

PLANNING COMMISSION MEETING

A G E N D A

TOWN OF CHINCOTEAGUE, VIRGINIA

February 9, 2010 - 7:00 P.M. – Council Chambers - Town Hall

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC PARTICIPATION

AGENDA REVIEW/DISCLOSURES:

1. Adoption of Bylaws/Election of Officers
2. Approval of January 12, 2010 minutes
3. Rezoning Application – Ettinger/Parcel ‘E’ (Public Hearing)
 - Staff Report
 - Applicant Presentation
 - Public Comment
 - Discussion/Motion
4. Old Business
 - Small Wind Energy System Ordinance
 - Home Occupation Regulations/Signs
5. New Business
 - Political Signs
6. Commission Members Announcements or Comments
(Note: Roberts Rules do not allow for discussion under comment period)

ADJOURN



By-Laws Chincoteague Planning Commission

ARTICLE 1 – OBJECTIVES

- 1-1. This Commission, established in conformance with the resolution adopted by the Chincoteague Town Council _____, 2004, has adopted the following Articles in order to facilitate its powers and duties in accordance with the provisions of Title 15.2, Chapter 22, Article 2 of the Code of Virginia.
- 1-2. The official title of this Commission shall be “The Chincoteague Planning Commission”.

ARTICLE 2 – MEMBERS

- 2-1. Said commission shall consist of seven (7) members, one of whom shall be a member of the Town Council, and the remaining six (6) hereafter referred to as appointed members. Such members shall be residents of the locality and be a minimum of 50% owner of real property.
- 2-2. The term of the council person shall in all cases correspond to their tenure of office.
Of the other members first appointed, one (1) shall be appointed for a term of one (1) year, one (1) shall be appointed for a term of two (2) years, one (1) shall be appointed for a term of three (3) years, and one (1) shall be appointed for a term of four (4) years, from and after the effective date of this resolution. Their successors shall be appointed for terms of four (4) years. Any vacancy in membership shall be filled by an appointment by the Council and such appointment, in the case of an appointed member, shall be for the unexpired term. Any appointed member may be removed by the Council for inefficiency, neglect of duty or malfeasance in office, provided that such removal may be made only after a public hearing at which said member is given an opportunity to appear and be heard on the charges against him.

- 2-3. The term of a Commission member shall expire on December 31 at which meeting his successor's term of office shall begin.

ARTICLE 3 – OFFICERS AND THEIR SELECTION

- 3-1. The officers of the Planning Commission shall consist of a Chairperson, a Vice-Chairperson and a Secretary.
- 3-2. Nomination of officers shall be made from the floor at the regular January meeting each year. Election of officers shall follow immediately.
- 3-3. A candidate receiving a majority vote of the entire membership of the Planning Commission shall be declared elected. Such candidate shall take office immediately and serve for one (1) year or until his/her successor shall take office.
- 3-4. Vacancies in office shall be filled immediately by regular election procedures.

ARTICLE 4 – DUTIES OF OFFICERS

- 4-1 The Chairperson shall be a member of the Commission and shall:
 - 4-1-2 Preside at all meetings.
 - 4-1-3 Rule on all procedural questions (subject to a reversal by a two-thirds (2/3) majority vote by the members present.)
 - 4-1-4. Be informed immediately of any official communication and report same at the next regular meeting.
 - 4-1-5. Carry out other duties as assigned by the Commission.
- 4-2. The Vice-Chairperson shall be a member of the Commission and shall:
 - 4-2-1. Act in the absence or inability of the Chairperson to act.
 - 4-2-2. Have power to function in the same capacity as the Chairperson in cases of the Chairperson's inability to act.
- 4-3. The Secretary shall:
 - 4-3-1. Keep a written record of all business transacted by the Commission.
 - 4-3-2. Notify all members of all meetings.

- 4-3-3. Keep a file of all official records and reports of the Commission.
- 4-3-4. Certify all maps, records, and reports of the Commission.
- 4-3-5. Give notice of all hearings and public meetings.
- 4-3-6. Attend to the correspondence of the Commission.
- 4-3-7. Prepare and be responsible for the publishing of advertisements relating to public hearings.

ARTICLE 5 – SUB-COMMITTEES

- 5-1 At such times that the complexity of duties facing the Commission shall require the advice of standing committees, the following shall be appointed by the Chairperson to serve as needed:
 - 5-1-1. A Comprehensive Plan Committee. It shall coordinate the work of the other committees as it progresses and relate it to the overall program and keep the comprehensive plan developing in a realistic and reasonable manner.
 - 5-1-2. A Land Use Committee. It shall initially determine, and then continue to maintain an inventory of land uses. This committee shall also be responsible for the preparation of land use maps.
 - 5-1-3. A Subdivision Committee. This committee should draft subdivision regulations and any subsequent amendments. They shall examine all applications for major subdivisions, receive the reviews of the staff pertaining to them, and make recommendations to the Commission.
 - 5-1-4. A Zoning Committee. This committee should draft zoning ordinances and/or any subsequent amendments. They shall review all applications for rezoning or special use permits. When authorized by law, they shall hold public hearings, receive the views of the staff pertaining to the issue, and make recommendations to the Commission.
 - 5-1-5. A Street, Traffic and Parking Committee. They shall study the location, relocation, opening, closing or widening of streets, alleys, right-of-ways and limited access thoroughfares as well as control and expediting of traffic and provision for adequate parking. This committee shall initiate pertinent action and make recommendations to the Commission. Public and private hearings may also be conducted.
 - 5-1-6. A Capital Improvements Committee. They shall study the economics of capital improvements as it relates to the use of land to be made by the Town. This may be done independently or in conjunction with affected governmental agencies.

Such study shall include need, priority of need, cost financing, joint use and participation, location, and relative status either within or without the views of the staff relative to the issues and make any recommendation deemed pertinent to the Commission are further duties of the committee.

- 5-2. Special committees may be appointed by the Chairperson for purposes and terms approved by the Commission.
- 5-3. The Chairperson shall be an ex officio member of every committee.

ARTICLE 6 – MEETINGS

- 6-1. Regular meetings of the Commission shall be held on the second Tuesday of each month at 7:00 p.m. excluding the months of July and December. When a meeting falls on a legal holiday, the meeting shall be on the day following unless otherwise designated by the Commission. Such meetings must be held in a public building.
- 6-2. Special meetings shall be called at the request of the Chairperson or at the request of a quorum of the membership.
- 6-3. All regular meetings, hearings, records, and accounts shall be open to the public.
- 6-4. A majority of the membership of the Commission shall constitute a quorum. The number of votes necessary to transact business shall be a majority of the entire membership. Voting may be by roll call, in which case a record shall be kept as a part of the minutes.

ARTICLE 7 – ORDER OF BUSINESS

- 7-1. The order of business for a regular meeting shall be:
 - 7-1-1. Call to order by Chairperson.
 - 7-1-2. Roll call.
 - 7-1-3. Determination of a quorum.
 - 7-1-4. Invocation.
 - 7-1-5. Pledge of Allegiance.
 - 7-1-6. Public Participation
 - 7-1-7. Review of Agenda.

7-1-8. Reading of Minutes.

7-1-9. Old business.

7-1-10. New Business.

7-1-11. Adjournment.

7-2. Parliamentary procedure in Commission meetings shall be governed by Roberts's Rules of Order, Revised.

7-3. The Planning Commission shall keep a set of minutes of all meetings, and these minutes shall become a public record.

The Chairperson shall sign all minutes, and at the end of the year shall certify that the minutes of the preceding year are a true and correct copy.

ARTICLE 8 – HEARINGS

8-1. In addition to those required by law, the Commission, at its discretion, may hold public hearings when it decides that a hearing will be in the public interest.

8-2. Notice of special hearings shall be published once a week for two successive weeks in a newspaper of general circulation in the area not less than five (5), nor more than twenty-one (21) days before the time of public hearing.

8-3. The case before the Commission shall be summarized by the Chairperson or other member delegated by the Chairperson. Interested parties shall have the privilege of the floor. Records or statements shall be recorded or sworn to as evidence for any court of law, only after notice is given to the interested parties.

8-4. A record shall be kept of those speaking before the hearing.

ARTICLE 9 – CORRESPONDENCE

9-1. It shall be the duty of the Secretary to draft and sign all correspondence necessary for the execution of the duties and functions of the Planning Commission.

9-2. All official papers and plans involving the authority of the Commission shall bear the signature of the Chairperson and Vice-Chairperson.

ARTICLE 10 – AMENDMENTS

10-1. These rules may be changed by a recorded two-thirds (2/3) vote of the entire membership of the Commission subject to approval from the Town Council after thirty (30) days notice.

**PLANNING COMMISSION MEETING
12 JANUARY 2010
MINUTES**

CALL TO ORDER – Chairman Rosenberger called the meeting to order at 7:00 pm.
INVOCATION AND PLEDGE OF ALLEGIANCE – Mr. Rosenberger led the invocation followed by the Pledge of Allegiance.

