

AT A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE ELEVENTH DAY OF MAY, NINETEEN HUNDRED AND NINETY THREE AT 7:00 P. M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

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

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. R. Patrick Friel, Senior Planner
Mr. Jeffrey J. Mihelich, Senior Planner

2. MINUTES

Upon a motion by Ms. McKenna, seconded by Mr. Hagee, the Minutes of the April 13, 1993 Planning Commission meeting were approved as presented by unanimous voice vote.

3. COMMITTEE REPORT

Ms. Gussman abstained from voting on Case No. SP-38-93. Carter's Grove Parking Lot Expansion.

Upon a motion by Mr. Betzner, seconded by Ms. McKenna, the Development Review Committee Report was accepted as presented by unanimous voice vote with Ms. Gussman abstaining on Case No. SP-38-93.

4. CASE NO. SUP-30-92. C. LEWIS WALTRIP/ROUTE 5 WATER AND SEWER CONNECTION (deferred January 12, February 9 and March 9, 1993)

Mr. Friel presented the staff report (appended) for a special use permit to allow for the connection of a future single family home to an existing 12 inch water main and force main along Route 5. Mr. Friel stated that staff recommended denial of the request for reasons stated in the staff report.

Mr. Kuras opened the public hearing.

Mr. Vernon Geddy, representing the applicant, stated his opposition to the staff recommendation of denial. Mr. Geddy stated that the existing mains were not several hundred feet down the road or across an adjacent property; this property was immediately abutting the mains. Mr. Geddy stated that the owner of this lot owns sewer taps, one of which could be made available to this lot so that capacity in the sewer line was not a concern. Mr. Geddy further stated that because the lot does not perk a septic drain field would not be an alternative. Mr. Geddy stated that there were possible alternatives but did not make further explanation except to say that they would not be as practical and considerably more expensive than connecting to the sewer main that exists. Mr. Geddy stated that the mains in question were approved as part of the approval of the Governor's Land project and that staff at this time was basing its recommendation on Comprehensive Plan issues which encourages development of utilities inside the PSA and discourages development of utilities outside of the PSA. Mr. Geddy pointed out that the request is not for an extension of the water and sewer mains outside the PSA nor is there a request for new subdivision approval as the lot exists. Mr. Geddy strongly urged that the applicant be allowed to hook up to the existing water and sewer facilities which through no action of the owner are in his front yard.

Ms. McKenna questioned how many lots along the line have purchased sewer taps.

Mr. Horne stated that sewer taps were transferable and not necessarily inherent with a plot of land.

Ms. McKenna questioned how many outstanding sewer taps were available to which Mr. Horne responded that there were quite a few.

Mr. Horne stated that sewer taps were transferable on the same force main.

Mr. Garrett asked what Mr. Waltrip could do with the sewer taps he already has. Mr. Rogers responded that he could transfer them to another property anywhere within the PSA to connect with this sewer line. Mr. Rogers further stated that the planning issue is whether or not there should be additional connections regardless of sewer taps, prepaid or not, outside the PSA.

Mr. Kuras stated that if a sewer tap had been bought by a property owner for a specific property it would make a difference to him.

Mr. Rogers stated that at the time the sewer taps were sold this line did not exist.

Mr. Horne clarified that the implication may be that if there is a sewer tap purchased by the property owner then it was purchased as an investment by the property owner in this line. That is incorrect in this case because this sewer line did not exist when the sewer taps were purchased.

Ms. McKenna recalled that this situation was the same consideration given to Governor's Land when it was approved, which was in part because the sewer taps were there.

Mr. Hagee asked if the main consideration was to discourage development outside of the PSA that is incompatible with rural lands.

Mr. Friel responded that development is not encouraged outside the PSA in rural lands that could not otherwise occur without the addition of public facilities to support the development.

Mr. Hagee raised the question as to why a three acre site (compatible with the rural lands designation) that perks would be allowed but a three acre site that could tap into immediately available water and sewer not be allowed.

