

## Minutes

### Northampton County Planning Commission

February 1, 2011

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, February 1, 2011 in the auditorium of the former Northampton County Middle School located at 7247 Young Street in Machipongo, Va., for the purpose of conducting public hearings and regular business.

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

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

The meeting was called to order at 7:05 p.m. and a quorum established.

#### **Review and Acceptance of Agenda**

The agenda was accepted with one addition to New Business as 7. B. to consider potential recommendations of appointment(s) to DEQ's Renewable Energy Stakeholder Group on Local Outreach for citing of renewable energy projects. Motion was made by Commissioner Miller to approve the agenda as amended and seconded by Commissioner Meyers. The motion carried unanimously 7-0.

#### **Public Hearings**

The Chair called the first public hearing to order as follows.

- A. **Zoning Text Amendment 2011-01 TOWN OF EASTVILLE:** Upon motion of intent to amend the Northampton County Planning Commission proposes to hold a public hearing and forward a recommendation to the Town Council of Eastville on proposed amendments to the Town of Eastville Zoning Ordinance. Amendments include, but are not limited to, creation of a new zoning district described as Article XIII ITF In-Town Farm District, addition of a new street oriented commercial frontage map, and elimination of Articles IX and X known as the R-11 Residential-Eleven and RM Residential Mixed Districts. (ex parte communications)

Ms. Benson suggested that Zoning Text Amendment 2011-01 and Zoning Map Amendment 2011-01 be heard concurrently. The Chair agreed and called to order the next scheduled hearing as follows.

- B. **Zoning Map Amendment 2011-01 TOWN OF EASTVILLE:** Upon motion of intent to amend the Northampton County Planning Commission proposes to hold a public hearing and forward a recommendation to the Town Council of Eastville on a revised town zoning map. Amendments include but are not limited to creation of a new zoning district known as Article XIII ITF In-Town Farm District and expansion of the Commercial-Neighborhood District. (ex parte communications)

The Chair called for ex parte communications. Commissioner Miller stated that she had attended many of the Eastville Town Council meetings at their request when these two matters were discussed. However, she stated that her participation at those meetings would not influence her vote and that she remains unbiased in her consideration of these two matters.

The Chair called for public comments.

Mayor Jim Sturgis was present and stated that the information before the commission is the culmination of work done by Council and citizens over the last five years. He noted that the objective was to make the town's zoning ordinance and map compliant with the town's adopted vision statement and comprehensive plan objectives.

No other public comments were received on ZTA 2011-01 and ZMA 2011-01 and the public comment portion of the hearing was concluded.

Commissioner Miller suggested that on page 13, the definition of "lot coverage" be clarified by adding second story over-hangs, eaves, etc.

The Chair stated his opinion that a house footprint does not include over-hangs, but reflects that which actually touches the ground such as the foundation. He added that plats or surveys show only the building footprint and that over-hangs are allowed to protrude into established setbacks up to a certain distance.

Commissioner Kellam stated that the definition should be what the locality determines it to be since urban areas usually have more limited space for development.

Commissioner Miller stated that a plan view can be likened to a "bird's eye" view looking directly down onto a structure thereby encompassing the entire roofline including any over-hangs or eaves thereby encompassing all impervious surfaces. She also suggested that language to allow temporary health care structures be added now or by a future text amendment.

Ms. Benson noted that council can address new amendments or revisions during its future public hearing.

Commissioner Miller then recommended for the record that council add language to cover the state-mandated temporary health care structure regulations.

At this time Mayor Sturgis was presented for council's information a copy of draft language being proposed to the county's zoning ordinance to allow by right temporary health care structures.

Action:

Motion to recommend approval of Zoning Text Amendment 2011-01 to the Town Council of Eastville was made by Commissioner Miller with consideration to add temporary health care structure regulations as mandated by the state and to amend the definition of "lot coverage" as discussed tonight. Second was made by Commissioner Meyers and the motion carried 7-0.

