

Minutes

Northampton County Planning Commission

July 20, 2011

This was a recessed meeting of the Northampton County Planning Commission held on Wednesday, July 20, 2011, in conference room #2 in the former Northampton County Middle School located at 7247 Young Street, Machipongo, Va.

Those present were Chair David Fauber, Severn Carpenter, David Kabler, Roberta Kellam, John Wescoat, Jr., and Michael Ward. Those absent were Mary Miller and Martina Coker, Vice-Chair.

Also in attendance were Sandra G. Benson, Director of Planning & Zoning; and Peter Stith, Long Range Planner.

The meeting was called to order at 7:00 p. m. and a quorum established.

The agenda was reviewed and motion was made by Commissioner Kabler to accept the agenda as presented. Second was made by Commissioner Wescoat and carried 6 to 0.

Consideration of Minutes

The minutes of the March 30, 2011, joint work session with the Board of Supervisors were considered with one correction noted that the title date be changed to March 30. Motion to approve as amended was made by Commissioner Ward, seconded by Commissioner Wescoat, and carried unanimously 6 to 0.

The minutes of the April 5, 2011, meeting were approved 6 to 0 with one correction to page 11, second paragraph, in the last line the words "to exclude" should be changed to "from excluding." Motion to approve as amended was made by Commissioner Ward and seconded by Commissioner Carpenter.

The minutes of the April 27, 2011, recessed meeting were approved as submitted 6 to 0 upon motion by Commissioner Ward and second by Commissioner Wescoat.

The minutes of the May 3, 2011, meeting were approved with one correction to page 3, second full paragraph, third line, insert the word "by" after "allowed". Motion to approve as amended was made by Commissioner Wescoat and seconded by Commissioner Carpenter. The motion carried unanimously 6 to 0.

The minutes of the May 18, 2011, recessed meeting were approved with a correction made to page 6, paragraph 9, by adding, "...and that many tourism-oriented uses are already permitted in the WV-NB District..." after the word "tourism." Motion to approve as revised was made by

Commissioner Ward and seconded by Commissioner Wescoat. The motion carried unanimously 6 to 0.

The commission approved the June 7, 2011, meeting minutes with the following corrections: (1) page 3, first sentence add the words, “under cultivation” after “land”; and (2) on page 5, second full paragraph, correct the typographical error in the last line. Motion to approve the minutes as corrected was made by Commissioner Wescoat and seconded by Commissioner Carpenter. The motion carried unanimously 6 to 0.

The commission approved the minutes of the June 15, 2011, recessed meeting by a unanimous vote of 6 to 0 with the following corrections: (1) first paragraph, change the location of the meeting in line 2 to the auditorium; (2) page 2, fourth bullet point, the second sentence should read, “There is a land-based test facility in Colorado.”; and (3) page 2, twelfth bullet point, insert the words “at least “ after the word “located.” Motion to approve as corrected was made by Commissioner Carpenter and seconded by Commissioner Ward.

New Business

The next order of business was a presentation and discussion related to Priority Conservation Areas. Ms. Benson explained that the Coastal Zone Management Program had provided funding allowing Virginia Commonwealth University (VCU) and the Va. Department of Game & Inland Fisheries to identify priority conservation areas within Northampton County. Then the county was awarded a grant to incorporate these priority areas into the county’s comprehensive plan. Staff has been using the Community Viz software to develop several different projects and staff training is on-going as part of the grant. She noted that the comp plan amendment needs to be done through the public presentation process within the next few months as part of the grant deliverables.

Mr. Stith explained that various agencies such as the U.S. Fish & Wildlife Service, the Va. Department of Game & Inland Fisheries, VCU and the Dept. of Conservation and Recreation have targeted various areas deemed as high priority. This document attempts to incorporate that information into one single map. While viewing the map he explained that areas are ranked based on highest to lowest priority. He explained that the ultimate objective is to direct high density zoning or inappropriate land uses away from these high priority areas.

During and after the presentation the commission inquired about the following topics:

Why the product is considered “subjective”?

Who “approved” the final product?

Was peer review accomplished?

What criteria/research formed the basis for the rankings?

