LANCASTER COUNTY PLANNING COMMISSION

Minutes

January 15, 2009

The regularly scheduled meeting of the Lancaster County Planning Commission was called to order at 7:00 p.m. in the General District Courtroom of the Lancaster County Courthouse, Lancaster, Virginia.

Present were David Jones, Chairman, Tara Booth, Steve Sorensen, Robert Smart, Ty Brent and David Chupp.

Also present were Butch Jenkins, Board of Supervisors Representative, Don Gill, Planning/Land Use Director, Audrey Thomasson, Rappahannock Record, Starke Jett, Northern Neck News, Charles Costello, Ben Burton, Herb Aman, David Donofrio, Pat Lawler, Bob Bragg and others.

Mr. Jones introduced Mr. David Chupp, the new Planning Commission member representing District 4.

Mr. Jones asked if there were any corrections or additions to the minutes of the November 20, 2008 regular meeting.

Mr. Jones moved to approve the November 20, 2008 minutes as submitted. **VOTE: 6-0**.

PUBLIC HEARING

REVISION OF SECTION 5-26 OF THE SUBDIVISION ORDINANCE TO ALLOW CONSERVATION/CLUSTER SUBDIVISION

Mr. Jones asked Mr. Gill to present the issue.

Mr. Gill stated that the issue was a revision to the Subdivision Ordinance Section 5-26 "Open Space and Recreation Area" to allow conservation/cluster subdivision to preserve open space in the A-1, Agricultural Limited; A-2, Agricultural General; R-1, Residential General and R-3, Residential Medium General zoning districts.

Mr. Gill stated that since the November meeting, three legitimate concerns have surfaced regarding the draft's language. First, as written, it is not density neutral. The increase in open space requirement from 10% to 30% for conventional subdivision in Section 5-26A decreases the available developable land and thus decreases density. While the current 10% requirement is small and makes it difficult to preserve the large

amounts of open space craved by County residents, the 30% requirement may be excessive for conventional subdivision. A possible solution would be to keep the conventional subdivision open space requirement at the current 10%, but have it apply to subdivisions of six or more lots. This will create more open space by having it apply to more subdivisions while maintaining a neutral density.

Mr. Gill stated that a second clarification should be made in Section 5-26B(1) to avoid a potential increase in density made possible by not applying the overlay districts. While staff automatically assumes "base zoning" to include overlay districts, it should be spelled out to avoid confusion. He further stated that staff recommends the replacement of "base zoning" with "base zoning and overlay districts" in Section 5-26B(1).

Mr. Gill stated that a third clarification is needed in Section 5-26C. The percentage of flood plains, wetlands, etc. that can be used as open space in a conservation/cluster subdivision will need to be greater than the proposed 25% if the zoning district specific open space requirements remain as proposed, which are 70% for A-1, 60% for A-2, 50% for R-1 and 40% for R-3. Mr. Gill stated that staff recommends that the percentage of floodplains, wetlands, etc. that can be used as open space in a conservation/cluster subdivision be increased to 50% in Section 5-26C.

Mr. Gill stated that advertising has been conducted as required by law. To date, staff has received five inquiries from the public. While none opposed the concept of conservation/cluster subdivision, some had recommendations for minor changes. Those not providing written comments indicated their intention to attend the public hearing.

Mr. Jones opened the floor for public comment.

Ben Burton of Bay Design Group stated that in Section 5-26A, he agreed with Mr. Gill on the percentage change.

Mr. Burton stated that in Section 5-26B(3), a minimum lot size of 10,000 square feet is reasonable when there is a private septic system and well, but he suggested a smaller lot size be entertained when public sewer and water is available. Mr. Burton suggested that the minimum lot size be 5500 square feet when public sewer and water is available.

Mr. Burton referred to Section 5-26B(4c) and (4d) and said his suggestions for the setbacks would be 10 feet for the minimum rear yard and 5 feet for the side yards.

Mr. Burton referred to Section 5-26B(5) and stated that he disagreed with the large amount of open spaces on the variable scale for the different districts. He further stated that he thought that it would be out of proportion and that a uniform thirty percent for all districts would be more reasonable.

Mr. Burton referred to Section 5-26B(6) and stated that he disagreed with the restriction that cluster subdivisions not be allowed in the 800' waterfront overlay

because, as written, there can be no greater density with clustering than what the base district will allow. He further stated that the Chesapeake Bay Preservation Ordinance still requires the 100' RPA buffer adjacent to the shoreline.

Mr. Burton referred to Section 5-26C and stated that he agreed with Mr. Gill about allowing more of the required open space to include flood plains, wetlands, etc.

Mr. Jenkins stated that he agreed with Mr. Burton on some of the issues, but his concern with possibly allowing conservation/cluster subdivision within the waterfront overlay is that there is nothing to prevent the clustering of homes right up to the 100' RPA buffer line with all the open space placed behind.

