

**Buckingham County
Planning Commission
May 15, 2023**

At a meeting of the Buckingham County Planning Commission held on Monday May 15, 2023 at 7:00 p.m. in the Peter Francisco meeting room, located within the Buckingham County Administration Complex, the following members were present; John Bickford, James D. Crews III;; Joyce Gooden, Steve Dorrier, Pete Kapuscinski, Ashley Shumaker, Stephen Taylor and Board of Supervisor Danny Allen. Also present were Nicci Edmondston, Zoning Administrator, and E.M. Wright, Jr., County Attorney.

Re: Call to Order, Quorum Present, Invocation, and Pledge of Allegiance

Chairman John Bickford called the meeting to order. Steve Dorrier gave the invocation, James Crews led the Pledge of Allegiance and it was said by all who were in attendance. Chairman John Bickford certified there was a quorum- eight of eight members were present. The meeting could continue.

Bickford: Nicci any changes to the agenda?

Edmondston: Yes, sir. Last Tuesday, an agenda was posted prior to this meeting. And today there were some changes that needed to be made to include a presentation by CRC for the upcoming comp plan. Workshop for the that will be open to the community in June. So I have added CRC to the agenda. That is the only change, Mr. Chairman.

Bickford: Okay. Very good.

Allen: So moved with change.

Shumaker: Second.

Bickford: Okay, have a motion and a second. All in favor, raise your right hand that passes. We'll move on to the comprehensive plan. I see Todd is here. So Todd, we're going to turn the floor over to you.

Supervisor Allen moved, Commissioner Shumaker seconded and was unanimously carried by the Commission to approve the agenda.

Todd Fortune: Good evening, everybody. Hope you can hear me through the mic. What we want to do tonight I don't expect this to take very long we want to go over the logistics what we are proposing to present and also kind of nail down a date and time and location under I see that Jamie and Nicci has some documents up on the screen. And we also bought some other dockets want to kind of give you a couple of examples of what we've done with past comp plans. What

you see on your screen is what we've done most recently with Charlotte County. Basically, there are two components to the actually three ones a just a brief slide presentation, by CRC staff to just be sure everyone knows what we're doing and why. But then we have two different exercises. And what we like to do is break the everyday attendees up into groups. And we have done it two different ways in the past what you see on the screen, what's on the screen is what we did for Charlotte County. It's an identifying issues exercise. And then the second exercise is a mapping exercise. And what we do is we break the room up into two groups. And one group will do the identifying issues, the other group will do the mapping and then after about 20 minutes, we'll switch. And then we'll come back and present our findings to the group. At the end. The whole meeting, we expect to last about an hour to an hour and a half depending on how much discussion there is. The other alternative, which Laura just passed out to you is something called a park exercise. We've done this before. And actually we did with Buckingham, before. So I want to get in, I'll just give you guys a second to look those over and see what your preference is. The differences are fairly minor with the park exercises, preserve, add, remove and keep out. If you were if you were here, the last time we helped update the comp plan, you're familiar with that exercise. The identifying issues exercise is more of identifying the county strengths challenges, and what you would like local news headlines to say about the county say 10 years from now. So that's really the difference between the two examples. It regardless of whichever exercise we do for issues with that we still plan to do a mapping exercise where we would have a large copy in your packet that's from the 2015 comp plan. And basically you just have markers and have p and have the map marked up based on your input. So that's what that's what we have in mind. I'd like to hear what the commission has to say what their thoughts are.

Bickford: I guess my question will be what's the is, sir, any better response from the citizens on either of these avenues?

Fortune: Well, we found was Charlotte County in particular, and also with Nottoway. County, the identifying issues exercise worked pretty well. And I will tell you that our intent is to take the feedback we get during the public meeting, and that's going to guide us when we draft a citizen surveys for what that's worth.

Bickford: Any comments from the planning commissioners on two approaches?

Crews: Think the park one kind of more simple to me. But I don't know what everybody else thinks.

Bickford: You're planning on having a couple community meetings?

Fortune: I think we're just doing one.

Bickford: Just one. I couldn't recall. I would say hit the middle ground. Do one at one meeting and one at the other.

Gooden: Go back to the first the first not the park identifying issues. The very first Yes. Okay. Want to Read that thank you.

Shumaker: I think it would be good if we could distribute the park exercise information is maybe a guide for people to organize their thoughts. Before going into the identifying issues exercise, I just think that helps people figure out what it is that they find to be the strengths and the challenges.

Gooden: If i had to fill out one I would want to do, the park. I agree with you.

Bickford: I'd agree. Little easier. Is that agreement among the commissioners just to do a hybrid? Is that what you just have to say? Or do you want to just stick with the park? How do you feel? I maybe misunderstood comment.

Shumaker: Maybe if we stick with the park, maybe between CRC and the Planning Commission, we can try to take the input and use the identifying issues more as a commission tool than a public tool

Bickford: Is everybody in agreement that we'll do the park and then we'll work on a other questionnaire in a joint meeting with you.

Fortune: All right, so for good on that, and then the mapping exercise by the competitor to the community meeting. So the other thing we need to talk about tonight is location, which I'm guessing is going to be the community center. That what that used to be the Dillwyn primary. And we didn't need to sell on a date and time. The what we're looking at, as far as time is sometime in June, understand the 12th is the Buckingham board meeting, which is out and then the 19th is June tenth. So there's a question of whether the group wants to have a meeting on that day.

