

A G E N D A
JAMES CITY COUNTY PLANNING COMMISSION
MAY 5, 2010 - 7:00 p.m.

1. ROLL CALL
2. PUBLIC COMMENT
3. MINUTES
 - A. March 3, 2010 Regular Meeting
 - B. April 7, 2010 Regular Meeting
4. COMMITTEE AND COMMISSION REPORTS
 - A. Development Review Committee (DRC)
 - B. Policy Committee
 - C. Other Committee/Commission Reports
5. PUBLIC HEARINGS
 - A. Z-0002-2009 / MP-0002-2009 – Governor’s Grove Section III Proffer and Master Plan Amendment – Applicant requests deferral
 - B. Z-0001-2009 / MP-0001-2009 / SUP-0007-2010 – Colonial Heritage, Deer Lake
 - C. SUP-0002-2010 – Busch Gardens Griffin Theatrical Lighting
 - D. SUP-0012-2010 – Camp Road Tower Development Corporation Wireless Tower
 - E. SUP-0009-2010 – USA Waste of Virginia Borrow Pit Renewal
 - F. SUP-0010-2000 – Branscome Borrow Pit Renewal
 - G. SUP-0004-2010 – Courthouse Commons
6. PLANNING DIRECTOR’S REPORT
7. COMMISSION DISCUSSIONS AND REQUESTS
8. ADJOURNMENT

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
Al 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 Leafe 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 ~~Season's Trace~~ 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.jccegov.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

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SEVENTH DAY OF APRIL, 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:

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

Staff Present:

Allen Murphy, Director of Planning/
Assistant Development Manager
Adam Kinsman, Deputy County Attorney
Tammy Rosario, Principal Planner
Ellen Cook, Senior Planner II
Chris Johnson, Principal Planner
Sarah Propst, Planner
Luke Vinciguerra, Planner
Scott Whyte, Landscape Planner
Bill Cain, Chief Civil Engineer
Melissa Brown, Zoning Administrator
Jennifer VanDyke, Administrative Services Coord.

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

2. RECOGNITION

PRESENTATION – RECOGNITION OF MS. DEBORAH KRATTER

Mr. Peck asked Mr. Jack Fraley to speak on Ms. Kratter's time spent on the commission.

Mr. Fraley described on Ms. Kratter's accomplishments during her time spent on the Planning Commission. He stated that Ms. Kratter displayed a great deal of tact and accommodated other points of view. Mr. Fraley stated that Ms. Kratter took the initiative to make improvements and changes to the Capital Improvements Program (CIP) process. Mr. Fraley stated that she was hard working and made intelligent contributions. He expressed his gratitude for all of the work that Ms. Kratter had done while on the Planning Commission.

Mr. Peck then read the Resolution of Appreciation.

Mr. Fraley moved to approve the resolution.

With a voice vote the resolution was approved (7-0).

Ms. Kratter accepted the certificate. She stated that James City County is a special place, and that it was her pleasure to serve the County.

3. RECOGNITION

PRESENTATION – RECOGNITION OF MR. GEORGE BILLUPS

Mr. Peck then asked Mr. Fraley and Mr. Joe Poole to speak about Mr. Billup's time spent on the Commission.

Mr. Poole stated that Mr. Billups had made a meaningful contribution as a public servant. Mr. Poole stated that Mr. Billups displayed sincerity and steadfastness. He stated that Mr. Billups shared his opinion and positions on matters very clearly and openly. He stated that he served the community well with his honest and open approach.

Mr. Fraley spoke about the time he spent with Mr. Billups on the Planning Commission. Mr. Fraley stated that Mr. Billups had nominated him for an award granted as a result of the work on the 2009 Comprehensive Plan. He stated that Mr. Billups executed his time spent with the Planning Commission with wisdom and, worked hard for the citizens of the County.

Mr. Peck then read the Resolution of Appreciation for Mr. Billups.

Mr. Poole moved to approve the resolution.

With a voice vote the resolution was approved (7-0).

4. PUBLIC COMMENT

Mr. Peck opened the public comment period.

Mr. Robert Richardson spoke on behalf of the James City County Citizens for Ethical Government. Mr. Richardson stated that he did receive a response letter from the Chairman, Mr. Peck, regarding some ethical concerns. One concern regarded new members signing the Code of Ethics prior to when they were seated. Mr. Richardson stated that there were also some concerns regarding the records, specifically the public response to Autumn West. Mr. Richardson stated that Mr. Mike Maddocks was ill-prepared for rendering any decision regarding the Autumn West case. He had not been provided full details of the case prior to voting. Mr. Richardson stated that he had spoken with Mr. Maddocks the day of the Planning Commission meeting and, confirmed that he had not received or was familiar with the 37 pages of research that Mr. Richardson had presented to the Development Review Committee (DRC). Mr. Richardson stated that the *Virginia Gazette* had run an article on the King William Reservoir project.

Ms. Dorothy Neiman, 105 Broomfield Circle, spoke of a *New York Times* article. The article speaks on a new technology available to cell phone users to improve the strength of its frequency.

Mr. Peck closed the public hearing.

A. Adoption and Affirmation of the March 17, 2010 Letter

Mr. Adam Kinsman stated that the purpose of this letter is to list the official reason for the Planning Commission's denial of the Autumn West proposal, SP-0064-2008.

Mr. Poole moved to adopt the resolution.

Mr. Chris Henderson asked by voting in the affirmative if he is verifying the reasons stated for denial. Mr. Henderson noted not all Planning Commissioners were in agreement.

Mr. Kinsman confirmed Mr. Henderson's statement.

In a unanimous roll call vote, the March 17, 2010 Autumn West letter was adopted and affirmed (7-0).

5. MINUTES

A. MARCH 3, 2010 REGULAR MEETING

Mr. Al Woods cited one correction needed for the minutes.

Mr. Henderson moved for approval of the minutes with the correction.

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

6. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC)

The March meeting of the DRC was held on March 31st at 4:00 pm. The first case was C-0006-2009 John Rogers Fast Food Restaurant. The DRC reviewed a conceptual plan for property on Pocahontas Trail (Rte 60) adjacent to the Ball Metal Manufacturing plant. The applicant is proposing to change the use of this property from a truck wash to a fast food restaurant. The parcel is currently zoned M-2, General Industry. The M-2 zoning district does not allow fast food restaurants as a use. The applicant is considering applying for a rezoning to B-1, General Business. He is working with the County's business facilitator and requested DRC feedback. After discussing this project with staff, the applicant, and the business facilitator, DRC members indicated that the project would be better as a rezoning application, rather than a Special Use Permit (SUP) application. The other case the DRC reviewed was SUP-0004-2010 Courthouse Commons. The applicant asked to make a presentation to the DRC in order to obtain

feedback on the project. The proposal includes potential building setback waivers and landscape modification requests. Mr. Henderson recused himself from the discussion due to a financial interest in the transaction. DRC members reviewed conceptual plans and discussed the various waivers and the reasons for the requests. Staff only recently received the case materials and is still in the review process.

Mr. Poole moved for approval of the report.

In a unanimous roll call vote, the action report was approved (7-0).

B. Policy Committee

Mr. Fraley stated that the Policy Committee met on March 17th. The Committee discussed protocol for meetings with applicants and discussed the methodology for the Comprehensive Ordinance Update. The full Planning Commission was in attendance at this meeting. Staff presented guidelines for consideration regarding Commissioners meeting with applicants based on feedback at the last Policy Committee meeting on February 25th. Amendments to the bylaws and policy guidelines adopted by the Committee are included in this evening's agenda for the Planning Commission's consideration. The Committee recommended the establishment of five priorities for the Comprehensive Plan Ordinance Update. Three of the five priorities are: the provision for additional public forums for community input, the establishment of a schedule of Policy Committee meetings for additional community participation, and guidance from the Board of Supervisors (BOS) for Rural Lands. The revised methodology will be further discussed this evening for the Planning Commission's endorsement and recommendation to the BOS. A recommended schedule for upcoming Policy Committee meetings that will also include those meetings on the Comprehensive Plan Ordinance Update has been forwarded to the full Planning Commission and, will be publicly announced upon its finalization.

Mr. Peck stated that there will be an article added to the by-laws, article four, Outside Meeting with Applicant. "1. The Planning Commissioners are permitted to meet with applicants outside of a Planning Commission meeting. 2. Commissioners shall publically disclose all meetings."

Mr. Poole stated that it is imperative that Planning Commissioners have contact with applicants and citizens as long as they are disclosed. Mr. Poole stated that as a Planning Commissioner one should not engage in negotiating.

Mr. Henderson moved for approval of amendments to the by-laws, article four.

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

Mr. Peck read from the new policy. "Planning Commissioners are permitted to meet with applicants outside of a public hearing pursuant to the below:
Applicants are defined as all individuals directly participating in the preparation of or having a material financial stake in the application that is subject of a meeting.

1. Commissioners may find it helpful to contact the Planning Division staff prior to such meeting to gather facts about the application. The staff may attend such meetings if requested by the Commissioner and approved by the Planning Director or designee.
2. The purpose of such meetings is limited to fact finding and clarification for all parties.
3. Commissioners shall not make a commitment of their voting intent.
4. Commissioners shall disclose all meetings by reporting them verbally at the Planning Commission meeting where the case is scheduled for a public hearing.

Mr. Henderson moved for approval of the proposed policy statement regarding meetings with applicants.

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

There were no other committee reports.

7. PLANNING COMMISSION CONSIDERATIONS

A. Initiating Resolution – Pedestrian Oriented Signage

Ms. Melissa Brown stated the initiating resolution is being considered for amendments to the Sign Ordinance. The amendment to the Zoning Ordinance would allow for the inclusion of pedestrian-oriented and directional signage in certain districts. Specifically, this ordinance amendment would allow pedestrian oriented signage in districts governed by a binding master plan and a design review board or other districts where there exists a binding area study approved by the BOS. The intent of the proposal is to address business owner concerns regarding the ability of their customers to easily locate the businesses located in the districts.

Mr. Poole asked if this has to do with New Town.

Ms. Brown stated that Staff is looking at New Town as well as other areas that have binding area studies such as Toano and Norge.

Mr. Peck stated that before the Planning Commission can investigate developing ordinances an initiating resolution must be passed.

Mr. Richard Krapf moved for approval of the initiating resolution.

In a unanimous roll call vote, the initiating resolution for pedestrian-oriented signage was approved (7-0).

B. Initiating Resolution- SSPRIT Recommendations

Mr. Chris Johnson stated that following an acceptance of the Business Climate Taskforce (BCTF) Report by the BOS in 2008 County Administration charged Development Management staff with organizing a team to review the County's development plan review process. The team worked at identifying issues at every level of that process and make recommendations to fulfill

BCTF action items. The Subdivision and Site Plan Review Improvement Team (SSPRIT) offered recommendations which were designed to provide transparency throughout the plan review process, improve communications between staff and the development community, and enhance the quality of plans and foster a positive perception of the County's review process for all parties involved. The initiating resolution is for the consideration of amendments to both the Subdivision and Zoning Ordinance plan review criteria and procedures for both administrative and commission review of conceptual plans, site plans, and subdivisions. Staff recommends that the Planning Commission adopt the attached resolution and refer this matter to the Policy Committee.

Mr. Poole asked Mr. Johnson if this is in response to a particular concern the development community has raised.

Mr. Johnson stated that the previous statement was taken directly from the BCTF report. This was in response to one action item taken from the BCTF report. Before any changes are implemented the changes will be reviewed by the Policy Committee and Staff then ultimately Planning Commission and BOS.

Mr. Poole stated that Planning Commission is tasked with maintaining the unique characteristics of the area. Policy changes should not compromise the Planning Commission's ability to serve the community in this way.

Mr. Johnson stated that the Committee's recommendations are not intended to limit the role of the DRC or Planning Commission. Staff has already initiated some changes at the DRC level by bringing conceptual plans forward for consideration. This enables more feedback early-on in the process. This initiating resolution is an attempt to bring those forward and put them into the Ordinance.

Mr. Henderson moved for approval of the initiating resolution.

In a unanimous roll call vote, the initiating resolution for SSPRIT recommendations was approved (7-0).

C. Zoning Ordinance Methodology

Ms. Tammy Rosario stated that staff had prepared a revised methodology for the Zoning Ordinance and Subdivision Ordinance update. The methodology and its related scope and process documents were revised based on guidance provided by the Commissioners at the Policy Committee meeting on March 17, 2010. The changes included three main items. First, the ordinance update priority items identified at the meeting have been inserted into the methodology in the Scope of Work section. Those include cumulative impact database setup, sustainability audit, development standards with the sign ordinance, commercial business districts, and Economic Opportunity District. Second, the same section of text was revised to include a goal of completing or adopting the priority items by the end of 2011. Third, two forums were created at the beginning of the process which would involve the whole Planning Commission and focus on collecting the input of groups, similar to the Community Participation

Team forums during the Comprehensive Plan review. The text reflecting this is in the process components section. The methodology and the Planning Commissions changes were discussed again at the joint work session with the BOS on March 23, 2010. Consensus was reached on moving forward with the adoption of the revised methodology. Staff recommended the Planning Commission endorse the revised methodology and forward it to the Board for consideration at its May 11, 2010 meeting.

Mr. Henderson moved to endorse the revised methodology.

In a roll call vote, the Zoning Ordinance methodology was unanimously endorsed and forwarded to the Board of Supervisors (7-0).

8. PUBLIC HEARINGS

A. Z-0002-2009/MP-0002-2009- Governor's Grove Section III Proffer and Master Plan Amendment- deferral request

Mr. Peck asked Staff and the Commissioners if they had any objection to the applicant's request for a deferral.

Mr. Allen Murphy stated there is no objection.

Mr. Peck stated he will continue the public hearing to the May Planning Commission Meeting.

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

Ms. Sarah Propst stated Mr. David Todd of The Rebkee Company has applied for an SUP to allow the construction of a CVS store and a Food Lion store at 7521 Richmond Road. This SUP replaces SUP-0008-2009 for a CVS on this site, approved by the BOS in July of 2009. The parcel is zoned M-1, and designated Mixed Use. The site fronts on Route 60, a community character corridor, and it is located within the Norge Community Character Area. The 13 acre Candle Factory parcel will be subdivided to create separate parcels for the pharmacy and the grocery store.

Ms. Propst stated a shared access agreement between the Candle Factory, CVS, and Food Lion is one of the conditions for approval. A portion of the existing Candle Factory commercial complex will be demolished to accommodate CVS. A section of the existing parking area adjacent to Route 60 will be removed and the existing buffer between the front parking area and Richmond Road will be widened to 50 feet to meet the Community Character Corridor requirement. Additionally, the existing parking area located along Croaker Road Extended will be removed and the buffer will be widened to 30 feet. A shared parking agreement between CVS and Food Lion is one of the conditions of approval for this SUP. Elevations for this proposed development have been reviewed at two DRC meetings. These elevations were revised per comments at the last DRC meeting on January 27th. This SUP application includes a landscape modification request. To transfer plant materials from the eastern side of the

properties and between the CVS and Food Lion Parcels to the western, southern and northern buffers. This request has been reviewed by staff and approval of this landscape modification is recommended. Staff and all agencies have reviewed this proposal and find it to be in accordance with the Zoning Ordinance and Comprehensive Plan. Staff recommends that the Planning Commission approve the landscape modification request and recommend approval of this application with the conditions included in the staff report.

Mr. Peck opened the public hearing.

Mr. Tim Trant with Kaufman and Canoles spoke on behalf of the Rebkee Company. Mr. Trant stated the neighboring property owner at Crosswalk Community Church had been concerned with how this parcel would be redeveloped and how it would impact the area. The applicant has since received a letter of support from the pastor of this church. Mr. Trant read from the letter. Reverend Mark Murrow stated the leadership of the church has closely reviewed the plans forwarded by the Rebkee Company to redevelop a portion of the Candle Factory Shopping Center into a CVS and Food Lion. The leadership does support the project and ask that the Planning Commission approve the SUP for the development. Mr. Trant pointed out that this project is a redevelopment and that there have been buffering increases as a result. This will be seen along the Route 60 Community Character Corridor. The architectural consistency displays that which has been envisioned by the Comprehensive Plan for the Norge Community Character Area. There are significant enhancements gained from this redevelopment. There are also enhanced environmental controls with this project, particularly better stormwater management tools. The type "A" soils found on this site are particularly good for infiltration which the design team has attempted to take maximum advantage of, using pervious pavement in the parking lot, underground storage vaults for the recycling of stormwater for irrigation.

Mr. Henderson asked that Mr. Trant display the building elevation for CVS. The building elevation has been amended per DRC request, and has become an attractive building. Mr. Henderson stated that the biggest concern he has is with the traffic movement at the intersection with Richmond Road. Also, the right-in and right-out east of CVS, may be problematic. Mr. Henderson stated he is concerned with the interaction of traffic leaving the CVS parking lot and attempting to make a left-hand turn while vehicles are approaching at a fairly high-rate of speed into the site. Mr. Henderson expressed concern over conflicting traffic movement on the other side of the parking lot.

John Riley with Kimley-Horn stated the majority of traffic would be using Croaker Road. The queuing at Croaker Road is expected to be one vehicle or less. The flow of traffic will not be blocked.

Mr. Henderson stated he is looking to the future when the adjoining property is developed and there is conflicting traffic movements and higher volume. Mr. Henderson stated he is concerned with the safety at this intersection.

Mr. Trant stated the adjacent property owner is the landowner of the subject property as well as the seller to the Rebkee Company. In the closing of this development there is under negotiation and review a binding agreement for an Easements Convenience Restrictions (ECR)

to address the redevelopment of both sites. Traffic flow and other safety issues would be taken into consideration to mitigate any potential problems.

Mr. Henderson asked if this document has been approved.

Mr. Trant stated it is not at this time, though it will be at closing.

Mr. Woods asked staff to further elaborate on “an aggravated initial impact” and “mitigated future impact” as referenced in the staff report.

Ms. Propst stated that the traffic impact analysis suggests this development will increase the volume of traffic. It will be mitigated by the traffic improvements recommended as conditions of approval by staff, and in the future this intersection is showing a drop in the level of service. The drop in service will be seen and future improvements will be made to the extent that it will resume a level of service comparable to the one seen today.

Mr. Woods asked for the underlying analytical basis of this determination.

Mr. Trant stated there are declining levels of service predicted in this intersection in a “no build” scenario. Meaning, in looking ahead to future traffic volumes without development of this parcel, the traffic volume of this road will still increase at a certain rate due to anticipated development of surrounding parcels and neighborhoods. Using the Institute in Traffic Engineers (ITE) Manual one can determine the rate of increased volume. In a build scenario without traffic improvements those declining levels of service would become worse. What the applicant has agreed to do, based on analysis, is to make the necessary improvements to mitigate future traffic impacts. With the proposed improvements in place the decline in the level of service is a wash. It is equivalent to the “no build” scenario.

Mr. Woods asked, will traffic be aggravated initially.

Mr. Trant stated no.

Mr. Woods asked if the ECR will improve the functionality of the intersection Mr. Henderson had spoken of.

Mr. Trant stated yes.

Mr. Woods asked if the applicant had considered making this a condition of the proposed development.

Mr. Trant stated no. Mr. Trant stated that in a practical sense the ECR is necessary. Making this a condition upon approval is not feasible due to the degree of complexity seen with this agreement.

Mr. Henderson stated that this is the first case review in the County subject to the VDOT 527 Review. The traffic report seen here is much more comprehensive than those seen in the

past. Mr. Henderson asked if the portion of the property in the rear had been had been treated as if it had been redeveloped while creating traffic forecasts?

