

LANCASTER COUNTY PLANNING COMMISSION

Minutes

September 15, 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, Tara Booth, Steve Sorensen, Ty Brent, David Chupp and Glenn Pinn.

Also present were Butch Jenkins, Board of Supervisors Representative, Don Gill, Planning/Land Use Director, Frank Pleva, Lancaster County Administrator, Joe Thompson, Northern Neck Land Conservancy (NNLC), Charlie Costello, Tom Smith, Mary Louisa Pollard, and others.

Mr. Jones introduced Frank Pleva, the new administrator for Lancaster County.

Mr. Jones asked if there were any corrections or additions to the minutes of the August 18, 2011 regular meeting.

Mr. Jones moved to approve the August 18, 2011 minutes as submitted. **VOTE: 7-0.**

PUBLIC HEARING #1

CONSERVATION EASEMENT ORDINANCE

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

Mr. Gill stated that the issue was to consider an ordinance allowing Lancaster County to co-hold Conservation Easements with qualified non-public bodies.

Mr. Gill stated that he had made the changes recommended by the County attorney and that they had been highlighted on the revised drafts of the ordinance and the cooperative agreement that were included in the members' packets. He stated that in reference to the ordinance, the changes were: 1) "and be perpetual" was added to Section 27-7, 2) a sentence was added to Section 27-8 to acknowledge and authorize public release of information and 3) the word "application" was added to Section 27-8(I) instead of re-listing and duplicating the same language again in Section B. Mr. Gill stated that in reference to the cooperative agreement, the changes were: 1) a sentence added to paragraph 4 for the NNLC and owner to consent to the public release of information and

2) a sentence added to paragraph 6 obliging the NNLC to assist the County with testimony and investigation.

Mr. Gill stated that there was one additional concern raised at last month's Planning Commission meeting regarding the fact that the draft ordinance does not set a minimum acreage for conservation easements, and the County will only allow land use taxation on agricultural land of five acres or more. He stated that the concern was if a conservation easement of less than five acres could be taxed at the land use rate given the current County requirement of five or more acres. He further stated that this new ordinance should not supercede the current County requirement concerning land use taxation and it was questionable if language should be added to the ordinance to prevent that from occurring.

Mr. Gill stated that he had attached the Code of Virginia section 10.1-1011 with the applicable language highlighted. He stated that his interpretation is that a conservation easement of less than five acres would not be taxed at land use rates since it does not qualify for such assessment under current County requirements. He stated that it could be taxed on a lower assessed value, reflecting the decreased potential uses of the property resulting from the restrictions of the conservation easement, but not at the land use rates. Any acreage over five acres could be taxed at the lower land use rates.

Mr. Gill stated that he had consulted with the County attorney about the minimum acreage and had received his comments, which he passed around to the Commission members. He stated that the County attorney agreed with his interpretation of the first five acres of an easement not qualifying to be taxed at the land use assessment.

Mr. Gill stated that advertising had been conducted as required by law and he had received two letters of support and one inquiry for additional information.

Mr. Jones asked Mr. Gill his opinion of the County attorney's recommendation of limiting the conservation easements to no less than five acres.

Mr. Gill replied that if the ordinance had no minimum acreage, the first five acres would not qualify for land use tax rates as established in the Code of Virginia, and it would make keeping data on those parcels more difficult. He further stated that if the minimum parcel size was set at five acres, it would reconcile the land use taxation policy with the conservation easement ordinance and keeping track of them in the future would be easier.

Mr. Jones asked Mr. Gill what his opinion was as staff.

Mr. Gill replied his opinion was to create a five-acre minimum for conservation easements.

Mr. Jenkins stated that he would make a suggestion that the ordinance include a provision for parcels under five acres that would make them eligible for a conservation easement if they met certain criteria, such as historical value.

Mr. Brent stated that he was concerned about waterfront parcels because there are very few parcels on the water that are in excess of five acres.

Mr. Jenkins stated that more than likely the waterfront parcel has already been developed and the conservation easement could be misused for the tax credit benefit.

Mr. Brent asked if a conservation easement could have an improvement.

Mr. Jenkins replied that conservation easements could have improvements.

Mr. Chupp stated that he did not see a reason to tie the Board's hands with having a minimum parcel size. He stated that the Board has the option to turn down a parcel less than five acres for any reason it chooses.

Mr. Jones stated that he thought there should be some criteria for a parcel under five acres to make it fair for all land owners.

Mr. Smart stated that he thought that Mr. Gill's recommendation was a good one. He further stated that he thought there should not be an easement under five acres unless certain circumstances pertained to a smaller parcel.