Edmondston: Conflict came June 19, would be your work session with the holiday it's moved to June 20. And CRC has a conflict on the 20th. Which our conversations in the last day or so we've taken a look at the calendar. So the week prior June 14 or 15th, or June 21 or June 22.

Bickford: All right, y'all have a preference, either, either of those day to a week apart there?

Fortune: It's really at the Planning Commission's discretion. We don't have any any conflicts with any of those dates.

Gooden: When you're thinking the 22nd Are you talking what time?

Fortune: Well, that's your thing. We need to settle is a time. So that's something else the group needs to discuss.

Bickford: I would think you would probably get a better response if you had it after working hours.

Fortune: Yeah, we're definitely going to do it in the evening. When we say 6pm. Our concern is that if we slack, if we have it at seven or 730, you might have people going home, dinner and not wanting to go back out.

Gooden: 22nd out for me. Out for me. But other people, I have NAACP meeting, okay. That would be a very conflict.

Fortune: So, look at the 14th, the 15th to the 21st. Unfortunately, I may or may not have nottaway County Planning Commission on the 20th. So I can't commit for 20th.

Bickford: How's that for 14th? That's Wednesday.

Edmondston: There's still four weeks out that gives us enough time as the county and admin staff to advertise appropriately. Just make sure correct publications for community aware. Okay, is anyone aware of any other community groups that could be negatively impacted negatively impacted by the 14th? Of course, Joyce brought up a very valid concern with another but we would like for as much of the community and citizen possible.

Bickford: know of any other meetings that would conflict with on the 14th.

Gooden: Except that it's usually Bible study.

Bickford: That's a very important, you know that.

Gooden: That's what I'm saying. And I would have to say, again, that's much I would have to choose between coming here and going to Bible study. I don't know what other churches however that's traditionally Bible study night.

Bickford: How about the 15th. Is that reasonable? What do you think? You're fine with 15. How's about all the commissioners? 15th? Looks like the 15th is the day. What is the longevity of the meeting you want?

Fortune: We were envisioning list lasting an hour, maybe an hour and a half, depending on how much discussion there is.

Bickford: Would it be reasonable to start at five and assume you maybe we were wrapping up by 630?

Fortune: I mean, that's really up to the group. mean, if you think people can be here about of you know, I can be here because I can leave the office early for this. This is work related, but other people they have jobs that they may or may not that's something the group needs to decide.

Bickford: It is a little early for some I do know for traveling. Any suggestions for like? Six o'clock?

Allen: Six yeah, the normal meeting time.

Bickford: Let's go for six,

Edmondston: June 15 6pm.

Fortune: Like Nikki said they're going to get an advertising ready for the paper, we'll get a Community Calendar announcement to go into Farmville Herald. And we also you may notice in the packet lower passed out, Lauren passed out a flyer we're going to work up. And we're going to coordinate with the county and getting the flyer distributed. If any, if anyone has any suggestions for where to distribute the flyer, please let us know. We'll work on that.

Edmondston: The only other thing that I made. I did not have a date to work with Wendy's Spivey who coordinates all the activities for the community center. So if there's a conflict, would it be okay to use June 14 at 6pm? That would only be our backup plan in case there's a conflict. Other than that, I will move forward with reserving the room for then.

Fortune: A question. Not the building next door of the one next to that where department forestry is or used to be Ag Center, is that still available if as a fallback if...?

Edmondston: I feel the community center, this is only my feeling and maybe I shouldn't put my feeling in it. The community center is a bit more centrally located. It's a larger area, some of our supplies and equipment that are so easily used for the citizens to access that informational room. It's very conducive to a conversational area with different stations set up so that individuals are more inclined to ask questions and be involved. We can take as a further conflict conflict if either of those days of Community Center on available, we can move it to the agricultural center. How about that?

Fortune: Up to the group? I'm just kind of throwing that out there.

Bickford: It is an option but I do agree with Nicci community is a lot better. More room. And more centralized, he says centrally located. When will you be able to verify for the meeting Nicci how soon?

Edmondston: I will know tomorrow I will send an email tonight.

Bickford: Well, if it doesn't work out and we can we'll just have to...

Edmondston: scramble tomorrow to make something work.

Bickford: For now there we'll go with this plan.

Fortune: Well, that's all we have. So if anybody else has anything they would like to discuss. We can wrap up and you can move on to your next order of business.

Bickford: How soon will you have the flyers and all to the county?

Fortune: We're gonna have them done in the next couple of days.

Bickford: Oh, great. Okay. Well, if you would just make sure Nicci's got them and then Nicci can let us know and we'll try to get some distributed as soon as possible. Very good. Before they close that session with them does any commissioners have any questions at this time?

Allen: Is any other changes y'all have already made? Or thought about making to the comp plan?

Fortune: We haven't gotten that far yet. We kind of wanted to hear from the public before we got too far into it. I will tell you the first three sections of the plan are really going to be more data intensive. So we can hopefully in the not too distant future get started on those. But as far as the really the public input comes into play when you get into your land use plan, and your goals, objectives and strategies and your special policy areas. So I'll be curious to see what we hear from what we see when we get from here from the public.

