

Northampton County Planning Commission

December 7, 2010

This was a regular meeting of the Northampton County Planning Commission held on Wednesday, December 7, 2010 in the auditorium at the Northampton County Administration Office located at 7247 Young Street, Machipongo, Virginia.

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

Also attending were Sandra Benson, Director of Planning & Zoning; and Kay Downing, Administrative Assistant.

The meeting was called to order at 7:04 p.m. and a quorum established.

The agenda was accepted with one minor change to combine Item 4 (Oyster and Willis Wharf Vision updates) and Item 5 (Comprehensive Plan Review – Part 2 Data) as a single item to be discussed concurrently. Motion to accept the agenda was made by Commissioner Wescoat and was seconded by Commissioner Miller. The motion carried with a unanimous vote of 8 to 0.

Commissioner Kabler informed the commission that Mrs. Barbara Custis had passed away yesterday and he thought it fitting at this time that the commission and county recognize her many contributions to the community including her position as Chair of the Northampton County Agriculture Committee.

Public Hearings

The scheduled public hearing was called to order.

A. **Zoning Text Amendment 10-09:** The Northampton County Planning Commission proposes to amend the Northampton County Code of Ordinances by adding a new section to be known as §154.114 *Standards for Wind Turbines and Windmills for On-Site Residential or Commercial Production and Use* and to amend Appendix A Use Regulations to provide for these uses.

No ex parte communications were disclosed.

It is noted that the commission had received a detailed staff report written by Director Benson.

The Chair called for public comments.

Mr. William Parr of Seaview stated his overall support of the proposed amendment but questioned Section (D) (5) and asked for clarification about affixing antennas to residential towers. He also questioned the limitation placed on the number of wind turbines as being too prohibitive in his opinion. Mr. Parr also noted that there is a reference to Agriculture/Rural Business in the proposed text but not in the Use Chart of Appendix A.

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

The commission considered Mr. Parr's comments. It was noted that the intent of Section (D) (5) was to prohibit rental to off-site users. Commissioner Miller moved to postpone any decision on this section until Commissioner Coker was able to be present as she wrote most of the draft. However, there was no second to the motion.

Discussion followed on changing the language and Ms. Benson noted that if a 35-foot wind turbine already exists it would require a special use permit in order to modify. Ms. Miller noted that in Appendix A, Category 4, Item 31 telecommunication facilities such as antennas and towers are allowed by special use permit only. Ms. Benson read guidelines addressing co-location/array of antennae from the zoning ordinance.

The Chair indicated that sufficient language is already in the zoning ordinance that addresses language contained in Section D. 5. Motion to delete Section D. 5 was made by Commissioner Kellam and seconded by Commissioner Meyers. The motion carried unanimously 8 to 0.

During discussion of Section (D) (18) Commissioner Miller noted that this only affects population clusters since most of the county is now zoned A/RB Agriculture/Rural Business and stressed that this ordinance applies only to on-site use. Commissioner Kellam stated her opinion that such devices are self-limiting since they are for on-site use only but that the county should be responsive if there is a demand for multiple turbines on a single property. By consensus the commission agreed to retain Section (D) (18) as drafted and to correct Appendix A, Use Chart, in the A/RB District.

The commission then considered the chart as presented in the public hearing draft as follows.

(E) Setbacks, Densities, Lot Sizes, and Dimensions for Small Wind Turbines and Windmills.

Lot Size	1-2 Acres	> 2 Acres & ≤ 5 Acres		> 5 Acres & < 20 acres		≥ 20 acres
Total Ht Allowed	≤ 35 Feet	≤ 35 Feet	36-65 Feet	≤ 35 Feet	36 -120 Feet	> 120 - ≤199 feet
Setback from property line	1.2 X Total Ht	1.2 X Total Ht	1.2 X Total Ht	1.2 X Total Ht	1.2 X Total Ht	3 X Total Ht
Permitting	R	R	M/S	R	M/S	S

Ms. Benson noted that there appears to be a discrepancy in the chart as there is a gap related to properties greater than or equal to 20 acres for height limitations whereby any wind turbine less than 120 feet is not provided for. She suggested that the chart be amended to greater than 5 acres so that smaller towers would also be allowed on larger parcels as well.