Commissioner Meyers moved to recommend approval of Zoning Map Amendment 2011-01 to the Eastville Town Council as presented. Second was made by Commissioner Ward and the motion carried 7-0.

The third public hearing was then called to order.

- c. **Special Use Permit 2010-9:** S. Fisher Land Development Company has applied for a use permit to convert the second floor of a detached accessory building into an accessory living unit on property located on Beach Lane. The property, containing 77+ acres of land, is described as being Tax Map 12, double circle A, parcel 4 and is zoned A/RB Agriculture/Rural Business. (ex parte communications)

The Chair called for ex parte communications. Commissioner Ward recused himself from the matter since he was legal counsel for one of the parties involved in the transference of property ownership. He then left the room.

The Chair called for public comments.

Mr. Dave Mitchell, builder and agent representing the applicant, stated that the proposed garage would be adjacent to the house. He noted that a barn is also being constructed on the property and presented photos for the commissioners to view. He stated that the parcel contains over 70 acres that will accommodate a single family home and detached garage with an accessory living unit located on the second floor. A building permit has been issued for the garage; however, the owner is now seeking to modify that permit to allow a small living unit on the second floor. No outside modifications will be made to what was originally proposed and

permitted. He added that the health department has approved a four-bedroom septic system that will be utilized by the three-bedroom residence and the one-bedroom accessory living unit.

Mr. Tom Noonan, an adjacent property owner, stated his support of the application. He noted that under its current zoning of agriculture the property could be used as a pig farm. It was his opinion that the applicant was offering a much better alternative and was providing employment opportunities during building construction and installation of the off-shore breakwater system to stop erosion.

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

Commissioners Meyers and Kellam noted that employment opportunities are not germane to the application being discussed and that those working there were from outside the county.

Commissioner Meyers stated that the property is being developed in a very responsible and environmentally conscience way that is compatible with the area. He noted the environmental benefit of the breakwater system and beach re-grading that had been accomplished on the property.

Commissioner Kabler agreed noting that the proposed limited development would add to the county's tax base as well.

When asked, Ms. Benson clarified that the owner does have an approved building permit for the detached garage. The special use permit would allow the owner to modify that permit to include an accessory living unit within the garage that is currently under construction. She also noted that the primary structure or residence has been permitted as well and is also under construction.

Action:

Motion was made by Commissioner Kellam to recommend approval of Special Use Permit 2010-09 as filed to the Board of Supervisors. Second was made by Commissioner Carpenter and carried with a majority vote of 6-0-1 with Commissioner Ward abstaining.

Commissioner Ward returned to his commissioner's seat at 7:33 p.m.

The next hearing was called to order.

- D. **Zoning Text Amendment 2011-02:** The Northampton County Planning Commission proposes to amend the Northampton County Code, **§154.003 DEFINITIONS**, to include a new definition for "Met Tower or Meteorological Tower"; to add a new section to be known as **§ 154.115 METEOROLOGICAL TOWER REGULATIONS AND PERFORMANCE STANDARDS**; and to amend Appendix A – Use

Regulations, Category 3, Commercial Uses, to allow Met Towers by major special use permit in the A/RB Agriculture/Rural Business District. (ex parte communications)

The Chair called for ex parte communications with Commissioner Kellam noting that she had communicated with various government agencies for information purposes only.

The Chair called for public comments.

Steve Volkert, representing Delsea Energy, spoke in support of the proposed regulations and provided photographs of the MET Tower that has been erected near Hallwood in Accomack County.

Mr. Ed Brinkley of Cape Charles encouraged the commission to use caution when siting such towers to ensure the protection of bird populations. He asked that language be included that would require bird diverting devices on tower structures and guy wires.

Ms. Benson then read into the record an e-mail received from Ruth Boettcher as follows.

