

Northampton County Planning Commission

Recessed Meeting

September 15, 2010

This was a recessed meeting of the Northampton County Planning Commission held on Wednesday, September 15, 2010 in the former middle school located at 7247 Young Street in Machipongo, Va.

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

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

The meeting was called to order at 7:03 p.m. and a quorum established.

The agenda was reviewed and unanimously accepted as presented upon motion by Commissioner Coker and second by Commissioner Meyers.

**Unfinished Business**

Discussion was held on the Corridor Overlay District draft language. Ms. Benson explained that prior commissioner comments were reflected in red type and noted that the overlay map was not available when first discussed by the commission. She added that only Commissioners Coker, Miller and Kellam had returned comments.

Discussion was held on whether the proposed overlay district language would actually accomplish what the Town of Cape Charles wants in terms of a scenic drive into the town. Ms. Benson suggested that the commission look at access management of the roadways and planting requirements.

It was recommended that since the town's original draft was based on the county's U.S. 13 Corridor Overlay District and prior zoning ordinance, that the setback from U.S. 13 should perhaps be revised to reflect the latest setbacks in the revised zoning ordinance.

Ms. Benson noted that this overlay district is a good start to developing the Cape Charles Town Edge District process as discussed at the August joint meeting of both planning commissions.

Commissioner Kellam suggested that on page 7 the second comment should be deleted from the text.

Commissioner Meyers noted that the county has designated Stone Road as a commercial area which is in conflict with what the town envisions and would prefer. It was his opinion that the draft language would not actually do anything to accomplish the town's goals that were stated on August 3 to keep the roadway rural in nature and undeveloped for the most part.

Ms. Benson reminded the commission that the overlay district language would not impact existing zoning or land use and that existing provisions allow every recorded lot to have an access point to these state roads.

Commissioner Meyers suggested that the town should probably adopt an entry vision statement and then submit to the county for incorporation into the county's comprehensive plan to use as a basis to change zoning regulations and to have performance standards.

Commissioner Miller agreed with Commissioner Meyers by noting that there is a distinct conflict of what the town envisions as a scenic entrance into the town versus future county economic development in the same area that the town opposes due to impacts to its businesses. Commissioner Meyers added that the town wishes to perpetuate a pretty, rural scenic drive into town with limited development and nicely groomed vegetation.

Ms. Benson stated that the proposed corridor overlay language would not affect actual uses on Stone Road but may have more of a bearing on Old Cape Charles Road where development is still limited. She added that language to implement a buffer requirement can be added, but right now the county comprehensive plan does call for development along Stone Road. It also was her opinion that the proposed corridor overlay district would not perpetuate a scenic drive as the town envisions.

Commissioner Kellam suggested that the commission not re-write the draft language but give the town those general comments as discussed tonight. However, Ms. Benson reminded the commission that this corridor overlay district applies to land within the county and under county jurisdiction.

Commissioner Meyers suggested that an internal road serve small lots along Stone Road for better access management. Ms. Benson stated that such a requirement could be mandated for new development only.

The Chair questioned the ability of the county to enforce buffer requirements in VDOT right-of-ways. Discussion followed and it was noted that the county's buffer requirements are not

those reflected in the draft language and that the draft should be changed to existing requirements.

Commissioners Kellam and Meyers suggested that the commission look out for the town's interest in this matter as a way to foster a new working relationship. Commissioner Meyers added that what happens in the county affects Cape Charles and what happens in Cape Charles affects the county.

Ms. Benson reiterated that the proposed corridor overlay district is located in the county's jurisdiction. She added that not only the town, but all property owners in the area will be given an opportunity to participate in the development of the Cape Charles Town Edge District. She stressed that the Town of Cape Charles should dictate the outcome of the TE plan but not as a key player in the process.

The commission completed its review of the draft with the following recommendations: use existing county buffer and setback requirements where applicable; page 5, d.5, reference to Cape Charles zoning needs to be changed to county zoning; page 5, d.4, architectural standards add "where applicable"; page 6.2 delete monetary penalty for tree removal/destruction; page 6.1 change "bushes" to "shrubs"; and on page 3, (6) require installation of stub streets on all sides to make connections to future development. Also, it was suggested that staff verify that 2,000 vehicle trips per day is VDOT's trigger for a traffic impact analysis; and that the town be informed that the county plans to revise signage requirements.

By consensus, the commission agreed that the corridor overlay district language as revised be submitted to the town for review and another joint meeting be scheduled between the two commissions.