Mr. Sowers responded that the site size of three acres is used as a guide for what is generally considered an acceptable lot size in order to maintain the rural character but three acres is not the sole criteria. Additional Comp Plan criteria for housing in Rural Lands areas include acceptable soil for an on-site sewage disposal system.

Mr. Hagee felt in place of acceptable soil a better situation is water and sewer available to the site; therefore, a three acre site with water and sewer in front of it should be allowed to connect because three acre sites are compatible with rural lands. Mr. Hagee questioned if water and sewer taps was a matter of setting a precedent.

Mr. Horne stated that it does set a precedent. Sewer extensions are done almost entirely by private developers and James City Service Authority does almost no sewer extensions on its own; it accepts sewer lines built by others but they are taken over and maintained at County expense. Mr. Horne further stated that if the County extends public facilities outside the PSA the meaning of the PSA line would be virtually gone and as well as control of the comprehensive plan.

Mr. Sowers stated that under the Comp Plan, presence of utilities is not a criteria for rural housing. The Comp Plan provides for rural housing where there is at least three acres and suitable soils and that this site does not meet both of these criteria. Using the presence of utilities to support this case adds a criteria for rural housing which is counter to the adopted policy in the plan and sets a precedent for disregarding the soils criteria.

Mr. Geddy questioned limitation based on lots existing on the date the sewer main they seek to tie into was built.

There being no further speakers the public hearing was closed.

Mr. Betzner made a motion, seconded by Mr. Garrett, to accept the staff recommendation of denial.

Mr. Betzner also stated that if the Commission wishes to consider Mr. Geddy's recommendation to consider extensions outside the PSA to existing lots that he felt it was a policy decision to be made outside the hearing of this specific case either through the annual change to the Comprehensive Plan or the Policy Committee.

On a roll call vote to recommend denial on Case No. SUP-30-92, the motion passed: AYE: Bradshaw, Garrett, Davis, Gussman, Betzner, Kuras (6). NAY: McKenna, Hagee, Hunt (3).

5. CASE NO. Z-3-93. ROBERT S. HORNSBY

Mr. Friel presented the staff report (appended) to rezone approximately .58 acres from LB, Limited Business to R-2, General Residential, and .88 acres zoned R-2, General Residential to LB, Limited Business. located at 5301 and 5313 Olde Towne Road. Mr. Friel stated that staff recommended approval as stated in the staff report.

In response to Mr. Betzner inquiry regarding the sharp curves, Mr. Friel responded that some of the curves will be straightened out as a result of the 199 extension.

Mr. Kuras opened the public hearing.

Mr. Bobby Hornsby stated that he was available to answer questions and pointed out on the map where Route 199 will cross a section of the property and straighten out a portion of the curves. He stated that this will possibly allow any future entrance to be located further from Route 199 and the curve and line up with an existing entrance.

There being no further speakers the public hearing was closed.

Ms. McKenna made a motion, seconded by Mr. Hagee, to accept the staff's recommendation of approval. On a roll call vote, the motion passed: AYE: Bradshaw, Garrett, McKenna, Davis, Hagee, Gussman, Betzner, Hunt, Kuras (9). NAY (0).

6. CASE NO. SUP-18-93. NORGE CENTER, INC.

Mr. Friel presented the staff report (attached) for a special use permit to allow the development of a supermarket in excess of 10,000 square feet on Norge Lane. Mr. Friel stated that staff recommended approval with the conditions stated in the staff report.

Mr. Kuras opened the public hearing.

Mr. Kevin McFadden of the Rebkee Company, representing the developer, was present to respond to questions.

There being no further speakers the public hearing was closed.

Mr. Bradshaw made a motion, seconded by Ms. Gussman, to accept the staff's recommendation of approval. On a roll call vote, the motion passed: AYE: Bradshaw, Garrett, McKenna, Davis, Hagee, Gussman, Betzner, Hunt, Kuras (9). NAY: (0).

