Minutes

Northampton County Planning Commission

April 5, 2011

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, April 5, 2011 at 7:00 p.m. in the auditorium of the former Northampton County Middle School located at 7247 Young Street, Machipongo, Va.

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

The meeting was called to order and a quorum established.

The agenda was reviewed and amended with an additional item, proposed "micro-business" language, being added to Item 8 Unfinished Business. Motion to approve as amended was made by Commissioner Wescoat and seconded by Commissioner Ward. The motion carried 6 to 0.

Public Hearings

The first public hearing was called to order.

A. **Special Use Permit 2011-01:** Conchata Webb has applied for a minor special use permit to place a single-wide mobile home on property 14, 375 square feet in size and owned by Ella Mapp Webb. The property is a vacant lot located on S.R. 617, Bayford Road, in the Hamlet District and is described as Tax Map 20, double circle A, parcel 84C.

The Chair called for disclosure of ex parte communications. None were reported and it was also noted that various commissioners had visited the property.

If present, the applicant did not come forward nor was there any public comment so this portion of the hearing was closed.

Ms. Benson noted that staff has accepted the information on the home as being correct and added that the Board never adopted specific criteria when evaluating single-wide mobile home structures.

<u>Action:</u>

Noting that in-fill development is what was envisioned in the development of Hamlet Districts, Commissioner Miller moved to recommend approval of Special Use Permit 2011-01. Second

was made by Commissioner Kellam and the motion carried unanimously 6 to 0. Commissioner Kabler also noted that such structures help the affordable housing needs of the county as well.

The second hearing was called to order.

B. **Special Use Permit 2011-02:** Daniel & Charlene Weeks have applied for a special use permit to operate an artisan studio as a Home Business on property containing 2.19 acres zoned ES-RVRR Existing Subdivision-Rural Village Rural Residential District located at 7348 Virginia Lane in the Silver Beach area. The property is described as being Tax Map 18D, double circle 1, parcel 2.

There were no ex parte communications to report.

Mr. Weeks stated that he builds custom furniture, has no employees and no retail sales on site. He added that he sells his product at various local galleries and does have some internet sales as well. In response to a question from Commissioner Kabler, Mr. Weeks stated he had had no complaints from neighbors about noise. He added that the shop has a dust collection system and that any leftover wood by-products are disposed of by composting. He added that most of the wood he uses comes from local citizens who contact him.

The Chair called for public comments and Mr. Carl Harris, adjacent neighbor to the south, spoke in favor of the request noting that a lawn mower makes more noise than the shop operation. He added that businesses of this type help to repurpose wood that is milled and sold locally.

At this time the Chair read a letter received from Mr. Herman Walker on behalf of Long Point, LLC in support of the application.

Commissioner Kabler stated that the proposed use meets the goals and objectives of the comp plan. He added that this type of artisan entrepreneurship should be encouraged and since there have been no complaints he was in favor of the proposed use. Commissioner Miller concurred.

Commissioner Carpenter arrived at 7:17 p.m.

<u>Action:</u>

Motion to recommend approval was made by Commissioner Kellam provided that the operation continues as currently operated and that the property be maintained with no debris and no additional noise.

Ms. Benson clarified that since the property is zoned ES-RVRR the business would be considered a home business and falls under the requirements of the prior zoning ordinance. Commissioner Ward added that subdivision covenants can be monitored by property owners as well.

At this time Commissioner Kellam amended her motion to recommend approval to the Board of Supervisors as submitted. Second was made by Commissioner Kabler and carried 7 to 0.

The third hearing was called to order.

C. **Special Use Permit 2011-03:** Bryan A. Williams has applied for a minor special use permit to replace a single-wide mobile home on property located in the Hamlet District at 5200 Martin's Landing Road near Townsend. The property contains approximately 22,000 square feet of land and is described as Tax Map 113-A-10.

No ex parte communications were reported.

The applicant's agent, Tim Smith, was present to answer questions.

The Chair called for public comments and none were received.

Commissioner Miller questioned if the existing septic system and drainfields were operable. Ms. Benson confirmed that the Health Department would verify adequacy of the existing well and septic system to serve the new unit through the building permit process.