Herb Aman stated that he agreed with many of Mr. Burton's points, including the minimum lot size being 5500 square feet when there is public sewer and water available.

Mr. Aman referred to the Highbank subdivision in White Stone and stated that it might have been better if the setback requirements were enlarged in the overlay areas. He further stated that a variety in construction could have enhanced the project.

Charles Costello stated that cluster housing is not required of the county by the state. He stated that it is something that the county has decided to do. He further stated that he wanted to know what constitutes the term "open space".

Mr. Costello stated that he thought the wetlands percentage was reasonable, but wanted to know what recreational activities would take place in the wetlands area.

Mr. Gill stated that staff's recommendation was to increase the percentage of floodplains and wetlands that can be used as open space in a conservation/cluster subdivision from twenty-five percent to fifty percent. He further stated that wetlands and floodplains are natural habitat areas.

Mr. Jones asked Mr. Gill what the reasoning was for the increase.

Mr. Gill stated that in many situations because of the topography of the land, meeting the increased open space percentages required with conservation/cluster subdivision would be extremely difficult if only twenty-five percent of wetlands and floodplains can be counted toward the open space requirement.

Mr. Jones asked Mr. Costello what he thought of the definition of open space being such things as farms, forests, parks, playgrounds, general recreation areas and natural areas for habitat protection as stated in the draft.

Mr. Costello stated that he thought it should also include language that states there would be no roadways.

Mr. Smart stated that if restrictions within the ordinance were too great, potential developers would choose not to do the cluster developments. He further stated that every piece of land has its own character and topography and some flexibility needs to be allowed. He stated that if flexibility is allowed then it encourages people to choose the conservation/cluster option proposed in Section 5-26.

Mr. Costello stated that he had a couple of other points to make. He stated that he thought the lot size should be no smaller than 10,000 square feet and that the proposed setbacks are not too restrictive.

Robert Davis, a citizen that lives on "The Green", referred to Section 5-26G of the draft. He stated that he didn't think the word "condominium" should be removed. Mr. Davis explained that with condominiums the land is held in common as opposed to a homeowner's association where each person owns their own land.

Mr. Gill stated that the reason the word "condominium" was taken out was because the revision only applies to single-family subdivisions and not multi-family subdivisions. The word "condominium" denotes a multi-family use.

A citizen from District 1 referred to Section 5-26B(6) and stated that he thought the language should read that the subdivision not be allowed within 800 feet of tidal and non-tidal wetlands, including tributary streams.

Mr. Jenkins stated that there would probably be nowhere in Lancaster County to build under those conditions.

Mr. Brent stated that there is a difference between a non-tidal stream and tidal wetlands. He further stated that there are already RPA guidelines in place to protect the waterfront.

Mr. Costello stated that his suggestion for Section 5-26B(6) would be to add tidal wetlands.

David Donofrio asked about Section 5-26B(6) and whether it included interior properties of a subdivision.

Mr. Jones stated that it doesn't specify interior or exterior lots in the draft.

Tom Smith stated that he supports the revision in appropriate locations, but not in the waterfront overlay district. He further stated that he had attended some recent DEQ meetings and studies have found that too many people are living too close to the water and contaminating it by things such as failing septic systems and runoff.

Mr. Jones closed the floor for public comment and asked the Commission members if they had any questions or comments.

Mr. Gill stated that he would like to go over a few comments he had heard at the hearing. He stated that he thought the 5500 square feet minimum lot size was just too small. Mr. Gill also stated that a uniform open space requirement across all zoning districts for conservation/cluster subdivision would leave huge remnant parcels ripe for future subdivision. He further stated that to eliminate that future subdivision potential, thereby realizing as much open space as possible, a sliding scale method is preferred.

Mr. Gill stated that there has been much discussion about the 800 feet waterfront overlay and he said that the draft specifically states the conservation/cluster subdivision shall not be allowed within 800 feet of tidal shores. The discussion tonight suggests adding tidal wetlands also.

Mr. Gill stated that there was a comment made that the County was not required to have cluster zoning. That is correct, however Section 15.2-2286.1 of the Code of Virginia allows the County to provide for conservation/cluster subdivision. He added that conservation/cluster subdivision is a recognized way of preserving open space and that at some future time the County would likely grow to the point where the state requires it, and Lancaster County would be ahead of the curve.

Mr. Gill stated that some discussed items needed clarification and correction. Specifically, changing the required open space percentage for conventional subdivision in Section 5-26A, adding "overlay districts" in Section 5-26B, adding "tidal wetlands" in Section 5-26B(6), revising the percentage of wetlands and floodplain to be allowed as open space and adding a clearer definition of open space.

Mr. Jones recommended that the corrected revision come back at next month's meeting as a consideration item.

CONSIDERATION ITEMS

PROPOSED NEW DISTRICT ORDINANCE, R-4-RESIDENTIAL COMMUNITY

Mr. Gill stated that the issue was to revise a proposed new ordinance, R-4-Residential Community District, which allows multi-family housing with an emphasis on creating workforce housing.

