

MEETING #46 – October 3

At a Joint Meeting of the Madison County Board of Supervisor and the Madison County Planning Commission held on Wednesday, October 3, 2012 at 7:00 p.m. in the Madison County Administrative Center Auditorium located at 414 N. Main Street:

PRESENT: J. Dave Allen, Chairman
Doris G. Lackey, Vice-Chair
Jerry J. Butler, Member
Pete J. Elliott, Member
Jonathon Weakley, Member
V. R. Shackelford, III, County Attorney
Ernie Hoch, County Administrator
Brian Daniel, Erosion & Sedimentation Technician
Carol Davis, Assistant Zoning Administrator

ABSENT: Betty Grayson, Zoning Administrator
Jacqueline S. Frye, Clerk of the Board

1. Call to Order/Determine the Presence of a Quorum:

Chairman Allen called the meeting to order and advised that all members are present and a quorum was established.

2. Pledge of Allegiance & Moment of Silence

The Board of Supervisors and Planning Commission commenced their meeting with the Pledge of Allegiance and a moment of silence.

3. Adoption of Agenda:

Chairman Allen advised the Board will have a few items to discuss before the close of tonight's session.

On motion of Supervisor Butler, seconded by Supervisor Weakley, the Board adopted the agenda as presented, with the following vote recorded:

J. Dave Allen	Aye
Doris G. Lackey	Aye
Jerry J. Butler	Aye
Pete J. Elliott	Aye
Jonathon Weakley	Aye



4. Joint Meeting Agenda:

Lloyd Williams, Commission Chair, explained the meeting format for tonight's session and advised that the Commission will either suggest that case(s) be: 1) approved; 2) rejected) or 3) tabled. In closing, he advised that tonight's public hearing is the result of a past case.

Cases:

1. Case Number: SP-09-12-08: Request by Tomlinson or Deshna Craig for a site plan for the construction of a proposed kennel building (Craig's Canine Estates). This property is located at 294 Waylands Mille Road (Route 618) near Leon, zoned A-1.

Lee Baines was present on behalf of the applicants and provided the following information pertaining to tonight's request:

- i. Parking requirements: The revised plans shows changes in the building footprint, as the original footprint was a preliminary building design – the current footprint shown tonight is a building planned specifically for this site and is a bit smaller than what was originally proposed. In closing, he advised the parking requirements will be based on the footprint design provided tonight which will have one (1) parking space per 150 square feet, which will equal eleven (11) parking spaces.
- ii. Erosion and sedimentation control: Approval has been attained through the Culpeper Soil & Water Conservation District with a few minor details still being addressed.
- iii. EPA Approval for wastewater treatment: The plan has been revised to include a conventional system that has a septic tank, distribution box, and four (4) lines (i.e. original plan only involved one [1] line); the design of the system is based on 300 gallons per day, is an easier system to maintain, and has a mechanism that will catch floating debris (i.e. animal hair) from entering the system, and the size of the tank size will hold 750 gallons.

Daniel Crigler, Commission Member, questioned the regulations pertaining to the installation of the septic system into the distribution box, to which Mr. Baines advised that modifications were submitted to the EPA, but weren't submitted as a part of the site plan.

The County Administrator provided a .PDF document for review by the Commission and Board members.



David Jones, Commission member, suggested the site plan request be approved based on the condition that T. A. Houston Associates, Inc. be required to sign off on proper installation (for wastewater of the dogs) and be designated as a part of the special use permit; he also suggested if the applicant tabled tonight's request, this would allow the Culpeper Soil & Water Conservation District time to resolve the issues they need to address.

Brian Daniel, Erosion & Sedimentation Technician, advised that an email was received late today from Greg Wilchens of the Culpeper Soil & Water Conservation District, which was read for informational purposes.

Mr. Williams opened the floor for discussion from the public, and there was none.

Nan Coppedge, Commission member, questioned that since Mr. Craig is now passed away, is the request still denoted as being from Mr. and Mrs. Craig.

