

LANCASTER COUNTY PLANNING COMMISSION

Minutes

October 21, 2010

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, Chairman, Robert Smart, Tara Booth, Steve Sorensen and David Chupp.

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

Mr. Jones asked if there were any corrections or additions to the minutes of the September 16, 2010 regular meeting.

Mr. Jones moved to approve the September 16, 2010 minutes as submitted.

VOTE: 5-0.

CONSIDERATION ITEM #1

ORDINANCE TO CO-HOLD CONSERVATION EASEMENTS

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

Mr. Gill stated that the discussion on this item was continued from last month's meeting to allow Jim Cornwell, Lancaster County's attorney, sufficient time to review the proposed ordinance and offer comments.

Mr. Gill stated that Mr. Cornwell had responded with written comments earlier that day and provided copies to the Commission members. He stated that the County attorney expressed concern over the fact that the County would be solely responsible for enforcement action which could result in the expenditure of taxpayer funds to defend an easement challenge. Mr. Gill stated that Mr. Cornwell also stated that Lancaster County would last into perpetuity, but the Northern Neck Land Conservancy (NNLC) may not, in which case, the County would then also be responsible for doing those things the proposed ordinance requires the NNLC to do.

Mr. Gill stated that the way it appears, based on Mr. Cornwell's comments, the County has the authority now to enforce conservation easements, but not the obligation to

do so. He stated that, in his opinion, the reason the NNLC would like an agreement with the County is for open space easements. Mr. Gill stated that the NNLC has the authority to hold conservation easements, but not open space easements. He stated that the definitions of both conservation and open space easements are discussed in Mr. Cornwell's comments.

Mr. Gill stated that the purpose of the discussion would be to address concerns of the Planning Commission before ultimately bringing this issue back for a public hearing. He stated that Page Henley of the NNLC was present to answer any questions that the Commission might have.

Mr. Henley stated that the NNLC would like to have a chance to review Mr. Cornwell's comments and ask that the matter be continued until next month's meeting.

Mr. Henley stated that he would like the Commission to know that the county of King George has joined Northumberland and Richmond counties in having cooperative agreements with the NNLC.

Mr. Gill stated that the County attorney's comments may seem to have a negative tone, but he wanted to remind the Commission that the Comprehensive Plan encourages conservation easements and specifically mentions the NNLC by name.

Mr. Jenkins stated that if the County is going to proceed with this, there needs to be a way to make sure that the NNLC or its heir doesn't have a right to sue the County, if the County chooses not to enforce an easement.

Mr. Henley replied that the way the easements are structured in other counties, both co-holders agree to a cause of action.

Mr. Jenkins stated that he respected what Mr. Henley had said, but that things change over time and a parcel of land that was thought to be in the best interest of the citizens of Lancaster County to be put into a conservation easement now could be reconsidered for another purpose twenty, thirty, or forty years from now.

Mr. Smart stated that at last month's meeting the cost of maintaining an easement was not discussed. He stated that when reading Mr. Cornwell's comments, he was surprised at the figure of \$10,000 to \$15,000 to maintain it for the life of the easement.

Mr. Smart asked Mr. Henley if the NNLC received all of its money from charitable donations.

Mr. Henley replied yes.

Mr. Smart stated that if litigation ensued, that would mean more cost and that expense would fall on the County.

Mr. Chupp asked how they could sue the County.

Mr. Jenkins stated that their argument could be that the County didn't act in good faith.

Mr. Chupp stated that he thought there were a lot of "bogeymen" being considered.

Mr. Jones stated that is why the County Attorney is doing his due diligence to research the matter and if he has concerns, then they need to be addressed.

Mr. Henley stated that the only time the County would be required to make an expenditure is when there is a problem with easement enforcement.

Mr. Jones asked Mr. Henley how many easements the NNLC currently held.

Mr. Henley replied that the NNLC holds one Northumberland County easement completely and co-holds a couple of easements in other counties.

Mr. Jones asked if the NNLC finds that people stick to the rules of the easement.

Mr. Jenkins stated that it is not the current generation that you have to worry about.

Mr. Henley replied that there has never been a challenge to an easement.

Mr. Jenkins stated that he wanted to make everyone aware that the ordinance would obligate every Board of Supervisors in the future to enforce it.

Mr. Jones stated that a good example is the boathouse ordinance. He stated that the due diligence the Planning Commission and the Board of Supervisors did at that time made the definition "locked tight" so there is no question about what you can or cannot do with boathouses.

Mr. Jenkins stated that a piece of property now might seem like a good place for "open space" but forty years from now that same parcel could mean a hundred jobs for citizens of the county.

Mr. Jones stated that he would like to bring the issue back next month after everyone has had a chance to review the County attorney's comments.

