

Minutes

Northampton County Planning Commission

November 2, 2010

This was a regular meeting of the Northampton County Planning Commission held on Tuesday, November 2, 2010, in the auditorium at the former county middle school located at 7247 Young Street in Machipongo, Va.

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

Also attending were Sandra Benson, Director of Planning & Zoning; and Peter Stith, Long Range Planner.

The meeting was called to order at 7:00 p.m. and a quorum established.

Review and Acceptance of the Agenda

The agenda was reviewed with Commissioner Coker clarifying that Old Business under Item B would cover discussion of standards for wind turbines and a new item was added to New Business as Item C Nominating Committee for Officers. Motion to approve the agenda as clarified and revised was made by Commissioner Meyers and seconded by Commissioner Coker. The motion carried unanimously.

Commissioner Miller requested that the Commission's Code of Conduct be placed on the December agenda since it needs updating.

Public Hearings: It is noted for the record that no public hearing items were scheduled.

Matters from the Public

Ms. Deborah Renz, Vice-President of Engineering and Construction with the Renewable Energy Corporation of New Jersey, has spoken with various property owners along the Eastern Shore to locate areas of interest where wind energy projects may be suitable. She offered to provide any information and assistance to the commission if needed. She stated that one of those property owners is Mr. David Long who is here tonight.

Mr. David Long, a farmer in both Accomack and Northampton Counties, stated that his family owns and operates a 400 acre farm between Capeville and Townsend that may be suitable for a wind energy project due to its close proximity to the mouth of the Chesapeake Bay. He noted that a past study conducted in 1940 indicated that the Cape Charles area would be a good location for wind turbines and windmills. Mr. Long stated that in these economic times, farmers are looking for ways to supplement their income in order to sustain their farms and wind energy would help assist in that effort as it is compatible with farming practices.

Commissioner Meyers asked Ms. Renz how the energy would be connected to the county's power source if ever located on the Long property. She stated that the electricity would be connected by upgraded power poles or a substation to an area agreed upon by all entities involved and would require feasibility studies as well. Mr. Long added that he had also inquired about connectivity and was told that the connectivity system could be upgraded using the existing public right-of-way and noted that the Bayview substation is approximately 3.5 miles away. Mr. Long also stated that local jobs would be created in the process as well.

Consideration of Minutes

The minutes of the September 7, 2010 were considered and were unanimously approved with the following corrections in addition to those noted at the October 5th meeting: page 8, fourth line from the bottom, the word "Road" should be plural; and on page 10, first paragraph, at the end of the third sentence Commissioner Kabler requested that additional wording, "without seeking planning commission comment", be added; page 6, paragraph 5, third sentence the word "the" should be inserted before "planning"; page 9, third full paragraph, the end of the first sentence that appears on the second line, should read, "level rise; and, therefore, should be maintained and preserved"; page 13, first paragraph, last line, the first "with" should be changed to "of". Motion to approve as corrected was made by Commissioner Meyers and seconded by Commissioner Miller.

The minutes of the September 15, 2010 meeting were unanimously approved with the following corrections in addition to those corrections noted on October 5th: page 3, second full paragraph, last sentence, the word, "is" should be replaced with "not as"; page 7, next to the last paragraph, a typo appears in the last sentence where the words "the commission" appear twice; and page 4, first line should end at "excluded" and the words, "and that such" be deleted; page 2, paragraph 5, second line the word "of" should be changed to "between" and on the third line the word "that" should be changed to "which" with a comma added after "opposes". Motion to approve with all corrections was made by Commissioner Meyers and seconded by Commissioner Miller.

The October 5, 2010 minutes were approved unanimously with the following corrections: page 1, paragraph 8, the word "and" should be added in the second line before the word "related", and a new sentence should be added prior to the last one to read, "He encouraged the commission to complete its work on this overlay district." Also, on page 9 in Item #4, the letters "se" should be changed to "set"; and in the next to the last paragraph, insert the word "is" before "a basis" in the last line. Motion to approve as corrected was made by Commissioner Meyers and seconded by Commissioner Coker.

New Business

The commission then received an updated status report from Ms. Benson on Royal Farms since the briefing with Coastal Properties East, Inc., on Zoning Map Amendment 10-04 was deferred at request of their agent. She noted that Mark Bumgardner, their attorney, has related that if they are not prepared to proceed by the public meeting deadline they will be prepared to file an extension request. They are waiting for the traffic impact study at this point.

