

Minutes

Northampton County Planning Commission

May 4, 2010

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, May 4, 2010, in the former circuit courtroom located in Eastville, Va., for the purpose of conducting regular business.

Those present were Chair David Fauber, Mary Miller, David Kabler, Robert Meyers, Marshall Cox, John Wescoat, Jr., Michael Ward, and Roberta Kellam.

The member absent was Vice-Chair Martina Coker.

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

The meeting was called to order at 7:02 p.m. and a quorum established.

The agenda was reviewed, revised and accepted. An addition was made to Item 8 New Business to include a brief report concerning sea level rise and new mapping in preparation for drafting the hazard mitigation plan; and one addition to Item 12 Director's Report to allow discussion of the Board's work schedule. Motion to accept with revisions was made by Commissioner Cox and seconded by Commissioner Miller. The motion carried unanimously.

The scheduled public hearing was called to order.

Public Hearing

Zoning Text Amendment 10-05 NHCO: The Northampton County Planning Commission proposes to amend the Northampton County Code §154.084 *Statements of Intent for Floating Zone Districts*, specifically subsection (B); and §154.175 *Floating Districts* and also to add a new §154.179 *Solar Energy District (SED)*. (ex parte communication)

No ex parte communications were reported.

The Chair called for public comments after stating that public comments be limited to five minutes.

Mr. Taylor Hammond, counsel for Lincoln Renewable Energy, referred to the letter from Mr. Joe Jordon of Lincoln Energy. The letter quantified the company's concerns and comments related to the proposed floating zoning text amendment versus using the special use permit

process. The comments elaborated on two major concerns that would make a floating zone more problematic or even prohibitive. The first concern was that a floating zone would only allow solar use exclusively prohibiting landowners from using their farm land prior to and during construction. He suggested that other uses currently permitted be allowed to continue so long as a solar energy project is not yet developed. Also, if the only use is solar it would prevent flexibility as to the type of projects developed such as industrial sizes used on warehouse rooftops as well as using solar devices with other types of energy uses and other types of projects. His second major concern is the requirement to maintain all storm water on site this could possibly prevent development altogether. A storm water management plan and regulations mandated by the Department of Environmental Quality (DEQ) should ensure that no additional storm water is created. Mr. Hammond noted that solar projects will have very little impervious surfaces since grasses will be planted along with mitigation of storm water impacts. This, along with the special use permit process, would allow more compatibility and flexibility for any site-specific parcel used as a solar energy project. Without revisions to the proposed floating zone language it was their opinion that such provisions may discourage location of solar energy projects in Northampton County.

Granville Hogg, a resident of 3127 Bluff Court, asked how the county would benefit from solar energy projects, how many jobs would be created, how much tax revenue would be added to the tax base and what entity would regulate such projects. He also noted his concern about more storm water runoff into bay tributaries and creeks impacting those areas where oyster and clam grounds are located. Mr. Hogg noted that he would remit other concerns and statements in writing as he had exhausted his five minutes.

Ralph Dodd, a Willow Oak resident, stated some concern that floating zone regulations may be more difficult to implement on site specific parcels. His main concern, however, was proposed language on performance standards requiring all storm water to be retained on site. It was his opinion that such language would set a precedent that could lead to major problems and could possibly be expanded in the future to encompass other activities such as farming. He noted that as a farmer he has dealt with drainage issues and knows of only one piece of land in the county that retains all storm water on site with appalling results. While stating that creeks and bays must be preserved, he reiterated that regulations requiring retention of all storm water on site would result in land waste involving unnecessary berms and ponds as well as lost jobs and businesses. Mr. Dodd stressed that the commission should be very cautious in this matter.

There being no other public comments, Ms. Benson noted that written comments had been received from Bill Finch with Community Energy and Chris Bullinger whom Commissioner Meyers identified as an agent for Cornerstone Power & Development, LLC of Chicago, Illinois.

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

Commissioner Wescoat asked Mr. Hammond about fungicide and pesticide applications. While noting that he was not an engineer but simply an attorney, Mr. Hammond stated that to his knowledge only natural solutions are used if needed.

Commissioner Kabler stated his opinion that a floating zone district allows more flexibility when locating solar energy projects. However, Mr. Hammond stood by his prior comments of concern adding that proposed retention regulations and single-use restrictions may make any solar project cost prohibitive. He added that once a property has been rezoned to the floating zone the landowner would be restricted from using his property even though it may take some time to get the project installed. He suggested that the special use permit process would allow more flexibility and noted that acreages and panel heights could be increased to accommodate technology advances. He added that other floating districts listed in the zoning ordinance allow other uses and infrastructures.