Bickford: Okay, very good. Thank you.

Fortune: Thank you, folks.

Bickford: Okay, that'll bring us to discussions on Mr. Wright on our ordinance to address mining. I'll turn the floor over to you sir.

Wright: I appreciate the opportunity to come and talk to you tonight. What I have to say is like watching paint dry, it's not going to be particularly exciting. And so we will go through it. I decided when I was going to do this, that I would have to go back and take an overview. So the legal part of it would make some sense, as we talked about the various parts of the gold mining discussion, as I've chosen to call it. A teacher, when I used to do some school, they say whenever you do a public speaking, you're supposed to tell people what you're going to say, then you say it, and then you tell them what you said. So to give you a little idea of where we're going, that first slide really sort of deals with a overview of what we hope to talk about tonight. I want to sort of give you a brief and it's interesting that the comprehensive plan is now back in front of you. Because part of this discussion really relates to the zoning ordinance on the comprehensive plan. And we'll spend a little time talking about the current status of that. spend just a very few minutes talking about what's changed why we really having this discussion. And then we'll spend a little time on what I perceive that you've heard the positions of the various people in the community, and the arguments in support of that. And what the state can do, what the county can do the timing factors, decisions that I see that you might have to make, and you might see those

differently. And then if we have time, and you're so inclined, try to deal with any questions you might have. So that's sort of what we're going to try to do tonight. And I don't want to waste anybody's time. But I will try to be brief. And there's a whole lot of words in here. So I won't spend, I will try not to read to you, I hate people that you put something up and then they read it to you. I think y'all are pretty capable. Alright, as you know, we have a zoning ordinance. I don't know whether you've ever taken a note and taken a look at it or not. But the authority in the order itself to adopt that comes from the state the authority is granted to the local bodies by the General Assembly in Section 15.2.2280 remember, that was a hot topic 52 15.2.2280 locality that as a zoning ordinance relied on that section to adopt it. State gives you four things that you can do. And those are the full list of the one that probably we're talking about right now that the grants the authority to regulate, restrict permit prohibit in determining the following the activation or mining of souls or other natural resources. So when you look for your authority to do anything that we're going to talk about, that's you can find some of it right there, and that's probably going to be the biggest spot you find the current zoning status that relate to money and the A one district mining can take place with a special use permit it says mining and quarrying with federal and or state license. So currently, a person could come in and apply for a mining permit or a zoning special use permit before they could begin operation. If you say you gave them that special use permit with whatever conditions you might impose somewhere before they can start operation they're going to have to have whatever other approval state or federal law requires and the state is generally the one who permits mining in this Commonwealth in district five, again, a special use permit for quarry mining, and District Six which is the heavy industrial section m2 that quarrying and mining is a permitted use so you can do that they can open a mine if they get the state and federal permits without having to come to ask the board for anything. I don't know whether you've ever seen and that's not a very good picture of it but that is the official zoning map from Buckingham County has provided to me what you see basically in green is a one. Okay. And if you look up and the northern end of the county, I think the...will make that a little bit better. M one is blue and m two and if you're familiar with a county, you know where the slate quarries are, and you know what kind of a two and those are the areas that would be really related to m two. So the zoning ordinance in Buckingham County relationship to the comprehensive plan is absolutely crucial. And the zoning ordinance districts with a reasonable consideration to the comprehensive plan is stated and express the purpose of the zoning ordinance to create land use regulations. To encourage the realization and implementation of the comprehensive plan to this end. You go through those things that you can see that promote efficient and cost effective use of the land, be situated so as to make possible future economies living the provision of services by public and private sectors and to be located as to protect watersheds protect services, groundwater, discouraged development, floodplains, wetlands and conservation areas. The Comprehensive Plan is your roadmap, the ordinance come in place to make that happen. And those of you who probably attended those classes recently heard I've heard a lot talk about the comprehensive plan and how that fits into your scheme. And Buckingham's current comprehensive plan currently, right now, I've picked out just a few. Just to give you an idea that the comprehensive plan that you currently have in place, support status quo. Okay, once you've gotten there, in terms of allowing your zoning ordinance to match up with that. And on page 47 economic activity within Buckingham County is the foundation upon which the county was built. The building blocks of this foundation include agricultural forestry