Commissioner Meyers stated that the drawing appears to be nothing more than a landscape plan that was date stamped. He asked that the original detailed site plan be provided in order to determine if any modifications have been made since its approval. He also noted that when this site plan was approved there were no requirements stipulating that any new changes in the code be implemented and recommended that the commission ensure that applicants be required to upgrade plans to meet new changes. However, the Chair related that building codes in existence at the time of a building permit approval are those that would apply as long as any permit remains valid. In answer to those concerns expressed by Commissioner Meyers, Ms. Benson stated that such a requirement would need to be addressed in the zoning ordinance and could not be enacted retro-actively in her opinion. Such a regulation could be addressed as a condition in a special use permit approval and/or zoning code amendment.

Ms. Benson noted again that Royal Farms is working on the traffic impact analysis that VDOT now requires which was triggered by the proposed zoning map amendment. She noted that Royal Farms could proceed with its project today as a lawful, nonconforming activity which still has county approval in accordance with the Code of Virginia. However, she reiterated that they have chosen not to proceed that way.

Commissioner Coker presented information on possible zoning provisions for temporary family health care structures as referenced in Section 15.2-2292.1 of the Virginia Code adopted in April 2010. She added that the code also references size limitation and duration for specific family health care issues and suggested that the commission be proactive in this matter. Commissioner Coker volunteered to investigate the matter more thoroughly and report back to the commission. Ms. Benson noted that she also would need to complete a summary on this topic. Commissioner Miller noted that she had compiled a report in the publication, *Shoreline*, and that one of her contacts for information (a building contractor) informed her that it would be difficult to construct a dwelling unit the size of 300square feet to meet the 110 mile per hour wind resistance requirement. She also noted that such a temporary structure should be considered as an accessory dwelling unit and added that these units would be constructed off-site and moved to their temporary locations. The Chair suggested that a pre-fab or modular unit could be used as well.

Noting the upcoming election of officers, the Chair appointed Commissioners Kellam and Miller as the Nominations Committee for elections scheduled to be held at the regular meeting in December.

Unfinished Business

Commissioner Kellam inquired about the commission's review of a zoning checklist as discussed in the past. Ms. Benson informed the commission that newly revised permits and checklists as developed by staff are ready to be distributed to the commission.

Referring back to upcoming elections, the Chair noted that everyone wishing to serve as an officer should contact the Nominations Committee to have their names entered.

The commission then reviewed the latest draft of the Wind Energy Overlay District. Commissioner Coker noted several changes to standards for on-site turbines/residential or commercial production or use.

The following revisions were so noted during discussion and approved by consensus.

- References to small wind turbines and windmills shall also include the words “microsystem wind turbine”
- Alphabetize Section (B) *Definitions*
- In Section (B) *Definitions* MICROSYSTEM WIND TURBINES: in the third line delete “energy system” and insert “turbine”; TOTAL HEIGHT: at the end of the definition add a comma after “blade” and replace the word “plus” with “including”
- Correct spacing, punctuation, and formatting where needed
- In Section (D) Performance Standards add a new item to read, “The lower part of any blade shall be a minimum of twelve (12) feet off the ground.”
- Section (E) *Setbacks, Densities, Lot Sizes...* is to be re-written in a table format to provide more clarity with language added that Microsystem Turbines are allowed in all zoning districts.

During discussion Commissioner Kellam noted that there was no “bird” information related to small turbines and suggested that maintenance and yearly inspections be required to alleviate any noise problems.

Commissioner Meyers added that noise depends on blade design and that he recently was near an operational small wind turbine that was undetectable while standing at the end of the driveway to its location.

Commissioner Miller stated her concern about the reach of blades and Commissioner Kabler stated his concerns about noise and bird mortality rates in area where numerous homeowners clustered together may have wind turbines on each property.

Commissioner Kellam stated that the commission would be hard-pressed to make a regulation addressing such concerns when there is no basis or background as support. She added that research registers no complaints about small wind turbines and since there is much interest in the county to allow such devices the county should go forward and later revise the regulations if warranted.

Commissioner Meyers stated his support to allow small wind turbines/windmills in resource protection areas (RPAs). Commissioner Miller suggested that the commission move forward and submit the final draft to the Department of Conservation and Recreation (DCR) and the Chesapeake Bay Local Assistance Department (CBLAD).

It was decided that the commission would review the last draft of these regulations at 6:30 p.m. on Nov. 17th prior to the scheduled joint meeting with the Exmore Planning Commission scheduled at 7:00 p.m.

Commissioner Kellam stated that she would e-mail a new red-lined draft to the commission with a potential vote to be taken on November 17th since she would not be available for that meeting. Ms. Benson polled the commission and noted that a quorum would be present for that recessed meeting.

Commissioner Kabler voiced his concern about potential noise pollution impacting neighboring property owners. Commissioner Kellam stated that the county has a noise ordinance that would cover these smaller devices as there is no evidence to support such concerns at this point.

