

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

1. ROLL CALL

Martin Garrett
John Hagee
Donald Hunt
Wilford Kale
Alexander Kuras
Willafay McKenna
A. Joe Poole, III

ALSO PRESENT

John T.P. Horne, Development Manager
O. Marvin Sowers, Planning Director
Leo Rogers, Deputy County Attorney
Gary Pleskac, Senior Planner
Paul Holt, Planner

2. MINUTES

Upon a motion by Willafay McKenna, the minutes to the April 6, 1998 meeting were approved by unanimous voice vote.

3. DEVELOPMENT REVIEW COMMITTEE

Alex Kuras presented the DRC report stating that after considerable discussion for the proposed Inn at Stonehouse it was determined this type of facility did not change the character of the area and approval of the case was recommended. He stated that Oaktree Office Park had too many open items from agencies to make a recommendation. This case was deferred until next month. By unanimous voice vote the DRC report was approved.

4. POLICY COMMITTEE REPORT

Willafay McKenna stated the only substantive addition to the bylaws was the time limitation for speakers discussed at the last two meetings. The other changes that have been suggested by the Policy Committee were basic items in order to put the bylaws in a more readable and easy to locate format.

Alex Kuras stated the Nominating Committee was headed by the Chair of two other committees and asked what would be done if a member chaired more than one committee.

Willafay McKenna suggested adding the wording "shall not include the Chair." A vote on the changes will be taken at the June 1, 1998 meeting.

5. CASE NO. SUP-10-98, JAMES CITY COUNTY SERVICE AUTHORITY (NORGE WELL FACILITY).

Gary Pleskac presented the staff report stating the applicant requested to upgrade the existing water storage, treatment, and distribution facility, including the construction of

two 55,000 gallon water storage tanks. Staff felt the proposal was consistent with the Goals, Objective and Strategies for Public Facilities as identified in the Comprehensive Plan and recommended approval as outlined in the staff report.

Wilford Kale inquired about the landscaping and asked who staff had contacted. He questioned if the applicant would have to meet the same requirements of the HOA for Kristiansand in regard to the type of fencing that would be used for the project. He also requested that the wording "will be 28' in diameter" be added to Condition #2.

Gary Pleakac stated Larry Foster dealt extensively with the neighbors and would be better qualified to answer those questions.

Larry Foster, General Manager of JCSA, first thanked the staff and members of the Kristiansand HOA for their involvement on this project. He felt confident this project would meet both the needs of the JCSA and the community. He gave a detailed presentation to the Commission explaining the purpose, design, and landscaping for this facility. He concluded that the Kristiansand HOA had endorsed this project.

Daniel Avery of 118 Nina Lane commended Larry Foster and the JCSA on their efforts and added that he supported this project. He did state that there were a few discrepancies regarding the landscaping but felt confident they would be worked out during the development review process.

Martin Garrett recommended that Daniel Avery be notified of the DRC meeting to review the site plans.

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

Willafay made a motion, to include the additional wording in Conditions #2 and the review of the landscape plan by the DRC and to recommend approval, seconded by Alex Kuras.

By a roll call vote, motion passed. AYE: McKenna, Hagee, Hunt, Kale, Poole, Kuras, Garrett (7). NAY: (0).

6. CASE NO. SUP-8-98. JAMES POINT NURSING FACILITY.

Gary Pleskac stated the applicant requested deferral of this application until the June 1, 1998 Planning Commission meeting.

7. CASE NO. ZO-3-97. WIRELESS COMMUNICATIONS FACILITIES (WCF) ORDINANCE.

Prior to the next case, Martin Garrett stated a work session had been conducted over a year ago and again on March 25. He felt the Commission has not had adequate

time to discuss this case and recommended that those who wished to speak limit their presentation to a five minute summary in order to allow the Commission to give it full consideration.

Marvin Sowers introduced the ordinance and said the Commission had received a good overview of the content of the proposed ordinance at the March 25 Board of Supervisors work session. He said he would highlight the items that were changed since the Commission last saw the ordinance on March 25. He stated the Board of Supervisors, at their May 14 meeting, endorsed the concept of the ordinance which encouraged higher towers in areas that had little impact and encouraged lower towers in areas that impacted residential, historic, and scenic areas. He stated the Board referred back to the Commission the ordinance and Case No. SUP-37-97 for their consideration. Changes made to the ordinance involved greater incentives to use lower towers and to increase siting opportunities for higher towers; flexibility of buffering requirements for lower towers; and additional language in the Performance Standards for towers going through the special use process to allow easier siting for taller towers on golf courses. He stated staff continued to recommend approval of the ordinance.

