

POLICY COMMITTEE MEETING

September 15, 2011

1:30 p.m.

County Complex, Building A

1) Roll Call

Present

Mr. Jack Fraley
Mr. Al Woods
Mr. Rich Krapf
Mr. Mike Maddocks

Absent

Mr. Tim O'Connor

Staff Present

Mr. Allen Murphy
Ms. Tammy Rosario
Ms. Jennifer VanDyke
Mr. Christopher Johnson
Ms. Kate Sipes
Mr. Luke Vinciguerra

Mr. Vaughn Poller
Ms. Marion Paine
Mr. Brian Elmore
Ms. Ellen Cook
Mr. Jose Ribeiro
Ms. Melissa Brown

Mr. Jack Fraley called the meeting to order at 1:30 p.m.

2) Old Business

3) New Business

a) **Wireless Communications Facilities**

Mr. Luke Vinciguerra reviewed the changes made to the draft Ordinance.

Mr. Al Woods asked what changes had been made since the last Policy Committee meeting.

Mr. Vinciguerra stated that at the last meeting there had been a discussion on the consultant's proposed additional setbacks and Mr. Fraley's tiered approach. He stated that several of Mr. Fraley's recommendations have been applied. Mr. Fraley had recommended an administrative application for low-visibility towers, a process to review Portable Cellular Transmission Facilities and a Special Use Permit (SUP) provision for high visibility towers. He stated that the consultant had made setback recommendations that were not included.

Mr. Fraley asked if it was appropriate to say that most of the recommendations made by the consultant were rejected.

Mr. Vinciguerra stated that it was not the majority.

Mr. Fraley asked staff to point out in the text the requirements for camouflaged towers.

Mr. Fraley stated that the language in Sec. 24-122 (3)(b)(4) is too vague. He stated that he would prefer to see pictures offering a visual aide to accompany the text. He stated that his research into cell towers has informed him of the qualities exhibited by the more visibly appealing towers. He stated that he had spoken with an individual working in the industry and that there should be more descriptors in the Ordinance that speak to the specific qualities desired for camouflage towers.

Mr. Allen Murphy stated that staff will endeavor to provide objective descriptors within the text to achieve low profile towers. He stated that ultimately the goal is to have a tower that blends in harmoniously with the natural landscape.

Mr. Woods asked Mr. Fraley if there was specific language that he could recommend.

Mr. Fraley stated that adding definitions for "preserve" and "replica products" would be useful. He stated that both definitions discuss materials of construction and would provide a better understanding of how best to replicate vegetation.

Mr. Woods asked if this terminology is common to the industry.

Mr. Fraley stated that it is.

Mr. Christopher Johnson asked Mr. Fraley if the individual he had spoken with would be willing to submit descriptions of building materials that are common or more visibly appealing towers.

Mr. Fraley stated, yes.

Mr. Murphy stated that staff has looked at samples in past applications.

Mr. Fraley stated that by adding more to the text the County can ask for a better quality product. He stated that he does not want to continue with assigning to the Planning Director the authority and responsibility to make the highly-charged decision that elected officials should be making. He stated that it should be up to the Board of Supervisors (BOS) to determine if a tower is camouflaged. He stated that the Policy Committee and the consultant both felt that this requirement should change. He stated that the consultant had stated that there is no jurisdiction anywhere that permits 120 foot towers by-right within a residential area.

Mr. Woods questioned Mr. Fraley's assertion.

Mr. Johnson stated that if it has been determined that the tower is not camouflaged then it would require an SUP.

Mr. Fraley stated that towers need to go into legislative review for residential districts.

Mr. Woods stated that the chart and text in Sec. 24-122 does not clearly convey the information. He stated that the chart should cover the requirements for all towers, camouflaged included.

Mr. Murphy stated that he, as the Planning Director, has turned down more towers than the County has ever approved.

Mr. Fraley stated that the previous Planning Director did approve the proposed Kingsmill towers. He stated that this is not a decision that should be put in the hands of the Planning Director. He stated that this is the only jurisdiction that places this responsibility on the Planning Director.

Mr. Krapf asked staff to explain their position.

