

AT A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE THIRTEENTH DAY OF OCTOBER, NINETEEN HUNDRED AND NINETY-TWO AT 7:30 P. M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Mr. Alexander Kuras, Chairman
Mr. Raymond L. Betzner
Mr. A. G. Bradshaw
Mr. Wallace Davis, Jr.
Mr. Martin Garrett
Ms. Victoria Gussman
Mr. John F. Hagee
Mr. Donald C. Hunt

ALSO PRESENT

Mr. O. Marvin Sowers, Jr., Director of Planning
Mr. John T. P. Horne, Manager of Development Management
Mr. Leo P. Rogers, Assistant County Attorney
Mr. Allen J. Murphy, Jr., Principal Planner
Mr. Donald E. Davis, Principal Planner
Mr. R. Patrick Friel, Senior Planner
Ms. Elizabeth Friel, Senior Planner
Mr. Trenton L. Funkhouser, Senior Planner
Mr. Jeffrey J. Mihelich, Planner
Mr. Darrell E. Gray, Parks and Recreation Facilities Coordinator

Mr. Sowers proudly announced that the County was the recipient of the Lower James River Association's "Friend of the River Award" in recognition of work accomplished on the 1991 Comprehensive Plan. Mr. Sowers praised the Planning Commission, Planning Division staff, and the County's citizens for their participation, which made possible this fifth award honoring the James City County 1991 Comprehensive Plan.

2. MINUTES

Upon a motion by Mr. Betzner, seconded by Mr. Davis, the September 14, 1992 Planning Commission minutes were approved.

3. DEVELOPMENT REVIEW COMMITTEE REPORT

Mr. Garrett stated that there had been considerable controversy regarding Case No. SP-77-92, Wood Duck Commons, during the last six weeks. At the October 7, 1992 Development Review Committee meeting, although it was not a public hearing it was opened for public input followed by a lengthy discussion. Mr. Garrett stated that there were probably

some members of the audience who would like to speak this evening and because it would benefit the commission and the citizens Mr. Garrett felt it would be helpful to open the meeting to public input provided the audience understood that it was not a public hearing and keep their comments to a minimum. There were no objections from the members of the commission.

Mr. Gilbert Bartlett, attorney, spoke on behalf of the homeowners at this meeting as well as at the DRC meeting. Mr. Bartlett urged the Commission to look at the issue not from a legal or planning standpoint, but from a political standpoint. Mr. Bartlett felt the developer was within his rights in the proposed development of this property and that the County should strive to provide affordable housing. However, Mr. Bartlett questioned the roadway within Wood Duck Commons, which is not a VDOT roadway, and if the road would be the responsibility of the homeowners abutting the roadway. Mr. Bartlett further stated that the road was not convenient for fire and police service and that the County, at some future date, may need to step in and bail out the community that the road serves should they become unable to maintain the road.

Mr. Hunter Bristow, 112 Southeast Trace, Seasons Trace, felt that the Wood Duck Commons proposal was not compatible with existing Seasons Trace homes, and that cluster development was unlike any other development in Seasons Trace. Mr. Bristow felt that Mr. David Hertzler's losses should not impact residents of Seasons Trace in the value of their homes which he felt would be reduced by one-half. Mr. Bristow stated that the new developer, Mr. T. H. Nicholson, III, should design homes compatible with Seasons Trace which would be profitable for Mr. Nicholson and the residents of Season's Trace.

Mr. Vernon Geddy, III, attorney for the developer, stated that the Planning staff and DRC both recommended approval, and urged the Commission to recommend approval.

Mr. Garrett stated the DRC's concern regarding the homeowners' ability to maintain the road. Mr. Garrett also stated that the Commissioners had received more than 40 letters from homeowners with many requesting the DRC and the Planning Commission to take the responsibility for regulating housing prices. Mr. Garrett responded that price regulation was not the responsibility of the DRC or the Planning Commission. Mr. Garrett stated that the DRC is responsible for deciding whether to change the site plan to permit the developer to build two story houses as opposed to the one story and to change the footprint. Mr. Garrett felt that two story homes had a higher value and agreed with staff's recommendation of approval.

Mr. Betzner stated concern regarding the potential devaluation of homes and argued that there was no reason to deny approval to the applicant; this, he said, was an uncomfortable decision.

Mr. Kuras stated that it was unfortunate that the applicant did not continue the same style homes. The road, he said, was not an issue. Mr. Kuras suggested that the homeowners review their bylaws and institute an escrow fund for road maintenance.

Mr. Garrett made a motion, seconded by Mr. Kuras, to accept the staff's recommendation of approval on case No. SP-77-92, and the Development Review Committee Report as presented. The motion passed by voice vote (7-1) with Mr. Davis opposing.