7. CASE NO. SUP-2-93. WILLIAMSBURG CROSSING MASTER PLAN AMENDMENT AND CASE NO. SUP-3-93. WILLIAMSBURG CROSSING OUTDOOR CENTER OF AMUSEMENT (deferred March 9 and April 13, 1993)

Mr. Friel presented the staff report (appended) for a special use permit for an outdoor center of amusement and to amend previously approved special use permits (SUP-49-90 and SUP-32-92) for the Williamsburg Crossing Shopping Center. Mr. Friel stated that staff recommended approval of the special use permits for the reasons and conditions stated in the staff report.

In response to Mr. Davis' inquiry, Mr. Friel responded that all property owners were notified of the applications.

In a discussion regarding Land Bay 11, Mr. Friel stated that future development could occur on this site with a special use permit.

Also discussed was the safety net at Route 199 with Mr. Garrett questioning its effectiveness.

Mr. Calvin Davis discussed a formula used and felt the safety was sufficient.

Mr. Betzner questioned the noise analysis regarding the go cart track which indicates DBA level below the DBA level of normal conversation.

Mr. Friel explained that the noise would be similar to a car idling in a driveway.

Mr. Kuras opened the public hearing.

Mr. Alvin Anderson representing University Square Associates stated that until an appropriate commercial user is identified for the balance of the property the applicant has proposed an interim recreation development. Mr. Anderson asked that the Commission compare the effects of the proposed interim use and its intensity with the use currently permitted and its intensity under the existing approved special use permit (535,000 sq. ft. of commercial space and associated parking). Mr. Anderson stated that approximately 300,000 additional square feet could be constructed under the terms of the existing special use permit. Mr. Anderson stated under the existing zoning there is a requirement of a 65 foot buffer along the common property line adjacent to Winston Terrace. Mr. Anderson stated that under this proposal the existing tree line which is within the Winston Terrace Subdivision and the proposed development would remain untouched unless landscaping were enhanced.

Mr. Anderson described Phase I which would include golfing, baseball and softball activities. Phase II would include the go cart track, a pool for bumper boats and a skate board bowl located behind the Food Lion Grocery Store. Mr. Anderson asked the Commission to note that the area proposed for Phase II is a depressed elevation area, and is surrounded to the rear and on the side by a heavily wooded area which will remain as part of this proposal. Mr. Anderson further stated that the professional studies have concluded that with the required buffers and the natural terrain these Phase II facilities would be virtually invisible

from Winston Terrace, Route 199 and Route 5.

Mr. Anderson further stated that this proposal would provide a recreation facility which is not currently available.

Ms. Cathy Gibbs (approximately age 10), Winston Drive, stated that the woods behind her house have herds of deer, rabbits, redheaded woodpeckers, owls, and the Virginia State bird, the Cardinal, as well as dogwood, pecan, walnut trees, and cattails. Ms. Gibbs asked the Commission to consider what would happen to the animals and the trees if this land is developed.

Mr. John Kellogg, 114 Winston Drive, stated that the issue of whether to grant a special use permit for construction of an amusement park calls for an examination of potential nuisances. Mr. Kellogg questioned the 50 foot safety net to catch golf balls and the yearly summary of errant golf balls in Route 199 traffic, and the raising of the safety net to 60 feet if the golf balls are a problem. Mr. Kellogg also questioned the recommendation that the go carts be equipped with mufflers in good repair with the issue not being how much noise the mufflers will allow but who will regulate it. Mr. Kellogg felt even with the staff recommendations the facility would still be a nuisance with the burden being on the residents to prove that nuisances still exist. Because the residents feel that many of the nuisances cannot be avoided regardless of the regulations and restrictions imposed by the Planning Commission and that the nuisances were different than those of a shopping center, he asked that the special use permit not be granted.

