

## Minutes

### Northampton County Planning Commission

October 2, 2012

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, October 2, 2012, in the Board chambers located at 16404 Courthouse Road in Eastville, Va.

Those present were Chair Martina Coker, Vice-Chair Michael Ward, Dixon Leatherbury, Mary Miller, Sylvia Stanley and Roberta Kellam. The member absent was Severn Carpenter.

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

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

The revised agenda was reviewed and accepted unanimously 5 to 0 upon motion by Commissioner Ward and second by Commissioner Kellam.

#### **Public Hearings**

The first public hearing was called to order.

- A. Subdivision Text Amendment 2012-01: The Northampton County Board of Supervisors has filed to amend the Northampton County Code, Chapter 156: Subdivision Code, specifically **§156.009 Family Subdivisions**, to allow for family subdivision of property held in trusts pursuant to Section 15.2-2244.2 of the Code of Virginia (1950, as amended).

Katie Nunez, County Administrator, stated that a county citizen had petitioned the Board to take up this matter.

Mrs. Thornton noted that the Commission had discussed this matter at a previous meeting, but decided to not pursue this matter at that time.

The Chair called for public comments. There being none, the hearing was closed.

Commissioner Kellam noted that during its initial discussion on this matter the Commission did not have a formal application at the time and did not fully understand the definition of "trust" in Va. Law. Mrs. Thornton clarified that all information that had been provided by an interested individual had been given to the commission at that time.

Commissioner Ward expressed his opinion that family subdivisions go to relatives and trusts are not owned by people. Therefore, property held in a trust does not belong to a family. It was his opinion that the new legislation as adopted by the General Assembly is a bad piece of law

and “legal fiction”. It was his opinion that the law would give one beneficiary too much power and take authority away from the trustee.

Mrs. Thornton noted that the legislation provides another option for family subdivisions when property is held in a family trust.

Commissioner Miller expressed concern that the new legislation is not settled law and can be challenged in court if adopted.

Commissioner Kellam stated that the county attorney has determined this legal. She added that many family trusts are unable to utilize the county subdivision code.

Commissioner Miller added that it will be up to an individual to decide if this legislation is to be utilized as stated in the staff report and in the recommendation of the county attorney.

Action:

Motion was made by Commissioner Kellam to recommend approval of STA 2012-01 to the Board. Second was made by Commissioner Leatherbury and carried 4 to 1 with Commissioner Ward opposed.

The second hearing was called to order.

- B. Zoning Map Amendment 2012-01: Margaret D. Hoinski and John B. Hoinski, Jr., have applied to rezone two (2) parcels from the ESD-RVR Existing Subdivision District-Rural Village Residential to the A/RB Agriculture/Rural Business District to allow use of a parcel for shellfish washing and packing. The properties are identified as Tax Map 85-2-4 and 85-2-5 and are located in the Seaview vicinity on the west side of Seaside Road (SR 600) across from Narrow Channel Drive. (*ex parte* communications)

David Bell presented the petition on behalf of his parents who own the subject properties and indicated that he wishes to be able to wash the oysters that he grows. In response to questions, Mr. Bell stated that Shellfish Sanitation requires a plan for disposing of the wash water and that the system consisting of trenching with sand will be located by the proposed addition to the existing building. He also explained that the new activity is not expected to generate much wash water since the shellfish are initially washed when they are harvested from the water. Washing must be done under cover according to regulations; therefore, a carport type structure is proposed. It was noted that both parcels were proposed to be rezoned in order to alleviate “spot zoning” in the area.

Commissioner Stanley arrived at 7:20 p.m.

No public comments were offered and the hearing was closed. It was noted for the record that across-the-street property owners had responded to their adjacent-property-owner notification and indicated that they had no problems with the proposed rezoning.

Commissioner Kellam had viewed the property and voiced her support of the petition noting that the land use proposed is very low impact.

Commissioner Miller noted that this type of independent business operation was envisioned when the county's Use Chart was adopted.

Action:

Motion was made by Commissioner Kellam that Zoning Map Petition 2012-01 be recommended for approval to the Board. Second was made by Commissioner Kellam and carried unanimously 6 to 0.