Action:

Motion was made by Commissioner Kabler to recommend approval since the proposed use meets the objectives of the comp plan to provide affordable housing and to promote development of designated Hamlet areas. Second was made by Commissioner Kellam and carried unanimously 7 to 0.

The fourth hearing was called to order.

D. **Special Use Permit 2011-04:** The Barbour-Orlando Revocable Trust has applied for a minor special use permit for Specialty Food Production: 2,500 square feet or less on property located at 6071 Riverside Farm Lane. The property contains 13.57 acres of land, is zoned Agriculture/Rural Business, and is described as Tax Map 92, double circle 5, parcel B.

There were no ex parte communications to report.

Mr. Barbour and Ms. Orlando presented their petition and explained that they did not envision expanding the baking operation to the shed in the near future. They advised that they do not intend to conduct retail sales on the property and that they would have to be extremely successful before hiring employees. Mr. Barbour stated that at this time the baked bread is delivered in their personal vehicle once or twice a week to Cape Charles.

The Commission received comments from Wilson Leggett on behalf of the Homeowners' Association (HOA) and from attorney Paul Watson representing Marion S. Scott, Jr. who had developed the subdivision. Both speakers expressed concern about retail sales and the potential for additional wear and tear on the private road that serves the subdivision which must remain unpaved according to covenants. Bill Parr referenced the letter he had submitted and stated that he supports the application but that he is concerned about chickens roaming over onto his property. Mr. Parr also stated that his concern that the existing well held under

an easement agreement would be adversely impacted if the business was greatly expanded in the future.

Commissioner Kabler inquired about the reference to chickens in the letter received from Bill Parr, and it was agreed that that was an issue the neighbors would have to work out.

Commissioner Kabler also noted that while he appreciated Mr. Parr's concern about the well easement the commission had no authority to address such an issue in this matter. Ms. Benson added that if the business is expanded or relocated to the shed, the Health Department would address additional well and septic system requirements.

Action:

Commissioner Wescoat moved to recommend approval of the special use permit in accordance with the application as submitted, indicating no retail sales on the property. Commissioner Carpenter seconded the motion which passed unanimously 7 to 0.

The fifth hearing was called to order.

E. **Special Use Permit 2011-05:** William C. Parr has applied for a minor special use permit for holiday and seasonal events and an event venue on property zoned Agriculture/Rural Business located at 24021 Seaside Road. The property contains 22.67 acres of land and is described as Tax Map 92, double circle 5, parcel A.

There were no ex parte communications reported.

Mr. Parr presented his application and stated that he agreed with most of the comments included in the staff report. He stated that he intends to install a private driveway from S.R. 600 to serve the facility, erect a fence along his southern property line and that he is considering vegetation options to provide a visual buffer and noise attenuation. He indicated that the future vegetative buffer would be greater than ten (10) feet high, greater than ten (10) feet wide, and evergreen. It was Mr. Parr's opinion that the proposed use would not present environmental issues and that the Health Department would be required to review each event as presented in a required special event application. He also stated that noise levels would comply with the county noise ordinance and that dark skies lighting would be utilized. The agricultural operations on the property would not be impacted nor would the proposed use be in conflict with surrounding farming operations. During discussion it was his understanding that any event being held on the premises would require a temporary commercial liability insurance policy in addition to a temporary permit to serve alcoholic beverages if warranted. Mr. Parr also stated that camping would not be allowed on the premises and that the hours of operation would begin no earlier than 8:00 a.m. and would conclude by midnight. After dark, all events would be kept indoors until their conclusion. Mr. Parr also stated that he would have a sub-lease agreement with each event holder just as a personal residence can be leased or rented. Parking would be provided on a cleared grassy area on the premises as he did not want to install any hard impervious surface on the farm. Handicap parking would be provided next to

the barn for easy access. Mr. Parr noted that the 127 year old barn has been restored and its electrical capacity upgraded. He had no plans for a sprinkler system at this time, but fire extinguishers and exit lights would be installed where necessary.

The Chair called for public comments.

