

## Minutes

### Northampton County Planning Commission

July 5, 2011

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, July 5, 2011, in the auditorium of the former Northampton County Middle School located at 7247 Young Street, Machipongo, Va.

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

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

The meeting was called to order at 7:03 p. m. and a quorum established.

The agenda was reviewed and motion was made by Commissioner Wescoat to accept the agenda as presented. Second was made by Commissioner Coker and carried 8 to 0.

#### **Public Hearings**

The Chair called for ex parte communications for Items A through D related to Agricultural-Forestal Districts (AFD). None were provided. Commissioner Miller noted that she had conducted field visits to each area.

The first hearing was called to order.

- A. Ten-Year Review of Elkington AFD:** Elkington AFD is located along Savage Neck Road (SR634) extending along Elkington Road (SR 665), Old Castle Road (SR 665), Kirwan Hall Lane (SR 705) and Courthouse Road (Bus. Rt.13) just south of the Town of Eastville.

Several property owners in the AFD were present, and Ralph Dodd, whose family farms over 500 acres in this AFD, asked for a favorable recommendation to renew this AFD.

The Chair called for public comments. None were received and the public comment portion of the hearing was closed.

Commissioner Ward asked for tax revenue information concerning this matter. Ms. Benson explained that the commission is to consider land use issues related to AFDs and that tax revenue issues are fully considered by the Board of Supervisors during their review.

Action: Review of Elkington AFD

Commissioner Kellam stated that due to both the environmental and economic benefits provided by this AFD she wished to make a motion to recommend approval to the Board with the withdrawal of the two small lots as requested by Garrison Brown.

It was noted that the acreage figure stated in the AFD Advisory Committee recommendation memo dated June 30, 2011, represented only that acreage that had been added in 2009 and that the total acreage in this AFD actually exceeds one thousand acres.

Commissioner Miller noted that item 4 as stated in the memo from the AFD Advisory Committee stipulates that local developmental patterns and needs should be considered. It was her opinion that renewing this AFD would help alleviate any residential development pressures in this area as well as meeting the comprehensive plan's goals of supporting agriculture and aquaculture industries. She then seconded the motion.

Concurring with others, Commissioner Kabler expressed his support to renew this AFD.

The motion carried 7 to 1 with Commissioner Ward opposed.

The next hearing was called to order.

- B. Addition to Happy Union AFD:** A. Stephen Boyer has applied to add 74 acres of land located on Nassawadox Creek near the terminus of Wellington Neck Road (SR 609) and described as being Tax Map 14, double circle 13, parcel H.

Stephen Boyer addressed the commission and stated that his request had not changed since the commission recommended approval of this application request in 2010.

Commissioner Ward questioned if the land was now part of a preservation easement. It was explained that the core acreage of Happy Union AFD is in a preservation easement that is not owned by the applicant.

There being no other comments the public portion of the hearing was closed.

Commissioner Kellam noted that the commission had recommended approval of this addition to Happy Union AFD last year which was denied by the Board. She noted her familiarity with the property as providing significant habitat area for wildlife as well as a valuable watershed and buffer that promotes water quality. She also noted that Dr. Boyer had vacated a subdivision plat of the property restoring it to one large parcel.

Commissioner Miller noted that the parcel is in a high-value real estate area with ample water frontage and there is no shortage of building lots in the area.

Commissioner Ward questioned the relevance of land being in both an AFD and a preservation easement. It was noted that land can be placed in both, but does not receive double tax relief benefits. Ms. Benson added that it was her understanding that any parcel of land can be placed in an AFD; however, not all parcels qualify for real estate tax relief.

Commissioner Kabler stated his support of this request noting that the AFD status would comply with natural environment and open space considerations in the comprehensive plan.

Action: Happy Union AFD Addition

Motion was made by Commissioner Miller to recommend approval of this addition to Happy Union AFD on the basis of compliance with requirements for approval. Second was made by Commissioner Coker and the motion carried 7 to 1 with Commissioner Ward opposed.

The third hearing was called to order.

- C. Addition to Milford AFD:** Shelton Alley has applied to add 303.71 acres. The property is described as being Tax Map 99, double circle 4, parcels 1 through 8 and A located on the east side of Seaside Road (SR 600) between Seaview and Capeville.