Mr. George F. Wright, President of the Historic Route 5 Association and Chairman of its Coordinating Council, representing property owners, developers and businesses located along John Tyler Highway. Mr. Wright resides at 148 Cooley Road. Mr. Wright expressed the residents pride in their neighborhoods and tolerance of commercial development in their area. Mr. Wright stated that "we do not want an amusement park or anything like it in our area ... period." Mr. Wright asked the Planning Commission to reject the request unanimously and so to recommend to the Board of Supervisors. Mr. Wright asked that "County staff and officials work with Mr. Davis to resolve problems rather than face such bazaar special use requests and possible law suits that cost tax payers dearly."

Ms. Alicia DeGracian, Winston Drive, agreed with the other speakers who opposed this application. She felt the use was not appropriate and suggested using taxes to acquire the area and create a beautiful park for families to enjoy.

Mr. John Brendel, 119 Winston Drive, felt an amusement center was not appropriate at this location. Mr. Brendel submitted a petition with more than 650 signatures opposing this application. Mr. Brendel stated that he met with Mr. Davis and felt the citizens of surrounding neighborhoods had everything to lose while Mr. Davis had everything to gain should this project be approved. Mr. Brendel felt an amusement center open 16-1/2 hours a day should not be permitted on this site. Mr. Brendel stated that the residents fear the noise, traffic, activity until midnight each night, potential increase in crime, and decrease in property values. Mr. Brendel asked that the Commission consider what is best for the residents of James City County and to exercise their authority in a way that represents the small guy.

Mr. Grant Olson questioned Mr. Anderson statement that this is a unique facility in the area as there is a driving range and additional golf practicing facilities available at the Williamsburg Pottery Factory. Mr. Olson also questioned Mr. Anderson's statement that Rampart Packaging is within 600 feet of Kingsmill residences and drawing a noise level comparison between that facility and the go cart bowl at the proposed recreational facility. Mr. Olson pointed out that the Rampart Facility was enclosed in a building while the go cart bowl was in an open facility.

Ms. Elizabeth McKenna, 134 Winston Drive, questioned Mr. Davis' commitment to seeing that this development was a successful venture and stated that she understood the amusement center to be an interim proposal in lieu of something that had been approved. Ms. McKenna also expressed her skepticism regarding the professional acoustics studies that had been performed. Ms. McKenna stated that this neighborhood where she had grown up and purchased her own home was affordable for young persons such as herself and asked that the request be denied.

Ms. Suzanne Feiderline, Jamestown Farm, felt a more creative use such as a park, or left as a natural area for future generations, would be more desirable use of the land which would not cause problems to the surrounding neighborhoods.

There being no further speakers the public hearing was closed.

Mr. Davis stated that he felt it was a nice plan but not appropriate for the area for safety reasons and the proximity to residential areas.

Mr. Garrett questioned Mr. Calvin Davis' statement that this project would be financially beneficial to the County stating that if members of the community perceived that their home values would go down then they may actually do so. Mr. Garrett further stated that the use was not appropriate, the golf facility posed a hazard, and he would not support the proposal.

Mr. Garrett stated that in this case he differed with the staff recommendation.

Mr. Sowers stated that the Williamsburg Crossing Mixed Use definition does not address aesthetics, distinguish between different types of commercial uses, etc. or mention any special visual protections for this area as other mixed use areas do; it speaks to commercial uses in general without differentiating as to whether the site is more appropriate to outdoor uses, indoor uses, office uses, fast food, retail, etc. The Commission has great discretionary latitude in how they interpret the Comp Plan but staff does not have the same latitude and must follow its guidelines.

Mr. Kuras felt Phase I was not quite an amusement park but more a recreational facility and he would possibly support it; however, Phase II he felt was not appropriate for this area.

Ms. Gussman felt the golf facility was troublesome, in particular the 50 foot net adjacent to Route 199, a greenbelt road, and would not support the proposal.

Mr. Garrett pointed out that the County has available space for this type of facility but a residential area is not appropriate for an amusement park.

Ms. McKenna felt that this area was primarily residential, had a greenbelt, and was at a primary intersection and not appropriate for an amusement center. Ms. McKenna stated that she did not object to some kind of recreation added in the shopping center but not of this scale.