**From:** caretta32@verizon.net [mailto:caretta32@verizon.net]

**Sent:** Tuesday, February 01, 2011 4:51 PM

**To:** sbenson@co.northampton.va.us

**Cc:** sophieandfolly@yahoo.com

**Subject:** MET tower comments

*MET Tower comments:*

*The southern tip has been designated as an Important Bird Area, and is a hemispherically important migratory staging area for passerines and other landbirds. The lower Delmarva Peninsula concentrates large numbers of southward bound neotropical and temperate migrants that land in suitable habitats (e.g., forest patches with well developed subcanopies and shrub/scrub habitats) when they reach the mouth of the Chesapeake Bay to rest and feed for varying periods of time before making the trip across the Bay. During the fall season, several million birds are believed to utilize the lower peninsula and their distribution is influenced in large part by habitat type. When siting MET towers, avoid habitat features that congregate birds and bats such as water resources, habitat edges, forest patches, shrub patches, etc.*

*MET towers have the potential to cause avian and bat mortality resulting from mid-flight strikes with the tower guy wires. Studies have shown guy-wired towers can cause substantially greater than towers without guy wires. When guy-wired MET towers are placed in low avian use sites such as open fields, mortality rates may remain relatively low under normal weather conditions. However, unusual conditions such as high winds, fog, etc. may result in large mortality events. Therefore, the regulation should require MET towers to be free standing structures or at a minimum require attaching Bird Flight Diverters (BFDs) at spaced intervals along the length*

*of multiple wires. Research shows the attachment of BFDs can reduce bird collisions considerably.*

*All MET towers should only be on site and standing for the minimum amount of time needed to monitor the wind resource. If towers are on site for 1 year or more, a mortality monitoring program (i.e., carcass searches) should be implemented, especially during every fall bird migration period the tower is in place.*

*The US Wind Turbine Advisory Committee recommends placing acoustic bat detectors (i.e., AnaBat detectors) on MET towers to record bat activity. One should be placed as close to the turbine rotor sweep zone or as high on the MET tower as possible, the area of presumed greatest risk for bats (30 meters or higher). Another should be placed near at ground level; approximately 1.5 -3 meters above ground). Acoustic data collection objectives should strive to collect as much acoustic information as is feasible across seasons and should be intensified from April 1 – October 31.*

*Lastly, the planning commission should address the following questions developed by the US Wind Turbine Advisory Committee when making wind energy development siting decisions:*

*1. Are there species of concern present on the proposed site, or is habitat (including designated critical habitat) present for these species?*

*2. Does the landscape contain areas where development is precluded by law or areas designated as sensitive according to scientifically credible information? Examples of designated areas include, but are not limited to: “areas of scientific importance;” “areas of significant value;” federally-designated critical habitat; high-priority conservation areas for non-government organizations (NGOs); or other local, state, regional, federal, tribal, or international categorizations.*

*3. Are there known critical areas of wildlife congregation, including, but not limited to: maternity roosts, hibernacula, staging areas, winter ranges, nesting sites, migration stopovers or corridors, leks, or other areas of seasonal importance?*

*4. Are there large areas of intact habitat with the potential for fragmentation, with respect to species of habitat fragmentation concern needing large contiguous blocks of habitat?*

*A “Yes” answer to one or more of the Tier 1 questions indicates a higher probability of significant adverse impacts to wildlife and warrants serious consideration to avoid wind energy development in the area or to devote considerable resources towards modifying wind energy projects in order to minimize significant adverse impacts.*

*Ruth Boettcher, 11116 Bayside Rd., Machipongo, VA 23405*

*[caretta32@verizon.net](mailto:caretta32@verizon.net)*

Commissioner Kellam advised that The Nature Conservancy (TNC) had e-mailed comments as well. However, Ms. Benson noted that e-mail from TNC had not been received by staff prior to the public hearing.

Commissioner Kellam related that the TNC did have concerns about the siting of MET towers; however, their comments were not as detailed as Ms. Boettcher's. She suggested that the commission wait before taking action on the matter until all information received is reviewed and considered.

