

Minutes
Northampton County Planning Commission
Recessed Meeting
March 25, 2010

This was a recessed meeting of the Northampton County Planning Commission held on Thursday, March 25, 2010 in the former circuit courtroom in Eastville, Va., for the purpose of conducting unfinished business from the agenda of March 2, 2010.

Those present were Chair David Fauber, Vice-Chair Martina Coker, Roberta Kellam, Marshall Cox, Mike Ward, Mary Miller and Robert Meyers. Those absent were John Wescoat, Jr., and David Kabler.

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

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

The agenda was considered and accepted by unanimous vote as presented upon motion by Commissioner Meyers and second by Commissioner Cox.

Unfinished Business:

Procedural matters

Commissioner Kellam distributed additional draft material related to procedural matters. While assisting the Montessori School in its special use permit process, she was made aware of how an applicant may not fully understand staff involvement and scheduling requirements. She suggested that a public education session may be helpful to inform citizens about the public hearing process including what is done, when it's done, why it's done a certain way and what type of resources are used. While their names did not appear on the hand-out material, Commissioner Kellam noted that other commissioners had provided some input.

The commission went on to discuss the timing of the application process with most agreeing that the commission should obtain public hearing applications and supporting documentation once deemed complete by staff. This would improve dissemination of information in order to formulate better questions to ask applicants and staff if necessary. Commissioner Kellam also stated that Mike Chandler had noted that many of Virginia jurisdictions actually start the timing process at the planning commission meeting even though the staff would get an application submitted, that application would not be submitted formally to the planning commission. She noted that such a change may require a policy change in accepting applications or a text amendment to the zoning ordinance especially applicable to special use permits and zoning map amendments in order to maximize the statutory time frame.

Ms. Benson stated that she had extensively reviewed the procedure hand-out material with Mr. Chandler this past week who did not believe the way this topic was discussed in class was the

way it is presented in this memo. In fact, he had related that the majority of jurisdictions do not do this sort of procedure, but added that he would check the code for more information. Ms. Benson then noted that perhaps the commission had not taken full advantage of the former presentation meeting to ask questions and to ask follow-up questions with prior applicants which is the purpose of a briefing meeting.

Commissioner Kellam stated her opinion that the former solar energy applicants did not properly answer the questions posed by the commission nor were the applicants prepared to answer questions.

Commissioner Meyers related that in the case of the Hampton Inn application more time should have been allowed for the commission to study the materials, especially the development plans which had to be returned to staff for redistribution later. He suggested that development plans be submitted to the commission when the application is deemed complete and that the commission retain the plans throughout its portion of the public hearing process.

While referring to Item #5 in the hand-out, Commissioner Kellam strongly recommended that a checklist is provided as part of the application material. She also suggested that applications be scanned and e-mailed to each commissioner upon receipt.

It was also suggested during discussion of Item #1 that the commission agenda packet be delivered no later than seven (7) days prior to the scheduled public hearing date.

Ms. Benson related that staff had this very discussion the previous day and that applications will be scanned for posting on the public website when first deemed complete by the Zoning Administrator. However, she noted that staff reports would be posted once available. Ms. Benson also noted that this process would not impede any commissioner without internet access and that materials would need to be received or delivered another way.

During discussion it was suggested that the process for a minor special use permit may not need to be the same for a major special use permit due to the subject matter and the numerous minor permits listed in the ordinance. Commissioner Miller questioned how the timing of the public hearing process would be handled. Ms. Benson reminded the commission that once a zoning map amendment is filed then the standard operating procedure of processing on a quarterly calendar basis is implemented as adopted by the Board of Supervisors.

Commissioner Meyers noted his appreciation of receiving public notices when submitted to the newspaper for publication. He suggested that a briefing session with an applicant be considered prior to the required public hearing when deemed necessary. Ms. Benson noted that zoning text and map amendments require 90 days in which action must be taken, but that a policy change may be possible. It was Commissioner Miller's opinion that a major special use permit may warrant a briefing meeting with the applicant in advance of the public hearing. Commissioner Cox asked if the public would be present at such a meeting. Ms. Benson replied that a briefing meeting would be considered a public meeting which is not the same as a public

hearing; therefore, a briefing would not require advertising in the newspaper. Commissioner Kellam suggested that briefing meetings be posted on the county website as well. Ms. Benson added that the Board of Supervisors is promoting citizen advocacy and that objective should be considered when discussing any policy change.

