

# **LANCASTER COUNTY PLANNING COMMISSION**

## **Minutes**

**August 21, 2008**

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, Tara Booth, Steve Sorensen, Ty Brent, Robert Smart, Glenn Pinn and Rodney Waller.

Also present were Butch Jenkins, Board of Supervisors Representative, Don Gill, Planning/Land Use Director, Alex Haseltine, Rappahannock Record, Starke Jett, Northern Neck News, David Donofrio, Ben Burton, Dan Hatch, Ray Freeland, Brett Prillaman, Charles Costello and others.

Mr. Jones asked if there were any corrections or additions to the minutes of the July 17, 2008 regular meeting.

Mr. Jones moved to approve the July 17, 2008 minutes as submitted. VOTE: 7-0.

## **PUBLIC HEARING**

### **APPLICATION FOR CHANGE OF ZONING DISTRICT CLASSIFICATION – HELEN EDWARDS**

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

Mr. Gill stated that there was an application for a Change of Zoning District Classification from R-1, Residential, General to C-1, Commercial by Helen Edwards for a 0.64-acre parcel described as Tax Map #34-101A. This property is located on VSH 200 (Irvington Road) near White Stone, Virginia.

Mr. Gill stated that the applicant wishes to establish a real estate office for Edwards Bay and River Properties, LLC on this unimproved parcel located just past Woods Drive on the left going from White Stone to Irvington. Current R-1 zoning will allow a professional office with one unit and up to four workers with a Special Exception from the Board of Supervisors, however the applicant has stated that the number of workers may exceed that number. The applicant also seeks the C-1 zoning for the reduced setbacks, however this parcel lies within the Highway Corridor Overlay District

and would be subject to its setbacks under either the current zoning or the proposed zoning. The applicant has offered a proffer that as a condition of approval the only permitted C-1 use would be the professional offices allowed under Article 8-1-12.

Mr. Gill further stated that staff believes the request could be considered as spot zoning and recommends disapproval. The GIS map shows that there are no other C-1 properties adjacent to the location. Contiguous properties are either R-1 or A-2. Staff believes the intended use could be accomplished under the current R-1 zoning with the Special Exception from the Board of Supervisors and would recommend approval of such a request. The adjoining property owners have been notified and advertising conducted as required by law. To date, there has been no input from the public.

Mr. Gill stated that Mrs. Edwards was not present at the meeting because her husband had been involved in a boat explosion and was hospitalized out of town. Mr. Gill further stated that because the public hearing had been advertised, it was required to be held, but he recommended that the vote be tabled until next month to give Mrs. Edwards an opportunity to be present.

Mr. Brent asked Mr. Gill about the professional office special exception in R-1.

Mr. Gill stated that a real estate office with one unit and up to four workers would be an allowable use in the R-1 zoning district with a special exception approved by the Board of Supervisors.

Mr. Smart stated that it was a small parcel of land and didn't think a large office would fit there. He further stated that he thought four employees would be adequate to run a small office. He agreed that changing that parcel to commercial would be considered spot zoning.

Mr. Jones opened the public hearing. There was no input.

Mr. Jones closed the public hearing.

Mr. Jones made a motion to table the vote until next month to allow the applicant to be present. VOTE: 7-0.

## **DISCUSSION ITEMS**

### **1. Cash Proffer Study**

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

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

Mr. Gill further stated that as evidenced by the report on Proffered Cash Payments and Expenditures, Lancaster County is eligible to accept cash proffers under the Code of Virginia Section 15.2-2298. That section contains several limitations on what can be legally proffered, but was amended in July 2007 to allow those eligible counties to choose the alternate form of conditional zoning permitted under Section 15.2-2303. The latter section allows property owners more flexibility in what they may legally proffer to the County in conjunction with a proposed rezoning. Most importantly, proffered conditions need not be directly related to the rezoning at issue, nor must the facilities or cash be contained within the County's Capital Improvement Program. Article 16-2 of our zoning ordinance already permits conditional zoning under both of these sections, therefore the only task is to develop a "Cash Proffer Policy." Mr. Gill stated that he had included examples of "Cash Proffer Policies" from the counties of Middlesex, Westmoreland, and James City. He said it is staff's opinion that the James City County policy more closely addresses the six points outlined in the County Administrator's memo, except for the maximum cash proffer amount, which would likely resemble either Middlesex or Westmoreland. Mr. Gill stated that the intent of the initial discussion would be to determine if either of the provided examples of "Cash Proffer Policies" should serve as a model for our own and to address any comments or concerns the members of the Planning Commission has with any of the six points outlined in the County Administrator's memo.