The last hearing was called to order.

- C. Zoning Text Amendment 2012-10: The Northampton County Board of Supervisors has filed to amend the Northampton County Code, Chapter 154: Zoning Code, **§§154.003, 154.040, and 154.127** (A), as well as Appendix A Use Regulations, as follows: amend the definition of **HOME OCCUPATION**; revise the Zoning Clearance process to exclude certain very-low-impact uses; to allow home businesses and home offices by right if specified criteria are met; to add a new category of home occupation to be known as **micro-business/office** which would be exempt from the zoning clearance process if specified criteria are met; and to revise Appendix A for consistency with existing and proposed regulations in other sections of the zoning code. The proposed amendments to Appendix A include the following: eliminate the "Z" designation for consistency with prior amendments to §154.040; add a designation to be known as "E" for very-low-impact uses that would be exempt from the zoning clearance process; and to change those uses currently designated as "Z" to one of the following: "R" to indicate a use by right, "E" to indicate a use proposed to be exempt from the zoning clearance requirement, or "M/S" to indicate a use requiring a minor special use permit.

County Administrator Katie Nunez provided background information on the development of the proposal. She noted that the Board had expressed certain concerns about the original language. Therefore, staff was charged with redrafting the amendment.

There was no public comment offered.

The commission discussed whether various types of in-home office activities would constitute a commercial activity that would require a business license. Mrs. Nunez explained that some businesses are exempt under the Code of Virginia and that the Commissioner of the Revenue makes determinations based on the Code.

Commissioner Miller noted that non-employer establishments are viable economic contributors to the county and this amendment would help promote such activities.

Following discussion, it was the consensus of the commission that the words "if required by the Commissioner of the Revenue" should be added to §154.127 (A) (a) 7 and to §154.127 (A) (b) 7.

It was also the consensus of the commission that §154.127 (A) should be revised as follows: *Home occupation. An occupation- low-impact commercial use conducted in an owner- or renter-occupied dwelling or accessory structure(s) accessory to the owner- or renter-occupied dwelling provided that the following criteria are met[.]*

Motion was made by Commissioner Miller to recommend approval of ZTA 2012-10 with revisions to the Board. However, the motion was withdrawn since amendments to the Use Charts had not yet been discussed.

It was noted that the proposed amendments were reviewed by the County Attorney's Office and deemed acceptable from a legal standpoint. A general question was raised however, regarding the proposed new "Exempt" designation with respect to zoning clearances. The attorneys questioned why zoning clearances should be required for by-right uses when no building permit is required, and the recommendation was made that further consideration be given to §154.040 regarding the circumstances in which a zoning clearance would be necessary.

Action:

Commissioner Miller moved to recommend approval of the zoning text amendment with revisions as discussed. Commissioner Stanley seconded the motion which carried unanimously 6 to 0.

**Matters from the Public:** none.

**Unfinished Business**

Commissioner Kellam stated that no new information is available concerning Zoning Code §154.111, agricultural ponds draft language.

It was noted that the Town of Eastville has requested a delay in the Eastville Town Plan review process at this time. In the meantime, a draft document will be forwarded by Mrs. Thornton to the Commission with the expectation of scheduling a February public hearing.

Mrs. Thornton reported that work is progressing on the county's Comprehensive Plan review.

Information on accessory dwelling unit language was presented by the Chair for future discussion and consideration.

**Consideration of Minutes**

The minutes of September 4, 2012 were approved with the following correction: on page 3, delete the fifth paragraph; and, in the sixth paragraph, reword the first sentence as follows, "As a point of information, Commissioner Miller noted that the Commission had been advised by a former commissioner who had recommended a maximum of 9 rooms." Commissioner Miller noted that clarification is needed so that the number 9 is not considered an arbitrary number, but was based on actual data from a bed and breakfast business owner. Motion to approve as

amended was made by Commissioner Miller, was seconded by Commissioner Kellam and carried unanimously 6 to 0.