Commissioner Miller mentioned that some jurisdictions never vote at the time of the public hearing, but at a later time.

By consensus the commission agreed that the commission should remain flexible on a case by case basis, but that agenda packets should be delivered earlier, that all applications be forwarded as soon as possible including development plans, that applicants be encouraged to submit applications in an electronic format, and that PDF files be posted on the website. Commissioners Fauber and Miller suggested that commissioners visit the planning office and obtain applications and plans of development once deemed complete.

Item #5 was reviewed with Commissioner Kellam suggesting that the detailed checklist used by New York State be adapted for use by the county in order to better review applications based on information contained within the comprehensive plan. This would promote references for justification and the foundation of a database used for review purposes. During discussion Ms. Benson related that the applicant is not necessarily asked to provide detailed background information, but that staff endeavors to provide such details. Commissioner Kellam added that a detailed checklist should be used for more major projects thereby providing a detailed guide for project analysis.

While viewing the draft checklist presented by Commissioner Kellam, Ms. Benson recommended that staff consider the draft and determine how it would fit in the current process. If adopted, Commissioner Meyers suggested that the checklist be provided as part of the application and posted on the website for public information. Commissioner Miller added that a checklist would make evaluation unambiguous for fairness and consistency. The Chair agreed and stated his opinion that a checklist would make reviews easier and more understandable.

The commission agreed that the procedures policy should be re-drafted for review again allowing staff and the commission time to evaluate the submitted draft checklist as well.

Commissioner Meyers suggested that application deadlines be posted on the website to benefit both the public and commission.

Item #3 involved how the commission's recommendation should be articulated and presented to the Board. Ms. Benson noted that when a recommendation or position is properly articulated, better analysis can be provided to the Board. She suggested that the Chair always restate the motion before the vote is taken so that everyone present has the same understanding of the motion as presented. Commissioner Miller recommended that the Chair poll the table asking each member for a verbal reply as part of the official record. Ms. Benson maintained that only the commission's recommendation is presented to the Board and never staff's opinion even though the Board receives a copy of each staff report. Her own opinion of

the commission's recommendation is never included in the action memo unless specifically requested by a Board member.

Moving on to Item #6, Commissioner Ward noted that Accomack's commission never mentions staff recommendations during its meetings. Ms. Benson informed the commission that the county attorney has reviewed the current process finding no conflict with this issue.

Commissioner Kellam was concerned that staff recommendations may be construed as having undue influence and implications on the commission's process and could be deemed as evidentiary in a court. However, Ms. Benson stated that a basis is provided in connection with any staff recommendation. Commissioner Miller stated her concern that a Planning Director could be placed in a precarious position as a witness against the county if a lawsuit ensued. Commissioner Ward suggested that only pros and cons of any application be presented in the staff report.

Before recessing for a five minute break at 8:40 p.m., Commissioner Kellam noted that she was not aware of any instance where everyone must state why they vote yes or no.

Item #4 was discussed concerning application forms and it was suggested that a subcommittee be formed to draft application forms and a checklist. Ms. Benson stated that staff is currently updating forms. Commissioner Miller agreed that staff should revise applications while the commission drafts a checklist.

Discussion continued on Item #6. Ms. Benson stated that the zoning ordinance requires that the Planning Director make a recommendation and the Chair acknowledged that the by-laws require a recommendation from staff. Ms. Benson suggested that it can be re-worded as to how the analysis is presented in a staff recommendation. Commissioner Miller stated that the staff recommendation should be presented in a way so that it could not be construed as an advocacy tool for or against an applicant. Ms. Benson also stressed that the Board can act for other reasons and not based solely on any recommendation of the commission as the Board is not compelled by law to support the recommendation of the commission. However, Commissioner Kellam noted that it is a significant point to think that staff could possibly be a witness against the county in a lawsuit.

Commissioner Ward explained that Item #7 is proposed to allow for a consent agenda as a means for conducting more efficient meetings, by enabling the Planning Commission to adopt a special rule of order whereby a group of items can be adopted simultaneously without debate. Basically, such items would be routine, technical, procedural or non-controversial items, avoiding the need for a motion, second, debate and vote on such matters. Consent calendar items are usually handled at the beginning of meetings, with the chairman offering the consent agenda, which consists of a list of items to be included for the Commission's consideration. The Chair then asks if anyone wishes to remove any item from the consent agenda. Approval of the consent calendar requires the unanimous approval of members, and any member wanting to discuss a particular matter or have a special vote on it, can have the item removed to the regular portion of the agenda. After further discussion it was determined that this procedure was unnecessary.

