

# **LANCASTER COUNTY PLANNING COMMISSION**

## **Minutes**

**October 16, 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 Robert Smart, Tara Booth, Steve Sorensen and Glenn Pinn.

Also present were Butch Jenkins, Board of Supervisors Representative, Don Gill, Planning/Land Use Director, Audrey Thomasson, Rappahannock Record, Charles Costello, Ben Burton and others.

Mr. Smart, Vice-Chairman, acted as chairman in Mr. Jones' absence.

Mr. Smart asked if there were any corrections or additions to the minutes of the September 18, 2008 regular meeting.

Mr. Smart moved to approve the September 18, 2008 minutes as submitted.  
VOTE: 4-0.

## **PUBLIC HEARING**

### **AMEND THE ZONING ORDINANCE, ARTICLE 8A, COMMERCIAL LIMITED DISTRICT, C-2**

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

Mr. Gill stated that the issue was to amend the Zoning Ordinance, Article 8A, Commercial Limited District, C-2, by adding the permitted use: 8A-1-36 Churches.

Mr. Gill stated that last month's rezoning request by the White Stone Church of the Nazarene made staff aware of the fact that churches are not a permitted use in the C-2, Commercial, Limited District. Apparently this was an undetected oversight through the years as all other zoning districts (except M-1, Industrial, Limited) allow churches as a permitted use. It would also seem logical for C-2 to allow churches since the more intensely commercial C-1 allows them.

Mr. Gill further stated that at last month's meeting, the Planning Commission indicated its willingness to consider adding churches as a permitted use in C-2.

Additionally, the Board of Supervisors at its meeting on 9/25/08 directed staff to bring this proposal to public hearing at the October Planning Commission meeting. Advertising has been conducted as required by law and to date, there has been no input from the public.

Mr. Smart opened the floor for public comment. There was no input.

Mr. Smart closed the floor to public comment.

Mr. Smart stated that the amendment needs to be done and made a motion to forward to the Board of Supervisors for approval the amendment of the Zoning Ordinance, Article 8A, Commercial Limited District, C-2, by adding the permitted use of 8A-1-36 Churches. VOTE: 4-0.

## **DISCUSSION ITEMS**

### **1)CASH PROFFER STUDY**

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

Mr. Gill stated that information is still being gathered from James City, Westmoreland and Middlesex counties to formulate a methodology for computing a maximum cash proffer.

Mr. Smart asked if there was any comment from the Commission. There was no comment.

Mr. Smart stated that he believed that they are on the right track by looking at the cash proffers and is glad that time is being taken to develop the system. He stated that he anticipated the issue would be on the November agenda.

Mr. Gill stated that the information needed in developing the system is quite extensive and that it will remain on the agenda until finalized.

### **2)PARKS AND RECREATION GUIDANCE COMMITTEE**

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, suggestions have been received for committee members from District One, Two, Three and the At-large position. Suggestions are still needed for Districts Four and Five. Ty Brent will represent the Planning Commission and chair this committee.

Mr. Smart stated that he wanted to thank Ty Brent, in his absence, for his acceptance of the chairmanship of the Parks and Recreation Guidance Committee.

Mr. Smart stated that he thought the Parks and Recreation program could improve the quality of life in the county and possibly create economic advantages for the county as well.

Mr. Jenkins stated that the Board of Supervisors had asked about establishing the Parks and Recreation Guidance Committee back in April and wondered why it is taking so long to appoint members to the committee. He further stated that he would think by the spring, the committee should be up and running. He stated that if recommendations miss the budget window, then it is another year of delay for the program.

