

VIRGINIA:

A meeting of the Lancaster County Board of Supervisors was held in the Administrative Building Board/Commission Meeting Room of said county on Monday, November 28, 2011.

- Members Present: B. Wally Beauchamp, Chair
 F.W. Jenkins, Jr., Vice Chair
 Ernest W. Palin, Jr., Board Member
 Peter N. Geilich, Board Member
 Jack S. Russell, Board Member
- Staff Present: Frank A. Pleva, County Administrator
 Jack D. Larson, Assistant County Administrator
 Don G. Gill, Planning and Land Use Director

Mr. Beauchamp called the meeting to order at 7:00 p.m.

PUBLIC INPUT

None

PRESENTATION

None

VIRGINIA DEPARTMENT OF TRANSPORTATION

County Road Maintenance

Mr. Harper stated plans have been approved for a “T” intersection on Merry Point and VSH 611/Hoecake Road. The plans are currently in their right-away division. They are acquiring the right-away easements needed to move forward on this project. The estimated start date on this project is April 2012.

Mr. Harper said he has a tentative set of plans for VSH 614/Devils Bottom Road at the bridge. The state road will be closed for 30 – 45 days to complete the project. There will be 30' slab bridge in place, as requested by the board. Vehicles will be held on the roadway only minimum time required to tie the guardrails into the bridge.

Mr. Palin asked, “What’s a slab?”

Mr. Harper said the slab is a big piece of pre-fabricated concrete. He stated he does not have pictures or plans to show at this point.

Mr. Palin asked what the width would be.

Mr. Harper stated that actual width would be 19 ½'. The roadway approaches on each end will be 20' narrowing down to the original width of the road.

Mr. Harper stated the traffic study request for VSH 611/West Point Road did not warrant a speed change, but will get upgraded warning signs.

Mr. Harper said the public hearing was held in Kilmarnock for the truck bypass route, and there is a 14 day period giving citizens an opportunity to submit their concerns or comments.

Mr. Harper stated he has not heard anything on the bike study for signs on VSH 200/Irvington Road, nor the “share the road sign” for VSH 695/Windmill Point Road to date.

PUBLIC HEARING

None

CONSENSUS DOCKET

Motion was made by Mr. Geilich to Approve the Consensus Docket and recommendations as follows:

A. Minutes for October 27, 2011

Recommendation: Approve minutes as submitted

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Peter N. Geilich	Aye
	Jack S. Russell	Aye

CONSIDERATION DOCKET

The Board considered the following items on its Consideration Docket:

1. Approval of November 2011 Salaries and Invoice Listings

Motion was made by Mr. Palin to approve the salaries for November 2011 in the amount of \$228,151.72* and Invoice Listings for November 2011 in the amount of \$455,157.35*.

*Judicial Center Expenses \$14,917.08

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Peter N. Geilich	Aye
	Jack S. Russell	Aye

2. Ordinance to Co-Hold Conservation Easement – Mr. Gill presented an ordinance allowing Lancaster County to co-hold Conservation Easements with qualified non-public bodies.

Mr. Gill said the public hearing for this new ordinance was held last month, but the vote was tabled until this month to allow the Board of Supervisors additional time to study the issue. The Board made the policy decision (vote 3-2) at its 1/27/11 meeting to keep working on a conservation easement ordinance to preserve the rural character and heritage of the County as stated in the Comprehensive Plan and accept the risk of possibly defending challenges to easements in the future.

Mr. Gill stated it appears that the major obstacle is the potential outlay of taxpayer dollars to defend future challenges to easements. Even though challenges to easements are extremely rare, the County attorney stated in a prior letter that a Virginia Outdoors Foundation attorney reported recent litigation in another jurisdiction, concerning only the issue of standing to enforce an easement, which resulted in costs and fees to the holder of the easement in excess of \$100,000. Some will argue that since challenges to easements are so rare, it is a risk worth taking for the County to ensure that its citizens enjoy open space views forever.

Mr. Gill said there are other pros and cons to this issue as well. Adoption of this ordinance would conform to the Comprehensive Plan, which specifically states in the third objective under the third goal in Chapter Two, "Encourage the creation of permanent conservation easements." However, the County attorney has previously pointed out that under Section 10.1-1013(7) of the Code of Virginia, Lancaster County currently has the right, but not the obligation, to take action affecting conservation easements located in Lancaster County. Thus, the Northern Neck Land Conservancy (NNLC) does not need to enter into a co-holding arrangement with Lancaster County to accept conservation easements and Lancaster County can enforce conservation easements without being a holder of the easement.

Mr. Gill stated conservation easements have traditionally been held by organizations such as the Virginia Outdoors Foundation and The Nature Conservancy,

but these large organizations will not usually accept easements on parcels less than 100 acres. This leaves a void in the system for those parcels less than 100 acres which may be equally deserving of preservation. Adoption of this ordinance would fill that void.

