

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE THIRD DAY OF JUNE, TWO-THOUSAND AND TWO, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

A. Joe Poole
George Billups
John Hagee
Don Hunt
Wilford Kale
Joe McCleary
Peggy Wildman

ALSO PRESENT

Leo Rogers, Deputy County Attorney
Marvin Sowers, Planning Director
Paul Holt, Senior Planner
Christopher Johnson, Senior Planner
Karen Drake, Planner

2. COMMITTEE AND COMMISSION REPORTS

A. DEVELOPMENT REVIEW COMMITTEE (DRC)

John Hagee presented the DRC report stating there were five cases before the DRC. He said the DRC recommended approval for an underground utility waiver at 301 Racefield Drive and a request for a waiver to the Subdivision Ordinance to allow the installation of a Puraflow type septic system on three lots to be created at 2264 Lake Powell Road. The DRC also recommended a waiver be granted to allow an 8-foot rear setback reduction for an office building in the Williamsburg Crossing Shopping Center. The final two cases recommended for approval, New Town Office Building and SunTrust Building, were before the DRC because they exceeded 30,000 sq. ft.

Peggy Wildman made a motion, seconded by Joe McCleary, to recommend approval.

In a unanimous voice vote, motion passed.

B. POLICY COMMITTEE

a. Recommendation for Approval of the Planning Commission Bylaws

Wilford Kale stated the changes to the bylaws which appeared in red were brought before the Policy Committee by staff as part of a recodification of the Code of Virginia and also for changes of clarification. He noted there were no substantive changes proposed. He said the Policy Committee met tonight and reviewed these changes and recommended approval of the amended bylaws.

Wilford Kale made a recommendation, seconded by Joe McCleary, to recommend approval. In a unanimous voice vote, motion passed.

b. Suggested Changes to Planning Commission Bylaws

Wilford Kale stated that the Policy Committee proposed the following additional changes to its bylaws: Article V. HEARINGS, 2 c.: delete "both the Planning Director and" and replace with "the." He stated the reason for the change was to keep the operation of the Commission within the Commissions, Membership, and Leadership and it would eliminate the involvement of staff in determining how they conduct their meetings before the public.

Wilford Kale stated, with the help of counsel, the Policy Committee proposed adding item 2 d. to Article V. HEARINGS which would read: "At the meeting, the above time limits (a, b, & c) may be extended by approval of at least two-thirds of the Commission members present."

Wilford Kale moved the Committee's recommendation that these two changes be made to the bylaws and would be open to discussion by the Commission.

Joe Poole stated staff had received these changes and asked if they could work through them in advance of the August meeting.

Marvin Sowers stated staff had no objection to preparing the changes.

Wilford Kale thanked Joe Poole for giving the Policy Committee the opportunity to review the bylaws and bring the changes forward.

4. PUBLIC HEARINGS

A. CASE NO. SUP-22-01. JCSA GROUNDWATER TREATMENT FACILITY, CONCENTRATE DISCHARGE MAIN, PRODUCTION WELLS, AND ROUTE 5 WATER MAIN EXTENSION

Christopher Johnson presented the staff report stating that the applicant had met with property owners from Jamestown 1607 on several occasions to discuss the alignment options under consideration and to address residents questions and concerns about the proposal. He stated drainage problems within Jamestown 1607 was a primary concern raised by the residents and in an effort to address that concern, JCSA met with VDOT officials to discuss placing a portion of the discharge main under the existing bikelane on the south side of Jamestown Road. Staff found that the proposal was consistent with the surrounding zoning and development and the Comprehensive Plan. Staff recommended the Planning Commission recommend approval of this application as outlined in the staff report.

Joe Poole opened the public hearing.

Larry Foster, General Manager of the James City Service Authority (JCSA), exhibited a container of water concentrate from the Newport News Groundwater Treatment Facility which is an exact treatment process that would be used in the JCSA facility. He said that the public had expressed some concern about the impact on the James River as a result of the discharge and wanted to show what the discharge looked like. He said the only concern of the Department of Environmental Quality (DEQ) was the ammonia levels and stated that test results indicated that the concentrate of ammonia would be less than the permitted levels. He felt that all neighborhood concerns had been addressed, especially with the homeowners of Jamestown 1607, and was also very pleased with the efforts staff made in helping to make this a good project. He said he would answer any questions of the Commission.