Andrew Barbour, an adjoining property owner, spoke in support of the application but requested that the county consider conditions pertaining to the use of the easement across his property, noise control, and limiting the number of participants at any venue and the hours of operation. Mr. Barbour also submitted written comments for consideration by the planning commission and the Board of Supervisors.

Barrett Cree addressed the commission stating that vegetative screening should help solve noise problems. He added that Bermuda grass and select fill should provide an adequate parking surface that would promote proper drainage and erosion control.

Wilson Leggett spoke on behalf of the HOA for the Scott subdivision, stating that they had objected to the use of Riverside Farm Lane when Mr. Parr met with them in February. He also stated that some of the HOA members who live closer to the barn than he does had expressed concern about lighting and noise.

Peter Lawrence spoke in support of the petition, stating his opinion that the activity would present a unique marketing and economic development opportunity.

Luisa Gazzolo spoke in support of the petition noting that she had hosted a very successful private reception on the premises which Mr. Barbour had attended.

Paul Watson representing Marion Scott requested that approval of the use permit be conditioned so that all activity, including ingress and egress, occur on the applicant's own property.

Dave Charlton stated that he had lived in the subdivision for eleven (11) years and requested that approval of the use permit be conditioned so that it be for the applicant only and not transferable.

Emails received in support of the special use permit were from Dora Sullivan, Robert K. Lewis, Brooks Johnson for Harmony Investments, Inc.; Bill Payne, Jacqueline Chatmon, and Mary Finney, were read for public record and are attached hereto.

There being no other comments the public hearing was closed.

The commission conducted extensive discussion with the applicant and among themselves after the public hearing was closed. Commissioner Miller reported that she had learned that afternoon from the county attorney that the county's noise ordinance is likely unconstitutional, based on a recent decision regarding Virginia Beach's noise ordinance. In addition to noise, commissioners expressed concern about hours of operation, security and controlling trespass on other properties, parking issues, and whether the proposed use was more commercial in

nature than agritourism-oriented, particularly in an area that seemed more residential in character than agricultural.

Action:

Upon motion by Commissioner Miller with second from Commissioner Kabler, the commission voted 6-1 to postpone further consideration of this matter until their April recessed meeting at a time and date to be determined. Commissioner Carpenter cast the dissenting vote.

Mr. Parr was reminded that the Board would still conduct their scheduled public hearing on this matter next week even though no commission recommendation would be forwarded.

The last hearing was called to order.

F. **Special Use Permit 2011-06:** Delsea Energy LLC has applied for a special use permit to erect a temporary Meteorological Tower on property owned by David and Virginia Long at 28166 Lankford Highway. The property is zoned Agriculture/Rural Business, contains 222.25 acres of land, and is described as Tax Map 105, double circle A, parcel 84.

The Chair called for disclosure of any ex parte communications. Commissioners Ward and Kellam reported that during their field visits they each had a general conversation with the landowner but that no explicit discussion was held on the application itself.

Stephen Volkert presented the petition on behalf of the applicant noting that the guyed tower would be a total height of 197 feet. He also provided detailed information about the bird flight diverters and bat detectors that they planned to install.

Bill Parr representing Coastal Properties, Inc., a nearby property owner, spoke in support of the proposal.

Sue Rice asked a number of questions about the proposal and expressed the view that proper location of such an installation is important. She was shown the proposed location on the applicant's map to affirm that no existing forested areas would be removed. She indicated that the proposed location is in a Coastal Avian Protection Zone according to the Virginia Department of Environmental Quality. She also suggested that MET tower could provide data to those working in the fields of wildlife and natural resource protection and perhaps a study of this site could be implemented between the various parties involved.

Ruth Boettcher stated that the concurred with Ms. Rice's comments and requested consideration of the data-gathering opportunity.

Action:

After a brief discussion, Commissioner Kellam moved to recommend approval of the use permit with the following conditions: (1) that the applicant contact state and federal wildlife officials to explore their interest in research pertaining to bird and bat mortality in relation to the tower, and (2) that the bird flight diverters and bat detectors will be installed in accordance with the

manufacturers' specifications as provided by the applicant. Commissioner Kabler seconded the motion which carried unanimously 7 to 0.

The Chair called for a brief break at 9:39 p.m.

