



PLANNING COMMISSION

Regular Meeting

Town Hall

February 4, 2014

At 6:00 p.m. in the Town Hall, Chairman Dennis McCoy, having established a quorum, called to order the Regular Meeting of the Planning Commission. In addition to Chairman McCoy, present were Commissioners Dan Burke, Sandra Salopek, Bill Stramm and Mike Strub. Commissioner Joan Natali arrived at 6:05 p.m. Commissioner Andy Buchholz was not in attendance. Also present were Town Planner Rob Testerman and Town Clerk Libby Hume. There were three members of the public in attendance.

A moment of silence was observed followed by the Pledge of Allegiance.

PUBLIC COMMENTS

Sherry Eulitt, 102 Madison Avenue

Ms. Eulitt addressed the Commission regarding backyard chickens. (Please see attached.)

There were no other comments from the public nor any written comments submitted prior to the meeting.

CONSENT AGENDA

Motion made by Mike Strub, seconded by Joan Natali, to accept the agenda format as presented. The motion was unanimously approved.

The Commissioners reviewed the minutes for the January 7, 2014 Regular Meeting.

Mike Strub stated that District 1 Supervisor Granville Hogg was listed as a member of the public and added that he should be listed either as a member of the public or a member of the Board of Supervisors. Mike Strub went on to state that under Reports, the address where the chickens were being raised was incorrect and should show 109 Monroe Avenue. Mike Strub also noted a typographical error on page 2.

Motion made by Joan Natali, seconded by Dan Burke, to approve the minutes from the January 7, 2014 Regular Meeting as amended. The motion was unanimously approved.

REPORTS

Rob Testerman reported the following: i) The Historic District Review Board met on January 21 and approved an addition of a double door entrance way into the commercial store-front at 207 Mason Avenue and a handicap ramp and side entrance to 500 Tazewell Avenue, the former library building; ii) He was resuming work to update the planning application forms (Zoning Clearance, Conditional Use Permit, Rezoning, etc.) and informational sheets to inform property owners of what each of these processes were, what they involved and when/why they needed to apply for them. Once completed, the forms would be available online; iii) The Harbor Area Review Board met on January 2 and approved applications for proposed additions to The Shanty and a proposal for a waterman's memorial in the harbor area from the Friends of the Virginia Waterman's Memorial. The Town Council approved the Harbor Development Certificates for both projects; iv) Six signs from Eastern Shore Healthy Communities, whose mission was to create a healthier Eastern Shore, had been placed in the Town demarcating a walking trail around town; v) Elaine Meil of the ANPDC began drafting a recommendation of the topics to be covered at each public session for the Comprehensive Plan update. Once complete, the recommendation would be provided for review by

the Planning Commission. There was a conflict with the ANPDC regular meetings on the third Mondays, so Ms. Meil suggested the fourth Mondays for meetings with ANPDC. There was some discussion and the Commissioners were in agreement regarding the fourth Mondays; and vi) Letters regarding the preliminary flood maps would be sent to localities on May 5, 2014. Localities would have six months to adopt modified flood plain ordinances. Dan Burke asked about the impact of the new flood maps on insurance. Rob Testerman stated that currently, most of the Town was in a flood zone and flood insurance was required by FEMA. With the new maps, the majority of the Town would be out of the flood zones and other areas were reduced to the X zone. Lenders may require flood insurance in the X zone but FEMA did not.

OLD BUSINESS

A. *Planning Commission Annual Report to Town Council*

Rob Testerman explained that § 15.2-2221.5 of the Code of Virginia stated that the local planning commission should "make recommendations and an annual report to the governing body concerning the operation of the commission and the status of planning within its jurisdiction." Rob Testerman stated that he had drafted the 2013 Annual Report modeling it after the Petersburg Report provided by Bill Stramm.

The Commissioners reviewed the draft report and made the following changes/corrections: i) The Code of Virginia section referenced in the Introduction paragraph was corrected; ii) The street address for the library building was added under Development in Cape Charles; iii) There was some discussion regarding the number of conditional use permits issued in 2013. The report showed one permit issued, but the Commission thought there were more. Rob Testerman would check the records and update the number if needed.

Motion made by Bill Stramm, seconded by Mike Strub, to approve the 2013 Annual Report as amended and to forward the final report to Town Council for their information. The motion was unanimously approved.