In her research Commissioner Kellam noted that one locality in North Carolina did not require separate requirements for storm water management under a separate zoning district, but rezoned a property to industrial plus required approval of a special use permit to allow a solar energy project. She added that specific parcels may have unique characteristics that could appropriately be addressed through the special use permit process. She noted that there are theoretical differences between the two tools of a floating zone and a special use permit and it was her opinion that when regulating a single use, a special use permit is the better option. She added that the county should deal with storm water in a way that reflects unique situations on a case-by-case basis along with mitigating factors like buffers.

Commissioner Ward stated his opinion that the floating zone is a better planning mechanism and suggested that the district be an energy district and not limited to solar exclusively. He added that a special use permit would mandate lot coverage requirements of only 15 percent whether in an agriculture or Industrial district.

Ms. Benson stated that the commission has never satisfied the issue of what constitutes impervious surface for a solar energy project even though the Board of Supervisors has directed the commission to do so.

Commissioner Ward stated that such projects should be considered industrial and that the impervious surface should be the envelope of the whole structure. Generally, he supported the floating zone concept but still had some reservations with certain provisions and that Commissioner Wescoat may have suggested a more rational alternative with incremental storm water management. He questioned how impervious should be calculated and was somewhat

doubtful about how storm water management would be monitored under the Public Service Agency (PSA). Commissioner Kellam stated her understanding that the PSA would manage storm water only within its designated areas.

Commissioner Kabler added that it may be unreasonable and extreme to require capture of all storm water on site; however, any increase in flow should be managed and mitigated.

Discussion followed on how to measure and what conditions to consider when delineating existing storm water flow from additional flow resulting from a solar energy project.

Commissioner Kellam suggested that language should perhaps stipulate that any discharge increasing sediment is prohibited or that no increase in storm water runoff is allowed. She reiterated her concerns over plasti-culture farming that produces high sediment runoff and violates the Agriculture Stewardship Act and that a solar energy facility placed over a plasti-culture field would be horrendous in her opinion.

The Chair suggested that standards for development and standards for re-development could be considered.

Discussion followed and Commissioner Wescoat stated his opinion that total retention of storm water is not necessary. He suggested that a better option would be requirements of a well-maintained vegetated buffer and allowing additional height to panels to benefit technology and necessary mowing and maintenance.

Ms. Benson added that any project is required to go through a development plan review that includes many factors such as soil types and topography.

Commissioner Miller stated her opinion that creating a floating zone is not so different than a special use permit. Also, she noted that a solar energy project is an industrial application and when a landowner enters into an option with a solar company it is a business arrangement and not an agreement with the county. She suggested that there needs to be a commitment from all parties involved.

Mr. Dodd voiced his concern about the Right to Farm Act and storm water retention required on site. Ms. Benson stated that once a property is rezoned to the floating zone the Virginia Right to Farm Act will no longer apply to land that was zoned as agriculture.

Commissioner Miller concurred and stated that the county has a commitment to defend the aquaculture industry by managing storm water in order to preserve salinity in the creeks and bay. It was her opinion that grading would produce more water runoff that should be retained on site. Also, there should be requirements that will insure a vegetated underlayment by requiring adequate spacing of panels to sustain sun and rain exposure. Commissioner Meyers

agreed and stated that the proposed SED would be a proactive approach. He noted that the Environmental Protection Agency (EPA) is trying to prevent nonpoint source pollution into the bay and that high quality storm water is a must that is low in nutrients and sediment.

Commissioner Kellam stated that in Davidson, North Carolina a solar energy project needed a 12 acre pond on site during construction that was deemed as unnecessary post project.

The commission discussed the issue of what is deemed as lawful nonconforming uses once land is rezoned. It was noted that any landowner could continue to use the property as a nonconforming use but could not introduce new uses once a rezoning occurs.

Commissioner Kellam asked Mr. Hammond if the company had run any storm water calculations or were they just speculating that proposed regulations would be a problem for the company. Mr. Hammond replied that he did not know for sure, but speculated on the latter.

The commission then reviewed the written comments submitted on behalf of Cornerstone Energy by Mr. Bullinger dated April 30, 2010.