Mr. Alley was present to answer questions and noted that there are approximately 140 to 150 acres of wetlands on the property.

No public comments were received and the public portion of the hearing was closed.

Commissioner Coker expressed the opinion that the subject property is important for water quality protection.

Commissioner Miller noted that the application does contain significant agriculture and forestal acreage and Commissioner Kabler added that this proposed addition meets comprehensive plan objectives to preserve and promote agriculture.

Action: Addition to Milford AFD

Motion was made by Commissioner Wescoat to recommend approval of this application and was seconded by Commissioner Coker. The motion carried 7 to 1 with Commissioner Ward being opposed.

The next hearing was called to order.

- D. Addition to The Hermitage AFD:** Charles Frederick Von Canon and the Von Canon Family Limited Partnership have filed to add 152.88 acres of land. The property is described as Tax Map 83, double circle A, parcels 12 and 16 and is located on the

north side of Stone Road (SR 183) along Von Canon Road with frontage on Kings Creek.

There was no applicant or agent present.

There being no comments the public portion of the hearing was closed.

Commissioner Wescoat stated that this appeared to be a well-placed addition that could help mitigate sediment runoff into Kings Creek especially given its close proximity to a large residential subdivision.

Commissioner Miller stated that there were a number of empty lots in the vicinity and no apparent pressure for residential development in the area. She also stated the view that enlarging the AFD would benefit both aquaculture and agriculture.

Commissioner Kabler concurred and noted that the application meets the goals and objectives of the comprehensive plan to preserve open space and valuable agriculture and forestry resources.

Action: Addition to The Hermitage AFD

Motion was made by Commissioner Kellam to recommend approval of this application to the Board of Supervisors. Second was made by Commissioner Carpenter and carried 7 to 1 with Commissioner Ward opposed.

The next hearing was called to order.

- E. 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.

The Chair called for public comments.

The Commission heard from Sue Mastyl of Harborton that she had been unable to access the map of the proposed overlay district on the county website; however, she had been able to obtain a copy. She asked if an application for a wind energy project could be submitted for location anywhere in the overlay area.

Steve Parker asked questions about the map and read a prepared statement advising caution as to where wind turbines should be located. He then explained the various zones depicted on

the Important Bird Area (IBA) Map as developed by the Audubon Society. A copy of his written comments is attached as part of the official record.

Ms. Benson noted that the Coastal Avian Protection Map was reviewed several months ago during a public meeting of the commission.

When asked by Commissioner Ward, Mr. Parker stated that he was unfamiliar with the different zones depicted on the proposed county overlay map but was quite familiar with the Important Bird Area (IBA) Map created by the Audubon Society. Mr. Stith noted that the county overlay map uses data layers taken from the IBA Map with 3 IBA zones excluded from the county version. Those 3 excluded zones delineate the county's proposed wind energy overlay district.

When asked by Commissioner Miller which version of the proposed 2011-08 Zoning Text Amendment was he supporting, Mr. Parker answered the version revised on June 15, 2011.

Sue Rice, Eastern Shore National Wildlife Refuge Manager, expressed appreciation for the commission's reliance on years of research and requested that a clearer map displaying more land features such as roads be provided.

Comment letters from Brian Taber and Harry Armistead (copies attached) were read for the record.

Commissioner Kellam noted that the colored zones have been identified as areas of international avian importance and, as such, should exclude wind turbines that would create high impact to a valuable resource. She noted that 95 percent of migrating birds that use these zoned areas for resting and feeding are young of the year. She then read her written comments of justification for the record as attached.

Commissioner Miller questioned if wind energy projects should be allowed in agricultural zones.

Staff confirmed that the new MET tower location is within zone 4 of the proposed map.

Given the limited capacity of existing power transmission lines, Commissioner Kellam questioned the probability of having wind turbine projects in the county even if an ordinance is adopted.

Commissioner Wescoat expressed his opinion that the proposed map is too broad and, therefore, preventative. He, too, noted the unlikelihood of having wind farms located in the county due to estimated low wind capacities.

Commissioner Miller reiterated that wind turbine farms should be excluded from the A/RB District as being incompatible with farming and because of population distribution as depicted on the 1,000-foot radius map. However, Commissioner Kellam disagreed noting her opinion that wind turbines are compatible with farming activities and that the special use permit process would help to mitigate other concerns.

