

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

1. ROLL CALL

Planning Commissioners

Present:

Reese Peck
Joe Poole
AI Woods
Mike Maddocks
Rich Krapf
Chris Henderson
Jack Fraley

Staff Present:

Allen Murphy, Director of Planning/Assistant
Development Manager
Adam Kinsman, Deputy County Attorney
Tammy Rosario, Principal Planner
Leanne Reidenbach, Senior Planner
Chris Johnson, Principal Planner
Sarah Propst, Planner
Luke Vinciguerra, Planner
Jason Purse, Senior Planner
Bill Cain, Chief Civil Engineer
Melissa Brown, Zoning Administrator
Brian Elmore, Development Management Asst.

Mr. Reese Peck called the meeting to order at 7:00 p.m.

2. PERSONAL PRIVILEGE – JACK FRALEY

Mr. Jack Fraley honored the late Tony Obadal's contributions to the Planning Commission. He stated that the recent improvements to the Capital Improvements Program (CIP) process, linking CIP rankings to the County budget, were championed by Mr. Obadal. Mr. Obadal's other main accomplishment was helping spur the County's first water quality monitoring system through proffers.

3. PUBLIC COMMENT

Mr. Peck opened the public comment period.

Mr. Jack Haldeman, 1597 Founder's Hill North, representing James City County Citizens' Coalition (J4C), stated that the group was disappointed with the Board of Supervisors' decision to exclude citizen committees and outreach recommended in ordinance amendment Option A. He stated that the County should consider Rural Lands density, the wireless communications facilities master plan, mixed use revisions, and community character overlay. The County should look to other localities for models and studies, including for bikeways and the Economic Opportunity designation.

Ms. Sarah Kadec, 3504 Hunters Ridge, stated that she was concerned with potential environmental, stormwater, quality of life, safety, topographic, and density issues from the

Autumn West development. She stated that J4C is raising funds in an attempt to purchase the Autumn West site. She asked the Commission to deny the application.

Ms. Elizabeth Snyder, 514 Spring Trace, stated that Season's Trace residents expect new development to exceed code standards. She stated many of the new units would not be able to reach their own backyards.

Ms. Wendy Anthony, 112 North Trace, stated that she was concerned with additional traffic created by the Autumn West development, creating a safety issue for families. She stated she did not want additional development in Season's Trace.

Mr. John Moravetz, 119 Southeast Trace, stated that the Autumn West development represented a failure to follow the Season's Trace master plan. He stated that over time, new Season's Trace neighborhoods have exceeded the community's original lower density. Autumn West will have twice the density of neighboring Spring Trace. The new townhomes' character would be very different from the existing, buffered homes.

Dr. Eugene Slagowski, 512 Spring Trace, stated that the proposed Autumn West area, using Spring Trace as a model for density, could only accommodate 16 homes.

Mr. Andon Zebal, 536 Spring Trace, stated that he was concerned with the loss of undeveloped areas in Season's Trace. He stated he was unsure why new units would be added to an area with many already-vacant houses.

Ms. Willafey McKenna, 119 Deer Spring Road, stated that she was concerned with the Autumn West development's potential impact on the Powhatan Creek watershed. She stated that Season's Trace zoning has been changed to R-5 since the 1973 adoption of the Season's Trace master plan. The Autumn West development is not developable under current R-5 zoning, which requires a minimum three-acre site size and 35-foot buffer from surrounding property lines, neither of which is currently met.

Ms. Joyce Wolf, representing the applicant, stated that the development would benefit Season's Trace and the County. She stated that of the 429 townhomes allowed by the Season's Trace master plan, 116 units have yet to be built. Autumn West's three units-per-acre density is lower than surrounding neighborhoods. The developer will accept a tree preservation plan within the buildable area. Stormwater run-off will be improved by on-site BMPs. As a by-right development, she feels the developer has met and exceeded all regulations. The developer will agree to a permanent open-space conservation easement on two-thirds of the property.

Mr. Jack Fowler, 109 Wilderness Lane, stated that the Autumn West development will negatively impact the landscape, water, and quality of life.

