

LANCASTER COUNTY PLANNING COMMISSION

Minutes

July 21, 2011

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, Robert Smart, Steve Sorensen, Ty Brent, David Chupp and Glenn Pinn.

Also present were Butch Jenkins, Board of Supervisors Representative, Don Gill, Planning/Land Use Director, Joe Thompson, Northern Neck Land Conservancy (NNLC), Charlie Costello, Robert Cunningham and others.

Mr. Jones asked if there were any corrections or additions to the minutes of the June 16, 2011 regular meeting.

Mr. Jones moved to approve the June 16, 2011 minutes as submitted. **VOTE: 5-0.**

DISCUSSION ITEM #1

CONSERVATION EASEMENT ORDINANCE

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

Mr. Gill stated that the Board of Supervisors has requested that the Planning Commission develop a conservation easement ordinance. He stated that staff had developed a draft ordinance modeled after the Fluvanna County Conservation Easement Program, which has been in existence since 2006.

Mr. Gill stated that at last month's meeting, the Planning Commission requested several changes to that draft and those changes have been made and were highlighted on the revised draft that the Commission members received in their packets. He further stated that they also received the proposed "Cooperative Agreement", or memorandum of understanding, that would need to be executed by the Northern Neck Land Conservancy and the County to comply with the revised ordinance.

Mr. Gill stated that a copy of the revised draft has been forwarded to the County attorney as well as the Northern Neck Land Conservancy for review.

Mr. Gill stated that the issue would need to be docketed for public hearing once the Planning Commission feels it has been discussed and tweaked satisfactorily.

Mr. Gill stated that he had some comments from Mr. Cornwell, the County attorney, to share with the Commission. He stated that there were two specific questions asked last month concerning the ordinance. He stated that Mr. Jenkins had asked about parcels being placed in conservation easements within town limits, and if the County would have an obligation to defend those easements if challenged. He stated that Mr. Cornwell replied that as a holder of the easement the County would have a duty to enforce it and for that reason he did not recommend the County accept easements within town limits or any other jurisdiction where the County's ordinances do not apply.

Mr. Jenkins stated that he would also like the language in the potential ordinance to include parcels in the rural village overlay not be accepted as well.

Mr. Gill stated that the second question was if an easement could be reviewed after a certain number of years and an "opt-out" be exercised if it is determined that the easement is no longer a good idea at that time.

Mr. Gill stated that Mr. Cornwell's response was that the County could not "opt-out" but could transfer the easement to another tax-exempt entity.

Mr. Gill stated that Mr. Cornwell plans to do an extensive review of the proposed ordinance after the Planning Commission has completed its review.

Mr. Gill stated that he had given a copy of the proposed ordinance to Joe Thompson, Field Director of the NNLC for his review. He stated that Mr. Thompson had two concerns with the ordinance. He said the first was that there was no stated minimum acreage and the second was that the fees were not defined.

Mr. Gill stated that the Board of Supervisors would set the amount of the easement fee. He stated that he would estimate that the fee would fall in the \$200 to \$500 range, or the fee could be based on acreage. He further stated that he had checked the Fluvanna County website and the only fee that was not listed was the easement fee, but that he would be in touch with them to find out how that fee was determined.

Mr. Jones asked if any of the Commission members had any questions concerning the changes made to the proposed conservation easement ordinance.

Mr. Smart referred to Section 27-3 and thought that it would be advisable that the County undertake a title search to make sure the applicant for the easement had clear title to the land and be free of any liens or other encumbrances that might affect the easement.

Mr. Jenkins stated that his suggestion would be that if it were found out that there is not clear title, it would negate the easement for the County.

Mr. Thompson replied that the NNLC requires a sixty-year title search of all potential easements and that it is at the expense of the easement donor.

Mr. Jenkins stated that the NNLC is not the only organization that can take advantage of the proposed conservation easement ordinance. He further stated that there should be language in the ordinance stating that the County be held harmless if the clear title is found not to be there.

Mr. Smart referred to Section 27-7 and stated that he thought it was well written and that the ordinance should not go below the twenty-acre minimum. He stated that the more parcels entering into an easement made for a better chance of more lawsuits.

Mr. Chupp stated that he felt the opposite of Mr. Smart and wondered if there should be any minimum at all. He stated that there could be pristine parcels below twenty acres that could be left out because of the proposed requirement. He further stated that the County always has the right to deny a parcel based on size, if they choose to do so.

Mr. Jones stated that he did not think there should be a minimum acreage either.

Mr. Smart stated that he could understand that argument. He asked if there were any smaller easements in place in other counties in the Northern Neck.

Mr. Thompson replied that there were some historic easements as small as a couple of acres and each piece is unique in its value. Some parcels may be small, but may be shown to support a certain habitat or species and be valuable in that way.