Due to the depth of discussion held at the September 11, 2012 joint work session, staff was asked to review and redraft certain sections of the minutes for clarification purposes. Specifically mentioned were changes to page 2, second full paragraph, ninth line, the word “conscientious” should be changed to “conscience”; page 3, the fifth paragraph is to be reviewed and statistics reported by the Chair related to the executive summary are to be inserted; page 3, in the eighth paragraph, the first sentence should read, “Commissioner Miller noted that according to the Center for Economic Policy Research in Washington, D.C., a ‘good job’ in the United States is defined as one that provides an annual pay of \$37,000.00 and helps to provide health insurance and a retirement plan.”; page 4, first paragraph, in the second sentence, replace “tourism” with “total overall”; page 4, fifth paragraph, check comments made by Mr. Coady regarding aquaculture tax revenues; and on page 5, fifth paragraph, in the second sentence, insert, “ because a city has people so a road cannot be a city” after the word “concept”. By consensus the minutes were deferred until resubmitted with revisions.

The minutes of September 19, 2012 were unanimously approved with one correction to page 3, fifth paragraph from the bottom, to change the word “Martial” to “Marital”. Motion to approve as corrected was made by Commissioner Kellam and seconded by Commissioner Ward.

### **New Business**

There were no procedural matters presented for discussion.

Mrs. Thornton noted that a legislative update would be provided and discussed at the next work session so that a November public hearing can be scheduled.

### **Communications**

No new communications were received from incorporated towns except for the Planning Commission and Town Council of Cape Charles via email earlier in the month.

### **Director’s Report**

The Director’s Report was submitted as follows.

1. Cape Charles cooperative planning update: *I have heard nothing further from town staff to date.*
2. Town Edge Planning: *There is nothing new to report regarding this matter at this time.*
3. Board/Town Action on Zoning Matters: *At their September 11, 2012, meeting, the Board of Supervisors approved Special Use Permit 2012-06 as filed by Robert Seckers II for an off-premise catering facility, in accordance with the Planning Commission recommendations. The requests to withdraw without prejudice SUP 2012-04 and ZTA 2012-09 were also approved. Zoning Text Amendment 2012-06 pertaining to Low-Impact Commercial Uses was denied.*

4. Comprehensive Plan Review: *The revised vision will be sent to the Plan Review Stakeholder Group by early next week. The commission will conduct a work session to continue discussion of plan data on October 17, 2012, at 7:00 p.m. in the Main Conference Room.*

5. Eastville Town Plan: *It is my understanding that tentatively the Town Council expects to be able to take up the plan again in December but that they will confirm on Monday, October 1, 2012, their preferred schedule for moving this project. In light of this delay, a draft plan update for your review will be disseminated prior to the October 17, 2012, work session.*

6. Legislative Update: *A report on ordinance revisions necessitated by amendments to the Code of Virginia will be provided under separate cover.*

Mrs. Thornton provided a signed copy of the Code of Conduct to each commissioner for their records.

Also, a letter from the Shellfish Grower of Virginia was distributed supplying data that can be used in the comp plan update process.

Commissioner Miller noted that University of Connecticut focus groups are currently doing an on-going study on how the natural environment among other things supports us here and how it affects aquaculture.

Mrs. Thornton stated that the latest draft vision had been forwarded to all members of the Plan Review Stakeholders Group today.

A copy of the County's Annual Operating Budget presentation related to revenue sources and revenue distribution was provided to those present.

Commissioner Kellam requested that a copy of the September 24<sup>th</sup> CPAC report made to the Board be provided to the commission. Mrs. Thornton stated that the report would be provided as an informational item since it contains no data.

Prior to recessing, the Chair acknowledged that tonight's meeting is the last official regular Commission meeting for Mrs. Thornton due to her early retirement plans.

Motion to reschedule the next regular meeting to Wednesday, November 7, was made by Commissioner Miller, was seconded by Commissioner Ward and carried unanimously 6 to 0.

## **Recess**

Motion to recess until 7:00 p.m. in the main conference room on Wednesday, October 17, 2012 was made at 8:10 p.m. by Commissioner Kellam and seconded by Commissioner Miller. The motion carried unanimously 6 to 0.

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Chair

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Secretary