Motion to stay beyond 10:00 p.m. was made by Commissioner Kellam and seconded by Commissioner Miller. The motion passed 4 to 3 with Commissioners Wescoat, Kabler and Carpenter opposed.

New Business:

The commission agreed to advance the agenda to Item 7 New Business, specifically those two items related Waterfront Village District issues. Motion to adjust the order of business was made by Commissioner Miller and seconded by Commissioner Kellam. The motion carried unanimously 7 to 0.

Ms. Benson had provided written comments on the proposed zoning text amendments, but not on suggested subdivision text amendments as that type of amendment must be submitted by the locality's commission or board as there is no statutory provision for individuals to do so. Her written comments on the zoning text amendments to the commission are as follows.

Turner & Turner Attorneys at Law has applied to amend the Northampton County Code, Chapter 154, Appendix B Densities, Lot Sizes, and Dimensions with respect to the Waterfront Village-Waterfront Commercial (WV-WC) District; §154.003 Definitions, specifically ***WATER-DEPENDENT FACILITY*** *and* ***REDEVELOPMENT.*** *The submittal also requests consideration of designation of the Waterfront Village-Waterfront Commercial District in Willis Wharf as an Intensely Developed Area (IDA), a permitted type of Chesapeake Bay Preservation Area (CBPA).*

<u>Comments</u>
The submittal sets forth the background of the request and provides an analysis of consistency with the Northampton County Comprehensive and other zoning requirements. At this time staff would not add to that analysis. The proposed amendments to Appendix B appear reasonable from a public health, safety, and welfare perspective. It is noted that the current definition of ***WATER-DEPENDENT FACILITY*** *in §154.003 of the Northampton County Code mirrors the definition set forth in the CBPA Designation and Management Regulations (9VAC10-20-40) and does not set forth an exhaustive list of water-dependent facilities. Aquaculture operations include features which are not water-dependent as defined by the state and county regulations, such as offices, restrooms, parking lots, driveways, loading docks, and storage sheds. Guidance from the Division of Chesapeake Bay Local Assistance indicates that only those portions of facilities included in the definition of water-dependent facility that are in fact water-dependent and can only function by virtue of location within the Resource Protection Area should be permitted to be developed on the shoreline.*

It is noted that the proposed redefinition of ***REDEVELOPMENT*** *presupposes designation of an IDA, so staff is unable to comment on that aspect of the proposal at this time. Absent that*

analysis, staff is reluctant to recommend specifically including AQUACULTURE or AQUACULTURAL FACILITIES in the ***REDEVELOPMENT*** *definition for the reasons stated above concerning determination of water-dependence. The matter of designating an IDA in the WV-WC District requires research and analysis of development patterns which has not yet been completed to date. We would expect to accomplish this prior to the May 3, 2011, planning commission meeting, so that a staff recommendation may be presented for consideration either prior to the scheduling of a public hearing or as part of the public hearing record. Designation of an IDA, which would involve both comprehensive plan and zoning ordinance amendments, may be an appropriate means of providing greater flexibility for expansion of aquaculture operations.*

Ms. Benson noted that any proposed amendments would apply to the Village of Oyster as well. The proposal would reduce yard setbacks and increase the percentage of allowed impervious surface to allow expansion of aquaculture businesses being hampered by current zoning setbacks in the Waterfront Village Districts.

Ms. Cela Burge with Turner & Turner was present to answer questions and deferred to those aquaculture business owners who were present to address the commission. She asked the commission to advance the proposed amendments to public hearing.

Mr. Tom Walker stated that 6 individual aquaculture businesses located in Willis Wharf are trying to preserve and expand their activities. Noting that aquaculture is a very competitive business it was his opinion that the county should encourage this type of business growth including the means necessary to grow oyster spat. He noted that aquaculture has provided much needed economic growth and employment and they are seeking a more business-friendly approach from the county for this type of water-dependent business instead of constant hindrances that have been experienced in the past when these businesses needed to expand along the waterfront.