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

Commissioner Kabler voiced his appreciation of those comments submitted by Ms. Boettcher as he had expressed similar concerns about avian mortality throughout the entire review process on this subject. He noted once again that it is imperative to protect the avian population. However, since each tower would be considered on an individual basis under the special use permit process he was prepared to support the proposed zoning text amendment.

Commissioner Kellam suggested that Ms. Boettcher's comments be incorporated into the draft document due to her expertise as a state biologist for this region. She then distributed information on bird flight diverters for commissioners to review noting that the diverters are connected to the guy wires to ensure better visibility that may prevent bird mortality.

When asked, Mr. Volkert stated that diverters have not been used on any of their MET towers and noted that illuminated articles tend to attract birds. He mentioned again that he has not personally witnessed any avian mortality around the towers that he monitors.

Commissioner Kellam then recommended that language be included to require bird diverters as was mandated by the U. S. Department of Energy when MET towers were installed in North Carolina as part of a federal project. She stressed that since the Eastern Shore is a migratory bird corridor the diverters should be required as well as acoustic monitoring for the local bat population.

Commissioner Meyers provided a copy of information disseminated by the Aircraft Owners & Pilots Association concerning proposed Federal Aviation Agency (FAA) guidelines for marking MET Towers, noting that the FAA is concerned about "proliferating MET Towers." Mr. Meyers proposed additional regulatory language to address the FAA concerns. Commissioner Miller stated her support for consideration of the FAA guidelines for safety reasons.

The Chair questioned why the FAA clause should be added to a county regulation as it is a federal regulation. It was Commissioner Meyers' opinion that tower owners would be more cognizant of updating requirements throughout the life of the tower. Commissioner Ward also questioned the need for such language as federal regulations would pre-empt any local

ordinance. Commissioner Meyers added that MET towers are becoming a real concern to aviation due to their proliferation.

Commissioner Miller voiced her support of the additional language considering the county's growing eco-tourism industry as well as recreational flying activities such as ultra-lights.

The Chair noted that such concerns can be implemented as conditions under the special use permit process on an individual basis.

Commissioner Kellam noted her concern that future commissioners may not be fully informed about such concerns when considering future MET tower special use permits. She stressed that potential detrimental impacts to bird and bat populations should be considered since this area is a major coastal flyway for neo-tropical birds. Commissioner Meyers agreed.

Commissioner Kabler pointed out that the potential for avian mortality related to MET towers had been dismissed during past discussions since there was no hard data to defend such a theory. Now it is being suggested to include this theory along with preventative measures even though there is still no supportive data. Given the different viewpoints being expressed tonight he suggested that the matter might need to be tabled until more study is done.

The Chair stressed the need to move forward and noted that regulations can be amended in the future if needed. He added that there are no requirements for these towers to have lights at this time.

Commissioner Miller asked if a second public hearing would be required if additional language was added tonight. Ms. Benson was of the opinion that another hearing may be order but would seek advice from counsel to confirm.

Action:

Motion was made by Commissioner Kellam to postpone action on Zoning Text Amendment 2011-02 until the commission has studied comments received tonight related to bird and bat impacts and FAA regulations. Second was made by Commissioner Meyers and the motion carried by a 4-3 vote with Commissioners Fauber, Carpenter and Ward voting "no".

However, later in the meeting Chairman Fauber called for a motion to reconsider the decision on this matter.

Following a motion by Ms. Kellam, seconded by Mr. Meyers, the commission voted 6-1 to reconsider with Commissioner Miller voting no.

The commission then heard and discussed two (2) additional provisions drafted by Commissioner Kellam and reviewed the proposed new language advanced by Commissioner Meyers as follows highlighted in red:

I. **§154.003 DEFINITIONS.** *Insert new definition:*

**MET TOWER or METEOROLOGICAL TOWER:** *A temporary tower used to measure wind speed and direction.*

II. *Add a new section as follows:*

**§154.115 METEOROLOGICAL TOWER REGULATIONS AND PERFORMANCE STANDARDS.**

*(A) Use Regulations: No MET Tower may be constructed within Northampton County except by a Special Use Permit within the Agricultural/Rural Business District (A/RB) issued pursuant to this Section.*