In **§154.177.1 (A)** a 3 year completion time was requested instead of two as proposed. Also in the following phrase “the Board of Supervisors shall initiate a rezoning process to eliminate the SED at that location” a requested revision was to change ‘shall’ to ‘may’. After discussion the commission agreed by consensus to make no changes to this section.

In **§154.177.1 (A) (2)** the following comments were offered.

(2) Performance Standards with SED

(a) All stormwater runoff must be contained within the SED or recycled for land use.

Comments from Mr. Bullinger requested that this be eliminated or perhaps set at a limit such as 50 percent. It was their opinion that their solar farm would not generate any significant additional runoff compared to the current use of the land. Also, he noted that there are no chemicals used or any other substance that would need to be contained on the solar farm. The commission agreed to discuss storm water management at a later time so no other discussion was held on this comment. The commission in their discussion noted that a solar farm is not agricultural in nature and different zoning should apply such as the proposed SED.

(c) All wiring not on the solar arrays shall be underground except where necessary to connect to the public utility. Mr. Bullinger noted that since the water table is high in this area, they would prefer the language be relaxed somewhat and suggested a change to “best efforts if technically and commercially feasible...” By consensus the commission

agreed to leave the language as proposed since underground wires are located throughout the county.

§154.177.1 (A) (2) (f) (1)

A vegetated buffer is required that consists of a landscaped strip at least fifty (50) feet wide measured from each boundary line of the SED around the entire perimeter of the SED....

Comments submitted asked for the definition of “landscaped” and if existing vegetation counts. By consensus the commission agreed to leave the wording as proposed. The commission noted that existing vegetation can be utilized.

§154.177.1 (A) (2) (f) (2)

SED’s shall be landscaped and maintained with a buffer of plant materials that are mature enough to effectively screen the view, to eight feet above ground level, of the solar panels from adjacent properties all year around. Comments asked for clarifying language since this requirement could most readily be met after some period of time. For example, it might take a few years for a hedgerow or trees to fill in or to reach 8 feet. The commission agreed that this comment has already been addressed, but to clarify that the measurement is taken at the property line.

§154.177.1 (A) (2) (g)

Noise generated by the facility shall be limited to 50 DBA above ambient levels except when a back-up generator is needed for maintenance. Comments suggested that 50 DBA may be slightly low and asked that the number be increased. The commission agreed by consensus that the words “above ambient levels” should be deleted from the proposed SED language. It was noted that this is the same standard for wireless communication facilities in Section 154.109-C-2-o of the county zoning ordinance. Commissioner Meyers noted to staff that the commission may want to revisit wireless communication language in the future as well.

In his comments, Mr. Bullinger also noted that the company is still moving forward diligently with their proposed solar energy project.

A five-minute recess was held at 9:00 p.m.

Comments submitted by Bill Finch with Community Energy dated May 4 appear as follows. Ms. Benson noted for the record that their comments are numbered differently than the public hearing draft ordinance.

Below please see comments regarding Northampton County, VA’s proposed language for establishing floating SEDs. In general, we see value in the flexibility of a floating district, but we are not sure we should be combined with mobile home parks, planned industrial developments

and planned rural villages given our limited need for public services and infrastructure and minimal impacts to the land and existing development. Further, the language seems to assume that a developer owns the project site. As lessees, we do not have the authority to fulfill many of these conditions ourselves. There was no acceptance by the commission that conditions of the proposed SED could not be fulfilled by the parties involved.