Commissioner Miller, speaking on behalf of the Waterfront Village Subcommittee, stated that after attending the meeting in Willis Wharf, the Subcommittee drafted a proposed Working Harbor District based on what other places have done along the eastern seaboard from Maine to Florida. She added that information had been obtained from the group known as Preserving Working Waterfronts. She noted that only 2 percent of the county's shoreline has been dedicated to water-dependent uses. It was her opinion that the amendments proposed by the Subcommittee would be less restrictive to both aquaculture and eco-tourism businesses.

Ms. Burge stated that she has not had adequate time to evaluate the Subcommittee's proposal but noted that her clients are not proposing changes to the Use Chart of Appendix A in the county zoning ordinance.

Mr. Hank Bowen, also in the aquaculture business, addressed the commission and added that current zoning setbacks unduly restrict and hinder aquaculture businesses due to front and rear yard setbacks making most of the small existing lots unusable along the waterfront. For

example, he mentioned that one small lot in Willis Wharf once accommodated 2 marine railways plus a small building but is basically of no use now because building setbacks cannot be met.

It is noted for the record that Commissioner Wescoat left the meeting at 10:15 p.m.

Motion was made by Commissioner Kellam to advance the proposed Zoning Text Amendment 2011-04 as submitted by Turner & Turner to public hearing. Second was made by Commissioner Miller and carried 6 to 0.

The commission asked that additional background information be provided before the public hearing such as the power points presentation made during the Willis Wharf meeting.

Motion was then made by Commissioner Miller to advance the proposed amendment as submitted by the Waterfront Village Sub-committee to create a new zoning district known as WV-WH Waterfront Village-Working Harbor District. Second was made by Commissioner Carpenter and carried 6 to 0

At this time the commission considered Item 7 A to review Variance 2011-03 as filed by Larry and Mary Emma Adkins for a variance of 9-feet from the required 15-foot side building setback for the purpose of constructing a single-family dwelling. The property, located at 3386 Seaside Road, is zoned TE-1, Town Edge – 1 and is described as Tax Map 10, double circle A, parcel 112.

Mrs. Downing noted that the former home on the property had been demolished due to extreme termite damage.

It was the opinion of the Chair that no hardship existed. However, Commissioner Miller stated her view that the placement of the drainfields being adequately separated from the well has created a hardship.

Motion was made by Commissioner Kellam to recommend approval to the Board of Zoning Appeals. Second was made by Commissioner Kabler and carried 6 to 0.

New Business

Instead of conducting the scheduled briefing, the commission was provided the following written comments concerning proposed Zoning Text Amendment 2011-05 as filed by Harmony Development.

Staff has determined based upon further review of the zoning ordinance, specifically §154.082 Statements of Intent for Primary and Secondary Zoning Districts, that it appears that no text amendment or other ordinance amendments are necessary in order for the proposed campground expansion. The pertinent sections upon which staff determination was based are the following:

> *(1) Existing Business Districts are not intended to be enlarged after the date of adoption of the 2009 Comprehensive Amendments; however, a use being performed within an Existing Business District may expand to the lawful limits of the existing site.*

(2) Any lawful non-conforming commercial use which exists on a parcel rezoned to the EB District on the adoption date of the 2009 Comprehensive Amendments to this Ordinance, but does not appear in Appendix A, shall be still considered a permitted use on the parcel.

Staff discussed the interpretation with the Assistant County Attorney, who concurred with the staff determination. The use will have to comply with site plan review and other ordinance requirements, as well as any requirements that may be imposed by other regulatory agencies, such as the Health Department and the Virginia Department of Environmental Quality.

Commissioner Miller suggested that the commission consider adding definitions for "recreational area, commercial" and "recreational area, public" and to include both in the Use Chart.

Unfinished Business

The commission by consensus deferred Item 8 Unfinished Business and did not discuss procedural matters or large scale utility wind energy ordinance language.

Matters from the Public

Mr. Barrett Cree questioned the rationale behind allowing commercial activity in the buffer area while not allowing homeowners to remove trees in the buffer.

Consideration of Minutes

The minutes of February 24, 2011 were approved with one correction to page 2, last paragraph, third line the words "little league" should be changed to "multiple sports". Motion to approve as corrected as made by Commissioner Kellam and seconded by Commissioner Carpenter. The motion carried 6 to 0.

