

## Minutes

### Northampton County Planning Commission

May 1, 2012

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, May 1, 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, Roberta Kellam, Severn Carpenter, Mary Miller, Dave Fauber and John Wescoat, Jr.

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

Members of the Eastville Town Council were also present during a portion of the meeting.

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

The agenda was reviewed and revised to include a new item New Business to schedule a meeting time with the Public Service Authority. Motion to accept the agenda as revised was made by Commissioner Wescoat and seconded by Commissioner Kellam. The motion carried 8 to 0.

The first public hearing was called to order.

Mayor Jim Sturgis reconvened a quorum of the Eastville Town Council to consider the following zoning text amendment.

#### Public hearings:

- A. **Joint hearing with the Town Council of Eastville - Zoning Text Amendment 2012-05:** The Town Council of Eastville has applied to amend the Eastville Zoning Ordinance by adding a new definition to **Article II, Section 2-3 Specific Definitions** to be known as **Livestock: Domestic or domesticated cows, horses, sheep, donkeys, goats, chickens, ducks, geese, turkeys, or enclosed rabbits or hares. Bee hives and domesticated dogs and cats kept as household pets are not considered livestock.**; to amend **Article II, Section 2-3** by revising the last sentence in the definition of *Livestock Husbandry, Domestic* to read: Domestic livestock must be penned **or fenced**; to amend the first line of **Article XIII, Section 13-2 Permitted Uses** by replacing the word "Agricultural" with the words "**In-Town Farm**" and to add a new use **(p) Livestock Husbandry, Domestic**; to amend **Section 13-3 Special Uses and Structures** by adding a new use **(g) Livestock Husbandry, Domestic, with higher density of livestock than specified in Section 13-6 (c) below**; to amend **Article XIII, Section 13-6 Standards for Livestock and Green Production Operations** to read as follows: (c) Minimum requirements for ~~traditional farm-based~~ livestock husbandry, **domestic (1)** Livestock facilities shall be situated on five acres or more, excluding federal-defined tidal and on-tidal

wetlands. **(2) By-right permitted livestock density: one cow per acre or one horse per acre, or two sheep per acre or two donkeys per acre; or four goats per acre, or twenty fowl per acre or twenty caged rabbits per acre. (3) Additional livestock density will be considered as a Special Use in accordance with procedures set forth in Section 4-3 herein.**

Mayor Sturgis explained that the town's zoning ordinance excludes farm animals from the In-Town Farm District. This amendment is intended to remedy that oversight and to promote farming activities as well. He added that a larger quantity of farm animals would require a special use permit; and that the In-Town Farm District was adopted to also preserve view-sheds around the town.

There being no public comment the public hearing was closed.

Commissioner Fauber noted that no llamas or alpacas are included in the type of animals allowed. Mayor Sturgis noted that the text can be amended in the future if warranted.

The Eastville Town Council meeting was recessed at this time.

Action:

Motion to recommend approval to the Eastville Town Council of Zoning Text Amendment 2012-05 was made by Commissioner Kellam and seconded by Commissioner Miller. The motion carried 8 to 0.

The second hearing was called to order. By consensus, it was decided that Items B and C would not be heard concurrently, but separately even though the same applicant had applied for both.

**B. Zoning Text Amendment 2012-04:** The Nature Conservancy has applied to amend the Northampton County Code, Chapter 154 Zoning Code, by adding to **Appendix A: Use Regulations, Category 4 Community Service Uses** a new use to be known as *research radar installation with or without ancillary structures* as a major special use in the A/RB Agriculture/Rural Business, V-1 Village-One, and WV-1 Waterfront Village-One Districts.

Mr. Barry Truitt, representing the applicant, stated that The Nature Conservancy (TNC) has been cooperating with NASA since 2003 to operate a weather radar facility in the Oyster area. He noted that the radar device had traveled the world and now is ready to be reinstalled in its original location.

