

**MINUTES OF THE
PLANNING COMMISSION MEETING
TOWN OF CHINCOTEAGUE, VIRGINIA
MAY 9, 2023 - 7:00 P.M. – Council Chambers**

Commission Members Present:

Mr. Ray Rosenberger, Chairman
Mr. William T. McComb, Jr. Councilman
Mr. David Britton
Mrs. Mollie Cherrix
Mr. Michael Dendler
Mr. Robert Shendock

Commission Members Absent:

Mr. Steve Katsetos

Staff Present:

Mr. Mark Bowden, Building and Zoning Administrator
Mr. Michael T. Tolbert, P.E., Town Manager

Call to Order

Chairman Rosenberger called the meeting to order at 7:00 p.m.

Invocation

Councilman McComb offered the invocation.

Pledge of Allegiance

Chairman Rosenberger led in the Pledge of Allegiance.

Public Participation

- Ms. Denise Bowden advised she is before the Commission as a citizen who is concerned about filling in some marshlands around the Island. She advised of talk of a section of Eastside that is in jeopardy of the same thing. She stated that to do so; you would have to jump through some hoops. Some would argue that the process is too strenuous. If you have the stamina, know-how, and means to jump through those hoops it is entirely possible to obtain the necessary permits. She explained the process of a Joint Permit Application which consists of the approval of the Army Corps of Engineers, the Virginia Marine Commission, and a local Wetlands Board. She stated that if the owners are successful, by the Town Code they have the right to do a number of things on that marsh. She listed the allowable uses. She advised that the marshlands are zoned RC, Resource Conservation. She read the meaning of conservation. She stated they have a chance to save a little bit of what is left of Eastside. She asked that the Planning Commission send to Council a revision of Section C, Resource Conservation, Section 5.7 that would remove the following: “accessory structures, commercial kayak and boat rental facilities, especially if there was a structure to be built with it, lodges, hunting clubs, and boat clubs”. Ms. Bowden also stated that the seafood business has been on the decline. She added that if it wasn’t for Mr. Mike McGee and Mr. Tommy Clark, they wouldn’t have a seafood industry. They both have a place where they bring their loads ashore. She would also like to see an added prevention of filling in any marshland for parking. She added that what is there, is there now, but once you lose it, you’re never going to get it back. She has no issues with growth

but has a lot of issues with irresponsible growth. She concluded that although things permitted by right doesn't make it right.

- Mrs. Tammy Riley advised she agreed with everything Ms. Bowden said. She doesn't understand that they could begin to fill in marshland to make a parking lot. She advised that several years ago the Town talked about bulkheading Eastside Road to hold the road and make sure the structure stayed there. She asked what they would do if the road failed. She has a problem with allowing someone to come in and buy all the marshland and ruin it all, fill it in, build a house with water and electricity, and rent it to make lots of money. She asked, how about all the other people that have lived here all their lives paying taxes. They have the view and want to keep it. She doesn't feel it's right. She commented on the wildlife that is out there. She added that you know what you have on Main Street but on Eastside they have the exact opposite. You can see the beauty, the abundance of wildlife, and the lighthouse. How beautiful would it be if you couldn't see it?

- Mrs. Peggy Thomas stated she has lived in her house for 88 years. She wants the Planning Commission to take into consideration how long she has been there. Her house came from Assateague beach and is over 100 years old. She is used to being there and doesn't want to go anywhere else. She asked the Commission to take into consideration that they don't want anything built there. They would like open marsh from Mrs. Billie Ann Bowden's house to Tarr Lane which is the only open marsh and waterway you see. She added that on the west side of the Island, you don't see anything until you get to the carnival ground. She stated that it makes her sick to see the changes that have taken place since she's been born.

- Mr. William Craig advised he also lives on Eastside. He bought his house 15 years ago and loves the view and everything about it. He stated that if they would just sit in his yard for a day and listen to people pass by on their bicycles. They pull in his driveway and want to just look and take pictures. He added that if they lose that little space, it's gone. He stated that he doesn't like it. He explained what would happen. He stated that his house is 3 blocks high, and if there is a structure built there he asked if it's going to flood and water puddle in his yard. He asked to take this into consideration and a lot of people come to the Island and say how beautiful it is.

- Mrs. Billie Ann Bowden stated that where she lives on Eastside, she has lived $\frac{3}{4}$ of her 77 years. She stated that the home was left to her and she could have sold it as she already had a home on Ridge Road. Because of the lot size, the location, and the view they decided to sell the other home and move on Eastside. She would like to keep it in her family. She stated that a dock is low impact. But, when it comes to structures and filling in the marsh alongside the road, she has a problem with it. She can't imagine a car being parked on that side of Eastside. She has no problem with docks, but she does have problems with structures and parking. She stated that this might be opening a door for something else. The gentleman may have bigger ideas down the road.

