

LANCASTER COUNTY PLANNING COMMISSION

Minutes

November 18, 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, Ty Brent and David Chupp.

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

Mr. Jones asked if there were any corrections or additions to the minutes of the October 21, 2010 regular meeting.

Mr. Jones moved to approve the October 21, 2010 minutes as submitted. **VOTE: 6-0.**

DISCUSSION 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 Commission members sufficient time to review the comments offered by Jim Cornwell, Lancaster County's attorney.

Mr. Gill stated that Mr. Cornwell 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 Mr. Cornwell pointed out that the County already has the authority, but not the obligation, to enforce conservation easements on a case-by-case basis, as it sees fit, under the Code of Virginia Section 10.1-1013.

Mr. Gill stated that the NNLC's attorney, Mr. Lee Stephens, responded with comments this week, which he in turn provided to all Commission members.

Mr. Gill stated that he had been unable to locate another similar, existing ordinance for co-holding conservation easements in other counties. He further stated that neighboring counties, such as Northumberland, Richmond and King George counties have done resolutions, not ordinances.

Mr. Jones referred to page two of Mr. Stephens' comments that stated that the NNLC wanted Lancaster County to be responsible for the legal defense of possible easement challenges.

Mr. Jones stated that, in his opinion, the Board of Supervisors has the best scenario now, with having the power to enforce conservation easements, but not the obligation.

Mr. Smart asked what definitive advantage to the County taxpayers would see if the County did adopt a conservation easement ordinance. He stated that the NNLC is already set up to hold conservation easements by authorization of state and federal regulations and the County can become involved, at this time, only if it wants to be.

Mr. Smart stated that he thought that entering into an agreement, such as this, could be potentially expensive for the County. He further stated that he understands that everyone is interested in conservation easements, but he thought it should be a voluntary issue between the landowner and the NNLC.

Mr. Chupp stated that he thought an advantage for the NNLC is that it would be easier for them to entice landowners to consider conservation easements if the County was involved because they would be ensured that someone would be there to enforce the easement in years to come. He stated that he felt misled, however, thinking that the County had the option, not the obligation to enforce legal action. Mr. Chupp stated that after thorough review of the attorney's comments and the proposed ordinance, he stated that the County is under obligation to enforce legal action.

Mr. Smart stated that, in his opinion, it would be better to leave things as they are because the County has the right, but not the obligation to enforce conservation easements at this time.

Mr. Jones stated that, for review, the Board of Supervisors was asked to adopt a resolution to co-hold conservation easements with the Northern Neck Land Conservancy as other neighboring counties have done. He stated that the Board of Supervisors had expressed that if they were going to agree to co-hold conservation easements, they wanted an ordinance, not a resolution, and wanted the Planning Commission to draft such an ordinance. Mr. Jones further stated that now, the Commission is not sure that an ordinance or resolution is needed, even though everyone agrees that conservation easements are a good way to preserve open space.

Mr. Brent asked who would police the conservation easements, if an ordinance were adopted.

Mr. Gill stated that it would be the NNLC.

Mr. Brent asked whom would the NNLC consult within the County.

Mr. Jenkins stated that that needed to be clarified as the term “ the County” could mean the land use officer, the Board of Supervisors, or the Planning Commission.

Mr. Jones asked if the other counties’ resolutions are set up to specifically name their county as being solely responsible for the legal defense issues.

Mr. Stephens stated yes, absolutely.

Mr. Jenkins stated that whether this issue is addressed by ordinance or resolution, they both would obligate, monetarily, both current and future Boards and taxpayers to defend any possible disputes involving conservation easements.

Mr. Jones stated that he thought that currently the County has the best of both worlds.

Mr. Jones stated that he thought the Commission could use some direction from the Board of Supervisors. He further stated that he thought everyone agreed with the NNLC’s mission, but an ordinance is not necessarily needed at this time.

Mr. Jenkins stated that, in his opinion, the problem is not with local government; it is with the state code. He further stated that the state code should allow organizations, such as the NNLC, more power to keep the easements in a permanent state of conservancy.

Mr. Jones stated that he personally didn’t think an ordinance was needed.

Mr. Jenkins stated that someone in the future, who is looking at land, is going to have a harder time researching a resolution as opposed to researching an ordinance and he stated that that was where the Board was going when they insisted upon an ordinance.