Mr. Thompson stated that the Board of Supervisors and the NNLC would both have to approve the parcel before the easement could move forward.

Mr. Chupp stated that he wondered if there needed to be any fee at all for an easement. He stated that a conservation easement would be of substantial value to the County and maybe no fee should be required of the applicant.

Mr. Jones stated that there is also a substantial value to the property owner getting the easement as well. He stated that the fees would cover staff work, attorney's fees and other expenses. He further stated that, in his opinion, the fees would be necessary.

Mr. Smart stated that he had spoken to Mr. Gill earlier and learned that each easement can be crafted on an individual basis so that the land can continue in use as it is or it could be written that it could be converted, for example, from forestland to agricultural land.

Mr. Thompson agreed and stated that each easement is unique to that particular piece of property.

Mr. Chupp stated that the fee schedule should be left open ended so as not to dissuade a potential conservation easement applicant.

Mr. Jones stated that the fees would be set by the Board of Supervisors.

Mr. Gill stated that all fees are set by the Board of Supervisors. He stated that he did not think the fees should be specific in the ordinance because every time the fees would change, the ordinance would have to be changed, creating more expense with public hearings and advertisements. He stated that there should be some fee associated with the easements to compensate for staff time.

Mr. Chupp asked if the other local counties charged fees for the easements.

Mr. Thompson replied that none of the other local counties have set fees associated with the easements.

Mr. Jones stated that those counties have resolutions and not ordinances, like Lancaster County is considering.

Mr. Jenkins stated that the owner gets tax credits for their decision to enter into a conservation easement. He further stated that if it is going to be a partnership, then everyone should have to pay something for the benefit of the conservation easement.

Mr. Jenkins stated that any fee associated with an easement would be small compared to what the County would have to shoulder should it have to defend an easement.

Mr. Jones stated that there is nothing free and there is work that will have to be done between all parties, so he doesn't think a small fee payable to the County is unreasonable.

Mr. Smart stated that a spin-off benefit of the easements is that it makes farmers more viable because property values of land in easements will not escalate as development occurs all around it and makes it easier for the farmer to acquire the land that he would need to remain profitable.

Mr. Thompson agreed and stated that there are three industries that potentially benefit from the land being protected: farming, fishing and timber.

Mr. Smart asked Mr. Jones if they should revisit the minimum size issue.

Mr. Jones replied that the Commission should make all its changes and then send the ordinance to the County attorney for his review before the issue goes up for public hearing.

Mr. Gill agreed.

Mr. Jones stated that he would like to see the following issues addressed, 1) language stating that the County be held harmless in the event of a title issue, 2) that parcels for easements not be accepted if they are in town limits or the rural village overlay district, and 3) not require a certain minimum lot size for a potential easement.

Mr. Chupp asked what the rural village overlay was.

Mr. Jenkins replied that the County has three incorporated towns, which are Kilmarnock, White Stone and Irvington, but historically have had other villages outlined to encourage growth as well. He stated that those villages include, Lively, Weems, Morattico, and Lancaster Courthouse. Currently, Lively is the only village included in the Rural Village Overlay District.

Mr. Thompson stated that the NNLC requires that an applicant's parcel must be viable under the County's current Comprehensive Plan. He stated that they are also very conscious of all VDOT regulations.

Mr. Chupp stated that he wanted to make a suggestion for Section 27-8. He stated that he thought it would be a good idea to require the applicant to state why they think their parcel warrants an easement and what advantages it would have to the County.

Mr. Gill stated that that would be included in the documentation report that the NNLC or similar group would prepare for the application.

Mr. Thompson agreed and stated that on their application form, the applicant is required to state why they think their parcel should be put into a conservation easement. He further stated that all information concerning the potential easement would be shared with the County.

Mr. Smart stated that this would be a process that would be slow in evolution, but even if there are a couple of parcels a year over a long period of time, there would be substantial property in easements.

Mr. Gill stated that he had modeled the ordinance after Fluvanna County. He stated that they put their ordinance into effect in 2006 and to date, they have acquired only two easements.

Mr. Jones stated that he thought the ordinance was good but just to be clear, he wanted to add the language stating that the County be held harmless in case of no clear title, that an easement not be allowed in the town limits or rural village overlays and that there would be no requirement for a minimum lot size.

The Commission agreed.

Mr. Jones stated that the ordinance will be reviewed by the County Attorney and then reviewed again by the Commission before it goes to public hearing.

Mr. Gill agreed.

OTHER BUSINESS

Mr. Jones stated that Mr. Robert Cunningham was in attendance and introduced him as a candidate for the Lancaster County Commonwealth's Attorney position.

ADJOURNMENT

The July 21, 2011 regular meeting of the Lancaster County Planning Commission was adjourned at 7:40 p.m.