- Ms. Kathleen (no last name) advised she does not live here permanently. This is her second home and she considers it a home. She is concerned about filling in a beautiful marsh that she sees every time she comes down here, rides her bicycle, or walks with her grandchildren

on Eastside. She asked why they would do such a thing as fill in areas that are for wildlife. She doesn't see that this should be a possibility. She stated they have flooding on Eastside and asked what this would do. She agreed with Mrs. Bowden, a dock is no big deal to her, but a home with people coming in and out of there filling up a beautiful natural marsh that they have is a big deal. She asked if this would be a snowball effect. She asked that this be stopped before it gets too far. She hopes that this is her retirement home and wants to enjoy the marsh and the birds. She loves this adding that this is her home.

- Mrs. Sonya Watson Conser echoed her neighbors. Her father built the house in 1974 with the gorgeous view. She has the privilege of living in the house, and added that the view is a fantastic, beautiful thing. She can't imagine someone wanting to fill the marsh. She commented on the number of cars that stop at the end of Wayne Road to take pictures of the view and the sunrise. She agreed with everything Mrs. Bowden said.

- Mr. Robert Watson stated that he moved to the Eastside home when he was 5 years old. He stated that it's a lot of history on Eastside. He discussed drainage issues due to development of the woods on the north side of Wayne Road, all of the drainage used to run into the ditches on Wayne Road running to the marsh on Eastside. A lot of that has been filled and now a lot of that floods. He advised that he owns the marsh property at the end of Wayne Road. The lighthouse, means a lot to him. He bought that property for one reason, because his father was afraid that when that was bought and divided someone was going to build a dock and a boathouse there. He invested money in that marshland and has no interest in doing anything on it. He stated that he wishes they would consider the Island and what is left of the marshlands around the Island and not just Eastside. He asked when enough is enough. He advised that he lives in Salisbury now but owns property here and other places. This is his home, it's where he comes every weekend. Mr. Watson stated that when his father was alive, he came over for 10 years and had breakfast with him every Saturday and Sunday. Eastside is a special side of the Island because they have the Assateague Lighthouse and the Pony Swim. He owns the property there and will never do anything with it. He invested money into that so no one will develop it. Growing up they had to build up Eastside because it used to flood. The Town has spent a lot of money building this up. He can't imagine developing that side of Eastside which would prevent even more drainage from going out.

- Mr. Mike McGee stated he has owned about 6 oyster houses on Eastside and he is still there. He asked why this came up. He has never heard of building on the marsh as it's literally impossible. He commented on dealing with the Army Corps of Engineers. He asked how this came up.

Building and Zoning Administrator Bowden advised there have been no applications at this time. There is a gentleman who is proposing to fill in an 8' x 10' parking spot on the end to put a water meter and a dock out to the end of Sheepshead Creek. He spoke with VMRC last week and nothing has been applied. There have been changes there and the new personnel is talking to old personnel about the site visit. He hasn't received the information back yet.

- Town Manager Tolbert read a letter from Mr. and Mrs. Dan Ingersol. It was in reference

to a dock and parking lot on Eastside Road. They are adjacent property owners there as well which includes property across from the lot along the marsh and to the creek. Their property has a very short and low walkway that previous owners constructed to launch kayaks. It is their understanding that a loophole in the Town Code relating to resource conservation could potentially allow this new robust project to be permitted. They questioned the validity of a series of loopholes that allows construction over wetlands and marsh in marsh in an environmentally sensitive area across from the U.S. National Park and will suggest that loophole was in fact designed to protect those areas rather than develop them. View shed rights adjacent to the U. S. National Park has long since been protected in many instances in order to preserve the beauty of the cultural landscapes for all to all to enjoy. The construction of any sort of building, residence, or boat house will effectively block the view not only for Mrs. Thomas, but for all living in Eastside Road. It would also effect, residents and tourists who routinely drive around the Island to drive around the Island to see the Assateague lighthouse. Most importantly, as a rich habitat for numerous species and submerged aquatic grasses, marshes are the very heart of our Island. She asked to think twice before allowing a variance that would compromise extraordinary natural diversity of the Island and close loopholes eliminating sections of the Code eliminating future large-scale development over the wetlands by others owning marshland along Eastside Road. They had previous appointments that kept them from attending this meeting and hopes the letter conveys their concerns. They requested the letter be read aloud at the meeting and forwarded to the Planning Commission.