### **3)PROPOSED NEW DISTRICT ORDINANCE, R-4-RESIDENTIAL COMMUNITY**

Mr. Gill stated that the issue is 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 the County Attorney has reviewed the draft ordinance. He expressed that this was a good attempt at drafting a simple version of what could be a very complicated ordinance. He felt that all statutory requirements of the Code of Virginia Section 15.2-2305, which grants localities the authority to enact affordable dwelling unit ordinances, had been met. The attorney's only concern was the enforcement mechanism described in section 6A-4-4 regarding the continued affordability of the workforce housing units. He suggested that language should be added stating that subsequent sales will need a certification from the County, to be recorded with the deed, verifying that the subsequent sale still meets the requirements of the ordinance. Failure to obtain that certification would make any transaction invalid. Furthermore, the County's remedies in the event of an invalid transaction should be spelled out, such as granting the County the authority to seek any excess sales funds from the seller to be put into a fund to further promote the County's workforce housing goals.

Mr. Gill stated that the County Attorney wanted to know what the county's remedy would be if a property were sold for more than the affordable range as stated in the ordinance. The County Attorney suggested that the certification with the deed could help prevent that from happening.

Mr. Gill stated that he had received an e-mail from the County Attorney that day.

In the e-mail, he made a recommendation that the maximum year period be changed from thirty years to fifty years.

Mr. Jenkins stated that the County Attorney's opinion of changing to fifty years is a personal opinion and not a legal opinion. He further stated that he had a problem with the fifty-year recommendation.

Mr. Jenkins stated that what should be created is an environment where individuals will want to build affordable housing. The second issue is that if a person purchases workforce housing, holds onto the property and the value of the property increases, why shouldn't that individual see the appreciation of the property. Mr. Jenkins further stated that the workforce housing could do a service at first, then punishes the homeowner on the back end.

A citizen stated that in the state, there are two bodies, VHDA and DHCD, which deal with housing issues. The DHCD's loan program has a fifteen-year period with a one percent interest rate to keep the housing affordable.

Mr. Smart stated that in a fifteen-year period, the speculators would be weeded out.

Mr. Jenkins pointed out that if a developer builds affordable housing, they might put lesser quality features in them, such as cheaper floor coverings and fixtures, and thus the house may not appreciate as much because the amenities are less. However, if the home does appreciate, the homeowner should be able to take advantage of that.

Mr. Smart stated that a key issue is to have some enforcement of whatever period of time is decided as the County Attorney had pointed out.

Mr. Smart asked if anyone thought the certificate attached to the deed, as a form of enforcement, was a good idea.

Mr. Jenkins stated that he thought it was a good idea.

To help clarify the controlled affordability period, Mr. Gill read part E-6 of Section 15.2-2305 of the Code of Virginia: "For a requirement that the prices for resales and rerentals be controlled by the local housing authority or local governing body or designee for a period of not less than 15 years nor more than 50 years after the initial sale or rental transaction for each affordable dwelling unit, provided that the ordinance further provide for reasonable rules and regulations to implement a price control provision."

Mr. Smart asked Mr. Gill if this would be on the agenda again as a public hearing.

Mr. Gill stated that the Commission has already had a public hearing on this topic, but another public hearing could be scheduled if the Commission desires.

A citizen asked if a workforce housing property was sold when the market was up, why couldn't the profit from that sale be split between the homeowner and the county, which in turn could be used by the county to continue with the workforce housing program.

Mr. Jenkins stated that that assumes the county is subsidizing the homes. The intent of the workforce housing is not to subsidize the homes, but rather to encourage developers to produce homes at an affordable price.

Mr. Costello stated that the homeowner is being subsidized because the county is providing greater density for the developer to encourage workforce housing.

Mr. Jenkins stated that the dynamics of the real estate market here has priced workers out of local housing and it wasn't an issue twenty years ago.

Mr. Smart stated that a time period will have to be chosen between fifteen and fifty years and the language will have to be chosen for the certificate that will be included with the deed.

Mr. Gill stated that he would suggest the same language that is in the code.

Mr. Gill asked about a sliding scale in which, depending on what year the house is sold, the amount of profit could be prorated.

Mr. Jenkins stated that he would be willing to look at that.