Mr. Riley stated that the redevelopment of the property in the rear had been taken into consideration. There are two scenarios for build out. Scenario one is without those developments in place. Scenario two is with those impacts in place.

Mr. Henderson asked if redevelopment of the property in the rear had been incorporated into the development proposal.

Mr. Riley stated yes.

Mr. Peck opened the public hearing.

Seeing no speakers, Mr. Peck closed the public hearing.

Mr. Krapf commended the applicant for their efforts to work with the feedback received.

Mr. Poole stated that given the zoning and Comprehensive Land Use designation of the site this type of redevelopment makes a lot of sense. The life-span of the property has passed. Mr. Poole stated that he understood Mr. Henderson's concern though he is inclined to hold onto the increased setback.

Mr. Poole moved for approval with the attached landscape modification request and conditions.

In a unanimous roll call vote, the motion passed (7-0).

C. Z-0001-2009/MP-0001-2009/SUP-0007-2010/SUP-0011-2010 Colonial Heritage Deer Lake

Mr. Peck asked staff to make their presentation.

Mr. Fraley stated he had met with the applicant to discuss a number of features including the stormwater management plan, the clearing and grading plan and a conceptual plan layout.

Mr. Maddocks stated that he had met with the applicant, Mr. Davis, to review the proposal.

Ms. Ellen Cook stated Mr. Gregory Davis of Kaufman & Canoles has applied, on behalf of the Lennar Corporation, to rezone a 130.3 acre portion of the 731.5 acre Deer Lake parcel located at 499 Jolly Pond Road from A-1, General Agricultural, with proffers, to MU, Mixed-Use, and R-2, General Residential, with amended proffers, with SUP for the extension of public utilities and a cluster overlay.

Ms. Cook stated that the existing Master Plan for Colonial Heritage has a unit cap of

2000, which includes a 50-lot rural cluster on approximately 221 acres of land located outside the PSA and zoned A-1. On that same 221 acres, the new proposal is seeking to rezone 66.4 acres to Mixed-Use, to be included in the Colonial Heritage Master Plan, and also rezone 63.9 acres to R-2 (with a cluster overlay) for the 50 lot cluster both with the extension of public water/sewer. The applicant would dedicate the remaining 90 acres zoned A-1 as conservation area. New proffers for this application include:

- Additional 90 acres of conservation open space to be dedicated
- Adherence to the Yarmouth Creek Watershed Plan goals and priorities
- Implementation of the County Streetscape guidelines
- Neighborhood Recreation Facility and adherence to the Parks and Recreation proffer guidelines
- And, cash contributions for both schools and JCSA water connections.

Staff recommends the Planning Commission recommend denial of this rezoning, master plan amendment and the special use permit applications to the BOS. Should the Planning Commission wish to recommend approval of these applications to the BOS, Staff recommends attaching the conditions for the utility extension SUP that were attached to your staff report as well as recommending approval of the attached proffers.

Staff would like to make the Planning Commission aware that subsequent to the development and distribution of the Staff report Staff identified a concern with the proffer language describing the timing of dedication of areas to be placed under conservation easement. Staff has communicated this concern to the applicant and has received a commitment to revise the language to address this concern moving forward.

Mr. Peck opened the public hearing.

Mr. Davis of Kaufman and Canoles stated he represents the applicant. In 2004 zoning was approved for 2000 units at Colonial Heritage, 1950 age-restricted units in the active-adult Colonial Heritage community as well as a 50 lot cluster development, not a part of Colonial Heritage and outside the PSA. 282 acres of conservation open space were dedicated and proffered. This application involves the preservation of an additional 90 acres of conservation area while spreading the age-restricted community onto 66 acres which were already approved for development in 2004. This application, by extending public utilities, eliminates the need for a private water system and septic drain fields for the 50 lots outside the PSA. The application also offers a long list of environmental benefits adjacent to Yarmouth Creek.

Mr. Davis, using an illustration, pointed out various landmarks and features of interest. He stated the proposal exceeds the Yarmouth Creek Watershed Plan measures. It preserves type "A" permeable soils. The 90 acres set aside for conservation buffers is a part of the non-tidal mainstem of Yarmouth Creek. The 90 acres are adjacent to the 282 acre conservation easement that is already established, making one large contiguous undisturbed area. When the rezoning application was submitted, workforce housing was proffered in the 50 unit, true cluster. Since that time, with input from the community, the applicant has begun to question if the housing meets a County need. Mr. Davis stated the applicant would like to hear from the Planning Commission what they feel is an appropriate use for the 50 unit, true cluster. The age-restriction

component of the community produces a positive fiscal impact. The 2,000 unit cap still applies to Colonial Heritage. The public benefit of this project should be appropriate justification for amending the PSA to include the proposed development. The alternative, a private well system, would be a cost incurred by the County in excess of \$100,000 per year.

Mr. Fraley asked for Mr. Davis to elaborate on the ten-foot clearing proposed.

Mr. Davis stated in the existing approved A-1 cluster the applicant was committed to a 35-foot setback from structures to the top of steep slopes and a 20-foot setback from the edge of clearing to the top of steep slopes. Staff noted that the current application reduced the distance from the edge of clearing to the top of steep slopes to ten feet down from twenty. After hearing this concern the applicant has agreed to a proffer revision that would increase the distance from clearing to top of steep slope to twenty-feet.

Mr. Fraley asked Mr. Davis to elaborate on the difference of stormwater management and the outflows between the two plans as well as the limits of clearing and grading.

Mr. Arch Marston of AES displayed some images to relay the differences between the stormwater management plans. The approved rural cluster concept plan has 15 lots that do not drain to any stormwater management facility. With the new proposal the development is confined to a small area. The topography is such that the cluster follows the contours as it falls down the hill towards the Best Management Practice (BMP). The drainage can be picked up and routed to one spot where a stormwater forebay would be designed. The water would be collected, pretreated and slowed before let go into Deer Lake. Regarding the clearing and grading, the new proposal does include some grading across lots due to the compact nature of the development. What is gained is additional saved areas around the cluster. Fifteen acres of the 63.9 area is dedicated to the cluster, minimizing negative impacts.

Mr. Henderson asked if there was a plan for development for the area proposed to go into the Mixed-Use zoning.

Mr. Davis stated that there is not a plan of development, though the development of Colonial Heritage up to this point can serve as an example.

Mr. Henderson asked from a traffic stand point, would it be the applicant's intention to have the traffic exit to Centerville Road as opposed to Jolly Pond Road.

Mr. Davis stated that there are no plans for an entrance on Jolly Pond Road.

Mr. Peck opened the public hearing.

Mr. Michael Hipple of 112 Jolly Pond Road asked for confirmation regarding no new entrances on Jolly Pond Road.

Mr. Davis confirmed that there will be a new entrance for the cluster development.

Mr. Hipple stated he has concern regarding traffic on Jolly Pond, especially due to the two new schools. Mr. Hipple stated that he is not against the proposed plans. Mr. Hipple stated that he is representing the subdivision on Jolly Pond Road. Mr. Hipple stated that he does have a concern regarding property values if the new development includes workforce housing. Jolly Pond is frequently used as an access to get from Centerville to Toano. Mr. Hipple stated that he would like to see the addition become an age-restricted development. There are a lot of steep slopes in the area under discussion. The cluster development does make sense due to the slopes. In regards to the stormwater management going into Deer Lake, can the dam sustain further stress? In his view the PSA is used intelligently to contain development, in this case though it may be in the County's best interest to extend the PSA.

Mr. Fraley asked Mr. Davis if the development were to be age-restricted would that lessen the impact of traffic on Jolly Pond Road.

Mr. Davis stated yes. A key feature of age-restricted communities is the limited number of accesses. The Centerville and Richmond Road entrances would be the only entrances if the residential cluster were to be an age-restricted community. The Jolly Pond entrance would be removed from the plans.

Mr. Fraley asked if there would be additional stress placed on Cranston's Mill Pond.

Mr. Davis stated that Deer Lake has been identified and planned as a BMP for Colonial Heritage. Some upgrade to the dam will be made; failure is not a risk.

Mr. Henderson asked if the property was not age-restricted would it still be within the Home Owners Association (HOA) for Colonial Heritage. Would the roads be public or private?

Mr. Davis stated that it would be a stand-alone development with its own HOA. Mr. Davis stated that it had been proffered as public or private subject to input of the Commission on the type of housing product.

Mr. Peck closed the public hearing.

Mr. Rich Krapf stated that the application concerns him. Expansion of the PSA is a violation of the land-use policies established in the November 2009 Comprehensive Plan. This would also set a precedent by extending public utilities outside of the PSA. This may have other consequences. It could send a message to the community that the PSA line is arbitrary and can be proffered away. The PSA is currently used as a tool for growth management. Extending the Mixed-Use designation onto the additional acreage runs the risk of allowing the applicant to meet the density at the expense of the rural lands. The environmental recommendations in the staff report are valid. The central well versus the public water argument has been addressed in the Comprehensive Plan. There is an acknowledgement that right now for the James City County Service Authority (JCSA) to take over wells would have a cost for the County. There is an action item in the Comprehensive Plan to remedy this situation. The BOS has agreed to study this issue at the June meeting. Therefore, this argument does not hold water. This proposal does not support our land use management strategies. It undermines the Comprehensive Plan and

PSA as a growth management tool. It also extends suburban density into the rural lands. Mr. Krapf stated that he cannot support the proposal.

Mr. Poole stated that he shares Mr. Krapf's views. He stated he notes some benefit. However extending the PSA would have notable consequence. The PSA is used to effectively provide smart growth. In those areas noted for economic opportunity/development it may be okay to extend the PSA, though the evidence has to be extremely compelling to consider an extension. In 2004, Mr. Poole had voted against Colonial Heritage though he has considered the new proposal independently. Mr. Poole stated that he is glad to see the Magnolia Trees will be preserved.

Mr. Peck read the goals of PSA as provided in the Comprehensive Plan. Mr. Peck provided a map of the PSA. Governor's Land which is outside the PSA has public water and sewer. Greensprings West is also outside of the PSA.

Ms. Cook stated that these developments were approved by the BOS in the 80's.

Mr. Peck asked if this was prior to the adoption of the PSA.

Ms. Cook stated that she believed it was after the PSA was adapted and identified on the Comprehensive Plan.

Mr. Allen Murphy stated that the zoning category, which the BOS supported, mandated the extension and provision of public water and sewer.

Mr. Peck stated that here are two cases where we have both public water and sewer not subsidized. The locations are near environmentally sensitive areas next to a water way. There are two new developments going up, one being Liberty Ridge, that have to have public water supply systems. The two will not be connected to the JCSA system, but will be turned over to them.

Ms. Cook stated that those two developments are by-right, A-1 developments that will have central well facilities and private septic systems.

Mr. Peck stated that they are high-cost systems that the County will end up subsidizing once they are turned over to the JCSA.

Ms. Cook stated that this issue was raised and discussed during the Comprehensive Plan update. An action item was added to the Comprehensive Plan to look at equalizing the cost.

Mr. Peck stated that he is aware of this, though these two developments would be grandfathered in according to Mr. Larry Foster of JCSA. They are not promoting increase public benefit per dollar spent, nor are they encouraging the efficient use of public facilities and services such as water and sewer. Mr. Peck located Freedom Park on the map. Mr. Peck stated that Freedom Park has had public water and sewer extended through it.

Ms. Cook stated that the BOS did approve the extension of utilities for this development concurrent with the approval of the SUP for the two new public schools.

Mr. Peck stated that another policy for the PSA is to make sure that public facilities are provided in a timely manner. Adjacent to these parcels is an elementary and middle school. There is a large sports complex, a new public safety building for the County Police Department, Warhill High School, as well as Freedom Park. By ordinance we will have public water supplied by the well system. The PSA is to help manage the cost of public facilities. We have built public facilities out of the PSA. There may be other draw backs for this project. By not extending the PSA the actions of the Planning Commission would run contrary to the intended use as stated in the Comprehensive Plan. The County needs to develop more workforce housing. This may be an ideal location due to the proximity to public facilities.

Mr. Henderson stated he is driven to recognize the significant public benefit with this project. He is in favor of this development becoming part of Colonial Heritage, therefore age-restricted. Eliminating an entrance on Jolly Pond is beneficial to the community. He stated he is compelled to recognize the economic benefit connected to senior housing. This is the only scenario that produces a positive economic development for the County. The significant protection put in place for the environment is another benefit. He will support the application; provided it is included into the parent development as age-restricted housing.

Mr. Fraley stated that during the Comprehensive Plan process the applicant did file a land use designation change request. It was denied by a vote of (6-5). He voted for the land use designation change. One of the benefits of this project is the environmental protection. The cluster would provide 90 additional acres of conservation area. It is subject to County special stormwater criteria. It is subject to the BOS resolution for resource management area buffers for legislative cases. The currently proposed plan is not subject to either of those. With the provision of public sewer service it eliminates the need for septic drain fields. With the provision of public water service less stress is placed on the aquifers and lowering operating cost for the service authority. The proposal is more consistent with the Yarmouth Watershed Management Plan Conservation Area recommendations. This is a superior open-space design. It would be undisturbed and contiguous with adjacent natural open space. The residential cluster conceptual design proposed does preserve highly permeable soils, minimizes cut-and-fill, provides an envelope around clearing and grading, provides large amounts of natural open space and is in harmony with the contours of the land. In terms of stormwater management this proposal provides for the collection of all runoff, 100% treatment by a single, state-of-the-art forebay structure and discharge into a wet BMP, Deer Lake, and directing outflow into only one finger of the lake. Mr. Fraley stated that he does support age-restriction. The residential cluster would generate a large positive fiscal impact. The current rural cluster would be negative. If age-restricted the residential clusters would be connected internally through Colonial Heritage and access from Centerville Road compared to an island development that is currently approved accessed from Jolly Pond Road. One of the negative features of this proposal includes having a higher density on the property adjacent to the eastern side of Deer Lake. It is also inconsistent with current Comprehensive Plan Land Use Designations. The current, approved plan preserves the integrity of the PSA boundary. The PSA is not stopping the growth in the rural lands. Smart sustainable growth is not supported by the PSA. In regards to rural lands, smart sustainable

growth would lower the base density by implementing a by-right cluster providing a higher density with conservation zoning and a robust transfer of development rights. The PSA line is arbitrary in that it was not drawn around ridge lines, sensitive environmental features, or big blocks of property owners. Mr. Fraley supports the application.

Mr. Peck stated he shares Mr. Fraley's vision of what rural lands should look like. Contiguous green space is important. This proposal supports the goals and principals of the PSA. As a note of disclosure this is consistent with his position during the Comprehensive Plan discussion.

Mr. Woods stated he is torn by this discussion. Mr. Peck pointed out inconsistencies with actions taken in the past. Other colleagues have identified the reaffirmation for the need to have certain discipline in the process. Those disciplines were more recently examined and rules have been affirmed. Rules in terms of frameworks had been just recently been reexamined. There is the notion that some type of control needs to be in place. If we take each perimeter individually each is flawed, though in total context it makes sense. Mr. Woods stated that he is not persuaded by what took place in the past. What we have decided recently is most important. The "we" being the combination of government and citizens. Irrespective of individual points on a standalone basis you must make sense in the aggregate. Mr. Woods stated he is not persuaded by any of these arguments. Mr. Woods stated that he is not in support of the proposal because you must have structure. There are individual aspects that are positive in the proposal. The boundaries need to be respected. We would do best by attempting to either manage them or advise them appropriately.

Mr. Peck asked if staff would like to make any additional comments.

Ms. Cook stated she wanted to review what is and is not proffered. The proposed 50-lot age-restricted cluster and workforce housing are not currently in the proffer set. The access on Jolly Pond Road is currently shown on the Master Plan.

Mr. Kinsman stated that Mr. Davis also offered to change the proffers regarding 20 feet setback from the steep slopes, as well as the mechanism that will trigger when the conservation easement would be deeded to the County.

Mr. Poole moved for denial of the Rezoning, SUP and Master Plan amendment per staff's recommendation. In a roll call vote the motion failed (4-3, NAY: Maddocks, Fraley, Henderson, Peck; AYE: Woods, Poole, Krapf).

Mr. Henderson moved for adoption of the Ordinance as amended with further restriction stating: the property would be age-restricted consistent with the current proffer on Colonial Heritage, there will be no access to Jolly Pond Road, the setback in the R-2 cluster be extended to 20 feet, and the trigger for the dedication of the easement would be amended upon recordation of the first lot. In a roll call vote the motion passed (4-3, AYE: Maddocks, Fraley, Henderson, Peck; NAY: Woods, Poole, Krapf).

D. SUP-0028-2009 Ingram Road Pegasus Tower

Mr. Luke Vinciguerra stated that Mr. Stephen Romine has applied for an SUP to allow for the construction of a 120' wireless communications facility with a four foot lighting rod at 108 Ingram Road. The parcel is zoned B-1 and, designated Mixed Use. Tower mounted communication facilities higher than 60 feet in the B-1 district require an SUP. The proposed facility would be a "slick stick" with no visible external antennas.

Staff found that the combination of topography, low tree cover, and proximity to multiple neighborhoods and primary routes would make the proposed tower highly visible from multiple locations. The BOS adopted Performance Criteria for Wireless Communication Facilities in 1998. These performance criteria noted that tower mounted facilities should be located in a manner that minimizes their impacts to the maximum extent possible and minimizes their presence in areas where they would depart from existing and future patterns of development. The Performance Standards also indicate that towers should be compatible with the use, scale, height, size, design and character of surrounding existing and future uses. The proposed tower is highly visible north and southbound on Ironbound Road from Clara Byrd Baker Elementary School to the entrance of the Powhatan Crossing subdivision and east and westbound on Route 5 from the Five Forks Water Treatment Facility to the entrance of the Graylin Woods subdivision. The proposed facility will also be visible from a portion of Powhatan Crossing and multiple points within Brandon Woods, The Villas at Five Forks, and the Governors Green Shopping Center.

Staff found that the application is not in compliance with the Comprehensive Plan, specifically the Community Character Corridor and Community Character Area recommendations, and does not meet the BOS adopted Performance Standards for Wireless Communications Facilities due to the negative visual impact. Staff recommends denial of this application. Should the Planning Commission wish to recommend approval of this application, staff recommend including the conditions that were listed in the staff report.

Mr. Peck asked if there were any questions of staff at this time.

Hearing none, Mr. Peck opened the public hearing.

Mr. Romine, representing the applicant spoke. This location was initially being developed for AT&T. Technology provides a critical link for government and emergency services. Today over 80% of the U.S. population relies on wireless telephone service. Fifty percent of all subscribers use their wireless phone as a primary phone. The growth and use of wireless has developed an expectation of service availability in all locations. Seventy percent of all 911 calls are made from wireless phones. Reliability is critical. The phone works by operating on a low-power radio signal. Where there are no antennae, there is no coverage. The application is an attempt to address a coverage gap. If you have unreliable or non-existent coverage you cannot sustain or maintain a phone call. Lack of availability is evident in this vicinity, especially near the intersection of Ironbound Road and John Tyler Highway. Pegasus is working with AT&T to provide service to the community in this area. The location, 108 Ingram Road, is zoned B-1 General Business. It currently has several industrial, flex-type buildings stacked behind one another. Mr. Romine provided several images. Mr. Romine stated that they

ran balloon tests at several heights. The primary concern expressed to them was the visual effect/impact. Mr. Romine provided a map to illustrate how the accessibility of service would be improved as well as currently available coverage. This is the 13th site that the applicant has considered in this area over the course of five years. Mr. Romine provided a map to illustrate the other sites that were considered. Mr. Romine provided images of the balloon test. Mr. Romine stated that there were a couple of areas where the balloon was slightly visible. At 120-feet it is not possible to completely eliminate the visibility of the tower. Mr. Romine reviewed the reasons for dismissal regarding the other 12 sites. In the staff report there are some determinations made regarding "highly visible". Mr. Romine stated that this has been a difficult area to provide coverage for. Mr. Romine stated that he acknowledges that it is visible in certain areas. The staff report states that the tower is not camouflaged. Mr. Romine stated that the "slick stick" proposed is considered camouflaged. One hundred twenty feet is as low as they can go without eliminating functionality. The facility is consistent with the County guidelines and the Comprehensive Plan. It is in a Community Character Corridor and Community Character Area they have gone to great lengths to accommodate that. Pegasus has agreed to the ten conditions proposed by staff. One condition, number nine, requires a 100-foot buffer. The trees will remain notwithstanding the ability to develop the property. The viewshed will remain virtually the same.