Joe McCleary asked Larry Foster where Newport News discharged its concentrate.

Larry Foster stated in the vicinity of Fort Eustis into the James River.

Joe Poole asked if there were any temperature changes between the discharge and existing water in the river that could cause problems.

Larry Foster stated the temperature of the discharge would be in the upper 40's-lower 50's and he expected the James River would be somewhere in that range. He said their modeling indicated that within just a few feet of the river, one could not tell the difference from the discharge water and the natural river water. He said that the DEQ sets the parameters that needed to be met and JCSA would monitor the water quality discharge.

Joe Poole stated he received a call from the president of the Jamestown 1607 Homeowners' Association indicating its support of this proposal.

There being no speakers the public hearing was closed.

George Billups asked if staff met with Parks and Recreation with respect to the this project to make sure the greenway trails and environmental areas are protected.

Christopher Johnson said there has been an ongoing discussion with members of Parks and Recreation with respect to the addition of the greenway trails between the treatment facility and the canoe access on Powhatan Creek.

Peggy Wildman asked if the concerns of a homeowner from Chanco's Grant, regarding a tree and the location of the trail, had been resolved.

Christopher Johnson stated that Mrs. Pew did not have any communication with staff since meeting with Mike Vergakis of JCSA. He stated that Mike Vergakis indicated to staff that she supported the general location shown on the plan.

Marvin Sowers stated there would be additional opportunity for public participation as the trail development goes forward.

Wilford Kale made a motion, seconded by Joe McCleary, to recommend approval. In a roll call vote, motion passed (7-0). AYE: Wildman, McCleary, Hagee, Hunt, Kale, Billups, Poole (7); NAY: (0).

B. CASE NO. SUP-11-02. KRISTIANSAND SEWER EXTENSION

Karen Drake presented the staff report stating that the James City Service Authority had applied for a special use permit to extend public sewer within the Kristiansand Subdivision which was developed in the late 1960's and early 70's when public sewer was not available and an on-site septic system was employed. She stated that in 1989 several of the septic systems began failing and JCSA extended gravity sewer to serve approximately 24 residential units. She stated the public sewer system was designed to allow for future extension to other residential units within the subdivision. She said that upon approval and construction of the public sewer system, it would be left up to the individual homeowner whether to connect to it. Staff found the proposal to be consistent with the Comprehensive Plan and the surrounding zoning. Staff recommended that the Planning Commission recommend approval of this application with the conditions outlined in the staff report.

Joe Poole opened the public hearing.

Larry Foster said that this was a good example of JCSA working with a neighborhood to address public health conditions associated with the Community. He stated there were several meetings with the Homeowners' Association and felt this was be a good solution to a problem in a public health risk area.

Wilford Kale asked if there was the possibility of future failures for the remainder of the back section of the subdivision.

Larry Foster said they were working with a couple who were not originally in the project scope and as JCSA went through the process design, their property was added to the current project. He said they were planning for the expansion of the project, but at this time, was unaware of any failed drain fields in the newer sections of Kristiansand.

Paul Porter of 206 Haradd Lane said that JCSA cooperated with him and said he was happy to be included in the project proposed.

Bill West of 102 Astrid Court and a property owner of 201 Haradd Lane said he was in favor of this application.

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

Don Hunt made a motion, seconded by George Billups, to recommend approval. In a roll call vote, motion passed (7-0). AYE: Wildman, McCleary, Hagee, Hunt, Kale, Billups, Poole (7); NAY: (0).

C. CASE NO. SUP-12-02. MT. GILEAD BAPTIST CHURCH

Paul Holt presented the staff report stating that Abram Frink had applied on behalf of Mt. Gilead Church to amend the conditions of SUP-9-01 which was approved by the Board of Supervisors on June 26, 2001. He said Abram Frink had also applied on behalf of William Washington for a special use permit to locate two temporary school trailers and an accessory playground on a portion of his property at 8672 Pocahontas Trail which is adjacent to the church parcel. He stated the church had no remaining feasible location on-site to place the trailers and playground equipment. He noted that William Washington was a member of the church and agreed to donate a portion of his lot to the church. Staff found this proposal consistent with the Comprehensive Plan and felt that no negative impacts to the surrounding development should occur. Staff recommended that the Commission recommend approval as outline in the staff report.