Ms. Linda Reese, 511 Spring Trace, stated that the erosion issues behind Season's Trace are due to two water main breaks in the neighborhood, not Spring Trace run-off. She asked the Commission to vote 'no' on the Autumn West development.

Ms. Kim Masowich, 505 Spring Trace, stated that the Season's Trace Recreation Association was concerned about the impacts of additional traffic from the Autumn West development on children playing in the neighborhood. She stated the neighborhood has no speed bumps to slow down additional traffic.

Mr. Peck closed the public hearing.

5. MINUTES

A. February 3, 2010 Regular Meeting

Mr. Poole moved for approval of the minutes.

In a unanimous roll call vote, the minutes were approved (7-0).

6. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC)

Mr. Rich Krapf stated that the February meeting of the Development Review Committee was held on February 24th. The DRC reviewed SUP-0032-2006, Prime Outlets Condition #21, which required Prime Outlets to evaluate entrance performance relative to traffic flow and internal circulation. The purpose of the condition was to ensure a traffic analysis of the site would take place prior to completion of the Prime Outlets expansion. By a vote of 4-0, the DRC approved the traffic study. The DRC also reviewed C-0002-2010, New Town Shared Parking Update. The DRC receives semi-annual updates on off-site and shared parking in New Town. The only significant change in the shared parking update was the proposed conversion of 4,000 square feet of office space in the Greene Leaf building to restaurant/retail. This will result in an increased parking demand of 11 spaces at the 8 p.m. hour; however, sufficient parking exists to absorb that demand. By a vote of 4-0, the DRC approved the shared parking update and will review shared parking at its August 25th meeting. Finally, the DRC reviewed C-0008-2010, Forest Heights and Neighbors Drive Redevelopment. This review is to allow discussion and feedback prior to the applicant submitting a project as a legislative application. The Office of Housing and Community Development is seeking construction funds from the VA Department of Housing and Community Development's Block Grant program. Funds would contribute to the redevelopment of the Forest Height Road/Neighbors Drive neighborhood located off Richmond Road between Prime Outlets and the property owned by the Salvation Army. Three conceptual plans for this project were reviewed by the DRC and discussed with the applicant.

Mr. Poole moved for approval of the report.

In a unanimous voice vote, the report was approved (7-0).

Mr. Krapf stated the Autumn West DRC report would be considered separately from the rest of the DRC meeting report. He noted that at the February Commission meeting, a 3-3 vote had deferred the report again. He asked if any Commissioners wanted to discuss the case further.

Mr. Chris Henderson stated that the applicant had sent the Commissioners an e-mail illustrating densities in several Season's Trace neighborhoods. He asked if staff agreed with the applicant's density interpretation.

Mr. Luke Vinciguerra stated that the document e-mailed to Commissioners was compiled using data supplied by staff at the applicant's request. He stated the applicant's density calculations were the same as staff's interpretation.

Mr. Henderson asked Mr. Kinsman to explain by-right development.

Mr. Adam Kinsman stated that by-right developments were those not subject to a legislative hearing. He stated that a site plan is a drawing showing how a parcel is going to be developed. Once a site plan complies with the Zoning Ordinance, the Commission's duty is ministerial. Approval is based upon meeting strict application of Code.

Mr. Henderson stated the Autumn West staff report recommends approval and states that according to staff interpretation, the applicant meets the terms of the ordinance. Mr Henderson asked Mr. Murphy to confirm.

Mr. Allen Murphy concurred that according to staff's interpretation, the application meets the terms of the ordinance.

Mr. Henderson asked if it was within the Commission's discretion to deny an applicant even though they meet the terms of the ordinance.

Mr. Kinsman stated that the Commission determined whether or not the applicant met the terms of the ordinance. The Commission may consider both staff interpretation and public comment, but the Commission makes the final decision.

Mr. Joe Poole asked if staff had density per developable acreage in Season's Trace. He stated the Commission did not want to include Resource Protection Areas (RPA) in its density calculations.

Ms. Wolfe stated she did not have that information.