Mr. Peck asked if the Commissioners had any questions for the applicant.

Mr. Peck asked if there were any members of the public that would like to speak.

Mr. Gerald Johnson of 4513 Wimbledon Way stated that he gets excellent reception throughout the area. Mr. Johnson stated that he is representing the Historic Route 5 Association. On the occasion of the balloon tests he drove throughout the area to get a sense of the visibility. Mr. Johnson stated that staff's assessment of it being "highly visible" is accurate. The major disagreement is that it is not inconspicuous. Given that it is a Community Character Corridor makes it even more important. The Five Forks study illustrates that the community is suppose to have a coherency. The housing around the area is numerous. The housing developed because it is a small community setting. This is what the people expect. The Commission should deny the application. This is not a ridge as described by the applicant. The Commission should support Staff's position.

Mr. John Miller representing AT&T Mobility stated that. AT&T has been looking for an appropriate site in the area for the past five years to provide satisfactory coverage. The site is a good location and will help satisfy coverage needs along the Ironbound corridor. Earlier on there were questions regarding the JCSA property, next to the elementary school. There are two communication towers already located on the site; AT&T has collocated on one tower at 90 feet. Placing a new tower on this site would not satisfy their coverage needs. The applicant also considered extending the tower at 140 and 160 feet, still it would not meet the coverage needs. The balloon tests showed that it would not be highly visible from many subdivisions. It was visible along Ironbound Road and John Tyler Highway. In certain areas in Brandon Woods it was visible.

Mr. Peck closed the public hearing.

Mr. Henderson asked if the applicant had considered the timeshare property at Powhatan Plantation as a possible location for the tower. That site may be ideal considering the coverage area the applicant is attempting to target.

Mr. Miller stated that the site had been considered, though due to the 400-foot setback required it was not feasible.

Mr. Poole stated he understands the difficulty in finding an appropriate site. Mr. Poole stated that the visual quality along Route 5 is very important. The apparent visibility of the tower along Route 5 is a concern.

Mr. Romine stated that this area is highly developed making the placement of a tower more difficult. The proposed site will be further developed however, if the tower is approved the required buffer of trees would remain. Otherwise the trees may be cleared to make way for another type of development. The other landscaping elements required will also provide screening at the vehicle and pedestrian level coming up Route 5. The top 20 feet cannot be screened. If you look at the staff report and the outlined performance standard requirements the applicant has satisfied all of the standards other than a visible viewshed-type impact. The viewshed impact is in itself debatable.

Mr. Krapf asked if the applicant had examined any alternatives beyond the tower.

Mr. Romine stated that he was not aware of AT&T considering any alternatives.

Mr. Krapf stated that he shares Mr. Poole's concern. The proposed location is a prominent location.

Mr. Romine stated that they had conducted a community meeting. After providing several images of the viewshed the response from the community was not one of concern.

Mr. Mike Maddocks asked for clarification regarding visibility of the tower from certain locations.

Mr. Romine provided information regarding visibility.

Mr. Maddocks asked if the diameter of the tower is comparable to the diameter of the balloon.

Mr. Romine stated that typically the diameter of a "slick stick" is between two and three feet. The diameter of the balloon was five feet.

Mr. Fraley stated that the Commission did receive a letter from a community organization regarding the tower. Verizon will be an active participant in an industry forum on planning for wireless communication facilities. Planning for the facilities in a more comprehensive way would be advantageous for the community and the service carriers. Finding locations in the least

obtrusive areas is of foremost concern. By working in this manner the public can become more engaged in the process, and it can be more predictable for service providers. Mr. Fraley stated that he cannot support the proposal.

Mr. Henderson asked for more information regarding the service customers that would be served by the proposed tower. Specifically this would provide in-office capability for people in the office park nearby.

Mr. Romine stated yes. This area is lacking in-building coverage.

Mr. Henderson stated that there is a significant day-time population in the vicinity within the professional buildings. Also, the neighborhoods nearby would benefit from more reliable coverage. Mr. Henderson stated that he can support the proposed location.

Mr. Romine stated that coverage in the area needs to be addressed.

Mr. Krapf moved for denial of the proposed SUP. In a roll call vote the motion passed (5-2, AYE: Poole, Fraley, Woods, Krapf, Peck; NAY: Maddocks, Henderson).

E. Z-0003-2009/ SUP-0017-2009 Freedom Market

Mr. Vinciguerra stated that Mr. Philip Richardson has applied for a Rezoning from Limited Business to General Business with proffers and an SUP to permit the operation of a convenience store with fuel sales for a 1.1 acre parcel located at 5534 Centerville Road. A rezoning is necessary because fuel sales are not a permitted or specially permitted use in the Limited Business district. General Business permits convenience stores with fuel sales only with an SUP. The applicant is proposing a 2,400 square foot store and six gas pumps. The BOS approved a similar proposal in 1998 for a 2,700 square foot store and eight gas pumps. The SUP has since expired.

Staff found the proposed site design and architecture compatible with surrounding development and consistent with the Neighborhood Commercial designation and recommended approval of the application and acceptance of the voluntary proffers

Mr. Vinciguerra stated that the applicant proposed a change to Condition No. 8, Enhanced Landscaping, to reduce the required planting size from 133% to 125% of ordinance requirements. The applicant stated that it is difficult to purchase plant materials at 133% of ordinance requirements. Mr. Vinciguerra stated that staff supports the requested change.

Mr. Henderson stated that he only sees three pumps but six fueling positions on the plans.

Mr. Vinciguerra stated that is correct.

Mr. Fraley stated that he had had a meeting with the applicant some time ago with Ms. Kratter. A report had been issued directly thereafter.

Mr. Peck opened the public hearing.

Mr. Vernon Geddy representing the applicant spoke. Freedom Market has been proposed by Whitfield Bacon, LLC. Mr. Whitfield is a business owner with another convenience store, with fuel sales on Route 143 in Lee Hall. It is called the Patriot Market. The site is just over one acre. It is on the corner of Longhill and Centerville Road. It is zoned Limited Business and is Neighborhood Commercial on the Comprehensive Plan Land Use Map. It is inside the PSA. It was previously approved for a larger convenience store with fuel sales. The parcel is surrounded by the Longhill Grove Apartment complex. There is a veterinary office nearby, as well as the entrance to Freedom Park. It is a small, neighborhood-scale use. The proffers and conditions associated with this ensure that there will be no adverse impacts on the neighbors. We think it is a use that the neighbors will embrace and use. It is needed in the area. Mr. Geddy pointed out several features on an image.

Mr. Geddy pointed out that there are limited hours of operation and delivery. There are no outdoor merchandise sales. There are limits on lighting, noise, signage, and trash removal. There is dumpster screening, and enhanced buffer landscaping. The site layout and number of fueling islands are established by the Master Plan and conditions. There is architectural review provided for by the elevations. The applicant has not provided the Community Character Corridor landscaping to open up the view. It is an attractive building and is compatible with the neighboring buildings. The buildings have brick siding with a "V" architectural shape. There was a traffic study done by DRW. It accounted for existing development as well as approved, but un-built development in both corridors. There is a new traffic signal being installed at this intersection, with turn lanes and various improvements. The study has been submitted to and approved by VDOT, and the approval is granted under the access management regulations for the entrances. It is a Community Character Corridor buffer and is an extremely small site, 1.15 acres. There are two Community Character Corridors that meet here. The site would be severely limited with a full, 50-foot buffer. The applicant is proposing a 30-foot buffer with enhanced landscaping. The site would use the Longhill Grove BMP pond, which was designed to handle stormwater from this site. There is a swale by a retention area and pervious pavement incorporated into the design. There is a water conservation plan. Because of fuel use, there will be stormwater pollution prevention, spill prevention, a control plan and a proffer of mitigation for an impact on any JSCA facilities. This was a condition developed for Exxon and has been carried forward into these plans. Mr. Whitfield has met with the Forest Glen Neighborhood Association and briefed them on the proposal. He met with the management of the Longhill Grove Apartments and provided renderings for residents to see. He went to a second community meeting with the New Zion Baptist Church. Certain Commissioners were present along with Staff. Staff made a presentation on the Comprehensive Plan at that time. There have been a couple of petitions that have circulated in support of this proposal. The owner of the adjacent apartments has written a letter supporting it. The applicant agrees with the staff report and the proposed conditions. The applicant believes that it is consistent with the Neighborhood Commercial Designation on the Comprehensive Plan Land Use Map.

Mr. Henderson asked if the fuel offering will be branded and, if so, has it been identified?

Mr. Geddy stated that it is likely to be unbranded.

Mr. Henderson stated that on the rendering he did not see any signage on the canopy. He asked whether this was an omission or an intended circumstance?

Mr. Geddy stated that the applicant does not plan for there to be signage on the canopy.

Mr. Woods asked Mr. Geddy to expound on the anticipated community need.

Mr. Geddy stated that the closest gas station is near Olde Towne and Longhill on Route 60.

Mr. Woods noted that there is a gas station on News Road.

Mr. Fraley asked Mr. Geddy for more information regarding the conditions. One condition has to do with the intercoms, as stated: “Any intercom system designed to allow oral communications between employees and customers shall operate in such a manner that they would not be audible by adjacent property owners.” What does “not be audible” mean?

Mr. Geddy stated that it means you cannot hear it (from an adjacent property).

Mr. Murphy stated that he would be inclined to ask Mr. Geddy if his client intends to have an intercom system.

Mr. Richardson stated that he is not certain at this time. If there is a system put in place it would be used exclusively for communications between the attendant and customer.

Mr. Geddy stated that for that limited purpose it would not be difficult to make it inaudible at adjoining properties.

Mr. Fraley asked about the intended hours of operation. Mr. Fraley stated that the proposed 5:00 a.m. seems early.

Mr. Richardson stated that in this location they will serve a number of commuters, they would be leaving for work early. If you visit some of the convenience stores in the area they are busy at this time. The proposed hours are 5:00 a.m. till 11:00 p.m.

Mr. Fraley stated that delivery would take place between 7:00 a.m. and 8:00 p.m.

Mr. Vinciguerra pointed out that Staff drafted SUP conditions similar to the conditions adopted by the BOD for the Greensprings Grocery on Centerville Road.

Mr. Fraley stated that Mr. Geddy had referred to a prior application. Mr. Fraley asked Mr. Vinciguerra if the hours are comparable to this other proposal.

Mr. Vinciguerra stated that he believes they are consistent.

Mr. Geddy stated he was not certain.

Mr. Fraley stated that he was interested in those hours, as they were proposed for this site.

Mr. Peck opened the public hearing.

Dr. Bonnie Brown of 105 Crescent Drive spoke. Dr. Brown noted that she is very happy about the new CVS that will be coming in down the street. Dr. Brown stated that she is the owner of Jolly Pond Veterinary Hospital, near the site. The location of the clinic is 3800 Longhill Road, directly across from the street from the proposed development. She stated she is against the proposal. She is concerned about the added traffic that would be generated. This is an already very busy and at times dangerous intersection. Dr. Brown stated when she first built in 2003 this was a relatively quiet intersection. Over the last seven years several new housing developments have been added. The Wisk Complex, Freedom Park, Warhill School, Matoaka Elementary, and the Thomas Nelson Community College have all been brought in over the past seven years. This coming September, Hornsby Middle School and Blakely Elementary School will add volume to the busy Jolly Pond Road near this intersection. The bus traffic alone will cause this Longhill/Centerville intersection to be a trouble spot for motorists. A gas station and convenience store have a very high turnover of cars every hour, making turns into and out of the business an unwise choice for this intersection. A similar situation exists at the intersection of 199 and Jamestown Road where a 7-11 was located prior to the 199 bypass becoming a busy thru fare. The parking lot of that business has been reduced with each change in the traffic pattern, leaving a very narrow and at times harrowing entrance and exit of cars into the area. The intersection of Longhill and Centerville is already a busy intersection. The piece of property in question is limited in scope to accommodate reductions that will be necessary in the very near future to keep the intersection safe for motorists and school buses alike. My second concern is the anticipated increase in foot traffic to and from the apartment complex. Over the last seven years Dr. Brown stated she has been a victim of vandalism ranging from stolen light bulbs to one or two broken windows per year. Loitering was a problem in their parking lot necessitating the erection of a fence around the property. The fence has greatly reduced the foot traffic around the parking lot. We are grateful to the James City County Police Department who frequently parks in the parking lot to keep an eye on things. The area could become a busy place during late evening hours, and loitering could once again become a concern for the safety of my business, my employees, as well as the residents in the area. I have no problem with progress and understand the need for the County to allow businesses to come in and generate services for the citizens and tax revenue for the County. Zoning changes are frequently positive for the community. One only has to remember the high crime and abandoned apartments that were replaced by the well kept and nicely managed apartments we now have at this very intersection. These apartments were enabled to be built because of the zoning changes made, allowing a higher density complex. That zoning change made this corner safer and a more attractive place to live and work. The businesses permitted with the current zoning designation would be appropriate for the location and, would have little negative impact on the traffic patterns and overall safety of the area. The proposed zoning changes and SUP's are a poor choice and would have a negative impact on this section of town.

Mr. Peck closed the public hearing.

Mr. Woods asked Mr. Vinciguerra if there were any traffic studies or analysis available for this area.

Mr. Vinciguerra stated that within the packet of materials there is a traffic study. The traffic study does conclude that an additional delay would be caused by the proposed development. The capacity of Longhill Road and Centerville Road can handle the expected traffic. VDOT concurs with this analysis.

Mr. Woods asked for more detail regarding the traffic light previously discussed.

Mr. Vinciguerra stated that the County will be putting up a new traffic light at the intersection as well as creating new turn lanes. The Master Plan shows what the intersection will look like following its construction within eight months.

Mr. Woods asked if the new traffic pattern has been incorporated into the analysis.

Mr. Vinciguerra stated that the traffic analysis includes the new turn lanes and the traffic light.

Mr. Poole stated that he is very impressed with the proposal. Externally the appearance is attractive and an enhancement to the area. Mr. Poole stated that he would hope, if approved, there would not be a great deal of convenience store debris. The music, commercials, and advertisements seen at many convenience stores is very unattractive. Mr. Poole stated that he can support this rezoning. It fits into the other elements already occurring in the area. It does not have a preponderance of gas pumps. He stated he is comfortable with the conditions as they are written as well as the landscaping. With the density of residential units in the area this development is appropriate. Mr. Poole stated that he would appreciate the applicant enhancing condition number seven, about temporary signage. Limiting signage would be appreciated.

Mr. Krapf thanked Dr. Brown for speaking. Her concerns are not unreasonable. If you consider this proposal on the grounds of compatibility with zoning, land use designations and the architecture it is a good fit. If there is an increase of loitering as a result of this development Dr. Brown should notify Staff. Mr. Krapf stated that he supports this proposal.

Mr. Henderson moved for approval of the proposal as amended, with the landscape reduction from 133% to 125% of required planting size requirements. In a unanimous roll call vote, the motion passed (7-0).

9. PLANNING DIRECTOR'S REPORT

There were no Planning Director comments.

10. COMMISSION DISCUSSIONS AND REQUESTS

Mr. Peck asked if any Commissioner would wish to speak, none responded.

11. ADJOURNMENT

Mr. Poole moved to adjourn.

The meeting was adjourned at 10:55 p.m.

Reese Peck, Chairman

Allen J. Murphy, Secretary

Development Review Committee Actions Report
April 28, 2010

S-0048-2010

Stonehouse Tract 12

DRC Action:

The DRC voted 3-0 to grant preliminary approval of the subdivision plan subject to agency comments and with the note that staff has reviewed the construction drawings against the approved proffers for Stonehouse and found the plans in compliance.

SP-0028-2010

The Pavilion at Williamsburg Place

DRC Action:

The DRC voted 3-0 to grant preliminary approval to the site plan subject to agency comments.

REZONING-0002-2009 / MP-0002-2009: Governor's Grove Section III: Proffer and Master Plan Amendment

Staff Report for the May 5, 2010 Planning Commission Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:

Building F Board Room; County Government Complex

July 1, 2009	(applicant deferral)
August 5, 2009	(applicant deferral)
September 9, 2009	(applicant deferral)
December 2, 2009	(applicant deferral)
January 13, 2010	(applicant deferral)
April 7, 2010	(applicant deferral)
May 5, 2010	(applicant deferral)

Board of Supervisors:

T.B.D.

SUMMARY FACTS

Applicant:

Mr. Vernon Geddy, III, on behalf of Jard Properties

Land Owner:

Five Forks II, LLC and Five Forks III, LLC

Proposal:

To modify the proffers and master plan approved with rezoning Z-0009-2005 / MP-0006-2005 to allow for the applicant's desired roadway entrance configuration for the Section III Commercial Parcel of the Governor's Grove development.

Location:

4399 and 4365 John Tyler Highway (Route 5)

Tax Map/Parcel No.:

4710100115 and 4620100014A, respectively

Parcel Size:

2.965 acres and 5.121 acres, respectively (8.086 acres in total)

Existing Zoning:

MU, Mixed Use, with Proffers

Proposed Zoning:

MU, Mixed Use, with amended Proffers

Comprehensive Plan:

Low Density Residential and Moderate Density Residential on the 4399 John Tyler Highway (Section 3 / commercial) parcel, and Moderate Density Residential on the 4365 John Tyler Highway (Section 2 / open space) parcel

Primary Service Area:

Inside

STAFF RECOMMENDATION

The applicant has requested that this case be deferred until June 2, 2010. Planning staff concurs with this decision on the part of the applicant, and recommends that the Planning Commission defer this case as requested.

Staff Contact: Kathryn Sipes

Phone: 253-6685

Kathryn Sipes, Senior Planner

Attachment: Deferral request from applicant

GEDDY, HARRIS, FRANCK & HICKMAN, L.L.P.

ATTORNEYS AT LAW

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April 27, 2010

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VERNON M. GEDDY, JR. (1926-2005)
STEPHEN D. HARRIS
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VERNON M. GEDDY, III
SUSANNA B. HICKMAN
RICHARD H. RIZK
ANDREW M. FRANCK

Ms. Kate Sipes
James City County
101-A Mounts Bay Road
Williamsburg, Virginia 23185

Re: Governor's Grove Section 3 – Z-0002-2009 and MP-0002-2009

Dear Kate:

I am writing on behalf of the applicant to request that the Planning Commission defer consideration of this application until its June meeting.

