

A JOINT MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS AND THE NEW KENT COUNTY PLANNING COMMISSION WAS HELD ON THE 18<sup>th</sup> DAY OF MAY IN THE YEAR TWO THOUSAND FIFTEEN IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 7:00 P.M.

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IN RE: CALL TO ORDER

Chairman Tiller called the May 11, 2015 Board of Supervisors meeting back into session.

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IN RE: ROLL CALL

Thomas W. Evelyn	Present
C. Thomas Tiller, Jr.	Present
James H. Burrell	Present
Ron Stiers	Present
W. R. Davis, Jr.	Present

All Supervisors were present.

Planning Commission roll call had been taken at the start of the 6:30 p.m. Planning Commission business session. Planning Commission members present for the 7:00 p.m. joint public hearings included:

C. Thomas Tiller, Jr.  
Edward W. Pollard  
Charna Moss-Gregory  
Richard Kontny, Jr.  
Patricia E. Townsend  
Laura Rose  
Joyce B. Williams  
John P. Moyer  
Dr. Joanne K. Schmit

Planning Commission members Katherine C. Butler and Jack Chalmers were absent.

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IN RE: PUBLIC HEARING – CLUSTER SUBDIVISION ORDINANCE – O-06-15

Before the Board for consideration was Ordinance O-06-15 containing proposed amendments to Section 91-127, Special Provisions for Open Space or Cluster Subdivisions, of the New Kent County Code.

Community Development Director Matthew Smolnik presented a brief history on the proposed changes contained in Ordinance O-06-15. He noted the Planning Commission had held a public hearing on these amendments at its January 20, 2015 meeting and had voted 8:0:1 to forward a favorable recommendation to the Board of Supervisors. The Board of Supervisors had then held a public hearing at their April 13, 2015 meeting and the proposed amendments failed by a 2:2 vote with one Supervisor absent. The amendments had been reconsidered at the April 29, 2015 Board of Supervisors work session and were then scheduled for a joint public hearing with the Planning Commission on May 18, 2015. Mr. Smolnik noted there had been no changes to the proposed amendments since first being presented to the Supervisors on April 13, 2015.

Mr. Tiller opened the public hearing.

Mr. Mark Daniel, a New Kent resident, addressed the Board and Commission regarding his concerns with the minimum fifty acre requirement in the proposed amendments to Section 91-127. He noted he was not sure if this was a good proposal or a bad proposal but indicated he assumed it was good because someone had thought it important enough to bring it back for further consideration. He suggested the current minimum ten acre requirement was possibly too small but indicated he felt a fifty acre minimum was too big and would make the cluster subdivision option open only to big developers. He suggested the Board give consideration to a smaller minimum acreage requirement, possibly increasing the minimum from ten acres to only thirty acres or, leave the ordinance as is and do nothing at this time.

Ms. Isabel White, a New Kent resident, also addressed the Board and Commission with concerns similar to those of Mr. Daniel. She voiced her opposition to the proposed minimum fifty acre requirement and noted not everyone had fifty acres to develop. She suggested the Board give consideration to a minimum of twenty to thirty acres and again stated she felt the proposed fifty acre minimum was set way too high and would prohibit the owners of smaller properties from using this option.

Mr. Davis suggested the provisions of Section 91-127 (c) and (d) regarding density calculations, Chesapeake Bay Resource Protection Areas and internal road systems as well as the requirement for half of the acreage to be kept as open space would result in very little of a minimum ten acre parcel being left to be developed. Mr. Smolnik noted if the final lot numbers in the cluster subdivision reached three or more, the internal roads would need to be built to State specifications which would require additional space. Mr. Davis indicated he felt an internal road would be cost prohibitive if the parcel were only ten acres and asked Mr. Smolnik if he knew the origin of the proposed fifty acre minimum. Mr. Smolnik noted the Boards had been discussing these amendments for some time prior to his tenure but he believed the Planning Commission had taken up the review of Section 91-127 at the request of the Supervisors and the Planning Commission had initially suggested the increase to a minimum of fifty acres. Mr. Davis noted if a fifty acre parcel were considered, half of the acreage would be required to be kept as open space and an internal road with a cul-de-sac built to State specifications could take as much as twelve acres which again would leave a small portion of the original parcel available for development.

Mr. Moyer, who was new to the Planning Commission, asked why New Kent had to have a cluster subdivision ordinance. Mr. Smolnik noted the cluster subdivision ordinance was required by state law. Mr. Kontny added that the Planning Commission had set the fifty acre minimum because, as Mr. Davis had noted, twenty-five of the acres would be kept as open space and they had felt twenty-five acres for internal roads and lots was reasonable.