The commission then discussed wind energy ordinance language as submitted by the Wind Energy Subcommittee members, Commissioners Coker and Kellam. It was noted that they had talked with representatives from Wind Capital Group who agreed that at least 1 to 2 years of MET Tower data is needed before a wind energy project is initiated. Although speculative at this time, the representatives believe that the federal government will impose regulations for the purchase of renewable power on all states including Virginia. Based on information provided, Commissioner Kellam stated that the current load capacity of the county's megawatt transmission line will need to be expanded in order to be used as part of any large scale wind energy project. She suggested that the county require a major special use permit for any small scale or industrial wind project as well as any MET tower. She noted that the current zoning ordinance requires a special use permit in the A/RB Agricultural/Rural Business and V1 Village One Districts. She then distributed information including definitions and noted that the

subcommittee is recommending an overlay district so that critical avian areas would be excluded.

The commission then reviewed the Coastal Avian Protection Zones as mapped in red and orange colors and suggested that a one-half (1/2) mile distance be required as the setback for any wind energy project from towns, village and hamlets as well as the designated avian areas. Ms. Benson agreed that using this map as the base map was a logical approach.

Those definitions as submitted by the subcommittee for review and discussion are as follows. It was noted that any district other than A/RB be excluded from the overlay district.

#### **DEFINITIONS**

**OVERLAY ZONING DISTRICT:** *An Overlay Zoning District is a special zoning district that is placed over the existing zoning districts and identifies special provisions in addition to those of the underlying district. Overlay districts can manage development in or near environmentally sensitive areas, such as groundwater recharge areas (e.g. to ensure water quality and quantity), special habitat (e.g. species or feature protection) or floodplains (e.g. prevent flood damage). Common requirements may include building setbacks, density standards, lot sizes, impervious surface reduction and vegetation requirements. Overlay Zoning Districts may also be used for encouraging a type of development in a certain area. A "Wind Energy Overlay District" is proposed so that wind energy development may be encouraged in portions of the County where fewer land use conflicts would be expected. The boundary of the Wind Energy Overlay District would include all that area of Northampton County that is both zoned "Agricultural" and is located outside of the area designated as "Internationally Important" by the DEQ's wind energy committee.*

**SPECIAL USE PERMIT:** *A Special Use Permit is a zoning tool that allows certain land uses to be located in a particular zone only upon specific approval of the governing body on a case by case basis. Wind turbines and MET Towers may be compatible with many allowable land uses in the Agricultural District, even though there are potential impacts that must be addressed. Those impacts would be addressed through the Special Use Permit. A Special Use Permit process would allow the County to enforce appropriate development standards to mitigate potential impacts, while permitting the Wind Energy land uses to be developed on private property where land owners may benefit from the associated rental income.*

#### **WIND ENERGY OVERLAY DISTRICT**

- I. Amend Section 154.083 to add: (D) Wind Energy Overlay District: The intent of the Wind Energy Overlay District is to designate areas of Northampton County where the production of electricity for commercial sale from the operation of wind energy conversion systems is appropriate and in the public interest, if impacts can be mitigated.**
- II. Add Section 154.166: Wind Energy Overlay District:**

- a. *The Wind Energy Overlay District includes all of that area under the jurisdiction of Northampton County that is both zoned "Agricultural" and is located outside of the area designated as "Internationally Important" by the Virginia Department of Environmental Quality.*
- b. *The uses and standards of the underlying zoning remains unchanged by the Wind Energy Overlay District, except the following uses and standards are added:*
  - i. *Wind Energy Facility – Special Use Permit*
  - ii. *Wind Energy Conversion System, Utility Scale – Special Use Permit*
  - iii. *Wind Energy Conversion System, Large Scale – Special Use permit*
  - iv. *Meteorological Tower – Special Use Permit*
- c. *Height Standards:*
  - i. *Wind Energy Conversion Systems (As noted in Wind Ordinance)*
  - ii. *Meteorological Tower – No taller than 199 feet from ground*

*Language to allow MET Towers by special use permit was submitted for review as follows.*

**METEOROLOGICAL TOWER SPECIAL USE PERMIT**

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

- (a) **Use Regulations:** *No MET Tower may be constructed within Northampton County except by a Special Use Permit within the Wind Energy Overlay District, issued pursuant to this Section.*
- (b) **Maximum Period of Special Use Permit:** *As a MET Tower is intended to be a temporary structure, no Special Use Permit shall be issued for a period that exceeds 24 months.*
- (c) **Procedure:** *In addition to the application materials required under Section 154.042(B)(1)(a) of the Code of Northampton County, Virginia, the following materials must be submitted:*
  - a. *Engineering specifications of the MET Tower to be installed.*
  - b. *Drawing showing the vertical dimensions of the MET Tower.*
  - c. *Drawing showing the location of all structures, residences, forested areas, wetlands and waterways within 500 feet of the property line where the MET Tower will be located.*
- (d) **Performance Standards:**
  - a. *The Maximum Height of the MET Tower from the ground to the top of the instrumentation shall not exceed 199 feet.*