Martin Garrett opened the public hearing.

Bill Broaddus, an attorney in Richmond, spoke on behalf of PrimeCo. He stated at the March 25 meeting he expressed his concerns over several aspects of the ordinance and felt that the changes made since the March 25 meeting did not address those concerns. The following comments were stated:

The fee proposal stated in 24-7 was excessive.

The definition of a wireless communications facility was flawed in 24-122 G because it omitted governmental facilities.

The set back provision of 400 feet were excessive in 24-124 A.1.

The requirement of a special use permit for installation of antenna on VDOT towers would raise some legal questions.

The consideration of a bond or letter of credit seemed excessive in 24-128 A. if it applied to each location within the County.

The consideration of a three mile radius for study was excessive in 24-129.

The provision of 24-129 A. requiring the disclosure of future service plans was proprietary information and may pose problems because it would not be protected from disclosure under the Virginia Freedom of Information Act.

The limitation of towers to 100 foot in residential areas including R-8, even with a special use permit noted in 24-354, was unreasonable.

The Performance Standards phrase of "minimal intrusion" was too great a standard for residential areas.

The buffering requirement of 100 foot mature trees around any site was excessive and may preclude placement of towers in pipeline easements.

He urged the Commission to recommend modifications of the ordinance that

recognized the necessity of some visual impact.

John Hagee asked if Bill Broaddus advocated abandoning any type of screening requirements for towers.

Bill Broaddus felt some aspects of screening were desirable in certain areas such as residential but felt there should be a reasonable relationship to the screening requirements.

Mark Sexton of Eight Prestwick spoke on behalf of the Historic Route 5 Association. He commended the County for their approach to the siting of wireless facilities, since their decision will have a long term effect on the Community. He stated that staff has appropriately kept to their principles striving to protect the County's environmental and historic assets while, at the same time, offering reasonable alternatives for siting of wireless communications facilities. He stated that HR5A found the proposed ordinance generally acceptable since it encouraged lower towers and camouflaged WCFs and allowed for taller towers where the impact would be minimal. The following comments were stated:

The definition of minimal intrusion in the Performance Standards was far too permissive and should be tightened.

To allow certain camouflaged towers by-right up to 120 feet was unnecessary and far too generous.

The provisions regarding credit be given to buffers that are not necessarily under the control of the provider needs to be tightening and clarified.

Increased siting opportunities for towers that would allow taller towers to be placed on sites that only impact on golf courses was an idea that should be omitted from the ordinance.

He concluded his presentation by noting that the proposed ordinance was far less restrictive than ordinances in such communities as Hilton Head, Orlando, and Cape Cod and should be easily defended if challenged in court. He added that a recent federal court decisions in Orlando, FL and Ontario, NY have reinforced the right of local governments to guide providers in the placement of these facilities.

Gary Bohlken of St. George's' Hundred asked if the requirement of a special use permit still allowed for two towers per site. He also asked if the ordinance addressed the National Environmental Policy Act of 1969 which required applicants to submit environmental assessment concerning wildlife, historic site, etc.

John Matthews representing AT&T commented on several remarks by Bill Broaddus notably the requirement of the applicants to submit confidential proprietary information because it would not be protected from disclosure under the Virginia Freedom of Information Act. The second issue was the potential misconception of an operable height of 120 feet. He noted in some cases 120 feet was acceptable but in others 160 feet might

not be acceptable. He said it depended on the circumstances of a specific location. He concluded by asking that the following letter be included into the record (A copy of the letter is attached to the minutes).

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

Martin Garrett stated there were many items in the ordinance that the Commission should not get involved with because they would be handled by staff the Board of Supervisors. He asked the Commission to vote on the policy in general and if there were specific questions they could be discussed.

Don Hunt asked if the main thrust of the vote was the acceptance of lower towers where there was a visual impact and higher towers in non-residential, and non-historic areas. He agreed with a comment by Bill Broaddus that at some point you would have to trade-off service for some visual impact and felt the towers couldn't always be invisible.

Willafay McKenna stated this ordinance reflected a good compendium of what other communities had put into place to protect their communities.