Commissioner Kellam questioned why the zoning text amendment included 3 districts. Ms. Benson explained that staff recommended those districts since they are similar in character.

Commissioner Miller expressed her concern about the height of such a facility as there are no limitations or performance standards proposed.

When asked, Mr. Truitt explained that they proposed to raise the facility 20 feet to allow for new equipment to be above the nearby tree line. He explained that the device is used to study global rainfall and can be used for migratory bird studies as well.

The Chair called for public comments. None were received and the hearing was closed.

Commissioner Fauber suggested that since there is no definition being proposed, limitations should be imposed. It was his opinion that the draft amendment language would open the door for any type of research radar. Since radio towers have limitations so should research radar devices.

Commissioner Kellam disagreed since the device being discussed is not a high-impact type of use. Each new device would require a special use permit and limitations or conditions can be implemented at that time if warranted. Commissioner Leatherbury concurred.

Commissioner Ward asked if installation of the radar would preclude the land from being used for anything else. Ms. Benson replied no since the applicant is simply adding a use by special permit if approved.

Commissioner Leatherbury asked would another special use approval be required if this radar facility is replaced with a larger unit in the future. Ms. Benson replied yes, if the facility is enlarged or any different than what is approved originally, then another special use approval would be necessary.

Action:

Motion to recommend approval to the Board of Supervisors of Zoning Text Amendment 2012-04 as submitted was made by Commissioner Wescoat. Second was made by Commissioner Kellam and the motion carried 8 to 0.

- C. Special Use Permit 2012-01:** The Nature Conservancy has applied for a major special use permit to locate a research radar installation in the WV-1 Waterfront Village-One District on property known as Tax Map 85-10-A near Oyster. The property contains 143.5 acres and has frontage on Seaside Road (SR 600) and on Crumb Hill Road (SR 1802).

Barry Truitt presented the application on behalf of The Nature Conservancy. There was no public comment offered on this matter.

In response to a question from the Commission, Dr. John Gerlach of NASA stated that the radar would be packed into the six sea containers to be stored by the tower and moved approximately every eighteen months.

Action:

Upon motion by Commissioner Kellam with second from Commissioner Carpenter, the Commission voted unanimously 8 to 0 to recommend approval of the special use permit as presented to the Board.

The last scheduled hearing was called to order as follows.

- D. Zoning Text Amendment 2012-06:** The Northampton County Planning Commission intends to amend the Northampton County Code, Chapter 154 Zoning Code, **§154.127 Low Impact Commercial Uses Section (A) Home occupation** to read: An occupation in a **an owner-or-renter-occupied** dwelling unit (or dwelling accessory structure) provided that...; amend **(A) (6)** to read: The business owner shall have no more than one full-time employee or ~~two equivalent part-time employees~~ **or one full-time equivalent.**; amend **(A) (7)** to read: Home

occupations shall be divided into ~~two~~ **three** categories: (a) Home Office, (b) Home Business **and (c) Micro-Business.**; and to add **(c) A Micro-business shall be an owner- or renter-occupied home or farm based business requiring a Zoning Clearance and meet the following criteria:**

**1. A Micro-business shall have no employees, other than the owner/operator;**

**2. A Micro-business shall have no identifying signage;**

**3. A Micro-business shall have no outside storage or additional vehicle traffic beyond that generally found for a household or on a farm;**

**4. There shall be no retail sales on the premises, and any products must be delivered off-site;**

**5. The micro-business shall utilize no specialized machinery or equipment beyond that generally found in a household or on a farm.**

There was no public comment offered so the hearing was closed.

Discussion followed on the following: (1) comments presented by the Zoning Administrator; (2) if services should be allowed or not; and (3) whether to require a zoning clearance for such activity or a minor special use permit.