Very truly yours,

GEDDY, HARRIS, FRANCK & HICKMAN, LLP



Vernon M. Geddy, III

VMG/

cc: Mr. James Jard

SPECIAL USE PERMIT – 0004 - 2010. Courthouse Commons
Staff Report for the May 5, 2010, Planning Commission Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

May 5, 2010 7:00 p.m.
TBD 7:00 p.m.

SUMMARY FACTS

Applicant: Gregory R. Davis, on behalf of New Town Six, LLC

Land Owner: Arthur S. Casey of New Town Six, LLC

Proposal: Up to 83,000 square feet of commercial/office development

Location: 5223 and 5227 Monticello Avenue, 4023 and 4025 Ironbound Road, and
113 New Quarter Drive

Tax Map/Parcel Nos.: 3840100003G, 3840100003E, 3840100003F, 3840100004, 3840100004B,
and 3840100004A

Parcel Size: 9.06 acres total

Zoning: M-1, Limited Business/Industrial District

Comprehensive Plan: MU, Mixed Use – New Town

Primary Service Area: Inside

STAFF RECOMMENDATION

Staff recommends that consideration of this case be deferred to the June 2, 2010 meeting for the following reasons:

- This site is subject to VDOT's 527 Traffic Study review process, and the traffic engineer has indicated that there are several revisions that will be made to the traffic study document submitted to VDOT and the County in March, 2010.
- At a meeting on April 22, 2010 the traffic engineer indicated that in addition to revisions to the traffic study submitted for 527 purposes, there was additional information and revisions which will be submitted to the County (as well as VDOT), but which have not yet been received.
- VDOT comments on the March, 2010 traffic study have not yet been received.
- Staff has concerns about the Community Character Corridor landscape area.
- Staff has concerns about adherence to the recommendations of the Comprehensive Plan.

The applicant concurs with deferral of this case to the June 2nd meeting.

Staff Contact: Ellen Cook

Phone: 253-6685

Ellen Cook

REZONING-0001-2009/SPECIAL USE PERMIT-0007-2010/MP-0001-2009. Colonial Heritage Deer Lake.

Staff Report for the May 5, 2010 Planning Commission Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:

Board of Supervisors:

Building F Board Room; County Government Complex

May 5, 2010

7:00 p.m.

June 8, 2010

7:00 p.m. (tentative)

SUMMARY FACTS

Applicant:

Mr. Greg Davis, Kaufman and Canoles

Land Owner:

Lennar Corporation

Proposal:

To rezone a 130.3 acre portion of the 731.5 acre Deer Lake parcel located at 499 Jolly Pond Road from A-1, General Agricultural, with proffers, to MU, Mixed-Use, with amended proffers, with a Special Use Permit for the extension of public utilities.

Location:

499 Jolly Pond Road.

Tax Map/Parcel Nos.:

2240100007

Parcel Size:

731.5 acres (130.3 acres subject to the new rezoning)

Existing Zoning:

A-1, General Agricultural and MU, Mixed-Use with proffers

Proposed Zoning:

MU, Mixed-Use, with amended proffers

Comprehensive Plan:

Rural Lands and Low-Density Residential

Primary Service Area:

Outside, but requesting public water and sewer service

STAFF RECOMMENDATION

Staff finds the proposal to be clearly contrary to the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation. Staff also finds this proposal violates the Primary Service Area as a growth management tool, as it proposes an extension of suburban residential development outside the PSA. While the proposed 90 acre conservation open space area provides a substantial contiguous amount of land for conservation, on balance, this feature with other aspects of the proposed design show no distinct environmental benefit compared to the rural cluster. Given the recent redesign of the stormwater master plan, the 90 acres of open space is a necessity in terms of meeting the required 10-point stormwater credit system. Regardless of any positive impact created by the proposed residential cluster, under this new proposal 66 acres of land would be rezoned Mixed-Use and developed at a proposed density of 4.6 dwelling units an acre, which is much greater than the .33 dwelling units an acre recommended for Rural Lands outside the PSA. Furthermore, the approved rural cluster development potential for this area is .226 dwelling units an acre. Many of the proposed units would not be realized on this land if not rezoned. Any perceived benefits from the proposed residential cluster must also take into account the impact that will be created by the new Mixed-Use area as well. This amended application is also not consistent with the Board of Supervisors adopted cash proffer policy. Staff recommends the Planning Commission recommend denial of this rezoning, master plan amendment and the special use permit applications to the Board of Supervisors.

Proposed Changes Made Since Planning Commission Meeting

Based on feedback from the Planning Commission at its April 7, 2010 meeting, the applicant has amended their previous application. Since the Planning Commission recommended approval based on the “residential cluster” being accessed through Colonial Heritage, rather than through Jolly Pond Road, the R-2 zoning district was not a viable option. The R-2, General Residential, zoning district does not allow for private streets. Since the rest of the Colonial Heritage Master Plan is served by private streets, the best possible alternative for the applicant was to have the “cluster” development zoned Mixed-Use as well. No other changes are proposed to the Master Plan with this new application other than the change in requested zoning from R-2 to MU to allow for the private streets.

The traffic impact section has been amended to reflect the 50-lot cluster entering and exiting the Colonial Heritage development through Richmond Road or Centerville Road, rather than through Jolly Pond Road. The report also contains new environmental evaluation of the additional RPA road crossing that would be required with the new development plan alignment.

Since the 50-lot clustered development is now being included under the same age-restricted guidelines as the rest of the Colonial Heritage Development, the public facility section has been amended to remove school children generation discussions. Staff would also note that the applicant is no longer offering cash proffers for schools under this application. Staff would note that the Board of Supervisors adopted cash proffer policy suggests the “age-restricted” developments should adhere to the policy and are not exempt.

These changes have been highlighted in the report.

Proffers

The signed proffer package was signed and submitted in accordance with the James City County Proffer Policy.

Changes to the proffers include:

- removal of the cash proffer policy for schools for \$17,115.00 per each single-family detached dwelling unit
- alteration to the Parks and Recreation proffer to include a recreational trail in the development, rather than pay a per unit amount
- removal of the traffic impact turn lane analysis for Jolly Pond road (not needed anymore)

Project History

On November 27, 2001, the Board of Supervisors approved rezoning and master plan applications (Case Nos. Z-4-00 and MP-1-01) for a 2,000-unit, gated and age-restricted community known as Colonial Heritage at Williamsburg. The applications rezoned approximately 777 acres from A-1, General Agricultural, and M-1, Limited Business/Industrial, to MU, Mixed Use, with proffers. The master plan for the development included 425,000 square feet of commercial development fronting on Richmond Road. The owner, Lennar Corporation, has marketed the community to retirees and those approaching retirement, and restricts the age of residents to 55 and above through proffers and covenants. The community focuses on an 18-hole golf course with associated amenities and provides several residential products, including single-family, townhomes, and multifamily condominiums.

In 2004, the applicant filed a rezoning application to incorporate the approximately 731-acre Boy Scout property into the existing Colonial Heritage at Williamsburg development. The applicant received approval to rezone approximately 229 acres from A-1, General Agricultural, to MU, Mixed Use, with proffers to incorporate the PSA portion of the Boy Scout property into the previously approved Colonial Heritage development with no increase to the approved 2,000 residential dwelling units and the entire proffer package was amended and restated at that time. The applicants also applied to rezone approximately 503 acres from A-1, General Agricultural, to A-1, General Agricultural, with proffers. The 503-acre portion of the Boy Scout property located outside the PSA would be subject to the amended and restated proffers but would not be subject to the amended master plan. The amended Colonial Heritage at Williamsburg master plan proposed up to 1,400 single-family residential lots, 800 townhomes, 240 condominiums (subject to the proffered 2,000-unit cap), and 425,000 square feet of commercial, retail, and office space, 18 holes of golf course, amenities, and open space.

The 229 acre portion of the Boy Scout property located within the PSA is designated Low-Density Residential on the Comprehensive Plan Land Use Map. The 503-acre portion of the Boy Scout property located outside the PSA is designated Rural Lands on the Comprehensive Plan Land Use Map.

In addition, the applicants applied for a special use permit to allow a 50-lot rural cluster development (SUP-0021-2004). The proposed rural cluster would be located on the portion of the Boy Scout Property located outside the PSA.

Table No. 1-Comparison between revised Applications for the Colonial Heritage

	2001 Application	2004 Application	2009 Application
Scope of Project	<p>Rezoning application: To rezone 777 acres from A-1 to MU, with proffers.</p> <p>2,000-unit, gated and age-restricted community and 425,000 square feet of commercial development fronting on Richmond Road</p>	<p>Rezoning application: Incorporated 732-acre Boy Scout property into existing Colonial Heritage Master Plan. Rezoned 229 acres of that property from A-1 to MU. The remaining 503-acres was rezoned from A-1 to A-1 with proffers, which dedicated 282-acres as conservation open space. The 2,000 unit cap did not change. The entire proffer package was amended and restated at that time.</p> <p>SUP application: From the 503-acre A-1 property, the 221 acres <u>not</u> dedicated as open space could also contain a 50-lot rural cluster which was located outside the PSA and would be sold at market rate, but was not age-restricted.</p>	<p>Rezoning application: From the original 503 acres that was left as A-1 in 2004 there was 221 acres that was not dedicated as open space. Of the 221 acres, 130.3 acres would be rezoned to Mixed-Use. Approximately 66 of those acres would be rolled into Land Bay 7&8, while the remainder would be developed as a 50-lot cluster development. The remaining 90 acres will be dedicated as additional conservation open space. The 90 acres will remain A-1.</p>

Project Description

Mr. Greg Davis, of Kaufman and Canoles, on behalf of the Lennar Corporation, has applied to rezone a 130.3 acre portion of the 731.5 acre Deer Lake parcel located at 499 Jolly Pond Road from A-1, General Agricultural, with proffers, to MU, Mixed-Use, with amended proffers, with a Special Use Permit for the extension of public utilities. The applicant is no longer requesting a Special Use Permit for a residential cluster, because the density and yard requirements gained by the cluster overlay are achievable under the MU zoning designation. The cluster design for the 50-unit area southwest of Deer Lake is still proposed as the same design as under the old proposal.

The existing Master Plan for Colonial Heritage has a unit cap of 2000, which includes a 50-lot rural cluster on approximately 221 acres of land located outside the PSA and zoned A-1. On that same 221 acres, the new proposal is seeking rezone 66.4 acres to Mixed-Use to be included in the existing Land Bays 7&8, and also rezone 63.9 acres to Mixed-Use for the 50 lot cluster. Both of these applications are requesting an extension of public water/sewer. The applicant would dedicate the remaining 90 acres zoned A-1 as conservation area. The applicant is not seeking a change to the total 2000 unit cap of the Colonial Heritage Master Plan.

The Primary Service Area line was affirmed by the Board of Supervisors in November of 2009. A land use application change request was submitted by the applicant to allow essentially the same rezoning proposal that would have moved the PSA line to include this area of land. However, the Board of Supervisors did not approve the change during the Comprehensive Plan update process and therefore this land (the 503 acres of the Deer Lake parcel not a part of the Colonial Heritage Master Plan) is still located outside the PSA and is designated Rural Lands on the Comprehensive Plan Land Use Map.

All references made to the “rural cluster” refer to the 50-lot rural cluster previously approved under SUP-0021-2004. References made to the “residential cluster” refer to the current rezoning proposal with 50-lots to the

southwest of Deer Lake.

Along with attachments showing the newly proposed Master Plan, staff has also included the Master Plan for the rural cluster (approved under SUP-0021-2004) along with those approved SUP conditions as well.

Surrounding Zoning and Development

Colonial Heritage is located along Richmond Road across from the Pottery Factory and adjacent to the Colonial Towne Plaza shopping center. The Deer Lake portion of this development extends from the intersection of Jolly Pond Road and Centerville Road down Cranston's Mill Pond across the street from the School Operations Center. While there is MU, Mixed-Use zoned parcels that are a part of the Colonial Heritage Master Plan area, a majority of the parcels adjacent to the Deer Lake area are zoned A-1, General Agricultural.

Proffers

The existing proffers for the Colonial Heritage Mixed-Use zoned property remain unchanged and would extend to the newly proposed Mixed-Use land. The previously proposed 50-lot rural cluster was subject to both the proffers and to SUP conditions (SUP-0021-2004).

- Existing proffers for Colonial Heritage remain unchanged and extend to the new Mixed-Use area
- Water Conservation standards to be approved by the JCSA
- Additional 90 acres of conservation open space to be dedicated
- Adherence to the Yarmouth Creek Watershed Plan goals and priorities
- Implementation of the County Streetscape guidelines
- Neighborhood Recreation Facility and adherence to the Parks and Recreation proffer guidelines
- Archeology and Natural Resource Inventory studies
- Owners Association
- JCSA cash contributions
- Private streets, including maintenance fund establishment
- 40% of cluster property permanently preserved as open space in the 50-lot development
- 35 foot buffer for structures from steep slopes and 20 foot buffer for clearing from steep slopes
- 150 foot buffer along Jolly Pond Road

PUBLIC IMPACTS

1. Environmental Impacts

Watershed: Yarmouth Creek

Proffers:

- 35 foot buffer for structures from steep slopes and 20 foot buffer for clearing from steep slopes
- 90 acres of additional conservation area/open space along Deer Lake
- Adherence to the Yarmouth Creek Watershed Plan goals and priorities

Environmental Staff Conclusions: The Environmental Division has reviewed the application and does not believe the amended Master Plan, Community Impact Statement and proffers offer added benefit over what is already been approved for the site and offers the following analysis. Additionally, more detailed plan review will occur when development plans are submitted.

Environmental staff evaluated the proposed residential cluster against the previously approved rural cluster and offers the following pros and cons for the new proposal:

Pros:

- The new residential cluster would be subject to County Special Stormwater Criteria.

- The new development would also be subject to the Board of Supervisors resolution for Resource Management Area (RMA) buffers for legislative cases. This would require a 50 ft. buffer on intermittent streams and non-Resource Protection Area (RPA) wetlands as well as a 200 ft. buffer beyond the 100' RPA buffer on the non-tidal mainstem of Yarmouth Creek. The 200 ft. buffer on the mainstem would be already contained in the 90 acre conservation area. The rural cluster would not be subject to the BOS resolution as the SUP was approved before the resolution and the plan has sufficient lot and road level detail to grandfather it under the old requirements.
- Public sewer service would be provided, thus eliminating the need for septic drainfield systems, which if not properly designed and maintained, could be a source of nonpoint source pollution in the watershed.
- The new residential cluster plan would also be more consistent with priority conservation area recommendations from the Yarmouth Creek Watershed Management Plan (Priority Area C-4). Area C-4 is a very large area proposed in the watershed plan, basically stretching from Deer Lake to Cranstons Mill Pond Road. However, it should be noted that 282 acres is already being dedicated in this area, regardless of the approval of this new rezoning proposal to meet watershed management plan priority conservation area requirements.

Cons:

- It is anticipated that total impervious cover between the two development scenarios would be equal. However, while the rural cluster would spread out the impervious cover over 219 acres, while the impervious cover for the newly proposed 50-lot design would be squeezed into the land bay area in a higher density format. This would result in a loss of a “distributed” impact approach for impacts associated with impervious cover (stormwater water quality and quantity-volume). The residential cluster would concentrate impact to one stream/wetland segment and cause accelerated impact to the natural receiving stream/wetland system on the east inflow stream to Deer Lake. The rural cluster would distribute it more evenly across the entire site.
- The overall open space design for the proposed rezoning consists of greater density at the south and east sides of the tract but with a large tract of open space in the north and is not consistent with Better Site Design/Natural Open Space layout practice for a site with these characteristics. Normally natural open spaces are integrated throughout the entire development and blend the manmade-to-natural landscape and are located in areas that conserve features worthy of protection such as natural streams, wetlands, lakes, etc.
- Based on topography and the requested density, it is expected that the MU tracts would need to be mass cleared and graded, during development. This is near certain as the already completed sections of Colonial Heritage have required mass clearing and grading already. Mass clearing and grading generally go against two primary performance standards of the County’s Chesapeake Bay ordinance including: limit land disturbing to the area necessary and preserve existing vegetation to the maximum extent practicable. This is a major difference between the two development scenarios. No mass clearing and grading is expected of lot development areas in the rural cluster. Infrastructure and lot development would strive to honor existing topography. It should be noted that if clearing and grading are required to balance the overall site layout, the Chesapeake Bay Preservation ordinance allows this as a means of consideration.
- Mass clearing and grading in the residential cluster scenario could conflict with the RMA buffer resolution, especially the 50’ intermittent stream buffers. This conflict could result in a reduction of the number of proposed lots or the need to issue waivers to the Policy.
- The approved rural cluster would be spread across 221 acres on both the east and west sides of Deer Lake. The proposed overall density would be no greater than .226 dwelling units an acre. With the

proposed rezoning, 66.4 acres to the east of Deer Lake would be rezoned to Mixed-Use and would be developed at a density of up to 4.6 dwelling units an acre. This sizable density increase adjacent to Deer Lake could threaten sensitive environmental features more than the rural cluster option.

- Chesapeake Bay Ordinance exceptions would be needed for utility crossings. Sewer crossings are not administratively approvable, and would require the Chesapeake Bay Board to grant waivers through the exception process. This would not be expected for the rural cluster.
- Additional impacts (i.e. road and utility crossings) will require modifications and amendments to the existing permits from both U.S. Army Corps of Engineers and the Department of Environmental Quality.
- Both the U.S. Army Corps of Engineer and the DEQ permits already require a 50' intermittent stream buffer in their project specific conditions, so many of the perceived benefits of applying the Yarmouth Creek Watershed Management Plan are already covered under the existing permit.
- The existing stormwater master plan was revised for the purposes of the 50-lot cluster to substitute certain water quality components with others. One of these items includes the 90-acres of conservation area that is being dedicated in conservation easement to satisfy the stormwater management 10-point system requirements. Land that was previously allocated as natural open space credit for stormwater points, under the new proposal, is being developed as Mixed-Use. The applicant must make up for that shift in credit by setting aside additional acreage dedicated as open space. Essentially, the applicant is consolidating the enhanced RPA buffers to a 90-acre site, in lieu of a linear distribution along the limits of the RPA.

Staff would note that both developments (the previously approved rural cluster and newly proposed MU residential cluster) show an equal amount of environmental benefits. Therefore, the proposed rezoning, based on the availability of information, cannot show distinct environmental benefit compared to the rural cluster from an Environmental analysis.

2. Utilities

The site is located outside the Primary Service Area, and the 50-lot rural cluster would be served by a central well and septic fields. The application proposes water and sewer service be extended from the existing lines that serve the Colonial Heritage Development and from existing service along Jolly Pond Road. The 50-lot rural cluster would have been served by a central well, which from a financial standpoint, costs the County money once it is taken over by the JCSCA. Recommendations to increase the cost from developers to the JCSCA upon acceptance were recommended in the 2009 Comprehensive Plan to help off-set this shortfall, but have not been implemented to this point. However, the Board of Supervisors had approved a resolution to proceed with consideration of this matter at their second Board meeting in June.

Proffers:

- Water Conservation standards to be reviewed and approved by the JCSCA.
- JCSCA cash contributions per unit
- All units shall be connected to gravity sewer

JCSA Staff Conclusions: The James City Service Authority has reviewed the proposal and concurs with the Master Plan and proffers as proposed. During the development plan phase, the applicant will be required to confirm the water/sewer capacity of the existing service in the area to ensure it is capable of supporting the additional development.

3. Traffic

The unit cap for the development is not changing under this proposal. The total number of units for the Colonial Heritage Master Plan remains at 2,000. The traffic study conducted by the applicant in 2004 is still valid.