B. *Backyard Chickens – Discuss Staff Report and Issues/Concerns*

Rob Testerman began by stating that no action was being taken at this time. Staff and the Commissioners were researching and reviewing information from various localities and would be discussing benefits and other issues related to backyard chickens. Dennis McCoy added that it was important for the public to know that the Planning Commission did not make the law. The Commissioners researched and reviewed an issue to provide a recommendation to the Town Council whose responsibility was to make the decision.

The Commissioners reviewed the report prepared by Rob Testerman outlining some of the benefits including: i) Source of fresh eggs – more nutritious than store-bought eggs and some tests showed that the eggs tasted better; ii) Chickens providing companionship as pets – Many people who owned small numbers of chickens considered them as pets and some localities regulated chickens as pets; iii) Chicken manure was a valuable fertilizer – Chicken waste provided necessary nutrients for plants and worked well as an addition to compost; iv) Chickens ate insects such as ants, spiders, ticks, fleas, slugs, roaches and beetles. Chickens also occasionally ate worms, small snakes and small mice. Small numbers of chickens were also a recommended method to eliminate weeds. This reduced the need to apply chemical weed killer or other insecticides in the owner's yard; and v) Chickens helped build community – Several studies found that urban agriculture could increase social connections and civic engagement in the community.

Some of the concerns outlined in the staff reports included: i) Noise – Roosters were noisy and Rob Testerman recommended that the Town not allow roosters. Hens would cluck excitedly after laying eggs but it was not generally sustained more than a few minutes. Hen clucking was

commonly compared to human conversation, around 65 decibels whereas a single dog barking registered decibels over 100. Dan Burke stated that he raised chickens when he was young and in some cases, a dominant hen grew a comb and began crowing. This issue needed to be taken into consideration; ii) Odor – The odor most associated with poultry was ammonia which was actually a product of poorly ventilated and moist coops; iii) Disease – According to a recent study by the City of Fredericksburg, the primary risk associated with poultry was salmonella, a type of bacteria present in the bird’s intestines and fecal matter. These risks were to the people handling the chickens and not the public at large. There was no evidence found of avian influenza or other diseases; iv) Property values – Several studies showed that agricultural uses within a locality actually increased property values. Of the 2013 Forbes Top 10 Healthiest Housing Markets, nine allowed urban chickens; v) Slaughter – Most egg-laying breeds did not make for tasty meat. Legalizing backyard chickens did not require the legalization of backyard slaughtering. Rob Testerman recommended not allowing slaughtering; vi) Chickens running wild – Although a chicken could escape from time to time, similar to dogs, regulations should be written to ensure that the hens were kept in an enclosure at all times; and vii) Predators such as raccoons, foxes, snakes, cats and dogs could be attracted to the hens. These predators already lived in the area and were attracted to open spaces, such as golf courses, with rabbits, ducks and geese. They were attracted to bird feeders, pet food, gardens, fish ponds, bird baths, and trash waiting to be collected. With proper shelter requirements, the risk of the chickens attracting predators could be reduced.

The Commissioners reviewed a number of critical questions: i) What type of chicken would be permitted? The term “domestic laying hens” did not specify any variety of chicken; however, it would exclude roosters and other game birds. There was some discussion on the difficulty to tell the difference between hens and roosters at first. If a backyard chicken owner ended up with a rooster, it would have to be removed; ii) Where would they be allowed? Staff recommendation, if the Town Council decided to permit backyard chickens, was that domestic laying hens be permitted at single family homes in the R-1, R-2 and R-E districts. Some localities permitted backyard chickens at multi-family dwellings with written consent of all owners and tenants within the structure. Rob Testerman stated that he recommended that coops and runs be restricted to the rear yard. Dennis McCoy stated that there could be issues with tenant changes, etc. and suggested not permitting chickens in multi-family structures. Joan Natali questioned the limitation to the residential districts and added that the New Roots Youth Garden might want to add chickens to their programming. Some localities used chickens as a way to enhance community gardens and the Town needed to keep the different districts in mind. Rob Testerman stated that he did not include commercial areas or PUDs due to their covenants; iii) How many would be allowed? Chickens were flock animals but in an urban setting, a large flock would not be logistical or favorable. Most reports and ordinances showed that for backyard chicken flocks, at least four chickens should be allowed. Given the lot sizes in Cape Charles, four to six hens, at a maximum, could be allowed. Joan Natali suggested that square footage be used since lot sizes varied; iv) What were appropriate setbacks and structure standards? Setback requirements varied greatly by locality. Some used property line setbacks and others used setbacks from other dwellings or any door or window on an adjacent residential structure, and the distances ranged from 10 feet to over 100 feet. A setback should be imposed that would set a distance from both the property line and the adjacent structure, allowing the owner to use whichever one placed the coop furthest from the nearest adjacent structure not owned by the applicant. An ordinance should require that the coop and outdoor enclosure be kept in a sanitary condition and free from offensive odors. Structures should be required to be cleaned on a regular basis to prevent waste buildup. Feed should be stored in a rodent-proof container to reduce the attraction of pests. Hens would be required to remain in the coop or outdoor run at all times, except when an adult was directly supervising them. Enforcement would be based on receiving complaints. There was some discussion regarding a project for kids through an organization such as 4H. The Commissioners recommended that

