



## **PLANNING COMMISSION**

**Regular Meeting**  
**Cape Charles Civic Center**  
**August 3, 2021**  
**6:00 p.m.**

At 6:00 p.m., Chairman Bill Stramm, having established a quorum, called to order the Regular Meeting of the Planning Commission. In addition to Chairman Stramm, present were Commissioners Kenneth Butta, Diane D'Amico, Paul Grossman, Jim Holloway, Dennis McCoy, and Michael Strub. Also, in attendance were Interim Planning/Zoning Administrator Katie Nunez, Planning Technician Tracy Outten, and Town Clerk Libby Hume. There were no members of the public in attendance and seventeen viewers on Facebook Live.

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

### **PUBLIC HEARING:**

There was no public hearing scheduled.

### **PUBLIC COMMENTS:**

There were no public comments to be heard nor any written comments submitted prior to the meeting.

### **AGENDA**

Michael Strub suggested starting the Planning Commission Bylaws revision review with Article IX.

**Motion made by Paul Grossman, seconded by Dennis McCoy, to approve the agenda as presented. The motion was approved by unanimous vote.**

The commissioners reviewed the minutes from the June 1, 2021 Town Council and Planning Commission Joint Public Hearing and Planning Commission Regular Meeting.

Bill Stramm made the following corrections: (i) Page 3: under Section 8.13 delete the words "to make was" from the first sentence; (ii) Page 4: under Section 8.18.B change the word "work" to "word" in the second sentence; (iii) Page 5: under Section 8.19 delete the words "the change" and use the word "changed" in the first sentence; and (iv) under Section 8.20.A discussion item iii delete the word "a".

**Motion made by Michael Strub, seconded by Jim Holloway, to approve the minutes from the June 1, 2021 Town Council and Planning Commission Joint Public Hearing and Planning Commission Regular Meeting as amended. The motion was approved by unanimous vote.**

### **UNFINISHED BUSINESS**

There was no unfinished business.

### **NEW BUSINESS**

- A. *Discussion of proposed revisions to the Planning Commission's Bylaws. – PLEASE NOTE that any changes to the Bylaws require a 30-day notice before these changes can be adopted*  
Katie Nunez reminded the Commissioners that the bylaws cannot be approved tonight, and all boards were reviewing their bylaws.

Discussion and questions were as follows:

*Article Nine: Hearings*

*9.1*

Katie Nunez explained that this wording was added to have flexibility to schedule public hearings. Diane D'Amico thought it sounded as though the Planning Commission needed Town Council approval to hold a public hearing. Ken Butta agreed and suggested changing the wording from "following Town Council approval" to "Town Council may also refer to Planning Commission".

*9-2*

Katie Nunez informed this was from the Virginia Code.

*9-3 The procedures normally followed for a public hearing on any matter shall be:*

Katie Nunez thought the public hearing process needed to be updated. Dennis McCoy did not think the process needed to change. Diane D'Amico and Ken Butta agreed actual procedures are needed. Bill Stramm said that it was time for a change after the actions of the applicants and citizens at the last public hearing.

*9.3.3*

Diane D'Amico asked if a timer would be set for the applicant. Katie Nunez answered yes, it was the chairperson's responsibility to manage the time. Ken Butta confirmed that this period was only for an applicant or their agent to make comments not for questions by the commissioners; correct questions could be asked in Section 9.3.4. Diane D'Amico thought it needed to be made clear that all persons speaking on an applicant's behalf had a combined time of fifteen minutes. Paul Grossman suggested adding the word "and" in front the wording "or legal representative" to firm up the time limit.

*9.3.5*

Paul Grossman said that "or submit written comments" needed to be added after the word "speak" to cover all public comments.

*9.3.6*

Ken Butta recommended adding "and staff are" after the word "applicant" to this section to give staff time to comment further on the application; therefore, the word "each" needed to be added before the word "limited".

*9.3.7*

Katie Nunez explained that this would be where the staff report would be presented along with a template of what the motion should include.

Some discussion ensued on how staff recommendations may impact others' opinions or how citizens may think the outcome had already been decided. Katie Nunez would try to make it clear on the staff report was based on the application supporting the Comprehensive Plan and the Cape Charles Zoning Ordinance.

*9.3.8*

Ken Butta wanted to know if additional information could be requested after the public hearing closed; yes. Diane D'Amico asked who would receive and distribute the information, staff.

*Article Ten*

*10-1*

Katie Nunez said this was for correspondences to the applicant.

Jim Holloway said an “s” needed to be added to the word “function”.

10-3

Diane D’Amico asked if the action deadline for the application began when it was completed and presented to the Planning Commission; yes.

4-1

Diane D’Amico did not like the wording “comparable Town position or their designee” because it was too broad. Katie Nunez would work on the wording.

Dennis McCoy suggested starting with Article VII at next month’s meeting.

