

LANCASTER COUNTY PLANNING COMMISSION

Minutes

March 15, 2012

The regularly scheduled meeting of the Lancaster County Planning Commission was called to order at 7:00 p.m. in the Board meeting room of the Lancaster County Administration Building, Lancaster, Virginia.

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

Also present were Don Gill, Planning/Land Use Director, John Mann, Clyde Stewart, John Langloh, Tom Gregory, Clarence Doggett, Walter Harcum, Charles Costello and others.

Mr. Jones asked if there were any corrections or additions to the minutes of the February 16, 2012 regular meeting.

Mr. Jones moved to approve the February 16, 2012 minutes as submitted.

VOTE: 7-0.

PUBLIC HEARING #1

UPDATE TO THE CAPITAL IMPROVEMENT BUDGET FY 2013-2017

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

Mr. Gill stated that the issue was to hold the public hearing for the Update to the Capital Improvement Budget for FY 2013-2017. He stated that advertising had been conducted as required by law and other than the discussion at the two previous Planning Commission meetings, there had been no input from the public. He stated that for FY 2013, the three items were the voice over IP solution system for all school buildings, the replacement of the HVAC systems at the middle school and the renovations for the old jail and clerk's office.

Mr. Jones opened the floor for public comment.

There was no public input.

Mr. Jones closed the floor to public comment.

Mr. Smart asked Mr. Mann if the school system was still requesting the weight room for fiscal year 2015.

Mr. Mann replied that it was something that they wanted in the future, but not this coming fiscal year.

Mr. Jones made a motion to forward the Capital Improvement Budget for FY 2013-2017 to the Board of Supervisors recommending approval. **VOTE: 7-0.**

PUBLIC HEARING #2

APPLICATION FOR CHANGE OF ZONING DISTRICT CLASSIFICATION- CLYDE A. STEWART, JR.

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

Mr. Gill stated that the issue is an application for Change of Zoning District Classification from R-1, Residential, General to A-2, Agricultural, General by Clyde A. Stewart, Jr. for a 43.51 acre parcel described as Tax Map #20-12 and a 3.999 acre adjoining parcel described as Tax Map #20-13 located near the end of state maintenance of Western Branch Road (VSH 665) in District 1.

Mr. Gill stated that the applicant is a local tree service contractor and wishes to use these unimproved parcels for the processing and recycling of tree debris generated from his and other businesses. He stated that as described, the applicant's stump/brush/scrap wood burning and/or chipping facility would be allowed with a special exception from the Board of Supervisors in the A-2 Agricultural, General District, but is not allowed in the R-1, Residential General District. He stated that as a result, the applicant seeks a rezoning from R-1 to A-2 to be able to use this parcel for the processing and recycling of tree debris.

Mr. Gill stated that staff viewed the request as reasonable and appropriate. These parcels adjoin two other A-2 properties and there are many other A-2 properties in close proximity to these parcels. He also stated that the parcels are wooded and their combined size of 47.5 acres would allow for more than adequate perimeter buffering from surrounding properties. He stated that rezoning to A-2 would be a downzoning from the more intense R-1 district.

Mr. Gill stated that adjoining property owners had been notified and advertising conducted as required by law. He stated that he had heard from ten property owners and that eight were opposed. He stated that a concern was the properties' access road, which is located straight through an almost ninety-degree turn where the state maintained portion of Western Branch Road ends and the private portion begins. He stated that the concern is that trucks would not need to stop as they leave the site and enter onto the

public portion of Western Branch Road, possibly endangering any oncoming traffic from the private portion of Western Branch Road. He stated that staff believes the applicant can adequately address this concern by placing a private "Stop" sign at the end of his properties' access road, requiring the trucks to stop at that ninety-degree turn prior to entering onto Western Branch Road, and by placing a private "Trucks Entering Highway Ahead" sign at the southeastern corner of his properties, which would alert traffic from the private portion of Western Branch Road approximately 350 feet before the ninety-degree turn.

Mr. Gill stated that he wanted to point out that this was a two-step process. He stated that there is a rezoning request that is heard by both the Planning Commission and the Board of Supervisors and then there is a special exception request that is heard only by the Board of Supervisors. He stated that the only decision that will be made at the meeting tonight is a recommendation for the rezoning of the parcels. He stated that the responses he has received seem to be more concerned about what could happen on the property under its most intense use.