DISCUSSION ITEM

BLUE-GREEN INFRASTRUCTURE PLANNING

Mr. Gill stated that Stuart McKenzie, Environmental Planner with the Northern Neck Planning District Commission, was present to make a third presentation on blue-green infrastructure planning, the concept of delineating “greenways” or conservation areas with reduced or no development in our county that could be linked to similar areas in adjoining counties to create a “greenway” across the Northern Neck.

Mr. Gill stated that Mr. McKenzie is making the presentations to the Planning Commissions in Lancaster, Northumberland, Richmond, and Westmoreland counties and if the Planning Commission deems it a worthwhile venture, the ultimate goal would be to define those areas with a map that would be included in the next revision to the Comprehensive Plan.

Mr. McKenzie stated that conservation areas could help retain the history and culture of the County. He stated that, as an example, it is in the best interest of everyone to maintain forested areas. Mr. McKenzie stated that some of the benefits of maintaining forests are: 1) forests hold soil in place 2) forests sequester carbon 3) forests filter stormwater runoff 4) forests filter the air 5) forests provide hunting areas for wild game and 6) forests are aesthetically pleasing.

Mr. McKenzie showed results of the City Green modeling software, which shows impervious cover and open space for designated areas. He stated that the satellite imagery was from the years of 1996, 2001 and 2006. He stated that according to the models of those three years, the forested area is declining.

Mr. McKenzie presented maps of the area showing forests.

Mr. Jenkins asked if the information presented on the maps went by the listed parcels of land that are on record.

Mr. McKenzie stated that they were not. He stated that they were interpreted from aerial photographs and they showed contiguous, forested areas of one hundred acres or more.

Mr. Jenkins stated that his district is shown as being basically unforested and there are more forested areas than what the maps were showing.

Mr. McKenzie stated that the maps are only showing large parcels of one hundred acres or more.

Mr. Jones asked if the models that compared the three years had also been done for the entire state.

Mr. McKenzie stated that he was not sure about that, but that the Department of Forestry does maps each year showing forested lands.

Mr. Jones asked if a parcel would still be considered a forest if it had been cut and re-seeded.

Mr. McKenzie stated yes, unless the stumps had been removed.

Mr. McKenzie stated that just as a growth area has been identified for the County, he would like to see areas identified that may be best kept in a natural state. He further stated that it is entirely up to the Planning Commission on how they would like to proceed.

Mr. Jones stated that he thinks identifying the natural areas is important, but they need to find a way to go about it so as not to infringe on property owner's rights.

Mr. Smart stated that there is a relatively small percentage of public ally owned land in the County and the blue-green infrastructure project would rely on the voluntary participation of private landowners.

Mr. Smart stated that he liked the idea of identifying reservoir sites.

Mr. Smart stated that little help is given to the forested landowner. He further stated that farmers have crop insurance and extension programs, but the landowner with forests has no crop insurance with long maturity times and that decreases the incentive to keep the land forested.

Mr. McKenzie stated that hunt clubs help landowners who have forests pay their taxes and keep their roads open.

Mr. Chupp stated that he saw it as a planning tool and not rendering absolutes at this time. He stated that it would be helpful to identify reservoir areas.

Mr. Jones stated that he agreed with Mr. Chupp, but that when the Commission has tried to identify areas for other things, the owners of those properties did not want their property singled out.

Mr. Jones stated that it has been his experience in the past that the property owners don't want their properties listed in the Comprehensive Plan as being a good place for reservoirs or other conservation areas.

Mr. Jones stated that he did think it was a good idea to identify areas for reservoirs.

Mr. Smart stated that he thought it was interesting that some of the early settlers of the area built a number of millponds and used them primarily for the power that the water generated and he said that many of these millponds still exist. He stated that the millponds are important because they help to keep groundwater levels up.

Mr. McKenzie stated that he could bring back more maps and information on reservoirs.

Mr. Gill stated that the Comprehensive Plan had identified seven potential reservoir sites and if Mr. McKenzie could do an overlay to show how many homes would be affected for each, that would be helpful information to identify possible conservation areas for the next revision of the Comprehensive Plan.

Mr. McKenzie stated that he would like to come back in January with some more information.

OTHER BUSINESS

Mr. Jones stated that it has been the practice of the Planning Commission not to have a December meeting.

Mr. Jones asked Mr. Gill if he had any public hearings coming up for that month.

Mr. Gill stated no.

Mr. Jones stated that there would not be a December meeting, if that were agreeable with everyone.

All members agreed.

ADJOURNMENT

The October 21, 2010 regular meeting of the Lancaster County Planning Commission was adjourned at 8:00 p.m.