Motion was made by Commissioner Wescoat that the chart be changed to delete the last column in its entirety that refers to equal to or greater than 20 acres and to remove the “& > 20 acres” in the next to the last column. Second was made by Commissioner Meyers and carried with an 8 to 0 vote.

Motion to forward Zoning Text Amendment 10-09 to the Board of Supervisors with proposed amendments as discussed tonight was made by Commissioner Meyers and seconded by Commissioner Kellam. The motion carried unanimously with an 8 to 0 vote. Commissioner Miller added for the record that the County Agriculture Committee had requested that this type of ordinance be implemented to aid the farming community.

Matters from the Public

There were no matters presented by the public.

Consideration of Minutes

Nov. 2, 2010

The minutes of the November 2, 2010 work session were approved with the following corrections: page, 8, paragraph 2 from bottom, in the first sentence, spaces should be inserted between the words “Benson and distributed” and “use and permit”; page 6, paragraph 2, in the fifth sentence, delete the word “Commonwealth” and insert “their state governments”; and to

delete the tenth sentence altogether. Motion to approve as corrected was made by Commissioner Wescoat and seconded by Commissioner Meyers. The motion carried 8 to 0.

Nov. 17, 2010

The minutes of November 17, 2010 were approved with the following corrections: page 3, third paragraph, in the last sentence “conduct” should be singular.

Commissioner Ward requested that all votes be recorded as a numerical vote and a roll call taken when appropriate due to legal implications by the courts. Ms. Benson stated that a consensus does not involve a formal motion, but simply denotes agreement among the commission.

Motion to approve the minutes as corrected was made by Commissioner Wescoat and seconded by Commissioner Meyers. The motion carried unanimously with an 8 to 0 vote.

New Business

Briefing Meeting

Ms. Benson noted that the briefing with Coastal Properties East, Inc., on Zoning Map Amendment 10-04 continues to be deferred at request of applicant’s agent.

Code of Conduct

The Code of Conduct was reviewed and distributed for updated signatures except for Commissioner Coker who was absent.

While signatures were being obtained the Code was read aloud by Ms. Benson as follows.

CODE OF CONDUCT

NORTHAMPTON COUNTY PLANNING COMMISSION

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Northampton County Planning Commission pledges to adhere to the following CODE OF CONDUCT.

1. Regularly attend all scheduled meetings of the Planning Commission as well as special or called meetings relevant to the office.
2. Prepare for each meeting.
3. Create a positive environment in meetings of the Planning Commission.
4. Maintain an attitude of courtesy and consideration toward colleagues, citizens, and staff during all discussions and deliberations.

5. Allow citizens, colleagues, and staff sufficient opportunity to present their views, within the prescribed rules for conduct of meetings of the Planning Commission.
6. Avoid the use of abusive, threatening, or intimidating language or gestures directed at colleagues, citizens, or staff.
7. Avoid comments, body language, or distracting activity that conveys a message of disrespect and lack of interest.
8. Respect all local, state, and federal laws, rules, and other regulations.
9. Submit completed real estate disclosure forms to the Northampton County Administration Office by the specified deadline.
10. Publicly acknowledge the adopted position when asked about a decision of the Planning Commission.

The performance of the Planning Commission and Planning Commissioners in adhering to this Code of Conduct is affirmed by the following signatures:

Election of Officers: The commission received the following written report from the Nominations Committee.

Nominations for Chair, Vice-Chair and Secretary

The Planning Commission's Bylaws state that, "No chair or vice-chair shall be elected to the same office for more than (2) two successive one-year terms." The Nominating Committee interprets this to mean that due to a restructuring and appointment of a new Planning Commission in mid-year 2009, that the short term of office(s) in that year did not constitute a "one-year term."