Mr. Smart stated that the majority of the R-4 ordinance seems very good, but he still had issues with section 6A-4-4.

A citizen asked about rental properties.

Mr. Gill stated that the ordinance does address rental properties.

A citizen asked if the R-4 would be replacing the R-2 zoning ordinance.

Mr. Gill stated yes.

Mr. Smart stated that he thought that ninety percent of the text in the proposed ordinance was good, but more work needed to be done on about ten percent.

Mr. Gill referred to 6A-4-2 and 6A-4-3 and asked if the language should include the words "or rented" or if additional text would be needed.

Mrs. Booth stated that if the second line of section 6A-4-2 was changed to say, "...priced for purchase or rental," that should take care of it.

Mr. Jenkins stated that he would also add the words “for purchase, rental, or subsequent rental after purchase.”

Mr. Smart asked if a recommendation should be made for a limitation of time.

Mr. Gill stated that based on the Code of Virginia, there can be no time limit less than fifteen years.

Mr. Gill asked Mr. Smart if the Planning Commission had a recommendation.

Mr. Smart stated that he thought it should be locked in for fifteen years and possibly a sliding scale afterwards. He further stated that maybe the County Attorney’s opinion could be obtained again.

Mr. Jenkins suggested that Mr. Gill speak with William Pennell, County Administrator, concerning the timetable.

#### **4) CONSERVATION/CLUSTER SUBDIVISION**

Mr. Gill stated that the issue was to revise Section 5-26 of the Subdivision Ordinance to allow conservation/cluster subdivision to preserve open space.

Mr. Gill stated that preservation of open space was a key theme expressed during the update to the Comprehensive Plan. Since that time, several potential conservation/cluster ordinances were presented to the Commission for review as possible models for our own ordinance. Those voluminous ordinances were very difficult to interpret and would have been even more difficult to enforce.

Mr. Gill further stated that Lancaster County already has open space requirements for larger subdivisions contained in Section 5-26 of the Subdivision Ordinance, however its meager 10% open space requirement and “one size fits all districts” approach will not preserve the large amounts of open space craved by County residents. Therefore, revising this section, with zoning district specific open space requirements, is a logical and simplistic approach to preserving open space.

Mr. Gill stated that he had attached to the Commission’s packet the Code of Virginia Section 15.2-2286.1 which grants localities the authority to enact conservation/cluster ordinances. Cluster development is already defined in our zoning ordinance as, “a type of development that allows the reduction of lot sizes below the zoning ordinance’s minimum requirements if the land thereby gained is preserved as permanent open space for the community.” Conservation/cluster subdivision **does not** increase density. The same number of dwelling units allowed under current zoning would be allowed under conservation/cluster zoning. The difference is that those same dwelling units would be grouped in a smaller area on the parcel, with the remainder of the parcel

preserved as open space.

Mr. Gill also stated that he had attached a proposed revision to Section 5-26 of the Subdivision Ordinance drafted by Ben Burton of Bay Design Group after several conversations regarding the direction staff had intended to proceed with this revision. Mr. Gill stated that the chart was very useful for comparing, by district, conventional subdivision versus proposed conservation/cluster subdivision. Mr. Gill stated that he hoped that a thorough review and scrutiny of this draft by the Planning Commission would yield a viable model to bring to public hearing at a future meeting.

Mr. Smart asked the Commission if there was any comment.

There was no comment.

Mr. Gill stated that a conservation/cluster subdivision does not increase density, but rather rearranges or groups the number of allowable homes into a smaller area and keeps other areas as open space. Mr. Gill further stated that in the last twenty or so years, market prices have risen so high, people who use open space, such as farmers, have not been able to purchase land. He went on to say that conservation/cluster subdivision could produce a scenario where a homeowner's association could have a sizeable amount of open space that could be leased to a farmer or a conservation easement could be placed on that open space acreage. A conservation easement would lower the value of that open space acreage which could make it viable for sale to a farmer for the purpose of farming the land and not developing it.