Mr. Johnson stated that knowing that a camouflaged tower is permitted by-right up to 120 feet in staff's mind, there was no need for a chart. He stated that staff can change the text and the chart to achieve greater clarity. He stated that the charts were intended to speak to anything above 35 feet in any district where it needed to be specially permitted or permitted by-right. He stated that staff tried to categorize the information to add additional clarity and definition to the different types of towers. He stated that staff determined that there were certain towers that should not be required to go through a legislative review, exhausting several months prior to approval. He stated, for those towers that are more highly visible proposals should go before the BOS for approval. He stated that his experience with balloon tests illustrate that the Planning Director's standard for camouflage is very high. He stated that he can only think of one tower where Mr. Murphy, Planning Director, determined it was camouflaged. He stated that this location was zoned R-8. He stated that you would be hard pressed to find any property in R-1 and R-2 where one could meet the 400 foot buffer requirements. He stated that this standard has proven to be affective by the fact that a relatively low number of applications that have been submitted.

Mr. Fraley stated that he spoke with Adam Kinsman, the Deputy County Attorney, regarding the language. Mr. Kinsman stated that the text is open to interpretation, leaving the Planning Director vulnerable to being sued.

Mr. Murphy stated that if the Policy Committee and Planning Commission want to change the Planning Director's authority to determine camouflaged towers, then staff will forward their request accordingly. He stated that if the change is made cell tower companies will be subjected to a lengthy process for a greater number of applications. The buffer requirements in R-1, R-2 and R-4 limit the applicable properties within the districts. He stated with this arrangement there is a great deal of authority that rests on the shoulders of the Planning Director. He stated that he is comfortable with the current process. He stated that staff had previously been asked by the BOS and Business Climate Taskforce to generally avoid the SUP process. He stated that with one exception the Ordinance has proven to be useful and judicial in permitting towers. He stated that the Kingsmill towers were the only controversial applications.

Mr. Fraley asked staff why this locality is the only one that grants the Planning Director the authority.

Mr. Woods asked if staff had been working in this mode for a great length of time.

Mr. Murphy stated that this has been in place with the R-4 district for six years.

Mr. Woods stated that within the six year time frame only one controversial case has developed.

Mr. Krapf stated that Mr. Fraley's recommendation is to require an SUP for R-1 through R-6 residential districts.

Mr. Fraley stated that within residential districts, towers of a certain height need to go to the BOS.

Mr. Murphy stated that towers that are attached to a camouflaged part of a building would not require an SUP.

Mr. Krapf stated that it is the free standing towers that Mr. Fraley is referring to.

Mr. Fraley stated that he has heard from many people in the community that they would prefer a slick stick over a tower constructed to look like a tree.

Mr. Murphy stated that slick sticks can be considered camouflaged if it is buffered to the point that they are virtually unnoticeable, which is difficult to achieve.

Mr. Fraley stated that he would like to hear from some of the industry representatives present today.

Ms. Lisa Murphy of LeClairRyan stated that there does seem to be a preference for slick sticks yet, the requirements for slick sticks are greater than other types of towers.

Mr. Fraley stated that his preference would be to have an 80 foot slick stick at the resort center in Kingsmill. He asked how tall the portable cellular transmission facilities are.

Mr. Stephen Romine of LeClairRyan stated that the facilities are 60-80 feet.

Mr. Fraley stated that he does not have a problem with an 80 foot slick stick in a residential area.

Mr. Romine stated that if you compare administrative approval and lengthy litigation to going through the legislative process it may be preferred to go through the legislative process. He stated that whatever the community accepts and feels most comfortable with is most suitable.

Mr. David Neiman of 105 Broomfield Circle stated that the community wants to have camouflaged towers within residential areas go through the legislative process. He stated that by having the towers reviewed legislatively the community will have the benefit of having public hearings. He stated that elected officials that feel responsible to their constituents should make those decisions. He stated that camouflaged towers in residential areas could be given an expedited review status.

Mr. Fraley stated that if the Kingsmill towers were brought forward legislatively then they may have opted to apply for slick sticks or a regular tower.

Ms. Murphy stated that the majority of the towers in James City County (JCC) have been camouflaged because the Ordinance has encouraged it. She stated that if you eliminate the administrative review of camouflage towers than the benefit to the industry would be lost. She stated that the community benefits from this arrangement from a planning standpoint. She stated that from a technology standpoint, camouflaged towers do not accommodate the most useful technology.

Mr. Fraley stated that the proposals he has reviewed going through the legislative process have included camouflaged elements.