Discussion ensued concerning the need to require a minor special use permit versus a simple zoning clearance. Based on the Zoning Administrator's comments, Commissioner Kellam disagreed that a zoning clearance should be required. Commissioner Fauber thought it should be mandatory to protect neighbors while allowing property owners to conduct such businesses without fear of complaints. Commissioner Ward agreed noting that a zoning clearance would give the applicant parameters as to what the next level of review would be if a business outgrows its "micro" status.

Ms. Benson expressed her concern about how the language has been structured; especially the home occupation definition for easy public consumption. She stressed that the language should clarify if services could occur as part of the business.

Ms. Benson pointed out that the current ordinance requires that stricter language be used if there is a conflict in the Use Chart. She then read *§154.004 General Conditions (B) Conflict with other county ordinances*, "Whenever this chapter is at variance with the requirements of any other lawfully adopted count, state, or federal statutes, rules, regulations, or ordinances, the most stringent of the applicable provisions shall govern.", and suggested that it be referred to in the draft language perhaps.

Action:

The Commission voted to postpone further consideration of this matter pending receipt and review of additional input from the Zoning Administrator. The motion, made by Commissioner Miller with second from Commissioner Fauber, carried unanimously 8 to 0.

**Matters from the Public:** none.

### **Consideration of Minutes**

The commission approved the April 2, 2012 minutes with the following corrections: (1) page 3, first sentence, insert the word “stated” after “Ms. Benson”; (2) on page 3, move the last sentence to the end of the fifth paragraph on page 4; and (3) on page 5, a correction was made to ~~paragraph~~ the third full paragraph where the name should be changed from Kellam to Miller. A motion to approve as amended was made by Commissioner Kellam and seconded by Commissioner Leatherbury. The motion carried 8 to 0.

The minutes of the April 11, 2012 recessed meeting were approved with the following addition to page 4 after the first full paragraph as follows, “When Commissioner Coker asked the Board what they had heard was the main reason for businesses not locating in Northampton County, Mr. Randall replied lack of infrastructure.” Motion to approve as amended was made by Commissioner Miller and seconded by Commissioner Kellam. The motion carried 8 to 0.

The commission approved the April 17, 2012 minutes with one correction to page 1 in paragraph 2, delete John Wescoat, Jr., as being present. Motion to approve as corrected was made by Commissioner Kellam and seconded by Commissioner Carpenter and carried 8 to 0.

Referring to the next to the last paragraph on page 5 of the April 3<sup>rd</sup> meeting, as a point of clarification Commissioner Miller stated that she had provided details during that meeting concerning her estimates that are not exactly scientific. While there are a large number of very small lots, her estimates reveal that more than half of the vacant commercial parcels appear to be on lots of five acres or more. Of the developed commercial lots, 75 percent are on lots of 5 acres or more of which many are now vacant. She added that her estimates do not include the parcels located within the towns.

### **New Business**

Discussion was then held on a potential subdivision ordinance amendment related to new legislation pertaining to property held in trust for a family member.

Commissioner Ward voiced concern about wording in (2) that the power of the trustee would be usurped when all beneficiaries have to agree that a property be subdivided. Usually a trust has one or two people in charge of the trust which is different than beneficiaries.

Commissioner Leatherbury stated that trustees are there to oversee the trust such as in cases when beneficiaries are minors or partially incapacitated.

Commissioner Miller questioned if trustees are not related to the family does this language provide a way for the trustee’s family members to have a foot in the door of becoming beneficiaries as well. Commissioner Kellam replied no.

Commissioner Wescoat added that the Code of Virginia already has provisions dealing with minors and their guardians related to trusts. The Chair asked if other sections of the Code be referenced to reflect that provision as well.

Commissioner Kellam suggested that the Section (F) (ii) be removed if deemed acceptable by the county attorney. Commissioner Kellam also asked that the county attorney confirm why the language is included.

By consensus, the commission agreed to ask for more clarification from the county attorney in order to address their concerns and questions as follows: (1) should (F) (ii) be removed; (2) are powers of trustee being limited; and (3) should all sections of the Code be referenced.