*(B) Maximum Period of Special Use Permit: As a MET Tower is intended to be a temporary structure, no Special Use Permit shall be issued for a period that exceeds 24 months.*

*(C) Procedure: In addition to the application materials required under Section 154.042(B)(1)(a) of the Code of Northampton County, Virginia, the following materials must be submitted:*

*(1) Engineering specifications of the MET Tower to be installed.*

*(2) Drawing showing the vertical dimensions of the MET Tower.*

*(3) Drawing showing the location of all structures, residences, forested areas, wetlands and waterways within 500 feet of the property line where the MET Tower will be located.*

**(D) Performance Standards:**

*(1) The Maximum Height of the MET Tower from the ground level to the top of the tower (including instrumentation) shall not exceed 199 feet.*

*(2) A MET Tower shall not have any more electricity-generating capacity than is necessary to sustain its use and data transmission operations.*

*(3) The minimum setback for a Met Tower is three times the Maximum Height (as defined in (D) (1) above) from the nearest property boundary line and/or utility line.*

(4) No lighting other than that required by FAA regulation shall be permitted to be located on the MET Tower. *Throughout the life of the MET Tower, compliance is required with all current FAA regulations within six (6) months of promulgation, or sooner if required by the FAA.*

(5) Signs on the MET Tower shall be limited to those needed to warn of any danger.

(6) MET Towers shall be located in a manner that minimizes land clearing and/or fragmentation of forested areas.

(7) MET Towers shall be maintained in good condition and shall have the structure inspected by a professional engineer at least once every twelve months. The results of the facility inspection shall be submitted to the Zoning Administrator within thirty (30) days of the inspection report's receipt by the applicant or facility owner. Ongoing maintenance shall include, but not be limited to, painting, structural integrity of the foundation, all equipment and support structures and security barriers (if applicable), and landscaping if present.

(8) Notice shall be provided to the Zoning Administrator within thirty (30) days of any change in ownership of the facility.

*(9) In the event that guy wires are utilized, Bird Flight Diverters shall be placed at spaced intervals along the length of multiple wires in a manner designed to minimize bird impacts.*

*(10) One Acoustic Bat Detector (ABD) shall be placed on the MET Tower at least thirty (30) meters above the ground, and one ABD shall be placed on the MET Tower between one and a half (1.5) meters and three (3) meters above the ground.*

(E) **Abandonment, Discontinuation of Use or Expiration of Special Use Permit:** Within ninety (90) days of abandonment, discontinuation of use or expiration of the special use permit, the applicant or his successor (and if neither is available, then the property owner) shall physically remove the MET Tower and all associated equipment, machinery, etc. from the site, properly dispose of any solid or hazardous waste materials in accordance with State and Federal regulations, and restore the location to its natural condition prior to the project installation.

(F) **Enforcement:** If the MET Tower is not removed in accordance with subsection (E) above, the Board of Supervisors may authorize the Zoning Administrator to enter the site

*and procure removal of the MET Tower. The Applicant must post a form of surety prior to construction in the amount necessary for the removal of the structure in accordance with subsection (E) above. The surety, in the form of bond, letter of credit, or escrow account, must be submitted to the Zoning Administrator and shall be fully inclusive of the costs associated with MET Tower removal.*

**III. Amend Appendix A – Use Regulations, Category 3, Commercial Uses**

*ADD: 106 Meteorological (MET) Tower: “S” for Agricultural/Rural Business District. “-” for all other districts.*

Commissioner Kellam moved to recommend to the Board approval of ZTA 2011-02 with amendments to subsection (D) (4) and the addition of new provisions to be numbered (9) and (10) to subsection (D) as discussed, provided that the County Attorney finds that another hearing before the commission is not required. The motion was seconded by Commissioner Meyers and passed on a 7-0 vote.

The final hearing was called to order.