Commissioner Ward expressed his opinion that slow or insufficient wind patterns do not necessarily preclude wind energy projects from being located in the county. He then asked for additional information concerning clarification of zone 4 as depicted on the draft overlay map.

Steve Parker with The Nature Conservancy gave a lengthy explanation as to how bird data was obtained by using Doppler radar and field verification techniques. He elaborated on the criteria used to create the Important Bird Area Map which has also been used by the Virginia Department of Environmental Quality in the Permit By Rule process. He noted that an estimated 6 to 9 million song birds pass through the county each year using mixed forest and scruffy woodland as habitat that provides protective canopy and foraging areas. The data has proven that there are more varieties of birds than originally anticipated and confirmed that this area is part of a major avian migration highway. Commissioner Kellam added that this area is a major raptor corridor as well and the county should continue to protect and promote its bird eco-tourism industry.

The Chair called for a short break at 8:45 p.m. and reconvened at 8:55 p.m.

Discussion continued on Zoning Text Amendment 2011-08. Commissioner Kellam stated that no current technology exists to protect birds from large flying objects such as wind turbine blades. She added that if and when technology advances to protect bird populations then an amendment to the map and language would be warranted.

Action: Zoning Text Amendment 2011-08

Commissioner Kellam moved to recommend approval of Zoning Text Amendment 2011-08 to the Board as presented. Motion was seconded by Commissioner Coker and carried 5 to 3, with Commissioners Ward, Carpenter, and Wescoat opposed.

Staff noted that if the zoning text amendment is approved by the Board, final mapping will exclude the areas of all incorporated towns.

The last hearing was called to order.

**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.

The Chair called for public comments.

Sue Rice, Eastern Shore National Wildlife Refuge Manager, expressed concern about expected negative impacts of improper siting of facilities. She referenced the Best Management Practices developed by the U. S. Fish & Wildlife Service for such projects and recommended requiring risk assessment studies for four (4) years after project installation. She expressed the view that the proposed height limit of 750 feet seems excessive and that there appears to be too much freedom afforded to participating companies. She also stated her opinion that several provisions seemed unclear.

Gordon Campbell, owner of Campbell Field, expressed his opinion that wind energy facilities would hamper aerial spraying of crops; therefore, such facilities are not compatible with agricultural activities here.

There being no other public comments the public portion of the hearing was closed.

Commissioners Kellam and Miller suggested that references to Wind Energy Test Facility (WETF) be deleted from the draft language altogether and a separate WETF ordinance and standards be drafted since there are too many unknown factors at this point.

Commissioner Kellam noted that a WETF's main purpose is not to generate electricity and that MET Masts are required to be part of any WETF project. It was her understanding that the Netherland WETF tied into an existing major wind farm and is part of a research project being conducted by a major university there. Commissioner Coker agreed that a separate ordinance should apply to WETFs.

Commissioner Miller provided comparative data for a Wind Energy Project versus a Wind Energy Test Facility. She agreed with those comments made by Commissioner Kellam as did Commissioner Coker.

Discussion ensued regarding a proposal to withdraw the application without prejudice, to rescind the motion from the last meeting, and to start the process over. Ms. Benson stated that the proposed amendment did not have to be withdrawn but could be recommended with commission revisions.

Commissioner Kellam stated her opinion that this proposed zoning text amendment should not be made available to the Board since it could be passed as advertised even if a revised version is recommended by the commission.

Commissioner Miller expressed her concern that a WETF would incorporate structures twice as large as the Armada Hoffer structure in Virginia Beach and that the general public may not be totally aware of what is being proposed.

Commissioner Kellam concurred and noted that she could find no parameters to locate off-shore wind turbines on shore for testing purposes and that further study of WETFs is warranted in her opinion.

Motion was made by Commissioner Kellam to withdraw Zoning Text Amendment 2011-09 without prejudice. Motion was seconded by Commissioner Miller and failed by a 4 to 4 vote with Commissioners Fauber, Wescoat, Carpenter and Ward opposed.

The Chair encouraged the commission to continue discussion of potential amendments on the advertised draft.