Mr. Al Woods stated that there appeared to be conflict between the applicant and Mr. Kinsman on Autumn West common area improvements at the February Commission meeting. He questioned who would be responsible for the maintenance of the stormwater management system.

Ms. Wolfe stated that after the developer completed the basin it would be deeded to the Homeowners Association. The HOA would be responsible for further maintenance.

Mr. Woods asked if the 1973 Season's Trace master plan would be executable today.

Mr. Murphy stated that the master plan was grandfathered. He stated the master plan would not be accepted under current zoning requirements. Although the number of units allowed is grandfathered, new development must adhere to current regulation. Density was also determined by the master plan.

Mr. Woods stated that he wanted to clarify that current requirements may force the master plan's number of total units to be revised.

Mr. Murphy stated that most of Season's Trace did not have to deal with Chesapeake Bay and stormwater ordinances as Autumn West does.

Mr. Mike Maddocks asked what would be the starting price of Autumn West units.

Ms. Wolfe stated the opening prices would be in the \$190,000 to low \$200,000 range. She stated that Autumn West has a density of 6.76. The Autumn Trace neighborhood has a density of 7.48. Spring Trace has a density of 7.26. Pheasant Run and Woodduck Commons both have densities of 6.08. Regarding the viability of the master plan, the approved numbers of homes could not be built today due to higher standards.

Mr. Krapf stated that while Autumn West was not the type of development he would like to see in the County, the case is not legislative. He stated the Commission has a narrower range of actions it can take regarding approval of the site plan. The master plan called for 80% of Season's Trace to be townhomes, the same type of structures proposed by the applicant. Autumn West would improve currently uncontrolled stormwater run-off into Powhatan Creek. The proposed development would not flood the rest of Season's Trace, as the stormwater would drain underneath Longhill Road. Any motion to recommend approval should include a condition to commit the undeveloped 67% of the parcel as a conservation easement and a condition to accept the tree preservation plan. R-5 zoning allows density of up to 12 dwelling units per acre and this proposal was well within that cap.

Mr. Henderson stated that the project was sent to the DRC and Commission since it barely exceeded 30,000 square feet. If the project were slightly smaller, it would have received approval. He stated he agreed with Mr. Krapf's interpretation of the Commission's latitude regarding administrative or by-right cases. No building plans had been submitted to determine whether or not the units have rear access.

Ms. Wolfe stated the developer has the capacity to add walk-out basements. If buyers chose not to purchase the basement option, stoops will be added and rear access will be provided wherever possible. The Code does not require a secondary doorway.

Mr. Henderson asked if any adjustments to regulations had been made to approve the case.

Mr. Murphy stated he knew of no adjustments to rules in order to approve the case.

Mr. Henderson asked to confirm that staff had not approved any waivers to the

administrative process.

Mr. Murphy stated that was correct.

Mr. Poole stated that the 30,000 square foot threshold has been implemented by the County to allow for smart growth of new large developments. He stated growth should occur in sustainable ways. That threshold exists for a reason, even for proposals slightly above the threshold. The proposal would improve the drainage situation in that area. While there are benefits, they are outweighed by a number of concerns, including topography not tying into the site, high developable-area density, and lacking guarantees regarding the tree preservation plan. The developable acreage will be clear cut. He stated he could not support the current proposal.

Mr. Fraley stated he referenced Zoning Ordinance sections on R-5, Site Plans, Landscaping, Chesapeake Bay Preservation, and Non-conformities to reach his decision. The R-5, Site Plans, and Landscaping sections all reference that new development should be consistent with the goals and policies of the Comprehensive Plan. Benefits of the proposal include the pond design and stormwater improvements. The design is intended to meet the minimum ordinance requirements, instead of building upon natural features and topography as required in Section 24-142 and the 2009 Comprehensive Plan. The plan's clear cutting, infilling, and retaining walls will forever alter the topography of the site. The potential for flooding always exists due to the site design. Potential exists for landslides and danger to adjacent property owners. Mature trees will be removed. Sustainable development, called for by the Comprehensive Plan, would minimize the amount of cut and fill and retaining walls, and match existing topography. Reduced densities, smaller building sizes, and alternative building layouts could reduce cut-and-fill, tree loss, and retaining walls. The proposal is in conflict with a number of ordinances, including Sections 24-205 and 24-314 of the R-5 district, 24-142 and 24-151 of the site plan ordinance, 24-86 of the landscaping ordinance, and Section 23-9(b)(2) of the Chesapeake Bay ordinance. The proposal is in conflict with the vision and standards of the Comprehensive Plan regarding residential development.