Mr. Jones suggested that they discuss the points made in Mr. Pennell's memo, one by one.

**1)The advisability of developing a cash proffer policy.**

Mr. Jones asked what surrounding counties had a cash proffer policy.

Mr. Gill stated that Middlesex and Westmoreland counties had cash proffer policies.

Mr. Smart stated that he thought that cash proffers would be advisable for Lancaster County. He stated that he liked the James City County model the best.

Mr. Jones stated that he also thought that a cash proffer policy would be advisable for Lancaster County.

Mr. Brent added that he thought that the proffers should not be limited to schools.

Mr. Jones stated that the proffers would be voluntary. The policy would be something to go by and not mandatory.

**2)What types of rezonings should be affected.**

Mr. Gill stated that his recommendation would be for cash proffers to be

applicable to all rezonings. He further added that Middlesex and Westmoreland have it that way.

Mr. Jones asked if everyone was in agreement with Mr. Gill's statement and the Commission agreed.

**3)What amount a suggested cash proffer should be.**

Mr. Gill stated that that would take some time as he would need to get additional information from Middlesex and Westmoreland counties to determine a methodology for computing a maximum cash proffer.

**4)What types of capital projects should receive the benefit of this funding.**

Mr. Jenkins stated that he didn't feel like the projects should be limited.

Mr. Jones stated that he had no problem with the capital projects not being limited.

**5)How LMI, Workforce and Elderly Housing project costs will be excluded from cash proffer requirements.**

Mr. Jones asked Mr. Gill if these projects would be exempt.

Mr. Gill stated that the James City County policy uses a sliding scale. He further stated that total exemption might not be a bad idea.

Mr. Jones agreed.

Mr. Jenkins added that all proffers would not have to be accepted.

Mr. Smart stated that legal counsel should be sought when stating the wording of the policy.

Mr. Jones stated that, in his opinion, if a cash proffer is paid and the building is not built, the proffer should not be refunded.

Mr. Jones asked Mr. Gill about who would administer the cash proffer policy.

Mr. Gill stated that he thought Jack Larson, the Assistant County Administrator and Director of Finance should be involved.

Mr. Jenkins stated that the Treasurer's office should also be involved in administering the cash proffer policy.

Mr. Gill asked if it was the Commission's recommendation to use the James City

County Cash Proffer policy as a model for a Lancaster County Cash Proffer policy.

Mr. Jones stated yes.

Mr. Jones asked Mr. Jenkins if this issue should be a public hearing or would the policy be passed on to the Board of Supervisors for approval.

Mr. Jenkins stated that it was not a public hearing issue. Mr. Jenkins also added that if this policy had been in effect twenty years ago, it might have been a "cash cow," but not to expect that now.

Mr. Jones stated that the cash proffer policy would be brought back at next month's meeting as a consideration item.

## **2. Parks and Recreation Guidance Committee**

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

Mr. Gill stated that the issue was to appoint a guidance committee charged with making recommendations for projects and improvements to be included in a Parks and Recreation Program.

Mr. Gill stated that the Planning Commission voted at its May 15<sup>th</sup> meeting to establish a Guidance Committee for Parks and Recreation consisting of a representative from each voting district, one member at large and one Planning Commission member. To date, he said he had received suggestions for committee members from Districts One, Two and Three. He said that suggestions were still needed for Districts Four, Five, and the At-Large position, as well as someone from the Planning Commission to chair the committee.

Mr. Brent stated that he recommended Mr. Joe Smith for the At-large position.

Mr. Jones nominated Mr. Brent as the Planning Commission representative for the guidance committee. VOTE: 7-0.

Mr. Waller stated that he had spoken to someone for the District 4 position and was waiting to hear back from that party.