The Public Service Authority (PSA) was discussed. Commissioner Miller noted that the commission needs to understand the PSA's understanding of their charge. She stated that an update from the PSA is needed. Commissioner Kellam agreed that it is critical that the commission knows what the PSA is planning. Ms. Benson stated that she would follow-up with County Administrator Nunez to schedule a joint meeting of the PSA and the commission.

### **Unfinished Business**

There were no procedural matters discussed.

Commissioner Kellam reported that she hopes to have more on the Zoning Code §154.111, agricultural ponds draft language by next month.

The commission then received Mr. Stith's analysis of all commercial property inventory within the incorporated towns that includes industrial and residential office districts for data purposes. Ms. Benson noted that the Comprehensive Plan Advisory Committee and the Board of Supervisors would also be receiving copies of the analysis.

Commissioner Miller asked if Exmore is infrastructure-ready like Cape Charles since the Board wants this type of zoned land available for business development.

Commissioner Miller noted that she had received a question from a stakeholder concerning the difference between a vision and goals.

### **Communications**

It is noted for the record that the commission had received agendas for both the Cape Charles Council and Planning Commission by email.

There was nothing new reported from the Towns of Cheriton, Exmore and Nassawadox. Staff was asked to contact the towns for agenda information or minutes.

The Town of Eastville will hold its comp plan review public workshop on May 14<sup>th</sup>.

Commissioner Ward asked if the radar research facility will communicate using broadband. Dr. Gerlach spoke up and stated that he could provide information on that matter after the meeting.

**Committee Reports/Presentations:** none.

#### **Director's Report**

1. Cape Charles update: Cape Charles Town Planner Tom Bonadeo has now indicated the town's preference to work on a joint planning area for Stone Road rather than pursue development of a Town Entrance Corridor Overlay. In the chart submitted as part of your 2011 Annual Report to the Board of Supervisors I requested clarification regarding the status of this project as a priority for the Board, but we have not yet received the requested clarification.

2. Town Edge Planning: There is nothing new to report regarding this matter at this time.

3. Board/Town Action on Zoning Matters: There were no zoning matters on the public hearing agendas of the Board of Supervisors or Town of Eastville in April 2012.

4. Comprehensive Plan Review: A meeting of the Plan Review Stakeholder Group has been scheduled for Wednesday, May 9, 2012, at 7:00 p.m. A copy of the memo to the group is included in your agenda package for your information.

As you requested, the data portion of the Power Point presentation used for the public input meetings is enclosed for your information.

The Comprehensive Plan Advisory Committee continues to meet each Thursday at 9:00 a.m. to continue efforts to develop a community survey and to acquire services from an economic development consultant to assist them in their work. They traveled to Richmond to meet with state economic development specialists on Tuesday, April 17, 2012. Copies of materials they received from the various presenters are enclosed for your information. They are being asked to submit any comments they may wish to make on the draft vision by May 11, 2012, for your consideration.

Ms. Benson added that the development of a public assistance program to help localities, including towns, to receive help in development of stormwater management programs.

Also distributed was a memo from Carol Wampler of the Dept. of Environmental Quality (DEQ) concerning Poseidon's wind turbine permit process. To date, no location data is available.

Commissioner Ward asked Ms. Benson if she was aware of road funds being allocated to the county. She stated that she did not attend the Board meeting where that issue was discussed, but it was her understanding that some funds have been allocated for the Cape Charles area. When asked if allocation of road funds has to coordinate with the comp plan, Ms. Benson stated that it should, but such provision may not be specifically spelled out.

Prior to adjourning the commission scheduled May 16 as its next work session.

**Adjourn/Recess**

Motion to recess until May 16 at 7:00 p.m. was made at 8:35 p.m. by Commissioner Kellam and second by Commissioner Carpenter. The motion carried unanimously 8 to 0.

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Chair

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Secretary