Mr. Gill stated that Mr. Stewart was present at the meeting to answer any questions. He stated that Mr. Stewart had been in business for nine years and for the first seven years had been disposing of the debris there, which is a violation of the R-1 district. He stated that the county is complaint driven and when he received a complaint, he investigated and then sent Mr. Stewart a letter asking him to cease the disposal and explained to him the steps he could take if he wanted to make the disposal legal under the zoning ordinance. He stated that since that time, Mr. Stewart took his debris elsewhere, and about a month ago came back to him and wanted to take the proper steps to apply for a rezoning and special exception to make the disposal of tree debris on his property legal under the zoning ordinance.

Mr. Jones asked about the process involved in what Mr. Stewart wants to do.

Mr. Stewart stated that he dumps the debris in deep pits and burns once a year. He stated that the fire is attended the entire time by his staff.

Mr. Jones asked if the property was already zoned A-2, would Mr. Stewart's practice of digging pits and burning debris be allowed.

Mr. Gill stated that digging pits would be allowed in A-2 as long as it is not in the 100' Resource Protection Area.

Mr. Chupp asked if Mr. Stewart could come up to answer some questions.

Mr. Chupp stated that the information that he had received had stated that the applicant wanted to use his parcels for the processing of tree debris from his and other businesses.

Mr. Stewart stated that he had entertained the thought of bidding for the county contract for tree debris disposal, but that he had no plans for that now. He stated that he

was only concerned about the disposal of his own debris, generated from his business, Magic Tree Service, because he cannot afford to pay the Lively Woodyard for the debris disposal. He stated that if he has to pay the woodyard fees, he would have to lay off some employees.

Mr. Chupp asked him what he was doing with his debris at the present time.

Mr. Stewart replied that he had had a disagreement with the owner of the Lively Woodyard and so the debris is going back to his property now. He further stated that it would cost him around \$5000 a month to use the Lively Woodyard and he cannot afford that.

Mr. Gill stated that when Mr. Stewart came in to apply and begin the process for the rezoning and special exception as outlined in the prior compliance letter, he allowed Mr. Stewart to continue dumping on his property until the outcomes of the requests were known. He stated that Mr. Stewart understood that if his applications were denied, the debris that had been dumped in the interim would have to be removed. He stated that as Zoning Administrator, he had the authority to do so as part of the process to remedy any condition found in violation of the ordinance.

Mr. Stewart stated that he was just trying to make a living.

Mr. Chupp asked if Mr. Stewart's long-range intention would be to have an outfit similar to Ronnie Self's woodyard with large-scale grinders and big equipment.

Mr. Stewart replied only if he had the county contract.

Mr. Chupp stated that he had friends in the area and when he has traveled the road, he noticed that it is narrow and not suitable for large trucks.

Mr. Stewart stated that his goal tonight is to make sure he has a place to dump his debris, not others' debris.

Mr. Stewart stated that he would not pursue the county contract if that is what it takes.

Mr. Gill stated that he would like to reiterate that the Commission is only considering the rezoning request and not the special exception request.

Mr. Chupp stated that the rezoning is the path to the special exception.

Mr. Gill stated that the rezoning enables the consideration of the special exception, but the Board of Supervisors could place any condition on any special exception that they approve. He stated that if the condition was violated, the special exception could be revoked. He stated that that was according to Article 13-3 of the zoning ordinance.

Mr. Jones asked if Mr. Stewart was just bringing in his own debris, what trucks would be used.

Mr. Stewart replied that he has two grapple trucks, a dump truck and some bucket trucks.

Mr. Jones asked how many loads Mr. Stewart would take to his property.

Mr. Stewart replied that it depends on the size of the job. He stated that after the last big storm, he took in about 400 loads over an eight-week period.

Mr. Jones asked how long Mr. Stewart had dumped on his property.

Mr. Stewart replied for seven years before he received the letter from Mr. Gill in October 2009. He stated that he did not know he couldn't dump on his property.

Mr. Smart stated that he did not like to place an impediment on a business owner with employees and that Mr. Stewart was asking for a downzoning from R-1 to A-2.

Mr. Smart referred to Jack Larson's letter and stated that there was a good point made about where the pavement ends, there is not much line of sight there, and it would be nice to have about an additional forty yards of pavement there.

Mr. Gill stated that the end of state maintenance is prior to the area that Mr. Smart was referring, so additional paving is not likely.