4. CASE NO. SUP-20-91. WILLIAM C. BRANCH

Mr. Friel informed the Commission that the applicant again requested an indefinite deferral to allow the applicant to submit review information to staff; however, staff recommended that the Commission continue the public hearing for a period not to exceed six months. The Planning Commission concurred with the staff's recommendation.

5. CASE NO. SUP-23-92. BUSCH PROPERTIES, INC.

Mr. Friel informed the Commission that the applicant had requested deferral until the November 10, 1992 meeting.

Mr. Kuras opened the public hearing. The Planning Commission concurred with the staff's recommendation to continue the public hearing at the November 10, 1992 meeting.

6. CASE NO. SUP-25-92. MERSHON PROPERTIES

Mr. Sowers informed the Commission that the applicant had requested deferral until the November 10, 1992 meeting.

Mr. Kuras opened the public hearing. The Planning Commission concurred with the staff's recommendation to continue the public hearing at the November 10, 1992 meeting.

7. CASE NO. MP-2-92. GOVERNOR'S LAND MASTER PLAN AMENDMENT

Mr. Friel presented the staff report (appended) for an amendment to the master plan and proffers for the Governor's Land at Two Rivers Planned Community. Mr. Friel stated that staff recommended approval of the master plan and proffer amendments.

In response to Mr. Betzner's request to better understand the funding proposals, Mr. Friel first explained the current proffers and then explained the proposed Transportation Improvement District.

In response to Ms. Gussman's inquiry, Mr. Friel stated that staff was fairly comfortable with the environmental conditions which are currently under study and that they would meet the Chesapeake Bay Preservation Ordinance. Mr. Friel further stated that if this turned out not to be the case, staff would recommend that the Board of Supervisors send the case back to the Planning Commission.

In response to Mr. Betzner's inquiry, Mr. Friel stated that staff expected to hear from the Commonwealth Transportation Board on October 15, 1992 regarding the action on the Transportation Improvement District. Mr. Friel pointed out that the revised proffers would pay for the Route 5 diversion shortfall with or without the District.

Mr. Kuras opened the public hearing.

Mr. Jerry Moore, applicant, praised Mr. Friel for an excellent job in covering all the points included in the amended proffers. Mr. Moore stated that he felt the proposed changes would give more flexibility that would allow the developer to produce a master plan land base which would create a higher quality development. Mr. Moore stated that Jim Bennett was also available to respond to any questions and asked that the Commission look favorably upon the application.

There being no further speakers, the public hearing was closed.

Mr. Hagee made a motion, seconded by Mr. Bradshaw, to accept the staff's recommendations of approval of the master plan and proffer amendments. On a roll call, the vote was: AYE: Betzner, Bradshaw, Davis, Garrett, Gussman, Hagee, Hunt, Kuras (8). NAY: (0).

8. CASE NO. ZO-10-92 & CASE NO. SO-1-92. ZONING ORDINANCE/SUBDIVISION ORDINANCE AMENDMENT TO TERM OF VALIDITY FOR FINAL PLANS

Ms. Friel stated that this Zoning Ordinance amendment was prepared, under the supervision of County staff, by students who attend The Marshall Wythe School of Law. The students, Thomas Book, Susanna Broaddus, Toby Roth and Randy Rowlett, are presently enrolled in a Local Government Seminar taught by Professor Ronald Rosenberg. Ms. Friel stated that this hands-on project had been successful thus far and staff would like to continue this hands-on approach with the staff report being presented by Mr. Rowlett.

Mr. Rowlett stated that the students appreciated the hands-on exercise in local government as well as the cooperation of Ms. Friel and the Planning Commission.

Mr. Rowlett presented the staff report (appended) and stated that staff recommended approval of the amendment to the Zoning Ordinance; namely, amend the ordinance to revise the term of validity for approved site plans from one year to five years; during this five year period no ordinance, map, resolution, rule, regulation, policy or plan can adversely affect the right of the owner to develop the property in accordance with the final plan unless there has been a mistake, fraud or a change in circumstances substantially effecting the public health, safety or welfare; and, that these requirements are applicable to all plans approved on or after January 1, 1992.

In a brief discussion that followed, the Commission was informed that if there is an approved minor modification to a final plan the original date of approval is not effected, that these changes are mandatory in all localities in the state, that approximately 50 site plans would be effected by this amendment, that no change is required in the Subdivision Ordinance because the ordinance does not restrict the term of validity on approved recorded subdivision plans, and that because the amendment is retroactive until January 1, 1992 plans approved prior to that date have a one year time frame.

