

## **Town of Colonial Beach Planning Commission Minutes**

Date: February 03, 2011 – Town Center, 22 Washington Avenue

Time: 4:30 P.M.

Present: Maureen Holt, Vice Chairperson  
Ed Grant  
Margaret McMullen  
David H. Coombes

Absent: Kent Rodeheaver, Cynthia Misicka, Desiree Urquhart

Also Present: Val Foulds, Town Manager  
Gary Mitchell, Director of Building and Zoning  
Andrea Erard, Town Attorney

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### **CALL TO ORDER**

Ms. Holt called the meeting to order at 4:30 P.M. stating that Ms. Misicka, Mr. Rodeheaver and Ms. Urquhart were absent from the meeting.

### **APPROVAL OF THE MINUTES**

Ms. Holt asked for a motion to approve the minutes from the January 06, 2011 meeting. Ms. McMullen moved to approve the minutes and Mr. Grant seconded the motion. There was general agreement to approve the minutes.

### **PUBLIC COMMENT ON PLANNING COMMISSION MATTERS**

Ms. Holt opened up public comment on Planning Commission matters. There was no public comment.

### **OLD BUSINESS**

- *Discussion and review of the Subdivision Regulations Ordinance.*

Ms. Holt explained that this was the final review of the Subdivision Regulations Ordinance before they had a public hearing. Ms. Holt asked Mr. Mitchell if he had any comments on this matter.

Mr. Mitchell stated that the Commissioners had in their packets a clean copy of the Subdivision Regulations. He said that in front of them tonight they had handed out the revised penalty section that needs to be inserted into this document. He stated that the Town Attorney had revised this section and it would be inserted before the public hearing. Mr. Mitchell stated that the language in the ordinance currently still reflected the old language.

Mr. Mitchell stated that he felt they were now at the place where they are ready for a public hearing, unless there are other discussions.

Ms. Holt asked if there was any discussion on this matter.

Mr. Coombes asked for clarification on the penalty section. He said he did not understand.

Ms. Erard stated that the language that was in their packet is the old language and the page that was distributed tonight is the new language. Ms. Erard stated the language she drafted was pursuant to their discussion at the last meeting.

Mr. Coombes stated so at the last meeting they agreed to go with civil penalty rather than the criminal.

Ms. Erard said they still could pursue criminal. She said under some instances they still could pursue criminal sanctions.

Mr. Coombes stated with all due respect he felt that Ms. Erard was being a little vague.

Ms. Erard said to look at the end of the second paragraph. She said that it states when the civil penalties total \$5,000 or more it can be prosecuted criminally.

Mr. Coombes stated so they have to build up to the \$5,000 with \$200 fines and then when it gets to the \$5,000 it is at the discretion of the Town as to whether to pursue it on a criminal basis. He asked if this was correct.

Ms. Erard responded that this was correct.

Mr. Coombes stated that this means the same person who is in violation has to go 25 times at \$200 to get to that \$5,000 threshold.

Ms. Erard responded that they have some that could do this.

Mr. Coombes said that he understands they may have some that are very difficult but the likely hold of the same person having a fine for \$200 or \$500 and building it up to \$5,000 is remote.

Mr. Mitchell stated that hopefully it gets corrected at the first fine.

Mr. Coombes asked where the \$5,000 threshold comes from.

Ms. Erard said the state code.

Mr. Coombes asked if the \$200 and \$500 were also state code.

Ms. Erard said yes.

Mr. Coombes asked if these numbers were the threshold state wide.

Ms. Erard said yes, if you adopt the civil penalties.

Mr. Coombes asked if Ms. Erard has seen any cases where they have hit the \$5,000 mark.

Ms. Erard said she has. She said she agrees with Mr. Coombes that here it would probably be unusual.

Ms. Holt asked if there were any more questions from the Commission.

Hearing none, Ms. Holt asked if somebody would like to make a motion.

**Ms. McMullen made motion to authorize a public hearing for the Subdivision Ordinance.**

**Mr. Coombes seconded the motion.**

There was general agreement to send this to public hearing next month.

### **NEW BUSINESS**

- ***Review of the Chesapeake Bay Phase III requirements.***

Ms. Holt stated that the next item to discuss was the Chesapeake Bay Phase III requirements.

Mr. Mitchell stated that last month he had given them all the ordinances that would need to be changed. He stated that he had included in their packets a summary and breakdown of these changes. He said that he put this all together in this packet. He stated that these changes are mandated by the Commonwealth of Virginia in order to be compliant with Chesapeake Bay act. He said these requirements were generated by review of our ordinances. He stated that last fall he provided the Planning Commission with a power point presentation of the bay act and the requirements of phase III. He said this presentation provided a brief history of the program and various phases of the implementation. He said that the five slides replica of that presentation is provided in their packets.

Mr. Mitchell reads the following language from his Staff report to the Commissioners.

Specific ordinance requirements address several areas. First, in the Chesapeake Bay Preservation district there are revised definitions. These definitions have been provided to staff by the Department of Conservation & Recreation (DCR). Additionally, staff believes that all definitions should be in the definition section of the ordinance instead of having definitions in various articles of the ordinance. Moving the definitions makes for more efficient administration of the ordinance. Staff has consulted with DCR and they have no problem of putting the definitions in one single location.