Members Present:

Mr. Ray Rosenberger, Chairman
Mr. Steve Katsetos
Mr. Tripp Muth
Mr. Gene Taylor
Mrs. Mollie Cherrix

Members Absent:

Mr. John Jester
Mr. Bob Behr (term expired)

Mr. William Neville, Planning Director
Mr. Kenny L. Lewis, Zoning Administrator
Mr. Robert G. Ritter, Jr., Town Manager

PUBLIC COMMENT

Ms. Inge Veneziano spoke in favor of permitting one (1) non-family member as an employee within the proposed Limited Home Occupation ordinance. Several questions confirmed that the current zoning code does not currently permit this, and that her baked goods business is not open to the public for sales. She explained that with a disability, her home based business is made possible through the assistance of a non-family member.

Mr. Rosenberger closed the public portion of the agenda since there were no other speakers.

AGENDA ADOPTION

Mr. Taylor motioned, seconded by Mr. Katsetos to adopt the agenda. The motion was unanimously approved.

1. Review of Bylaws, Disclosure Statement

The Commissioners were informed that the disclosure statement included in the packet must be filled out each year and returned to Ms. Karen Hipple.

Following a brief review of the existing Bylaws for the Planning Commission, Mr. Rosenberger requested that the document should be updated to identify the regular meeting date as the second Tuesday of each month, to correct Article 7 – Order of Business to include an Invocation, and to change the regular election of officers from September to January to coincide with new appointments. Mr.

Neville was directed to revise the document and include it on the February 2010 agenda for adoption.

Mr. Ritter requested the Commissioners to recommend suitable candidates for the vacant position and encourage them to fill out the questionnaire at the front counter prior to January 27th.

Mr. Rosenberger thanked the Town Council for his reappointment and on behalf of Mrs. Cherrix as well.

2. Election of Officers

Mr. Rosenberger noted that a new vice chairman must be elected to replace Mr. Behr due to his expired term. It was suggested and agreed that the election of officers would be deferred until the Town Council was able to appoint a replacement member to the Commission.

3. Approval of November 10, 2009 minutes

The minutes as submitted were reviewed and no changes were requested. Mr. Rosenberger questioned whether Mr. Harvey Spurlock, Director of Public Works would replace Mr. Cosby on the Directional Sign committee. Mr. Ritter agreed to confirm this assignment. Mrs. Cherrix motioned, seconded by Mr. Muth to approve the minutes of the last meeting. The motion was unanimously approved.

4. Rezoning Application – Ettinger/Parcel ‘E’

Mr. Rosenberger noted that this application had been referred to the Planning Commission from the Town Council and in accordance with State Code, a report was required within 30 days which would in effect require a decision at this meeting.

Mr. Neville responded to say that the Commission could hear the applicant’s presentation, discuss the case this evening and report to the Council in conformance with Town Code requirements, and that the report may include a recommendation that a public hearing will be held by the Commission in conformance with State Code to hear from the public prior to providing the Council with a recommendation.

Mr. Jeff Potts of Coldwell Banker, applicant for the property owner (Mr. Philip Ettinger), spoke to the Commission about the request to rezone approximately 4.5 acres adjacent to the Oyster Bay II subdivision from R-1 to R-2. The property was at one point part of the subdivision until December 1975 at which time it was sold off. There is no documentation at this time to prove whether it is or is not still a part of the Oyster Bay II subdivision.

Mr. Potts explained that the property used to be located in the County prior to incorporation into the Town limits in 1989. Prior County zoning was a single category of residential, while the Town zoning provides for different categories of residential such as R-1, R-2, and R-3. He made the case that this zoning request is really a correction since the parcel should not have been zoned R-1 based on its approved use when it was annexed.

Mr. Potts responded to a question whether this was subdivided prior to the assignment of R-1 zoning by describing the original intent of the parcel for common open space for the construction of a community center, swimming pool and general store. When the original developer went bankrupt in November 1974, the parcel was deeded off and has not been required to pay association dues.

A concern was expressed by the Commission that the existing owners within Oyster Bay subdivision do not have a common interest in this parcel and that the current Bylaws do not have mention of the property. Mr. Potts stated that the Bylaws only apply to the 96 residential lots in the subdivision. A copy of the deed of sale for the property was provided for review and Mr. Potts also compared the deed with one from an adjacent lot.

Mr. Rosenberger asked about a title search and whether that would confirm the parcel's relationship with the subdivision. There was a discussion regarding subdivision approval, covenants, and the creation of homeowners associations/bylaws generally.

Mr. Potts stated that the only confirmation he can offer at this time is that this property has never been required to pay association dues. At the suggestion of Mr. Poulson, the landowner has hired a real estate attorney to prepare a title search and opinion regarding the status of the parcel.

Mr. Rosenberger confirmed that this information would be important and that the Planning Commission would also proceed with advertisement for a public hearing at the next Commission meeting in February.

Mr. Muth asked whether there were other large R-1 parcels in Town that were a part of an existing subdivision. After several were considered, Mr. Lewis concluded that there was probably not a similar example. He noted that all existing subdivisions at the time of the 1994 annexation were designated R-1 and that if there are covenants that establish criteria for the subdivision, the Town administers the covenants over the R-1 regulations if there is a conflict.

Mr. Muth confirmed with the applicant that the intent of the property owner is to increase the value of the property for resale and there were no plans at this time regarding further subdivision or development. Mr. Potts also noted that the property could be subdivided into 3 lots without further review by the Town but that was not the owners intent at this time.

Mr. Lewis asked about the sign on the property along North Main Street advertising lots for sale. Mr. Potts responded that he was currently marketing 32 lots for sale within Oyster Bay II subdivision.

Commissioners discussed with the applicant adjoining properties and the location of existing structures.

Mrs. Cherrix requested information regarding proposed access to the property. Mr. Potts responded that access could be provided from 130 feet of frontage along North Main Street by filling (if necessary) on either side of the existing pond. He also discussed the possibility of providing access from the private Hibiscus Drive if an agreement regarding improvements and maintenance could be reached with the Oyster Bay II Association.

Several comments were made regarding the location of the property adjacent to both R-1 and R-3 zoning, and the potential for the proposed R-2 zoning to serve as a transition.

At the suggestion of Chairman Rosenberger a motion was made by Mr. Muth, seconded by Mr. Katsetos to schedule this application for public hearing at the next Commission meeting in February 2010. A brief discussion clarified the importance of providing the public an opportunity to provide comment on the application. The motion was approved unanimously.

Mr. Neville requested that a report from the Commission would be presented to the Town Council at their meeting on February 1, 2010.

5. Home Occupation Regulations/Signs

This item is a continuation of the Planning Commission's consideration of proposed revisions to the Town Code regarding Home Occupations.

Mr. Lewis presented the latest draft version of the ordinance that compiled best practices from several Virginia communities. He encouraged the Commission to review and consider this draft as a working document that can be modified to meet the unique characteristics of the Town of Chincoteague. One major difference between the existing and proposed regulations is the identification of specific permitted uses listed to provide a separation of limited home occupations from home occupations. There are also new regulations for business vehicles, and signage of all kinds.

Mr. Rosenberger proposed that the ordinance should be read aloud at the meeting to encourage discussion and questions for Mr. Lewis. Questions included:

- Some limited home occupations would seem to generate traffic and parking concerns such as instruction for students

- Section 288.2(a) refers to specific zoning districts that permit home occupation. Should this language be more general and refer to use lists contained within each district in case they change in the future?
- Discussion regarding visibility of business vehicles
 - Should S.288.1(a)(8) and S.288.2(a)(8) say ‘...unless garaged’
 - This section may also need to address open or closed equipment/cargo trailers
 - The 20 feet length criteria should be evaluated to make sure it represents the intended control of large vehicles
 - Is this enforceable or reasonable if someone without a home occupation permit could potentially use/park/store similar vehicles. Concern for grandfathering and/or flood of permits prior to adoption.
 - Consider issue of commercial zoning districts that may permit large business vehicles by right but not under home occupation permit
- Suggestion that paragraph 5 regarding limitation of signage should be broken into several smaller sections for clarity. Discussion that this section also needs to be compared to sign ordinance requirements
- Discussion regarding 32 square feet cumulative limit of sign area. Enforcement of vehicles would be difficult, particularly where on street parking is available.
- If a use is not listed, how do you get added to the list as a permitted use.

Mr. Neville suggested that the format of the Ordinance should be reviewed with the Town Attorney and located in Article 6 General Provisions, rather than modifying the definition section as currently proposed.

Mr. Ritter suggested that Commission members should pass along any other questions or concerns to Mr. Neville so that the draft ordinance may be updated and presented for further consideration at the next Planning Commission meeting. When the Commission is satisfied with the content, the ordinance should be forwarded to Mr. Poulson for review.

6. Information Update/Discussion

a. Subdivision Ordinance Revisions

Mr. Rosenberger asked about the status of the proposed Subdivision Ordinance. Mr. Ritter stated that the Town Council had received the recommendation of the Planning Commission and had referred it to Mr. Poulson on February 2, 2009 to respond to several questions that had been raised. Mr. Poulson prepared a memo on February 23, 2009 and Mr. Anderson responded on April 7, 2009 regarding outstanding issues.