1. *Panel height (154.175(D)) – Should be OK – but cannot guarantee at this point that we can work within the maximum 12 feet.* The commission agreed to change the height requirements to 15 feet (including revisions to the chart) and to specify that the bottom of a panel must be a minimum of 4 feet above ground - finished grade. By consensus Section 154.175 (D) (A) (2) (b) was revised by adding, “Panels must be adequately spaced to insure sufficient sunlight to promote growth of vegetation.”
2. *General Provisions (154.175(E)) – We are concerned about being held to the general requirements of this section when we have such minimal needs and impacts as compared to the other types of districts which feature residential, industrial and commercial uses – essentially all other types of land use except for agriculture. For instance, making sure we build where “schools and other public facilities are or will be available.” A further concern – whether a project encourages “a variety of housing styles and types, including affordable housing”. Perhaps a section of the code dealing with agriculture seems more appropriate.* These comments were so noted by the commission with no changes proposed. Ms. Benson noted that no solar energy project could be located in an Agricultural-Forestal District (AFD) as it has been deemed incompatible with AFD provisions since such projects are considered an industrial type use.
3. *Intended uses (154.177.1(A)) – The County’s description of allowed uses is at odds with the wide ranging general requirements applicable to all floating districts. As noted above, if we can only do such a limited number of things in the SED, why would we be held to the general requirements of districts that contemplate all types of land uses except for agriculture?* These comments were so noted by the commission and that farming could continue as a legal nonconforming use until such time that a solar energy farm is installed.
4. *Construction deadline (154.177.1(A)) – We cannot offer absolute assurance a project will be fully built in 2 years.* These comments were also noted by the commission.
5. *“Local” electric grid (154.177.1(A)(1)(b)) – The term “local” should be removed as there is no guaranty the point of interconnection can be described as “local”.* The commission agreed to delete the word “local” and repeat the terminology from (A) “electric public utility grid.”
6. *Ground cover (154.177.1(A)(2)(b)) – we will cover the bulk of the site with vegetation, including under the panels.* The comments were so noted by the commission. Ms. Benson added that if an approved plan of development fails to accomplish its purpose then it can be revised to alleviate any deficiencies.
7. *Allocation of utility right-of-way (154.177.1(A)(2)(e)) – Given that we will be leasing most if not all land involved, we will not have the authority to set aside land for easements and*

rights-of-way, because it's not our land to set aside. The commission agreed by consensus to add the following, "Space for any public utility right-of-way must be allocated."

8. *Plant buffer screen (154.177.1(A)(2)(f)(2)) – We will offer year round plant buffer screening. Mix of coniferous and deciduous trees and bushes.* The commission so noted these comments.
9. *Removal of vegetation (154.177.1(A)(2)(f)(3)) – This looks to impinge on Landowner's rights to log their own woodlands if they so choose.* These comments were so noted by the commission but no changes were made.
10. *Noise regulation (154.177.1(A)(2)(g)) – We are working with a sound expert to see if we can operate under the maximum 50 decibels. Preliminary findings - Noise will not leave the site.* The commission noted that this matter was already discussed during consideration of former comments.
11. *Required reporting (154.177.1(A)(2)(m)(1)) – The term "public utility" should be changed since it is unlikely we will be delivering energy to the public utility.* The commission agreed to change the wording to "electric public utility grid."
12. *Required reporting (154.177.1(A)(2)(m)(2)) – Our production numbers are proprietary to our company and we should not be required to release such information to the public.* Commissioner Miller read from the Federal stimulus regulations noting that the quasi-cessation issue of solar energy projects is a concern and that annual reports should be required. By consensus the commission agreed that language taken from §154.109 (E) Wireless Communication Facilities (WCF) Management reporting requirements be revised to address solar energy project reports as well. Existing WCF language reads, "Required Yearly Report. The owner of each such WCF shall submit a report to the Northampton County Department of Planning and Zoning once a year, no later than July 1. The report shall state the current user status of the tower."
13. *Removal (154.177.1(C)) – This is very open-ended language regarding the performance bond. We need to discuss flexibility in the instrument, greater clarity in how the amount will be determined and inclusion of Landowner as a party eligible to call on such funds.* The commission noted the comments with no changes proposed.
14. *Removal (154.177.1(C)) – We would like further clarity on the description of which underground facilities we must remove – "any underground structures or supports" is very broad.* The commission noted said comments with no changes proposed.

The commission then addressed prior written comments submitted by Joe Jordan of Lincoln Energy whose cover letter was dated April 27, 2010. However, their comments appearing in red type dated April 6, 2010 related to an earlier draft. The two chief areas of concern in the draft amendment were 1) impact on current landowners use and 2) containment of all storm

water runoff on-site. With respect to rezoning parcels prior to construction, Lincoln recommended adding language that preserves the current uses of the property until the point that a solar farm is constructed and operational thereby allowing a project to apply for and receive the zoning necessary for construction without limiting current uses for the landowner. He agreed in principle that a comprehensive storm water management plan be submitted with any application, but that requiring retention of all storm water runoff on-site is neither practical nor feasible on the Eastern Shore. Therefore, they recommended that any storm water management plans limit discharge to the levels of the site under its current use. His opinion was that the floating zone district would make it more difficult for solar companies to do business in the county relative to the solar text amendment passed in December of 2009. However, he noted that the “how” of permitting should be a community decision, but would like to offer information on how permitting can be done that ensures projects will meet county standards while fostering investment that would benefit the community.