Mr. Romine stated that slick sticks do not propagate as well because the antennas used are not the most powerful. He stated that this may be an unintended consequence of such a modification.

Ms. Murphy stated that at this time the industry is going back and upgrading the technology by adding more antennas to existing towers. She stated that the increased demand for data usage capacity is placing a heavy burden on existing infrastructure.

Mr. Fraley stated that he is fine with the Ordinance but, he would like staff to go back and add more descriptors to the text in an attempt to improve the quality of the product. He stated that cell towers should require an SUP in residential districts, unless the industry would find it useful to make a lower threshold for administrative review.

Mr. Romine stated that it would be useful to hold onto some flexibility for administrative reviews for residential areas.

Mr. Fraley stated that he is aware of two or three jurisdictions that do allow by-right towers in residential districts at lower heights. He stated that 80 feet seems to be a minimum height for towers before you eliminate the utility of the tower.

Mr. Krapf stated that he would like to recommend requiring an SUP for freestanding wireless communication facilities in residential districts that exceed 80 feet in height.

Mr. Murphy stated that if that is the Policy Committee's wish staff can forward the recommendation.

Mr. Romine asked if this would include changes to the definitions for camouflage and buffers requirements. He asked, if not when would you apply those definitions.

Mr. Johnson stated that they would still be used for nonresidential districts.

Ms. Murphy asked if the buffering and camouflage requirements would still be applied to those towers 80 feet or less in height.

Mr. Murphy stated that they would still apply.

Ms. Murphy stated that that would make it less useful.

Mr. Fraley stated that he would feel comfortable with relaxing the requirements for those towers 80 feet or less in height.

Mr. Murphy suggested that the Policy Committee think further on this point before making any decisions.

Mr. Woods stated that he agreed.

b) Affordable Housing Policy

Mr. Jose Ribeiro presented the materials.

Mr. Fraley asked if the funds contributed in lieu of building will be identified separately so that there is certainty that the funds would be used to build affordable housing.

Mr. Vaughn Poller stated that it will only be used towards the construction of affordable housing.

Mr. Fraley stated that he would like to have a more concrete understanding of what those funds would be used for.

Mr. Krapf asked about the cash proffer reduction at the 30% to 60% Area Median Income (AMI). He asked why staff elected to apply a 100% reduction in cash proffers to this category.

Mr. Ribeiro stated that staff wanted to provide the maximum incentive to developers, to build the most affordable housing.

Mr. Woods asked if staff is aware of any evidence that this type of incentive would achieve the intended goal.

Mr. Poller stated that he cannot provide specific examples of success. He stated that staff recognizes that attempting to serve the population at the 30% to 60% AMI represents the biggest challenge. He stated that when staff has spoken to builders they have been told that providing units at that level eliminates any room for profitability. He stated that he does not have any examples of this within the Commonwealth. He stated that he would look into Fairfax and Alexandria to find examples.

Mr. Murphy stated that proffers have been waived with the BOS's discretion by practice. He stated that with this policy staff attempted to write down what has been commonly practiced by the BOS. He stated that there may not be other examples out there. He stated that the County has a lack of affordable housing.

Mr. Woods asked what is the cost associated with proffers.

Mr. Ribeiro stated that a single, detached unit would be \$17,015. He stated that the proffer for a multifamily unit would be \$15,000 and \$4,807 for a single family attached unit.

Mr. Woods asked if those proffers can be adjusted or waived legislatively. He asked if the County waives or adjusts frequently, and if so, what the average proffer received was.

Ms. Tammy Rosario stated that staff does not have that data.

Mr. Johnson stated that it varies by product.

Mr. Murphy stated that \$17,015 represents the maximum fee, but it is typically waived or adjusted for affordable units.

Mr. Fraley asked how many residents are living in Ironbound Square that work in JCC.

Ms. Ellen Cook stated that staff has data, but it is not specific to Ironbound Square.

Mr. Fraley stated that this is a nice project that seems all around successful.

Ms. Marion Paine stated that she was looking at these numbers recently. She recalls that each inhabitant either lived in JCC when they purchased, or lived or worked in the City of Williamsburg.

Mr. Poller stated that you need to also include in that catchment basin those persons who work here.

Mr. Fraley stated that his overriding concern is that it attracts people that do not live or work in JCC.