**B. *Appendices to the Bylaws:***

**1. *Citizen Participation Guidelines adopted by Town Council on 7/22/2021***

Katie Nunez read through the guidelines. Ken Butta asked if the Cape Charles Police Department would attend meetings, no.

**2. *Code of Ethics and Meeting Rules of Order adopted by Town Council on 7/22/2021***

Katie Nunez briefly read through the documents and asked all commissioners to sign the acknowledgment sheet.

**C. *Overview of the Freedom of Information Act (FOIA), Conflict of Interest Act (COIA) and Public Records Act***

Katie Nunez gave a PowerPoint presentation of the Freedom of Information Act, the Conflict of Interest Act, and the Public Records Act. (Please see attached.) She reiterated that all commissioners needed to use their town emails and copy in staff on all correspondences.

**OTHER BUSINESS**

There was no other business.

**ANNOUNCEMENTS**

- Regular Session – September 7, 2021, at 6:00 p.m. in the Civic Center
- Comprehensive Plan Work Sessions at 3:00 p.m. – 5:00 p.m. in the Civic Center:
  - August 16, 2021: Population/Demographics (Paul Grossman)
  - September 20, 2021: Community Facilities (Diane D’Amico)
  - October 18, 2021: Transportation (Bill Stramm)
  - November 15, 2021: Land Use (Ken Butta/Jim Holloway)

**Motion made by Jim Holloway, seconded by Paul Grossman, to adjourn the Planning Commission Regular Meeting. The motion was approved by unanimous vote.**

The meeting adjourned at 8:22 p.m.

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Chairman Bill Stramm

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Planning Technician

Interim Planner/Zoning Administrator PowerPoint Presentation  
August 3, 2021 Planning Commission Regular Meeting

PLANNING COMMISSION MEETING  
AUGUST 3, 2021

Overview of the  
Freedom of Information Act (FOIA),  
Conflict of Interest Act (COIA) and  
Public Records Act

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**CODE OF CONDUCT**

- ▶ Uphold on all laws and regulations.
- ▶ Loyalty to the highest moral principles.
- ▶ Adopt policies and programs that support the entire population, not just certain segments.
- ▶ Do not place you or your family in a position of accepting favors or benefits based on your role as an appointed official (CONFLICT OF INTEREST ACT).
- ▶ Make no private promises that will bind you.
- ▶ Do not use info. gained confidentially for private gain.
- ▶ Be current with all taxes.
- ▶ Always conduct public business in view of the public in accordance with the Freedom of Information Act (FOIA).

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## CODE OF CONDUCT (CONT.)

- ▶ **Attend all Committee meetings that you are assigned.**
- ▶ **Be courteous and considerate toward all colleagues, staff and citizens during discussions.**
- ▶ **Avoid criticizing colleagues or staff in front of the media.**
- ▶ **Build a strong relationship with colleagues, department staff.**
- ▶ **Follow chain of command by communicating directly with Planning & Zoning Administrator.**
- ▶ **Address criticism of colleagues or town employees in an appropriate forum.**

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## FREEDOM OF INFORMATION ACT (FOIA)

- ▶ Act was first adopted in 1968 by General Assembly and is intended to govern citizen access to records of public entities and to their meetings.
- ▶ Meetings of public bodies should be open to the public and that all public records should be open to citizen inspection. There are exemptions allowed under the act for both open meeting and confidential records but they are specific and narrowly construed.
- ▶ Meetings are defined as any gathering of more than 2 members of a public body, if the members are discussing the public body's business.
  - ▶ Minutes are required
  - ▶ Posting of meetings
  - ▶ Emergency Meetings
  - ▶ Availability of Board packet to public
  - ▶ Informal Polling
- ▶ A closed meeting may be held only if certain procedures are strictly followed and only for one of the 26 specific, limited exempt purposes listed in the act (Code §2.2-3711)
  - Voting, minutes, other attendees during closed session, & what can you say afterwards

Sub Committee(s) of the Planning Commission: does not "convert" to Planning Commission meeting

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## FREEDOM OF INFORMATION ACT (FOIA)/ PUBLIC RECORDS ACT

- Public Records – any compilation of letters, words, or numbers created, owned, or possessed by a public body, regardless of its physical form or characteristics or the manner in which it is stored. Written, printed, magnetic and electronic records are all included if they have been created or accumulated in the transaction of public business.

### Importance of County-Issued E-mail Address:

E-mails have generated much controversy since they began being used in government business operation. E-mails that deal with public business are public records. E-mails kept on the home computer of a council member or local government employee that relate to the transaction of public business are public, and subject to inspection and copying by a citizen who makes a request to see the records. Text messages have become the subject of many FOIA requests as well. These must be produced if requested and are subject to the records retention rules as well.

**RULE OF THUMB:** If you respond to an e-mail as a Planning Commission member, cc either the department generic account ([planner@copeccharles.org](mailto:planner@copeccharles.org)) or the Staff Member for the Department ([planningtech@copeccharles.org](mailto:planningtech@copeccharles.org))

If you are transacting public business, the ownership of the device is irrelevant.