Wilford Kale stated that every step should be taken to protect areas in the County from having towers. He commented on the provision to allow towers adjacent to a golf course. He felt the potential of this area for a golf destination had not been tapped and towers could be a detriment to the future development of golf courses. He also asked how one could control an area the provider did not own and refer to it as buffer. He also asked how the County could allow for credits to that provider.

Martin Garrett stated he agreed with the comments by other Commission members and questioned whether the Board would omit special use permit requirements for camouflaged towers.

John Hagee felt the County, with the cooperation of providers, should be able to locate sites within the County that would minimize the number of towers needed. He added that, due to varying technology by the providers, towers should be taken on a case by case basis and that might be the only way to control them. He felt that the ordinance in hand was workable.

Martin Garrett concluded that there was a consistency of agreement among the Commission members and that the Commission should vote on the ordinance as it now stood so staff can present it to the Board of Supervisors.

Martin Garrett asked how the Commission could be assured that their comments would be forwarded to the Board.

Marvin Sowers asked that any comments by the Commission members be given to Carole Giuliano so she could forward them to the Board along with the ordinance and that

staff would also include the comments made at the meeting in the minutes.

Alex Kuras stated a letter of credit or a bond might be held by the County for a long period of time and felt that a lien against the property owner would be sufficient to collect any monies to have the towers taken down.

Willafay McKenna asked about cases where the sites were rented and how could the County make the landowner responsible for the removal of the tower with only a lien.

Alex Kuras felt there should be a requirement where the provider be required to remove the tower but ultimately the responsibility would fall to the property owner.

Joe Poole felt a letter of credit or a bond was necessary to guarantee the towers would be removed and said it should be the responsibility of the provider.

Wilford Kale agreed that, with the way technology was moving, the towers would become obsolete and asked, if not for a letter of credit or a bond, how would there be a guarantee that towers would be removed.

Alex Kuras stated that in most cases the scrap from the towers would almost pay for the removal itself. He felt the letter of credit or a bond was just another bureaucratic item against the contractors.

Marvin Sowers informed the Commission there were three approved special use permits for towers that had this requirement already.

Willafay McKenna made a motion, seconded by Joe Poole, to recommend approval.

By roll call vote, motion passed. AYE: McKenna, Hagee, Hunt, Kale, Poole, Kuras, Garrett (7), NAY: (0).

8. CASE NO. SUP-37-98, PRIMECO PERSONAL COMMUNICATIONS SYSTEMS - ROUTE 5 FACILITY.

Paul Holt presented the staff report for this special use permit application to construct a 185 foot wireless communications facility. He stated this case was deferred at the February 10 Board of Supervisors meeting. On April 14, 1998 the Board generally endorsed the proposed tower ordinance and policy and remanded the ordinance and this case back to the Commission. He stated the proposed tower facility was very noticeable from Ironbound Road, Chanco's Grant subdivision, and Mainland Farm and that it was inconsistent with the surrounding areas, the comprehensive plan, and the wireless communication facilities performance standards. Paul Holt stated that the reason for denial had not changed and are more fully explained in the staff report. Staff therefore recommends denial of this application.

Martin Garrett opened the public hearing.

Bill Broaddus spoke on behalf of PrimeCo asking for support of this application. He stated that, over the past few months, very little had changed in this application. He felt the location of the tower within the property minimized the impact upon the community. He said, before a proposal of a site was made, a considerable amount of research was done to develop a sense of available sites. He said the applicant requested a tower height of 185 feet and staff had agreed this particular proposal was not readily noticeable from St. George's Hundred or Route 5, however, it was visible from the rear portion of Chanco's Grant, Clara Byrd Baker School, Mainland Farm, and the 1607 Jamestown Townhouses. He stated the issue was what type of visual impact the tower would have, since there was no evidence of a financial impact on property values or any adverse impact on the ability of the property owners to use their land. He stated that what the applicant needed for a tower height in this area was approximately 150 feet. He stated they felt the lower height proposed by staff would not provide adequate coverage, and would amount to a economic moratorium. He concluded, that in keeping towers at a lower level, the likelihood of visual impact would increase due to the number of tower locations required in residential or non-residential areas. He requested the Commission approve this application.

Don Hunt asked if the 185 foot tower was built, had the County shown interest in co-locating.

Marvin Sowers stated the County was informed of the new tower location early on, and at this time, there had been no indication of interest.