- b. *The use of guy wires is prohibited.*
- c. *The minimum setback for a Met Tower is three times the Maximum Height to the nearest property boundary line and/or off-site residence.*
- d. *No lighting other than that required by FAA regulation shall be permitted to be located on the MET Tower.*
- e. *Signs on the MET Tower shall be limited to those needed to warn of any danger.*
- f. *MET Towers shall be located in a manner that minimizes land clearing and/or fragmentation of forested areas.*
- g. *MET Towers shall be located in a manner that does not have significant negative impacts on animal species, including bats and migratory avifauna.*
- h. *MET Towers shall be maintained in good condition and shall have the structure inspected by a professional engineer at least once every twelve months. The results of the facility inspection shall be submitted to the Zoning Administrator within thirty (30) days of the inspection report's receipt by the applicant or facility owner. Ongoing maintenance shall include, but not be limited to, painting, structural integrity of the foundation, all equipment and support structures and security barriers (if applicable), and landscaping if present.*
- i. *Notice shall be provided to the Zoning Administrator within 30 days of any change in ownership of the facility.*
- j. ***Abandonment, Discontinuation of Use or Expiration of Special Use Permit:*** *Within ninety (90) days of abandonment, discontinuation of use or expiration of the special use permit, the applicant or his successor (and if neither is available, then the property owner) shall physically remove the MET Tower and all associated equipment, machinery, etc. from the site, properly dispose of any solid or hazardous waste materials in accordance with State and Federal regulations, and restore the location to its natural condition prior to the project installation.*
- k. ***Enforcement:*** *If the MET Tower is not removed in accordance with Section "j" above, the Board of Supervisors may authorize the Zoning Administrator to enter the site and procure removal of the MET Tower. The Applicant must post a form of surety prior to construction in the amount necessary for the removal of the structure in accordance with "section j" above. The surety, in the form of bond, letter of credit, or escrow account, must be submitted to the Zoning Administrator shall be fully inclusive of the costs associated with MET Tower removal.*

Commissioner Kellam explained that wind towers would be allowed as tall as 400 feet. Questions were raised if adequate wind data could be collected if MET towers were limited to a maximum of 199 feet in height.

Commissioner Miller questioned why the proposed wind overlay district was different than the solar energy overlay district. Commissioner Kellam noted that wind projects have the ability to

do a site plan in a floating zone, but that no other uses can co-locate with solar projects so there is nothing else that can go in that zone. However, with wind towers farmers still have the ability to plow up to the base of a tower making it compatible with farming activities. She added that the county should ensure that neighboring property owners are not impacted by any wind project. Commissioner Kellam also explained that the subcommittee did not want a floating zone because any area where such projects are excluded should be designated. However, it was their belief that wind energy is important to the county's eco-tourism goals as designated within the comprehensive plan. Commissioner Kellam added it was her understanding that a property owner has entered into an agreement for the placement of a MET tower near Eastville.

The commission then reviewed the Coastal Avian Protection Zone Map and requested that staff overlay this defined zone on the county's zoning map and to include utility transmission lines.

The commission then discussed mitigation requirements and setback requirements for such projects. Commissioner Kellam stated that the commission should identify sensitive receptors in the process.

Discussion followed over aesthetics and visual impacts, noise and "flickering" situations. Commissioner Miller suggested that small-scale projects such as farm windmills and residential wind turbines should have separate regulations and be done first.

While viewing the avian protection zone Commissioner Meyers suggested that a ½ mile building setback from the red and orange areas would be appropriate.

Commissioner Kellam recapped noting that definitions have been distributed tonight and a revision of the standards for wind energy conversion systems (from July). The next step is for the subcommittee to separate small wind projects out of those standards as presented and submit to the commission for further review. She noted that small projects should be allowed with a minor special use permit. Once staff has drafted the proposed overlay map for the commission's review the district will be refined in area. Then the commission can finish review of allowing MET towers with a special use permit under the proposed overlay zone and the last step will be to finalize standards for wind energy conversion systems for large scale utility under a major special use permit in the overlay zone.

### **Board Action on Request for Joint Meetings**

Ms. Benson reported that the Board was receptive to meeting again with the commission and has requested a list of discussion topics from the commission. Ms. Benson suggested that a prioritization of those items discussed at the earlier joint session would be the best place to start. Commissioner Miller suggested that the commission quantify the work expected such as

review of the comprehensive plan, signage regulations, etc. Ms. Benson recommended that the commission first identify sections of the comprehensive plan that should be updated as only certain sections are five years old and not the entire document. She also noted that the proposed Corridor Overlay District with Cape Charles, TE District plans, and updates to the comprehensive plan be completed by the end of the calendar year.

Commissioner Miller added that Mike Chandler has suggested that certain discernable trends could be reviewed including but not limited to economic factors, jobs, education, and emergency management (fire rescue hurricane patterns).

**Adjournment**

Motion to adjourn was made at 9:42 by Commissioner Coker and seconded by Commissioner Kellam.

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Chair

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Secretary