

**King & Queen County  
Planning Commission Minutes  
March 4, 2013**

The King & Queen County Planning Commission met on Monday, March 4, 2013, at 6:00 p.m. in the King & Queen County Courts and Administrations Building in the Court Room for their regular monthly meeting.

**Planning Commission Members Present:**

John Roane  
Milton Watkins  
David Campbell  
James Guess

Robert Coleman, Jr.  
Shelia Morton  
Hunter Richardson  
William Herrin

**Also in Attendance:**

Thomas J. Swartzwelder, County Attorney  
Donna E. Sprouse, Assistant Zoning Administrator

**Call to Order**

Chairman, Mr. Richardson called the meeting to order.

**Roll Call/Determination of Quorum**

Mr. Campbell took roll call and determined that a quorum was present.

**February 4, 2013 – Regular Meeting**

After brief review of the minutes, a motion was made by Mr. Watkins to approve the minutes as written, second by Mrs. Morton.

Voting For: Watkins, Roane, Campbell, Coleman, Morton, Richardson

Voting Against: None

Abstain: Herrin, Guess

**Citizens Comment Period**

Mr. Richardson opened the floor for public comment period, hearing no comments from the public, citizens comment period was closed.

**New Business**

No New Business

## **Unfinished Business**

### **A. Aquaculture & Working Waterfronts – Draft Ordinance (Set Public Hearing)**

Mrs. Sprouse provided the Commission with a draft ordinance as requested by the Commission during their January meeting with one minor revision. Mrs. Sprouse stated that the requirement of having access for such a use to be from a paved state maintained road was removed as the Commission asked. With such a use being approved by Conditional Use Permit, would allow the Commission to determine if access from a state maintained road should be a condition of the request based on the scale of the proposed operation.

Hearing no further comments from the Commission, a motion was made by Mr. Watkins to set a public hearing for text amendment to include Aquaculture in the permitted use table and definitions section of the zoning ordinance, second by Mr. Roane.

Voting For: Watkins, Roane, Campbell, Coleman, Morton, Richardson, Herrin, Guess

Voting Against: None

Abstain: None

### **B. Dunes & Beach Ordinance – Open Discussion** (*Randy Owens, VMRC & KQ Wetlands Board*)

Mr. Randy Owens with VMRC provided the Commission with a power point presentation explaining the history of the Dunes and Beach Act. Mr. Owens also provided the Commission with his list of advantages (citing no disadvantages) in having the locality adopt the Dunes & Beach Ordinance and have it administered locally by the current Wetlands Board.

Mr. Kirk Havens, Timothy Hayes and Randy Shank all of the local Wetlands Board spoke on behalf of having their Board hear all permits regarding dunes and beaches rather than having citizens report to the VMRC Board in Newport News.

Hank Thorndike of Dock Masters stated that he works in King & Queen County and other surrounding localities as a marine contractor. He stated that he assisted with marine construction for Mr. James Kelly Tucker on the York River and if he had to appear before the VMRC Board in Newport News with Mr. Tucker, it would have been costly him to have him sit there all day.

James Kelly Tucker stated that sand helps save the marsh from erosion and having the dunes ordinance adopted locally would save time and money.

Mr. Richardson stated that this is the third time the Planning Commission has been asked to consider adopting the Dunes & Beach Ordinance. He noted that this request is new for some of the Planning Commissioners and thought this was a good opportunity for them to obtain information from Mr. Owens with VMRC and our local Wetlands Board about their request. He also noted that if the Commission does not make a recommendation for the Board of Supervisors to approve such an ordinance, nothing changes. He stated that all applications will continue to go to VMRC and their Board will hear the applicants' request. Mr. Richardson stated that he understands that this could provide an inconvenience to some citizens; however he noted that the only inconvenienced person that he has heard during this discussion is Mr. Tucker. Mr. Richardson asked if the County would have to supply an expert to review the beach and dunes applications. Mr. Havens stated no, Mr. Owens will still assist in determining if a property has any beaches or dunes.

Mr. Roane asked if this would include wetlands as it continues into creeks, streams, etc. and does it affect logging operations. Mr. Havens stated that the Wetlands Board has jurisdiction over the tidal wetlands and logging activities are not managed by VMRC or the local Wetlands Board. Mr. Coleman asked what was the difference between a Wetlands Board and a Beach and Dunes Board. Mr. Havens stated that the Wetlands Board pertains to marsh grasses, mud flats, tidal wetlands that are 1.5 times the tide range. The Dunes Board pertains to beach where you don't have grasses but have sand. Mr. Herrin asked if there have been any violations and how are violations discovered. Mr. Havens stated that there have been a few minor wetland violations; however none that was required to be sent to court. Violations are discovered either when the Board visits a site, citizen complaints, County staff or VMRC.