Rob Testerman contact the 4H Club. It was suggested that a residential structure needed to be defined since some people worked in a detached studio/garage. These types of structures should be included. The materials for fencing needed to be defined since wire mesh fencing was not permitted. Dan Burke commented on weather conditions and added that he used to have a heater for the chickens in the winter months. Bill Stramm stated that he had a friend in NY who used flood lights for heat for his chickens. It was suggested that the Cape Charles Volunteer Fire Company could have an issue with heat sources for the coops; and v) How would they be permitted and who would be responsible for enforcement? Staff recommended a permit be required. The applicant would be required to submit an application stating the number of chickens desired, description of coops and outdoor runs, etc., a sketch of the proposed structures in relation to property lines, adjacent residential structures, etc. in order to determine setbacks. Some localities required a yearly permit, requiring the chicken keeper to renew the permit each year. If the proposed ordinance were to be included in the Zoning Ordinance, enforcement would be the responsibility of the Zoning Administrator. After issuance of a permit, the Zoning Administrator would be authorized to periodically inspect the coop and run to ensure that the standards continued to be met. In the event of a neighbor complaint, an inspection would be conducted to determine if any aspect of the regulations were in violation. If the ordinance were to be included in the Town Code, enforcement would be the responsibility of the Code Official.

Dan Burke provided an article which described chickens being left at shelters. Town Clerk Libby Hume would scan the article and email it to the Commissions for their review. (Please see attached.)

Bill Stramm commented that it would be interesting to know why no other towns on the Eastern Shore had ordinances for chickens. Rob Testerman stated that when he lived in the Town of Onancock, his neighbor had 12-13 chickens with 2-3 roosters. If not for the roosters, and the fact that the owner did not keep the chickens in coops, he would not have known that the neighbor had chickens. Rob Testerman added that he would double check with the counties and towns on the shore regarding chicken ordinances. The City of Chesapeake adopted an ordinance initially for a one-year trial period. At the end of the one-year period, the number of complaints and other issues were reviewed. The City Council recently voted to adopt the ordinance on a permanent basis.

There was discussion regarding the vast differences in the ordinances currently adopted by localities.

Rob Testerman stated that the items listed in his staff report were not his recommendations but information that he found on the internet. Rob Testerman added that he would do more research on the pros and cons for further review at the next meeting. Dan Burke requested that research be done regarding humane treatment of the chickens as well.

C. *Comprehensive Plan Review - §§ 3.C through 5*

Rob Testerman stated that he would contact Elaine Meil of the ANPDC regarding the fourth Mondays for meetings. Upon receipt of the draft schedule, it would be provided to the Commissioners for their review.

The Commissioners reviewed §§ 3.C through 3.D.3 and noted the areas needing to be updated.

In the opening of § 3.C, the following was discussed: i) In the second paragraph, the part of town laid out in 1885 was corrected to show six blocks by seven blocks; ii) In the next paragraph, "recent" was removed from "2008 traffic study" and there was some discussion re: the last sentence in that paragraph regarding land being available for a roundabout since one corner

was now the home of the New Roots Youth Garden. More research regarding this issue needed to be done. Rob Testerman would check with VDOT regarding their continued plan for a roundabout at the intersection of Fig Street and Randolph Avenue; iii) Joan Natali stated that several months ago, at the ESLand Presentation, enhanced port facilities was mentioned on the east side of the harbor and she felt this needed to be included in the updated Comp Plan. Joan Natali asked that, if possible, a copy of the presentation be provided to the Commission for their review. The plan needed to be reviewed and the Commission could decide to include it in the Comp Plan update if they felt it was in the best interest of the Town; iv) Joan Natali also stated that the Railroad needed to be added as a subsection. Bill Stramm agreed and suggested that Rob Testerman contact Larry LeMond for information; v) A subsection needed to be added for the Cape Charles Town Harbor with language regarding harbor dredging and water transportation businesses; and vi) Reference to Walkability needed to be added as well.