Are individual agency priorities reflective of funding priorities or actual “natural” priorities?

Is there any legal or funding implication if the county approves projects in the highest priority areas?

Ms. Benson explained that the map presented tonight is a separate grant project developed by other agencies as mentioned. However, this grant proposal is for the county to evaluate these conservation priority areas that have been identified using our data and then consider whether we would incorporate this information into our comp plan. She also noted that this objective is not a regulatory requirement, but is subjective and the map can be adjusted by the locality.

The commission then discussed the issue of private swimming pools as accessory uses as outlined in Ms. Benson’s memo of June 1, 2011 as follows.

It has recently been brought to my attention that we have what in staff’s opinion is a conflict in our zoning regulations with respect to private swimming pools. In Appendix A, Category 7 – Recreational Uses, “Swimming Pools, Private” is a use allowed by right in all districts except Conservation, Village-2, and Existing Industrial, in which districts it is not allowed, and Waterfront Village-Waterfront Commercial, where it is a minor special use. This use is differentiated from “Swimming Pools, Public or Commercial” in Category 7. Such presentation would imply that it was contemplated that a private swimming pool could be a primary use on a property, which I would not recommend. Typically a private swimming pool would be an accessory use on the same parcel as a dwelling unit, and Category 8 SF – Single-Family Residential Uses provides “Accessory Uses and Structures (excluding guesthouses) with zoning clearance in all districts. Category 8 MF – Multi-Family Residential Uses allows “Accessory Uses and Structures” with zoning clearance in all districts except Conservation, where multi-family residences are not allowed. Given the points stated above, staff requests that the Commission consider as a clarifying zoning text amendment deletion of “Swimming Pools, Private” as a separate use in Appendix A, Category 7 – Recreational Uses.

Ms. Benson explained that swimming pools are listed in the Use Chart as a separate use and not considered as an accessory use. She recommended that private, residential pools be allowed as an accessory use still requiring a county zoning clearance in order to obtain a building permit.

Commissioner Kabler concurred and noted that private pools should not be considered a primary use.

Ms. Benson clarified that a zoning text amendment would be required; however, commercial pools should be considered a separate use and not as accessory.

The Chair suggested that the number of zoning districts allowing commercial pools as a use be reviewed as well in the Use Chart.

Motion was made by Commissioner Kabler and seconded by Commissioner Kellam to accept the process outlined by staff in the June 1, 2011 memo to address this issue. The motion carried unanimously 6 to 0.

A fifteen minute break was taken at 8:30 p.m.

Ms. Benson then updated the commission about action taken by the Board on July 12, 2011, on Zoning Text Amendments 2011-08 and 2011-09. Since no commission recommendation was made on ZTA 2011-09 no action was able to be taken by the Board. She noted that Commissioner Miller had attended the meeting as well and had prepared a written interpretation of her observations. Ms. Benson noted that her understanding of what had transpired differed somewhat from those of Commissioner Miller's.

Ms. Benson stated that the Board did not wish to adopt the overlay without adopting a text amendment that would go with the overlay. She added that a question came up after the commission meeting about a procedural matter. After checking with the county attorney's office it was determined that a zoning map amendment was required and not necessarily a comprehensive plan amendment so that the overlay district would actually be added to the zoning map. Also, property owners would need to be notified; therefore, another public hearing step is necessary. She added that the Board would like the commission to work on WETF language since the location of a wind farm here is slim due to wind resources, but having a WETF may be a real possibility.

Commissioner Kellam expressed her opinion that the Board was more adamant that the WETF be a priority and that the Board had agreed that a WETF is not a standard wind farm but different.

Ms. Benson added that perhaps the WETF provisions should be deleted from the Wind Energy Ordinance but not to slow down the process for the overlay so that it can be advertised for September. It may be useful to take this opportunity for the commission to review the overlay map one more time as well. She added that staff has tried to contact the Audubon Society to determine how the overlay areas were identified.

Commissioner Kellam stated that she has a list of the Department of Environmental Quality studies that were used to develop the Important Bird Area (IBA) mapping and would make sure

that information is given to each commissioner. It was her impression that the Board was not enthusiastic about implementing an overlay district and perhaps additional standards should be developed for certain areas.