Betty Grayson, Zoning Administrator, advised that the Craigs haven't made any changes in the ownership of their property in the Commissioner's Office.

Mr. Baines advised the process involving the Culpeper Soil & Water Conservation District will be fairly simple to correct, as the main requirement was to have approval from the EPA and approval of the site plan; however if the Commission or the Board of Supervisors has additional concerns, he will request to table tonight's case until the October work session.

After discussion, Mr. Williams advised the applicant has requested to table tonight's case until the Commission's October work session in the event the Board of Supervisors does not take action on tonight's request.

In closing, he advised the Commission will not need to have a special meeting in which to discuss the small wind energy issue with the Board of Supervisors.

With no further cases requiring action, the Commission adjourned their portion of tonight's meeting session.

Supervisor Weakley questioned the content in the email regarding 'pumping on a periodic basis' and what would make that determination, as Culpeper's Animal Shelter also has a filter (pump) mechanism to separate animal hair. In closing, he asked if the system will be separate from the dwelling and septic.

Mr. Baines advised there will be a clean-up cycled in place on a monthly basis, or sooner, depending on how much water is used at the facility. He also advised that the system will be separate from the dwelling's septic system, as the house is located just up the hill from the drain field system.



Supervisor Weakley also asked about the regulator's views pertaining to an 'injection system' and whether there were any permits required by the Madison Health Department.

Mr. Baines advised that the unit being used will be a commercial septic system, which doesn't really fall under the jurisdiction of the local health department, as the system is solely for commercial use and requires UIC permitting through the EPA (directly through the State of Virginia) – the language used by the EPA classifies underground injection as a Class V injection well that infiltrates into the ground.

Supervisor Elliott indicated there is language that denotes a reserve area is required, but there is no indication on the map to advise of this.

Supervisor Lackey asked how many acres are situated on the parcel, to which Carol Davis, Assistant Zoning Administrator, advised, totals 14.149 acres. In closing, Supervisor Lackey asked if there were additional requirements that the EPA will need the applicant to meet and whether the representative from T.A. Houston Associates, Inc. would provide guidelines regarding how often the system will need to be cleaned.

Mr. Baines indicated there has been no request for additional approval from the EPA other than what has already been attained; therefore, he isn't aware of anything additional that may be required. In closing, he advised that these types of wastewater systems do 'fall through the cracks' and certification for installation is done on a regular basis; however, there are no concrete regulations in place for these special systems other than what's already in place for alternative septic systems. He also advised that nothing has been provided regarding how often the system will need to be cleaned, but he feels the representative will be glad to provide some recommendations for a maintenance schedule. In closing, he doesn't feel there will be a problem with identifying a reserve site on the site plan as suggested.

Supervisor Elliott also questioned whether ditches will be in place to divert the water away from the entrance, although there is no indication that a silt fence will be put into place, which will also need to be investigated.

Chairman Allen called for public input, and there was none.

After discussion, on motion of Supervisor Elliott, seconded by Supervisor Butler, the Board voted to approve the site plan request as recommended by the Madison County Planning Commission, with the condition that T. A. Houston Associates, Inc. be required to sign off on proper installation for the wastewater system (for the dogs), in conjunction with the specifications as a part of the



special use permit and also identify a reserve site (on the site plan), with the following vote recorded.

J. Dave Allen	Aye
Doris G. Lackey	Aye
Jerry J. Butler	Aye
Pete J. Elliott	Aye
Jonathon Weakley	Aye

b. Public Hearing: Small Wind Energy System with tower height of greater than sixty feet (60') to one hundred feet (100') as a special use in Conservation, C-1, Agriculture, A-1, Business, B-1, Industrial, M-1, and Industrial General, M-2 zones.

Chairman Allen advised there will need to be discussion on the request pertaining to a sixty foot (60') to one hundred foot (100') tower as a special use in all property zones.