manufacturing, including processing, retail and wholesale trade and services. Manufacturing. Actually, that's where you mining come in defined in comprehensive plan. Much of the manufacturing of Buckingham County involves some form of mining, Kyanite and slate are the predominant mineral so you play tribute in your comprehensive plan that those are a vital part of this county as it exists, goes on to talk about what Kyanite is, what the slate company is James River slate coming into me with accounting know the landscape has changed some in regard to some of those items. And solite which doesn't even exist in the county anymore was very prevalent in 2015. Community Resources, it identifies mineral resources in Buckingham County and describes those and says that's part of what we got here. And that's part of what we need to consider in the comprehensive plan. Do we want to allow him to development of those? Do we want to close that development? How do we want to go about that? A Map is included. I don't expect it to mean anything to you other than they've been identified. And actually there's a little tweak if you go to the study that was performed by the state that maps tweaked a little bit in terms of where the goal resources and those types of things. Buckingham counties land use plan which probably is there are areas where mining or industrial activities are occurring and could expand into adjacent areas of its present location. Comprehensive Plan as you now have it envisions that mining operations in Buckingham, more than likely could expand and talks about the way that you should approach that expansion. In the numbers below are the representative of where this is founded a comprehensive plan. My disclaimer, not a complete statement don't need this to be a comprehensive overview of the Comprehensive Plan. I've just saw a few snap shots of some of the references demining in the comprehensive plan presented only to affirm the connection between the Comprehensive Plan and the ordinance of the county primarily zoning in the subdivision ordinance. Alright, so we've got that what we have now sorry, I have a tendency crowd walk away from the mic. I'm not good staying in the same spot. So what's really changed to bring about this discussion. Aston Bay is the driving force that's really caused this discussion. They've done prospecting and prospecting. They continue to have discussion about prospecting in the county the potential for mining as the biggest driver of what while we're here talking about this, then the General Assembly stated came, and then the community dialogue, so that that's sort of why we're having this discussion, the two sides and very broad in a sense, and it's more nuanced than what's here. So this is just a general opinion, band mining either through zoning or otherwise band metallic mining, either through zoning or otherwise, make adjustments to the current ordinances don't change anything. That's what y'all are having to think about. And I think that pretty well, in broad sense, is what you're thinking about the arguments and supporting the various positions. Mining metallic mining is harmful or dangerous and should be not allowed. In any version further controlled by regulations, you can be appropriately regulating mine is, is of economic importance to the county, those are the factors that you got to think about, as you decide what you want to do. Right, so who's really in charge, you get to make a decision about how you want to decide who's in charge, I'm going to tell you, in my opinion, the state is really in control. It authorizes what can be done. And it shows him the license and permit mining in Virginia. It's authorized a county to do things through zoning. And additional there is a statute that specifically relates to mining and we'll talk a little bit more about that later 45.2-1227 written totally in the negative, which drives me crazy. That says any locality may establish standards and adopt regulations dealing with the same subject is dealt with in this chapter. So long as those such standards and regulations are no less stringent than those adopted by the director. And we'll

see later on. There's some caveats added to that where the director has to can by waiver, make some of this not apply to localities. So what can the counties do in my position is limited. I'm going to bore you a few minutes to talk about a local government. In processing, and that's why I got there. Each county in the state of Virginia was created by the legislature by the General Assembly. All right. And little law says US court law says several counties like county organizations and county offices exist only by the virtue of the constitution and laws of the state. So Buckingham exists because the general the same general assembly says there's going to be a Buckingham County, right? The creation of counties is purely a legislative function. If they hadn't said there's gonna be a Buckingham County, there wouldn't be a Buckingham County. That's how the county gets created. But it goes a little bit further than that. You want a little history, we were created in the 1761. If you read the science, and 1778, a little small triangle A section got cut off a Buckingham and give them a compliment. If you've ever looked at the map, the line that used to be a straight line. If you notice when you get up to the James River, it bends to the west. That little piece the legislature said Come on, you can have that. And so that's why that map looks a little different. You see that little corner up in the side. That was a little tweak that the General Assembly made sometime not long after 1761. They've done a few other little things around the county and adjusting boundaries. But that's the General Assembly's ground, your turn to the Virginia constitution. General Assembly may provide by general law a special act that any county may exercise any of its powers or perform any of the functions and may participate. within or without the Commonwealth may provide by general law a special act for transfer or sharing the regional government of services. This is the grant that says what you got is gonna be what the general assembly generally gives you. That's known as Dillon's rule. Dillon's rule provides that local government bodies only have the power the General Assembly provides, either expressly or unnecessarily by implication, Supreme Court stated as applicable to determine in the first instances from express words or by implication. If the power cannot be found, then the inquiry is at an end. all reasonable doubt, doubt over whether the legislature legislative authority exists, must be resolved against the local governing body. And that's a pretty strong statement. If you can't find somebody who says you got the power to do it, you really don't have the authority to do it under Dillon's rule. As to the challenge, you don't get the presumption that you were politically correct in making those decisions, and the Code of Virginia in section one, Dash 248 The Constitution and the laws of the United States and the Commonwealth shall be supreme any ordinance resolution, by law, rule, regulation or order of any governing body, or any corporation board or number of persons shall not be inconsistent with the Constitution. And the laws in the United States are of the Commonwealth. It's called the Supremacy Clause establishes the pecking order at hand in terms of federal government, state, locality, we are not the high man on the pecking order. State law may also be blocked by local authority and three are three ways they talk about oops, alright. That's a little there's some other things in there preemption dot and at the Attorney General's opinion, and he really says you got some limitations. Right now, the area's Virginia assembly has given localities to regulate citing, or the location of businesses is through zoning. In an opinion given by the Attorney General, he says in his estimation, the adoption of a zoning ordinance is the only method permitted by the General Assembly authorizing a locality to generally control the location of undesirable industries or businesses within locality. So zoning allows you to decide where businesses operate or don't operate in the county. Go back to that thing we talked about earlier, you have the right in