Mr. Ritter indicated that Staff would try to renew discussion with Mr. Poulson.

b. Arts and Entertainment District

Following a presentation by Mr. Behr at the December 7, 2009 Town Council meeting, the Council requested a meeting with the Planning Commission and the Subcommittee to decide what direction the Town wants to go with the planning process to create an Arts & Cultural District. Mr. Ritter indicated that this meeting would be scheduled sometime in the next several months. Mr. Lewis suggested that Mr. Behr should confirm his intent to stay involved with the Subcommittee now that he is not longer on the Commission.

c. Wind Energy Ordinance

A public hearing for the proposed wind energy ordinance was held by the Town Council on December 7, 2009 and was forwarded to the Town Attorney and Planning Commission for further review of several issues.

Issue #1 – Should small wind energy systems be permitted by conditional use permit with approval by Town Council (\$1,500 fee) or special use permit with approval by Board of Zoning Appeals (\$450 fee)?

Issue #2 – Whichever path is chosen, revisions may be necessary to other sections of the Town Zoning ordinance that currently permit power generating windmills by special use permit.

Mr. Rosenberger indicated his concern for the need to adopt additional regulations for small wind energy systems based on the level of public interest, and the need to address public safety issues.

Mr. Lewis also identified the concern of a cumulative impact on the community if too many systems were installed in one location such as along main street.

There was a general discussion regarding the desire to make the approval process simple so that people would be encouraged to pursue alternative energy solutions, and the need for well defined safety standards. The BZA/Special Use Permit process may be the simplest way to resolve the conflict as long as it was not possible to receive a variance for any of the safety standards.

Additional discussion involved the potential for roof mounted wind energy systems that are not currently addressed by the draft ordinance. The Commission concluded that this option would potentially conflict with

building code, maximum building height and would not generally be suitable for the residential character of the community.

Mr. Lewis suggested that the Commission should consider what sections of the ordinance can or cannot be appealed before providing guidance back to the Town Council.

Mr. Neville was directed to make the changes discussed and bring the Ordinance back to the Commission at their next meeting for further review.

d. Drainage Issues from adjacent property

Mr. Rosenberger noted the recent drainage issues in Town and concerns expressed to him that filling of individual properties becomes a competition in some cases. The concern is: What can we do as a planning commission, are there areas of responsibility we have, to help protect individuals, specifically in residential areas, from being inundated by somebody else's water? In the commercial areas the problem had been addressed with significant requirements insofar as drainage.

Mr. Lewis noted that Accomack County Soil and Sediment Control enforces stormwater management for commercial properties but they do not on residential. Legislation currently proposed at the State level would require stormwater management for any property that proposes more than 15% fill, which would help the current problem.

A general discussion concluded that the problem is not so much the larger subdivisions but the actions of individual lot owners taking action to deal with water in their yard. There should be a requirement to direct water to a ditch or retain it in a pond rather than send it onto your neighbor. The Town should not have to be a referee between two property owners. The main concern is no matter what you do, where does the water go?

Mr. Rosenberger stated he wanted to put this issue out on the table and look at options that other Towns, or VML may have considered. The Town is hiring a stormwater management consultant to address some areas of Town and there may be recommendations coming from their work.

e. Virginia Certified Planning Commissioners Program

Mr. Ritter requested the Commissioners to indicate who would be interested in signing up for the training program. Mr. Muth, Mr. Katsetos, and Mrs. Cherrix agreed to attend. Mr. Muth offered to pay his own fee.

7. Commission Member Announcements or Comments

Mr. Taylor stated his preference on the Home Occupancy Ordinance that vehicle signage would not count toward the 32 square foot maximum total.

Mr. Lewis thanked Mr. Bob Behr for his service to the Planning Commission.

ADJOURN

Mr. Muth motioned, seconded by Mrs. Cherrix to adjourn the meeting. The motion was unanimously approved.

Ray Rosenberger, Chairman

MEMORANDUM

To: Planning Commission
From: William Neville, Planning Director
Date: January 8, 2010 (Updated February 5, 2010)
Subject: Rezoning Application – Ettinger Parcel “E”

Summary

Phillip P. Ettinger of Alexandria, VA has submitted an application to rezone approximately 4.5 acres from the R-1 Residential District to the R-2 Residential District in order to sell the property for future development. On January 4, 2010, the Town Council referred the application to the Planning Commission for a report (to be provided within 30 days) in accordance with Sec. 11.1.4 of the Town Code. The Planning Commission received a presentation by the applicant at the January 12, 2010 meeting and prepared a report to Council that recommended a public hearing and further consideration. Public notice has been provided for the February 9, 2010 meeting and additional application materials (letter dated January 28, 2010) have been submitted.

Application Information

Information provided by the applicant is attached for reference purposes.

The applicant has stated that Parcel ‘E’ is located at the edge of the existing Oyster Bay Section II subdivision zoned R-1 and next to an adjoining undeveloped property zoned R-3. If rezoned to the R-2 district, it would serve as a transition and buffer between the two properties. A brief history of the Oyster Bay subdivision was presented by the applicant who noted the minimum lot size of 12,000 square feet in the subdivision was unchanged when the property was incorporated into the Town of Chincoteague. At that time, the subdivision was mapped as R-1 (minimum lot size of 15,000 square feet) to reflect the deed restriction for building only single family detached homes. The applicant’s request to include the subject property in the R-2 zoning district (minimum lot size of 12,500 square feet) was described as consistent with the original subdivision lot size and similarly located with properties along North Main Street that are also zoned R-2. An early proposal for Parcel ‘E’ to be used for recreation and commercial use was also described.

The applicant has not submitted a proposed development plan, or any details of site improvements such as proposed building types, buffers to adjoining properties, safe means of access to the property in order to support the requested increase in permitted uses, or other studies that demonstrate the potential use of the property.

The applicant has provided a copy of the deed of sale dated December 4, 1975 in support of the application stating that the property was ‘removed’ from the Oyster Bay 2 subdivision and is no longer community property. A legal opinion from a qualified land use attorney was requested and provided to the Town on January 28, 2010 (see attached document). Mr. Jon Poulson, Town Attorney, has indicated that this letter is enough to satisfy his initial concern regarding the relationship of Parcel E to the Oyster Bay II subdivision.

Project Review

The property is located adjacent to parcels within the R-1, R-2 and R-3 zoning districts as illustrated on the Existing Zoning Map. Permitted uses in the Residential districts are summarized below for quick reference.

R-1 Residential	R-2 Residential	R-3 Residential
Single Family Dwelling Limited Home Occupation Tourist Rental Homes Accessory Building/Structure	Single Family Dwelling Two Family Dwelling Home Occupation Tourist Rental Homes Tourist Homes Accessory Building/Structure Fences Public Utilities Signs Parks Schools Churches Pony Penning Sales/Yard Sales	Single Family Dwelling Two Family Dwelling Mobile Home Home Occupation Tourist Rental Homes Tourist Homes Vacation Rental Cottages Boardinghouse Bed and Breakfast Rest Home Beauty/barber shop Professional Office Day Care Facilities Nursing Homes Municipal Facilities Accessory Building/Structure Fences Public Utilities Signs Recreational Parks/Playgrounds Schools Churches Public Piers/Boatramps Pony Penning Sales/Yard Sales Mobile Home Parks

The Comprehensive Plan that was adopted by the Town Council on January 4, 2010 after many years of public input and careful deliberation provides guidance regarding this idea. The Plan identifies this parcel as Single Family Residential with an implementation strategy to apply the R-1 zoning district and to limit residential use to detached single family only. Planning areas illustrated on the Comprehensive Plan 2010 Map were generally mapped to identify areas of common land use characteristics, subdivisions controlled by covenants and restrictions, and to reflect public participation in the planning process.

Land Use Objectives and Recommendations contained in Appendix A of the Comprehensive Plan support the continuation of the R-1 district along with improvements to the quality of local streets and pedestrian systems serving residential neighborhoods. For adjacent properties located in the One and Two Family Residential Planning area, the Plan supports redevelopment and infill of existing underutilized commercial areas in the R-2 district. Recommendations for street and pedestrian system improvements are included along with appropriate development standards for a balanced mix of residential and commercial development.

Review Criteria

The Town of Chincoteague Application for Rezoning requests three criteria for consideration in addition to the guidance provided by the adopted Comprehensive Plan. The information provided by the applicant is summarized below.

1. Reason for Request

A Zoning Map ‘correction’ for Parcel ‘E’ to the R-2 zoning district would allow one-family residential lots of a similar size and character to the Oyster Bay subdivision prior to its incorporation into the Town of Chincoteague.

Potential development of two-family residential lots and other permitted uses under the R-2 zoning district is consistent with similar adjacent properties along North Main Street that are zoned R-2

Owner desires greater flexibility of land use to assist in sale of the property.

2. Proposed Use

No supporting information such as a concept plan has been provided to assist in the evaluation of the rezoning request.

3. Voluntary Proffers

None provided.

The Chincoteague Town Code also provides a reference (CD1:5, CDA:26 Sec. 2.142, State Code 15.2-2286(7)) to assist in reviewing a decision to rezone this property. The proposed change

may occur whenever the public necessity, convenience, general welfare, or good zoning practice requires such a change.