The County Attorney was present and advised that tonight's request was prompted by a case presented by the Fishbeck Family, during which time a consultant was brought forth to provide information on wind power. During the presentation, it was denoted that the County's existing Zoning Ordinance contains a limit of sixty feet (60') which isn't enough height to make these types of systems economically viable in Madison County. After the workshop session, he and Mr. Williams were directed to compose a proposal, which was a simple one in that they suggested windmills be raised from sixty feet (60') to one hundred feet (100') for use by special use permit in an C-1, A-1, B-1, M-1 and M-2 zones, but not allowed in a residential zone (R-1). The reasoning behind requiring a special use permit was added after discussions about sighting and appropriate setback requirements. Additionally, it was concluded that a setback would be a 'floating issue' depending on the size of the property and the configurations and that issues pertaining to the site plan, setbacks and sighting could be addressed through a special use permit. In closing, he advised that tonight's amendment is very simple and will be slated as an amendment to the County's Zoning Ordinance to allow small wind systems with a tower height greater than sixty feet (60') to one hundred feet (100') by special use permit in the zones denoted (excluding R-1), and the Small Wind Energy Ordinance that was previously adopted will remain in place with all definitions and requirements being the same.

Mr. Williams called for questions/discussion from the Commission.

Mr. Jones, Commission Member, advised that he isn't convinced the additional forty feet (40') in height will help increase wind power.

Mr. Crigler, Commission Member, suggested that future requests be assessed on a 'case by case' basis.

The floor was open for public comment.



Mr. Williams advised that a memorandum was received from Dr. Herbert Putz (read for the record) in which he urged the Commission not to approve tonight's proposal as he feels the increased height will cause a disturbance in the County and enhance noise pollution.

After discussion, the Madison County Planning Commission recommended the Madison County Board of Supervisor approve tonight's proposed amendment to Ordinance #2012-3 [Ordinance to Amend the Madison County Zoning Ordinance to Permit a Small Wind Energy System with a Tower Height of Greater than Sixty feet (60') to One Hundred feet (100') as a Special Use in a C-1, A-1, B-1, M-1 and M-2 Zones], as presented.

With no further action being required, the Commission adjourned their meeting.

Chairman Allen called for comments/questions from the Board.

Supervisor Lackey questioned: a) What will be the result if someone wants to raise the tower to one hundred twenty feet (120'); and b) Will a tower up to sixty feet (60') be a allowed 'by right' with the limitations denoted in the Ordinance:

The County Attorney advised that nothing above one hundred feet (100') will be allowed and that a sixty foot (60') tower will be a 'by right' used based on the limitations denoted in the Ordinance in a C-1, A-1, B-1, M-1 and M-2 zone and allowed by special use permit in an R-1 zone. He also explained the criteria that indicate the blade length must be included in the height with setback requirements, as denoted in the Ordinance, which contains no changes. In closing, he advised there may be some additional setback requirement depending on the size of the parcel and configuration of the parcel if the proposed tower height is over sixty feet (60').

Supervisor Elliott asked if someone builds a tower of one hundred feet (100') in an area where a light is required, will the light be considered as a part of the tower.

The County Attorney indicated the light will be a part of the tower, as measurements will be based on the same criteria as would be considered for a blade; also, the light will be an issue that would be considered under a special use permit, as this, as a light has been added to the communications towers that are situated here.

Supervisor Weakley advised that Prince Michel Vineyards has propane operated windmills and he questioned the height, to which the County Attorney was unsure whether the County regulated the height at that particular location, and also felt the windmills are used to circulate the air and not for energy production and he was unsure if the County regulated the height at that particular location.

Chairman Allen called for comments from the public, and there were none.



Chairman Allen advised it has been the position of the Board not to vote on issues pertaining to a public hearing on the same night of the public hearing.

Supervisor Lackey questioned if there was an amendment from the Commission on tonight's issue, to which Ms. Davis advised the amendment was passed as it was presented by the Commission.