The proposed 50 single-family lots have the potential to generate 480 daily, 38 AM peak hour, and 51 PM peak hour trips on the roadway network based on ITE trip generation rates. The trip generation appears to be consistent with the existing approved use of the site. However, the trips will now be generated on Richmond Road (Lightfoot corridor) or Centerville Road, rather than onto Jolly Pond Road, as was the case with the previous proposal.

2006 Annual Average Daily Traffic Volume (per VDOT) (Richmond Road): From Croaker Road to Centerville Road there were 19,000 trips. James City County's 2007 traffic count data for Route 60 (Richmond Road) from Croaker Road to Lightfoot Road there were 21,892 trips.

2035 Daily Traffic Volume Projected: For Richmond Road, between Croaker and Centerville there is a projection of 33,500 trips. This section of Route 60 is listed in the "watch" category.

Proffers:

- None at this time.

VDOT Conclusions: VDOT reviewed the Master Plan and concurs that the proposal will not generate any additional vehicle trips over what is currently approved under the existing Colonial Heritage Master Plan.

PRIVATE STREETS:

Section 24-528 (b) of the Zoning Ordinance states that: *'Private streets may be permitted upon approval of the board of supervisors and shall be coordinated with existing or planned streets of both the master plan and the county Comprehensive Plan. Private streets shown on the development plan shall meet the requirements of the Virginia Department of Transportation.'* The applicant has indicated the possibility of private streets in the some areas of the development, as shown in the master plan, and has proffered (Proffer #12) maintenance of the private streets through the Home Owners Association.

4. Fiscal Impact

A Fiscal Impact Study prepared for this development by the Wessex Group, and revised in March 2010, (attached to this report) was provided along with the rezoning application for County review. It should be noted that the approved rural cluster was not to be a part of the Colonial Heritage development (age-restricted) and was to be sold at market rate. At one point, during the Comprehensive plan Land Use Map Designation change request process, the applicant had considered developing these units as workforce housing, but the units will continue to be sold at market rate regardless of whether this rezoning be approved. The Fiscal Impact Study continues to evaluate all three proposals (market rate separate from Colonial Heritage, market rate as a part of Colonial Heritage, and workforce housing separate from Colonial Heritage), but the applicant is proposing the 50-lot cluster to be market rate units as a part of the Colonial Heritage "age-restricted" community.

Staff Comments: Neither the previously approved rural cluster, nor the proposed residential cluster provide a positive fiscal impact to the County, but the Colonial Heritage development, as a whole, remains fiscally positive. The Board of Supervisors evaluated the 50-lot rural cluster as a part of the rezoning approved in 2004, and this proposed rezoning does not request any additional units to what is already approved.

5. Public Facilities

Proffers:

- The applicant is no longer offering to adhere to the cash proffer policy. The BOS adopted policy does not exempt "age-restricted" developments, so therefore this application is not in compliance.

Staff Comments: This project proposes 50 "age-restricted" single-family dwelling units, which will not generate additional school children. However, the BOS adopted cash proffer policy does not exempt "age-restricted" units from the policy. Since cash proffers are no longer offered under this application the project is

no longer in compliance with the policy.

6. Parks and Recreation

Proffers:

- A contribution in the amount of Ninety-four dollars and 82/100 Dollars (\$94.82) shall be made to the County for each Residential Unit developed on the Cluster Property in accordance with the County Comprehensive Parks and Recreation Plan proffer guidelines. The proffers also require one park at least .3 acres, a minimum of .25 of a mile biking/jogging trail, and a minimum of one facility designed for an age-appropriate activity.

Staff Comments: Staff finds that the proffers meet the requirements established by the Parks and Recreation proffer guidelines.

Comprehensive Plan

Land Use

Designation	<p><i>Low-Density Residential and Rural Lands (Page 152 and 153):</i></p> <p>Rural Lands are areas containing farms, forests, and scattered houses exclusively outside of the Primary Service Area (PSA), where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for in the future. Recommended uses for areas designated Rural Lands are agricultural and forestal activities, together with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.</p> <p>Recommended uses for Low-Density Residential include, very limited commercial establishments, churches, single family homes, duplexes, and cluster housing with a recommended gross density of 1 unit per acre up to 4 units per acre in developments that offer particular public benefits.</p> <p>Staff Comment: All of the existing Colonial Heritage master planned development is currently located inside the Primary Service Area on land designated Low-Density Residential or Mixed-Use, with the exception of the 50-lot rural cluster, which is consistent with its' Rural Lands designation.</p> <p>The new proposed development is all located on lands designated Rural Lands and proposes extension of public water and sewer outside the Primary Service Area to serve a suburban residential development design. The Rural Lands description notes that lands are exclusively outside the PSA, where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for the future. None of the proposed development, including the 50-lot cluster, is consistent with the Rural Lands Comprehensive Plan designation, and the development would be located in areas where utilities and services were not planned for.</p> <p>Furthermore, the plan is a violation of the PSA growth management policy and sets a precedent for expansion of private development outside the PSA. The type and intensity of development already approved is consistent with the affirmation of the PSA boundary by the Board of Supervisors in November 2009 and consistent with the Rural Lands description in the Comprehensive Plan. Approved development in the rural cluster outside the PSA is very low density and consists of 50 lots on 221 acres or .226 units an acre.</p> <p>The proposed density for the new area in Land Bay 8 of the Colonial Heritage Master Plan on this acreage would be 4.6 dwelling units an acre. Regardless of any</p>
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	<p>positive impact created by the proposed residential cluster, 66 acres of land would be developed at this proposed density of 4.6 dwelling units an acre compared to a .33 dwelling unit an acre recommendation for lands designated Rural Lands and located outside the PSA. Again, the by-right development potential for this area is .226 dwelling units an acre. Many of the proposed units would not be realized on this new land if not rezoned.</p>
Density	<p><i>Recommended Rural Lands Density-Page 152:</i> In terms of the desired scale of rural land developments, very low density development, significantly lower than currently permitted, or rural clusters on a small scale which meet the design guidelines of the Rural Lands Development Standards are encouraged while large concentrations of residential development are strongly discouraged as such subdivisions interrupt rural qualities and significantly increase the demand for urban services and transportation facilities.</p> <p>Staff Comment: The current density of rural lands is one dwelling unit per three acres. The Comprehensive Plan recommends development be significantly lower than this, however, the proposed Master Plan would have a density of 4.4 dwelling units an acre for the Mixed-Use acreage and a density of almost one dwelling unit an acre for the 50-lot cluster. The language in this section also <i>strongly discourages</i> concentrations of residential development as such subdivisions interrupt rural qualities and significantly increase demand for urban services and transportation facilities.</p>
Development Standards	<p><i>1. Use and Character Compatibility (a)- Page 152:</i> Uses in Rural Lands should preserve the natural, wooded, and rural character of the County. Particular attention should be given to the following: (i) locating structures and uses outside of sensitive areas, (ii) maintaining existing topography, vegetation, trees, and tree lines to the maximum extent possible, especially along roads and between uses, (vii) minimizing the number of street and driveway intersections along the main road by providing common driveways and interconnection of development.</p> <p><i>2. Residential Rural Clusters-Page 152:</i></p> <p>a) Minimize the impact of residential development by preserving a substantial amount (at least two-thirds) of the site in large undivided blocks of land for permanent open space.</p> <p>b) Appropriate goals for open space and lot layout include preservation of farmland, open fields, scenic vistas, woodland, meadows, wildlife habitats, and vegetation; protection of environmentally sensitive land including wetlands, stream corridors, and steep slopes; roadway buffers; and preservation of scenic views.</p> <p>c) The goals of the open space and lot layout should be shown on a conceptual plan, and the design should support these goals. For instance, if preservation of agriculture is one of the main goals of the open space, the open space should encompass that land which is most suitable for farming (topography, soils). Blocks of land large enough to support a farm should be set aside in the open space. In addition, potential conflicts between the uses should be minimized by designing buffers between the farmland and the residential development. Similar design considerations would be expected to support other open space goals as well.</p> <p>d) The open space should be placed in a conservation easement or the equivalent to ensure that the land will remain undeveloped.</p> <p>e) The visibility of the development from the main road should be minimized. It is recommended that lots be placed along an access road rather than along the main route so that the view from the main route still appears rural in nature.</p> <p>Staff Comment: All sites in the County have different characteristics that need to be taken into account when determining site design standards for cluster development. As explained in the Environmental Impact discussion section earlier in this application, there are both positive and negative site design features for the 50-lot</p>

	<p>cluster compared to the already approved rural cluster.</p> <p>Normally natural open spaces are integrated throughout the entire development and blend the manmade-to-natural landscape and are located in areas that conserve features worthy of protection such as natural streams, wetlands, lakes, etc. While the proposed 90 acre conservation open space area provides a substantial contiguous amount of land for conservation, other aspects of the design have greater environmental impacts than the rural cluster. Mass clearing and grading could impact intermittent streams and the greater density proposed for the eastern side of Deer Lake (because of the Mixed-Use area) could threaten endangered species conservation area more than the rural cluster option.</p> <p>The goals of the rural cluster description are to preserve farmland and agricultural land. It was not the intent of this description to encourage low-density residential densities on rural lands as long as portions of the property were preserved as open space. Rural Land's density standards also apply, and the density of the Mixed-Use area should be considered along with the consideration of the open space conservation area. More land is being developed than just the residential cluster area, and this land is not being developed with a rural cluster design. The development proposal as a whole will have an impact on Rural Lands.</p>
Goals, strategies and actions	<p><i>Action 1.1.3-Page 163:</i> Use policy and ordinance tools to ensure the provision of open space. In particular, maintain or increase incentives for cluster development in exchange for additional open space that provides significant benefits to the community.</p> <p><i>Strategy #1.4- Page 164:</i> Direct growth into designated growth areas in an efficient and low-impact manner.</p> <p><i>Action 1.4.1-Page 164:</i> Enforce policies of the Comprehensive Plan to steer growth to appropriate sites in the Primary Service Area.</p> <p><i>Action 1.4.4-Page 165:</i> Restrict the extension of water and sewer utilities, and the formation of new central sewer systems in areas outside the PSA. Extend water and sewer service in the Primary Service Area according to a phased plan in accordance with the County's Comprehensive Plan and JCSA master water/sewer planning.</p> <p>Staff Comment: This proposal is clearly contrary to Actions 1.4.1 and 1.4.4 of the Comprehensive Plan. The Comprehensive Plan uses the Primary Service to direct growth to appropriate sites and restrict the extension of water and sewer utilities. The plan proposes an extension of public utilities outside the PSA and sets a precedent for that extension for private development.</p> <p>The applicant has already proffered to conserve 282 acres of the Boy Scout property under the existing Colonial Heritage Master Plan. While the additional 90 acres provides a benefit to the County, increasing the conservation area on this property by a third does not off-set the impact of violating the County's strongest growth management policy.</p>

Economic Development

Goals, strategies and actions	<p><i>Action 1.2.3-Page 29:</i> Support the provision of mixed cost and affordable/workforce housing near employment centers and transportation hubs.</p> <p>Staff Comment: The original proposal for the 50-lot cluster was for market rate housing. The new proposal continues to propose market rate units. The applicant had considered offering workforce housing units during the Comprehensive Plan Land Use Map designation change process, but has decided to continue to offer the</p>
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	units at market rate under this rezoning proposal.
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Housing

Goals, strategies and actions	<p><i>Action 1.1.4-Page 45</i> Guide new residential development to areas that are served by public utilities and that are convenient to public transportation and major thoroughfares, employment centers, schools, recreation facilities, and shopping facilities.</p> <p><i>Strategy 1.3-Page 47:</i> Increase the availability of affordable and workforce housing, targeting households earning 30%-120% area median income as established by HUD.</p> <p><i>Action# 1.3.15-Page 47:</i> Promote the full integration of affordable and workforce housing units with market rate units within residential developments and throughout the Primary Service Area.</p> <p>Staff Comment: The original proposal for the 50-lot cluster was for market rate housing. The new proposal continues to propose market rate units. The applicant had considered offering workforce housing units during the Comprehensive Plan Land Use Map designation change process, but has decided to continue to offer the units at market rate under this rezoning proposal.</p>
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Environment

Yarmouth Creek Watershed Management Plan	<p><i>Page 66:</i> Yarmouth Creek is a predominantly forested watershed of about 12 square miles located in the lower James River Basin. The Creek drains into the Chickahominy River, which discharges into the James River. A recent natural areas inventory classified almost half of the watershed as moderate to high in terms of biodiversity present. The watershed contains extensive complexes of wooded swamp, freshwater wetland, and rare tidal freshwater marsh which support at least one heron rookery and seven globally rare or state rare species among other flora and fauna. The Board of Supervisors adopted the six goals and 14 priorities associated with the Yarmouth Creek Watershed Management Plan by resolution dated October 10, 2006.</p> <p>Staff Comment: The new residential cluster would be subject to County Special Stormwater Criteria.</p> <p>The new development would also be subject to the Board of Supervisors resolution for Resource Management Area (RMA) buffers for legislative cases because of the Yarmouth Creek Watershed Management Plan. This would require a 50 ft. buffer on intermittent streams and non-Resource Protection Area (RPA) wetlands as well as a 200 ft. buffer beyond the 100' RPA buffer on the non-tidal mainstem of Yarmouth Creek. The 200 ft. buffer on the mainstem would be contained in the 90 acre conservation area. The rural cluster would not be subject to the BOS resolution as the SUP was approved before the resolution and the plan has sufficient lot and road level detail to grandfather it under the old requirements.</p>
Goals, strategies and actions	<p><i>Action 1.1.3-Page 78 :</i> Through the Chesapeake Bay Preservation Ordinance, enforce Resource Protection Areas (RPAs) protecting all tidal wetlands, tidal shores, non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, perennial streams and a 100-foot-wide buffer adjacent to and landward of other RPA components.</p> <p><i>Action 1.3.5-Page 81:</i> Continue to develop and enforce zoning regulations and other County ordinances that ensure the preservation to the maximum extent possible of rare, and threatened and endangered species, wetlands, flood plains, shorelines, wildlife habitats, natural areas, perennial streams, groundwater resources, and other environmentally sensitive areas.</p>

	<p>Staff Comment: Both the existing approved rural cluster and the newly proposed residential cluster both provide for the 100' buffer adjacent to RPA. Both developments meet the Chesapeake Bay Preservation Ordinance goals of protecting tidal wetlands, tidal shores, non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, as described in Action 1.1.3.</p> <p>The existing Master Plan for Colonial Heritage has identified a number of rare or endangered species in the existing Land Bay 7&8 areas as shown on the Master Plan. These areas are set aside for conservation purposes. However, given the additional proposed land being added to Land Bay 8, this sizable density increase adjacent to Deer Lake could threaten sensitive environmental features more than the rural cluster option.</p>
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Community Character

Goals, strategies and actions	<p><i>Action #1.3.5- Page 99:</i> Expect all currently approved and new development to blend carefully with the topography and surrounding vegetation, to preserve unique formations, greenery, and scenic views, and to use sustainable plantings and building techniques.</p> <p>Staff Comment: As previously discussed in the Environmental Impact section, cluster developments need to be evaluated for their environmental benefits on a case-by-case basis. This parcel contains a number of sensitive environmental features. Cluster development for this parcel would most likely mean mass clearing and grading which may adversely affect the surrounding character of the area. While land is preserved around the northwest portion of Deer Lake, the entire expanse of the eastern side of the lake will be exposed to much more intense development because of the added Mixed-Use zoned land proposed by the applicant. While the approved rural cluster proposes units in this area it is at a much less intense density (.226 dwelling units an acre). Since mass clearing and grading is not anticipated for this approved rural cluster, staff believes that this development would better blend with the topography and surrounding vegetation, to preserve the unique character of this area, more so than the proposed development.</p>
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Transportation

	<p><i>Action#1.1.2-Page186:</i> Ensure that new developments do not compromise planned transportation enhancements. New development should minimize the impact on the roadway system by:</p> <ul style="list-style-type: none"> (a) Limiting driveway and other access points and providing shared entrances, side street access and frontage roads; (b) Providing a high degree of interconnectivity within new developments, adjoining new developments, and existing developments using streets, trails, sidewalks, bikeways, and multipurpose trails; (e) Implementing strategies that encourage shorter automobile trips and accommodate walking, bicycling, and use of public transit.
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	<p>Staff Comment: The new rezoning proposal by the applicant does not increase the total number of units in the Colonial Heritage development or the 50-lot cluster options. There will not be a significant number of new trips generated because of this proposal. Both the approved rural cluster and the proposed residential cluster are proposing the same number of entrances onto Jolly Pond Road (one entrance, with the ability of the Planning Commission to approve an additional entrance if requested by the applicant), so both developments should minimize the impact on the roadway system.</p> <p>VDOT requested that the applicant provide a turn lane warrant analysis for the Jolly Pond Road entrance to this property prior to site plan approval for the development and the applicant has included that provision in their proffers.</p>
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Comprehensive Plan Staff Comments

Staff finds the proposal to be clearly contrary to the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation. The expansion of public utilities outside the Primary Service Area, and the development of suburban residential densities on Rural Lands is strongly discouraged by many sections of the Comprehensive Plan. While 90 acres of the rural cluster site is being proposed as open space, over 66 acres on the east side of Deer Lake, that was previously a part of the rural cluster acreage, would be rezoned to Mixed-Use and would develop at a much greater intensity than would be possible under the approved rural cluster. Much of the newly proposed acreage will be designed, not as a cluster development, but rather under the same design as the Colonial Heritage development. Even with the proposed 90 acres of conservation area, the total acreage under this application will see a much more intense development than the approved rural cluster.

RECOMMENDATION:

Staff finds the proposal to be clearly contrary to the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation. Staff also finds this proposal violates the Primary Service Area as a growth management tool, as it proposes an extension of suburban residential development outside the PSA. While the proposed 90 acre conservation open space area provides a substantial contiguous amount of land for conservation, on balance, this feature with other aspects of the proposed design show no distinct environmental benefit compared to the rural cluster. Given the recent redesign of the stormwater master plan, the 90 acres of open space is a necessity in terms of meeting the required 10-point stormwater credit system. Regardless of any positive impact created by the proposed residential cluster, under this new proposal 66 acres of land would be rezoned Mixed-Use and developed at a proposed density of 4.6 dwelling units an acre, which is much greater than the .33 dwelling units an acre recommended for Rural Lands outside the PSA. Furthermore, the approved rural cluster development potential for this area is .226 dwelling units an acre. Many of the proposed units would not be realized on this land if not rezoned. Any perceived benefits from the proposed residential cluster must also take into account the impact that will be created by the new Mixed-Use area as well. This amended application is also not consistent with the Board of Supervisors adopted cash proffer policy. Staff recommends the Planning Commission recommend denial of this rezoning, master plan amendment and the special use permit applications to the Board of Supervisors. Should the Planning Commission wish to recommend approval of these applications to the Board of Supervisors, staff recommends attaching the following conditions to the utility extension SUP as well as recommending approval of the attached proffers:

1. If construction has not commenced on this project within thirty-six (36) months from the issuance of a special use permit, the special use permit shall become void. Construction shall be defined as clearing, grading and excavation of trenches necessary for the water and sewer mains.
2. No connections shall be made to the water main which would serve any property located outside the Primary Service Area (PSA) except for connections of the R-2 residential cluster and the Mixed-Use area under the Colonial Heritage Master Plan project. In addition, for each platted lot recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City as of April 7, 2010,

that is vacant, outside the PSA and adjacent to the water main, one connection shall be permitted with no larger than a 3/4" service line and 3/4" water meter.