particular areas to prohibit regulator otherwise mining in those zones. So what about this 15.1-1200? If you just go in and read this section, you say, Wow, here it is, we can do whatever we want to any county may adopt says measures as it deems expedient to secure and promote the health safety and general welfare. That Power Shall include, and you go through those. You said, Well, there it is, we can do about anything we want to as long as it's tied to promote the health safety and general welfare. But if you remember from that earlier discussion, General assembly may provide, by general law, a special power, you got to do that. If you remember the supremacy part, you got to be in order with that. So you can't just do anything you want to it can't go beyond be in conflict with what the state and the feds say you can do. So when you first look at 15.2 1200, it is not as empowering, as it appears. Those of you that remember the solid waste discussion a few years ago or merely attempted to block the application of bio solids, and they got taken on. This was prior to the present bio solids law. And the court said is we have clearly and repeatedly stated a local government may not forbid what the legislature has expressly licensed operator authorized or required. A local ordinance may not conflict with state law. So again, use 154-1200 to expand the county's role when the state is not authorized accounted to do it. Or the state is already taken the area to itself that's called preempt the ability of the locality to the local to deal with it. What did the legislature intend to give you with that? Improve the public health. And also it talks about that the need for mineral resources and the need of agricultural industries and businesses be recognized in future row. So the general assembly is saying to you in your zoning on. These are the things you need to think about and included in that as in mineral resources. You thought about that and talked about it in your comprehensive plan when it was adopted. In 2000, I guess I was adopted in either 14 or 15. Again, to repeat that 2280, there's your four is the one becomes re, appropriate here it may regulate, restrict permit, prohibit or determine the following. And so you have the authority in your zoning ordinance to describe and decide the areas in which you want those things to happen. And that's what you've done, you current ordinance does that. You say in a one, if they want to mine, they need a special use permit. If they want to mine in light industrial, they need a special use permit. If they want to mine heavy industrial, they don't have to come talk to us go ahead. And as long as you comply with the state and federal people, you can do that. That's a whole lot of words take some time read it later on. But it really talks about to encourage economic development activities that provide desirable employment and enlarge the tax base to provide for the preservation of agricultural farmland, and other lands of significance. I've started highlighting some of the things that pertain to us. That's what you can do with the zoning. That's what you want any comprehensive plan, if you want to change something's a sort of direct way to zoning, so it'll match up. So what do you need to consider in drawing these districts that you're authorized to do where you can put these businesses there are some standards, it's a state said you've got to follow zoning ordinance and district shall be drawn and applied with a reasonable consideration for existing use and character of property, the Comprehensive Plan, the suitability of the property for the various uses the encouragement, the most appropriate use of the land throughout the locality. Though, in those districts you establish, you got some very clear guidelines of the types of things that you need to be aware of as you draw those, and other parties 2282, all zoning regulations shall be uniform for each class, and kind of building in use throughout that district. But the regulation in one district can be different from the regulation in another district. So that means, and let's use m two, that's easiest one heavy industrial. Everything, mining is pretty consistent,

that you can say any type of mining can go, the concern I get, and I'll talk about it very briefly later, if you come and begin to try to separate out types of mining within those districts, then have you do you have uniformity in the district? In other words, it's subtle in some ways, but silver mining, is that different from another type of mining and if you say special requirements for this one, special requirements for that, what not, then for these, that may, you may run into the uniformity in the district and trying to do that type of operation, you got wide discretion, you will get some backing as you decide what to do with it. But if you go with an irrational classification as the uses, it's not permitted. In other words, if you need it, whatever direction you need, you need to justify that pretty clear why you're moving in that direction, and make that part of the record. If you get it wrong on unconstitutional grounds, you might have a problem. Right? What other tools did the legislature authorize you? And the comprehensive plan that we've already talked about. Every locality by resolution has got to have a planning commission, and what is your purpose in order to promote the orderly development of the locality and its environs, and accomplishing the objective of that 15, 422200, the local planning commission, Civil served primarily as an advisory capacity to the governing body. So you play a pretty important role in this. The notion is that you are the providing advice, just like when you listen to your mom and dad, and they gave you advice, sometimes you took it, and sometimes you didn't. And from a legal perspective, that's the way it was the Board of Supervisors, you all try to be on the same page. But you don't necessarily always end up on the same page. local planning commission shall prepare this comprehensive plan you're talking about. The comprehensive plan shall be general in nature. And it should designate a general approximate location, characters and extent of such features, roads, improvements, transportation. That plan is going to take on more importance this year than it ever has, okay? Because you're really saying what we believe needs to happen, and in the age of the county as we go forward, circle back around that that's dealing with transportation more than anything else. But the you got to have the maps that he talked about the designation of areas of various types of public and private development, and residential, including restricted housing, business, industrial, agricultural, those are the areas you got are addressed. The only thing I'm trying to give you here is a notion is that comprehensive plan is important. And the amendment part is really what you're going through. Now, what you need to decide, because if you decide to recommend some action on this situation, depending on how far you go with that, my estimation is you're also going to need to amend your comprehensive plan. Because right now, your comprehensive plan stands in support of a certain types of things happening in certain areas. And if you decide to change that, you will be in conflict with the comprehensive plan. And if you remember earlier, we said that you got to do this zoning thing in consistent with your comprehensive plan. Same type pitch, here's the part that you really gives you a pretty good control, special use permit. I won't read it to you. But you may include, among other things, reasonable regulations, and provisions as to any and all of the following matters. And if you go through those, you'll find some of them deal with environment, some of them deal with other things, doesn't mean you say there are limits on that. But it does give you a way to put in some special conditions. Now, there's one other stature that I've found that really specifically deals with mining. And that's 45.2.-1227. And it says local standards and regulations waiver, the application of the chapter review for strict compliance. The a part is what you jump on first, any locality may establish standards and adopt regulations of dealing with the same subject dealt with and dot da dah this chapter, which say down at chapter 12 deals with