Mr. Tiller suggested if the Board reduced the acreage from the proposed fifty acres to thirty acres, more people could possibly be included. Mr. Evelyn suggested forty acres should be considered and pointed out VDOT (Virginia Department of Transportation) would require internal roads to also have sidewalks which would again reduce the acreage available for development. Planning Commission Chairman Patricia Townsend stated she did not believe the Planning Commission would be opposed to reducing the acreage.

Mr. Stiers pointed out he had voted against the proposed ordinance when it had been presented to the Supervisors on April 13<sup>th</sup> and noted his agreement with Mr. Daniel and Ms. White. He too felt the increase in minimum acreage would hinder small development in the County.

Mr. Tiller asked Board members where they wanted to go with the minimum acreage requirement; twenty, thirty or forty acres. It was noted the Planning Commission would need to take action first and then forward their recommendation to the Supervisors for their consideration.

Mr. Davis asked how many cluster subdivisions were currently in the County. Planning Director Kelli Le Duc and County Administrator Rodney Hathaway indicated there had only been three or four cluster subdivision developments in the County and Ms. Le Duc noted these had all been developed on fairly large properties of thirty or more acres.

Mr. Evelyn disclosed that one of the cluster subdivision developments in the County belonged to him and it had consisted of over three hundred acres. He noted for the record he had discussed the proposed cluster subdivision ordinance changes with former County Attorney Michelle Gowdy and had been advised his involvement would not be a conflict.

Mr. Pollard noted Mr. Daniel's suggestion to do nothing at this time may be the best decision since there seemed to be no general consensus on the minimum acreage requirement. Mr. Smolnik asked what more the Board and the Commission wanted staff to bring to them for consideration and asked if there were any other substantial discussion points.

Mr. Stiers pointed out the ordinance had been in place for over ten years and asked what outcry had there been to change it. Ms. Le Duc indicated the Board and Commission had been discussing the proposed changes for some time and she was not sure what had prompted the initial review of the existing ordinance.

Ms. Townsend asked if the acreage was the only issue the Board and Commission had with the proposed changes or were there concerns regarding any of the other recommendations. Ms. Le Duc noted if an agreement on minimum acreage could not be reached and there were no issues with the other proposed changes, she recommended the Board and the Commission move forward with approval of all changes with the exception of those involving minimum acreage.

Mr. Evelyn noted the request for a review of this ordinance had been initiated by the Board of Supervisors. He suggested the Board had thought a ten acre parcel was too small to develop and continue to maintain the rural character of some areas in the County.

Mr. Kontny pointed out if the Commission and the Board went with thirty acres, there was nothing that would prohibit them from reconsidering the minimum acreage and possibly increasing it in the future. He again noted the Planning Commission had initially suggested the fifty acre minimum because the developer would be forced to keep twenty-five acres in open space. Mr. Burrell indicated previous Boards had been talking about maintaining the rural character of the County for years and the higher acreage requirement supported that.

There being no additional individuals wishing to address the Board and Commission on this topic, the Public Hearing was closed.

By an 8:0:1 vote, the Planning Commission took action to approve Application OA-01-15 with all references to fifty acres being changed to thirty acres, in order to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County and the health, safety, and general welfare of the citizens in the County and that it be forwarded to the Board of Supervisors for consideration. Mr. Tiller abstained.

Mr. Davis moved to adopt Ordinance O-06-15 with all references to fifty acres being changed to thirty acres, in order to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County and the health, safety, and general welfare of the citizens in the County. The members were polled:

Thomas W. Evelyn	Aye
James H. Burrell	Aye
Ron Stiers	Nay
W. R. Davis, Jr.	Aye
C. Thomas Tiller, Jr.	Aye

The motion carried.

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IN RE: PUBLIC HEARING – MINIMAL FINAL FLOOR AREA – O-08-15

Before the Board for consideration was Ordinance O-08-15 proposing changes to Sections 98-411, Table of Regulations, and 98-412, Table of Regulations Notes of Explanation. Said changes would repeal requirements for “Minimal Final Floor Area” of residential dwellings in the County.