Mr. Richardson asked if there were any violations with the Beach & Dunes Act in King & Queen County. Mr. Owens stated there had been none. Mr. Richardson asked how many Beach & Dunes applications have there been in King & Queen County. Mr. Owens replied one since 2008.

Mr. Owens stated that there are beaches along the York River and up the Mattaponi.

Mr. Coleman stated that it seems to him that it would be a limited number of applications to go before the Beach & Dunes Board and it seems to him that the Chairman of the Wetlands Board feels that they have the capability to review the applications. If they find that they need additional assistance, they can go to Mr. Owens with VMRC for assistance. With a limited number of applications, he feels it would be a small burden to that Board to adopt the ordinance.

Mr. Watkins asked Mrs. Sprouse if she had any comments about the adoption of the Beach & Dunes Ordinance. Mrs. Sprouse replied that she had no comments.

Mr. Guess asked if Mrs. Sprouse would be responsible for enforcing the ordinance. Mrs. Sprouse stated that there will be staff that will be responsible for inspections and permitting. Mr. Guess asked if there would be cost associated with this request. Mrs. Sprouse replied that there would be additional costs.

Mr. Coleman asked if the Planning Commission were to accept the recommendation to adopt the ordinance, would it then go to the Board of Supervisors for approval. Mr. Richardson stated that the Commission, the previous two times that it was heard, did not feel that this ordinance was necessary. If the Commission wishes to adopt the ordinance, staff will have to prepare the draft ordinance, and then the Commission will have to set and hold a public hearing. The Board of Supervisors will then hear our recommendation and decide if a public hearing will be held. He noted that this is the beginning of a long process. Mr. Richardson stated that the citizens present tonight would like a decision; however the Commission does not have to act on this matter tonight.

Mr. Thorndike stated that the Environmental Codes Compliance Officer position is being filled anyway so additional staff wouldn't be necessary. This new person will also have to provide assistance to the Wetlands Board.

Mr. Havens stated that there is a model ordinance already prepared and ready for adoption and that a new ordinance would not need to be prepared. Mr. Richardson replied yes he knew there was a model ordinance, however the Commission and staff needs to review it and may consider minor changes to the model.

Mr. Herrin asked if the size of the Wetlands Board will need to be increased. Mr. Havens stated no.

Mr. Richardson asked if there is anyone in the audience that could explain why there is a strong interest in adopting this ordinance when it has only involved one person since 2008. Mr. Hayes stated that the laws are on the books anyway and regardless of the number of applications they will

have to comply with this law. Understand that in most situations that he is not in favor of any additional rules, regulations, requirements or ordinances. However this law exists. He would rather get his breakfast cooked by someone in King & Queen County rather than in Newport News. Since it has to be enforced anyway, he thinks it should be handled locally in King & Queen and not some bureaucrat in Newport News making the decision. It would be faster, more efficient and less expensive. They are not asking that the County do anything more than what are on the books now.

Mr. Herrin asked if the County could charge a fee for those who make application to the Beach & Dunes Board. Mr. Hayes stated that they could assess a fee. Mr. Richardson asked if VMRC charges such a fee. Mr. Owens stated that VMRC does not charge a fee. Mr. Owens stated that he is not aware of a locality that does not charge an application fee for the Beach and Dunes application.

Mr. Richardson asked what was the pleasure of the Commission.

Mr. Herrin made a motion to table the request until their next meeting, seconded by Mr. Coleman.

Voting For: Watkins, Roane, Campbell, Coleman, Morton, Herrin, Guess

Voting Against: Richardson

Abstain: None

*(The members of the Wetlands Board, Randy Owens with VMRC, James Kelly Tucker, Hank Thorndike left at this time)*

### **Staff's Comments**

Mrs. Sprouse informed the Commission that Mr. Philip Thompson, Environmental Codes Compliance Officer, is no longer employed with King & Queen County. He has taken a new position in the private sector and the County is actively looking to fill the position. She added that the application deadline for employment is Friday, March, 8, 2013. She is looking forward to having the position filled soon and training will start thereafter.