## **3. Proposed New Ordinance, R-4 – Residential Community District**

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

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 at the July 17<sup>th</sup> public hearing, several questions were raised regarding clarification of the townhouse regulations, the deed restriction guaranteeing the continued affordability of the workforce housing units, as well as specific wording changes needed to clarify ambiguous statements. All but one of the questions raised have been addressed with the highlighted changes on the draft. The lone issue not addressed involves the allowable density of townhouses. Ben Burton of Bay Design provided a handout showing “typical” townhouse densities of 7-12 units per acre, which is common in many localities’ ordinances. If this is the desire of the Planning Commission, a possible solution would be to double the allowable densities **for townhouses only**, which would result in a maximum allowable base density for townhouses of 4 units per acre, increasing to 6 units per acre if 10% of the units were built and priced as workforce housing and ultimately 8 units per acre if 20% were workforce housing.

Mr. Jones asked Mr. Gill if the county attorney had reviewed the proposed R-4 district.

Mr. Gill stated that he did not have the county attorney’s comments yet.

Mr. Jones stated that the attorney’s comments should be available by next month’s meeting.

Mr. Gill asked if anyone from the Commission had any comments on the changes he had made to the R-4 district.

Mr. Smart referred to Section 6A-3-4, which states that the minimum lot area for a townhouse permitted use shall be 2,500 square feet and then he referred to Section 6A-8-1, which states that any structure in the R-4 District shall not occupy more than 40 percent of the area of the lot. He stated that that would translate into a very small townhouse.

Mr. Gill stated that what he had typically seen in other ordinances is 30 percent lot coverages and that townhouse lots are not given a minimum lot size.

Mr. Brent referred to Section 6A-13-1 and asked what area was applicable to the Waterfront Residential Overlay District.

Mr. Gill stated that it encompassed the landward 800 feet of tidal shores, including tidal and non-tidal wetlands.

A citizen, Mr. Charles Costello, referred to Section 6A-9-1, and suggested that the words “gross site” be replaced with the words “buildable area”.

Mr. Jones stated that after the county attorney has reviewed the R-4 Ordinance, it needs to be brought back for public hearing.

#### **4. Prior Application for Change of Zoning District Classification-Confederate Interests, LLC**

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

Mr. Gill stated that the issue was the prior application for change of zoning district classification by Confederate Interests, LLC for: 667.207 acres described as Tax Map #27-297 from A-2, Agricultural, General to R-1, Residential, General (for 37.0 acres of the total) and R-3, Residential, Medium General (for the remaining 630.207 acres) and also 29.016 acres described as Tax Map #27-297A from A-2, Agricultural, General to R-3, Residential, Medium General. This property is located in the roughly shaped triangle between VSH 200 (Irvington Road), VSH 629 (Lumberlost Road) and VSH 675 (Black Stump Road) near Kilmarnock, Virginia.

Mr. Gill stated that at the July 17<sup>th</sup> meeting, the applicant provided a plan of “by-right” A-2 zoning showing 592 lots with private septic and wells with the minimum required 10% open space versus a conceptual plan under the proposed zoning of 642 lots with public sewer and water and 30% open space. The Waterfront Residential Overlay was depicted on each plan. He also provided a new proffer stating that as a condition of approval of this rezoning the total number of dwelling units on the proposed rezoned acreage will not exceed 600, that the portion of Tax Map #27-297 proposed for R-1 zoning will be surveyed as depicted in the plan of development and that water and sewer will be provided by the Town of Kilmarnock or a new private wastewater treatment system he will install.

Mr. Gill further stated that the Planning Commission again tabled this request seeking additional information on the sewage disposal system. The Commission requested a certification letter from an engineer verifying that the private system proffered would work for this size development, should the Town of Kilmarnock not provide its system for the sewage disposal. In addition, the Commission requested the location of the system within the development as well as the discharge site. Mr. Donofrio has advised Mr. Gill that he is addressing this request with recent on site evaluations by soil scientists and engineers. Mr. Donofrio indicated they would be prepared to make a presentation at the meeting and answer any additional questions.

Mr. Jones asked Mr. Donofrio to make his presentation.

Mr. Donofrio stated that he was prepared to address the issues of septic and water for his project, King’s Grant.