3. No connections shall be made to the gravity sanitary sewer main which would serve any property located outside the PSA except for connections of the R-2 residential cluster and the Mixed-Use area under the Colonial Heritage Master Plan project. In addition, for each platted lot recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City as of April 7, 2010, that is vacant, outside the PSA and adjacent to the main, one connection shall be permitted with no larger than a 4-inch service line.
4. All permits and easements shall be acquired prior to the commencement of construction for the water and sewer transmission mains.
5. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

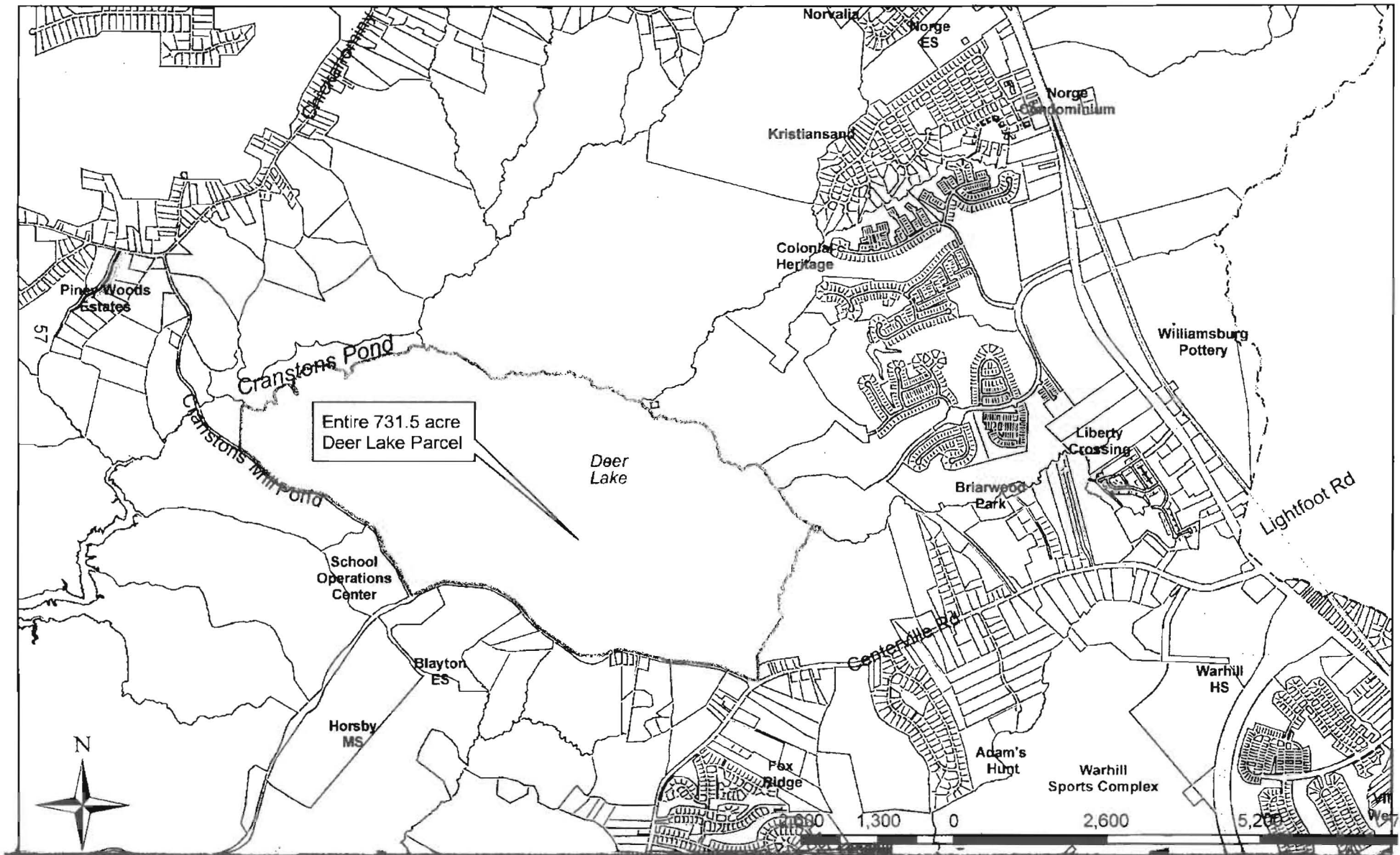
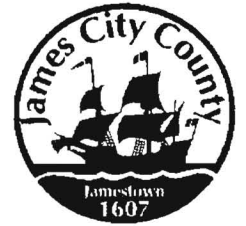
Jason Purse, Senior Planner

ATTACHMENTS:

1. Location Map
2. Master Plan dated June 21, 2002 and most recently revised February 24, 2010
3. Proffers
4. Community Impact Statement

Z-0001-2009/SUP-0007-2010/MP-0001-2009

Colonial Heritage Deer Lake



SPECIAL USE PERMIT-0008-2010 / HEIGHT WAIVER-0001-2010. BUSCH GARDENS GRIFFON THEATRICAL LIGHTING

Staff Report for May 5, 2010 Planning Commission Meeting

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARING

Planning Commission:

Board of Supervisors:

Building F Board Room; County Government Complex

May 5, 2010

7:00 p.m.

May 11, 2010

7:00 p.m.

(tentative)

SUMMARY FACTS

Applicant:

Ms. Suzy Cheely, SeaWorld Parks and Entertainment, LLC

Land Owner:

Busch Entertainment Corporation

Proposal:

To amend condition 3 of the existing special use permit and height waiver (SUP-0002-2006/HW-0001-2006) for the Griffon roller coaster to permit upwardly-directed theatrical lighting.

Location:

7851 Pocahontas Trail, Roberts District (inside Busch Gardens Theme Park)

Tax Map / Parcel Nos.:

5140100009

Parcel Size:

Project will affect approximately 5 acres of a 383 acre parcel

Existing Zoning:

M-1, Limited Business/Industrial

Proposed Zoning:

(No change in zoning proposed.)

Comprehensive Plan:

Limited Industry

Primary Service Area:

Inside

Staff Contact:

Leanne Reidenbach

Phone: 253-6685

STAFF RECOMMENDATION

Given the location of the Griffon roller coaster internal to Busch Gardens, the proposed lighting has limited additional visual impact outside the theme park. Staff finds the proposal consistent with surrounding zoning and development and consistent with the Comprehensive Plan. Staff recommends the Planning Commission recommend approval of this special use permit application to the Board of Supervisors with the included conditions. The Board of Supervisors will also jointly consider the height waiver portion of this application.

PROJECT DESCRIPTION

Ms. Suzy Cheely of SeaWorld Parks and Entertainment has applied to amend condition 3 of the existing special use permit and height waiver to allow upwardly directed LED theatrical lighting on the Griffon roller coaster as part of the "IllumiNights" program. No other changes are proposed to the Griffon or to the existing height of the coaster. "IllumiNights" is scheduled to take place in late June and will run through the summer in the main

villages hourly from 5 p.m. to 9:30 p.m. As part of the display in the park's France area, the structural supports and tracks for the Griffon roller coaster are proposed to be illuminated with green, blue, red, or magenta LED lighting.

When the expansion to permit the Griffon was initially reviewed, the special use permit and height waiver conditions were combined into a single resolution. As a result, though this amendment is specifically related to the height waiver, both applications have to be reviewed through the Planning Commission and Board of Supervisors. As part of this amendment, staff has divided the height waiver and special use permit conditions into separate applications and resolutions.

The Griffon is located near the center of the theme park near the northwest end of the Rhine River, and just north of the existing *Alpengeist* rollercoaster attraction. The coaster exceeds the sixty-foot height limitation imposed by the M-1 Zoning District, reaching a total height-above-grade of 210 feet at its highest point.

SURROUNDING ZONING AND DEVELOPMENT ANALYSIS

To the west and southwest of Busch Gardens is Kingsmill, a residential subdivision zoned R-4, Residential Planned Community, and Carter's Grove County Road, also owned by Busch Properties. To the north of the theme park is the Anheuser-Busch Brewery on land zoned M-2, General Industrial. To the northeast of the park are the Route 60 and Route 143 roadways, sections of rail line owned by CSX Railroad, and the Williamsburg Country Club and Golf Course. To the east and southeast of the theme park is Grove, which contains residentially zoned properties. Planning staff believes that the proposed lighting within an existing theme park on an existing attraction is compatible with surrounding land uses due to its limited visibility from these areas.

HEIGHT WAIVER

As noted earlier, Ms. Cheely has also applied to the Board of Supervisors for a Height Waiver, which is scheduled to be heard jointly with the special use permit at the May 11, 2010 Board of Supervisors meeting. On property zoned M-1, structures may be constructed, by right, up to sixty feet in height above grade. If structures are to exceed sixty feet in height, they must first be authorized by the Board with the issuance of a Height Limitation Waiver (Height Waiver). The Griffon reaches a maximum height of 210' above grade at its highest point (approximately 280 feet above sea level). Again, because the original special use permit and height waiver applications were combined, both applications require amendment.

Projected sight lines, as depicted on "BGW 2010 Summer Nights, Griffon Site Lines," show that the Griffon has a limited or negligible visual impact on motorists or pedestrians on roadways in the vicinity of Busch Gardens and residents of Kingsmill. The applicant conducted a lighting demonstration on April 14, 2010 to help evaluate potential impacts of the added lighting to the visibility of the Griffon. A DVD of this test and photographs taken from the Section A, B, and C sight lines shown on the plan are also included as attachments. While the Griffon is visible in the daylight in several locations, most notably from Route 60 near the interchange of Route 199, the additional lighting was not visible from adjoining properties or roadways until after about 8:30 p.m. and does not significantly add to the visibility of the coaster. Due to the nature of the lights as LED fixtures, the lighting effects are muted and only visible on the track itself. The lighting does not produce glare or illuminate the sky itself. At night while illuminated, the Griffon was visible from Route 60 and Route 143 as you pass the parking areas, but at these points, an eastbound observer would have to turn their head a significant amount in order to see the coaster. It was also visible from where the Grove interchange of I-64 crosses over Route 60. Finally, the coaster was virtually unnoticeable from the Route 60 corridor near the Route 199 interchange as the light from multiple traffic signals along this corridor essentially block the lighting on the Griffon.

HEIGHT WAIVER ANALYSIS

Section 24-419(a) of the James City County Zoning Ordinance states that structures in excess of 60 feet in height may be erected only upon the granting of a height limitation waiver by the Board of Supervisors and upon finding:

1. Additional setbacks have been provided; however, the Board may waive additional setbacks for structures in excess of 60 feet;
Staff comment: The Griffon is located very near the center of the amusement park, in a conscious effort to minimize its audio and visual impacts. The nearest park boundary is roughly 800 feet from the expansion, which is well in excess of what is required by the Zoning Ordinance.
2. Such structure will not obstruct light from adjacent property;
Staff comment: Given the distances to the Busch Gardens property boundary lines, and the relatively small mass of the structures being anticipated in relation to the overall site and operation, Planning staff finds that the coaster with the proposed additional lighting will not obstruct light from adjacent properties.
3. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
Staff comment: The closest area of historic interest is Carter's Grove Country Road, which is roughly 1,000 to 1,200 feet from the site of the coaster. The Griffon is currently not visible from this location. The nearest residential development is Kingsmill. Staff drove through areas closest to the theme park during the lighting demonstration and verified that neither the coaster nor the lighting were visible given the significant distance, existing buffer, and tree cover between Busch Gardens and Kingsmill. Based on these observations, Planning staff finds that the proposed lighting will not impair the enjoyment of nearby historic attractions, areas of significant historic interest, or nearby developments.
4. Such structure will not impair property values in the area;
Staff comment: The Real Estate Assessments department indicated that the region immediately adjacent to the subject site has experienced stable or increasing property values over the last several years, even with the addition of other park attractions. The Director of Real Estate Assessments also indicated that his office had not seen any market changes in adjacent residential areas attributable to the proximity to Busch Gardens. As such, his opinion is that the proposed lighting addition will not negatively affect the property values.
5. Such structure is adequately designed and served from the standpoint of safety and that the County fire chief finds the fire safety equipment installed is adequately designed and that the structure is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property;
Staff comment: The Fire Department indicated that they had no concerns with the addition of lighting to the Griffon.
6. Such structure will not be contrary to the public health, safety, and general welfare.
Staff comment: Based on the current proposal and supporting information submitted by the applicant, staff believes the additional lighting on the Griffon will not unduly or adversely affect the public health, safety, or general welfare.

PUBLIC IMPACTS

1. Environmental Impacts, Utilities, and Traffic

Staff Conclusions: the addition of lighting on the Griffon coaster does not have any additional impacts on the environment, utility service, or traffic generation.

Comprehensive Plan
Land Use Map

Designation	<p><i>Limited Industry (Page 154):</i> Land included in this designation generally are within the Primary Service Area and used for warehousing, office, and service industries. Parcels require access to arterial roads, public water and sewer, nearby police and fire protection, and adequate buffers to residential developments</p> <p>Staff Comment: The proposed lighting is within an existing theme park which meets the general site characteristics contained within the 2009 Comprehensive Plan. Particularly important with this application is the adequate buffer to the nearby Kingsmill residential development.</p>
Development Standards	<p><i>Compatibility (a)-Page 154:</i> For Limited Industry areas, dust, noise, odor, and other adverse environmental effects (but not size) are primary considerations for determining whether land uses are acceptable in these areas.</p> <p><i>Environmental protection (a)-Page 154:</i>Protect environmentally sensitive resources including... historic and archaeological resources, designated Community Character Corridors and Area, and other sensitive resources by locating conflicting uses away from such resources and utilizing design features, including building and site design, buffers, and screening to adequately protect the resource.</p> <p>Staff Comment: The location of the Griffon coaster and proposed lighting internal to the park use the park's existing buffers to provide screening from Kingsmill and most areas along Route 60. In terms of visibility from the Route 60 Community Character Corridor, the coaster and lighting could only be seen in the area where the Busch Gardens parking lots are located. In all other areas adjacent to the park along Route 60, the observer has to actually be looking for the coaster in order to see it. Even when visible through buffers or adjacent to the parking areas, the proposed lighting was subtle and relatively unobtrusive.</p>
Goals, strategies and actions	<p><i>Action #1.3.2-Page 164:</i> Communicate with adjacent jurisdictions regarding development plans that have potential impacts on adjacent localities and public facilities. Work with them to coordinate plans and to identify and mitigate areas where there are impacts.</p> <p>Staff Comment: York County was notified of the lighting demonstration and also of the public hearing dates through adjacent property owner notifications. No comments were received as part of either notification.</p>

Community Character

Goals, strategies and actions	<p><i>Strategy #1.1-Page 97:</i> Preserve and enhance entrance corridors and roads that promote the rural, natural, or historic character of the County.</p> <p><i>Action #1.3.10-Page 100:</i> Encourage on-site lighting that enables the retention of rural “dark sky” qualities of the County by promoting the use of cut-off and glare reducing fixtures and low intensity lighting.</p> <p>Staff Comment: During the lighting demonstration, the impacts of the additional lighting were carefully evaluated along the Route 60 Community Character Corridor. The Griffon and much of Busch Gardens is already visible from Route 60 during the day and the addition of lighting does not significantly increase the visual impact of Griffon at night due to the presence of other bright light sources (parking lot lighting, the brewery, and traffic lights). While the lights are directed upwards, they are generally “wash lights” meant to illuminate only the structural components of the Griffon and does not create additional glare beyond the tracks. Through the proposed conditions, possible colors are restricted to blue, green, red, or magenta, which either blend with the existing color of the coaster or the night sky to produce a more subtle effect than stark white or yellow light would produce.</p>
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Comprehensive Plan Staff Comments

An amusement park is a service industry, albeit not a traditional one. The additional lighting will not create dust, odor, or any additional noise. Since the attraction is near the center of the park, the visual impacts of the lighting on adjacent properties and the Route 60 Community Character Corridor are minimal and unobtrusive.

RECOMMENDATION

Given the location of the Griffon roller coaster internal to Busch Gardens, the proposed lighting has limited additional visual impact outside the theme park. Staff finds the proposal consistent with surrounding zoning and development and consistent with the Comprehensive Plan. Staff recommends the Planning Commission recommend approval of this special use permit application to the Board of Supervisors with the included conditions. The Board of Supervisors will also jointly consider the height waiver portion of this application, but the conditions have also been included below for your information.

Special Use Permit:

- 1.) **Permit:** This Special Use Permit shall be valid for the construction of a queuing building and an embarking/disembarking station, collectively totaling approximately 7,500 square feet in size, together with additional auxiliary support buildings, to serve the Expansion. The Expansion shall be generally located as shown on the Plan.
- 2.) **Height:** No part of the queuing building, embarking/disembarking station, or any auxiliary support buildings shall exceed 40' in height over "average finished grade." The "average finished grade" at the site of the Expansion shall be defined as 70' feet above mean sea level.
- 3.) **Lighting:** A lighting plan shall be submitted to, and approved by, the Planning Director or his designee prior to the issuance of a final Certificate of Occupancy for the Expansion. The lighting plan shall show that no glare will be cast beyond the any boundary line of the Property by any lighting installed as a component of or result of this Expansion.
- 4.) **Commencement of Construction:** Construction on this project shall commence within 36 months from the date of approval of this Special Use Permit or this Special Use Permit shall be void. Construction shall be defined as the obtaining of permits for the construction of foundations and/or footings.
- 5.) **Severance Clause:** This Special Use Permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Height Waiver:

- 1.) **Plan:** This Height Waiver shall be valid for a 150-foot waiver to the height limitation requirements set forth in the James City County Code to allow for the erection of track sections up to 210 feet tall as generally shown on the plan prepared by LandMark Design Group, dated January 10, 2006, and entitled "BGW New France Expansion: Sight Lines, Ex. 1."
- 2.) **Lighting Type:** Only LED lighting fixtures or landscape-shielded "wall washer" type fixtures may be installed to upwardly illuminate vertical walls or structural components of the Griffon. Installation of any other type of upwardly-directed lighting shall be prohibited.

- 3.) **Lighting Colors:** The color of the Lights shall be limited to blue, green, red, and/or magenta.
- 4.) **Time Limitations:** Operation of the Lights shall only be permitted for the 2010 operating season. Upon written request to the Director of Planning, the operation of the Lights may be extended beyond the 2010 operating season provided that no adverse impacts caused by the Lights have been identified during the previous season. The request shall be submitted no less than three months prior to the opening of the upcoming operating season.
- 5.) **Color Scheme:** The color of the structure(s) of the Griffon at any point at or above sixty feet above finished grade shall be muted and made to blend with the sky or other surrounding natural features. A color scheme plan shall be submitted to, and approved by, the Planning Director or his designee for consistency with this condition prior to the issuance of a final Certificate of Occupancy for the Griffon.
- 6.) **Severance Clause:** This height waiver is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Leanne Reidenbach

Attachments:

1. Special use permit/height waiver submission package (includes 2 full-color location maps and a DVD of the lighting demonstration)

SPECIAL USE PERMIT-0012-2010. Camp Road Tower Development Corporation Wireless Tower Staff Report for the May 5, 2010 Planning Commission Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

May 5, 2010 7:00 p.m.
June 8, 2010 (tentative) 7:00 p.m.

SUMMARY FACTS

Applicant: Byron Scyzgial, Georgia Towers LLC

Land Owner: Randolph Gulden

Proposal: To allow for the construction of a 199' tall (195' tower with 4' lightning rod) wireless communications facility "WCF" on the subject property. Wireless communications facilities are specially permitted uses in the A-1, General Agricultural zoning district.