There was some discussion regarding the ceremony held earlier in the day at Bayshore Concrete where Governor McAuliffe announced Bayshore Concrete's planned \$4M investment which would create 135 new jobs.

In § 3.C.1, the first sentence was changed to show that "Cape Charles is a golf cart-friendly community."

In § 3.C.2, the language needed to be updated to state that the first phase of the Community Trail was complete and the second phase was underway.

In § 3.C.4, the following was discussed: i) Reference to Bay Creek Marina was changed to Kings Creek Marina; ii) "Certified pump-out facilities" was added. Staff would check with Kings Creek Marina to ascertain whether their facilities were certified; iii) youth garden was added; and iv) A notation would be made regarding the hospital stating that "As of this writing, the hospital was planning to relocate further north into Accomack County..."

In § 3.C.5, the paragraphs would be updated to state that the wastewater treatment plant replacement was complete, met and exceeded the projected growth and also met State and Federal guidelines. Language would be included to show that the Town was collaborating with Bay Creek Resort & Club to accept the treated effluent into their retention ponds.

§ 3.C.6 was modified to show the completion of the Broadband Communications project.

In § 3.D.1, the Commissioners felt that this entire section needed to be updated to include all the recent enhancements at the Harbor such as the floating docks, walkway, bath house, restaurant, Cape Charles Yacht Center, and Tall Ships events.

In § 3.D.2, the following was discussed: i) In the first sentence, "free" was added to show that the Cape Charles Beach was the only free public beach on the Eastern Shore; and ii) The third paragraph needed to be updated with the new FEMA information.

In § 3.D.3, the Commissioners felt that a new paragraph needed to be added regarding Kings Creek Marina since the area with Aqua restaurant and the shops were no longer part of Bay Creek.

Due to time restraints, the Commissioners agreed to stop this evening's review after § 3.D.3.

For the March meeting, the Commissioners would review from § 3.D.4 to the end of the Comp Plan, pages 43-51.

NEW BUSINESS

There was no New Business to review.

OTHER

Dan Burke asked about the "Got Ammo" sign in the back of the pickup truck at the Northampton Firearms store on Randolph Avenue coming into Town. Rob Testerman stated that he had not seen the sign but would check into the issue.

ANNOUNCEMENTS

There were no announcements.

Motion made by Joan Natali, seconded by Mike Strub, to adjourn the Planning Commission meeting. The motion was unanimously approved.

Chairman Dennis McCoy

Town Clerk

Public Comments Provided in Writing
February 4, 2014

Dear Town Council:

I am a part time, soon to be full time, resident of Cape Charles.

I have owned property on Madison Avenue for almost 10 years. Approximately eight months ago, a neighbor obtained chickens and erected a chicken coop in her yard. I am writing to voice my strong objection to this conduct, which is both a nuisance, and prohibited by current town regulations.

The bedroom area of our home is only a matter of yards from the chicken coop, and on almost a daily basis, we are awakened because of noise from the chickens. Moreover, the smell of the chickens and the area where they are maintained is particularly unpleasant.

We came to Cape Charles to enjoy the beach community. We do not live in a rural area and did not anticipate that we would be confronted with livestock in the confines of our town. We believe that individuals who want to engage in farming activities should reside in areas that are zoned and suitable for farming. The small lots of a municipal township are not appropriate for farm animals. To be clear, these chickens are not pets. They remain outside and their main purpose is to produce eggs for consumption.

I have been advised that there are specific town regulations, which absolutely prohibit this conduct. I merely write to ask that the town enforce those regulations and require the individuals in town who are maintaining chickens to remove this nuisance from their properties.

Sincerely,
Paul and Sherry Eulitt

NBC News Article by JoNel Aleccia, July 7, 2013.
Provided by Dan Burke

Backyard chickens dumped at shelters when hipsters can't cope, critics say



Susie Coston, national shelter director at the Farm Sanctuary based in Watkins Glen, N.Y., is holding Becky, a pet hen, as former backyard birds wander nearby. About 250 abandoned backyard birds are waiting for homes at the shelter's three sites on both coasts.

Despite visions of quaint coops, happy birds and cheap eggs, the growing trend of raising backyard chickens in urban settings is backfiring, critics say, as disillusioned city dwellers dump unwanted fowl on animal shelters and sanctuaries.