Mr. Smart stated that his inclination was to favor the request for downzoning, but he would like to see some safety concerns addressed.

Mr. Stewart stated that he would have a stop sign installed at the end of his driveway so that traffic leaving his parcel would stop before entering the road.

Mr. Chupp stated that just down the road from this parcel are very expensive, waterfront homes. He stated that it is a residential area and they would not want the noise or fire hazards.

Mr. Stewart stated that no one could see the operation unless they drove into his property. He stated that there would be no noise from a grinder, because he would not have a grinder to dispose of his own debris. He stated that a grinder is an expensive piece of equipment and he wouldn't need one.

Mr. Sorensen asked if the rezoning was granted would Mr. Stewart have to go the Board of Supervisors before he moved forward.

Mr. Gill replied yes.

Mr. Jones opened the floor for public comment.

John Langloh, a Western Branch Road resident, stated that he had been a property owner there since 1988. He presented emails from the community and a denial for Clarence Doggett made by the Board of Supervisors in 1990 for a similar request. He stated that he was in opposition to Mr. Stewart's request. He stated that in 1990, Mr. Doggett was denied a similar request on the same road, and since that time, ten new residences have been built.

Mr. Langloh stated that his reasons for opposition were vehicular safety, road degradation, personal safety, fire hazards, environmental issues, and property values. Mr. Langloh asked how the county planned to mitigate the safety risks. He stated that the road is so narrow that VDOT doesn't paint lines on it and when two cars pass, one must pull over. He asked if the county would pay for the upgrades to the road. He stated that residents use the road for jogging, biking and walking. He stated that the parcels are heavily wooded and that would increase the fire hazards. He stated that the parcel was zoned residential when Mr. Stewart purchased it and it should stay that way.

Mr. Langloh stated that he was fond of the Stewarts and had used his tree service, but he doesn't think the rezoning and special exception is in the best interest of the surrounding properties.

Mr. Sorensen asked if the concerns that Mr. Langloh spoke of had ever been presented to the county in the previous seven years.

Mr. Langloh stated that they didn't know what Mr. Stewart was doing was illegal.

Mr. Pinn stated that he did not understand why there is a problem now, if Mr. Stewart has been in business for nine years without incident.

Mr. Langloh stated that another concern was if Mr. Stewart did get his special exception with limitations, how would the other property owners be protected and the limitations for the special exception be followed, if the county seeks someone else out and offers Mr. Stewart the county contract.

Mr. Gill stated that the county does not seek anyone out in particular for the contract, because the work is put out for bids under the Procurement Act of the Virginia Code.

Mr. Jones stated that there are a lot of people who would like to have the contract that are already set up to do it. He stated that it is a competitive process.

Mr. Gill stated that the driving force on the bids is the lowest bidder and there is no favoritism on the bids.

Mr. Langloh asked what if Mr. Stewart was the lowest bidder for the county contract.

Mr. Gill stated that if Mr. Stewart's rezoning and special exception were approved by the Board of Supervisors, he could bid on the county contract for tree debris unless conditions are placed on the Special Exception which would preclude him from doing so. Any conditions under which the special exception was granted become part of the special exception and the only way they could be changed would be to go through another public hearing, in which all adjoining property owners would be notified.

Tom Gregory, a District One citizen, referred to the Board of Supervisors meeting notice where Mr. Stewart is asking for a special exception for a stump/brush and scrap wood burning and/or chipping facility.

Mr. Gregory stated that the property is zoned residential and the area around it is probably the most densely populated in the upper end of the county. He stated that there are many residences and a lot of foot traffic in the area. He stated that there are many full-time residents. He stated that there would be a smoke issue and a noise issue if Mr. Stewart was allowed to do what he wanted. He stated that he opposed the zoning change and it is not an agricultural area.

Mr. Jones asked Mr. Gregory how long he had lived in the area.

Mr. Gregory replied twelve years.

Mr. Jones asked if the smoke had bothered him in the last seven years.

Mr. Gregory stated that smoke bothers him from time to time, but he is not sure of the source.

Mr. Jones stated that he shared the concerns about the road. He stated that twenty or more homes could be built on Mr. Stewart's current acreage and that would create more traffic as well.

Mr. Gregory stated that at least it would not be big trucks on the road.

Mr. Jones stated that he thinks there might be a misunderstanding between what Mr. Stewart is willing to do and the advertisement for the special exception.