The commission noted that the SED maximum height requirement was discussed and changed from 12 to 15 feet as found on page 3 of Mr. Jordan’s mark-up of the draft SED amendment.

Also recommended by Lincoln was that §154.175 Floating Districts (E) (2) Items (a) through (d) did not actually pertain to the proposed SED in their opinion. However, no changes were made by the commission.

It was also suggested that §154.175 (I) Overall Community Plan be changed to read, “**All PID and MHP Floating** districts must be approved”; and (J) (1) be changed from 220 maximum acres to 300 acres for SEDs. However, the commission noted that the amount of acreage proposed is based on the largest existing industrial use in the county and no changes were made.

In §154.177.1 Solar Energy District (SED) it was suggested that (A) read as follows, “It is the intent of Northampton County that the Solar Energy District **allow be used solely for the** generation of solar power to be connected directly to the electrical public utility grid. It is not expected to generate heavy traffic and/or noise during operation. All such uses shall be subject to approval by the Board of Supervisors of a rezoning application with a plan of development. Any uses planned as accessory uses to the principal uses shall be subject to approval by the Board of Supervisors as part of the rezoning. **If an application for a building permit to construct the solar power system is not submitted within two (2) years after the SED is created or the solar power system is not built to completion within three (3) years after the SED is created, or the solar power system** ~~the solar power system is not built to completion with 2 years after the SED is created,~~ becomes unused, abandoned or vacated for more than twelve (12) consecutive months, the Board of Supervisors shall initiate a rezoning process to eliminate the SED at that location.”

In §154.177.1 Solar Energy District (SED) it was suggested that (A) (1) uses permitted in SED be amended as follows by adding two new subsections: (c) All uses permitted in the Agriculture/Rural Business District if (i) the SED Floating Zone was rezoned from such District and (ii) a solar power system is not installed within the SED Floating Zone, which uses shall be governed by the Zoning Ordinance provisions pertaining to the Agriculture/Rural Business District. (d) All uses permitted in the Existing Industrial District if (i) the SED Floating Zone was rezoned from such District and (ii) a solar power system is not installed within the SED Floating Zone, which uses shall be governed by the Zoning Ordinance provisions pertaining to the Existing Industrial District.

The commission noted that inserting subsections c and d would allow all uses in a SED including solar project that would essentially be allowed by right in all A/RB Agriculture/Rural Business Districts and EI Existing Industrial Districts. The commission noted that legal nonconforming uses may continue to operate if not abandoned for a period of two years or more. A motion to retain the language as drafted in §154.177.1 Solar Energy District (SED) without addition of the proposed subsections c and d was made by Commissioner Miller and seconded by Commissioner Meyers. The motion carried with Commissioner Kellam opposed. Therefore, no changes were made based on these suggested revisions.

Also, (2) (a) Performance Standards within SED was proposed as follows, ~~All~~ Storm water runoff must be contained within the SED or recycled for land use **managed in accordance with State and Federal guidelines and to the extent possible be managed on site and create no additional runoff on the site.** It was noted by the commission that this item was discussed earlier and no changes were made at this time.

Additional language proposed at the end of §154.177.1 (2) (f) 1 read as follows, **"A storm water management plan should be submitted with the application and storm water should be managed in accordance with State and Federal regulations and create no additional run off relative to previous use."** ~~Storm water must still be contained within the SED or recycled for land use even if relief is granted for buffer and/or screening reduction.~~ Once again, it was noted that this matter had been discussed earlier and no changes were made.

The last proposed recommendation submitted by Mr. Jordan was to revise §154.177.1 (2) (g) as follows, "Noise generated by the facility shall be limited to 50 DBA above ambient levels **not increase existing noise conditions by more than 3 DBA the property line** except when a back-up generator is needed for maintenance." The commission noted that this item had been previously revised and no further changes were made.

Motion was then made by Commissioner Miller to postpone further discussion of the SED and to take up the rest of tonight's agenda at a recessed meeting to be held on Thursday, May 20th at 7:00 p.m. Second was made by Commissioner Cox and carried unanimously.

Recess

The Chair recessed the meeting at 10:10 p.m. until Thursday, May 20th at 7:00 p.m.

Chair

Secretary