

LANCASTER COUNTY PLANNING COMMISSION

Minutes

June 16, 2011

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

Present were David Jones, Chairman, Tara Booth, Steve Sorensen, and David Chupp.

Also present were Butch Jenkins, Board of Supervisors Representative, Don Gill, Planning/Land Use Director, Joe Thompson, Tom Smith, Mary Louisa Pollard and others.

Mr. Jones asked if there were any corrections or additions to the minutes of the May 19, 2011 regular meeting.

Mr. Jones moved to approve the May 19, 2011 minutes as submitted. **VOTE: 4-0.**

DISCUSSION ITEM #1

ORDINANCE TO HOLD/CO-HOLD CONSERVATION EASEMENTS

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

Mr. Gill stated that the Planning Commission decided at its November 18, 2010 meeting that an ordinance of this nature was not needed at this time and sought further direction from the Board of Supervisors as to how to proceed - either continue work on a proposed ordinance or let the issue die. He stated that that guidance was provided at the January 27, 2011 Board of Supervisors meeting and that the Board decided by a 3-2 vote to continue work on an ordinance to hold/co-hold conservation easements.

Mr. Gill stated that the previous draft had been abandoned due to the numerous concerns offered by the County attorney and that the current draft, that was included in the members' packets was modeled after the Fluvanna County Conservation Easement Program, which has been in existence since 2006. He stated that a copy of the draft has been forwarded to the County attorney as well as the Northern Neck Land Conservancy (NNLC) for review. He further stated that the intent of this discussion would be to address any concerns the Planning Commission members have with the current draft.

Mr. Gill stated that conservation easements are a recognized way of preserving open space and farmland, which was a predominant theme expressed during the last update to the Comprehensive Plan. He stated that conservation easements are legal documents which control the amount, if any, of development that will be allowed on a parcel of land in perpetuity. He stated that traditionally, conservation easements have 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. He further stated that this leaves a void in the system for those parcels less than 100 acres, which may be equally deserving of preservation and the NNLC hopes to fill this void with cooperative agreements with neighboring counties.

Mr. Gill stated that the NNLC recently entered into cooperative agreements with Northumberland, Richmond, Westmoreland and King George counties to co-hold conservation easements and made a presentation at our March 25, 2010 Board of Supervisors meeting seeking a similar arrangement with Lancaster County. He stated that the cooperative agreements in the other counties were done by resolution, but the Lancaster Board of Supervisors requested it be by ordinance in our county. He further stated that the actual holder of the easement, whether it is by resolution or ordinance, would be the County, with the NNLC being the co-holder.

Mr. Gill stated that the point of the discussion at this meeting would be to listen to the representatives of the NNLC and to see if any of the Commission members have any concerns that could be addressed before the next review.

Mr. Jenkins stated that the Board has said by a 3-2 vote that it favors promoting conservancy of the land. He stated that further review was needed and the Board wants the Commission to come up with their best effort for a conservation easement ordinance and the Board will either approve or disapprove.

Mr. Jones asked Mr. Gill if an ordinance were passed, how would the staff handle it.

Mr. Gill stated that the program administrator, which would be himself at this time, would be looking to the NNLC or similar group to bring forth potential easements which had not been approved by the larger organizations that typically hold those easements. He stated that the NNLC would come to him with their information and he would review it for compliance with the County's ordinance. Then, the County attorney would review the deed of easement and if approved, the package would be taken to the Board of Supervisors for their decision. He stated that if the Board approved the easement, it would be recorded, and then the stewardship and monitoring would be done by the NNLC or similar group and reports of such would be reported to the County.

Mr. Jones asked Mr. Gill if the County would be the only avenue for someone wanting to do a conservation easement.

Mr. Gill replied that organizations such as the Department of Forestry and the Virginia Outdoors Foundation typically take parcels of 100 acres or more. He further stated that the County would probably be involved with parcels of 99 acres or less.

Mr. Jones asked if the language in the ordinance would state “99 acres or less”.

Mr. Gill replied that it currently did not, but that was up for discussion.

Mr. Jenkins asked about the possibility of easements in town limits and whether a conservation easement ordinance would supersede town zoning.

Mr. Gill stated that he would look into it.