Community Development Director Matthew Smolnik indicated he and Building Official Clarence Jackson had been approached several times in recent months by individuals desiring to build “tiny houses” in the County. He reported that Sections 98-411 and 98-412 had been presented to the Planning Commission for discussion at its April 20, 2015 meeting and the same information had been shared with the Board of Supervisors at their April 29, 2015 work session. After consulting with the County Attorney, staff had informed the Planning Commission and the Board of Supervisors that the Department of Community Development could not prohibit the construction of a single family residential dwelling in residential zoned districts based solely on the finished floor area of the dwelling. Mr. Smolnik reported he had received a number of questions regarding the impact this would have on HOA (Home Owners’ Association) covenants and noted HOA covenants could be more restrictive by limiting the home size and would not be impacted by repealing the County’s ordinance requirements on minimal final floor area. The driving factor would be if the dwelling could meet the Building Code. Mr. Smolnik reported the Planning Commission and the Board of Supervisors had agreed at their respective meetings to hold a joint public hearing on these proposed changes on May 18, 2015.

Mr. Tiller opened the public hearing.

Mr. Dallas Clark, a New Kent County resident, addressed the Board regarding his concerns that repealing minimum final floor area requirements would provide no protection for him as a property owner. He indicated he was new to New Kent County and had been alarmed when he had read the County was considering removing these requirements. He noted the community in which he lived did have covenants which required a minimum final floor area of 1,800 square feet and his concern was if the proposed changes were approved, homes smaller than this would then be allowed. He indicated if the County Attorney could tell him the covenants would continue to protect the property owners in his community, then he would be satisfied.

County Attorney Bill Hefty noted HOA covenants were private and the County had nothing to do with enforcing them. He further noted the covenants would still apply even if the proposed ordinance changes were approved. He pointed out however, citizens could not

come to the County asking for protection under the HOA covenants; it would be the HOA's responsibility to address those issues.

Mr. Davis asked what would happen if the County decided to leave the ordinance as it was currently written. Mr. Hefty indicated there were legal ramifications that could arise if the proposed changes were not approved. Mr. Jackson also indicated that Building Code could not be controlled with an Ordinance and his department would have to approve plans that met the Building Code requirements. He noted staff in the Planning Department would be put in a bad situation once the plans approved by his department reached them. Mr. Smolnik noted the parties would be receiving conflicting information from each side of the hallway.

It was noted Section 98-412, new item (f) (formerly item (m)) contained an error and should state "... the minimum lot area shall be 10,000 square feet" and not 10,00 square feet.

There being no additional individuals wishing to address the Board on this topic, the Public Hearing was closed.

Ms. Townsend called for a motion from the Planning Commission. Mr. Kontny indicated he was not sure he was ready to vote on these recommendations. He noted his concerns regarding Woodhaven Shores and the minimum lot size information contained in Sections 98-411 and 98-412. Ms. Townsend asked if Mr. Kontny would prefer the Commission defer action for thirty days to which he indicated he would.

Mr. Smolnik pointed out the Commission could move forward with action on the house size changes and then come back at a later date with recommendations for other changes to this ordinance.

By an 8:0:1 vote, the Planning Commission took action to approve Application OA-08-15 with new item (f) in Section 98-412 revised to read "... the minimum lot area shall be 10,000 square feet", in order to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County and the health, safety, and general welfare of the citizens in the County and that it be forwarded to the Board of Supervisors for consideration. Mr. Tiller abstained.

Mr. Evelyn moved to adopt Ordinance O-08-15 with new item (f) in Section 98-412 revised to read "... the minimum lot area shall be 10,000 square feet", in order to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County and the health, safety, and general welfare of the citizens in the County. The members were polled:

James H. Burrell	Aye
Ron Stiers	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
C. Thomas Tiller, Jr.	Aye

The motion carried.

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IN RE: PUBLIC HEARING – BOTTOMS BRIDGE CORRIDOR OVERLAY – O-07-15

Mr. Tiller announced because the Board of Supervisors wished to hold a separate public hearing on the Bottoms Bridge Corridor Overlay, Ordinance O-08-15 had been moved up on the agenda and the Bottoms Bridge Corridor Overlay (Ordinance O-07-15) had been moved to the end of the agenda so the Planning Commission could move forward with their independent public hearing.

Mr. Evelyn moved to cancel the Board of Supervisor public hearing on the Bottoms Bridge Corridor Overlay and that it be rescheduled for a future meeting. The members were polled:

Ron Stiers	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
James H. Burrell	Aye
C. Thomas Tiller, Jr.	Aye

The motion carried.

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IN RE: ADJOURNMENT/CONTINUATION

Mr. Davis moved to continue the meeting until 9:00 a.m. on May 20, 2015 when the Board would reconvene for a work session. The members were polled:

W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
James H. Burrell	Aye
Ron Stiers	Aye
C. Thomas Tiller, Jr.	Aye

The motion carried. The Board of Supervisors meeting was continued at 8:16 p.m.

Ms. Townsend called for a brief recess while Supervisors left the room and the Planning Commission repositioned themselves for the final public hearing.