Recommendations

Public comment should be received and considered by the Planning Commission. A public hearing has been advertised along with certified notices sent to all adjoining property owners as required by State Code Section 15.2-2204.

Voluntary Proffers by the applicant to address specific concerns may be considered by the Planning Commission in making their recommendation to Town Council.

Amendments to the zoning map should generally follow the guidance of the Comprehensive Plan, and/or should be accompanied by statements and findings regarding the review criteria listed above. Sample motions to recommend approval, denial or continuation are provided for reference.

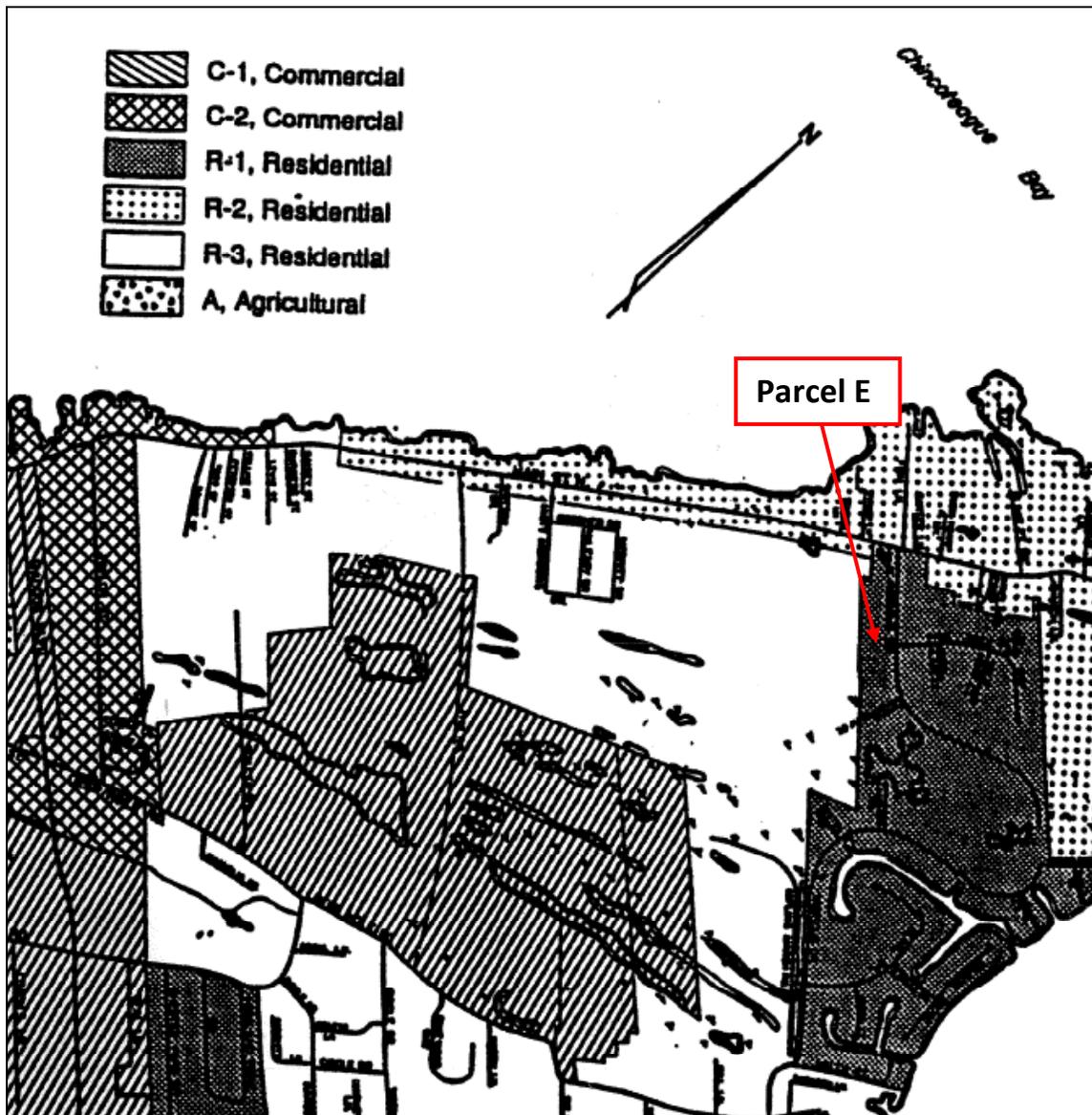
Sample Motions

1. I move to forward the rezoning request for Phillip P. Ettinger – Parcel ‘E’ to the Town Council with a recommendation for approval for the following reasons:
 - a. The property is similarly situated to adjacent lots along North Main Street that include a mix of residential zoning districts including the R-2 district,
 - b. With the application of unique design and development standards, the property could serve as a transition between the adjacent R-1 and R-3 zoning districts,
 - c. Rezoning to the R-2 district would ‘correct’ a mapping error that occurred at the time of annexation into the Town
 - d. other _____

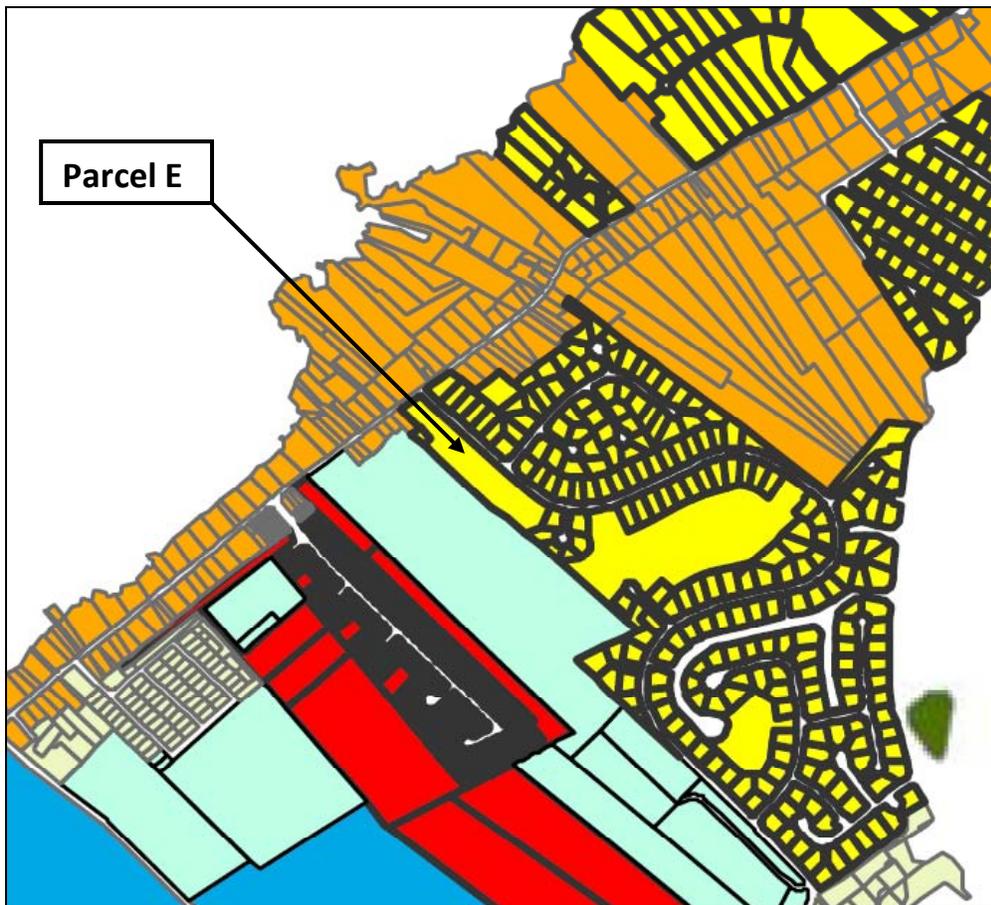
2. I move to forward the rezoning request for Phillip P. Ettinger – Parcel ‘E’ to the Town Council with a recommendation for denial for the following reasons:
 - a. Rezoning to the R-2 district is not consistent with the adopted Comprehensive plan that maps this property as a part of the Oyster Bay subdivision,
 - b. The proposed increase of permitted uses and density is requested without a concept plan for development or other information to demonstrate adequate protection of the public welfare and the implementation of good zoning practice
 - c. other _____

- I move to table the consideration of the rezoning request for Phillip P. Ettinger – Parcel 'E' at the request of the applicant to allow for the review of additional application materials.

Existing Zoning Map



Comprehensive Plan 2010 Map



Legend: Planning Areas

-  SINGLE FAMILY RESIDENTIAL
-  ONE/TWO FAMILY RESIDENTIAL
-  MIXED USE RESIDENTIAL
-  HISTORIC DOWNTOWN
-  RESORT RESIDENTIAL
-  NEIGHBORHOOD COMMERCIAL
-  COMMERCIAL CORRIDOR
-  RESORT COMMERCIAL
-  PUBLIC/SEMI-PUBLIC
-  PARK
-  AGRICULTURE
-  RESOURCE CONSERVATION
-  BOUNDARY

No. 14786A

THIS DEED, made this 4 day of DECEMBER, 1975, between FIRST CHINCOTEAGUE CORPORATION, hereinafter referred to as "FCC", as General Partner of Oyster Bay Village Partnership, a Virginia limited partnership, and WOODROW D. MARRIOTT, 4840 Dexter Street, N.W., Washington, D. C., hereinafter referred to as "MARRIOTT".