In closing, Chairman Allen advised this item will be added to the October Regular Meeting for action.

5. Discussion/Action Item(s):

Chairman Allen advised a citizen has requested to hold a yard sale at the Criglersville Elementary School and Ms. Valerie Ward, Director of Social Services, has requested to display a silhouette in recognition of domestic violence.

After discussion, it was the consensus of the Board to authorize the County Administrator to handle the above referenced requests.

6. Information & Correspondence (if any)

Chairman Allen advised that on October 1, 2012, a decision was made in Orange County pertaining to a subdivision issue by Judge Petri.

The County Attorney advised that Orange County had a Subdivision Ordinance that had a trade referred to as a 'time based provision' similar to what Madison County has in place for that allows for four (4) divisions in an agricultural zone within four (4) years). He also advised that Orange County had nothing in its Zoning Ordinance or Comprehensive Plan relating to this type of division (unlike Madison County), but did recently incorporate something into their Subdivision Ordinance. The State Code is very specific in about two (2) sections of the code that pertains to mandatory provisions in a Subdivision Ordinance and discretionary provisions, although the language is fairly limited and some would say the language is only adequate. In the background of all this is what's known as the 'Dillon Rule', which denotes that a local government cannot take action unless it is enabled to do so by the General Assembly. The focus of the argument in Orange County was on whether the State Code had enabling legislation to permit the time based subdivision concept in a subdivision; if Madison had this clause just in its Subdivision Ordinance, this particular case would be controlled here – the issue is recognized here when the language was added to the County's Ordinance and Comprehensive Plan and he recommended this language be incorporated into both documents. In his opinion, he feels the case may have been very different, as there is a lot more authority in the enabling statutes for a locality to craft a Zoning Ordinance than a Subdivision Ordinance and he feels if the County is ever challenged on this issue, it would be a case of 'first impression' as there has been no litigation here on this issue (as he is aware of), and he feels he **could well defend** the County if needed. Also, there was



much discussion amongst the Commission and the Board in the past to preserve the rural agricultural land – Madison County has a relatively small minimum acreage requirement (i.e. three [3] acres in agriculture and ten [10] acres in conservation), which is very different than the twenty-five (25) acre minimum for Rappahannock County – it is known that subdivisions use up agricultural land very quickly and there is much feeling here that people don't need twenty-five (25) acres; therefore, it was the general consensus to continue with the requirement of a minimum of three (3) acres, but to add the 'time based concept' in order to permit reasonable divisions, growth and expansion of homes into A-1 zoned properties, since most of the County here is zoned A-1. When the two (2) concepts were joined together, the combination has worked very well in Madison County; therefore, he doesn't feel there is a need to overact to the decision made in Orange County, as he feels Madison County has already given much thought to this issue and has crafted terminology that works well for this area.

Supervisor Lackey questioned whether there was a thought that Orange County would appeal the decision, to which the County Attorney advised that Orange County is in a state of turmoil with regard to their existing Ordinances, as there have been several different variations of their Subdivision Ordinance; however, there is much authority imposed by the Judge's decision on the matter and Orange County was in the process of looking at their Subdivision Ordinance.

7. Adjournment

With no further action being required by the Board, on motion of Supervisor Lackey, seconded by Supervisor Weakley, Chairman Allen adjourned the meeting, with the following vote recorded:

J. Dave Allen	Aye
Doris G. Lackey	Aye
Jerry J. Butler	Aye
Pete J. Elliott	Aye
Jonathon Weakley	Aye

J. Dave Allen, Chairman
Madison County Board of Supervisors

Jacqueline S. Frye, Clerk of the Board

Adopted on: November 15, 2012

Copies: J. Dave Allen, Doris G. Lackey, Jerry J. Butler, Pete J. Elliott, Jonathon Weakley,
V. R. Shackelford, III & Constitutional Officers