Mr. Dan Hatch with Dominion Soil Science of Fredericksburg presented a map of King’s Grant. He stated that his firm had done fieldwork to try to find the best soils for a community septic area. He further stated that the most desirable soil was sassafras soil, which was found in the area. He said his estimation would be that 16 or 17 acres would be needed as a disposal site.

Mr. Hatch stated that he felt confident that there is enough area for the wastewater treatment. He stated that these areas would be out of the Resource Protection Area. He stated that there was enough good soil there to make it viable for 600 home sites.

Mr. Smart stated that what the Commission had wanted was an engineer to tell them that there was soil available to handle a community the size of King's Grant.

Mr. Jones asked Mr. Hatch if he did actual soil borings.

Mr. Hatch stated yes, with hand augers and a mini excavator.

Mr. Smart asked Mr. Hatch what the elevation was for the primary area.

Mr. Hatch stated that it was about eighty feet in the higher areas.

Mr. Hatch stated that there were marginal soils to very good soils in the area and they would want to focus on using the very good soils first.

Mr. Jones asked Mr. Donofrio if he uses the better soil areas for the drain field area, could he still get the 600 home sites.

Mr. Donofrio stated that the drain field area would probably be in the botanical garden area where homes wouldn't be built anyway.

Mr. Donofrio introduced Ray Freeland with Freeland Engineering. Mr. Freeland made a presentation showing treatment plant systems. He stated that small pockets of land and not just one spot would be used to disperse the wastewater. Mr. Freeland stated that each home would have a tank and the waste would go to the treatment facility either by gravity or pressure. He further stated that the treatment plants could be designed to fit into any landscape.

Mr. Smart asked Mr. Freeland if the treatment plants use aeration.

Mr. Freeland stated yes.

Mr. Smart stated that he thought the treatment plant would be better than having 600 separate septic tanks.

Mr. Donofrio introduced Brett Prillaman with Sydnor Hydro.

Mr. Prillaman stated that his company offers turn-key water systems. He stated that his company was proposing a system of four wells and four stations for the King's Grant project. The system would tap into the Potomac group aquifers.

Mr. Jones asked Mr. Prillaman how many gallons of water a day would be used for 600 homes.

Mr. Prillaman answered approximately 500,000 gallons a day.

Mr. Smart asked Mr. Prillaman about the water table.

Mr. Prillaman stated that he didn't know about the water table, but that the water quality in this area was very good.

Mr. Jones stated that the Commission has nothing in writing about the incentives that have been mentioned, i.e. the botanical gardens and walking trails. He further stated that the Commission had not received letters from the engineers, concerning the water and sewer system.

Mr. Jones stated that he would like to see a package of everything in writing before the next meeting, so that the Commission might have something to give to the Board of Supervisors for their review.

Mr. Donofrio stated that he could supply the needed information.

Mr. Smart stated that he was more comfortable with the project, after hearing the three representatives. He further stated that he agreed with Mr. Jones that everything stated needed to be in writing.

Mr. Brent asked Mr. Donofrio if the wastewater treatment system changed his master plan of King's Grant.

Mr. Donofrio stated that he wanted to do a good project and was not looking for density. He stated that he would not know if it changed his master plan until after he started the project.

Mr. Jenkins asked if the trails and the botanical gardens would be open to the public.

Mr. Donofrio stated that he did not know the answer. He stated that it would probably depend on the King's Grant homeowner's preferences.

Mr. Jones asked Mr. Jenkins about the county's policy to not have two zonings in one parcel.

Mr. Jenkins stated that that is the way it has been in the past.

Mr. Donofrio asked about a proffer to have the site surveyed.

Mr. Gill stated that it would be best to have the site surveyed.

Mr. Jones stated that he would like to see the letters from the three gentlemen that had made presentations, all other proffers in writing, and have the survey done before next month's Planning Commission meeting.

Mr. Jenkins stated that, in his opinion, 600 home sites seemed excessive.

Mr. Hatch stated there is a lot of technology now for the on-site systems and 600 sites are conceivable, however it is easier to maintain one central system than many individual systems.

Mr. Jones asked Mr. Donofrio to get the information to Mr. Gill before the next meeting, so that the Commission members could have a chance to review it. The Commission was in consensus with this.

### **ADJOURNMENT**

The August 21, 2008 regular meeting of the Lancaster County Planning Commission was adjourned at 8:40 p.m.