WHEREAS, FCC assigned its Thirty-five Percent (35%) ownership interest as General Partner in Oyster Bay Village Partnership to MARRIOTT by a document dated October 28, 1975, and entitled Assignment of Interest as General Partner in Limited Partnership, a duplicate original of which is attached hereto and incorporated herein by reference; and

WHEREAS, Said assignment gave MARRIOTT a One Hundred Percent (100%) ownership interest in Oyster Bay Village Partnership; and

WHEREAS, Oyster Bay Village Partnership is the owner in fee simple of the real estate described below in this Deed;

WITNESSETH, That in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, FCC does hereby grant unto MARRIOTT, his heirs, administrators and assigns, in fee simple with Special Warranty and English covenants of title, the following described real estate:

All that certain tract or parcel of land designated as Parcel "E" containing One Hundred Ninety-six Thousand Six Hundred Seventy square feet (196,670 sq. ft.) as shown on a certain plat prepared by Richard H. Bartlett and Associates entitled "Oyster Bay Community, Section II, Subdivision 'D'" which plat has been duly recorded in the Clerk's Office for the Circuit Court of Accomack County, Virginia, in Deed Book 318 at page 494, along with a deed from the party of the first part to Joseph A. Giardina et als duly recorded in said Clerk's Office in Deed Book 318 at page 483 et seq to which reference is made for a more accurate description of the herein conveyed tract or parcel of land. Said tract is bounded on the Northeast, by Hibiscus Drive; on the Southeast, by Lots 227 and 228 as shown on a plat entitled "Oyster Bay Community, Section II, Subdivision 'B'" which is duly recorded in Deed Book 318 at page 490; on the Southwest, by lands of Donald Amrien and Watson and on the Northwest, by North Main Street.

This conveyance is made subject to recorded conditions, restrictions and easements affecting the property hereby conveyed. *

WITNESS the following signatures and seals.

FIRST CHINCOTEAGUE CORPORATION

(CORPORATE SEAL)

Attest:

[Handwritten signature]

By:

[Handwritten signature]
President

Legal
Opinion

HOWARD C. WESSELLS II
ATTORNEY AND COUNSELOR AT LAW
2331B COURTHOUSE AVENUE - P.O. BOX 30
ACCOMAC, VIRGINIA 23301

TELECOPIER
(757) 787-9294

TELEPHONE
(757) 787-1077

January 28, 2010

Mr. Phillip P. Ettinger
2904 Maplewood Place
Alexandria, VA 22302

Re: Parcel E, Oyster Bay Community

Dear Mr. Ettinger:

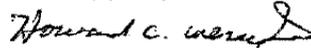
You asked me to do some limited research on whether Parcel E was designated as a common area for the Oyster Bay II Community. As a result of this request I have examined the following documents which you sent to me and which I have attached to this letter:

1. A plat designated OYSTER BAY COMMUNITY SECTION II SUBDIVISION "D", dated May 4, 1972, recorded in the Clerk's Office for the Circuit Court of Accomack County, in Deed Book 318, at page 494.
2. A plat designated BOUNDARY SURVEY OF Parcel 'E' Oyster Bay Community, dated 12/27/09, Tax Map No. 031B11200E00000.
3. Owner's title insurance policy issued by Southern Title Insurance Corporation dated 11/13/2009.
4. Oyster Bay II Community Covenants and Restrictions.

The result of my research is that I could find no references that Parcel E was to be designated a common area. Therefore, it is my opinion that Parcel E could be developed.

Should you have any questions, please feel free to give me a call.

Sincerely yours,



Howard C. Wessells, II

HCW,II/dpm
Enclosures
Cc: Mr. Jeff Potts (Via Fascimile)

POULSON NORHAM & LEWIS, PLLC
Attorneys and Counselors at Law

Three Cross Street
P. O. Box 478
Accomac, Virginia 23301

Telephone: 757-787-2620
Fax: 757-787-2749

MEMORANDUM

TO: Rob Ritter, Town Manager
FROM: Jon C. Poulson
DATE: December 31, 2009
SUBJECT: Zoning - Wind Energy Systems

Under the present Chincoteague Zoning Ordinance "Power Generating Windmills" are permitted by special exception in all zoning districts. Apparently the Ordinance was amended in 2001 to allow such.

We need to amend the proposed Ordinance submitted to Council at the December, 2009, meeting in several particulars. We cannot work and modify by email what you transmitted. The simplest procedure would be to give you the changes and let you print as appropriate. Basically I am going to amend several sections under Section 6.9.2 Siting Requirements and then the two (2) variations in Section 6.9.4, the first of which will permit such a system with a conditional use issued by the Town Council, with the alternative permitting the use of such a system by the BZA as presently contemplated by the Zoning Ordinance.

The amendments to Section 6.9.2 Siting Requirements are applicable to either version.

(The Conditional Use Version)

Add a new second sentence to subsection 1) of 6.9.2 as follows: "A wind energy tower may be erected, maintained and/or operated on or as an attachment to a building on a lot".

Existing second sentence of subsection 1) which will become the third sentence should read as follows: "A photo simulation may be required by the permitting Authority".

Amend subsection 4) by adding a third sentence as follows: "When situated on or attached to a building the total height shall not exceed seventy feet (70 ft.). The building itself shall otherwise

conform with the applicable height requirement under the Ordinance and nothing herein shall permit the height of any such building on which situated or attached to exceed such building height requirement.

Section 6.9.4 should be amended as follows: "Section 6.9.4 Wind Energy System Permit"

"No such system shall be constructed, maintained and/or operated by any person or entity unless a conditional use permit is issued by the Town Council pursuant to Article IX of the Zoning Ordinance."

With this alternative the following sections of the Zoning Ordinance should be repealed:

3.2.2 Power Generating Windmills

3.5.3 Power Generating Windmills

3.8.9 Power Generating Windmills

3.11.4 Power Generating Windmills

4.2.2 Power Generating Windmills

4.5.2 Power Generating Windmills

(Alternative - The Special Exception Version)

If we are going to follow the alternative of permitting such with a special exception we need to make the amendments to Section 6.9.2 Siting Requirements as above detailed.

Additionally Section 6.9.4 will read as follows: "Section 6.9.4 Wind Energy System Permit"

"No such system shall be constructed, maintained and/or operated by any person or entity unless a special exception is granted by the Board of Zoning Appeals."

If this alternative is followed then there will be no repeal of the numerous "Power Generating Windmill" sections above enumerated.

I would suggest that you print both versions with the suggested changes and with that and my explanation the alternatives should be pretty clear to Council. Additionally, you and Kenny should check these section numbers as I don't always have an up to date version of the Zoning Ordinance.

Call me if any questions on Monday.

cc: File

The Conditional Use Version

Zoning Ordinance

Article VI

(Revised through February 9, 2010)

Section F. Wind Energy Systems

6.9 The purpose of the article is to regulate the placement, construction, and modification of small wind energy systems while promoting the safe, effective, and efficient use of small wind energy systems.

Section 6.9.1 Applicability

The requirements set forth in this section shall govern the siting of small wind energy systems used to generate electricity or perform work which may be connected to the utility grid pursuant to the Virginia's net metering laws, serve as an independent source of energy, or serve in a hybrid system.

Section 6.9.2 Siting Requirements

The requirements for siting and construction of all small wind energy systems regulated by this section shall include the following:

- 1) Small wind energy towers shall maintain a galvanized steel finish, unless FAA standards require otherwise, or if the owner is attempting to conform the tower to the surrounding environment and architecture, in which case it may be painted to reduce visual obtrusiveness. A wind energy tower may be erected, maintained and/or operated on or as an attachment to a building on a lot. A photo simulation may be required ~~at the request of the Mayor and Council~~ by the permitting Authority.
- 2) Small wind energy systems shall not be artificially lighted unless required by the Federal Aviation Administration (FAA) or appropriate authority.
- 3) No tower should have any sign, writing, or picture that may be construed as advertising by the building and zoning administrator or their designee.
- 4) The applicant shall provide evidence that the proposed height of the small wind energy system tower does not exceed the height recommended by the manufacturer or distributor of the system. The tower height shall not exceed a maximum height of seventy (70) feet on a parcel. When situated on or attached to a building the total height shall not exceed seventy feet (70 ft.). The building itself shall otherwise conform with the applicable height requirement under the Ordinance and nothing herein shall permit the height of any such building on which situated or attached to exceed such building height requirement.
- 5) The applicant shall provide evidence that the provider of electric utility service to the site has been informed of the applicant's intent to install an interconnected customer-owned electricity

The Conditional Use Version

generator, unless the applicant intends, and so states on the application, that the system will not be connected to the electricity grid. This notification will take place by having the electric utility provider sign the conditional use permit application. This signature does not construe approval for net metering by the electric utility.