Location: 126 Camp Road

Tax Map Parcel Number: 1020100012

Parcel Size: 1.22 acres out of 87.2 acres

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

STAFF RECOMMENDATION

Staff finds the proposal, with the attached conditions, to be consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation. The visual affect of the tower will be discreet in most locations and should not adversely impact the nearby scenic resources. Because of the existing topography and tree cover in the area, the tower should only be visible from the rear section of Camp Road. This tower will provide needed wireless coverage to an underserved area of the County. Staff recommends the Planning Commission recommend approval of the special use permit application for the Camp Road tower with the attached conditions to the Board of Supervisors.

Staff Contact: Jason Purse, Senior Planner

Phone: 253-6685

PROJECT DESCRIPTION

Mr. Byron Scyzgial has applied for a Special Use Permit to allow for the construction of a 199' wireless communications facility (195' tower with a 4' lightning rod) located at 126 Camp Road. The parcel is zoned A-1, General Agricultural and has a Comprehensive Plan designation of Rural Lands.

The proposed tower would be located on the same parcel as an active farm, which is currently enrolled in the Mill Creek AFD. The proposed tower will not affect the ability of the property owner to continue farming on the parcel. In the Mill Creek AFD, the ordinance allows for up to 5 acres of a property to be utilized as a tower site. The proposed tower site is 1.22 acres and therefore in compliance with the AFD requirements.

PUBLIC IMPACTS

Environmental

Watershed: Diascund Creek

Staff Comments: The Environmental Division has no comments on the SUP application at this time. Any site development issues will be dealt with at the site plan level.

Public Utilities and Transportation

The new WCF would not generate additional needs for the use of public utilities or significant additional vehicular trips in the area.

Visual Impacts

A publicly advertised balloon test took place on April 13, 2010, and the applicant has provided photo simulations of the proposed tower location from a number of different locations around the vicinity of the site, which have been provided for your reference.

The proposed site of the tower will be located in the back rear of the property, along the existing tree line. The applicant is proposing a 100' buffer around the tower site that will remain undisturbed, except for the tower site and the access road. Existing trees will be used to buffer the tower from the rear of the property, however, the existing farm is currently located on-site to the North of the tower location. The topography and tree cover between the tower and Richmond Road will adequately screen the tower from the public right-of-way, however, some adjacent property owners along Camp Road will be able to see the tower. During the balloon test, staff did not find the balloon visible from any of the other public rights-of-way in the vicinity of Camp Road. The visual impact of the tower appears to be limited to the rear portion of Camp Road.

Federal Aviation Administration (FAA) requirements

Per Federal requirements, all structures greater than 200' above ground level (AGL) must be marked and/or lighted. Owners/developers of all structures greater than 200' AGL are required to provide notice to the FAA, which will then conduct an aeronautical study for the specific project. Structure marking may consist of alternating bands of orange and white paint (for daytime visibility) and red obstruction lights (for night visibility). As an alternative to this combination, the FAA may allow a dual lighting system featuring red lighting at night and medium intensity white strobe lighting during the day. Because this extension would be less than 200 feet, a marking system would not be required by the FAA.

COMPREHENSIVE PLAN

Land Use Map

Designation	<i>Rural Lands (Page 152):</i> Land uses in this designation are farms, forests and scattered houses, exclusively outside of the Primary Service Area. Appropriate primary uses are agricultural and forestall activities, together with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.
	Staff Comment: The inclusion of a WCF on the site is a secondary use. The limited development associated with the WCF will not have an adverse impact on the ability of the farm to continue to meet the goals of the land use designation.
Development Standards	<i>Rural Land Use Standard #1B-Page 152:</i> Site non-agricultural/non-forestal uses in areas designated Rural Lands so that they minimize impacts or do not disturb agricultural/forestal uses, open fields, and important agricultural/forestal soils and resources.
	Staff Comment: The proposed tower location will not impact the use of the land.
Goals, strategies and actions	<i>Action #1.6.1.6-Page 168:</i> Protect farming and forestry uses from conflicting activities by encouraging buffers and open space design for developments.
	Staff Comment: The proposal for the new WCF involves minimal land clearing and will not adversely impact farming activities taking place on this land. This application meets the goals, strategies and actions of the Land Use section of the Comprehensive Plan.

Community Character

General	<p><i>Wireless Communications Facilities-Page 96:</i> In 1998, the increasing need for new wireless communication facilities prompted the County to establish Performance Standards for Wireless Communication Facilities and a new division in the Zoning Ordinance to address them. Through the use of the performance standards and the ordinance, the County has sought to accomplish the following:</p> <ul style="list-style-type: none">◆ Keep the number of wireless communication facility sites to a minimum;◆ Minimize the impacts of newly approved wireless communication facilities; and◆ Expedite the approval process for new wireless communication facility applications. <p>The policy and ordinance strive to effectively camouflage new wireless communication facilities in many areas of the County in order to reduce their incompatibility with and impact on adjacent development. Many new towers have been either constructed below the surrounding tree line or built as a camouflaged structure to blend in with the surrounding natural and man-made environment.</p> <p>Staff Comment: Co-location options are encouraged in order to mitigate impacts created by clustered, single use towers. This WCF will provide co-location opportunities for three other servers, to accommodate, a total of, four wireless carriers. The tower will have a limited visual impact along a portion of Camp Road but is screened by the topography and surrounding trees and will provide wireless service in an area that is currently underserved.</p>
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Comprehensive Plan

This application, as proposed, is in general compliance with the Comprehensive Plan. While the tower will have a limited visual impact on Camp Road, the impact is minimized by the location. Given the existing tree buffer, topography, the distance from the surrounding residential areas, staff concurs that the applicant has selected an appropriate location for this tower, to provide wireless service to an underserved area.

PERFORMANCE STANDARDS

On May 26, 1998, the James City County Board of Supervisors adopted several performance criteria for WCFs (see attachment #1).

Section 24-124 of the Zoning Ordinance states that “In considering an application for a special use permit for a WCF, the planning director shall prepare a report identifying the extent to which the application takes into account the ‘Performance Standards for Wireless Communications Facilities’. In general, it is expected that all facilities should substantially meet the provisions of these performance standards.”

These performance criteria note that tower mounted WCFs should be located and designated in a manner that minimizes their impacts to the maximum extent possible and minimizes their presence in areas where they would depart from existing and future patterns of development. While all standards support the goals outlined in the Comprehensive Plan, some may be more critical to the County’s ability to achieve these goals on a case-by-case basis. Therefore, some standards may be weighed more heavily in any recommendation or decision on a special use permit and a case that meets a majority of the standards may or may not be recommended for approval. To date, towers granted the required special use permit have substantially met these standards, including those pertaining to visibility.

A. Co-location and Alternative Analysis

Standard A1 encourages co-location. Since this new tower has the ability to accommodate four service providers, this standard has been met.

Standard A2 pertains to the demonstration of a need for the proposal and the examination of alternatives, including increases in transmission power and other options. With regards to demonstrating the necessity for the tower, the applicant submitted propagation maps showing coverage of the area as unreliable.

Standard A3 recommends that the site be able to contain at least two towers on site to minimize the need for additional towers elsewhere. The applicant is proposing a tower which can accommodate four servers, but is not proposing a second tower. Locating a second tower on the site would make the WCF more noticeable to adjacent property owners.

Standard A4 regarding allowance of future service providers to co-locate on the tower extension is addressed at the site plan stage through requirements in Section 24-128(3) of the Zoning Ordinance.

B. Location and Design

Performance Standard B1 states that towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. More specifically, towers should be compatible with the use, scale, height, size, design and character of surrounding existing and future uses. The tower is located within a 100’ buffer area on the site, and the parcel is also enrolled in the Mill Creek AFD which further prohibits the development of the property. The existing topography between this parcel and Richmond Road, and the development limitations on this parcel should adequately screen this tower from additional rights-of-way. Therefore, staff finds that this standard is met by the application.

Performance Standard B2(a) states that towers should be located in a manner that use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or scenic resource corridors. The proposed tower should only be visible from the rear section of Camp Road. The visual affect of the tower will be discreet and should not adversely impact the nearby scenic resources.

Performance Standard B3 states that towers should be less than 200 feet to avoid lighting. This application meets this standard.

Performance Standard B4 states that towers should be freestanding and not supported by guy wires. This application meets this standard.

C. Buffering

The Performance Standards state that towers should be placed on a site in a manner that maximizes buffering from existing trees, including a recommended 100-foot wide wooded buffer around the base of the tower, and that the access drive should be designed in a manner that provides no off-site view of the tower base or related facilities.

The proposed location of the tower is within a 100-foot wide buffer, however, not all of the buffer contains trees. Given the size of the parcel, the trees on the opposite side of the property help to further screen the tower, and staff is comfortable with the location of the tower on the site.

RECOMMENDATION

Staff finds the proposal, with the attached conditions, to be consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation. The visual affect of the tower will be discreet in most locations and should not adversely impact the nearby scenic resources. Because of the existing topography and tree cover in the area, the tower should only be visible from the rear section of Camp Road. This tower will provide needed wireless coverage to an underserved area of the County. Staff recommends the Planning Commission recommend approval of the special use permit application for the Camp Road tower with the attached conditions to the Board of Supervisors.

CONDITIONS

1. A maximum of one (1) wireless communications tower shall be permitted at the property located at 126 Camp Road, further identified as JCC RE Tax Map No. 1020100012 ("Property"). The tower and supporting equipment shall be located and designed as generally shown on the overall site layout plan, prepared by BC Architects Engineers, titled "Kings Corner" dated March 8, 2010 ("Master Plan").
2. The tower shall be located on the Property in a manner that maximizes the buffering effects of existing trees. Tree clearing shall be limited to the minimum necessary to accommodate the tower and related facilities. A screening and landscaping plan shall be provided for approval by the Director of Planning or his designee prior to final site plan approval.
3. The tower shall be a gray galvanized finish unless approved otherwise by Director of Planning, or his designee, prior to final site plan approval.
4. The maximum height of the tower, including the lightning rod, shall not exceed 199 feet from existing grade.
5. Within 30 days of the issuance of a final Certificate of Occupancy by the County Codes Compliance Division, certification by the manufacturer, or an engineering report by a structural engineer licensed to practice in the Commonwealth of Virginia, shall be filed by the applicant indicating the tower height, design, structure, installation and total anticipated capacity of the tower, including the total number and type of antennas which may be accommodated inside the tower, demonstrating to the satisfaction of the County Building Official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
6. No advertising material or signs shall be placed on the tower.
7. The tower shall be designed and constructed for at least four (4) users and shall be certified to that effect by an engineering report prior to the site plan approval.

8. A final Certificate of Occupancy shall be obtained from the James City County Codes Compliance Division within two (2) years of approval of this special use permit, or the permit shall become void.
9. The tower shall be freestanding and shall not use guy wires for support.
10. The fencing used to enclose the area shall be vinyl-coated and shall be dark green or black in color, or shall be another fencing material of similar or superior aesthetic quality as approved by the Director of Planning. Any fencing shall be reviewed and approved by the Director of Planning prior to final site plan approval.
11. A minimum buffer of 100 feet in width of existing mature trees shall be maintained around the tower. This buffer shall remain undisturbed except for the access drive and necessary utilities for the tower as depicted on Sheet C-1 of the Master Plan.
12. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

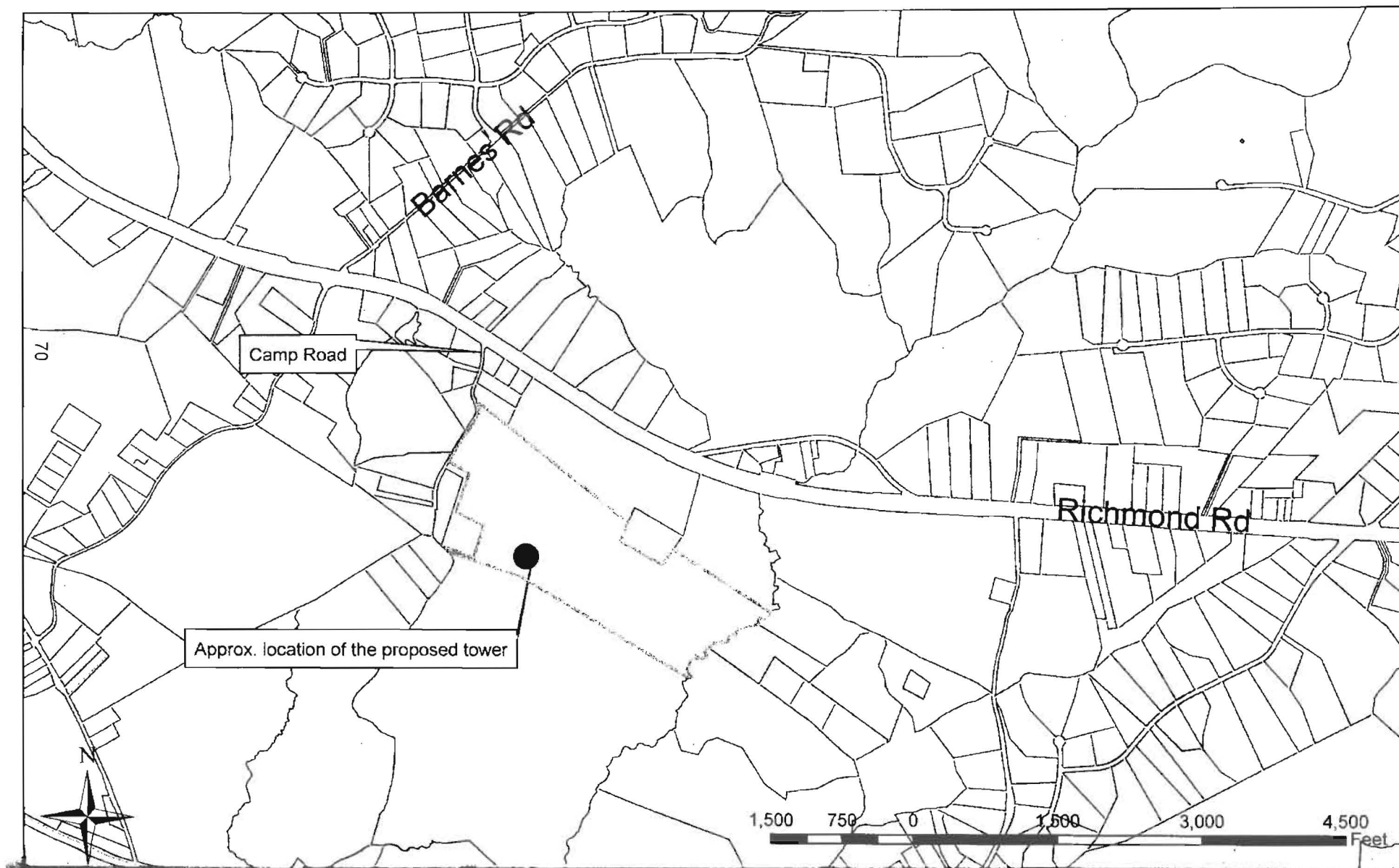
Jason Purse, Senior Planner

ATTACHMENTS:

1. Performance Standards for WCFs Policy
2. Preliminary site plan
3. Propagation map showing existing area coverage
4. Photo simulations
5. Location map

SUP-0012-2010

126 Camp Road WCF



**PERFORMANCE STANDARDS FOR WIRELESS COMMUNICATIONS FACILITIES
MAY 26,1998**

In order to maintain the integrity of James City County's significant historic, natural, rural and scenic resources, to preserve its existing aesthetic quality and its landscape, to maintain its quality of life and to protect its health, safety, general welfare, and property values, tower mounted wireless communications facilities (WCFs) should be located and designed in a manner that minimizes their impacts to the maximum extent possible and minimizes their presence in areas where they would depart from existing and future patterns of development. To implement these goals, the Planning Commission and the Board of Supervisors have adopted these performance standards for use in evaluating special use permit applications. While all of the standards support these goals, some may be more critical to the County's ability to achieve these goals on a case by case basis. Therefore, some standards may be weighed more heavily in any recommendation or decision on a special use permit, and cases that meet a majority of the standards may or may not be approved. The terms used in these standards shall have the same definition as those same terms in the Zoning Ordinance. In considering an application for a special use permit, the Planning Commission and the Board of Supervisors will consider the extent to which an application meets the following performance standards:

A. Collocation and Alternatives Analysis

1. Applicants should provide verifiable evidence that they have cooperated with others in co-locating additional antenna on both existing and proposed structures and replacing existing towers with ones with greater co-location capabilities. It should be demonstrated by verifiable evidence that such co-locations or existing tower replacements are not feasible, and that proposed new sites contribute to the goal of minimizing new tower sites.
2. Applicants should demonstrate the following:
 - a. That all existing towers, and alternative mounting structures and buildings more than 60 feet tall within a three-mile radius of the proposed site for a new WCF cannot provide adequate service coverage or antenna mounting opportunity.
 - b. That adequate service coverage cannot be provided through an increase in transmission power, replacement of an existing WCF within a three mile radius of the site of the proposed WCF, or through the use of a camouflaged WCF, alternative mounting structure, or a building mounted WCF, or a system that uses lower antenna heights than proposed.
 - c. The radii of these study areas may be reduced where the intended coverage of the proposed WCF is less than three miles.
3. Towers should be sited in a manner that allows placement of additional WCF facilities. A minimum of two tower locations, each meeting all of the requirements of the Zoning Ordinance and these standards, should be provided at all newly approved tower sites.
4. All newly permitted towers should be capable of accommodating enough antennas for at least three service providers or two service providers and one government agency. Exceptions may be made where shorter heights are used to achieve minimal intrusion of the tower as described in Section B.2. below.

B. Location and Design

1. Towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. While the Comprehensive Plan should be

consulted to determine all applicable land use principles, goals, objectives, strategies, development standards, and other policies, certain policies in the Plan will frequently apply. Some of these include the following: (1) Towers should be compatible with the use, scale, height, size, design and character of surrounding existing and future uses, and such uses that are generally located in the land use designation in which the tower would be located; and (2) towers should be located and designed in a manner that protects the character of the County's scenic resource corridors and historic and scenic resource areas and their view sheds.

2. Towers should be located and designed consistent with the following criteria:

Proposed Location of Tower	Impact Criteria
a. Within a residential zone or residential designation in the Comprehensive Plan	Use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or scenic resource corridors.
b. Within a historic or scenic resource area or within a scenic resource corridor	Use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or scenic resource corridors.
c. Within a rural lands designation in the Comprehensive Plan	For areas designated rural lands in the Comprehensive Plan that are within 1,500 feet from the tower, use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or scenic resource corridors. For rural lands more than 1,500 feet from the tower, no more than the upper 25% of the tower should be visible.
d. Within a commercial or in an industrial designation in the Comprehensive Plan	Use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or scenic resource corridors.
<p><i>Notes for the above table:</i></p> <ol style="list-style-type: none"> <i>Exceptions to these criteria may be made on a case by case basis where the impact of the proposed tower is only on the following areas: (1) An area designated residential on the Comprehensive Plan or zoning map which is not a logical extension of a residential subdivision or which is a transitional area between residential and nonresidential uses, (2) a golf course or a golf course and some combination of commercial areas, industrial areas, or utility easements, provided the tower is located on the golf course property, or (3) a scenic easement.</i> <i>A tower will meet the minimal intrusion criteria if it is not visible off site above the tree line. Such tower should only be visible off-site when viewed through surrounding trees that have shed their leaves.</i> <i>Camouflaged towers having the design of a tree should be compatible in scale and species with surrounding natural trees or trees native to Eastern Virginia.</i> 	

- Towers should be less than 200 feet in height in order to avoid the need for lighting. Taller heights may be acceptable where views of the tower from residential areas and public roads are very limited. At a minimum, towers 200 feet or more in height should exceed the location standards listed above.
- Towers should be freestanding and not supported with guy wires.