It was decided that staff would summarize tonight's discussion for further consideration on April 21st at 7:00 p.m. and that Commissioner Kellam and Ms. Benson would collaborate on the checklist.

Commissioners Kellam and Fauber stated that they will be unable to attend the April 2 meeting.

Commissioners Kellam and Coker suggested that April 20th be scheduled as a wind energy public information meeting at 7:00 p.m. after the joint work session with the Board of Supervisors.

Cape Charles Historic Town Entrance Corridor Overlay District

The Commission then considered the Cape Charles Historic Town Entrance Corridor Overlay District. Ms. Benson stated that the commission should draft a document for recommendation then conduct a meeting with Cape Charles to discuss. The maps have been requested but there have been some technical issues on the town's part. It was her understanding that the town had focused more on view shed issues rather than what the county had done when working on its U.S. 13 Corridor Overlay.

The Chair described future development plans for the Bayshore Road area noting that it will eventually merge at Benders Lane to Stone Road running along the dredge spoil site basically resulting in the disappearance of the Old Cape Charles Road as now maintained. He noted that there will be a development within the area that will incorporate a cul-de-sac in its design.

Commissioner Miller requested that the town's proposed boundary adjustment map be given to the commission. Ms. Benson related that such a map is unavailable until a formal request is filed with the county.

By consensus the commission agreed to discuss this matter again at the April 21st meeting along with the draft corridor map.

Solar Energy District; referral by Board of Supervisors of consideration of lot coverage provisions for solar installations

The commission then discussed the draft language pertaining to the Solar Energy District (SED)

The Solar Energy Subcommittee comprised of Commissioners Miller and Meyers answered questions concerning draft language on the proposed Solar Energy District (SED) that would be implemented as a floating zone in the zoning ordinance. The following points were made by the subcommittee as follows: the SED would eliminate lot coverage requirements; all storm water must be retained within the SED and that buffer requirements and sediment traps would be utilized; SEDs would only be allowed in two districts – Agriculture/Rural Business and Existing Industrial; once rezoned to SED there is no longer any underlying zoning district as would occur in an overlay district; and the SED would not pertain to individual residential solar energy devices. There were several points made during the discussion concerning allowable uses within a SED such as a single-family residence being permitted for family members. Commissioner Meyers stated that such areas would not be included in the SED similar to

Agriculture-Forestal District (AFD) provisions. However, Mrs. Downing noted that a landowner's house and yard area is included in an AFD and is regulated as such; however, the house and yard area do not qualify for reduced real estate tax benefits. Also, Commissioner Miller noted that Virginia law requires that only an approved utility is allowed to distribute electricity.

Discussion ensued over the suggested minimum and maximum acreage requirements. Due to the possibility of technology changes there was a concern about restricting additions to an existing SED. Also, Ms. Benson stated her opinion that the county cannot cap a district size. Commissioner Kellam stated her opinion that a visual impact plan should be required as part of the application process. Commissioner Miller noted that a comparative industrial site is the landfill and its acreage was used in the formulation of the acreages listed. She noted that Best Management Practices (BMPs) would be consistent for each SED and that performance standards would be used for consistency. Commissioner Kellam wanted to make sure that issues such as potential vandalism, noise, etc., would be addressed in the SED language. Ms. Benson also noted that the county cannot preclude an application to expand a district beyond the original 400 acres for perpetuity.

Motion was made by Commissioner Cox to delete the minimum and maximum acreages listed for an initial SED and additions. Second was made by Commissioner Meyers. Commissioner Miller stated that acreages should be determined only after buffer and other issues are determined. The Chair noted that the issue can be re-visited later if warranted.

It was Commissioner Meyers' understanding that Lincoln Energy will return to address tax issues and that the commission will be forced to deal with lot coverage discussions again. Ms. Benson noted that since the Board had officially referred the subject of lot coverage provisions for solar installations to the commission, it is required that a recommendation be made.

The Chair called for the motion which carried with a majority vote of 4 to 3 with Commissioners Kellam, Coker and Miller voting no.

Adjourn

Motion was made by Commissioner Cox to adjourn at 10:20 p.m. which was seconded by Commissioner Kellam and carried.

Chairman

Secretary