- 6) Small wind energy systems shall adhere to noise limits as delineated in Section 22-35 of the Code of the Town of Chincoteague. These levels, however, may be exceeded during short-term events such as utility outages and/or severe windstorms.
- 7) The applicant will provide information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
- 8) The minimum distance between the ground and any protruding blade utilized on a small wind energy system shall be fifteen (15) feet, as measured at the lowest point of the arc of the blades. The lowest point of the arc of the blades shall also be ten feet above the height of any structure within seventy-five (75) feet of the base. The supporting tower shall also be enclosed with a six-foot tall fence or the base of the tower shall not be climbable for a distance of ten (10) feet.
- 9) The applicant will provide proof of adequate liability insurance for a small wind energy system. Whether or not the applicant is participating in the net metering program, the applicant will be required to meet the insurance coverage requirements as set forth in 20 VAC 5-315-60.
- 10) The small wind energy system generators and alternators should be constructed so as to prevent the emission of radio and television signals and shall comply with the provisions of Section 47 of the Federal Code of Regulations, Part 15 and subsequent revisions governing said emissions.

Section 6.9.4 ~~Review process- Wind Energy System Permit~~

~~The property owner will adhere to the conditional use permitting process as provided by Article IX of the Town of Chincoteague's Zoning ordinance. No such system shall be constructed, maintained and/or operated by any person or entity unless a conditional use permit is issued by the Town Council pursuant to Article IX of the Zoning Ordinance.~~

Section 6.9.5 Federal and state requirements

- 1) Compliance with the Uniform Statewide Building Code: Building permit applications for wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including tower, base, and footings, An engineering analysis of the tower showing compliance with the Uniform Statewide Building Code and certified by a licensed professional engineer shall also be submitted.
- 2) Compliance with FAA Regulations: Wind energy systems must comply with applicable FAA regulations including any necessary approvals for installations close to airports.
- 3) Compliance with National Electric Code: Building permit applications for wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.

The Conditional Use Version

- 4) Compliance with regulations governing energy net metering: Wind energy systems connected to the utility grid must comply with the Virginia Administrative Code 20 VAC 5-315: Regulations Governing Energy Net Metering.

Section 6.9.6 Setbacks

The wind energy system shall be set back a distance at least equal to one hundred ten (110) percent of the height of the tower plus the blade length from all adjacent property lines and a distance equal at least to one hundred fifty (150) percent of the tower height plus blade length from any dwelling inhabited by humans on neighboring property. Additionally no portion of the small wind energy system, including guy wire anchors may be extended closer than ten (10) feet to the property line.

Section 6.9.6 Removal of defective or abandoned wind energy systems

Any wind energy system found to be unsafe by the building official shall be repaired by the owner to meet federal, state and local safety standards or removed within six (6) months. Any wind energy system that is not operated for a continuous period of twenty-four (24) months shall be considered abandoned and the owner of the system shall remove the turbine within ninety (90) days of receipt of notice from the town instructing the owner to remove the abandoned wind energy system.

The following section of the Zoning Ordinance should be repealed:

3.2.2 Power Generating Windmills

3.5.3 Power Generating Windmills

3.8.9 Power Generating Windmills

3.11.4 Power Generating Windmills

4.2.2 Power Generating Windmills

4.5.2 Power Generating Windmills

The Conditional Use Version

Notes:

1. Recommended revisions from Mr. Jon Poulson, Esq. dated December 31, 2009 have been incorporated and are highlighted for reference purposes. In response to Town Council comments, this ordinance was revised to apply to both free standing towers and building mounted turbines.
2. The question has come up regarding a roof mounted turbine and whether it would be considered in the same way as an antennae, satellite dish or solar panel. Area Regulations/Height Regulations may require clarification within each District based on the type of turbine proposed.
3. The current fee for a Conditional Use Permit is \$1,500.00. The Planning Commission may recommend an alternate fee to the Town Council for Small Wind Energy Systems due to the limited scope of review needed for this permit.

The Special Exception Version

Zoning Ordinance

Article VI

(Revised through February 9, 2010)

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The Special Exception Version

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- 7) The applicant will provide information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
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The Special Exception Version

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Section 6.9.6 Removal of defective or abandoned wind energy systems

Any wind energy system found to be unsafe by the building official shall be repaired by the owner to meet federal, state and local safety standards or removed within six (6) months. Any wind energy system that is not operated for a continuous period of twenty-four (24) months shall be considered abandoned and the owner of the system shall remove the turbine within ninety (90) days of receipt of notice from the town instructing the owner to remove the abandoned wind energy system.

Notes:

1. Recommended revisions from Mr. Jon Poulson, Esq. dated December 31, 2009 have been incorporated and are highlighted for reference purposes. In response to Town Council comments, this ordinance was revised to apply to both free standing towers and building mounted turbines.
2. The question has come up regarding a roof mounted turbine and whether it would be considered in the same way as an antennae, satellite dish or solar panel. Area Regulations/Height Regulations may require clarification within each District based on the type of turbine proposed.
3. The current fee for a Conditional Use Permit is \$1,500.00. The Planning Commission may recommend an alternate fee to the Town Council for Small Wind Energy Systems due to the limited scope of review needed for this permit.
4. This ordinance introduces the term and adopts standards for "Small Wind Energy Systems". If this term is the same as "Power Generating Windmills", it should be stated so in Section 6.9 or a definition should be adopted in Article II Definitions.
5. Mr. Lewis, Zoning Administrator, has recommended that portions of this ordinance should not be subject to approval of a variance application by the BZA due to the public safety concerns.

Bicycle-wheel wind turbine



Declared by Popular Mechanics magazine to be one of the "10 most brilliant products of 2009," Honeywell's new wind turbine may change the face of the industry and, quite possibly, the look of the suburbs. Small and compact, the Honeywell turbine resembles an extra-large, 6-foot-diameter bicycle wheel with plastic blades instead of wheel spokes. More important, it is not subject to the same constraints as the horizontal and vertical wind turbines on the residential market. It can be installed on the roof of a wood-framed house rather than on a separate pole or tower, and it does not need to be positioned away from trees or other obstructions.

Another critical difference with the Honeywell model is that it can start up and generate electricity with wind speeds as low as 2 mph, a rate at which air movement is barely perceptible. The other wind turbines currently available require start-up wind of at least 7 mph. The Honeywell model's ability to function in light breezes is especially relevant to Washington area residents because the average wind speeds here are low, about 5 to 8 mph in the District and the close-in suburbs, 8 to 11 mph in a more rural setting like Leesburg.

Another plus with the Honeywell turbine: It does not make alarming noises or vibrate excessively, two major objections to installing wind turbines on houses in residential neighborhoods.

How much electricity would the Honeywell model provide to Washington area households?

According to the Energy Department, the average U.S. household uses about 10,000 kilowatt-hours a year of electricity. Matching up usage and local wind speeds, Sarah Jenan of WindTronics, the Michigan firm that developed and manufactures the turbine, said that homeowners in the Leesburg area (a Class 4 wind zone) could expect to generate about 2,700 kilowatt-hours a year, or about 27 percent of average household electricity use. In the close-in suburbs (a Class 3 wind zone), the turbine would produce about 20 percent, and in the District (a Class 2 wind zone) about 15 percent.

The installed cost for the turbine, including a connection to the local electric grid, averages about \$8,000 to \$9,000, said Brian Levine, a WindTronics marketing executive, adding that the installed cost can be partially offset by a federal tax credit of 30 percent that expires in 2016, as well as by state tax credits and rebates. For specific information on the rebates offered in the Washington area, check out <http://www.dsireusa.org>. For information on the Honeywell/WindTronics turbine, see <http://www.ownyourwind.com>.

Introducing the Honeywell Wind Turbine

Thank you for your interest in our wind technology.

We've turned traditional wind turbines, inside out.

The Honeywell Wind Turbine's **Blade Tip Power System (BTPS)** replaces the traditional gear box, shaft and generator of current wind turbine technology. The Honeywell Wind Turbine's gearless **Blade Tip Power System** creates a "free wheeling" turbine, generating energy from the blade tips (where the speed lies) rather than through a mechanical center gear. By practically eliminating mechanical resistance and drag, the Honeywell Wind Turbine creates significant energy (2000 kWh/yr in class 3, 2752 kWh/yr in class 4 winds at 33') operating in a greater range of wind speeds (2-42 mph/3-68 km/h) than traditional wind turbines. The highest output, lowest cost per kWh installed turbine ever made (in class and size). So powerful, so simple.



The Home Energy Solution - Always Turning, Always Generating Energy.

Why was it necessary to redesign the turbine?

With 90% of North America's actual wind resources below 9 mph (14.5 km/h) on average, it was essential to develop a technology capable of starting-up in wind speeds as low as 2 mph (3km/h) and remaining operational through 42mph (68km/h). Traditional turbines rarely start turning before 7.5 mph (12 km/h) and shutdown by 29 mph (47 km/h) to protect their mechanical systems. It is this greater capture and conversion of available wind energy that enables the Honeywell Wind Turbine to provide such a meaningful percentage of a home's energy needs.