Chairman Rosenberger closed the public participation. He advised that the second item on the agenda is the Comprehensive Plan. It was his intent to address the question of the marsh area that was raised at the Council meeting.

Agenda Review/Disclosures

Councilman McComb motioned, seconded by Mr. Shendock to approve the agenda as presented. All present were in favor and the motion was carried.

Approval of Minutes

Councilman McComb motioned, seconded by Mr. Shendock to approve the minutes of the April 11th, 2023, meeting. All present were in favor and the motion was carried.

Consider Adjustments to Residential Area Requirements

Chairman Rosenberger advised this was a topic as a result of the new structure on Church Street. He stated that Town Manager Tolbert and Building and Zoning Administrator Bowden worked together to create a proposal.

Town Manager Tolbert stated that the issue came up because of a structure that was built excessively higher than the other structures in the neighborhood. He advised of the front yard setbacks that are modified to fit the neighborhood. This keeps the character of the neighborhood by not forcing new structures to be placed so far back that they look out of place, taking that provision and extending it to the height as well as the front yard setback. He added that this could be for R1, R2, and R3. He read further about setbacks. He read the proposed addition to the Code for Height Regulations: "Buildings and other structures may be erected up to 36 feet in height accordance with Section 2.24. Definition of building and structure height: "No structure

shall exceed three stories in height. Exception: Enclosures below the base flood elevation used for incidental storage, parking garages, and means of egress shall be exempt from being considered a story if such space is less than 600 square feet in area. However, the height restriction still applies.” He stated to average the height as per the rest of the neighborhood, they would add, “Structures using the average setback rule as referenced in 3.3.2, must not exceed the average height of the structures on either side of the proposed structure. The building official may make minimum allowances for compliance with applicable flood zone and building code requirements.” He stated that the reason for the last statement is because the average setback rule was put in many years ago before flood insurance was required and before some building codes were changed. The building official will have to give allowance to build at the base flood plus freeboard which is two feet above base. This is also to allow for a new structure which allows a minimum height of 8 feet per story. He added that a lot of buildings have less than 8 feet per story. He explained further that this would be only if he takes advantage of the minimum setback rule.

Chairman Rosenberger stated that he has been on the Planning Commission for over 20 years. They have always taken into consideration what they can do about keeping Chincoteague somewhat the way it is and not having an impact with changes that would alter the dynamics of the Island. That’s the reason he came here, why they stay here, and why others come to visit here. He thinks this is a fair way of approaching it.

Mr. Shendock feels it certainly goes through and adds a usable dimension to the regulations. He added that paragraph 1 in Section 3.34 may be a little restrictive. If this is the case, they could appeal to the Board. He feels this is an enhancement and improvement.

Councilman McComb agreed. He stated that it gives clarity and is well written.

Mrs. Cherrix stated that it’s good.

Mr. Dendler feels this is a good way to address what could be a real problem.

Councilman McComb motioned, seconded by Mr. Shendock to send the proposed changes to Council. All present were in favor and the motion was carried.

Consider Changes to Comprehensive Plan

Chairman Rosenberger stated that this item is to address some additions that they’ve been working on. This is to look at opportunities to improve the Plan or address local issues that they had not foreseen. They’re reviewing the 2020 plan so they’re ready to present a Plan in 2025. They’ve been working on the sewage disposal plan and explained further. They have to find a way to meet the needs for the very near future and meet the needs in the 10 to 15-year time frame. They’ve developed a base plan to present to Council and the developers to see whether they would be in compliance.

Town Manager Tolbert advised that Mr. Shendock put this together.

Mr. Shendock reviewed the process that has been moving along rapidly. The Commission defined a public sewer service area. The PSSA encompasses the boundaries of the incorporated town so that at some point in time the whole Town is under consideration. The immediate step is to expand the existing facility, expanded system facilities, and work out from there. The HRSD was approved to do a study to see what type of options are available. They have to define 3 phases of implementation that are based on the findings of the Wastewater Advisory Committee. The Commission then defined 3 phases of implementation and they are in the commercial district.

Town Manager Tolbert gave an in-depth account of how the sewage treatment plant and partnership began with HRSD. He explained the eligibility of connection and the proposed phases. He stated that HRSD made it clear at the first meeting in 2020 that if the Town went through this deal and followed it through to the end, the Town was able to give this plant to them to operate within the guidelines of what the Planning Commission came up with, as far as connecting. The Planning Commission came up with a map to phase in the different commercial areas and the Town will try to obtain additional capacity from the DEQ so they can treat more sewage on the Island.