Joe Poole opened the public hearing.

Abram Frink of 148 Magruder Avenue stated he was Chairman of the Trustee Board of the church and said they had a short presentation to make. He introduced Reverend Dawson.

Reverend Dawson, Pastor of Mt. Gilead Baptist Church, made a presentation stating he was happy to be back before the Commission tonight and was thankful for the things that have been fulfilled under the previous special use permit. He reviewed the equipment they planned to use for the playground area and showed an elevation to give the Commission a visual of where the trailers would be placed. He concluded his presentation stated he would answer any questions of the Commission.

Joe McCleary asked if the applicant had any problems with the conditions presented by staff.

Reverend Dawson said there was one question regarding the condition that required a minimum of 35 feet from the adjacent properties in which he spoke to Paul Holt and had since been resolved.

Leo Rogers said in reviewing that condition, it needed to be modified since it referred to any property line being 35 feet. If it were to be limited to just one property line, a revision to the current condition would have to be made.

Marvin Sowers stated that staff had prepared a modification to the condition and copies were distributed to the Commission members.

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

Peggy Wildman complemented Reverend Dawson and the church for what they have accomplished over the year with it's school and made a motion to recommend approval of this application to expand.

Joe McCleary seconded the motion and in a roll call vote, motion passed (7-0). AYE: Wildman; McCleary, Hagee, Hunt, Kale, Billups, Poole (7); NAY: (0).

D. CASE NO. SUP-10-02. VOICESTREAM WIRELESS - VDOT TOWER EXTENSION

Paul Holt presented the staff report stating that applicant had originally submitted an application to construct a new 250 foot tall tower at 4392 Rochambeau Road which had been subsequently withdrawn. He stated at staff's suggestion, a structural analysis of the existing VDOT tower at the Croaker Road intersection was performed and it was revealed that, with modifications, VoiceStream's antenna could be located on the existing tower. Staff stated that while the existing tower was not consistent with the Comprehensive Plan, they found that the proposed antenna addition would not have an additional impact on surrounding zoning and development and co-location would prevent the construction of a new tower. Staff recommended the Commission recommend approval of this application as outlined in the staff report.

Joe Poole stated the County had conditions placed on towers in the County and asked if wireless communication towers became obsolete, was there a provision where this tower could come down, since it was on VDOT property.

Paul Holt said he did not believe the County had a surety on the VDOT tower since it was constructed prior to the ordinance requirements. He said he believed it would be a challenge to acquire one under this condition as VoiceStream would be leasing space rather than being the owner of the underlying tower.

Joe Poole opened the public hearing.

Nathan Holland, representing VoiceStream Wireless, stated that VoiceStream was currently putting up approximately 266 sites within areas in Virginia and North Carolina. He said they were requesting to extend the existing VDOT tower ten feet to allow coverage on the interstate. He felt this would be a plus for the County since it would eliminate the need for a new tower.

Joe McCleary commented that this was an excellent initiative on the part of VoiceStream to co-locate rather than construct a new tower.

Nate Holland asked about condition #5 which involved landscaping. He said they did not have a problem with the landscaping but stated that VDOT had its own right-of-way landscaping manager who would review the plans and noted that VDOT usually indicates specific species of tree. He asked if "from VDOT approval" could be added to the condition.

Paul Holt stated that in the past, the County has attempted to overcome VDOT limitations by adding the simple language "subject to final VDOT approval."

George Billups asked if this condition might be an imposition on VoiceStream since the site was controlled by VDOT.

Wilford Kale asked how the County could have control of the ground when VoiceStream was only adding to the existing VDOT tower.

Paul Holt stated that the condition could be placed because the underlying property owner, VDOT, was the actual applicant who signed the special use permit application.

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

Wilford Kale asked if the landowner (VDOT) was being required to do something that was in a condition of the special use permit and if they were informed of the condition.