The Honeywell Wind Turbine's Power Blade System creates energy at the blade tips, rather than through a central gear and rotor used in most turbine technology. By eliminating the resistance of a central gear and shaft, significant efficiencies are gained in cost and energy output. The Honeywell Wind Turbine is

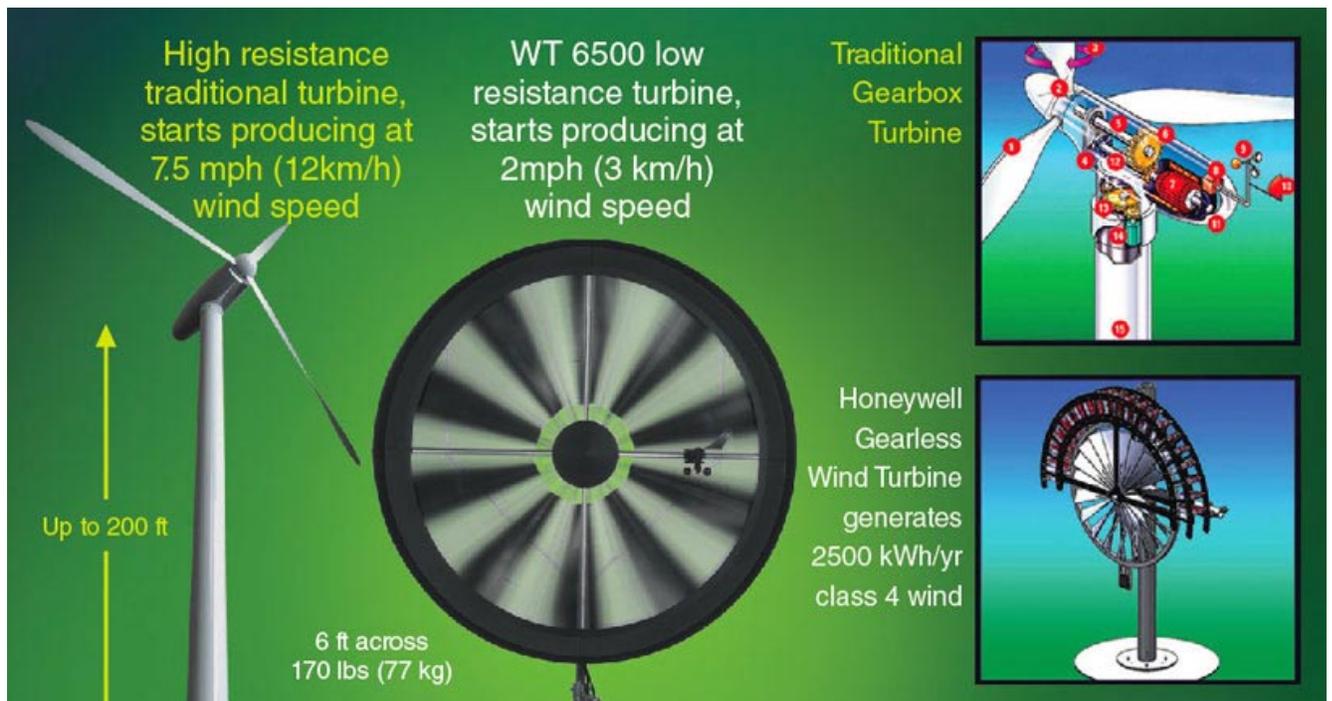
less expensive to own and operate while generating energy across a broader range of wind speeds (wind classes).

Saving Energy is a breeze with the Honeywell Wind Turbine.

The turbine's installed cost is approximately 1/2 of the cost of traditional turbines with a lower installed cost per kWh (in class and size) than any turbine on the market. Adding to the value are federal and state rebates covering anywhere from 30% to 100% of the overall cost.

The Honeywell Wind Turbine comes complete with a computerized smart box, inverter and inter connect switch to wire the system into a household panel. The Honeywell Wind Turbine is designed to be installed where the power is being consumed and can produce 2000 kWh/yr in class 3, 2752 kWh/yr in class 4 winds at 33' (height of 33'). The system has a MSRP of \$5,995.

Generate energy at the source. Efficiency meets innovation with the Honeywell Wind Turbine.



The Future of Wind Power.

The Honeywell Wind Turbine from WindTronics measures just 6 feet (182 cm) in diameter and weighs 170 lbs (77kg) providing 18 % of an average household's (DOE) energy needs.

The Honeywell Wind Turbine patented design maximizes efficiency drawing energy from the fast moving blade tips rather than a complex slow center hub. The **Blade Tip Power System** cuts-in with wind speeds as low as 2 MPH (3km/h), generating energy at a third the cost per kWh of any other Wind turbine (in class and size).

MEMORANDUM

To: Planning Commission
From: William Neville, Planning Director
Date: February 5, 2010
Subject: Limited Home Occupations & Home Occupations

The draft proposal for limited home occupations and home occupations has been revised to follow the same format as the Wind Energy Systems ordinance by located the standards within Article VI General Provisions. Comments and suggestions from the last meeting are highlighted for further review and discussion.

Zoning Ordinance Article II Definitions (Revised through February 5, 2010)

Sec. 2.79. Home occupation.

An occupation carried on by the occupants of a dwelling as a secondary use in connection with which there are no more than 16 square feet of display of products or inventory for sale visible from the road or adjacent dwellings. Such occupation must be a use permitted by right as defined in this ordinance. A current town business license is required. (See article VI, section C for parking regulations [and section G for use regulations](#).) See "Limited home occupation."

Sec. 2.88. Limited home occupation.

An occupation carried on by the occupants of a dwelling as a secondary use in connection with which there is no exterior {visible from the road or adjacent dwellings) display of products or inventory for sale, on-site customer visitation is severely limited to the point where neighbors are not disturbed, and no one is employed other than members of the family residing on the premises. A current town business license is required. (See article VI, section C for parking regulations [and section G for use regulations](#).) See "Home occupation."

Article III Residential Districts

Sec. 3.4. Uses permitted by right.

The following uses shall be permitted in residential district R-2 subject to all other provisions of this ordinance:

- 3.4.1. Single-family dwelling.
- 3.4.2. Two-family dwelling.
- 3.4.3. Limited Home occupation.
- 3.4.4. Tourist rental homes.
- 3.4.5. Tourist homes.
- 3.4.6. Accessory building/structure.

Article VI Limited Home Occupations and Home Occupations

Section G. Limited Home Occupations and Home Occupations

Sec. 6.10 Limited Home Occupations

The purpose of the limited home occupation provisions of this ordinance is to allow for home occupations that are compatible with the neighborhood in which they are located.

Sec. 6.10.1 Permit procedures.

- (a) Limited home occupations complying with the permitted uses established in section 288.1(b) shall be considered minor in character and permitted by right. The zoning administrator may issue a zoning permit for such uses upon application and evidence of payment of the appropriate business license. So long as the business remains in compliance with the criteria set forth in section 288.1(a), it may continue. Such continuing compliance shall be certified annually to the town manager in such manner as the town manager may require.
- (b) Limited Home Occupations not listed in section 288.1(b) shall commence only after the receipt of a conditional use permit issued by the Mayor and Town Council.

Sec. 6.10.2 Criteria for Limited Home Occupations.

- (a) Uses classified as a limited home occupation shall be permitted in all zoning districts which allow single-family residences. The following regulations shall apply to all limited home occupations:

1. No person other than family members residing on the premises and one non-family member shall be engaged in such operation.
2. The limited home occupation shall be clearly incidental and subordinate to the primary use of the dwelling as a residence; not more than 25 percent of the gross floor area of the dwelling shall be used in conjunction with the limited home occupation or combination of limited home occupations.
3. There shall be no change in the outside appearance of the dwelling and surrounding property and no display of goods or business-related items of any kind visible from the street or from adjoining property.
4. No limited home occupation shall be conducted in any accessory building.
5. There shall be no outside display, excluding a 4 square foot sign, or storage of equipment or materials associated with the home occupation. No more than one vehicle with the business name on it may be parked so as to be visible from the street or from adjoining properties and no vehicle which is to be parked so as to be visible from the street or from adjoining property may contain signage in excess of ten square feet for the entire vehicle.
6. No traffic shall be generated by a limited home occupation or combination of limited home occupations in greater volumes than would normally be expected in a residential neighborhood.
7. No installation or use of mechanical or electrical equipment is permitted which could endanger surrounding persons or property or which can be heard outside of the dwelling.
8. No on-site use, parking or storage of cargo trailers, trucks or vans with a length in excess of 20 feet, tractor trailers, semi-trucks, or heavy equipment, such as construction equipment, used in connection with the limited home occupation is permitted, unless garaged.
9. No limited home occupation shall produce noise, obnoxious odors, vibrations, glare, fumes, or electric interferences detectable to normal sensory perception beyond the property line; nor shall such home occupation produce electric emissions or signals which interfere with normal radio and television reception in the surrounding neighborhood.
10. A limited home occupation shall comply with all applicable local, state or federal regulations.
11. Parking generated by the conduct of such home occupation shall be on-premises, off-street and in designated driveway areas.
12. Deliveries from commercial suppliers may not be made more than once each week and shall not restrict traffic circulation.
13. No illegal discharges of any materials, fluids or gases will be permitted to enter the drainage or sewer system.