Chairman Rosenberger stated that Wastewater Advisory Committee came up with a workable plan, but there was a question of funding. He gave an account of the meeting 5 years ago at the College. He added that this is a long process with commercial areas first. He asked what the next step is with HRSD.

Town Manager Tolbert stated that they need to tune up the proposal and present it to Council to include it in the Comprehensive Plan. This requires a public hearing. A joint public hearing is the most efficient way to get it done. He stated that if they want to approve it pending the HRSD review if they're fine with it then it can go to a joint public hearing in June with Council.

Councilman McComb motioned, seconded by Mr. Shendock to send the proposed addition of Sewage Disposal and Phase Map to the Comprehensive Plan to Council contingent on review by HRSD. All present were in favor and the motion was carried.

Review of 2025 Comprehensive Plan

Chairman Rosenberger stated that last month he requested that the Commission begin reviewing the Comprehensive Plan for things they may need to add to the Plan. As a result of the last meeting, he put marshland on the top of his list. Based on public participation, he would like to proceed with this. He asked for comments.

Councilman McComb stated that a lot of good suggestions have been made tonight specifically when you look at Section 5-7 through 5-10 which address this. He stated that Councilwoman Bowden spoke well with key items in the current section that talks about accessory structures, lodgings, clubhouses, boat and kayak rentals, and the reference of filling in marshland. He would like to see staff bring those sections as they did with the residential area requirements. He suggested writing what a revision would look like for the next Planning Commission meeting for review and possibly take action.

Town Manager Tolbert asked the extent of the revisions that they would like him to do, or should he consolidate everyone's comments or would they like to offer a few specifics.

Councilman McComb stated that he likes what was laid out in the comments specifically addressing things like accessory structure in the letter that was written.

Chairman Rosenberger stated that when the Maddox Campground was developed one of the major concerns was the marshland at that portion of the Island. The marshland extends across Maddox Boulevard, behind the museum, and the rest of it goes all the way back to the townhouses and Piney Island. It was his feeling at the time, and since then they have gotten involved with resiliency issues, retaining what we presently have due to whether you have climate change, or environmental change, or rising sea levels. He stated that one of the aspects of that according to the experts is that marshlands are just as effective as protecting land as bulkheads. Bulkheads raise another foot or two, but they don't last forever. The marshland migrates, or stays the same, and the marshland is the home of crabs, eels, herons, egrets, and small fish. It's the only aspect left on our borders here on the Island. He wouldn't be opposed to totally prohibiting any development on the marshland. He stated that when you put a pier over the marsh there is mud underneath and not a blade of grass under there. He added that it's God's gift to us.

Mr. Shendock suggested taking the time to look at this to make sure they are consistent with other regulations. He feels that the Commission should go through and understand all regulations that apply to this so what they come up with is consistent. He stated there are things that are done to the marsh that are very destructive. They want to make sure they protect against that and be thorough.

Chairman Rosenberger reviewed a couple of articles he read about wetlands mitigation plans. He agreed with Mr. Shendock, they have to stay within the rules. He would like to curtail construction on the marsh.

Councilman McComb feels they should at least protect what they know may potentially be a problem right now and build on it from there.

Chairman Rosenberger mentioned drainage and stated that in the Comprehensive Plan review he would like to look at vacant land and open space. He feels drainage is a big problem and is controlled by the tide. He stated that not only Wayne Road drains into that marsh but so does Tarr Lane and Tarr Lane drainage comes from Sunnywood Manor. They had opportunities of development on Eastside Road. He is concerned that they have the appropriate vehicle for the Comprehensive Plan. The Plan should be broad enough or specific enough to provide the Town with the opportunity to address potential issues that may come forward and maintain what they presently have. Drainage is a problem from the standpoint of a developer. He talked about rules so as not to inundate neighbors with drainage issues. He also reminded that some rules were changed in the last Virginia General Assembly regarding the Planning Commission and Comprehensive Plan and resiliency.

Mr. Shendock commented on the drainage and stated that water flows were incorporated in the 2020 Comprehensive Plan revision. He mentioned multiple available tools to go through and evaluate drainage and suggested integration. He agreed to meet with Building and Zoning Administrator Bowden to go over the tools but advised it will take some time.

Chairman Rosenberger stated that Mr. Shendock is the expert on the Comprehensive Plan and has devoted thousands of hours on the Plan. He expressed his appreciation.

Commission Members Announcements or Comments

Mr. Shendock stated it's good to see everyone out tonight.

Chairman Rosenberger was glad to see everyone out and invited them back on the 2nd Tuesday of the month.

Adjourn

Councilman McComb motioned, seconded by Mr. Shendock to adjourn. All present were in favor and the motion was carried.

Chairman, Mr. Ray Rosenberger