Mr. Kuras opened the public hearing. There being no speakers the public hearing was closed.

Ms. Gussman made a motion, seconded by Mr. Davis, to accept the staff's recommendation of approval on Case No. ZO-10-92. On a roll call, the vote was: AYE: Betzner, Bradshaw, Davis, Garrett, Gussman, Hagee, Hunt, Kuras (8). NAY: (0).

No action was necessary on Case No. SO-1-92.

9. CASE NO. CP-2-92. COMPREHENSIVE PLAN AMENDMENT

Mr. Funkhouser presented the staff report (appended) stating that the Board of Supervisors directed staff to refer three additional Comprehensive Plan items to the Planning Commission for its review and recommendation. Mr. Funkhouser stated that the three items include revisions to text referencing access to Route 199, revisions to the Land Use Plan Map description for the Williamsburg/Jamestown Airport, and the addition of 6 parcels of land to the Warhill mixed use area which are located in an area generally bounded by Mooretown Road, Richmond Road and the proposed Route 199 overpass of Richmond Road.

Mr. Funkhouser pointed out that the Board did not vote to approve these changes but that the Board's action signified that the Board deemed these proposals worthy of additional discussion. Mr. Funkhouser further commented that the Board voted to deny two of the three Land use Plan Map change applications (Terrell/Bell and Vermillion properties) and deferred action on the Crawford/Akins property in order for staff to provide additional information to the Board.

Mr. Funkhouser stated that staff recommends that the decision be deferred on the Williamsburg-Jamestown Airport until completion of the master plan, and further stated that staff recommends denial of the Route 199 and Warhill Tract amendments.

Mr. Garrett questioned why a worksession was not held prior to this presentation to the Commission.

Mr. Sowers responded that a public hearing is legally required and staff felt it would be expeditious to have the public hearing and if the Commission wished to defer and consider further it would only require two meetings rather than possibly three meetings.

Mr. Kuras opened the public hearing.

Mr. Perry DePue, Member of the Board of Supervisors, stated that he was present to represent, he felt confidently, the position of the majority of the Board. Mr. DePue stated that many private discussions were held prior to action taken by the Board and the majority agreed to bring these to the Commission. Mr. DePue stated that the Board could have taken action on the amendments on its own but preferred input from the Commission and wished to convince the Commission that these actions by the Board for the Commission's consideration are the correct actions to take in reviewing the Comprehensive Plan. Mr. DePue agreed that the Williamsburg-Jamestown Airport should be deferred until the master plan is produced. Mr.

DePue stated that he was available for any private discussion with Commissioners before rendering a decision. Mr. DePue said that all three items were controversial and difficult a year ago and passed by a 3-2 vote, and are still controversial and the Board has undergone a subtle change in the last year and asked for a change in the right direction.

Route 199. Mr. DePue stated that adding generally to the text regarding cuts onto Route 199 was small but significant. Mr. DePue referred to the possibility of a tax increase next spring because of a decline in property values and an increase in the financial obligations of the County. Mr. DePue pointed out that both the Warhill Tract and Williamsburg Crossing have significant economic and commercial development opportunities if additional curb cuts onto Route 199 were considered. He emphasized that the main advantage of this change would be to put the County in the position to consider economic development possibilities and that he would not support any proposal that would not preserve the design level of service. Mr. DePue referred to an anchor store such as a Leggett, J. C. Penney or Wal-Mart in the future at the Williamsburg Crossing site. Mr. DePue referred to a meeting about 18 months ago with the owners of the Warhill Tract who he said were concerned about the way Route 199 Comprehensive Plan language was written. Mr. DePue felt the plan was very restrictive and would require change before any significant development occurred on the site.

Williamsburg-Jamestown Airport. Mr. DePue asked that the restrictive commercial and office development recommendations for this designation be revised to permit a wider variety of commercial uses. Mr. DePue supported deferral until a master plan for the airport is available.

Warhill Tract. Mr. DePue stated that there was a meeting last year with residents living along Richmond Road, from Lightfoot to Berkeley Commons, which is designated low density residential. These are small parcel owners who are predominantly black, many of whom were relocated from Camp Peary years ago to this area, they are enclosed by commercial development on all sides, and have seen their quality of life changed dramatically. The only benefit the property owners see that they can derive is in selling their land if there is the potential for commercial development but under the current Comprehensive Plan designation this would not be possible because it is zoned low density residential. One corner is designated low density residential and other three corners are designated for mixed commercial office development. Mr. DePue felt it was unfair to leave one area of the intersection designated low density residential as it would be unlikely that a home would be built on a major highway such as Richmond Road. Mr. DePue felt the County should afford the benefit of a greater resale value to these citizens. Mr. DePue stated that the small property owners informed him that they would get together as a group and sell to a developer for commercial purposes.