Paul Holt stated they had not been informed by staff. He said the conditions, along with the staff report, were faxed to VoiceStream. He also stated that VoiceStream had a contractual agreement with VDOT that would permit these activities, including the placement of the conditions.

Nathan Holland stated that VoiceStream has worked with VDOT on other towers and he said it was not uncommon for them to receive approval on VDOT's behalf.

Joe McCleary made a motion to recommend approval with the addition of "subject to VDOT's approval" in condition #5.

Peggy Wildman asked Leo Rogers if he found the additional wording legally acceptable.

Leo Rogers felt they did not have to change the condition. He said it was an unusual circumstance in which the Commission would adopt a condition and then say that it was subject to the approval of the property owner. He said the way the condition now reads if VDOT objected to the landscaping, then the special use permit would not be in place and the tower could not be extended.

Joe McCleary withdrew his motion.

John Hagee made a motion, seconded by Don Hunt, to recommend approval as outlined in the staff report. In a roll call vote, motion passed (6-1). AYE: Wildman, McCleary, Hagee, Hunt, Billups, Poole (6); NAY: Kale (1).

E. CASE NO. Z-2-02. GREENSPRINGS PLANTATION PROFFER AMENDMENT.

Karen Drake presented the staff report stating Marc Sharp had applied on behalf of Greensprings Office Park to amend the existing proffers for Greensprings Plantation to permit a monopine communication tower of up to 120 feet in height. She stated that this amendment would apply only to a monopine type structure and would replace the current proffers that placed height restrictions in land bays M-9 and M-10 on any structure within 600 feet from the centerline of Route 5 to 35 feet or less and 45 feet or less in height within 900 feet of the centerline of Route 5. She noted that the Greensprings Master Plan was not being modified with this application. Staff found the proposed tower to be consistent with the existing surrounding zoning and the Comprehensive Plan and recommend the Commission recommend approval of this application.

George Billups asked how this would impact on other possibilities of applicants coming for approval of similar type of conditions. He asked if this would be setting a standard for others to modify a rezoning proffer and asked if the County was holding to the requirements that were already in existence. He noted the previous case where the a ten-foot addition had been added to an existing tower.

Marvin Sowers said the motion to amend a previous special use permit or rezoning proffer was something that had been done from time to time. He said as cases get older and things change, there has been a need to come back and request an amendment. He said that this particular application, based on the balloon test results, sets a very positive precedent in meeting County standards.

Wilford Kale said the application was for a tower but the staff report indicated towers and asked how many towers were being proposed.

Karen Drake stated the site plan submitted showed two proposed towers. However, with recent conversations, the applicant was looking to construct only one tower at this time. She said if this rezoning were to be approved, a revised site plan would be submitted for placement of one tower. She said the rezoning before them tonight was for a revision of the proffers to permit additional towers up to 120 feet as defined by the Zoning Ordinance.

Wilford Kale stated he would like to see the Commission take a look at every tower that comes in. He said the staff report on page 51 stated the proposed use was a tower and he would like the Commission to approve only one tower.

Karen stated that the proffer would only permit a tower in land bay M-9.

Wilford Kale then asked if staff could approve another tower closer to Route 5 within the confines of the property.

Marvin Sowers stated that when the ordinance was amended in 1997 very tight administrative criteria were adopted that adequately protect the corridor. He said there was also an appeal route back to the Development Review Committee if the property owner felt that staff made an error in judgement.

Joe Poole asked if it would be problematic or cumbersome to insert a Development Review Committee final review of what staff administratively processed in regard to this type of tower.

Marvin Sowers stated this was a rezoning proffer amendment so a condition to that effect could not be required by the Planning Commission. He said it would have to be an informal agreement between staff and the Commission.

Peggy Wildman asked if, according to the staff report, that one of the towers could be go into the Fairway Villas section.

Karen Drake said that with the rezoning a tower could possibly be constructed near Fairway Villas but it would have to meet all zoning requirements.

Marvin Sowers noted that adjacent property owners would be notified, therefore, there would be an opportunity for public intervention and if someone had a concern, it would go before the DRC.

Joe Poole opened the public hearing.