Mr. Gregory stated that he opposed Mr. Stewart dumping his own debris as well.

Mr. Chupp stated that Mr. Stewart did not know it was illegal to dump his own wood debris, so the other residents in close proximity probably did not know either. He stated that the neighbors are friends of the Stewarts, so for them to come out and oppose the application must mean that it would make a big impact on their lives.

Mr. Pinn stated that if the practice has gone on for seven years with no problems, he doesn't see a problem with it staying the same with Mr. Stewart just disposing of his

own debris. He stated that since Mr. Stewart has asked for the rezoning, everyone now wants to say something about it.

Mr. Smart stated that it seemed to him that everyone was friendly in the area and some of the neighbors had used Mr. Stewart's service. He stated that Mr. Stewart provides a valuable service, especially after storms, and right now, he has no where to put that debris. He stated that it has gone on for some time without any troubles and his inclination is to favor the down zoning.

Mr. Chupp stated that he felt exactly the opposite. He stated that the only way to ensure that a big wood lot operation is not put on the property is to vote down the change in zoning.

Clarence Doggett, a Western Branch Road resident, stated that he did not realize that Mr. Stewart did not have the right to dump the wood debris on his own property. He further stated that paying a landfill or wood yard is a part of doing business and he has to do it with his own operation.

Walter Harcum, a Western Branch Road resident, stated that he probably lives the closest to the Stewarts. He stated that he did not oppose the business, but he did oppose the first step because it may lead to an end that they do not like. He stated that he did not realize the dumping was illegal.

Charles Costello stated that he can understand all of the sides of the issue and the first step needs to be carefully considered. He stated that he would turn the request down if it was up to him.

Mr. Chupp asked about a condition to limit Mr. Stewart's use of the land.

Mr. Gill replied that Mr. Stewart could voluntarily offer a proffer for a conditional rezoning that would limit the use to just his business.

Mr. Gregory stated that when Mr. Doggett asked for a similar request in 1990, he was turned down and there were fewer residences then. He asked what the difference was now.

Mr. Jones stated that according to the documentation, it was an open field with less acreage.

Mrs. Booth stated that Mr. Doggett had been asking to have a wood yard for other's debris and not just his own, according to the documentation.

Mr. Gill stated that the advertisement in the paper that had been referred to several times is worded just as it is in the ordinance. He stated that Mr. Stewart can offer a proffer if he chooses. He stated that the proffer would have to be in writing and be notarized.

Mr. Jones asked about tabling the request.

Mr. Gill stated that due to the fact that he had allowed Mr. Stewart to continue dumping on his property during this process, and in order to keep the amount of debris to a minimum that would have to be removed in the event of denial, and that since the special exception request is on the agenda for the Board of Supervisors meeting on March 29, a decision needs to be made tonight. He stated that there are three options: recommend approval, denial, or no recommendation.

Mr. Chupp asked Mr. Stewart if he would consider a proffer about just dumping his own debris and not using a chipper.

Mr. Stewart replied he would just dump his own debris and would not use a chipper.

Mrs. Booth asked if there would be someone at the Board of Supervisors meeting that would represent the Planning Commission's feelings on the issue.

Mr. Gill replied that he attends the Board of Supervisors meetings and would be presenting the issue to them.

Mr. Costello suggested the Planning Commission make no recommendation to the Board.

Mr. Jones closed the floor to public input.

Mr. Chupp made a motion to forward the application to the Board of Supervisors recommending denial of Mr. Stewart's rezoning request for Tax Maps # 20-12 and # 20-13 from R-1 to A-2. Mr. Brent stated that he agreed with Mr. Chupp. **VOTE: 2-5.**

The motion failed.

Mr. Sorensen made a motion to forward the application to the Board of Supervisors recommending approval of Mr. Stewart's rezoning application for Tax Maps # 20-12 and # 20-13 from R-1 to A-2. **VOTE: 5-2.**

DISCUSSION ITEM #1

UPDATE TO THE COMPREHENSIVE PLAN-CHAPTER TWO

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

Mr. Gill stated that the changes requested at last month's meeting had been made and are highlighted on the Commission members' drafts.

Mr. Gill stated that at last month's meeting the Commission had asked about land use taxation being applied to timberland and to possibly include it in the Comprehensive Plan. He stated that he had contacted Northumberland, Richmond, Middlesex, and Westmoreland counties and all of those counties do allow land use taxation on timberland. He stated that they have a requirement of twenty acres.