Mr. Smart stated that the Virginia State Parks system leases some park land to farmers and thought that was a good idea.

Mr. Smart stated that he wanted to thank Ben Burton of Bay Design Group for preparing the chart.

Mr. Smart stated that he had a question regarding Section 5-26, B-3 where it suggests that lot sizes be reduced to twenty five percent of the base district.

Mr. Gill stated that he liked the twenty five percent of the base lot size, but would change the 5500 square feet minimum lot size limit to 10,000 square feet due to the fact that the Health Department uses 10,000 square feet as a minimum size to locate primary and reserve septic systems.

Mr. Gill stated that in Section 5-26, A, he thought that ten percent open space was too low and that the open space requirement "trigger" of fifteen lots was too high. He said he would change the "trigger" to ten lots to coincide with the traffic impact study requirement and increase the open space requirement as follows; A-1 should require seventy percent open space and thirty percent buildable land; A-2 should require sixty percent open space and forty percent buildable land; R-1 should require fifty percent open space and fifty percent buildable land; and R-3 should require forty percent open

space and sixty percent buildable land. He stated that R-4 should not be included in this revision since the Code of Virginia Section 15.2-2286.1 targets single family dwellings. The proposed R-4 district already requires thirty percent open space.

Mr. Smart stated that a developer that would come in to do a conservation/cluster subdivision would find it to be more cost advantageous to do a community sewer and water system and that would also preserve open space.

Mr. Gill stated that he didn't see why there would be any opposition to this revision. He also stated that the chart Mr. Burton had prepared was very useful, although there would be some changes if the Commission agreed with his recommendations.

Mr. Smart asked Mr. Gill if this issue would be a public hearing matter.

Mr. Gill stated yes.

Mr. Smart suggested that the revision issue be a discussion item again next month to give all of the Planning Commission members a chance to discuss the issue.

Mr. Gill agreed and stated that he thought Mr. Jones would like to have an opportunity to discuss the issue with the Commission.

Mr. Jenkins stated that the ordinance needs to be coordinated with the R-4 zoning district.

Mr. Smart stated that the focus of the proposed R-4 district is on affordable housing.

Mr. Jenkins stated that, in practicality, affordable housing would also come out of cluster developments.

Mr. Gill stated that it was his recommendation to not allow the conservation/cluster subdivision in the waterfront residential overlay.

Mr. Jenkins stated that he thought that there was a place for cluster housing in the waterfront overlay, but it must be much stricter. Mr. Jenkins further stated that the purpose of cluster housing on the waterfront would be to avoid a "checkerboard" effect, where there is a home every two acres on the water.

Mr. Smart added that in updating the Comprehensive Plan, it was mentioned many times that the waterfront areas be kept as natural as possible.

Mr. Gill referred to an e-mail he had received from a citizen, which states that according to the Code of Virginia, Section 15.2-2286, four guidelines must be met. These guidelines are: 1) Ordinance has to apply to at least 40% of unimproved land in residential and agricultural districts; 2) Process is "by right"; 3) Process may exempt

parcels 2 acres or less; and 4) Density bonus is NOT mandated. Mr. Gill stated that these four guidelines could be met.

Mr. Smart stated that this issue would come back as a discussion item at the November meeting.

Mr. Gill stated that he would make the changes that have been recommended and bring it back next month.

### **OTHER BUSINESS**

Mrs. Tara Booth, District 3 Planning Commission member, stated that her sixth grade class at Lancaster Middle School in Kilmarnock was presenting their annual Veteran's Day program on Friday, November 7<sup>th</sup>. There will be two performances, the first at 9:00 a.m. and the second at 1:30 p.m. The public was invited to attend.

### **ADJOURNMENT**

The October 16, 2008 regular meeting of the Lancaster County Planning Commission was adjourned at 8:20 p.m.