- E. **Zoning Text Amendment 2011-03:** The Northampton County Planning Commission proposes to amend the Northampton County Code, **§154.003 DEFINITIONS**, by adding a new definition for “Temporary Family Health Care Structure” and by amending **§154.063 TEMPORARY BUILDINGS** to add subsection (C) setting forth provisions for *Temporary Family Health Care Structures*. (ex parte communications)

No ex parte communications were reported.

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

Commissioner Ward noted his concern dealing with mandated language. He questioned the vagueness of terminology used in the draft such as “legally appointed guardian”. He also expressed doubts that the proposed language could be used as a mechanism to guarantee that adequate care would actually be provided. Commissioner Kellam agreed and speculated about possible consequences that could occur if such regulations were not adopted.

Ms. Benson reminded the commission that a specific commissioner had brought this to light and the whole commission had agreed to schedule this matter for public hearing.

Commissioner Miller also voiced her doubts that an adequate level of care could actually be provided in a 300 square foot structure not required to have a kitchen or bathroom and that is not actually considered a dwelling unit. Also, she questioned if the county could adequately define “legally appointed guardian”.

Commissioner Kabler stated the view that, aside from the fact that the state directed localities to consider the use, the proposed use expands health care options available in most rural areas. He also stressed that it is not within the purview of the commission to police private family health care.

Commissioner Ward stated that he was not opposed to the idea of providing alternative care options. However, he had concerns about the terminology being used in the proposed language.

Ms. Benson reminded the commission that new state legislation now mandates that all localities allow this type of use.

Commissioner Miller stated that the county already allows accessory structures in its zoning ordinance. However, Mrs. Downing pointed out that such accessory structures are allowed only with special use permit approval and not by right. Ms. Benson added that this proposed use is considered temporary and not permanent.

Commissioner Miller expressed the opinion that as advanced by the General Assembly, this matter presents a system that is fraught with the potential for abuse.

Commissioner Kabler expressed his opinion that the proposal does have many affirming points and can be a positive alternative when offering care to loved ones.

While Commissioner Meyers did have certain reservations he stated the opinion that the proposal would allow a family to respond relatively quickly due to the structure’s close proximity to those providing care if an emergency does arise.

### Action

Commissioner Kabler moved to recommend approval of Zoning Text Amendment 2011-03 as presented for public hearing to the Board. The motion was seconded by Commissioner Meyers and passed on a 5-1-1 vote, with Commissioner Kellam voting “no” and Commissioner Miller abstaining. Commissioner Miller explained her decision to abstain because she felt that the local zoning authority had been usurped by the General Assembly in the legislation directing consideration of the use by right, and Ms. Kellam stated that she had voted in the negative for the same reason.

**Public Comments:** none.

There was a short break taken at 8:30 p.m.

### **Consideration of Minutes**

The minutes of December 7, 2010 and January 4, 2011 were moved to the end of the agenda due to time constraints upon motion by Commissioner Meyers and second by Commissioner Kellam. The motion carried 7-0.

### **New Business**

The commission then reviewed a pending variance as described below so that a potential recommendation could be submitted to Board of Zoning Appeals.

Variance 2011-01: John Hanson, Dawn Hanson and Carol Selby have petitioned for a variance of 22-feet from the required 115-foot shoreline building setback for the purpose of constructing an addition to a single-family dwelling. The property is located on the south side of Parsons Circle, State Route 642, and is zoned TE-1, Town Edge - 1. The property is described as Tax Map 91, double circle 6, parcel A.

Ms. Benson stated that the applicants had modified their original proposal and reduced encroachment after conferring with staff.

Commissioner Miller asked if health department approval had been obtained for the additional bedrooms. Ms. Benson stated that no building permit would be issued without such approval.

During discussion the Chair stated the opinion that the situation is not unique to this specific property and that the new owners should have been aware of such issues when the property was purchased. Commissioner Kellam agreed.

Commissioner Meyers noted that the existing home is already located in the resource protection area (RPA) and that the proposed plan is to keep as much of the addition out of the RPA. However, another option would be to construct a vertical addition instead.

