

Northumberland County Planning Commission
October 20, 2022
Minutes

The regular monthly meeting of the Northumberland County Planning Commission was held on October 20, 2022 at 7:00 p.m. in person at the Northumberland Courts Building and using Zoom (telephonic meeting) with the following attendance:

Chris Cralle	Present	Garfield Parker	Present
Vivian Diggs	Absent	Roger McKinley	Present
Alfred Fisher	Present	Heidi Wilkins-Corey	Present
Ed King	Present	Charles Williams	Present
Richard Haynie	Present	Patrick O'Brien	Absent

Others in attendance:

Stuart McKenzie (County Planner)

Philip Marston (Zoning Administrator)

RE: CALL TO ORDER

The meeting was called to order by Chairman Fisher.

Mr. King gave the invocation, followed by Mr. Fisher leading the commission in the Pledge of Allegiance.

RE: AGENDA

Mr. McKenzie requested to add the revision to the zoning ordinance for tent camping to the Work Session portion of the agenda. Mr. McKinley made a motion to approve the agenda with the revision, and Mr. King seconded the motion. All voted in favor of accepting the agenda as revised.

RE: MINUTES- September 8, 2022; September 15, 2022; September 28, 2022

Mr. Cralle motioned to approve the minutes from the two work sessions on September 8 and September 28, as well as the regularly scheduled meeting on September 15, 2022, which was seconded by Mr. Parker. All voted in favor of accepting the minutes from the two work sessions and meeting.

RE: COMMISSIONERS' COMMENTS

There were no Commission member comments.

RE: STAFF MEMBERS' COMMENTS

Staff did not have any comments.

RE: CITIZENS' COMMENTS

There were no citizens comments.

RE: PUBLIC HEARINGS

There were no public hearings scheduled.

RE: WORK SESSION ITEMS

Mr. McKenzie asked the commission members to clarify the recent revisions made to the travel trailer zoning ordinance regarding tent camping, as there is a possibility of misinterpretation of the language. Mr. McKenzie read the sentence in question "Tent Camping is permitted by owners, residents, and tenants on property owned, leased, or otherwise legally occupied by them and they may allow guests to camp thereon without compensation for a period of no more than seven days." Mr. McKenzie asked the commission members if it was their intent to include all the groups mentioned (owners, residents, tenants, and guest) for the seven-day camping limit. Commission members stated that yes, the idea was that recreational camping (camping without compensation) would be limited to seven days. Mr. McKenzie stated that is what he thought the commission had said, but pointed out that the sentence was a compound sentence and after the "and", the sentence could be construed as guests have a limit of seven days and owners, residents, tenants have no limit on how long they can camp on their property. Mr. McKinley asked if this revision limits property owners camping on their own property. Mr. McKenzie stated yes. Mr. McKinley state he does not want to limit the rights of the property owner, tenant, or resident. Mr. McKinley stated he is thinking of the homeowner who has family visiting from out of town and does not have enough bedrooms for all of them, camping should be an option. Mr. McKinley stated he was mainly thinking of properties that already have a house on the lot. Mr. Marston reminded the commission of the reason for the revision of the ordinance from the BOS memo, that being regulating individual tent commercial camping. Mr. Parker made the motion to revise the tent camping ordinance to clarify that owners, renters, residents and guests (which are recreational campers, with no compensation), can only camp on their property for a maximum of seven days. The motion was seconded by Mr. King, and the vote is as follows:

Chris Cralle	Aye	Garfield Parker	Aye
Vivian Diggs	Absent	Roger McKinley	Nay
Alfred Fisher	Aye	Heidi Wilkins-Corey	Aye
Ed King	Aye	Charles Williams	Aye
Richard Haynie	n/a	Patrick O'Brien	Absent

The motion passed.

Mr. McKenzie stated that the commission is now going to consider solar zoning ordinance revisions. Mr. McKenzie had the draft solar ordinance projected on a screen

for all commission members and the public to see, and started to go through the changes that the commission had made so far.

First, Mr. McKenzie stated that the commission considered prohibiting utility scale solar facilities within a one mile buffer from tidal waters. Mr. McKenzie created a map depicting the one mile from tidal waters prohibition area, and it turned out the prohibited area of the county was around 65% of the land area of the county. Planning Commissioners deemed that a little too strict and decided against the prohibition of solar energy facilities within one mile of tidal waters. Planning commission members then considered prohibiting utility scale solar facilities from the R-1, Residential General, and R-2 Residential Waterfront zoning districts, which they ultimately passed.