Mr. Hagee agreed that Phase I was acceptable but Phase II was inappropriate for the area. Mr. Hagee stated that this plan had been developed at great expense and time to the developer based upon the wording of the Comprehensive Plan and in order to preclude it from happening again a better definition of where such uses should go is needed.

Mr. Hunt agreed with Mr. Hagee and stated that from his home he can hear the loud speakers at 1000 feet away.

Mr. Betzner also felt the proposal was not appropriate in close proximity to residential areas. Mr. Betzner felt the protection of trees that staff proposed was very good.

Mr. Bradshaw felt the developer had put a lot of time and thought into the proposal but he was concerned about the complaints of the public. Mr. Bradshaw questioned how many of the 600 signatures on the submitted petition actually were of residents affected by this proposal. Mr. Bradshaw stated that he would like more time to review the proposal and questioned if a work session was in order.

The Commission generally agreed that a work session was not necessary.

Mr. Alvin Anderson stated that if it was the pleasure of the Commission his client would be happy to have the matter deferred with the idea of deleting Phase II, and reorienting Phase I to reduce or eliminate the requirements of the netting.

The Commission generally agreed not to defer action.

Mr. Garrett made a motion, seconded by Ms. McKenna, to recommend denial of Case No. SUP-2-93 and Case No. SUP-3-93. On a roll call vote, the motion passed: AYE: Garrett, McKenna, Davis, Hagee, Gussman, Betzner, Hunt, Kuras (8). NAY: Bradshaw (1).

8. CASE NO. SUP-15-93. LARRY TO. AND JEAN T. WALTRIP/TUB GRINDER

Mr. Friel presented the staff report (appended) for a special use permit to allow the manufacture and sale of wood products. Mr. Friel stated that staff recommended approval with the conditions detailed in the staff report.

Mr. Betzner questioned if the apparatus would be stationery.

Mr. Friel responded that the apparatus is a mobile unit and a site plan would be

required showing where the wood grinding apparatus would be located.

In response to a question by Mr. Garrett, Mr. Sowers described the apparatus stating that the noise could be described as a low, dull grinding sound as opposed to the high pitched whine of the portable grinding units used by three trimmers, and could be heard about one to two blocks west of Lake Powell Road when there were no competing sounds; i.e., kids on bikes, cars driving by, and aircraft taking off were considerably louder at that distance.

In response to Mr. Hagee's inquiry on the location of the apparatus, Mr. Friel responded that it is possible that it could be placed close to the 50 foot buffer.

In response to Mr. Garrett's inquiry as to whether the Commission had any control on where it would be located on the property, Mr. Friel stated that the Commission could suggest a condition at this point that would allow the DRC to approve the final placement of the apparatus and emphasized that the DRC would approve the site plan.

Mr. Garrett suggested that the DRC have some control over the exact location of the apparatus.

Mr. Horne stated that if the Commission wanted the apparatus to be located as far away from the perimeter of the site, that it should be addressed by a condition in the special use permit.

Mr. Kuras opened the public hearing.

Mr. Alvin Anderson, representing the Waltrip, discussed the major problem of waste disposal and the associated costs and liability of ground water protection. Mr. Anderson displayed a picture of the Diamond Z Tub Grinder and what the materials look like following processing. Mr. Anderson displayed a photo showing the approximate present location of the tub grinder south of the runway. Mr. Anderson further stated that Mr. Bernard Farmer, Zoning Administrator, has ruled that the tub grinder can continue to operate at this location as an accessory use as long as the existing landfill continues to operate. Mr. Anderson asked for a favorable recommendation to the Board of Supervisors.

In an attempt to determine whether additional traffic would be incurred, Mr. Betzner questioned if commercial haulers would be involved.

Mr. Larry Waltrip, owner of Williamsburg Recycling, stated that haulers would bring a load or stumps, etc. to be mulched and in turn the mulch would leave the site.