Mr. Peck stated that while the case is administrative, the Commission's role is to do more than approve a checklist. Standards should be read in concert with the Comprehensive Plan's directives. It is the Commission's judgment whether Comprehensive Plan principles are followed by the development.

Mr. Maddocks moved for approval of the DRC report.

Mr. Henderson stated the move for approval should include the conservation easement and tree preservation conditions.

In a roll call vote, the Commission recommended denial of the DRC report as amended (4-3; No: Poole, Fraley, Woods, Peck; Yes: Krapf, Maddocks, Henderson).

B. Policy Committee

Mr. Fraley stated that the Policy Committee met on February 25th. The Committee

discussed meetings with applicants and directed staff to draft by-laws that would allow Commissioners to meet with applicants, but require disclosure of those meetings. Staff was also directed to draft a policy as a guide for how to disclose external meetings. The Committee concurred with staff's recommendation to continue with the current format for meeting minutes. A Comprehensive Plan scorecard was discussed, using Augusta County as an example. Mr. Kinsman agreed to draft guidelines for Commission tie votes. At the March 17th meeting, the Committee will review the ordinance update process. Policy Committee agendas and materials are now available on www.jccgov.com.

Mr. Kinsman stated that an announcement at the current meeting would satisfy the 30-day rule for advertising by-law changes and noted that the Commission could act to amend its by-laws at the April 7th meeting.

Mr. Krapf moved for approval of the Policy Committee report.

Mr. Kinsman stated that staff will draft a letter to the Autumn West applicant citing those things the Commissioners identified as deficient.

Mr. Fraley stated the notification of denial is required within 10 days.

In a unanimous voice vote, the Policy Committee report was approved (7-0).

C. Other Reports

There were no other committee reports.

6. ZONING ORDINANCE PROCESS

Mr. Fraley stated that Ms. Tammy Rosario's presentation would summarize the three ordinance update ideas presented to the Board at its budget work session.

Ms. Rosario stated that the three ordinance update options were presented to the Board to solicit early feedback on the range and scope of the process for budget purposes. Option A is the largest in scope and includes stakeholder committees. Option B is more moderate in scope, input, and time frame and relies on work sessions and public workshops instead of committees. Option C uses the smallest public and consultant input. The Board preferred Option B at its budget worksession. Staff is currently drafting a process outline and methodology for consideration by the Policy Committee and welcomes Planning Commission feedback for consideration in that draft.

Mr. Krapf asked how traffic levels-of-service studies would be impacted by a decision to use Option B.

Ms. Rosario stated that Option B would not include policy choices for levels-of-service. Option A would have studied appropriate levels-of-service for different roads and different circumstances.

Mr. Poole asked about the reasoning behind removal of items between Option A and Option B.

Mr. Fraley stated that Option B sets a certain level of funding. He stated those items reviewed will still be up for Commission discussion. He stated he hopes the entire Commission will weigh in on which priorities will be updated.

Ms. Rosario stated the Option B priorities were determined using Comprehensive Plan priorities, Commissioner and Board member priorities, development issues confronted by staff, and those update items easiest to achieve, while recognizing that it needed to represent a smaller scale than Option A. Staff expects the current recommendations in Option B will be revised based on additional feedback.

Mr. Murphy stated that the three options were to establish a budgetary framework. He stated that the Policy Committee, Commission, and Board will decide much of the update items.

Mr. Poole stated that if the ordinance rewrites do not add value, then the work done by staff, the public, the committees, and the Commission on the Comprehensive Plan would go to waste. He stated the high-quality and ground-breaking Comprehensive Plan needs high-quality ordinance updates to complement its work. He stated he was concerned with the reduction in public input in Option B.