Mr. McKenzie then explained that the commission wanted to make sure there is a fire protection plan, as requested by the BOS, so in the section requiring an Emergency Operations Plan (EOP), a sentence was added to emphasize that a fire protection plan is a required component of the EOP.

Next Mr. McKenzie stated that he had alerted the commission that although there is a requirement for a Knoxbox to be installed at the solar energy facility site, outside the fence, that there was no provision on who in the county would have access to the key to the Knoxbox, so the commission added a sentence that stated the Chief of Emergency Services would have access to the Knoxbox.

Mr. McKenzie then proceeded to the proposed requirement for an environmental impact assessment for a solar energy facility, that addresses the BOS request for environmental issues to be considered, that the commission passed.

Next Mr. McKenzie showed the section of the solar energy facility zoning ordinance that the commission decided to add the requirement of a landscape agreement and a landscape surety, to assure that the vegetative buffer surround the solar facility remains intact, and shields the facility from view of highways, rights of ways, and adjacent properties.

Mr. McKenzie reminded the members that although the commission previously passed the landscape agreement, with surety, that the memo from the BOS requesting the Planning Commission examine issues with the solar energy facility zoning ordinance specifically asked the commission to consider grass cutting. Mr. McKenzie stated that by mowing grass at the end of the growing season, there is less dead and dry combustible vegetation that could ignite into a wildfire, should there be an ignition source nearby. Mr. McKenzie then stated that mowing once a year is probably not enough, and maybe we should require three mowings a year, like VDOT does with the primary highways. Chairman Fisher stated that he thought that two mowings a year were enough, and that stipulating a time frame would ensure that the mowing was completed when most effective. Mr. McKenzie suggested one mowing in Spring and one mowing in the Fall. Mr. Fisher stated he thought that a mowing in May and September would be the best time to require the two annual mowings, as the cool weather in September slows grass growth, and May has considerable growth that would need to be cut. Mr. McKinley made a motion to require two mowings a year, one in May and one in September, which was seconded by Mr. Cralle. The vote was as follows:

Chris Cralle	Aye	Garfield Parker	Aye
Vivian Diggs	Absent	Roger McKinley	Aye
Alfred Fisher	Aye	Heidi Wilkins-Corey	Aye
Ed King	Aye	Charles Williams	Aye
Richard Haynie	n/a	Patrick O'Brien	Absent

Mr. McKenzie continued the review of the changes made to the solar energy facility zoning ordinance, by stating the commission considered and added a requirement that the solar facility applicant provide proof of liability insurance and provide a copy of the lease agreement with the property owner. Mr. McKenzie stated that this would inform the county of the life of the project (the term of the lease), so that county staff would have an idea when a facility might be decommissioned in the future.

Mr. McKenzie then alerted the commission members that since the commission added the requirement of providing a copy of the lease, that #12 in the existing ordinance, which stated: "Documentation of right to use property for the proposed project. Documentation shall include proof of control over the land or possession of the right to use the land in the manner requested", would be duplicative, and thus was deleted from the revised ordinance. There was discussion about if there were solar energy facilities built in Virginia that were built on land owned by a power company, or whether a majority were built on land leased from private citizens. The consensus was that a majority of solar facilities in Virginia were built on land that was leased, and there was no reason to change the language to accommodate solar facilities built on a utility company owned land.

Mr. McKenzie proceeded to outline the requirement added by the Planning Commission require all lighting fixtures be facing downward to prevent glare to neighboring properties. Mr. McKenzie stated that this downward lighting component is boilerplate language that the county adds to most conditional use permits.

Mr. McKenzie then outlined the changes that the commission made regarding the decommissioning plan, that the county would be able to choose the Virginia licensed engineer to revise the decommissioning plan every five years, and that the project applicant would pay the cost for the engineer's revision of the decommissioning plan. Mr. McKenzie reminded commission members that the county attorney had recommended a two year interval for revising the decommissioning plan, due to current market price volatility. Mr. McKenzie asked the commission members if they would consider changing the interval for revising the decommissioning plan to two years, per the county attorney. Mr. McKenzie reminded the members that since the applicant will be paying for the engineer's time, that the interval does not matter to the county, as it will not cost the county regardless of the interval chosen. Mr. McKenzie also relayed that if we advertise for the BOS public hearing on the solar energy facility zoning ordinance revisions with a two year decommissioning plan revision interval, and the Board decided that two years is too frequent, the Board could make the ordinance less strict by choosing 3 or four years, without having to re-advertise for a subsequent public hearing, as the

