

At a meeting of the Accomack County Planning Commission held on the 24<sup>th</sup> day January, at the Accomack County Board of Supervisors Chambers, Room 104, in Accomac, Virginia.

**1. CALL TO ORDER**

**MEMBERS PRESENT AND ABSENT**

**Planning Commission Members Present:**

Mr. Leander Roberts, Vice Chairman  
Mr. Kelvin Pettit  
Mr. Glen “Adair” Tyler  
Mr. Lynn Gayle  
Mr. Brantley Onley

**Planning Commission Members Absent:**

Mr. John Sparkman  
Mr. Robert Hickman

**Others Present:**

Ms. Maxie Brown, Interim Zoning Administrator of Building, Planning & Economic Development  
Mr. Paul Seltzer, Deputy Director of Building, Planning & Economic Development  
Ms. Shawnta McCain, Administrative Assistant II of Building, Planning & Economic Development

**DETERMINATION OF A QUORUM**

There being a quorum, Vice Chairman Roberts called the meeting to order at 7:01 p.m.

**REMOTE PARTICIPATION**

Chairwoman Wingfield, located at the NASA facility in Wallops Island, requested to participate in the meeting remotely due to being at work.

*On a motion made by Vice Chairman Roberts and seconded by Commissioner Gayle, the Planning Commission voted unanimously to allow Chairwoman Wingfield to participate remotely.*

**2. ADOPTION OF AGENDA**

*On a motion made by Commissioner Gayle and seconded by Commissioner Tyler, the Planning Commission voted unanimously to adopt the agenda as is.*

**3. OLD BUSINESS**

**A. Chapter 106 of the Accomack County Code: Proposed Wetland Mitigation Bank Ordinance Amendments:**

A continued discussion regarding draft ordinance amendments to allow wetland mitigation banks subject to securing a Conditional Use Permit in the Agricultural, Residential, Industrial, General Business, Limited Business, Rural Residential and Village Developments Districts. Additional language is also proposed to update the list of zoning districts and overlay districts in Section 106-31 and a new Section 106-33 to clarify that uses not listed as permitted or conditional are prohibited.

Ms. Brown started the meeting summarizing some questions that were raised at the previous meeting. One question was regarding the taxation of Wetland Banks. Ms. Brown gave a summary of the information contained in the packet which explains that each case will need to be determined on a case-by-case basis depending on what the owner applicant decides to do. Another question or discussion was regarding the Comprehensive Plan, and whether protection of certain types of farmland could be a consideration for recommending denial of an application for a wetland mitigation bank. Ms. Brown indicated that as part of the Commission's review of future applications, the Commission may take into consideration the Comprehensive Plan's support of farmland preservation.

Commissioner Onley asked if the land would still be property taxed. Ms. Brown referred to a memo in the Planning Commission packet by County Attorney Jan Proctor, stating that if a wetlands bank is encumbered by a conservation easement established under the Virginia Conservation Easement Act, the property would be assessed using open space land use values. It was also stated that if the wetlands bank is NOT encumbered by a conservation easement established under the Virginia Conservation Easement Act, the County would assess the property at its fair market value.

Commissioner Tyler asked what Ribbits was. Commissioner Tyler stated that in a previous email there were three (3) links to the DEQ website that discussed the Army Corp ribbits and that there was a map on the website that showed conservation locations and mitigation locations currently on the Eastern Shore. He also mentioned that Army Corp. of Engineers has a map that shows everything across the United States where there are mitigation banks. Ms. Brown asked about the existing mitigation banks sites identified; Commissioner Tyler responded that he interpreted the existing sites to correspond to the way they identify suitable properties. Commissioner Tyler questioned what criteria the County would use in evaluating future applications for wetland mitigation banks.

Commissioner Tyler expressed concern regarding the layers already put on applications and requirements for wetland mitigation banks and that the proposed county ordinance would become another layer. He stated that one of the links he researched directed him to 'Wetlands and Strains as a part of the DEQ Compensatory Mitigation' and then 'Federal Guidance for the Establishment and Use and Operation of Mitigation Banks'. Commissioner Tyler also mentioned that the EPA website goes into detail about how they work, what they do, and who is in charge of them and some information about a committee called the MBRT. Ms. Brown pointed out that based on guidance received from the County Attorney, the Commission may add other objective criteria as they see fit. Further, each application shall be subject to local ordinance Section 106-234 of the Accomack County Code and Sections 15.2-2200 and 15.2-2283 of the Code of Virginia. These should provide ample guidance tools as long as all applications are treated equally.

Commissioner Pettit questioned what the issue is or whether there is an issue. Ms. Brown stated that hopefully the issues and questions have been addressed. Further, it would be up to the Planning Commission to determine whether the proposed amendments are satisfactory. General discussion ensued.