permits the certain mining operations and reclamation of land, but they can't be more or less stringent than the state. But then they go on and b and c to talk about the direct waiver and have some impact on that. I can't find where one case that's been challenged. And it got resolved in a different way. And that's a big, Chesapeake, this was a boring operation. If I remember correctly, that type of operation, not the mining, the city had some regulations about the standards of that the person who was running that mine had run into some odds with the state and they had entered into a settlement agreement with the state. And they were arguing that the director by entering into the settlement with them had an effectively said city of Chesapeake, you can't enforce that, because there is that waiver that's talked about in there. So depending on what the reaction to the state might be, you might put something in place, and then that might be a discussion. Well, the director of mining is not going to deal with that. So what's the takeaway from all this, and I know I've thrown it at you fast to take away the county is given authority through zoning, that zoning must be done within the parameters of the authorization of the state. And the zoning must be consistent with the comprehensive plan, and the state is also giving the 45.2 section. Alright, with that in mind, let's pivot to the Prove it first ordinance, which had been quite a topic of discussion got me named as Wright is wrong, and I appreciate that. But I still stand by my correct statement as I see it the wrong statement as they see it. I gave the board an opinion. Last August says the county was laid legal authority to adopt that ordinance. It's the only amount of that I've expressed a formal opinion on I've listened to the discussion very carefully. But I've not advised is any other opinion. And I'm not really doing that tonight I am telling you what I think the sort of the other balance lines are and where they are. I'm not changing my mind on the prove it first ordinance. You know, it's always interesting when you get something that's put in front of this board or the planning commission or some group you'd like to know where it came from. And so I spent a little time really looking at the genesis of this concept. This concept is broader than just mining and Buckingham County. It really comes out of a larger community group on community issue is a is a do it yourself guide from 2019 That really puts forward on local issues in in areas you need to do four things. They describe the full problems, at least one of them is stealing prevention. If you talk to if you remember that that's federal, state local, you got to challenge that. Dillon's rule is an inhibitor in their estimation, the Dormant Commerce Clause and contract clause, the courts have developed a legal doctrine called the Dormant Commerce Clause, which says that sometimes Congress has exclusive power to regulate commerce. And the state and local governments when not discriminate against the commerce from other states, has some implication here. And finally, this group takes on corporate personhood they believe that corporations should not be treated as people that they should not have the same rights as individuals. And out of that same do it yourself, the Big Four legal doctrines talked about mentioned above, trapped you and your community in a box that you are allowed to demand as a community activist to the community right strategy of activism developed out of recognizing how in many conventional forms of community activism that appealed to the government. Here's how big four are applied to restrict the rights of you and your community. They recognize that they are roaring upstream. Now, you know, I'm a great believer of you take what you got, and you argue for it. So they found this as a way to argue for it. You know, I understand that, and intellectually, I'm in favor of it. But when it comes to the application of the adoption of it, I have a problem with it. I'm not gonna put you on the spot, and ask you to raise your hand, if you've actually read it. Okay. I know some of you have, I don't know how many have, but I want to

make sure it's in front of you tonight. Want to make sure and I won't read it to you. But they say to protect the health safety. If you go back to that 15.2 Maybe that sounds pretty good. They talk about the name, read where they get the authority for every one of those are great documents, but they have nothing to do with the ability of the county to adopt this ordinance. That's a political statement, as one of my friends whose an attorney said at some nice political statement. Okay. But not legal authority. Let me put it back to the right side. So I'll move on. Those who, in this case, two slide presentations, the finding and his purposes, read what you would be finding if you recommend the adoption of this. I don't think you're ready to make those findings. There's accusations that the county has not taken care of its citizens. Now, again, maybe that's a political statement. But there's not enough information in your record, to recommend the adoption of that if you were even so inclined, and thought you had the authority. Interpretation alright. And they go through the definitions and you can read those it's goes on but there is statements of law rights the right to self government, all residents again more of a political statement, at what level true but there is a hierarchy of our right to self government. They won that those advice things and not opposing concept any of them. Administration civil rights enforcement they don't set forth a penalty now which they said to the extent authorized by law but it's not. Effective Date. people's right to self government. While the sentiment can be appreciated the legality of putting in an ordinance like this doesn't belong in there. It's a political statement and not a statement of what the policy of the county is and what it chooses to enforce. There's one section in here for example, in dealing with corporations, anybody who aids and abets, a corporation in trying to do metallic mining is subject to penalty. So if you own a piece of land and you want to have that explored and possibly enter into a contract with a corporation to mine you'd probably be in violation of this, too. So I just legally do not believe County has the authority to adopt this. I would ask, it is the only thing that I've given an opinion on because I was asked specifically about it. I do not believe this planning commission should recommend to the board. Not that because in the form because I don't think they have the authority to do it. There are other ways that you might can accomplish some of that, but it's not through that ordinance. All right. What about the timing? Let's think about where we all have a comprehensive plan coming along. Because the other part of this timing right now is not an immediate crisis is to finding a solution. The state has time to react, the county needs time to react with a comprehensive plan appropriate on any ordinance changes. Now, why do I say it's not an immediate crisis, you know, that state report, spend some time with a 280 some pages, and you will find first in the Executive Session, that gold prospecting activity has taken place in Buckingham County, it is not at all a certainty that goldmining will be proposed that's on page one of the file report, part of the formal URL when he interviewed Ashton Bay, they said we're still looking we don't know. The part that I really like about that report is the What the scientific community added at the end, that's where the technical discussions occur. That's where you really get into it. And they make distinctions of the type of mining that might occur here compared to the type of mining that occurred in South Carolina, they said the type of mining that may have occurred here is more akin to what might happen in Alaska, and a certain property up there, that it will not be a certain type of mining that you see the necessarily some of the pictures of that happened in South Carolina. But even at executive summary, after they said that when you get down into the what's attached to it is called publication copy attached to the final report, given that no new gold mines are currently proposed in Virginia, and that there are several more years of exploration and development work