Mr. Poller stated that he would be surprised if residents currently living in Newport News could not find affordable housing in Newport News. He stated that most of the people that would have interest in living here are attempting to cut down their living costs by not having to commute to work. He stated that our marketing has always been to those persons who either live or work in JCC.

Mr. Woods asked for clarification on 5(b) of the draft policy. He asked how the "soft second" mortgage works.

Mr. Poller stated that the soft second represents the effort to maintain the public's money so that people do not purchase these houses with the idea of flipping them. He stated that when you compare the houses at a market rate there tends to be a difference of \$50,000. He stated that the intention is to eliminate the possibility of someone buying the property, living in it for some short period time and then selling it for profit. He stated that the money (that was the public's) used to purchase the property will return to JCC.

Mr. Woods asked for clarification on the Housing Fund.

Mr. Poller stated that the money is for the particular purpose of affordable housing and the development of affordable housing in JCC. He stated the money cannot be used for administrative costs. He stated that the money will be used as down payment in closing costs. He stated that when you look at the median cost for rental properties, for those affording houses in this price range they are paying \$950-\$1,100/per month. He stated what they cannot afford is the down payment and the closing costs. He stated that these monies are loaned out to individuals who are credit worthy and who either live or work in JCC. The Office of Community Housing and Development then secures the individual with an FHA or VHDA mortgage. If the individual later elects to move, the money will go back into the fund for the next applicant.

Mr. Woods asked if there is a policy document that describes the housing fund and its fullest uses.

Ms. Paine stated that a document could be created for this purpose.

Mr. Woods stated that this would help protect the County's interests.

Mr. Fraley stated that the proposed policy is not in Ordinance therefore, there is no requirement to do it.

Ms. Rosario stated that there are references to the policy in the Ordinance in the form of density bonuses.

Mr. Fraley stated that he thought this would be more inclusionary zoning and incentives.

Ms. Rosario stated that this is a baseline expectation in the form of a policy which establishes 20% figure, but then there are density bonuses in cluster and mixed use that encourage developments to go higher than that. She stated that they get greater density by exceeding the figure.

Mr. Fraley stated that there are incentives in the Ordinance to do build affordable housing, but there is no requirement to do it under this policy.

Ms. Rosario stated that in order to meet the density bonus you do at minimum have to meet the baseline. She stated that one would have to exceed the baseline to realize the maximum benefit of the density bonus.

Mr. Woods stated that if one were to aggregate all the different incentives it could become significant.

Ms. Susan Gaston, representing the Association of Realtors, asked what the timeline is on this policy.

Ms. Rosario stated that it will go to BOS for preliminary feedback at the end of September. She stated that it will then go into a period of refinement and then to the Planning Commission in December and the BOS in January.

Ms. Gaston stated that she is pleased to hear that the policy is incentive driven. She stated that from a realtor's perspective, the real gap in the market is not low income housing but workforce. She stated that honing in on that sector would be most helpful.

Ms. Kate Sipes stated that the difference in language between workforce housing and affordable housing was introduced as a part of a Comprehensive Plan conversation. She stated that in recent conversations there has been discussion of whether or not that distinction is necessary. She stated there may be a stigma associated with affordable housing. She stated that she would be interested in hearing whether or not the Policy Committee would prefer to call all of this workforce housing but keep the stratification within the policy.

Mr. Woods stated that he appreciates this sensitivity.

c) Sign Ordinance

Ms. Melissa Brown explained the changes made to the draft ordinance.

Mr. Krapf asked a question regarding Sec. 24-80. He stated that the text now indicates that only the property owner would receive written notification of violation. He stated that it may be in the County's best interest to still notify the tenant or lessee as well as the owner.

Ms. Brown stated that the County has been making a move to more penalties and fines because there has been a real problem. She stated that if the fines are not paid they want to be able to attach the fine to the property. She stated that in practice you get a quicker response when a letter is sent to the property owner rather than notifying the tenant or lessee.

Ms. Rosario suggested that the lessee or tenant could still be copied for any written notification.

Mr. Krapf stated that he would prefer an arrangement that includes the lessee or tenant be copied.

Mr. Fraley asked what provisions are in place for those businesses that have road construction/repairs in progress in front of their store. He asked can they put up directional signs during this occasion.

Ms. Brown stated that Virginia Department of Transportation (VDOT) has provisions for directional signage. She stated that if VDOT is working in the right-of-way then the signage needs to be placed in the right-of-way. The County does not have the authority to permit signs in the right-of-way.