The commission then discussed MET Tower regulations with Commissioner Kellam noting that the subcommittee has not received any other comments to the draft regulations since they were distributed on September 15th. She proposed striking the requirement that such devices be located in the Wind Energy Overlay District (WEOD) and to allow applicants to proceed at their own risk. The commission agreed by consensus that MET towers should be allowed in the A/RB Agricultural/Rural Business District by special use permit. She also proposed deletion of guy wires prohibition thereby eliminating the idea that such installations are temporary. She noted that even though there are concerns about guy wires interfering with bird flight she did a limited survey around the county to see if there was such a problem and found none. It was decided that the maximum height should be measured from ground level to the top of the tower including instrumentation and maximum height shall not exceed 199 feet. It was also decided that the minimum setback would be three times the maximum height (199') to the nearest property line and/or utility line.

Commissioner Miller asked that the definition of MET Tower be revised to eliminate energy producing capabilities to the grid. It was noted that a MET tower could have a solar panel to generate enough power to operate its data transmission equipment.

Commissioners Meyers and Miller were of the opinion that data gathered should be shared with the county and should be stipulated in the regulations. When asked, Ms. Renz stated that such data is private information for business purposes and not public information to be shared with others such as business competitors.

Discussion followed on where to allow MET towers. Commissioner Kellam suggested that such towers be limited exclusively to large tracts in the A/RB Agriculture/Rural Business District. The commission so agreed by consensus and added MET Tower to Category 3 Commercial Uses of Appendix A in the county zoning ordinance as a special use permit.

Commissioner Kellam noted that she would e-mail a redlined copy of the revisions as discussed to the commission and staff with a potential vote to be taken on November 17th.

Commissioner Kellam reported that she had no new information to provide on the Wind Energy Overlay District (WEOD) and was not prepared to continue discussion at this time. She acknowledged that Katie Nunez, County Administrator, has submitted a memo that was clarified as not being related to MET towers but was for off-shore wind turbine installations. It should be considered for a utility scale type facility for future discussion. Ms. Benson stated that she has asked Ms. Nunez to issue a new memo concerning this topic for clarification purposes.

Commissioner Miller reported that Governor McDonnell has appointed a commission to investigate wind energy off the coast. She added that the Virginia Coastal Energy Research Consortium (VCERC), as reported by George Hagerman, may be contemplating tentative plans to locate large wind turbines off the coast of Virginia Beach including two turbines near Fishermans Island.

Commissioner Miller reported on draft off-premise directional business signage language noting that visuals have not yet been developed. Information provided by other localities outside of the Commonwealth revealed that such signage is generally provided at the expense of the business owners. She asked the commission if a recommendation should be sent to the Board to determine if this is a worthwhile concept; and whether or not business owners should be charged for using such directional signage. The Chair inquired about the location of such signs since they are prohibited in the highway right-of-way. Commissioner Miller stated that some localities simply locate the signs in conjunction with private property owners and others have asked their state governments to grant an exemption when the location is in a tourism center. Commissioner Meyers noted that this ordinance would be used to promote local businesses and not to generate revenue for the county. It was also suggested that the General Assembly could be approached about adopting legislation that would allow an exemption for the location of such signage in the VDOT right-of-way.

Commissioner Kellam gave a brief report on bio-solids ground application noting that she would provide Amherst County's regulations for the commission to review. She related that other localities have not been successful in their attempts to over-regulate bio-solids as evidenced by court decisions. She found that the Environmental Protection Agency (EPA) is doing a risk assessment for this type of Class B utility to determine levels of toxins found such as pathogens, steroids, hormones, etc. She also noted that warning signage is required and must be posted for at least 30 days when bio-solids are applied to the ground area. The Chair noted that when referring to bio-solids it should always be referred to as a Class B bio-solid since Class A can be purchased off the shelf and applied around yards. Commissioner Kellam noted that root crops cannot be grown on the land for at least three (3) years but there is no enforcement or checks and balances in place at this time. If a locality does not have an ordinance it cannot be reimbursed for testing of bio-solids which is free of charge when an ordinance is in place. She suggested that a memo be sent to the Board asking them to consider the development and adoption of such language. Ms. Benson stated that since land use is involved it would seem appropriate to continue to develop a recommendation to consider. Commissioner Kabler asked if bio-solids are being distributed to help farmers or to simply get rid of the sewage sludge. Commissioner Kellam replied that the objective is both since it is nutrient rich but the goal should be to protect human health and the environment as well. The Chair noted that nitrogen is being applied to local fields as fertilizer or in some other form. Commissioner Kellam also noted that farmers are to have a nutrient management policy and those applicators or sewage sludge marketers are responsible for correctly applying the bio-solids and for keeping records as mandated by the state. She noted that the county could restrict application to agricultural zones only.