The nominating Committee places before the Planning Commission the following slate of Officers for 2011:

Chair: David Fauber---*Mr. Fauber has served ably as Chair. He is one of the longest-serving Commissioners and the Committee feels that his prior experience using the current Comprehensive Plan to inform the crafting of the adopted Zoning Ordinance amendments, will serve the Commission well as we begin the five-year review of the Comprehensive Plan.*

Vice-Chair: Martina Coker—*Ms. Coker has served ably as Vice-chair, accepting the post after the resignation of the previous Vice-Chair. On past Commissions, it has fallen to the Vice-chair to serve on many of the appointed Sub-Committees. Even though this has not been a stated policy of the present Commission, she has accepted that role and the extra hours of work it entails.*

Secretary: Sandra Benson, Director of Planning and Zoning: *Ms. Benson has dependably carried out all the required legal and other responsibilities of Secretary, in addition to the multiple duties required to keep the Planning Commission moving forward with its mandated work.*

All of the nominees have agreed to serve a one-year term beginning in January 2011.

*Respectfully submitted,
Roberta Kellam & Mary Miller
Nominating Committee*

No other nominations were made from the floor. Commissioner Miller noted that the Nominations Committee had not received any other nominations as well. There being no other nominations or comments, motion to approve the Nominations Committee's slate of officers as presented was made by Commissioner Meyers and seconded by Commissioner Ward. The motion carried unanimously with an 8 to 0 vote.

Unfinished Business

Under procedural matters Commissioner Miller suggested that information provided by Ms. Benson related to how the comp plan connects to the zoning ordinance as well as the responsibilities of staff be included in everyone's individual comp plan folder and perhaps in the official comp plan. She also suggested that Mr. Stith's report on vacant lots be included in the official folder as well so that all of this information can be reviewed as the commission moves forward in the comp plan update process.

Since the commission had not received the latest draft of the MET Tower language as forwarded to staff by Commissioner Kellam, this item was moved to the January 2011 agenda.

At this time Commissioner Meyers mentioned that the Cape Charles Historic Town Entrance Corridor Overlay District was omitted under the agenda item, Unfinished Business. Ms. Benson replied that a report would be made later in the meeting.

Commissioner Miller suggested that since other business related to waterfront villages had taken precedence as directed by the Board of Supervisors, that the draft signage proposal be moved to the commission's next agenda in January.

Commissioner Meyers noted that several business items had diverted the commission from its early plans and this should be stated in the commission's annual report to the Board. Ms. Benson noted that she would submit a draft of the annual report to the planning commission.

Commissioner Kellam then distributed a report on bio-solids as obtained from Nelson County. She noted that their language would allow reimbursement of testing monies and provide for other such issues related to bio-solids activities.

The commission then reviewed the report. Commissioner Kellam suggested that in Section E this activity should be located in A/RB district and that adequate notice be given to neighbors,

that there be restrictions on human contact, and that required signage be posted both in English and Spanish as the county has many Hispanic agricultural workers as well as requiring symbols that infer danger for those who do not read. She also recommended that any bio-solid policy or ordinance adopted by the county or required by the State be posted on the county website as well. She volunteered to write a cover memo to summarize the report for the Board of Supervisors.

The Chair suggested that some distinction be made between the types of bio-solids to clarify that this language pertains strictly to Category B only and not Category A. Commissioner Meyers also suggested that it be made clear that this report does not include animal or chicken manure, but human waste only. Commissioner Kellam stated that she would check the state definition for clarification.

Commissioner Wescoat noted his greatest concern was outlined in Section 11 dealing with financial responsibility. He suggested that a legal opinion be obtained as to what responsibilities the landowner has for such a use if a lawsuit ensues since the language refers to the permittee. Commissioner Kellam noted that Section 11 refers only to large applicators as permittee and it was her opinion that it is not the county's responsibility to protect landowners when agreements are written between a property owner and a bio-solid business.

Commissioner Kellam stated her concern that the state law as currently written has no way of ensuring that the time frames for growing vegetables are adhered to and that no notice is required to a new landowner. She suggested that the county require a deed restriction whenever bio-solids are being applied to any land being transferred to new owners. She added that there is a 3 year restriction for growing potatoes or root crops after bio-solids are applied. Also, bio-solids application is allowed now since it is considered a fertilizer resource. It was her opinion that the county should adopt a policy or ordinance.

After discussion it was the commission's decision to draft a memo to the Board conveying their concerns and recommendations plus any legal opinions along with information from the EPA and DEQ. Commissioner Kellam suggested that DEQ be contacted to see if staff would be available to review any draft ordinance language.

The commission decided to move discussion concerning temporary buildings for temporary family health care to January's agenda.