### WHAT RECORDS MIGHT BE EXEMPT RE: PLANNING COMMISSION

- Proprietary records and trade secrets: § 2.2-3705.6.
- Written advice of legal counsel to state, national or local public bodies or public officials, and any other records protected by the attorney-client privilege: § 2.2-3705.1(2).
- Information contained in engineering and construction drawings and plans for any single family residential dwelling submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) shall be confidential and shall not be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except to the applicant or the owner of the property upon the applicant's or owner's request. § 36-105.3
- The name, address and phone number of a person complaining about another person on a Zoning, Building Code or Fire Prevention Code complaint are exempt from disclosure. This provision is not limited to criminal complaints; it applies in any investigation of the complaints. § 2.2-3705.3(8).

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## CONFLICT OF INTEREST ACT

TITLE 2.2, CHAPTER 31 OF THE CODE OF VIRGINIA, § 2.2-3100 ET SEQ.



Regulates the financial relationship of council members, as well as elected and appointed officials, in 3 general areas:

1. General provisions covering bribes and other illegal behavior.
  - prohibition on taking gifts and opportunities while serving as a public official. §§ 2.2-3103(5), (6), (8), (9) & 2.2-3103.1. The act prohibits a member from accepting money, loans, gifts, services, business opportunities, or other benefits if it is reasonable to construe that the benefit was given to influence the member in his or her duties.
  - Gifts: \$50 limit

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## CONFLICT OF INTEREST ACT (CONT)

2. Regulation of financial interests a member may have in business dealings with his locality and with agencies related to his locality (Personal Interest in a Contract).

### 8 Exceptions that apply to all local government officials and employees. § 2.2-3110(A).

1. Any sale, lease, or exchange of real property between a member and his or her locality is allowed as long as the member doesn't participate in the deal on behalf of his board or commission, and the fact that the member wasn't involved is recorded in the public record of the government involved in the transaction.
2. The prohibition does not apply to contracts for the publication of official notices, presumably so that local newspaper may be used for ads required by state law even when a member is an owner or employee of that paper.
3. Town population under 10,000 allows for contracts between a member and his or her locality despite the general prohibition, if the total of those contracts does not exceed \$5,000 per year. Further, contracts up to \$25,000 are allowed if the contract is awarded by competitive sealed bidding. This higher level only applies if the public official has filed a statement of economic interests form.
4. If the sole personal interest the member has in the contract is his or her employment by the contracting business and the member's annual salary exceeds \$5,000, the business may contract with the locality. The council member and members of his or her immediate family must have no authority to participate in the deal, and must not participate in the deal. Further, the member must not participate in the deal on behalf of the locality.

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## CONFLICT OF INTEREST ACT (CONT)

### 8 Exceptions that apply to all local government officials and employees. § 2.2-3110(A).

5. If the member is employed by a public service corporation, a bank, a savings and loan association, or a public utility, and if he or she disqualifies himself from participating on behalf of the city or town and does not participate for his or her locality, then the utility, bank, etc., may contract with the locality. § 2.2-3110(A)(6).
6. The prohibition does not apply to contracts for goods or services below \$500. But if a locality normally purchased paper on an annual contract, for example, could it split up a year's worth of paper contracts so that each is less than \$500? While the section is silent on splitting up a larger contract to meet this exception, the consensus is that this circumvention would violate the law. § 2.2-3110(A)(7).
7. Program grants made to a member are allowed if the rates or amounts paid to all qualified applicants are uniform and are established solely by the agency administering the grants. § 2.2-3110(A)(8).
8. If the spouse of a council member is employed by the locality, the personal interest prohibition does not apply if the spouse was employed by the agency five or more years prior to marrying the council member. § 2.2-3110(A)(9). If one spouse is the supervisor of the other spouse, the conflict does not exist if the subordinate spouse earns less than \$35,000 per year. § 2.2-3110(B).

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## CONFLICT OF INTEREST ACT

3. Regulation of the level of involvement a member may have in an item being considered by his locality that involve his business, property or other personal financial interest (Personal Interest in a Transaction).
4. If a council member is disqualified from participating in a transaction, the act requires several steps. § 2.2-3112:
  1. The council member must disclose the interest that causes the disqualification by identifying the interest, including the name and address of the business or property. § 2.2-3115(F). The disclosure is required whether the law requires the disqualification or the council member voluntarily disqualifies himself out of an abundance of caution. The disclosure can be in a written record to the Clerk or verbally and recorded in the minutes of a public meeting.
  2. The disclosure must be kept for five years in the records of the board.
  3. The member may not vote on or participate in discussion on the transaction. It is a best practice for the member to sit in the audience during the discussion and vote.
  4. The member may not attend the portion of a closed meeting at which the transaction is discussed.
  5. The member may not discuss the matter with anyone in the government who is involved in the transaction.