Mr. Swartzwelder stated that he would like to provide the Commission with a little bit of clarification pertaining to the Beach and Dunes Ordinance. The county would not have to hire additional staff if the ordinance were adopted. However, currently with it being handled by VMRC, the County is not involved in the permitting process. If you adopt the ordinance, we will. We would have to hold a meeting, we will have to conduct inspections, and we would have to take care of public notification so there are costs. No fee that we have in place now even comes close to cover all expenses to cover the program. Mr. Swartzwelder stated that he is not pro or con, but wants to point out that there are associated costs to the County.

Mr. Richardson asked how many members serve on the Wetlands Board. Mr. Swartzwelder said five members. Mr. Richardson asked about the cost associated with managing the Wetlands Board. He asked if there is a cost incurred by the County for their meetings or site visits. Mrs. Sprouse replied yes they do get paid mileage for meetings and site visits, as well as a meeting fee of \$25. Mr. Richardson asked if we have a knowledgeable staff member who can visit these sites and provide recommendations to the Wetlands Board, why does the Wetlands Board have to visit the site. Mr. Swartzwelder said it is two folds. The Act is something that you take as it is written or you don't. When they make changes to the code and model ordinance, we would have to make those changes. So under the draft ordinance, VMRC still has jurisdiction. The hearing that would occur in our County will continue to allow VMRC staff to issue a site determination. If our staff

says that it is not a dune and Mr. Owens says it is a dune then it is a dune, we have no control over that ruling. It just means that the meeting will be heard here in King & Queen County and the applicant does not have to travel to Newport News, nor the contractor. Mr. Guess asked if it meant an additional cost to the County. Mr. Swartzwelder stated that his concern is not only with the mileage or meeting costs. The County is going to pay for someone's time (staff time) to handle this process and visit the site regardless of the final ruling issued by VMRC. If VMRC does not approve of a county determination, VMRC can reverse the Wetlands Board's decision. VMRC issues guidance and an opinion on every single application before the Wetlands Board.

Mr. Swartzwelder stated that from his perspective there are some benefits in making it easier on the citizen by having their meeting held locally. He just doesn't want the Commission to think that our local Board really has say in what is or isn't a beach or dune. If you read the state code, our program will be reviewed by VMRC. This ordinance will bring on a greater level of compliance and supervision where right now we are not involved.

Mrs. Morton asked what the consequence is if the Commission decides not to do anything now, could the Commission reconsider this at another time if we have more applicants in the future. Mr. Swartzwelder stated that the Commission may reconsider this at any time. One of the things you would want to consider, and one reason why some other localities have not adopted the model ordinance is because the ordinance serves a small percentage of your population at the expense of your entire population. Mr. Swartzwelder stated that he is a waterfront property owner and he likes that he can come locally for the meeting but if you add up all of the waterfront property owners, other people are paying for us to have that convenience of coming here instead of Newport News. He thinks that localities are seeing push backs as budgets continue to get tight. Mr. Swartzwelder stated that about 25% of Philip Thompson's job was related to the Wetlands Act. It is obvious that VMRC wants its meetings to be the responsibility of the locality by adopting this ordinance; this is the third time it has come up in little King & Queen County. Mr. Swartzwelder stated that he believes VMRC is going to eventually try to get the General Assembly to force this on to the localities. Mr. Swartzwelder said if you leave it the way it is, who does all of the work, VMRC. He then asked if the Commission changes their mind and adopts the ordinance, who does the work, the County staff. Mr. Swartzwelder stated that in his experience with past State mandates, once a State program has been handed to a locality, the requirements become more restrictive. Again, there are benefits to adopting the ordinance. Staff doesn't have any problem with the adoption of the ordinance if that is what the Commission and Board wishes, but wanted the Commission to hear both sides in order to make a more informed decision.

Mr. Richardson stated that this has been a fair discussion and is sorry that the Commission is rehashing this for the third time. He stated that this has allowed the new members the opportunity to hear both sides and were given useful information for the Commission to make a well informed decision.

Mr. Richardson asked if staff could provide a summary on the projected expenses associated with adopting this ordinance. He requested that this information be provided during their next meeting and made a part of the record as such along with the prior discussions documented by this Commission.

**Commissioner's Comments**

None

**Adjournment**

A motion was made by Mr. Watkins, seconded by Mr. Guess to adjourn the meeting. There being no further business the meeting was adjourned.

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Hunter Richardson, Chairman