(b) Permitted limited home occupations are limited to the following:

1. Architectural support service.
2. Art restoration.
3. Authors and composers.

4. Consulting services.
5. Data processing.
6. Direct sale product distribution (including, but not limited to; Amway, Avon, Tupperware, etc.).
7. Drafting and graphic services.
9. Dressmaking, sewing, tailoring and contract sewing.
10. Electronic assembly.
11. Engineering support service.
12. Financial planning, and investment services.
13. Flower arranging.
14. Grass Cutting provided no more than two pieces of equipment is visible from the adjoining properties.
15. House cleaning service.
16. Interior design.
17. Jewelry design.
18. Locksmith.
19. Mail order, excluding retail sales from site.
20. Music lessons except for amplified instruments or drums and not more than four students at a time.
21. Photographer.
22. Preserving and cooking for sale off-site.
23. Security service, security systems, auto security systems, provided no equipment is visible on the premises.
24. Tax service.
25. Telephone answering, switchboard, and call forwarding.
26. Tutoring; classes of not more than four students.
27. Typing and word processing service.
28. Writing, and computer programming.
29. Any other similar business clearly meeting the criteria listed in subsection (a) of the section.

Sec. 6.10.3 Home Occupations.

- (a) Uses classified as a home occupation shall be permitted in Residential R-3, Commercial C-1 and Commercial C-2 zoning districts. The following regulations shall apply to all home occupations:
 1. No person other than family members residing on the premises and two non-family members shall be engaged in such operation on the property.
 2. The home occupation shall be clearly incidental and subordinate to the primary use of the dwelling as a residence; not more than 30 percent of the gross floor area of the dwelling shall be used in conjunction with the home occupation or combination of home occupations.

3. There shall be no change in the outside appearance of the dwelling and surrounding property and no display of goods or business-related items of any kind greater than 16 square feet in area visible from the street or from adjoining property.
4. Home occupation may be conducted in one accessory building.
5. The maximum permitted signage allowed for a home occupation shall not exceed 32 square feet in area. The 32 square feet of signage can be a single banner, sign(s), flag(s) sandwich board sign not exceeding 8 square feet or combination of such. In no case can the total combined area of all signs, banner, flags or sandwich boards exceed 32 square feet in area. All signs, banners, and flags must comply with Article VII of this code.
6. There shall be limited storage of equipment or materials associated with the home occupation. No more than two vehicles with the business name on it may be parked so as to be visible from the street or from adjoining properties. ~~No vehicle which is to be parked so as to be visible from the street or from adjoining property may contain signage in excess of 32 square feet for the entire vehicle.~~
7. A minimum of two parking spaces for the home occupation must be provided in addition to two parking spaces for the residence. See section 6.6 for requirements.
8. No installation or use of mechanical or electrical equipment is permitted which could endanger surrounding persons or property or which can be heard beyond the property line.
9. No on-site use, parking or storage of large trucks or vans with a length in excess of 20 feet, tractor trailers, semi-trucks, or heavy equipment, such as construction equipment, used in connection with the home occupation is permitted, unless garaged.
10. No home occupation shall produce noise, obnoxious odors, vibrations, glare, fumes, or electric interferences detectable to normal sensory perception beyond the property line; nor shall such home occupation produce electric emissions or signals which interfere with normal radio and television reception in the surrounding neighborhood.
11. A home occupation shall comply with all applicable local, state or federal regulations.
12. Deliveries from commercial suppliers may not be made more than three times each week and shall not restrict traffic circulation.
13. No illegal discharges of any materials, fluids or gases will be permitted to enter the drainage or sewer system.

Any use not listed subsection 6.10.2(b) and/or not clearly meeting the criteria listed in subsection 6.10.2(a) shall not be considered a home occupation and shall not be permitted without a conditional use permit granted under procedures set forth in Article IX.:

(b) Permitted home occupations are limited to the following:

1. Appliance repair.
2. Art & photography studio.
3. Babysitting, including day care for not more than five children.
4. Barbershop or beauty shop (two chairs max).
5. Catering service, off premise.
6. Contracting, plumbing, electrician, hvac, etc., provided that no equipment or supplies are visible from adjoining properties.
7. Gardening, landscape maintenance, provided that no equipment is visible on the premises.
8. Home crafts, including ceramics with a kiln up to six cubic feet, for sale on-site.
9. House cleaning service.
10. Interior decorating.
11. Insurance sales or broker.
12. Laundry and ironing service.
13. Mail order, including retail sales from site.
14. Massage therapist
15. Professional Office
16. Retail Sales of minor nature such as but not limited to decoy's, crafts, art work, jewelry, embroidery, silk screening, souvenirs, novelties..
17. Sales representative.
18. Sign painting.
19. Swimming pool cleaning, provided that no equipment is visible on the premises.
20. Taxi cab
21. Wallpapering, drywall installers.
22. Washing or cleaning of automobiles
23. Any other similar business clearly meeting the criteria listed in subsection (a) of the section.

MEMORANDUM

To: Planning Commission
From: William Neville, Planning Director
Date: February 5, 2010
Subject: Political Signs

Proposed revisions to the sign ordinance have been prepared for Planning Commission review based upon the letter from Mr. Jon C. Poulson, Esq dated October 22, 2009. The Commission may recommend these revisions to the Town Council for public hearing and adoption prior to the upcoming election season.

Zoning Ordinance Article VII Signs

Sec. 7.4 Temporary Signs

7.4.4 Banners. On-premises banners shall not be more than ~~30~~ 32 square feet in area. Total banners shall not exceed one per residence and one per business. Such placement shall not exceed 2 times per calendar year not to exceed 4 consecutive weeks for each placement. Non-profit organizations are exempt from the above time limit provided the banner is removed within 7 days after the event has ended. Placement of such banners must comply with Article VII of the ordinance. Banners shall not be placed closer than ten feet from any property line. A permit is required.

7.4.5 Political campaign signs. Owner of said parcel must give consent on the placement of such signs. Such signs shall not exceed ~~16~~ 32 square feet in area and be located on private property. Political signs may not be placed in the sight distance triangle, and shall be removed no later than 14 days after the election has occurred.

POULSON, NORTHAM & LEWIS, PLC

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Accomac, Virginia 23301

Telephone: (757) 787-2620

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Jon C. Poulson
Thomas L. Northam
Lynwood W. Lewis, Jr.

October 22, 2009

VIA FACSIMILE

Kenny Lewis
Zoning Administrator
Town of Chincoteague
Chincoteague, Virginia 23336

RE: Political Signs

Dear Kenny:

This is to confirm our discussions about the temporary political signs that have been placed on various properties in Chincoteague, both commercial and residential, by various political candidates and both parties. Specifically the issue seems to be the size of the political signs.

Under our Ordinance §7.4.5 Temporary Signs, political campaign signs are allowed as a matter of right. They may not exceed 16 sq. feet in area and must be on private property. They may not be placed in the site distance triangle and shall be removed within 14 days after the election has occurred.

I note that banners, under Ordinance §7.4.4 can be 30 sq. feet in area. A permit is actually required to obviously police the permitted two times a year restriction. You have advised me that in a commercial district signs can be 100 sq. feet in area.

I have done considerable research and reading, and consulted several sources including the ACLU which has been active in such matters.

Regulations dealing with political signs necessarily involve First Amendment issues. The First Amendment provides the broadest possible protection for the exhibition of political signs. It

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October 22, 2009

is said to be at the core of the First Amendment protection. *Beaulieu v. City of Alabaster, et als* 454 F. 3d 1219 (Eleventh Cir. 2006). In looking at any provisions as to signs basically you consider a test for "time, place, or manner". More specifically, are the restrictions content-neutral; are they narrowly tailored to serve a substantial government interest; and do the restrictions leave open ample alternative channels of communication. *Cleveland Area Board of Realtors, et als v. The City of Euclid* 88 F. 3d 382 (Sixth Cir. 1996).

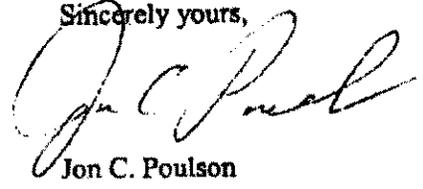
In general political signs cannot be more restricted than other signs permitted by a locality. Re-election time limitations on their placement have been sharply questioned by various courts.

At this point, as earlier indicated, I am not prepared to rewrite or advise that our current provisions relative to temporary political signs are invalid or unlawful, absent further work. My inclination however is that we should permit in each district political signs at least equal in size and availability to the biggest signs in the district. While it is 30 sq. feet in a residential district, and many of the temporary political signs are 32 sq. feet, at this point I would not make an issue over the two additional sq. feet. Obviously, there would be no square foot issue in a commercial district.

I believe we can at this point enforce the 14 day removal requirement as well as the site distance provision on the sign ordinance as we so enforce as to all signs under the Ordinance.

Should you have any questions about the contents herein or what action should you follow, please advise.

Sincerely yours,



Jon C. Poulson

JCP/nma

- cc: Robert Ritter, Town Manager
John H. Tarr, Mayor

DocuSign