The minutes of March 1, 2011 were also approved with the following corrections: page 1, paragraph 8, second line, Donna Bozza should be identified as Director of the Eastern Shore of Virginia Tourism Commission; page 2, in Item 10 after "OpSail 2012" insert "…to generally attract tall ships to our community…."; page 2, first full paragraph, first line insert the word "new" before "tourism strategy"; in the second line insert the word "it" after "support"; third full paragraph insert "on-going" before "efforts" and then add "to attract tall ships on a continuing basis and" before the words "Operation Sail"; page 4, first line, should read, "Commissioner Miller submitted a proposed zoning ordinance draft for a new use, "micro-business." Page 4, fifth paragraph, insert ", to promote rural economies" at the end of the sentence. Page 5, sixth paragraph, make Commissioners plural in the first line and add "and Miller" after "Fauber"; line 3, should read, "…zoning text amendments soon and that a Waterfront Village Sub-committee had been appointed." Remove the hyphen in aqua-culturists throughout the text. Motion to approve as corrected was made by Commissioner Miller and seconded by Commissioner Kellam. The motion carried 5-0-1 with Commissioner Ward abstaining as he was absent from the March 1 meeting.

The minutes of March 16, 2011 were approved as submitted upon motion by Commissioner Ward and second by Commissioner Kellam. The motion carried 6 to 0.

Committee Reports/Presentations

Commissioner Kellam noted that she would provide a follow-up memo concerning a utility wind energy meeting she attended in Richmond. It was her understanding that a model ordinance would be developed for localities to adopt. One specific requirement adopted by Rockingham County is to provide for a balloon test whereby balloons are flown at the height of any proposed wind turbine in order for residents to visualize the impact from individual vantage points. She then reviewed legislative language as presented to the commission that prohibits localities from excluding wind and solar energy projects in their jurisdictions.

Communications

Concerning updates on town business, there was nothing new to report for Nassawadox or Exmore. Commissioner Miller noted that the Eastville Board of Zoning Appeals will consider a variance application this month. It was reported that Cape Charles had conducted its new well test.

Director's Report

The commission was provided the April Director's Report as written below.

1. Cape Charles update: There is nothing new to report on this matter. At the Transportation Technical Advisory Committee meeting on February 17, 2011, Tom Bonadeo, Town Planner, reported that the Cape Charles Planning Commission had discussed the status of the draft Historic Town Entrance Corridor Overlay District on which we had provided comments. He indicated that he was preparing a revised document to submit to us in the near future.

2. Exmore Town Edge Planning: I have not yet received any information from the town regarding their review of the Exmore Town Edge.

3. Board/Town Action on Zoning Matters: There were no zoning matters before the Board of Supervisors in March. The Town Council of Eastville adopted a revised zoning ordinance and map on March 7, 2011.

4. Potential ordinance revisions: Staff met with representatives of the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Health on March 24, 2011, to discuss their regulations and definitions pertaining to catering and specialty food production. Since that date staff has not been able to complete a report and formulate a recommendation, so this matter will be forthcoming at a later date. Staff has also recently met with representatives of the Virginia Department of Conservation & Recreation, Floodplain Division, and the Federal Emergency Management Agency (FEMA). Due to changes being imposed by FEMA, we have been advised of several amendments that should be made to §154.162

Floodplain Overlay District for full compliance. Those amendments will also be presented at a later date.

5. Waterfront Village Vision meetings: Meetings with residents of and property owners in Oyster and Willis Wharf to review their respective vision documents have been confirmed for Monday, April 18, 2011, and Monday, May 2, 2011. Both meetings will be held 6:30 – 9:30 p.m. at the former Northampton Middle School. The two (2) communities will meet jointly with the consulting team for general Waterfront Village discussion and then separate into their respective village groups to discuss concerns of each village specifically.

Prior to adjourning it was decided to defer consideration of Commissioner Miller's proposed Low Impact Commercial Uses (micro-business) language until the May meeting.

Adjourn/Recess

Motion to recess to an undetermined date was made by Commissioner Kellam at 11:10 p.m.

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Chair Secretary