Mr. Waltrip further stated they had been grinding for about two months and have had no complaints. They have sold a number of truck loads of mulch in the area, and when he inquired of the buyers was told that they did not hear the equipment operating. Mr. Waltrip felt that when the equipment was moved to the new site that it would not be heard at all and will not even know it is there.

Mr. Kuras closed the public hearing.

Ms. McKenna made a motion, seconded by Mr. Davis, to recommend approval to the Board of Supervisors.

Mr. Friel stated that the suggested condition would read as follows: The grinder shall be located as far away as possible from the southeast and southwest site boundary of the 19 acre site as shown on a plan entitled "Plat of boundary adjustment between the properties of Linwood Waltrip, et als and Williamsburg-Jamestown Airport" prepared by AES and dated February 16, 1988 to minimize the potential adverse impacts including but not limited to noise, dust and odor, etc. The final location of the grinder shall be approved by the Development Review Committee as part of the development plan approval.

Ms. McKenna suggested that the condition not include the distance from the boundaries.

Mr. Davis confirmed that standing in the parking lot of the airport it was hard to hear the sound of the equipment.

On a roll call vote, the motion passed: AYE: Bradshaw, Garrett, McKenna, Davis, Hagee, Gussman, Betzner, Hunt, Kuras (9). NAY: (0).

9. REGIONAL BIKEWAY PLAN

Mr. Mihelich presented the staff report (appended) of the Regional Bikeways Plan which was developed to identify areas in James City County, City of Williamsburg and York County where the construction of bikeway facilities are desirable and appropriate from a transportation perspective. Mr. Mihelich discussed various segments of the regional plan. Mr. Mihelich stated that staff recommended approval and incorporation of the Regional Bikeways Plan into the James City County Comprehensive Plan.

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

Mr. Kuras complimented staff, Mr. Sowers and Mr. Horne, on their work with the Regional Issues Committee.

Following a brief discussion, Mr. Kuras made a motion, seconded by Ms. McKenna, for approval of the Regional Bikeways Plan. The motion passed by unanimous voice vote.

10. PLANNING COMMISSION CONSIDERATIONS

Proposed Methodology for the Comprehensive Plan Second Annual Review

Mr. Mihelich presented the staff report (appended) in which he summarized responsibilities and methodology for the Commission's consideration. Mr. Mihelich stated that staff recommended approval of the methodology.

The Commission recommended approval by unanimous voice vote.

Mr. Kuras asked that if a desirable application was presented to the County that staff would not request that they be asked to wait until summer to process the application.

11. PLANNING DIRECTOR'S REPORT

Mr. Sowers presented the report and commented that the Greenways Workshop will be followed by the creation of a citizens advisory committee to help lead the greenway planning effort. Mr. Sowers asked if any of the Commission members would like to participate and join the effort to call the number in the report.

12. MATTERS OF SPECIAL PRIVILEGE

Outdoor recreational facilities

Mr. Hagee felt it would be worthwhile to review such uses as outdoor recreational facilities and set parameters as where and how they can be used under a special use permit.

Mr. Kuras felt that would be difficult to do as they are site specific.

Mr. Hagee felt in the past there had been situations such as borrow pits and towers where industrial sites are indicated for approved locations but were refused. Mr. Hagee felt the Commission should decide where such uses will be permitted.

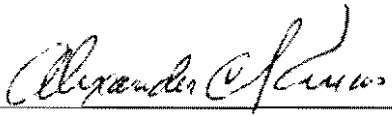
Following discussion, Mr. Hagee stated that perhaps amusement parks need to be reviewed as to location within a zone, specifically how far from a residential area.

Mr. Garrett questioned if specifics would create a stringency that he would not want.


Mr. Hagee felt that the requirements would be more definitive and a developer would have direction.

13. ADJOURNMENT

There being no further business, the May 11, 1993 Planning Commission meeting adjourned at 9:52 p. m.



Alexander C. Kuras, Chairman



O. Marvin Sowers, Jr., Secretary

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