necessary before mine can be proposed. There is ample time for Virginia General Assembly and state agencies to consider the conclusion and recommendations reached by both the National Academies committee and the state agency committee before the state need to evaluate any applications. So this is what we're talking about now is a right far piece down the road. So we don't have to make a decision tonight, and probably not even next week. Because they're saying the academic people are saying there is time for the state to react to it. And notice they talk about action by the state, they don't talk about action by localities, what you're being asked to do is sort of a backstop and an indirect backstop. In other words, if the state doesn't take care of it, don't allow to have it all in the county. When it's, it's a little early, know what the state's going to do if they're going to do anything. And I don't mean to be presumptions. There are a couple of things that from staffs perspective that I believe you need to be thinking about. First, do you want need any more information at this particular time? You've heard from the community? You've heard from individuals, you've heard from private groups, you've heard from business and industry? Is there anything else that we should be looking for, to try to get in front of you. I have met with some people I got a meeting scheduled Thursday, I think it is with another group of people just to hear the types of information that might be out there depending on which way you pivot with what you think you might want to do. But that's the first thing that sort of that I have in my mind. Really, do you need to hear anything? Do you want to hear anything else are you to the point where you're ready to begin whatever type of deliberation discussion to make your recommendation to the state? that state report, if you really even more tedious than this, spend a few hours will that it's fascinating really, and I commend it to you. Other thing I think you need to be thinking about is how do you integrate the path forward with the change in your comprehensive plan, which is now under revision. You go ahead and amend independently if you want to do something? Do you go ahead and amend your current comprehensive plan knowing And you got another one coming shortly that you got to deal with? So that's something you've got to decide in your discussions. Right. Once you start to get past that, what you got to be a recommendation to the Board of Supervisors? I want to talk a minute, before we get to that. There's this I think they're asking you for a recommendation, you weren't asked to consider a particular project or a particular word. Formally the deal is a good first on the to the planning commission, they have X number of days, which is 180. Thank you. Thank you. Thank you. The, I don't think the board is in that notion, they are looking for you to make some guidance recommendation to them and then they will see where they go from that. So I don't think you stuck on a timeframe. In this situation, I feel pretty comfortable about saying that to you. What are the possibilities again, these are how vision I've been high altitude. And I don't mean to be presumptuous. But I think somewhere in this, you're going to have to make some decision along these lines. And I'm in there's no hierarchy, there's no magic in the numbers. Obviously, the default position would be nothing to do nothing, which would either take great action down on the other end. So you can either say no changes needed. Let's wait till we take action till we get through this comprehensive plan. Lets amend zoning ordinance a comprehensive plan immediately what changes to the comprehensive plan what to the ordinance take action to require the state of Virginia to develop more appropriate regulations criteria for metal gold mining, that would mean the board would adopt a resolution say, hey, state, you read the same report, we did take a look at it, you got to do something. So but I think somewhere that those are the choices that you're going to have to make. I'm standing in front of you, as your attorney as

the county attorney, tell you my legal concerns, really need to know that specific of what you might want to do before I can give you any detailed response. But if you treat the various types of mining differently in the same zone, remember that uniformity, that creates a problem, I believe you can probably make distinctions in zones, some discussion of whether you want to do an overlay zone and that type of stuff. But I think I would stay to the side of keeping the various types of mining the same in the same zone differently in different zones. If you take broad action, and don't amend the comprehensive plan, I think you got a problem. In other words, if you institute some real large changes in terms of the mining and what we've got, and don't adjust your comprehensive plan, either immediately or wait until we get through the before you take action. And if you remember, that report says there's no urgency to this right now. There's a few years before we'll get even to the point where the state would have to consider an application. And it may be that Aston Bay decides, Buckingham is not the place for us because it's not a not enough product for us to get it out of the ground. If you ban or adopt something that says ban mining entirely. I think we got a real problem. Okay. And the other one that's dear to my heart is the Prove it first ordinance if you adopt that ordinance in the form and send that's your possibility. All right. That's my fast approach bullet points. Not trying to be too long. But I will try to answer questions. But understand hypotheticals get to be difficult because they're driven by so many different facts. But general questions, I think we can talk about

Bickford: Commissioner any questions at this time for?