Willafay McKenna asked even though the application was for a 185 foot tower all that was really needed was 150 feet.

Bill Broaddus stated they explored the possibility of going to a lower height if that could be worked out but, that they needed 185 feet to use the technology that was available to them to provide service at a level they desired for their customers.

Willafay McKenna asked if the applicant could still provide service if the towers were there at a lower level.

Bill Broaddus stated they could provide service if they could get the sites and if they had the capital to spend on those sites. He stated a 100 foot tower would have a one-mile radius where a 185 foot would have a three-mile area within a flat terrain.

Mary Pugh of 2908 Francis Chapman Road spoke against this application.

Gary Bohlken of St. George's Hundred also spoke against this application. He stated Bill Broaddus made the same presentation to the Commission as he made in January and that the Commission recommended denial and requested they deny it again tonight.

Mark Sexton representing the Historic Route 5 Association said the Association continued to be surprised that PrimeCo was moving forward with this application for a 185 foot tower. He stated there were alternatives to these towers such as the coming satellites but also the camouflaged towers and stealth antennas which have been used all over the nation. He stated another alternative was to use stealth antennas in combination with towers down Route 5 and possibly Jamestown Road. He noted PrimeCo has used this alternate approach in such communities as Orlando, FL; Lake Forest, IL; and suburban Milwaukee, WI. He felt the County had set up fair and even handed criteria both in the existing policy and new ordinance. He concluded by stating the HR5A urged the Commission to deny this application and let the applicant come back with a plan that was better for the community and respected the County's beautiful historic and environmental assets.

Axel Nixon, the property owner, spoke to the Commission stating that he owned the property up to Mary Pugh's back door and owned it before her house was built. He said he didn't complain when the subdivision moved in on him. He stated he was approached by the applicant and was willing to lease his land for the revenue and didn't feel this would bother anyone.

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

Alex Kuras made a motion to support staff's recommendation of denial.

Willafay McKenna felt that a 185 foot tower was inappropriate for this area and supported the recommendation of denial given its impact on historic, scenic, and residential areas.

Joe Poole stated that the current policy spoke of innovative design approaches and said the applicant was made aware in January of his objections to a galvanized pole. He added the applicant returned with the same application as presented in January without taking into any concerns the impact issues. Therefore, he could not support this application.

Wilford Kale opposed this application on the basis of the existing policy and noted he would have denied it in January had he been on the Commission.

Don Hunt stated he still supported this application because he felt trading one 185 foot tower for four 120 foot towers was not a good idea.

John Hagee stated he preferred the lower towers and would vote against this application.

Alex Kuras made a motion, seconded by Willafay McKenna, to deny this application.

By a roll call vote, motion passed. AYE: McKenna, Hagee, Kale, Poole, Kuras, Garrett (6). NAY: Hunt (1).

9. ADEQUATE PUBLIC SCHOOLS FACILITIES TEST.

Willafay McKenna gave a brief presentation to the Commission members on the progress of the Grab Bag Zoning Ordinance Committee. She said the Comprehensive Plan had a strategy that stated an Adequate Public Schools Facilities Test Policy be adopted and the committee spent many hours discussing this issue. She added the policy would require all proposed residential development pass a public school test before receiving staff approval. She noted one thing that their calculations came up with was that a public schools facilities test, at this time, would impact only 13% of the applications in the next ten years. Therefore, the committee came up with was a recommendation for a policy that would promote impact fees. The Committee felt there were many other public facilities the County would provide as it was developed that would never be touched if we limited this to an Adequate Public Schools Facilities Test. She concluded by saying the committee came up with the information provided to the Commission members.

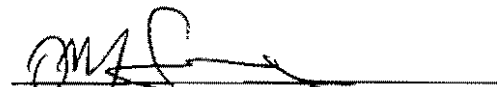
Martin Garrett made a motion, seconded by Alex Kuras, to endorse this policy. In a unanimous voice vote, motion passed.

10. PLANNING DIRECTOR'S REPORT.

Marvin Sowers mentioned that the Historic Triangle Bicycle Advisory Committee was sponsoring a ride for Planning Commission members, Board members, City Council members, and local elected officials on May 16. Anyone interested should call the office for information.

There being no further business, the May 6, 1998 Planning Commission meeting was adjourned.


Martin A. Garrett, Chair


O. Marvin Sowers, Jr., Secretary