Secondly, under General Performance Standards of the Chesapeake Bay Overlay District this language further clarifies our process that is currently being used and assists the Town in the reduction of the impervious cover/water quality mandate. The tree restoration process and woodlot management permits work together to address the impervious cover reductions as well as provide better management of stormwater runoff. This reduces the amount of pollution entering the Bay. These permits and processes reflect our current practices. Placing the permit/process in the ordinance clarifies the standards and authority for the permitting activity. Additionally, the woodlot management/tree restoration permit/process helps to establish the Specific Development Standards as required by the Phase III requirements.

The next item deals with Site and General Development Plan articles in the ordinance. During review of the Town's ordinances DCR found we were non-compliant, in that plans submitted did not designate the location of the RPA and/or RMA. These 3 changes in Sections 14-3, 14-4 and 19-4 of the Zoning Ordinance add this requirement to the plan submission checklist. Many plans already show this information but it is not currently required by our ordinance but is required by the Chesapeake Bay Act.

Changes in Article 24 clarify when landscape plans are required and the standards for such plans. This also serves towards meeting the mandate relating to the reduction of the impermeable surfaces part of Bay Act. Also, as part of addressing the impermeable surface/water quality improvement issues is the use of native plant species. These species of plants survive better in our local environment. The use of native plants which absorb water better, survive our hot summers, and helps to improve water quality (which lowers the pollution load in the Potomac River) meets the water quality requirements of the Bay Act

This is the summary of the Bay Act changes required for our ordinances to be consistent with Phase III implementation. There are other minor ordinance changes such as re-numbering the sections and/or articles accordingly.

Mr. Mitchell stated that this document gives you a condensed summary of all the changes that were in those multiple sections given to you at the last meeting.

Mr. Mitchell stated that they do have to do these things. He stated that if they want to talk about this some more they can or if they want to think about it some more they can. He stated otherwise they can authorize public hearing for next month. He said that eventually they must do this it is not an option.

Ms. Holt stated that she has two questions. She stated that on the front of this packet it mentions on the bottom paragraph that the Town will be assisted in a reduction of the impervious surface cover. She asked if this means they are going to require less property or more property.

Mr. Mitchell explained that this just helps them meet the 36% percent impervious mandate.

Ms. Holt stated that the wording says "reduction in". She said that it states it again on the last page, 3<sup>rd</sup> paragraph it says "reduction in impermeable surfaces".

Mr. Mitchell stated that he would clarify this language.

Ms. Holt stated that on Article 22.5, E.b.2. where it states "if the replacement planting is to be deciduous tree it shall be a minimum of a 3.5 inch caliper at breast height" She asked what this means.

Mr. Mitchell explained that the tree needed to be 3.5 inch caliper diameter at breast height. He stated this is a term commonly used in the Chesapeake Bay ordinance. He stated diameter at breast height is a measurement and wording that Department of Conservation and Recreation uses.

Ms. Holt stated it was very unusual.

Mr. Mitchell said that he does not understand why they don't specify a number.

Mr. Coombes asked if this is standard stuff from the State that he was putting in here. He asked if this was not developed by Mr. Mitchell individually. He asked if these are state requirements.

Mr. Mitchell said that these are the standards as other people have dealt with these issues.

Mr. Coombes asked if the State was telling them they have to do this.

Mr. Mitchell stated yes the State is telling them they have to do this and what he did was go out and look at what other people did to accomplish this and he basically pulled their things and put it in here.

Ms. Erard stated that the State also expects us to enforce this too.

Mr. Coombes asked if we don't do this then what happens.

Ms. Erard stated that the State would take action against us for failure to comply. She said it could potentially cut off our State funding.

Mr. Coombes asked if other municipalities ever resist this.

Ms. Erard said that most municipalities have the same feelings as Mr. Coombes does but they just do it.

Mr. Grant asked what the chain of command is with this.

Mr. Mitchell explains that it would go through his office if there is a complaint.

Ms. Holt asked for a motion to send this to public hearing next month.

**Mr. Coombes moved to send it to public hearing next month**

**Mr. Grant seconded that motion.**

**There was general agreement to send it to public hearing next month.**

#### **OTHER MATTERS**

Ms. Holt asked if there were any other matters.

##### ***-Enterprise Zone update***

Ms. Foulds stated that she would like to share with the Planning Commission that they are now part of the Enterprise Zone. Ms. Foulds stated that the State provided them with a document approving them for the Enterprise Zone.

Ms. Foulds thanked Ms. McMullen for pushing this issue.

Mr. Mitchell said it would now go to the Economic Development Committee to come up with a plan.

Mr. Coombes asked where they stood with the Tourism Zone.

Mr. Mitchell stated that the Technology and Tourism Zones have all passed and are part of the Town Code. Mr. Mitchell explained that all these zones will all be part of the marketing plan.

**ADJOURNMENT**

Ms. Holt adjourned the meeting at 4:55P.M.

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Cynthia Misicka, Chairperson