Hundreds of chickens, sometimes dozens at a time, are being abandoned each year at the nation's shelters from California to New York as some hipster farmers discover that hens lay eggs for two years, but can live for a good decade longer, and that actually raising the birds can be noisy, messy, labor-intensive and expensive.

"Many areas with legalized hen-keeping are experiencing more and more of these birds coming in when they're no longer wanted," said Paul Shapiro, spokesman for the Humane Society of the United States. "You get some chicks and

they're very cute, but it's not as though you can throw them out in the yard and not care for them."

That accusation is disputed by advocates of home-grown chickens, who say that a few negative incidents shouldn't give a bad name to a practice that encourages both self-sufficiency and the consumption of sustainable food grown in a humane manner.

"We've experienced smell, noise, pests, etc., way more from improperly cared for dogs and cats than we have from backyard chickens," said Rob Ludlow, owner of the fast-growing website, BackYardChickens.com, which started with 50 members in 2007 and now boasts 200,000 members. He is the author of three books, including "Raising Chickens for Dummies."

"Hundreds of thousands of people are realizing the wonderful benefits of raising a small flock of backyard chickens, the pets that make you breakfast," he said, noting that cities nationwide have agreed, passing ordinances making it legal to keep small flocks of urban chickens.

However, at the Farm Sanctuary headquartered in Watkins Glen, N.Y. -- which operates three shelters on two coasts -- some 225 former backyard chickens are waiting now for new homes, said National Shelter Director Susie Coston. They're among at least 400 to 500 abandoned chickens that show up every year, including many suffering from maltreatment or illness.

"They're put on Craigslist all the time when they don't lay any more," said Coston, 48. "They're dumped all the time."

It's the same scenario at the Chicken Run Rescue in Minneapolis, Minn., where owner Mary Britton Clouse has tracked a steady climb in surrendered birds from fewer than 50 in 2001 to nearly 500 in 2012.

She traces that rise to the so-called "locavore" movement, which spiked in popularity in 2008 as advocates urged people to eat more food grown and processed close to home.

"It's the stupid foodies," said Britton Clouse, 60, who admits she speaks frankly. "We're just sick to death of it."

People entranced by a "misplaced rural nostalgia" are buying chickens from the same hatcheries that supply the nation's largest poultry producers and rearing them without proper space, food or veterinary care, she said.

The most commonly available hens have been bred to be good egg layers. At the same time, backyard farmers often use enhanced feed, light or other tools to prompt hens to lay constantly. After keeping up that pace for 18 months to two years, however, hens often develop reproductive problems including oviduct diseases that can kill them, veterinarians say. However, healthy hens can live for years longer, up to a decade after they stop laying.

Because chickens are notoriously hard to sex, some backyard farmers wind up with roosters, which are often culled and killed because they can be noisy, aggressive and illegal, and, of course, they don't lay eggs at all.

In addition to the noise, many urban farmers are surprised that chickens attract pests like rats, and predators including foxes, raccoons, hawks, and even neighborhood dogs.

When they get sick or hurt, they need care that can run into the hundreds of dollars, boosting the price of that home-grown egg far beyond even the most expensive grocery store brand.

Enthusiasts who start out with good intentions frequently wind up posting messages like this one delivered to Britton-Clouse last month:

"One of our hens grew up into a rooster and our neighbors are starting to complain. Do you know someone who might take him?"

"People don't know what they're doing," Britton Clouse said. "And you've got this whole culture of people who don't know what the hell they're doing teaching every other idiot out there."

But Ludlow, the backyard chicken enthusiast, said that "it's very rare" that people make such mistakes or underestimate how difficult it is to raise chickens.



Many people would be surprised to know that chickens are smart, with funny, quirky personalities, Coston said.

“While we definitely want to see more education around the lifespan and laying lifespan of chickens, we find that most people become so attached to their hens as pets, that even though they planned to eat or cull their hens at the end of their laying life, they decide to keep their girls around even without laying eggs,” he said.

Coston, the Farm Sanctuary shelter director, said she wished that were true. Most people don’t realize that chickens are funny, with quirky habits and affectionate personalities as distinct as any other pet’s.

“Oh, my god, they’re amazing,” said Coston, who frequently cuddles her chickens. “We have some of the sweetest ones here. They just sit beside you and they let you pet them. And they’re big and dumpy.”

She hopes the enthusiasm for raising backyard chickens will fade and that consumers will take a second look at their appetite for eggs and poultry.

“To go back in time sounds wonderful,” she said. “But there is not enough land on this earth to sustain the amount of meat, dairy and milk that people want.”