Mr. Betzner asked if he understood correctly that Mr. DePue was telling the Commission that the Board of Supervisors intended to approve these changes and that the Commission should essentially say they agree.

Mr. DePue responded that the board would vote its options, but that he was present out of respect for the Planning Commission and staff who he knew to have strong feelings and felt the other side should to be represented.

Mr. Betzner felt there was contradiction in the language regarding Route 199. Mr. DePue agreed to a problem with the language but felt it was not insurmountable and emphasized that it was not the Board's intent to diminish the level of service. Mr. DePue stated that a study during the Williamsburg Crossing process indicated there were some ways to improve the level of service in that area.

Mr. Betzner stated that studies also showed that it would not improve the level of service.

In regard to staff's comment regarding the proposed changes leading to "considerable developer expense," Mr. DePue felt that had not been a County concern in the past, and if a developer was willing put up money for a traffic study to prove that it would not harm the level of service he would not worry about expense to the developer.

Mr. Betzner stated that he did not understand Mr. DePue's original rationale that in order to avoid tax levels going up, the County should make Route 199 a more difficult road to drive.

Mr. DePue responded that Mr. Betzner had unfairly characterized his comments. He is committed to keeping the level of service as is.

Mr. Betzner suggested a worksession.

Mr. Funkhouser added for clarification for the Planning Commission that staff was opposed to at grade intersections and not necessarily any new interchange development.

Ms. Gussman stated that she thought the Board passed a resolution setting forth criteria under which Comprehensive Plan amendments would be entertained in the years 2-4 and not the fifth year.

Mr. Sowers clarified the resolution which stated ... only if there is a demonstrated change in conditions or if there is a clear error in the original decision.

Ms. Gussman also suggested a worksession.

Ms. Jean Miller, 103 Dogwood Drive, expressed concern regarding the expansion of the landfill on the airport property stating that there is already so much traffic on the road and certainly do not need more dump trucks. Ms. Miller stated that another preschool had been added to the area, that there was only one entrance and one exit because of the detour over the dam. Ms. Miller said that bicycling was a danger for adults and the many children who use the road. She was under the impression that the landfill had died a natural death and was surprised that it would again become an issue and they were tired of fighting the airport. Ms. Miller further stated that housing was increasing in the area, the population was going up, and that the area was not designed for commercial uses. Ms. Miller further stated that Mr. DePue indicated that the majority of the Board was behind him and if that was the case then the residents should be told and they would stop fighting for themselves. Ms. Miller also said that the impression she had that the Comprehensive Plan would protect the residents was not

true if the Board of Supervisors keeps changing it.

Ms. Peggy Miller, 105 Dogwood Drive, also expressed concern regarding the expansion of the landfill. The area is residential with a school, and one entrance to accommodate fire, police and EMS. Ms. Miller asked that the Commission seriously consider what is before them and remember that life savings, the hope to retire in the community, their children and other neighbors coming in and ask that the Commission place itself in these conditions when considering this possible change of plans.

Mr. John Horne stated that he was sorry Mr. DePue had left but he wanted to make some comments. He stated there were different kinds of judgements, short term and long term, and the kind of judgement which applied to the Comprehensive Plan process was long term judgement. This judgement was based on a broad feeling for where the community was headed and not narrowly focused on every individual little case. Mr. Horne felt staff and the Board had applied long term judgement in developing the Comprehensive Plan after a very long process. The narrow case by case focus and process is when just the individual parties are involved. One party wants approval and the other party does not. Mr. Horne expressed concern that the County is becoming extremely focused on very small scale changes and not exercising long term judgement. The three cases tonight are best looked at in the long term and not focus continually on every small case that comes before the Commission for a Comprehensive Plan amendment.

There being no further speakers the public hearing was continued to a worksession on October 28 at 4 p.m. in the board room unless otherwise notified.

10. CASE NO. AFD-4-86. PATE'S NECK AGRICULTURAL AND FORESTAL DISTRICT

Mr. Friel presented the staff report (appended) stating that the County is obligated by the State Code to review this district and to either continue, modify, or terminate the district. Mr. Friel stated that the Agricultural Districts and Advisory Committee unanimously recommended approval on the continuation of this district. Mr. Friel pointed out an error in the report which stated that the district included all the land on the property. There is no exception of land within 25 feet of the road right-of-way of Little Creek Dam Road as stated in the staff report.