Board would be making the ordinance less strict than publicly advertised. Mr. McKenzie then explained if the commission left it at five years, and the BOS wanted a shorter interval, then the county would have to re-advertise the public hearing, because the Board would be making it more strict, and that would add at least another month to instituting the revisions, not to mention the cost of the county having to pay for additional public notices in the newspaper for the new public hearing. Mrs. Wilkins-Corey stated that she thinks every two years is onerous, but that if it is administratively convenient she could be persuaded to go along with it. Mrs. Wilkins-Corey further explained that she did not want Northumberland County to get a reputation of being hard to work with. Mr. McKenzie stated that the commission could change the interval to two years in the draft ordinance, as suggested by the county attorney, but also include a recommendation by the Commission to the Board for a five year interval in revising the decommissioning plan. Mr. McKinley made a motion to revise the ordinance to a two year interval, with a recommendation from the Planning Commission to the BOS that they feel five years is more appropriate. The motion was seconded by Mr. King, and the vote was as follows:

Chris Cralle	Aye	Garfield Parker	Aye
Vivian Diggs	Absent	Roger McKinley	Aye
Alfred Fisher	Aye	Heidi Wilkins-Corey	Aye
Ed King	Aye	Charles Williams	Aye
Richard Haynie	n/a	Patrick O'Brien	Absent

The motion passed unanimously.

Mr. McKinley stated he has a problem with #13e, which stated “The owner or owners of a solar facility shall return the site to the land cover that was present before the solar facility was built.” Mr. McKinley asked what would happen if the solar energy facility was built on forest land, would the applicant have to replace the stumps, or plant trees on the property? Mr. McKinley stated you cannot replace 25 year old trees, if it was built on a forested area. Mr. McKenzie stated that he understands Mr. McKinley’s point, and queried the commissioners how would we go about correcting the language. Mr. Marston suggested that we revise the sentence to read “The owner or owners of a solar facility shall return the site to *permanently stabilized land with vegetative cover.*” The members present thought that would solve the problem, Mr. McKinley made a motion to accept the revised language, seconded by Mr. Parker with the vote as follows:

Chris Cralle	Aye	Garfield Parker	Aye
Vivian Diggs	Absent	Roger McKinley	Aye
Alfred Fisher	Aye	Heidi Wilkins-Corey	Aye
Ed King	Aye	Charles Williams	Aye
Richard Haynie	n/a	Patrick O'Brien	Absent

The motion passed unanimously.

Mr. McKenzie stated that the Virginia State Code allows for a solar energy applicant to enter into a siting agreement with a locality that it is planning on building a solar facility

in that jurisdiction, and provide proffers to offset the impact of the solar energy facility on the jurisdiction. Furthermore, Mr. McKenzie stated the proffers could be cash payments or in kind services or purchases, or could address a need in the jurisdiction's Capital Improvement Plan. Mr. McKenzie further explained that this is a state code, and that the county does not need to reference the state code in the local ordinance in order to implement it, noting that Richmond County does not have a reference in their solar ordinance. However, Mr. McKenzie stated that if we do refer to a siting agreement in the county solar energy ordinance, it would make future solar developers aware that the county is going to request a siting agreement negotiation process with every solar facility proposed. Mr. Marston stated that his preference would be to add a reference to the county solar ordinance, to make it clear that the county expects a siting agreement to be negotiated. Mr. Fisher made a motion to include the siting agreement statement, with the appropriate State Code Reference included. Mr. King seconded the motion and the vote was as follows:

Chris Cralle	Aye	Garfield Parker	Aye
Vivian Diggs	Absent	Roger McKinley	Aye
Alfred Fisher	Aye	Heidi Wilkins-Corey	Aye
Ed King	Aye	Charles Williams	Aye
Richard Haynie	n/a	Patrick O'Brien	Absent

The motion passed unanimously.