Ms. Benson reported that she did not have anything new to convey since last Thursday on the comp plan review process. It was noted that the next comp plan work session will be held on January 20th in conference room 2.

Commissioner Miller suggested that information received entitled "Putting Smart Growth to Work in Rural Communities" be used when updating the comp plan and that this information also be placed in each individual's comp plan folder as well as the information concerning the housing section of the plan.

Communications

Ms. Benson reported that she will meet with Tom Bonadeo this week to get a status report on the Cape Charles Historic Highway Corridor Overlay District. Commissioner Meyers asked that Ms. Benson inquire as to whether or not the town plans to proceed with any annexation or boundary adjustments. Ms. Benson reminded the commission this matter was on the Board's objectives for the year as it involves county land. Commissioner Meyers noted that the commission has taken adequate steps to develop this district and that it is now time for the town to respond. He asked that staff make a formal request to the Cape Charles Planning Commission that this matter be put on their formal agenda next month. Ms. Benson stated that she would do so. She explained that staff is waiting for the town's planning commission to respond to the second draft.

The Chair stated that the issue of the historic highway corridor should not be confused with development of the highway as outlined in the prior annexation agreement.

Committee Reports/Presentations

The agendas for the Cape Charles Planning Commission and Town Council were included in the agenda packet and the December 7th planning commission agenda was distributed tonight.

Commissioners Ward, Kellam and Meyers had nothing new to report from the towns of Cheriton, Nassawadox and Exmore.

Commissioner Miller report that staff and the commission have the draft Eastville Zoning Ordinance that will be discussed at the January meeting before a public hearing is scheduled.

When asked Ms. Benson noted that Eastville has contracted with the county authorizing the county's zoning administrator to act as the zoning administrator for the town as well.

It was noted that the Wind Energy Committee is winding up its work and that the commission needs to finish reviewing information submitted from the Signage Committee which will be presenting other additional information in the near future.

Zoning Administrator's Report

There was no additional site plan information to report from the Zoning Administrator.

Board Action on Zoning Matters

Ms. Benson reported that there had been no public hearings on land use issues for the Board of Supervisors to consider last month.

Director's Report

The Director's Report was submitted as follows.

1. Meeting to discuss impaired waters: As part of DCR's efforts to finalize a King's Creek TMDL implementation plan, DCR staff met on November 10, 2010, with government representatives and other stakeholders to discuss a draft. Attendees were asked to submit comments by this date. I will keep you apprised of the progress.
2. Royal Farms update: Mark Baumgartner, attorney for Royal Farms, again requested that the briefing with the Planning Commission be deferred again as they are still working on the required traffic studies.
3. Cape Charles update: To date I have been unsuccessful in my attempts to contact the Town Planner to learn when we might expect feedback on our comments concerning the draft Historic Town Entrance Corridor Overlay District which was provided to them on November 2, 2010. I have also conveyed interest in scheduling a time to discuss the Town Edge planning process.
4. Exmore Town Edge Planning: This is a reminder that following our meeting with the Exmore Planning Commission on November 17, 2010, we anticipate another joint meeting in January 2011, after they have some time to discuss the Town Edge internally.
5. Eastville Zoning Ordinance update: We have received the draft revised Eastville zoning ordinance, which is being provided for your review. We would like to schedule a discussion of the document as part of your January 4, 2011, agenda.
6. Virginia Coastal Partners Workshop: On December 8, 2010, I will give a brief presentation on the county's planning and zoning for our two Waterfront Villages, Oyster and Willis Wharf, as part of the segment on working waterfronts in a panel discussion of Coastal & Marine Spatial Planning Issues.

Referring to Item 6, the Chair asked Ms. Benson to provide a copy of her report as presented at the workshop in Richmond. Ms. Benson informed the commission that according to Laura McKay Northampton is the only locality to develop a working waterfront district to her knowledge. Commissioner Miller requested that Ms. Benson obtain any additional information and materials related to sea level rise while at the workshop.

Adjourn/Recess

Motion to adjourn was made at 8:52 p.m. by Commissioner Meyers. Second was made by Commissioner Wescoat and carried unanimously with an 8 to 0 vote.

Chair

Secretary