Mr. Smart stated that, in the County attorney's comments, he points out that any parcel is going to have costs associated with it and the costs of maintaining the easement need to be weighed against the value.

Mr. Chupp stated that the Board would have the right to refuse any conservation easement.

Mr. Jones stated that there should still be some criteria met for smaller parcels.

Mr. Jones opened the floor for public input.

Charles Costello, a District 2 citizen, stated that a possibility is that a parcel under five acres, in which the owners want to place it in a conservation easement, could be considered for a special exception by the Board of Supervisors. He further stated that he thought it was a good ordinance and was needed.

Mr. Jones stated that it needs to be fair to all who seek a conservation easement for their land.

Mr. Gill stated, in reference to Mr. Costello's comments, in Section 27-8F that the acceptance of any easement is in the sole discretion of the Board of Supervisors, so a special exception is not needed.

Mr. Smart asked about a person offering their land for a conservation easement and then the family coming back at a later date and stating that that person was not competent and challenging the easement.

Mr. Gill stated that there is language in the ordinance that speaks to the parcel having a clear title.

Mr. Jenkins stated that the County would be expected to defend a court case if that situation came about.

Mr. Thompson of the NNLC stated that he wanted to thank Mr. Gill and the Commission for the work they had done on the conservation easement ordinance.

Mr. Thompson stated that the NNLC has a policy in place for parcels under five acres and they would share that with the County. He stated that the land to be considered for a conservation easement must have conservation values in order to be a legitimate tax deduction for the Internal Revenue Service and a parcel which does not show conservation values would be inviting an audit.

Mr. Thompson stated that on the issue of competency, that would be handled between family members and the attorney drawing up the deed of easement.

Mr. Jones stated that between the NNLC's review and Mr. Gill's review, he believed any issues concerning a conservation easement would be weeded out.

Mary Louisa Pollard, a District 3 citizen, read an e-mail from her brother, Harry Wells, which stated that he was in support of the NNLC and the County co-holding conservation easements. His e-mail stated that he had twenty acres that he had been trying to place in an easement with no success so far.

Mrs. Pollard stated that placing a parcel into a conservation easement is not as easy as one might think. She stated that there are certain criteria that must be met and it is a long process. She further stated that a conservation easement is totally voluntary and there can be a dwelling there. She stated that every conservation easement is considered to be for public benefit.

Mr. Jones closed the floor for public input.

Mr. Brent asked if the Commission was contemplating a minimum size for conservation easements, or not changing the ordinance for smaller parcels.

Mr. Chupp stated that, in his opinion, the trouble with trying to specify criteria is that there are so many possibilities, such as special wildlife, and he doesn't think they can all be covered. He further stated that they should rely on the Board of Supervisors to use its discretion on any parcel that may not be a good choice for a conservation easement.

Mr. Jenkins stated that in coming up with a list of criteria, something is bound to be overlooked. He further stated that is why there is a process to allow amendments to the ordinances.

Mr. Smart stated that he believed the conservation easement ordinance is a good thing to have. He stated that he doesn't think there will be a "rush to the gates", but eventually there may be some land holdings that really will have an effect on conserving open space. He further stated that he would be willing to go with it the way it is written, where there is no minimum and the Board of Supervisors will have the option to accept or not accept a parcel.

Mr. Jones stated that he thought with the checks and balances that will be in place, it will work out.

Mr. Jones made a motion to forward the Conservation Easement Ordinance, as presented, to the Board of Supervisors recommending approval. **VOTE: 7-0.**

OTHER BUSINESS

Mr. Gill stated that the Planning Commission's by-laws state that the Planning Commission only needs to meet every other month and suggested that unless an application requiring Planning Commission action comes up, his suggestion would be that the Planning Commission not meet in October.

Mr. Jenkins stated that the meeting dates had been published.

Mr. Pleva stated that because they have announced it at this meeting, barring any applications received, he thinks that is sufficient.

Mr. Jones stated that there would be no October meeting unless an application comes in before the advertising deadline.

Mr. Pleva stated that he wanted to thank the Commission for their time and service. He stated that he is honored to be working in Lancaster County and is looking forward to working with everyone. He asked the members to contact him with any questions or comments.

Mr. Pleva stated that he wanted to add in reference to the Conservation Easement Ordinance, that staff, under the direction of the Board, could come up with some

guidelines to consider for the easements, even if it is not listed in the ordinance. He further stated that it is an important decision for easements because of tax implications and public benefits. He again thanked everyone.

ADJOURNMENT

The September 15, 2011 regular meeting of the Lancaster County Planning Commission was adjourned at 7:45 p.m.