Mr. Gill presented figures to the Commission about how allowing land use taxation on timberland would affect the County's taxes. He stated that there are 35,001 acres of timberland in the County and the value of that timberland under the current assessment is \$59,239,700 and the total tax received from that timberland is \$236,959.

Mr. Gill stated that if all the timberland was taxed at the land use rate, which is \$500 an acre, the value in timberland would be \$17,500,700 and the tax received would be \$70,003. He stated that the difference between the two, if everyone used the land use taxation rate for timberland would be \$41,739,000 in the value of the timberland and \$166,956 for the taxes received.

Mr. Gill stated that the other surrounding counties use different ways of determining the value of timberland. He stated that Lancaster County is the only county in the area that does not allow the land use taxation for timberland. He further stated that there are 631 parcels in the County greater than or equal to twenty acres.

Mr. Jones stated that he found it hard to believe that Lancaster County does not have land use taxation for timberland.

Mr. Smart stated that one of the objectives of the Comprehensive Plan is to keep some of the county rural and not allowing land use taxation for timberland is not much of an incentive to do so.

Mr. Chupp asked if the other counties that allow the land use tax break place restrictions on the timber companies, such as providing a buffer between the land that has been clear cut and other properties nearby.

Mr. Gill stated that he was not aware of any other restrictions tied to the land use taxation. He stated that there may be some type of timber ordinances in other counties, but the only requirement for the land use taxation on timberland is the minimum amount of acreage for a parcel.

Mr. Brent asked about parcels getting a land use taxation rate and it also being in a conservation easement. He asked if they were able to co-exist as both.

Mr. Gill stated that conserved land is taxed at the land use rate and there would be no "double credit".

Mr. Chupp stated that he did not think land use taxation for timberland would be a disaster for the county. He stated that clear cutting the land is not attractive and no efforts are made to provide for a buffer. He further stated that the county's livelihood is based on tourism and wealthy people moving into the area. He stated that if the scenery of the county is ruined by harvesting timber, it would affect people wanting to move into the area.

Mr. Jones stated that he did not think clear cutting has stopped one person from coming to Lancaster County. He stated that if he owned a thousand acres of timberland and paid the regular tax rate on the property and the only way to produce any income from it is to clear cut it, he would not want anyone telling him what to do with it. He stated that he would have that right as a property owner, just as someone has a right to sell their home and make a profit from it.

Mr. Chupp stated that on the road where he lives, a property owner clear-cut his land, which he had a right to do. He stated that he and his neighbors went to the owner and the forest service and asked if they would leave a buffer zone so that it could not be seen from the road and offered to pay the land owner for the value of the trees that would not be harvested and was turned down because the forest service recommended against it.

Mr. Jones stated that the state recommends against buffers as well.

Mr. Smart stated that his church group had Rich Steensma, the local forest warden, speak to them and Mr. Steensma stated that agriculture equals silviculture, with the difference being that with silviculture, the crop is harvested about every thirty years.

Mr. Smart stated that it is a good use of land because it protects against erosion and if reseeded, the trees can be back up to around four feet high within three years. He stated that Mr. Steensma had said that wood products are a big part of the economy in the state. He stated that wood is essential to the construction industry.

Mr. Smart stated that Mr. Steensma had said that buffers tend to be prone to wind destruction, meaning if a narrow buffer is left, it usually gets blown down anyway. He stated that there is an advantage to knocking down all of the debris to about two feet of the ground because it rots more quickly and the seedlings get more sunlight to grow.

Mr. Brent stated that some of these parcels are beautiful for forty years and then there is an interim period of about five to seven years when it is not, but at least the parcels are being maintained as forested area and not being developed.

Mr. Jones stated that the issue of land use taxation for timberland is just a possible objective in the Comprehensive Plan.

Mr. Jones asked if the Commission was satisfied with the other changes made to Chapter Two of the Comprehensive Plan.

The Commission agreed.

Mr. Jones made a motion to forward the Update to the Comprehensive Plan – Chapter Two to public hearing at next month’s meeting. **VOTE: 6-1.**

OTHER BUSINESS

Mr. Gill stated that he would include Chapter Three of the Comprehensive Plan in the Commission members’ packets for their review for next month’s meeting.

ADJOURNMENT

The March 15, 2012 regular meeting of the Lancaster County Planning Commission was adjourned at 8:35 p.m.