Joe Thompson, field director for the NNLC, asked to speak to the Commission.

Mr. Jenkins restated his question to Mr. Thompson about parcels placed in a conservation easement within town limits and if there is anything in the Code of Virginia that would state whether the County would have an obligation to defend that easement, since the incorporated towns exercise their own zoning.

Mr. Thompson replied that any easement that his organization considers has to be in compliance with all county codes.

Mr. Thompson stated that there are factors involved before the NNLC will consider an easement. He stated that the land has to have conservation values. He further stated that the parcels are considered charitable donations in the eyes of the federal and state government and if the parcel did not have a high conservation value, the donor may have issues with those agencies.

Mr. Chupp asked if a citizen had a parcel of 150 acres and for whatever reason, one of the larger organizations did not want to take it, and the NNLC saw value in the parcel and would like to see it conserved, couldn't the NNLC in conjunction with the County protect the parcel.

Mr. Thompson replied that legally the NNLC could, but practically they probably would not. He further stated that if there were a reason that an organization such as the Virginia Department of Forestry stated that they wouldn't hold an easement on the property, there would probably be something to preclude the NNLC with going ahead with the easement as well.

Mr. Thompson stated that the NNLC's first option is to try to place the parcel with a state agency and have them hold the easement. He stated that, generally, the only reason that they would consider a parcel or bring a parcel to the County would be because the acreage was not large enough to be considered by a state agency. He stated that the state agencies' priorities are the larger parcels because the goal is to have as much land under easement as possible.

Mr. Jones asked if the potential ordinance would only be dealing with 100 acres or less.

Mr. Thompson stated that the only exception he could think of is if a citizen wanted their larger easement placed with the County for personal reasons.

Mr. Jenkins asked if it would accomplish the same thing to deed the parcel to the County and reserve lifetime rights for the owners.

Mr. Thompson replied that it would be different because by deeding it they have given up the land and any inheritance to the land.

Mr. Jones stated that, in his opinion, no one on the Commission had a problem with the easements themselves, just the fact that the County was going to be “on the hook” for the defense expense if an easement is challenged.

Mr. Thompson stated that easement agreements are written so that it would be hard for an individual to go to the courts and have a chance of breaking it.

Mr. Jenkins stated that, in his opinion, the NNLC needs the County to backstop those smaller sized parcels, which the NNLC doesn't believe they can economically take on and preserve in an easement.

Mr. Thompson stated that the NNLC is a relatively small and young organization and it doesn't have deep pockets to pay for big legal expenses.

Mr. Jenkins stated that he understood that the perception was that the County had deep pockets, however, he stated that the deep pockets are made up of many, shallower pockets. He stated that local taxpayers were being expected to pay for those potential legal expenses. He further stated that if the Commonwealth wanted conservancy of the land, then the situation should not be passed on to the localities to handle.

Mr. Chupp stated that from what he had read, the Commission was not supposed to be debating the value of the program. He further stated that it looked as if the County has made a decision to work with the NNLC and the Commission is being asked to come up with a program to do so.

Mr. Chupp stated that, in his opinion, the County would have two roles with holding a potential easement. He stated that the first would be to approve or disapprove the easement after the NNLC's easement proposal was presented to the County. He stated that the second role would be the defense if the easement were challenged at a later date.

Mr. Jones stated that he agreed with Mr. Chupp about the fact that the Commission is not there to debate the legitimacy of the program, but rather figure out the best way to help out the NNLC.

Mr. Gill stated that the way the process will work is for the County to incorporate the NNLC's forms into the County's forms and the NNLC do all of the legwork, stewardship and monitoring of the easements. He stated that the County would be the holder, whether by cooperative agreement, resolution or ordinance.

Mr. Jenkins asked about the depth of the County's obligation and what happens in ten years if the NNLC is not doing the stewardship of the easements and who does that responsibility fall on.

Mr. Gill replied that it would fall back on the County and that the County attorney, Jim Cornwell, spoke about that in his previous comments.

Mr. Thompson stated that the same situation exists with their agreements with state agencies, in that the responsibility goes back to the state by default if the NNLC ceases to exist.

Mr. Thompson suggested that, if the Board of Supervisors approves the conservation easement ordinance, an original memorandum of understanding be included that defines roles in the relationship between the County and NNLC.