Commissioner Kellam expressed her opinion that other changes were needed to the language as advertised besides simply deleting references to WETF. She then suggested that the definition of Wind Energy Test Facility be revised as, "**WIND ENERGY TEST FACILITY, An** ~~electricity-generating facility,~~ A wind energy facility consisting of one or more Wind Turbines, Utility Scale or Large Scale, under common ownership or operating control that includes substations, cables/wires, foundations, access roads, crane platforms and other building accessories and any testing equipment - such as but not limited to – METMASTS to such facility, whose main purpose is to test and certify new Wind Turbines." This would clarify that a WETF would be a sub-group of a wind energy facility."

Commissioner Kellam also suggested that IEC requirements be added as accreditation criteria for wind turbine prototypes.

Discussion was held on whether to include references to WETFs or not. The Chair suggested that if the commission was not comfortable keeping WETF language in the draft then a recommendation could be made to remove such language. Commissioners Kellam, Coker and Miller agreed that such language should be deleted and a new ordinance developed for such. Commissioner Kellam suggested that METMAST be left in the ordinance as it adds a different dimension than a MET tower.

It was suggested that all references to WETF be deleted throughout the document such as those on page 5, (D) Items 2 and 3; Item 8 on page 3; on page 7, delete the second sentence in f; and on page 9 in Item 4.

Commissioner Kellam suggested that additional language be included as follows, "The Board of Supervisors reserves the right to access surety funds in the event of failure to prevent deterioration and/or creation of a hazardous situation." She explained that this would prevent abandonment situations from occurring. It was suggested by the Chair that such language be added to (E) Item 5 on page 9.

While discussion Item 10, Commissioner Kellam suggested that turbines be restricted from operation during the time of shadow flickering until it has passed beyond residential structures. She added that this could be accomplished by modeling.

Item 12 was discussed as well concerning noise considerations. Commissioner Kellam suggested that noise levels be lowered during evening hours by changing the decibel level. Commissioner Wescoat disagreed and expressed his opinion that one reasonable decibel level be established for all hours of operation.

Due to the time, motion was made by Commissioner Ward to continue the meeting beyond 10:00 p.m. which was seconded by Commissioner Wescoat. The motion failed 4 to 4.

Due to time constraints and other agenda business Commissioner Miller moved to table further discussion on Zoning Text Amendment 2011-09. Commissioner Kellam seconded the motion, which carried 7 to 1 with Commissioner Ward voting "no."

Motion was made by Commissioner Wescoat and seconded by Commissioner Carpenter to revise the agenda order to consider Item B under New Business next. The motion carried 7 to 1 with Commissioner Miller opposed.

### **New Business**

The commission then viewed a power point presentation providing information on a wind turbine certification facility or a WETF as presented by Sallie McNeilan with Fugro Atlantic. Also present was Jeff Keever with the Virginia Port Authority.

Ms. McNeilan explained that the concept as presented is to provide: (1) a for-profit offshore wind turbine test and certification facility on land utilizing a maximum of 10 turbine sites; and (2) provide international certification for large scale turbines of 5-10 MW that would be located on site for 5 to 7 years. This type of land-based facility has been approved in Colorado and Lelystad in the Netherlands. However, currently there is no exact facility like this type in the world. Various photos and concept drawings of METMAST towers and large off-shore wind turbines were shown including existing construction sites for such devices. Possible impediments were financing and permission from the United States Department of Agriculture (USDA) when participating in programs such as the Conservation Reserve Program, commodity program payments, Swamp Buster provisions, Environmental Quality Incentives Program, Wildlife Habitat Incentives Program, Farmland Protection Program and the Wetlands Reserve Program. It was noted that currently no location has been selected for such a facility and

contact information was provided for anyone wishing to offer a site that possibly meets wind requirements.

Ms. McNeilan reported that Fugro was interested in locating a WETF in Virginia because there are no air traffic problems in this county, rail and port facilities are numerous throughout the Hampton Roads area and Virginia is a right-to-work state. She also noted that the Department of Environmental Quality has shown interest in using the facility for biological studies. When asked by Commissioner Kabler, Ms. McNeilan acknowledged that when one turbine is removed another can replace it; however, the company must re-apply to the county to permit the replacement turbine.

Due to time constraints no other agenda matters were considered.

**Recess**

Motion to recess until July 20, 2011 at 7:00 p.m. was made by Commissioner Kabler and seconded by Commissioner Coker at 10:13 p.m.

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Chair

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Secretary