Mr. Friel stated that VDOT asks that 25 feet of right-of-way land be preserved in a district because once in a district VDOT is restricted in how it can be obtained so the condition is typically included. In view of Mr. J. A. Daniels, Jr.'s (Pate's Neck Timber Company) comments, it is staff's intention to contact VDOT to see how important they consider the 25 feet and if they will change their position.

Since this case is a continuation the Board must act before the district expires; therefore, Mr. Friel requested that the Commission approve the conditions as listed until staff hears otherwise from VDOT.

Mr. Kuras opened the public hearing.

Mr. Daniels stated that originally the state requested the exclusion of the 25 feet of the road right-of-way but the Commission and Board recommended that it be included. Mr. Daniels stated that he was the only one on the road with possible use for it but that he had no intention of developing the property and emphasized that he would leave it exactly as it is - untouched. Mr. Daniels said that he felt confident the state would want the 25 feet and requested that the Commission approve the staff report exactly as is except for 8 years instead of 6 years and exclude the 25 feet.

There being no further speakers Mr. Kuras closed the public hearing.

Ms. Gussman made a motion, which was seconded, to recommend approval of the staff report with the exception of the exclusion of the 25 feet from the right-of-way from Little Creek Dam Road. Ms. Gussman stated that she felt it highly unlikely that the road would need to be widened significantly. On a roll call, the vote was: AYE: Betzner, Bradshaw, Davis, Garrett, Gussman, Hagee, Hunt, Kuras (8). NAY: (0).

11. RECREATION MASTER PLAN UPDATE

Mr. Darrell E. Gray, Facilities Coordinator for Parks and Recreation, presented the staff report (appended). Mr. Gray stated that staff was extremely pleased thus far with the process of the plan and attendance at the meetings. The participants at the October 8 meeting represented a broad spectrum of the County from a geographic, demographic and economic perspective.

Mr. Gray welcomed Mr. Kuras as an ex officio member of the Recreation Commission who will act as a communication link between the Park and Recreation Commission and staff via the Planning Commission.

Mr. Kuras encouraged Commissioners to attend the meeting.

12. MATTERS OF SPECIAL PRIVILEGE

A. Golf Courses and Country Clubs

Ms. Gussman distributed a letter (appended) to Commissioners regarding the inconsistency in the Zoning Ordinance regarding the permitting of golf courses and country clubs in residential districts. Ms. Gussman pointed out that golf courses are permitted in residential districts with the exception of the R-1 District, which she felt was an oversight by the residential subcommittee that should be corrected. Ms. Gussman requested the Commissioners' consideration and if it is determined that golf courses and country clubs be added to the R-1 District that staff be directed to amend the ordinance. Ms. Gussman stated that the Commissioners might feel that they should spend time deliberating or determining whether or not golf courses and country clubs should be added and if so with or without a special use permit. Ms. Gussman suggested the residential subcommittee reconvene and make a recommendation of this issue.

Mr. Garrett stated that he would prefer to see some staff comments.

Ms. Gussman stated that she had contacted two members of the subcommittee but they did not recall discussing this issue. Ms. Gussman requested that staff present an amendment at the next meeting for Commission consideration.

Mr. Sowers stated that staff would present a report at the November meeting and if the Commission decides to move forward, an ordinance amendment would be heard at the public hearing at the December meeting.

13. PLANNING DIRECTOR'S REPORT

The Planning Director's Report was accepted as presented by Mr. Sowers.

14. SETTING OF FUTURE MEETING DATES

Mr. Kuras reminded the Commission of the November 7, 1992 Planning Commission Bus Tour, beginning at 9:30 a.m. at the County parking lot and returning to the County following lunch at the home of A. G. Bradshaw.

Mr. Friel informed the Commission of a new public information effort which can be seen on CATV38 entitled Toward 2007 - A View From the Crow's Nest. Mr. Friel described the broadcast as a weekly presentation of planning related topics, one entitled Neighborhood Master Planning prepared in Ft. Lauderdale, and Highest and Best which appeared on PBS earlier this year. Citizens are encouraged to call in with any questions or information.

Mr. Sowers informed the Commission that the videos were prepared by non County sources.

Mr. Bradshaw stated that he had attended the VCPA annual conference. Mr. Bradshaw praised Mr. Sowers for his presentation at the conference.

15. ADJOURNMENT

There being no further business, the October 13, 1992 Planning Commission meeting was recessed at 9:20 p. m. until the October 28, 1992 Planning Commission worksession at 4:00 p. m. to discuss Case No. CP-2-92, Amendments to the 1992 Comprehensive Plan Update.



Alexander C. Kuras, Chairman



O. Marvin Sowers, Jr., Secretary

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