Mr. Fraley stated that the County should be able to help the local businesses in this situation.

Mr. Rich Costello of AES asked for clarification on signage within those shopping centers with multiple outparcels.

Ms. Brown stated that if there are two entrances then they can have a freestanding sign on each side.

Mr. Costello stated that the way he reads the text the outparcels that before could put a freestanding sign along the exterior of the shopping center can now only place that sign on the interior of the shopping center.

Ms. Brown stated that they are allowed freestanding signs. She stated that if they have access to the main road then they can place a sign along the exterior. She stated that the intent of the Ordinance is to use the sign to indicate an entrance.

Mr. Costello pointed out that most of the free standing signs for those outparcels will not be visible from the right-of-way.

Ms. Brown stated that it is not just visible from the right-of-way it is also visible from adjacent properties.

Mr. Costello stated that future businesses will have less ability to put up signage visible from the right-of way.

Ms. Brown stated that in practice this is what they have guided people to do, which is why staff elected to make the change. She stated that we could have further discussions regarding this point.

Mr. Fraley stated that this should be discussed further.

Mr. Murphy agreed that signage for the outparcels would be discussed further by staff.

d) Procedural Descriptions, Submittal Requirements, and Administrative Items

Mr. Ribeiro reviewed some of the changes to the ordinance text.

Mr. Fraley asked of Sec. 24-8; who is the building official?

Mr. Johnson stated that the building official is appointed by the BOS and is a title called out in the state code. He stated that Mr. Tom Coghill, Building Safety and Permits Director is the County's building official.

Mr. Ribeiro pointed out the text in Sec. 24-144 (b) that reduces the number of days from 21 calendar to 10 working days in which the planning division will transmit comments to applicants for conceptual plans.

Mr. Mike Maddocks responded positively.

i) Environmental Impact Constraints Analysis

Mr. Ribeiro reviewed changes made to the environmental checklist.

ii) Fiscal Impact Study Guidelines

Mr. Ribeiro reviewed the Fiscal Impact Study Guidelines.

Mr. Fraley asked if applicants will be required to use this template for their fiscal impact studies. He stated that it is frustrating to get multiple estimates from different groups regarding impacts.

Mr. Ribeiro stated that applicants will be required to submit the outlined information at minimum. The applicant may choose to submit additional materials.

Mr. Brian Elmore stated that for residential developments applicants will provide four or five modifiers. Mr. Elmore stated that for new businesses coming in the process is more complex.

iii) Traffic Impact Analysis Guidelines

Mr. Fraley asked how this traffic impact analysis would compare to the VDOT 527 review.

Mr. Vinciguerra stated that this is very similar to the VDOT 527 review. He stated that applicants would be required to indicate how to mitigate the impacts of traffic to a service level of "C" rather than a "D".

Mr. Murphy stated that the County would continue to have greater discretion than VDOT. He stated that one hundred peak hour trips would be the threshold; VDOT's is higher for commercial areas.

Mr. Johnson stated that many County roads have a unique character and citizens have the expectation to maintain that character.

Mr. Costello stated that VDOT is now moving to multiple access points. He stated that Sec. 24-23 speaks of "no more than one access point on each abutting public street shall be permitted unless".

Mr. Murphy stated that staff will adjust it dependent upon what VDOT requires.

Mr. Costello made a recommendation to change the text in Sec. 24-145 (7). He recommended changing five foot contours to two foot contours. He stated that this level information is more beneficial for site plans.

Mr. Costello asked if it was necessary to submit a new site plan amendment for decreased parking.

Mr. Johnson stated that there are valid reasons to require a site plan amendment for increased or decreased parking.

Mr. Costello stated that there are no licensed traffic engineers in the state of Virginia, just licensed engineers or certified land planners. Mr. Costello asked if it necessary to have plans including ten (or greater) multi-family units go to the Development Review Committee (DRC) for review.

Mr. Johnson stated that there will be a trend for more in-fill development on challenging topography. He stated that there will be a greater demand to maximize a limited amount of developable area. Staff and the Planning Commission determined that those cases should be reviewed by the DRC.

Mr. Costello stated that this would mean that all R-5 developments will be seen by the DRC.

2) Adjournment

Mr. Maddocks moved to adjourn. The meeting was adjourned at 3:32 p.m.



Jack Fraley, Chair of the Policy Committee