Mr. McKenzie then stated that other neighboring counties in the region have a solar conditional use permit fee that is large enough to cover the staff expense for reviewing an application. Mr. McKenzie recalled the Bluff Point Planned Unit Development that was proposed several years ago, that the county spent considerable staff time reviewing the proposal. Mr. McKenzie stated that Lancaster County has a \$1,500 solar permit application fee, and perhaps Northumberland County should consider an increased fee for solar conditional use permits. Mr. McKinley state that in some Virginia counties, they require a \$1000 permit fee to review any rip rap wetland board application, so he does not think the \$1,500 solar conditional use permit fee would be out of line, and added that maybe even \$2,000. Mr. McKenzie further explained that the standard county fee of \$150 for a conditional use permit does not even cover the cost of advertising a public hearing in two newspapers for two weeks, so with every conditional use application, the county is losing money. Mr. McKinley made a motion to recommend to the BOS that the county institute a \$1,500 solar energy facility conditional use permit fee, which was seconded by Mr. Cralle, with the vote as follows:

Chris Cralle	Aye	Garfield Parker	Aye
Vivian Diggs	Absent	Roger McKinley	Aye
Alfred Fisher	Aye	Heidi Wilkins-Corey	Aye
Ed King	Aye	Charles Williams	Aye
Richard Haynie	n/a	Patrick O'Brien	Absent

The motion passed unanimously.

Mr. Williams asked if solar developers are prohibited from submitting applications for solar energy facilities at this time. Mr. Marston stated that no, that is not the case, as the BOS has not enacted a moratorium on solar energy facility conditional use applications. Mr. Williams asked if the BOS needs to hold a public hearing to enact a moratorium on solar energy facility conditional use applications. Mr. Haynie stated no, just a motion. Mr. Haynie stated that all the Board has now are the conditions placed on a conditional use permit.

Mr. McKenzie then pivoted to discussing the Remote Participation Policy, by stating that if, in the future, planning commission members want to participate remotely for meetings, either telephonically or by internet, then the Planning Commission would have to adopt a Remote Participation Policy. Mr. McKenzie further explained that before, during the pandemic when the Planning Commission had members participate remotely, that was covered under the County local emergency declaration. However, that local emergency declaration has expired, and now the planning commission is covered under state code, and state code requires a public entity to pass a remote participation policy. Mr. McKenzie stated he had previously sent out a draft of a remote participation policy for the Planning Commission, modeled after the Board of Supervisors remote participation policy which they have already adopted. Mr. McKenzie also stated that there are only specific instances when a member of a public body can participate remotely, and that includes a temporary or permanent disability or other medical condition that prevents the member's physical attendance or such member is unable to attend due to a personal matter and identified with specificity the nature of the personal matter. Mr. McKenzie then stated that in addition to adopting the remote participation policy, that before each meeting where there is a member that wants to participate remotely, before the meeting starts, the commission would have to vote to allow that member or members to participate remotely for that particular meeting. Mr. McKenzie added that the Board of Supervisor's adopted a remote participation policy, because with only five members, it is more difficult to have a quorum, and the commission, with its ten members has an easier time obtaining a quorum. Mr. McKenzie thanked the commission members for their dedication and stated that the time he has been working with the Planning Commission, there has rarely been an instance when we were unable to obtain a quorum. There was some discussion that this was not an urgent matter, and that it did not seem necessary at this time. The commission decided to postpone any decision on a remote participation policy, noting that they could revisit it in the future if need be. Chairman Fisher asked Mr. Haynie if there had been any progress on replacing Mr. Shirley, from Voting District 2, as he had resigned, and the commission only has nine members at this time. Mr. Haynie replied it is hard to find someone willing to volunteer their time, but he is working on it.

RE: DISCUSSION ITEMS

There were none.

RE: BOARD OF SUPERVISORS REPORT

No report was given.

RE: PUBLIC COMMENTS

Chairman Fisher opened the public comment section of the meeting, noting that the only public comments they would permit would be comments not relating to what they have discussed tonight. Mr. James Johnson of 403 Judith Sound Rd, Lewisetta, VA expressed displeasure about not being able to comment during the Planning Commission meeting regarding the subjects they are discussing. Mr. Johnson stated that previously the way the planning commission allowed public comment was ideal and was very productive. Mr. Johnson stated that waiting until the public comment period likely will not give the planning commission members or board of supervisors members enough time to digest and consider the information that may be presented to them a few minutes before they make a decision. Mr. Johnson stated he had some economic analyses that members could not fully process in the few minutes before a vote. Chairman Fisher stated he agreed with Mr. Johnson one hundred percent. Mr. Johnson state he would like someone to explain why that change was made.

RE: ADJOURNMENT

Mr. Fisher made a motion to adjourn the meeting at 8:42 pm, which was seconded by Mr. King with the vote as follows:

Chris Cralle	Aye	Garfield Parker	Aye
Vivian Diggs	Absent	Roger McKinley	Aye
Alfred Fisher	Aye	Heidi Wilkins-Corey	Aye
Ed King	Aye	Charles Williams	Aye
Richard Haynie	n/a	Patrick O'Brien	Absent