Mr. Gill said a possible compromise to consider may be to create a minimum size for potential easements. As presented, the draft ordinance has no minimum size requirement for the “parent” parcel, but states that no parcel shall be further divided so as to create any parcel containing less than 20 acres. The County attorney previously recommended that the ordinance require at least a 5-acre minimum size to coincide with the County’s land use taxation policy. Staff’s initial draft of this ordinance had a 20-acre minimum size requirement. (The Planning Commission considered these minimum size requirements, but ultimately decided against them since there may be smaller parcels deserving of preservation and the fact that the ordinance gives the Board the sole power to accept or refuse any easement.) A larger minimum size requirement immediately reduces the number of parcels eligible for consideration. Discussion at the public hearing raised the concern of smaller waterfront property owners potentially abusing the easement ordinance trying to obtain tax credits. A larger minimum size requirement would reduce the potential for that abuse. A larger minimum size requirement may also reduce the likelihood of potential challenges to easements in the future by removing smaller controversial parcels from consideration. Lastly, as with any ordinance, this conservation easement ordinance could be amended, or even repealed in the future if conditions warrant.

BACKGROUND

Mr. Gill said the current draft was modeled after the Fluvanna County Conservation Easement Program, which has been in existence since 2006 and has resulted in only two held easements to date. The Planning Commission has tweaked this proposed ordinance at each of its meetings since June to produce the attached document for the Board’s consideration. The attached minutes from those

meetings offer a very good chronology of the changes requested and made by the Planning Commission as a result of input from staff, the Planning Commission, the County Attorney and the public. The County Attorney has been involved with the drafting of this ordinance and even though he still maintains a difference of opinion as to whether or not the County should co-hold conservation easements, the Board of Supervisors ultimately made the policy decision to pursue this, and from a legal standpoint, his final comment was “good job.” The NNLC has also been a part of this process and endorses the proposed ordinance.

Mr. Gill stated he provided a copy of a Cooperative Agreement which would now be required under Section 27-5B(6) of the ordinance. This Cooperative Agreement has also been tweaked and revised throughout this process by staff, the Planning Commission and the County Attorney. This particular agreement is specific to the NNLC, but something similar would be required of any qualified non-public body seeking a co-hold arrangement with the County.

Mr. Gill said he has also provided several letters and copies of petitions circulated by the NNLC and signed by County residents in support of this ordinance.

Mr. Beauchamp stated that the public hearing was held last month, however; if anyone has anything new to add, comments will be heard at this time.

Hank Harts, Chairman of the Outdoor Foundation, stated they often enter into easement in conjunction with the Department of Historic Resources where they will take the house and property with historic value. They would also obtain an easement on the adjoining property or the remainder of the property that amounts to open space. In the event that it possibly does not meet historic resource criteria of the state, the easement could be written to protect what you believe to be important.

Mr. Jenkins stated the board is already empowered by the legislation from the General Assembly to take care of a situation just described.

Joe Thompson said he knows there were some concerns over the cost of challenges that the county might be exposed to as result of holding these easements. He wanted to get specific information relative to challenges which would be a minimum. The Virginia Outdoor Foundation has held easements for 45 years in the State of Virginia and consulted with their legal counsel who stated there have been court cases and none of those involving easement challenges. He also talked to Fluvanna County whose ordinance is the model for our proposed ordinance, and from 1987 to present they have had no challenges.

Mr. Beauchamp asked if there was any liability with the county involved in any of the three cases cited with the Virginia Outdoor Foundation.

Mr. Thompson said there was not in all three cases.

Mr. Jenkins asked why the NNLC will not accept liability versus the county taxpayers if there is so little risk.

Mr. Thompson said because there still is exposure NNLC must assure any land owner that comes to them with an easement that they will defend that easement. The NNLC is a young organization without “deep pockets” that must rely on pro-bono support for which there is no guarantee. Assurance of the county involvement providing legal is critical support at this stage in NNLC’s growth. Also individual landowners prefer to work with local governments rather than state government with respect to easement.

Mr. Jenkins said individuals can work with local government now. He still has concerns with the liability issue and wonders if there is so little risk why is this ordinance needed.

Mr. Thompson said the risk is the same regardless of the acreage you could have someone to take you to court with a 15 acres easement, having deep pockets

and attorney that would require a lot of financial support to be able to defend against. Right now the county does not have staff trained in this activity.

Mr. Jenkins stated the county did not have staff trained in the Chesapeake Bay Act either but the staff was properly trained once given a new function. He said he is pro-conservator, but there is nothing unique that NNLC bring to the table, that the county can not find on its own. He still held by the fact that the General Assembly has empowered this county under its magisterial authority to enter into these easements, no matter how large or small under our terms. The other concern is over historic properties, because of the alteration over years will never make the state historical registry and not on 100 or 20 acres. The county will limit their ability to do something by approving this ordinance.

Mr. Thompson stated he sees this as a partnership with the county and NNLC bring the expertise available in house to provide that to the county.