Commissioner Kabler stated that the new owners are trying to improve their living situation and to upgrade the existing home.

It was noted that if the variance was approved then it would be for a 7-foot encroachment into the 100-foot buffer area and a 22-foot encroachment into the 115-foot shoreline setback.

Motion was made by Commissioner Miller to recommend that the Board of Zoning Appeals deny the application as no hardship has been established and the property is already developed for residential use. Second was made by Commissioner Kellam and the motion carried 6-1 with Commissioner Ward voting "no".

Also under new business the commission considered making an appointment to the Department of Environmental Quality's (DEQ) informal Renewable Energy Stakeholder Group on Local Outreach. The purpose of the Group is to open fully the lines of communication, especially between state government and local government, regarding renewable energy development. This Group would consider and recommend measures such as model ordinances that can assist local governments and communities in determining if and under what conditions they might wish renewable energy facilities to locate in their jurisdiction. Also, the Group will facilitate technical and educational assistance to local government and other stakeholders concerning DEQ's permit by rule and other renewable-energy issues, and provide a forum in which local government representatives and other stakeholders can communicate freely concerning renewable energy issues and potentially resolve these issues on either an individual or group basis.

The Chair called for nominations at this time and nominated Commissioner Kellam. Commissioner Kellam then proposed that an alternate be nominated as well namely Commissioner Meyers and Ms. Benson who could perhaps alternate since meetings will be held in Richmond. The nominations were seconded by Commissioner Miller and carried 7-0.

It was decided that Ms. Benson should notify DEQ of the commission's decision.

### **Unfinished Business**

Under procedural matters Commissioner Kellam related an unpleasant experience that occurred during a field inspection and as a result she would no longer do property visits when alone. The commission agreed that a "buddy system" should be implemented from now on. Commissioner Miller added that aggressive questioning has occurred as well even though each commissioner does have a county ID badge that is worn while conducting field visits.

Ms. Benson explained that the commission is covered under the county's personnel policy as well which deals with sexual harassment incidents requiring an investigation. She also noted that the county's zoning ordinance authorizes commissioners and staff to conduct such field inspections as being directly related to designated responsibilities.

The commission then continued discussion on the topic of bio-solids with Commissioner Kellam presenting a proposed memorandum to the Board of Supervisors related to this matter.

Commissioner Kellam reiterated that the state will reimburse a locality for monitoring and testing of bio-solids land application only when a local government has adopted a bio-solids ordinance providing for such. She added that monitoring could be done through an independent contractor arrangement. One reason for such an ordinance is because local

government is the first entity to receive complaints from citizens and State legislation is offering the local government a role in the bio-solids process which should be investigated.

It was noted that storage only of bio-solid sludge would require a special use permit and not the land application itself which is allowed by right. Commissioner Kellam also noted that regulations would not pertain to the Class A grade bio-solid which is unregulated and used on private lawns. She added that Class B solids usually have an odor and pathogens to some level. However, she knew of no large scale bio-solids applications being conducted in the county at this time since chicken manure is generally used. The Class B sludge comes generally from municipal sewage plants and contains human waste, pharmaceuticals traces, etc. She noted that DEQ took over the bio-solids application program several years ago and is doing more outreach with local governments. It was noted that heavy metals would probably accumulate in the soil eventually and that standards dealing with pharmaceuticals and hormones are years away from being established.

Setbacks from intermittent streams, perennial streams, property lines, roads, etc. were briefly discussed.

Commissioner Kellam suggested that if the county proceeds with adopting a bio-solids application ordinance then such language should be reviewed by DEQ for compliance purposes.

Motion was made by Commissioner Meyers to submit the draft local bio-solids ordinance to the Board of Supervisors for their information, input and comments. Second was made by Commissioner Kellam and carried unanimously 7-0.

Ms. Benson noted that a public hearing with the commission is not required for this type of ordinance as it is not a zoning ordinance amendment; however, the Board would need to conduct its own public hearing in order to adopt such an ordinance.