Ms. Brown stated that the County does have a say in future wetland mitigation banks and if the ordinance is adopted, an applicant would will be required to meet all local, state and federal approvals. Ms. Brown indicated her position on wetland mitigations banks is that currently, they are not defined or addressed in the County ordinances. Commissioner Tyler asked if that would make it, a by-right use. Ms. Brown responded that since it is not

addressed, it would be considered a pending issue until an ordinance is adopted. Commissioner Tyler asked if that would essentially stop someone from being able to develop a wetlands mitigation bank. Ms. Brown responded that the response would be to notify an applicant that an ordinance is now under consideration; therefore, no application for a wetland mitigation bank could be approved administratively. Further, the applicant could appeal that determination to the BZA.

Vice-Chairman Roberts reaffirmed that the purpose of the proposed ordinance amendments is to make sure this issue is addressed and that an applicant may apply and go through the process. Commissioner Gayle stated that they could still proceed with it as it is now, because there are different levels of mitigation. Commissioner Gayle stated that the problem he has with wetland mitigation banks is taking farmland out of production. Specifically, wetland mitigation banks can take County farmland out of production, and with what is going on across the Chesapeake Bay, the County could become a focal point for this type of mitigation. As a result, much of the County's farmland could be removed from production. Commissioner Gayle stated he does not believe the County should be that focal point, at least for prime farmland.

Mr. Seltzer stated that if the ordinance is adopted as written, all applications would be subject to public hearings would go before the Planning Commission and the Board of Supervisors for a Conditional Use Permit (CUP). Commissioner Gayle indicated that this process does not prohibit wetland mitigation banks, but instead, adds an element of review. Commissioner Gayle mentioned the letter for the mitigation bank on Mink Farm Road and that there is already a level pond. Mr. Seltzer stated that was the only one that was approved in Accomac County and that was from 2011. Mr. Gayle mentioned that is was not new and serves as an example of how wetlands should be done.

Mr. Seltzer stated if mitigation is unable to take place, that is where the County \$18 in-lieu would become an option; and that it is separate from the wetland mitigation bank. Commissioner Tyler questioned a possible scenario that if the owner of Mink Farm was charging \$15 per square foot, and there was no extra room or credits available, could that individual then pay the County the \$18 in-lieu fee and at some in the future, the County would find a suitable site. Mr. Seltzer stated that even if the County fee was the chosen option, the applicant would still be required to obtain a Conditional Use Permit.

Commissioner Tyler mentioned the Army Corp. website and criteria for wetlands regarding hydraulic surveys and not using uplands and asked if the Planning Commission should use the Army Corps criteria for land to be suitable or whether the County's criteria would be different. Discussion ensued. Commissioner Tyler stated that he would like to have some specific criteria. Mr. Seltzer responded that the Army Corp criteria or checklist included many "boxes" or requirements but not all of those criteria had to be met or "checked".

Commissioner Pettit inquired about the terms vegetated and non-vegetated. Mr. Seltzer responded that non-vegetated wetlands are more like the marsh, where there is nothing really growing there it's just straight marsh with no grass. Vegetated is where there is growing matter. Mr. Seltzer stated that the key terms for the County is whether it will be tidal or non-tidal. Further, in order to obtain tidal wetland credits, you would need to convert non-tidal wetlands into tidal. In order to obtain non-tidal credits, you would need to convert uplands into non-tidal. There is no enhancement to get credits, there has to be established a new category of wetlands to obtain credit.

Discussion ensued regarding all the different applications and requirements an applicant would be subject to in order to receive all local, state and federal approvals.

Commissioner Tyler asked if the County would use the same checklist as DEQ and whether all the items would be required. Ms. Brown responded that under the proposed ordinance, the County would consider local ordinances relevant to obtaining a Conditional Use Permit. In addition, the Comprehensive Plan is another local tool or guidance, which would allow for farmland preservation considerations.

Discussion ensued. Commissioner Pettit indicated that the one thing the County has in place is the Comprehensive Plan and it can be used as guidance for future decisions. Further, the Comprehensive Plan supports and speaks to the matter of preserving farmland and agriculture in the County. As long as the Commission adheres to the Comprehensive Plan, that should provide solid ground to make future decisions.

Mr. Seltzer stated that the less criteria set, the more it could be handled on a case-by-case basis based on the merits of each application.

***On a motion made by Commissioner Gayle and seconded by Commissioner Pettit, the Planning Commission voted unanimously to hold a public hearing for Proposed Wetlands Mitigation Bank Ordinance Amendments, at the February 8, 2023 Planning Commission meeting.***

**4. NEXT MEETING**

The next Planning Commission regular session is scheduled for Wednesday, February 8, 2023 at 7:00 p.m. in the Accomack County Board of Chambers, Room 104

**5. ADJOURNMENT**

***On a motion made by Commissioner Tyler and seconded by Vice Chairman Roberts, the Planning Commission voted unanimously to adjourn the meeting.***

The meeting was adjourned at 7:53 p.m.

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Angela Wingfield, Chairwoman

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Shawnta McCain, Administrative Assistant of Building, Planning & Economic Development