7. PUBLIC HEARINGS

A. Z-0011-2007/SUP-0022-2007/MP-0007-2007 Monticello at Powhatan North Phase 3

Mr. Peck stated that the case was withdrawn by the applicant.

Mr. Peck closed the public hearing.

B. SUP-0011-2009 7708, 7710 Cedar Drive Contractor's Warehouse

Mr. Peck stated that the case was withdrawn by the applicant.

Mr. Peck closed the public hearing.

C. SUP-0003-2010 Gilley Property Two-Family Dwelling

Mr. Peck opened the public hearing.

Mr. Jason Purse stated that Mr. Greg Davis had applied for a Special Use Permit for the construction of a two-family dwelling at 248 Neck-O-Land Road. The property is zoned R-2 and designated Low Density Residential. The applicant had previously received a Special Use Permit for four nearby duplexes. A single family home on the property has been determined too

expensive to renovate, and the owner is seeking to replace it with a duplex. Conditions for this case are identical to the previous SUP, except for a junk removal condition which has been fulfilled and an RPA setback (the property has no RPA). A driveway will be constructed to serve all of the duplexes. Staff finds the proposal generally consistent with neighboring properties, the Comprehensive Plan, and the Zoning designation. Staff recommends approval with conditions.

Mr. Greg Davis of Kaufman and Canoles, representing the applicant, stated that the proposal intends to develop a family farm and redevelop several dilapidated buildings in the area. The redevelopment will reduce impervious cover through a shared driveway and conform to current codes. The applicant is comfortable with all staff conditions.

Mr. Poole stated the duplex conditions are similar to other ones that have been before the Commission. He stated that duplexes serve a certain segment of the community.

Mr. Peck closed the public hearing.

Mr. Poole moved for approval with conditions.

In a roll call vote, the Commission recommended approval with conditions (7-0).

D. SUP-0002-2010 CVS and Food Market at Soap and Candle Factory Site

Mr. Peck stated the applicant requested deferral.

Mr. Peck continued the public hearing until the April 7th Planning Commission meeting.

E. SUP-0026-2009 Constance Avenue Wireless Tower

Mr. Peck opened the public hearing.

Ms. Sarah Propst stated that Ms. Lisa Murphy has applied for a Special Use Permit to place a 114 foot wireless communications tower at 115 Constance Avenue. The property is zoned R-8 and designated Low Density Residential. The parcel is currently undeveloped and the owner intends to add a single family residence in the future. Conditions include maintenance of a 100 foot wooded buffer on all sides. Staff finds the location suitable for a tower due to the wooded buffering and limited visibility. Due to both the 100 foot buffer and a 200 foot scenic easement, the tower would be barely visible from the Colonial Parkway. The National Park Service approves of the plan. Staff finds the tower generally consistent with the ordinance, the Comprehensive Plan, and Wireless Performance Standards, and recommends approval subject to conditions.

Mr. Poole asked why Condition #10, a vegetation protection easement, was removed from the proposal.

Ms. Propst stated that the condition was originally included because the owner requested.

a reduced 17 foot buffer on the western side of the wireless communications facility. She stated that given the buffer reduction immediately adjacent to the tower that staff felt the vegetative buffer along the western portion of the property would provide a similar effect of the needed buffer, but the owner did not agree to that condition.

Ms. Lisa Murphy, representing New Cingular Wireless, stated that New Cingular was expanding its network in central James City County. She stated there are cellular coverage lapses along the Colonial Parkway. Although locating towers near the Parkway is difficult, the proposed tower would fill a cellular void and provide co-location opportunity for another provider. Along the western property line, between 300 and 350 feet of property is protected by RPA or Chesapeake Bay ordinances. A 200 foot scenic easement extends along the southern property line, facing the Parkway. Due to the amount of buffering already on site, the applicant requested a reduction of the required 100 foot tower buffering on the western side. Due to the property owner's objections to an additional condition, the 100 foot buffer has been added back. The towers maintenance area has been changed from a vinyl to wood fencing at the request of an adjacent property owner. Several locations on the property were reviewed before the National Park Service gave its approval. No adjacent property owners came to an advertised public meeting in January.