Under other old business it is noted for the record that there was no discussion held on the comprehensive plan update at tonight's meeting.

**Matters from the Public:** none.

### **Communications**

No report was provided for the towns of Eastville, Nassawadox, Exmore or Cheriton. The commission had received agendas from the Town of Cape Charles related to its most recent council and planning commission meetings.

Ms. Benson stated that an updated Zoning Administrator's report on site plan status will be submitted next month for the commission's information.

## **Board Action on Zoning Matters**

There was no Board action to report.

Motion was made by Commissioner Miller to continue the meeting beyond 10:00 p.m. Second was made by Commissioner Meyers and carried with a 7-0 vote.

## **Committee Reports/Presentations**

No additional reports or presentations were made at this time.

## **Director's report**

Ms. Benson informed the commission that the county had received a state grant to allow for water sampling of Kings Creek. She also noted that the next Kings Creek TMDL meeting would be held on February 23.

The monthly Director's Report was reviewed as follows.

*DATE: January 25, 2011*

- 1. Meeting to discuss impaired waters: As reported at your January 20, 2011, recessed meeting, the public meeting which had been scheduled for January 26, 2011, concerning the King's Creek TMDL implementation plan has been cancelled, and VA Department of Conservation & Recreation staff have indicated that it has not yet been rescheduled.*
- 2. Royal Farms update: To date we have received no further update from Mark Baumgartner, attorney for Royal Farms.*
- 3. Cape Charles update: As previously reported, I met with Tom Bonadeo, Town Planner, on December 9, 2010, to discuss the status of the draft Historic Town Entrance Corridor Overlay District on which we had provided comments. I have not yet received any follow-up communication or any materials from the town as discussed at that time.*
- 4. Exmore Town Edge Planning: I have not yet received any information from the town regarding their review of the Exmore Town Edge.*
- 5. Signage proposal: As discussed at your January 4, 2011, regular meeting, your signage proposal was presented to the Board of Supervisors for their consideration at their January 11, 2011, meeting. Attached for your information and further discussion is an excerpt from the minutes of that meeting. Not reflected in the minutes are two questions posed by Supervisors Murray and Bennett regarding (1) who would pay for such advertising signs and (2) whether such signage would be available for all businesses. I explained that the matter of paying for the signage was a detail that would need to be finalized if the program went forward and that as*

*conceived the proposed signage would be available for local businesses providing local goods and services.*

Several comments were made by the commission concerning Item 5. Commissioner Miller noted that the proposal provided to the Board contained information regarding who would pay for such advertising signage and that it should have been evident that the proposal pertained only to those businesses located off U.S. 13.

Commissioner Kellam suggested that the signage issue be discussed at the future joint work session with the Board. However, Ms. Benson stated that the work session agenda would be provided by the Board and not the commission. She also noted that usually the annual joint meeting is to review and discuss the commission's annual report. The commission was of the consensus that the annual report should include an item on how the planning commission could work more efficiently with the Board especially in dealing with land use processes. Prospective dates to meet were briefly discussed and each commissioner was asked to provide available dates to staff no later than Friday, Feb. 4.

Ms. Benson also pointed out that a complete review of existing signage regulations has not yet been accomplished as directed by the Board.

It was noted that the March agenda will include continued discussion of large utility scale wind regulations that had been deferred until other wind related ordinances were adopted by the Board.

The commission then agreed to meet again on February 24 to continue review of the comprehensive plan update, specifically the Community Facilities and Services section.

Motion was made by Commissioner Miller to approve the 2010 Planning Commission Annual Report for 2010 as discussed with meeting dates inserted. Second was made by Commissioner Kellam and carried unanimously 7-0.

**Recess**

There being no other business the meeting was recessed at 10:23 p.m. until February 24<sup>th</sup> at 7:00 p.m. Motion to recess was made by Commissioner Miller and seconded by Commissioner Kellam. Motion carried 7-0.

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Chairman

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Secretary