Mr. Gill stated that a public hearing has already been held, however discussion at November's meeting indicated that the Planning Commission intended to send this item back for another public hearing due to the many revisions made in the prior months. The newest draft includes all revisions to date, including the County Attorney's comments. Mr. Gill stated that the apartment specific items discussed at November's meeting, but not recommended for changes due to a lack of a consensus by the Planning Commission, included limiting the number of bedrooms per unit, the number of people per bedroom and creating minimum sizes for apartments based on the number of bedrooms. It was

suggested that these decisions were best left to the developer or landlord and would be regulated by the building code.

Mr. Gill went on to say that since the last meeting, one citizen expressed two concerns: 1) the re-rental rates under Section 6A-4-4 should not be based on inflation, but on the qualifying HUD Median Family Income estimate, and 2) the maximum number of townhouses in an unbroken façade line should be 4 instead of 3, which he believed was more feasible from a construction standpoint.

Mr. Smart referred to Section 6A-3-1 and asked about the minimum lot area for permitted uses changing to five acres.

Mr. Gill stated that that was the recommendation at the November meeting.

Mr. Smart referred to Section 6A-8-1 and asked about the forty percent area of a lot. Mr. Smart suggested fifty or sixty percent.

Mr. Chupp referred to Section 6A-3-4 and asked about the square footage of 1500 feet for a townhouse lot.

Mr. Gill stated that that was the recommendation at the November meeting.

Mr. Jenkins spoke about the differences between townhouses and condominiums.

Mr. Jones asked Mr. Gill if he would ask the County attorney about the definition of townhouses and condominiums.

Mr. Smart referred to the statement of intent, which states that the R-4 District shall be located in areas where central water and sewer are available. Mr. Smart stated that the only area in the county would be in or near the town of Kilmarnock.

Mr. Jones stated that central water and sewer could also be a mass drainfield. He stated that it doesn't necessarily need to be in Kilmarnock.

Mr. Chupp referred to the three-story height in Section 6A-10-1 and asked if that was appropriate for a rural county.

Mr. Gill stated that the three-story height is the standard used in all of the County's residential zoning districts.

Mr. Gill asked if it was the Commission's intent to send both the R-4 ordinance and the revision of Section 5-26 of the Subdivision Ordinance to the Board of Supervisors at the same time.

Mr. Jenkins suggested that they go to the Board of Supervisors one at a time.

Mr. Jones recommended that the R-4 ordinance come back next month as a consideration item.

DISCUSSION ITEMS

CASH PROFFER STUDY

Mr. Gill stated that the issue was to study the "cash proffer system" and make a recommendation to the Board of Supervisors addressing the six points outlined in the memorandum from the County Administrator, William H. Pennell, Jr.

Mr. Gill stated that this was a first draft of a cash proffer policy statement. He stated that the zoning ordinance already contains language permitting cash proffers under the Code of Virginia Section 15.2-2303. As directed by the Planning Commission, staff used the James City County cash proffer policy as a model and also pulled relevant information from the Middlesex cash proffer policy. He stated that cash proffers have been suggested for schools, law enforcement and public access to the water, as these are the primary services impacted by increased residential development. These are also the services in which the County would own the property, buildings, and equipment. Fire and rescue buildings and equipment are privately owned and were not included in the cash proffer policy. Mr. Gill stated that while policy language was in place (subject to review by the Commission), maximum cash proffer amounts are still being formulated. Staff has calculated a maximum cash proffer amount for schools, but seeks verification of its accuracy from County auditors before releasing it. These missing values should be available by next month's meeting and this item will remain on the agenda until finalized.

Mr. Jones asked Mr. Gill if he could ask the County attorney about including the fire and rescue departments in the cash proffer policy.

Mr. Costello referred to paragraph number 7, which states that the determination of whether an amount proffered by an applicant for rezoning is sufficient to offset the impacts of the proposed development shall be made on a case-by-case basis. Mr. Costello asked who would make the determination.

Mr. Gill stated that the Board of Supervisors would make that determination.

Mr. Jones recommended that the issue come back at next month's meeting as a discussion item.

OTHER BUSINESS

Mr. Gill stated that the Capital Improvement Budget (CIB) requests have gone out and are due back to him by January 30, 2009. He stated that at next month's meeting, the

Commission should work through that budget, line by line, as in past years. Each department submitting a request will be asked to have representation at that meeting, and Jack Larson, Assistant County Administrator and Financial Management Director will be asked to attend as well.

Mr. Jones asked Mr. Gill about the status of the Parks and Recreation Committee.

Mr. Gill stated that the appointments have been made. Mr. Brent is the chairman and will be scheduling the meetings.

ADJOURNMENT

The January 15, 2009 regular meeting of the Lancaster County Planning Commission was adjourned at 9:00 p.m.