Mr. Jones stated that he agreed that if the Board wanted something definitive, then there needed to be an ordinance.

Mr. Jones stated that he thought when a parcel was put into a conservation easement, that was how it remained and there would not be an argument over its development.

Mr. Gill stated that the deed of easement could be written to allow a limited amount of development, if that is how the landowner wants it. Challenges would arise if something were wanted on the land that was not specifically spelled out in the deed of easement.

Mr. Jenkins stated that the potential is always there for future conflicts over development.

Mr. Jones asked Mr. Stephens how many easements are co-held by the NNLC.

Mr. Stephens replied that the NNLC co-holds one easement with the Virginia Outdoors Foundation in Lancaster County at the present time.

Mr. Chupp stated that this potential ordinance is dealing with issues that are very far into the future. He gave an example of a parcel that may be placed into a conservation easement and used for its timber in the present day and seventy-five years from now, it may be the only place for a reservoir. There would need to be some leeway to get out of the conservation easement if it is contrary to the public's interest.

Mr. Stephens responded that the way that would have to be accomplished is through the court system. He stated that that would be a rigorous remedy. He stated that if the NNLC entered into a partnership with the County, the NNLC would be looking to the County to be the financial backstop in the event of a conservation easement challenge.

Mr. Stephens stated that historically nothing has happened with conservation easements in Virginia until 2002. He stated that when these documents are drafted, they are thought of in terms of hundreds of years and it is hard to plan that far into the future, much less perpetuity.

Mr. Stephens stated that he was intrigued by Mr. Jenkins' comment on having the state code changed to specifically give easement-holding organizations more authority. He stated that two years ago the code was changed to allow the soil and water conservation districts to have direct access to the Attorney General's office to defend these issues.

Mr. Stephens stated that the NNLC has approached the Northern Neck counties and King George and been successful with three of the five so far with entering into the conservation easement agreements with the understanding that the NNLC would do all of the "grunt work" up front and that the counties would defend challenges if they arose.

Mr. Stephens stated that his biggest fear would be that a landowner wants to contribute, but there is no holder that is willing to take smaller parcels.

Mr. Stephens stated that he would ask the Planning Commission to consider asking the Board of Supervisors to discuss the issue. He further stated that Mr. Cornwell is exactly right, that co-holding conservation easements could be a financial burden for

the County. He stated that the Board of Supervisors should weigh it out and determine if the risk is worth the reward.

Mr. Jones stated that he thought the consensus was that the Planning Commission did not see where an ordinance was needed and if the Board of Supervisors does want it, then further direction would be needed from the Board.

The Planning Commission members agreed.

Mr. Jones made a motion to forward to the Board of Supervisors that the Planning Commission does not think an ordinance or resolution for co-holding conservation easements is necessary at this time and will be looking for further direction from the Board. **VOTE: 6-0.**

Mr. Jenkins asked Mr. Gill about the Board of Supervisor's docket for the next meeting.

Mr. Gill stated that it was a light docket and that he could get the issue on the agenda.

Mr. Jenkins asked Mr. Stephens if there was a great urgency and whether there was a parcel of land for which this was pending.

Mr. Stephens replied no.

Mr. Jenkins stated that his suggestion was for a representative from the NNLC to be present at the Board of Supervisor's meeting, but not anticipate a decision from the Board that night, as it will be the first time that the issue is in front of the Board.

Mr. Smart stated that when the motion is sent up to the Board of Supervisors, he thought it should be mentioned that the Planning Commission likes the work that the NNLC is doing, but would like to back off from the obligation to take legal action.

Mr. Chupp asked Mr. Stephens about the state not allowing an organization such as the NNLC to hold open space easements.

Mr. Stephens stated that the Virginia Open Space Land Act allows public bodies to hold open space easements and the Virginia Conservation Easement Act allows non-public bodies to hold conservation easements. He stated that while open space land and conservation land are defined separately, there are many similarities between the two.

OTHER BUSINESS

Mr. Jones made the announcement that there would not be a December meeting as is customary for the Planning Commission.

Mr. Jones thanked everyone for a successful year.

ADJOURNMENT

The November 18, 2010 regular meeting of the Lancaster County Planning Commission was adjourned at 7:40 p.m.