Mr. Jenkins stated the county already has the authority from the General Assembly and why have an ordinance that may have within it, unintended consequences to other things this county may want to do.

Mr. Thompson said other county use an agreement and it was the decision of the board to draft an ordinance.

Dr. Russell said he takes a boarder view of this ordinance, the surrounding counties have approved an agreement and Lancaster is in competition with the surrounding counties. In the past Lancaster has been one of the most progressive counties in the Northern Neck, one of greatest resources that we have is the attraction of tourism and retirees. We want people on the outside to continue to look at Lancaster County as progressive and attractive place to live. This is something the county need and it is a lot more then whether the county will be subject to a lawsuit. We need to think about the future and he supports the ordinance.

Mr. Palin said that he voted against this ordinance the first time. He further stated that "personally, I am still in opposition to this easement, but I have been contacted by a number of my constituents that asked me to support the ordinance. Since I am their representative, I will vote in favor of the conservation easement ordinance."

Mr. Geilich said he agreed with Dr. Russell and believes it gives structure that future board's member can rely on and any property would have to come before the board first.

Mr. Jenkins said no other county has approved an ordinance but rather by a quick resolution. He agrees with Dr. Russell that this has always been a progressive county and he believe the reason is because Lancaster County Board of Supervisors does not do things off the cuff but go through a comprehensive process. He still disagree with the ordinance, it is local legislative overlying that is not needed.

Mr. Beauchamp said agreed with Mr. Jenkins and still has concerns with the possible legal cost to the county taxpayers.

Tom Smith stated he still has concerns with the no minimum acreage and NNLC would like to consider a minimum acreage. He believes the board should consider setting acreage guides as such: 25 acres for inland and 5 acres for waterfront property.

David Evans said he moved to Lancaster County eight years ago and has invested millions of dollars in this county. The reason he and his wife choose Lancaster County was because the county had a reputation for being progressive for preserving its tidal waterfront and rural character and totally agree with Dr. Russell. This ordinance is a key element to the future of the county.

Dr. Russell made a motion to Approve to Co-Hold Conservation Easement Ordinance.

VOTE:	B. Wally Beauchamp	Nay
	F. W. Jenkins, Jr.	Nay
	Ernest W. Palin, Jr.	Aye
	Peter N. Geilich	Aye
	Jack S. Russell	Aye

Motion passed 3 – 2.

BOARD REPORTS

None

COUNTY ADMINISTRATOR

Northern Neck Planning District Commission Quarterly Meeting

Mr. Pleva reminded the Board of Supervisors of the Northern Neck Planning District Commission quarterly meeting will be held January 23, 2011 at 5:30 p.m. The meeting will be held at the Kilmarnock Rappahannock Community College facility and the meal will be prepared by the culinary students.

Mr. Pleva stated recently the Virginia Resource Authority refinanced the New Judicial Center debt at an interest rate of 2.2885% with a net savings of \$423,655.

CLOSED SESSION

Motion was made by Mr. Beauchamp to enter into closed meeting to discuss matters exempt from the open meeting requirements of the Virginia Freedom of

Information Act. The subject matters to be discussed in the closed meeting are briefings by staff members about probable litigation regarding the release and use of bond proceeds for the construction of a subdivision road. The subject and purpose falls within the following exemption(s) under §2.2-3711.A of the Code of Virginia, 1950, as amended.

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Peter N. Geilich	Aye
	Jack S. Russell	Aye

RECONVENE

Motion was made by Mr. Geilich to reconvene the open meeting.

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Peter N. Geilich	Aye
	Jack S. Russell	Aye

CERTIFICATION

WHEREAS, the Lancaster County Board of Supervisors convened in a closed meeting on November 28, 2011 pursuant to an affirmative recorded vote on the motion to close the meeting pursuant to, § 2.2-3711.A.7 of the Code of Virginia. The purpose of and subject matter to be discussed in the closed meeting are briefings and consultation by staff members regarding specific legal matters pertaining to the performance of a contractor that provides public services.

WHEREAS, §2.2-3712 of the Code of Virginia requires a certification by the board of supervisors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE BE IT RESOLVED that the Lancaster County Board of Supervisors hereby certifies that, to the best of each member’s knowledge, (1) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act were heard, discussed or considered in the closed meeting to which this certification applies and (2) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting to which this certification applies.

Motion was made by Mr. Geilich to certify the closed meeting.

Before a vote is taken on this resolution, is there any member who believes that there was a departure from the requirements of number 1 and number 2 above? If so, identify yourself and state the substance of the matter and why in your judgment it was a departure. There was no comment.

Hearing no further statement, Mr. Beauchamp called the question. A roll call vote was taken:

ROLL CALL

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Peter N. Geilich	Aye
	Jack S. Russell	Aye

This certification resolution is adopted.

No action was taken on the closed meeting matter.

ADJOURNMENT

Motion was made by Mr. Palin to adjourn.

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Peter N. Geilich	Aye
	Jack S. Russell	Aye