Vernon Geddy said he was pleased to be representing the applicant, particularly in a monopine case that has been so well received. He noted that Marc Sharp the landowner for Greensprings Plantation and C. E. Forehand with SPA Network Services were here and said anyone of them would be happy to answer any questions of the Commission.

George Billups stated the proposed proffers would replace the current proffers and asked if there was a reason for that.

Vernon Geddy stated the amended proffer would replace one proffer and simply restate verbatim the existing proffers that now govern the balance of Greensprings Plantation.

George Billups commented that the proffer was to compensate for the distances from the road's center line and the height of any towers.

Vernon Geddy stated the controls George Billups referred to would remain in place in land bay M-10 and M-9 for everything except for stealth communications towers. He said the sole amendment to the proffer was to allow stealth communications towers as defined and governed by the zoning ordinance.

There being no speakers, the public hearing was closed.

Joe McCleary said that he and Peggy Wildman attended the balloon test and the only place that the balloon could be seen was in the parking lot of the office park and a very narrow wedge into Fairway Villas. He said that the way the balloon appeared so close to the existing tree line that this would be an excellent example where a pine tree disguise would actually be a real disguise and would not be seen.

Joe Poole complimented the applicant on this case and felt this came closer to what the Commission had been looking for. He said he continued to have a little bit of caution with the wireless industry considering the potential number of towers and he supported wholeheartedly the Performance Standards. He also suggested, unless it was a problem, that the DRC have some type of involvement in the administrative site plan process.

Leo Rogers stated that Joe Poole's request would require an amendment to the Zoning Ordinance. He said that the ordinance now permits the Planning Director to make that decision and if they would like it to go to the DRC, it could be done.

Joe Poole did not want to get involved in an ordinance change and withdrew his suggestion.

Marvin Sowers stated there was an adjoining property owner who had expressed opposition and the Planning Commission received his letter and said a similar letter was all that would be needed for it to come before the DRC.

Peggy Wildman made a motion, seconded by Joe McCleary, to recommend approval of Case Z-2-02. In a roll call vote, motion passed (7-0). AYE: Wildman, McCleary, Hagee, Hunt, Kale, Billups, Poole (7); NAY: (0).

5. PLANNING DIRECTOR'S REPORT

Marvin Sowers stated that VDOT would be holding a public meeting on the widening of Route 199, Phase II, Brookwood Drive to South Henry Street on June 12, 2002, at the Berkeley Middle School from 4:00 p.m. to 7:00 p.m.

6. APPOINTMENT TO COMPREHENSIVE PLAN CITIZEN PARTICIPATION TEAM (CLOSED SESSION)

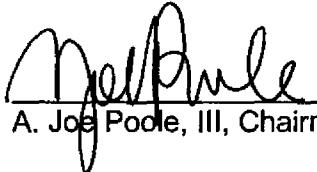
Marvin Sowers stated the Commission needed to recess to closed session in order to consider the appointment of members to the Citizen Participation Team (CPT) for the Comprehensive Plan. Marvin Sowers requested there be a motion by the Commission to go into a closed session.

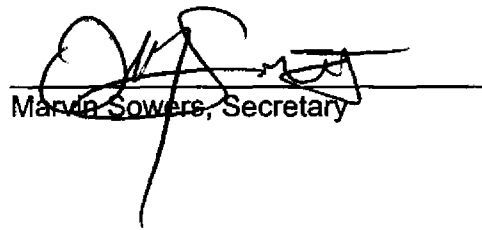
Joe McCleary made a motion, seconded by Peggy Wildman, to go into closed session. In a unanimous voice vote, motion passed and the Planning Commission convened a closed meeting. After coming out of the closed session, the Commission adopted the Resolution of Certification of Closed Meeting which is attached to these minutes.

The Planning Commission then unanimously appointed the following citizens to the CPT: Jeff Barra, Mary Higgins, William Miller, Dr. Lisa Curry, Ron Rosenberg. He stated that he, Don Hunt, and Wilford Kale would also be on the committee.

7. ADJOURNMENT

Upon return from closed session and there being no further business, the June 3, 2002, meeting of the Planning Commission was adjourned approximately at 9:20 p.m.


A. Joe Poole, III, Chairman


Maria Sowers, Secretary