Ms. Benson reiterated that the Board has directed the commission to focus on regulations for wind energy test facilities (WETFs).

The Chair asked the commission if they wished to discuss the wind energy zoning text amendment tonight. Commissioner Kellam replied yes. However, since the Board emphasized the importance of getting a WETF proposal on the table she wished to discuss a newly proposed draft entitled "Planning for a Wind Energy Test Facility" at this time. This new proposal would be very similar to the solar floating zone. During discussion she noted that the WETF in Colorado is connected to a university.

Commissioner Ward noted that there are persuasive comments advocating for a floating zone where installations would be by right after a rezoning, in accordance with adopted performance standards.

Recalling comments made by Sally McNeilan with Fugro Atlantic, Commissioner Wescoat stated his support of the special use process being used for each individual turbine. He added that it was evident to him that her organization has a clear interest in locating here.

Commissioner Kellam stated her support of a floating overlay zone because other underlying uses could continue on a property. She added that wind turbine operations should also conduct data research on bird impacts.

Commissioner Ward expressed his opinion that he was not comfortable with the commission having to grant a special use for each individual turbine.

The Chair asked if the Wind Energy Committee wanted to draft additional wind energy language at this time. Commissioner Kellam replied that she was no longer interested in participating on that committee at this time. The Chair then suggested that the full commission be made aware of this vacancy. Ms. Benson informed the Chair that she felt sure that staff will be directed to draft an amendment if the commission is not interested in doing so.

In order to alleviate confusion and to allow ample time for dissemination and review, Ms. Benson emphasized that meeting materials be delivered to the commission in a timely manner and not at the last minute or at the meeting itself.

Unfinished Business

- A. **Zoning Text Amendment 2011-08:** The Northampton County Planning Commission intends to amend the Northampton County Code, Chapter 154 Zoning Code, §154.083 Statements of Intent for Overlay Zoning Districts to add a new section to be known as **(D) WIND ENERGY OVERLAY DISTRICT**; and to include a new section to be known as **§154.166 WIND ENERGY OVERLAY DISTRICT**. The amendment includes a map delineating areas for placement of such facilities.
- B. **Zoning Text Amendment 2011-09:** The Northampton County Planning Commission intends to amend the Northampton County Code, Chapter 154 Zoning Code, **§154.003 DEFINITIONS** to include new definitions pertaining to wind energy facilities; to add a new section to be known as **§154.114 STANDARDS FOR WIND TURBINES, LARGE AND UTILITY-SCALE**; and to amend Appendix A – Use Regulations, by deleting in Category 4, Community Service Uses, Item 35 Wind Farm and by adding in Category 3, Commercial Uses, and Category 4, Community Service Uses, to allow by major special use permit Large and Utility-Scale Wind Turbines in the A/RB Agriculture/Rural Business and EI Existing Industrial Zoning Districts.

Commissioner Ward stated that he would offer an amendment in the form of a substitute for Zoning Text Amendment 2011-09 making conditions for the WETF but keeping it in the utility scale wind energy language.

At this time Commissioner Wescoat moved to recommend approval of Zoning Text Amendment 2011-09 to the Board as advertised. It was clarified that this motion pertained to the amendment just as advertised and did not include any revisions or amendments previously discussed by the commission on July 5th. The motion was seconded by Commissioner Kabler.

Commissioner Kabler also expressed his opinion that the overlay is a very important aspect of the entire issue and had concerns about the Board possibly adopting language without having the overlay in place. Ms. Benson clarified that the overlay matter requires another public hearing process scheduled for the regular meeting in September.

The Chair polled members present to see if anyone had any other comments to offer before the vote was taken. There being no other discussion, the motion carried 5 to 1 with Commissioner Kellam voting “no.”

At this time the commission agreed by consensus that their work on the overlay map has been completed except for the additional public hearing process that will occur in September. Therefore, there was no further discussion of the overlay.

Adjourn

Motion to adjourn was made by Commissioner Kabler at 9:23 p.m. and was seconded by Commissioner Wescoat.

Chair

Secretary