Mr. Jones stated that he would like to see better delineations of the duties of both parties.

Mr. Gill stated that he could work on the language in the proposed ordinance, possibly incorporating the memorandum of understanding.

Mr. Jenkins asked about the possibility of adding a clause in the ordinance that allowed the then sitting Board of Supervisors to review the easement and possibly opt-out of it in the future.

Mr. Chupp stated that that would destroy the whole purpose of it for the NNLC or other organization.

Mr. Jones stated that Mr. Cornwell had already said that if the County enters into it, then they are the holder and the County is obligated.

Mr. Jenkins stated that he was trying to work on a compromise. He stated that something that looked like a good deal in 2011 might not look like that in 2050.

Mr. Chupp stated that he thought Mr. Cornwell had stated in his previous comments, that the County would be obligated no matter what. He further stated that if the County had a way to opt-out of the agreement, the program would lose its value.

Mr. Thompson stated that another potential issue might be that if an easement is held by an entity that states they may or may not defend it, the IRS might have serious doubts that it is truly a charitable donation with value.

Mr. Jones stated that if the ordinance passes, the language needs to be “tight”, so the possibility of mistakes being made is minimized in the future.

Mr. Sorensen asked if the easements could be renewable.

Mr. Jones stated that they would be in perpetuity.

Mr. Gill stated that, in his research, he found that the state of Pennsylvania does have some type of term easements, but that everything in the state of Virginia is in perpetuity.

Mr. Chupp stated that, in his opinion, the County has considered that the obligation would go on forever, but that it was worth the risk because of the value of the potential conserved lands to the County.

Mr. Jones stated that the Board of Supervisors has asked the Commission to send them a potential ordinance. He stated that it should be definitive in the roles of all parties concerned and that the steps involved with a citizen wanting to pursue putting their parcel in a conservation easement outlined in detail.

Mr. Gill stated that Mr. Jenkins had brought up the possibility of eased land being in town limits. He stated that when it came time for the program administrator to make his recommendation to the Board, potential easements located within the incorporated towns or the Primary Growth Area would not be recommended for approval as those areas are targeted for higher density residential development.

Mr. Gill stated that conservation easements are totally voluntary and the Board of Supervisors is not obligated to approve any easement.

Mr. Jones stated that he thought that everyone was in favor of land conservancy, but he just wants to make sure that the language is definitive and everyone has a clear understanding of all of the steps involved.

Tom Smith asked about the acreage of parcels that the County would be obligated to review.

Mr. Gill replied that, based on the draft ordinance, the County would not consider any parcel under 20 acres.

Mary Louisa Pollard stated that she thought the memorandum of understanding that was brought up earlier in the meeting, would make the County and the NNLC more comfortable about the arrangement. She stated that Richmond County was the first of the

adjoining counties to co-hold with the NNLC and at this time, there is one easement there. She further stated that this would be for a limited amount of parcels.

Mrs. Pollard explained the process, in which the NNLC goes about obtaining a conservation easement.

Mr. Jones stated that he appreciated Mrs. Pollard's comments and thought that each entity should have their own memorandum of understanding, so everyone will be on the same page.

Mr. Gill stated that he wanted to review the discussed points of concern with the commission. He stated that he would ask the County attorney if the County would be the single defense for easements that are located within town limits. He stated that, it was his understanding, the Commission wanted to know if there was a possibility of some sort of "opt-out" if after a number of years, the decision to hold the parcel as an easement was no longer a good idea and if there could be a review of the easements after a certain number of years. He stated that the Commission wanted to include a memorandum of understanding in the ordinance that specifically details the responsibilities of the holder and co-holder as well as the criteria of eligibility for parcels being placed in a conservation easement.

Mr. Chupp asked about the 20-acre minimum and stated that he might be in favor of having no minimum lot size.

Mr. Gill stated that, in the course of his research, he found that there are 712 parcels in the County that are 20 acres or larger, and just used that number in the ordinance, but it was open for discussion.

OTHER BUSINESS

There was no other business.

ADJOURNMENT

The June 16, 2011 regular meeting of the Lancaster County Planning Commission was adjourned at 8:15 p.m.