Kapuscinski: Mr. Wright I would understand specifically that we have no civil rights authority on this commission. So a prove it first ordinance from us recommendation or not, it's not our purview. Am I right?

Wright: I dont disagree with you.

Kapuscinski: So why would we even consider making that recommendation?

Wright: Well, it's part of that ordinance. I'm telling you that I don't think the ordinance is presented stands legal challenge. So if there are parts of it that you like or don't like or otherwise, and that's one of them that you have that opinion. I don't disagree with you.

Kapuscinski: Second question. You mentioned to me at one time that there's a difference between the act of mining and the processing of fines the commodity the mind the product comes out in the mind. If I read the ordinances, the way they are, if I read the state code the way it is, it seems to me, regulation could include, even though it may not exceed what the state government allows, could include our discussion with regard to the processes in order to refine whatever the product is that comes out of the ground, could you discuss that?

Wright: It's an interesting thing, if you read the report made by the state, in the academic part, they say, it's probably likely that the, what comes out of the ground here, will not ultimately be processed here. They think infrastructures already exist. And it's easier to take this product and carry it someplace else to have it finely processed. Now, that's not saying there won't be

disturbing some ground, they won't be crushing mills. But that report does not definitively say that the extraction of gold will happen on site in Buckingham County. Alright, so in terms of mining this, that's a process as the state regulates the other thing that gets to be interesting, if you if you go broadly into mining, and we've heard arguments about the tailing mines, that the tailings out of the mines that existed in dealing with those that is currently regulated by the state under the same deal that the gold mining, so it's awfully hard to distinguish those out. And the academic people suggest that some of those tailings are probably more volatile in terms of the exposing community to other chemicals, and otherwise, without proper regulation, I think the inference is, if you think that can be done successfully, which has been done successfully in Goochland probably right now, because there's enough gold left in those tailings to get money out, the application is if that can be done safely. The processes of the bad things are there are not as bad as the things that might come out of a new gold mine. So you can focus on different parts of it yes.

Kapuscinski: So we could conceivably talk with regard to the mining itself, we can talk to the processing of the ore that comes out of the ground. In other words, we could do in a zoning ordinance, something that would, as an example prevent the use of heavy metals? I'm asking the question not making a statement.

Wright: As I said, I'm not prepared to answer that question. Okay. If you give me a specific of what ordinance you think you might recommend and how you want to do that? Or tell me to develop a think about that? I can come back and talk to you about that. But to tell you a good definitive answer to that would only either embarrass myself later or look like a hero later on? I am. I even got my hearing aid in and I can hear it. Thank you.

Bickford: Any other questions from commissioners?

Allen: Only question I got is can I get this report that you just made?

Wright: Yes. But I want to say and I want to say to the commission that I appreciate very much. You're listening to that. But I also want to say to the commission that I appreciate I've had interaction with a pretty wide variety of people in this, and I appreciate their input. It helps me think about how some of these things are part of that. I've not had a meeting with anybody that the people weren't most courteous and considerate and the way they presented themselves and the conversations we had. And I heard somebody talk about being Buckingham proud at the Board of Supervisors and that is Buckingham proud when we conduct ourselves a way in spite of our differences that we have a discussion to shake hands at the end of the day. So with appreciation to you and the board.

Bickford: Okay, Mr. Wright appreciate you giving us your presentation. And I would like to also have you email that?

Wright: Ill email and Ill give it the record and it shall be part of that and then we'll get you a copy of it.

Bickford: Okay. Thank you, sir. That brings us to commission matters and concerns. I'm going to suggest we've had a lot of information provided to us. We have a meeting next week, our regular meeting why not take some time. Think about all the information has been provided. At the end of next week's regular meeting, we can take a few minutes decide if we need to hear some other speakers. If you prefer that to get some other information. If that's the case, we'll do it. I think our next step would be to do that and decide on a work session to continue this.

Kapuscinski: I'm agreeing with you, sir. But I would also like to take it to the next step with regard to Mr. Wright's recommendation that he takes a look and determines whether or not we could include or create an ordinance that dealt just with the process of the fines. If we do that, and then had the meeting at our regular commission meeting, I think they'd be very helpful.

Bickford: But anyway you be thinking on if you want to entertain some other speakers at a work session. Also, when you may have one. So we're already scheduled. So we can you know, if you choose if you want more speakers we can certainly have them there. And that'll give us plenty of time to go over what what's been provided to us.

Kapuscinski: Mrs. Edmondston is there going to be any other issues on the docket. I mean, what have you got on the agenda so far for next week.

Edmondston: Next week's regularly scheduled Planning Commission meeting there will be a public hearing regarding the zoning text amendment SUP and there will also be an introduction for a cell tower.

Bickford: Okay. Any other commissioners have any time they want to voice at this time. Do I have a motion to adjourn?

Kapuscinski: So moved.

Allen: Second.

Bickford: All in favor, raise your right hand. We are adjourned. Thank you.

Commissioner Kapuscinski moved, Supervisor Allen seconded, and was unanimously carried by the Commission to adjourn the meeting.

There being no further business, Chairman Bickford declared the meeting adjourned.

ATTEST:

Nicci Edmondston
Zoning Administrator

John Bickford
Chairman