The commission then discussed review of the comprehensive plan with Ms. Benson noting that she would be submitting a memo to the Board of Supervisors outlining the process and goals and will provide a copy to the commission. She noted that the county should have a Capital Improvements Plan

(CIP) which is not part of the implementation process related to the comprehensive plan as questioned by Commissioner Ward who was of the opinion that any planned CIP public service areas should be incorporated into the future land use map. Commissioner Miller stated that levels of service should be developed and that new census information, especially age data, is imperative when reviewing the plan. Commissioner Meyers suggested that the commission provide input into the development of the framework of the CIP. Ms. Benson stated that in the past there was a commission subcommittee appointed to start work but no progress was made since other priorities took precedent.

Commissioner Kellam suggested that a standing meeting may be in order to address work on the comp plan and that a work plan, checklist, and organizational goals or framework are needed as well. Commissioners Coker and Meyers agreed. Ms. Benson suggested that the commission start scheduling additional meetings in January. After further discussion, the commission decided by consensus that a methodical approach is needed to address review of the comprehensive plan. Commissioner Miller requested that a work session be scheduled in December to discuss Part 2 – Data. A meeting date of Wednesday, December 1, 2010 at 7:00 p.m. was scheduled to discuss what sections should be updated.

Communications

It is noted for the record that the commission had received current planning commission and town council agendas from the Town of Cape Charles.

Commissioner Meyers noted that the Exmore's planning commission is ready to meet again to discuss the Town Edge process.

Commissioner Miller reported that the Town of Eastville is now ready to forward to county staff its draft amendments to the Eastville Zoning Ordinance.

There was no new information to report from the Towns of Nassawadox and Cheriton.

Per the commission's request a status report was compiled by Zoning Administrator Melissa Kellam regarding site plans submitted during the past five (5) years. Ms. Benson explained that in the "Status" column, dates refer to approval dates; "Complete" means that the project has been completed; and "Void" means that the project was withdrawn, abandoned, or will require a whole new submittal in order to proceed. While reviewing the report, Commissioner Meyers requested that information be provided on the number of new lots approved that have been added to the current inventory of undeveloped lots. He also suggested that VDOT be notified about limited access plans along U.S. 13 at the Tower Hill location for the Hampton Inn project. It was suggested that such a requirement be incorporated into the newly developed zoning checklist.

Commissioner Kellam stated that a member of the Harmony Development group had recently informed her that the proposed Hampton Inn near Tower Hill Subdivision would not be constructed since financing was unavailable.

In the agenda packet the commission received a brochure, "Energy for the 21st Century", for information purposes only.

At 10:00 p.m. motion was made by Commissioner Miller to extend the meeting to 10:15 p.m. which was seconded by Commissioner Coker and carried unanimously.

Board Action on Zoning Matters

There were no recent Board actions taken on zoning matters.

Committee Reports/Presentations

No committee reports were presented.

Director's Report

Ms. Benson noted her encouragement concerning the participation of local citizens in the first community planning academy which was a great success.

Items addressed in the written Director's Report are as follows.

1. Public information meeting to discuss impaired waters: DCR staff is working on a draft implementation plan and attempting to schedule a meeting with government representatives to discuss the draft. I will keep you apprised of the progress.
2. Upcoming public hearings: At this time we have no public hearing items for your December 7, 2010, agenda. Mark Baumgartner, attorney for Royal Farms, requested that the briefing anticipated to occur on November 2, 2010, be deferred again. It may be that this matter will be on the December agenda.
3. Community Planning Academy: Our first Community Planning Academy concluded on October 25, 2010. The participants were very engaged, and as we prepare for our comprehensive plan review some of the information generated by the class will be provided to the Commission.
4. Town Edge Planning: We will meet with the Exmore Planning Commission at 7:00 p.m. on November 17, 2010, at the Town Office to resume discussion of the Town Edge. Please mark your calendars accordingly.

As mentioned earlier, Ms. Benson distributed the newly developed zoning and land use permit applications and checklists to the commission for their information and review. She noted that the new applications are being utilized and can be found on the county website as well.

The Chair asked if the Exmore Comprehensive Plan located in the appendices of the county's plan was current. Ms. Benson stated that she did not know if it was a current version or not and it will be her recommendation to not include any town plans when updating the county's plan.

Recess

The meeting was then recessed until 6:30 p.m. on Nov. 17, 2010, in the Exmore Town Office to continue unfinished business and to meet with the Exmore Planning Commission at 7:00 p.m. Motion to recess was made by Commissioner Miller and second by Commissioner Coker.

Chair

Secretary