Mr. Poole stated that he was comfortable that the project would not have any negative visual impacts. He stated he was concerned about future maintenance of the wood fencing and would prefer metal fencing with bayberries. Since the fencing was not visible from a public right-of-way, he stated he would not press the issue.

Ms. Murphy stated she would prefer a waiver of the 100 foot buffer on the western side, but that she understood staff's recommendation. The property owner would not object to the 100 foot tower buffer, but the applicant would have to negotiate for the additional leased square footage.

Mr. Henderson asked if it was within the Commission's purview to grant a waiver to the tower buffer.

Ms. Propst stated the Wireless Performance Standards are used to gauge visual impacts. She stated the Commission has the authority to provide a waiver. She was not aware of any towers approved without the buffers.

Mr. Murphy stated that he was not aware of any waivers. He stated that without the buffering, staff cannot be sure that policy standards are met, including RPA intrusion. He stated the property owner was not amenable to an easement along the western side and instead favored the 100 foot tower buffer.

Ms. Murphy stated that the property owner would not accept an easement along the delineated wetlands area and preferred the established 100 foot tower buffer. The owner wants to retain the right to present future development applications in that area. Without a recordable document signifying the protected areas, the owner would not provide a waiver. The tower's collapse zone is within the 50' by 50' lease compound.

Mr. Kinsman stated that the tower buffer helps mitigate any future on-site tree removal, such as through timbering.

Mr. Doug Burris, the property owner, stated that he intends to ask for a RPA waiver in the future for additional development on the property. He stated he did not want the additional western buffer, but that any western buffer should include the tower compound itself. Any signed lease will include a provision for fence maintenance by the applicant. A RPA waiver for thinning trees around the house will also be requested. He stated a 100 foot buffer on all four sides of the compound was acceptable.

Mr. Peck closed the public hearing.

Mr. Henderson moved for approval as amended.

In a unanimous roll call vote, the Commission recommended approval as amended (7-0).

F. FY2011-2016 Capital Improvements Program

Mr. Peck opened the public hearing.

Ms. Leanne Reidenbach stated the Policy Committee was forwarding its FY2011-FY2016 Capital Improvements Projects (CIP). The Committee has adopted a new standardized set of evaluation criteria to prioritize projects. Criteria include quality of life, health and public safety, economic development, and regulatory compliance. These topics are weighted, scored, and averaged. Of the 47 projects reviewed, 11 requested funding in FY11. Those 11 projects were ranked and will be forwarded to the Board.

Mr. Peck closed the public hearing.

Mr. Krapf moved to approve the CIP rankings.

In a unanimous roll call vote, the Commission approved the rankings (7-0).

9. **PLANNING DIRECTOR'S REPORT**

There were no Planning Director comments.

10. **COMMISSION DISCUSSIONS AND REQUESTS**

Mr. Henderson asked if staff had any reaction to the David Neiman letter on the Kingsmill cell tower.

Mr. Kinsman stated he had not seen the letter. He stated if the letter regarded the Kingsmill cell tower, the cell tower is not under Commission purview.

Mr. Henderson stated the letter requested additional Kingsmill tower site landscaping.

Mr. Fraley stated Mr. Neiman had concerns regarding Verizon follow-through on landscaping promises made to the DRC.

Mr. Peck stated he received a statement from Mr. Bob Richardson where he stated it was unethical for Mr. Maddocks to participate in Autumn West hearings.

Mr. Kinsman stated the complaints centered on Mr. Maddocks newness to the Commission. He stated Commissioners have no tenure required before they can vote. There is no requirement that the Code of Ethics be signed immediately upon appointment. Mr. Maddocks has since signed the Code of Ethics. There is no evidence of any ethical violation.

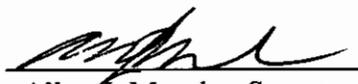
9. ADJOURNMENT

Mr. Fraley moved to adjourn.

The meeting was adjourned at 9:15 p.m.



Reese Peck, Chairman



Allen J. Murphy, Secretary