C. Buffering

1. Towers should be placed on a site in a manner that takes maximum advantage of existing trees, vegetation and structures so as to screen as much of the entire WCF as possible from view from adjacent properties and public roads. Access drives should be designed in a manner that provides no view of the tower base or related facilities.
2. Towers should be buffered from adjacent land uses and public roads as much as possible. The following buffer widths and standards should be met:
 - a. In or adjacent to residential or agricultural zoning districts, areas designated residential or rural lands on the Comprehensive Plan, historic or scenic resource areas, or scenic resource corridors, an undisturbed, completely wooded buffer consisting of existing mature trees at least 100 feet wide should be provided around the WCF.
 - b. In or adjacent to all other areas, at least a 50 foot wide vegetative buffer consisting of a mix of deciduous and evergreen trees native to Eastern Virginia should be provided.

**SPECIAL USE PERMIT-0009-2010, USA Waste of Virginia Landfills, Inc. Renewal
(Amendment to SUP-0020-2005)**

**SPECIAL USE PERMIT-0010-2010, Branscome, Inc. Borrow Pit Renewal
(Amendment to SUP-0019-2005)**

Staff Report for the May 5, 2010 Planning Commission Meeting

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Center

May 5, 2010 at 7:00 pm
June 8, 2010 at 7:00 pm (Tentative)

SUMMARY FACTS

Applicant:

Mr. Vernon Geddy, III

Land Owner:

USA Waste of Virginia Landfills, Inc. (SUP-0009-2010) and
Branscome, Inc. (SUP-0010-2010)

Proposed Use:

Continued operation of a borrow pit (i.e. a surface mine for sand and clay)

Location:

700 and 750 Blow Flats Road

Tax Map/Parcel:

(60-3) (1-2) is the Branscome owned property
(60-3) (1-3) is the USA Waste of Virginia, Inc. property

Parcel Size:

Approximately 281 acres (Branscome property) and
approximately 139 acres (USA Waste of Virginia property),
for a total of approximately 420 acres

Zoning:

M-2, General Industrial

Comprehensive Plan:

General Industrial

Primary Service Area:

Inside

STAFF RECOMMENDATION

Staff finds the proposal consistent with the Comprehensive Plan Land Use Designation and compatible with surrounding properties and zoning. For these reasons, staff recommends that the Planning Commission recommend approval of the special use permit renewals for both parcels, subject to the attached proposed conditions.

Staff Contact: Kathryn Sipes, Senior Planner

Phone: 253-6685

Project History

For over 40 years, Henry S. Branscome Inc., has operated a borrow pit in the southern-most portion of the County. Branscome utilizes the borrow pit as an area where sand and clay are mined for use as fill material in off-site building and roadway construction. USA Waste of Virginia Landfills, Inc., uses the borrow pit to mine clay material for use at a local landfill. In the M-2, General Industrial, Zoning District, "crushed stone, sand, gravel, or mineral mining; storage and distribution of same" is a specially permitted use. Two special use permits (one for each property) were approved by the Board of Supervisors in 1992 to allow for the continued operation of these facilities. At that time, in order to give staff the opportunity to reevaluate the impacts of the operation, a five-year time limit was placed on the permits as a condition of approval. In 1997, the special use permits were reevaluated and renewed for a subsequent three years. In 2000 and again in 2005, the special use permits were once again renewed with a five-year time limit as a condition of the approval. The two existing special use permits will expire on September 13, 2010. As part of the current renewal process, the applicant has requested that the Board of Supervisors reapprove the two special use permits without any time limit.

Project Description

The facility currently operates up to six days a week, during daylight hours. The total size of the parcels is approximately 420 acres; however, previous special use permit conditions limit the amount of area that can be disturbed at any given time to 40 acres per parcel. The accompanying exhibit indicates the following:

- 213 acres are covered by the State Mining Permit (58 + 155)
- 41 acres are currently disturbed (9 + 32)
- 5.2 acres are currently being mined (all on the Branscome parcel)
- 15.7 acres are to be mined in the next 12 months (9.2 + 6.5)
- 13.8 acres have been mined since the last SUP renewal (6.9 + 6.9)
- 26.5 acres have been reclaimed and associated bonds have been released since the last SUP renewal (all on the Branscome parcel)

The applicant had previously proposed to create tidal wetlands on the three western peninsulas on the USA Waste of Virginia Landfills, Inc. property. The process of creating tidal wetlands would involve mining to an elevation of -15 feet to mean sea level on portions of the peninsulas that would become inundated by water during high tide. The Environmental Division is receptive to the idea and will oversee and provide guidance set forth by conditions of the special use permit. The largest peninsula to the south has not been previously mined and is set aside for future mining operations. The two other peninsulas have been previously mined and were both reclaimed and were released of their bonds by the state in 2001. In order to re-mine the two smallest peninsulas, the mine operators would have to apply for and be approved for an amendment to their current state mining permit. Per an existing SUP condition, the Office of Economic Development will aid the Environmental Division in delineating the limits of the tidal wetlands to ensure that there will be viable land for future economic development. The limits of the tidal wetlands will be delineated over time to meet the demands of the market and possible changing environmental regulations.

Access

Access to the site is provided by a private road to the south-west of the Wal Mart distribution center addition. This road, which is approximately 5,300 feet in length, has a 30 foot easement and a travel surface of 21B stone built to VDOT specifications. Trucks access this gravel road from an existing commercial entrance located at the end of Blow Flats Road. The applicant estimates that the site generates 70 truck trips on an average day and approximately 120 truck trips on a peak day. Historical data from the company has shown the busiest month generated approximately 4,000 total trips and an average 160 daily trips. The north side of Blow Flats Road contains approximately 20 residences and is characterized by front yards with shallow setbacks. The south side of the road is primarily vacant and is part of the Greenmount tract.

During the 1992 public hearing process, homeowners along Blow Flats Road were very concerned over the amount of truck traffic that uses the road. As a result of those concerns, the Board requested the applicant to look at different access alternatives. These included using the adjacent BASF property and Greenmount property as additional means of ingress and egress to the site. Those property owners, however, did not agree to such a proposal. At the request of the neighborhood, alternatives such as constructing a separate pedestrian trail and bike path, and making roadway and intersection improvements were also analyzed. However, according to the Virginia Department of Transportation (VDOT), Blow Flats Road is substandard in that there is insufficient right-of-way and pavement width to accommodate such improvements (the right-of-way is currently 30 feet while VDOT standards now require 50 feet and the pavement width is 20 feet while VDOT requires a minimum of 22 feet). Consequently, access was not substantially improved. The one improvement that did result from the 1992 public hearing process was that VDOT established a 25 m.p.h speed limit on Blow Flats Road. The speed limit for the road was previously unposted and therefore had a default limit of 55 m.p.h. No further public interest has been expressed to staff since the original public notification of the current request for renewal. As part of the notification process, letters were sent to all property owners along Blow Flats Road.

As part of this renewal application, the applicant expressed an interest in using the Greenmount property and future Greenmount Parkway for future access. While no formal request has been made, County staff expressed no objection and has encouraged the applicant to revisit discussions with the property owner. Initial discussions with VDOT staff indicate no objections, but noted a revised CE-7 would be required and access into the property may have to be modified when the proposed roadway is expanded from two lanes into four. Additionally, VDOT may request or require the removal of the existing access from Blow Flats Road.

Surrounding Development and Zoning

The site is bordered on the east and south by Skiffe's Creek while Wood Creek is located to the west of the site. Property to the north of the site is zoned M-2, General Industrial, and is the site of the Wal-Mart Distribution Center. There are several residences along Blow Flats Road as previously described; however, these homes are on property zoned M-2 as well. During the 1992 public hearings, the homeowners were very concerned over the potential negative effects the truck traffic would have on the area. As stated above, these concerns involved pedestrian safety, noise and dust. Examples of currently permitted uses in the M-2 district include breweries, drop-forge industries, industries that manufacture metals, glass, automobiles, machinery, electronic devices, etc. Any of these proposed uses, including a borrow pit, have the potential to generate various levels of noise, truck traffic, dust, and noxious emissions. Since the last special use permits were issued, Wal-Mart has completed construction on an additional one million square feet bulk distribution facility. Given the industrial nature of this use, the heavy truck traffic generation and the distance from the borrow pits, staff believes the two uses are compatible. Staff feels that, with a feasible land reclamation plan, a borrow pit has no more of a negative impact on adjacent land than other permitted M-2 uses. Therefore, staff feels the proposal, with the proposed conditions, is compatible with the surrounding zoning.

PUBLIC IMPACTS

Environmental Impacts

Watershed: Skiffe's Creek

Environmental Staff Comments:

Condition #7 (SUP-0009-2010). The Environmental Division supports the idea of creating tidal wetlands on the USA Waste of Virginia Landfills, Inc. property.

Condition #12. As part of the current renewal process, the applicant has requested that the Board of

Supervisors reapprove the two special use permits without any time limit in order to reduce administrative tasks for the businesses. The Environmental Division prefers to include a time limit on the Special Use Permit. The regulations regarding environmental protection change constantly and having an opportunity periodically to review the conditions of the operation allows the County to address these changes, which is critical for the potential future redevelopment of the property for economic development purposes. The sunset provision has been set at five years from the date of approval. Staff is comfortable with extending the time period from five years to eight years and is now proposing the expiration date be set at December 31 of the renewal year (2018).

Public Utilities

The site is served by public water and sewer.

JCSA Staff Comments: JCSA has reviewed the proposals and has no comments.

Traffic

Staff Comments:

Condition #10. VDOT has noted that there is an active VDOT Land Use Permit covering the use of the existing entrance and any maintenance of Blow Flats Road required due to the permitted hauling activities. This permit expires October 24, 2010. VDOT staff has recommended a condition of the renewal be the requirement of the applicant to apply for an extension of their existing VDOT Land Use Permit for a time period equal to the duration of the permitted use granted by the County.

COMPREHENSIVE PLAN:

Land Use

Designation	<p>General Industry (Page 154): Areas located within the PSA that are suitable for industrial uses which, because of their potential for creating dust, noise, odor, and other adverse environmental effects, require buffering from adjoining uses, particularly residential uses.</p> <p>Staff Comments: A borrow pit can create noise and dust and, if not properly regulated, can prove to be an environmental hazard. A borrow pit also generates substantial heavy truck traffic. Staff believes that this property is well suited to accommodate this type of use because it is located in a relatively undeveloped portion of the County which is planned for industrial uses that would generate similar impacts. The residential properties on Blow Flats Road are also designated for Mixed Use and General Industrial. Additionally, proximity to an arterial road which is also a primary highway should minimize adverse traffic impacts. Furthermore, a condition is included requiring transitional screening along the perimeter of the site.</p>
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Economic Development

Goals, Strategies, and Actions	<p>Strategy 1.1 (Page 28): Encourage a balanced mixture of commercial, industrial, and residential land uses in a pattern and at a pace of growth supportive of the County's overall quality-of-life, fiscal health, and environmental quality.</p> <p>Action 1.1.1 (Page 28): Maintain an active and effective Economic Development strategy, which includes existing business retention and expansion, the formation of and assistance to new business, and new core business recruitment.</p> <p>Strategy 1.5 (Page 30): Encourage infill development, the redevelopment of existing parcels, and the adaptive reuse of existing buildings to efficiently use infrastructure and natural resources.</p> <p>Staff Comments: This project supports the continuation of an established County business in an existing industrial park. Additionally, Conditions #7 and 8 are intended to preserve opportunities for future development.</p>
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Environment

Goals, Strategies, and Actions	<p>Action 1.1.1 (Page 76): Promote development and land use decisions that protect and improve the function of wetlands and the quality of water bodies.</p> <p>Action 1.1.3 (Page 77): Through the Chesapeake Bay Preservation Ordinance, enforce Resource Protection Areas (RPAs), protecting all tidal wetlands, tidal shores, nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, perennial streams, and a 100-foot-wide buffer adjacent to and landward of other RPA components.</p> <p>Staff Comments: Retaining the condition that requires renewal of this special use permit allows staff the opportunity to monitor environmental impacts, including water quality and erosion.</p>
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Staff Comments:

Staff has drafted proposed special use permit conditions that are designed to keep the property above the floodplain level except in specific areas where tidal wetlands are to be created, prevent erosion and sedimentation damage, keep the property screened and wooded, protect sensitive environmental areas, and prohibit unusable fill. Staff believes that for these reasons, use of this site as a borrow pit, with the proposed conditions, would not prohibit the future use for conventional industrial development.

STAFF RECOMMENDATION

Staff finds the proposal consistent with the Comprehensive Plan Land Use Designation and compatible with surrounding properties and zoning. For these reasons, staff recommends that the Planning Commission recommend approval of the special use permit renewals for both parcels, subject to the attached proposed conditions.

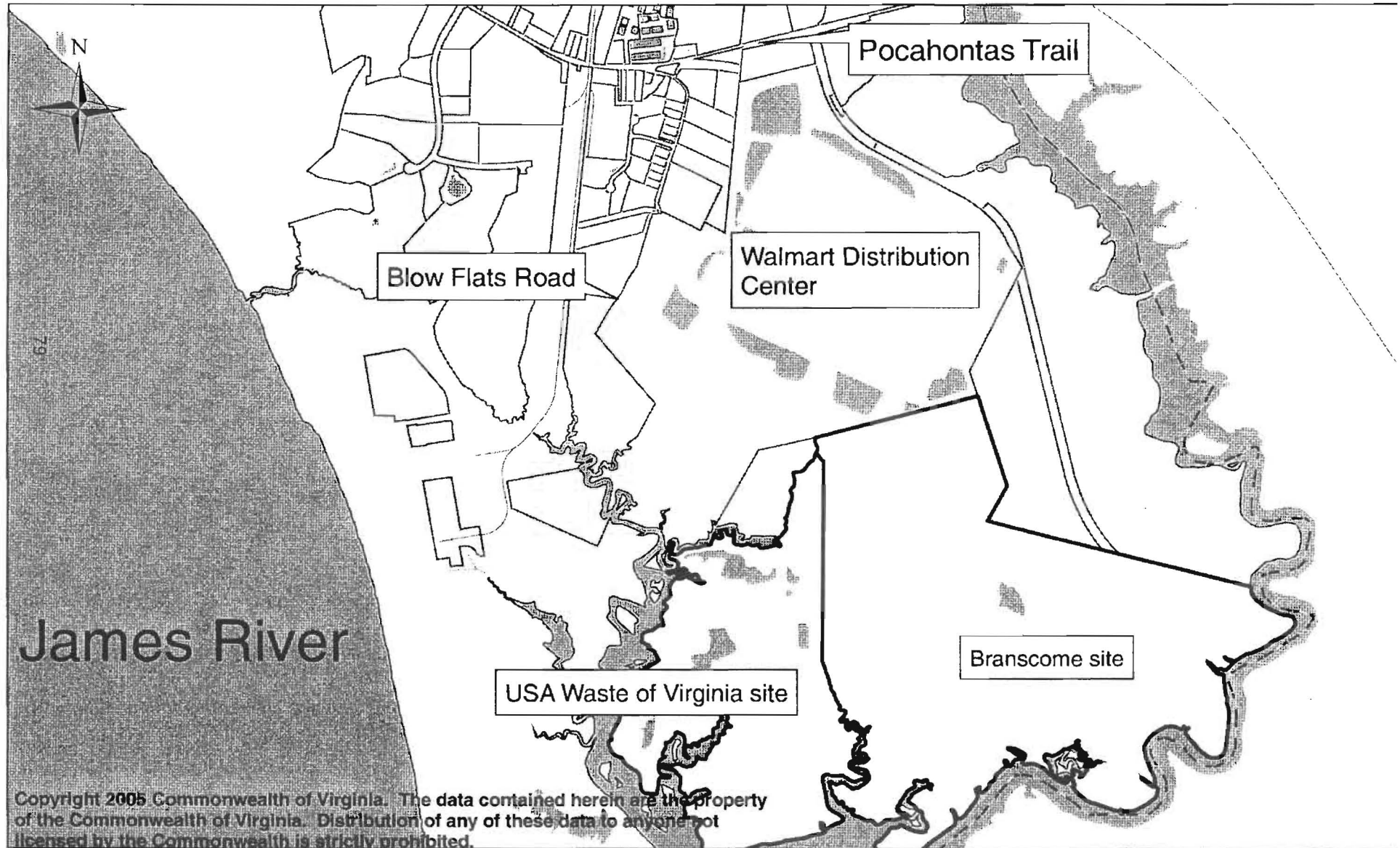

Kathryn Sipes, Senior Planner

ATTACHMENTS:

1. Location Map
2. SUP Conditions for SUP-0009-2010
3. SUP Conditions for SUP-0010-2010
4. Map of both parcels delineating mining areas dated April 2005. (Under separate cover)

ICC SUP-0009-2010: USA Waste of Virginia Renewal

ICC SUP-0010-2010: Branscome Renewal



CONDITIONS: CASE NO. SUP-0009-2010. USA WASTE OF VIRGINIA LANDFILLS, INC.

1. An erosion and sediment control plan shall be submitted to, and approved by, the Environmental Division Director prior to any new land disturbance occurring on site. All approved erosion and sedimentation control measures shall be installed prior to any clearing or grading of any borrow pit cell.
2. No more than 40 acres of the site shall be disturbed at any one time.
3. A transitional screening buffer equal to or greater than 50 feet in width shall be provided along the perimeter of the site. The transitional screening buffer shall be established and maintained in accordance with Chapter 24, Article II, Division 4, Section 24-98 (a) *Transitional Screening* of the James City County Code, as amended.
4. All buffer areas shall be flagged in the field prior to any new clearing so the equipment operators know the limits of their work. This flagging shall be inspected by the Environmental Division.
5. The hours of operation shall be limited to daylight hours, Monday through Saturday.
6. The special use permit shall only be valid for those areas covered by the State Bureau of Mines, Minerals and Energy Mining Permit No. 10445AB, the limits of which are identified on the map submitted with the special use permit request and titled, "James City County Special Use Permit Branscome, Inc. U.S.G.S. Quadrangle: Hog Island" and dated April 2010.
7. Areas on the USA Waste of Virginia Landfills, Inc. property may be mined to an elevation of -15 feet to mean sea level, once delineated by the Environmental Division Director with the aid of the Office of Economic Development for the purpose of creating tidal wetlands. Soil side slopes between the elevations of +2 to -2 feet to mean sea level shall be no steeper than 4:1. All other areas on the USA Waste of Virginia Landfills, Inc. property shall be mined to an elevation of +10 feet to mean sea level in order to be considered for future economic development. Encroachment into the RPA will be allowed only after obtaining expressed written consent by the Environmental Division Director and only for the sole purpose of creating tidal wetlands.
8. Only "inert material" shall be used as fill during the reclamation of the property. For the purposes of the special use permit, "inert material" shall be defined as "clean soil, broken concrete, broken road pavement, rocks, bricks, and broken concrete pipe." Under no condition shall fly ash, demolition debris, organic waste material, lumber, or household waste be used as fill.
9. For as long as the special use permit is valid, the property owner shall submit a report prepared by, or verified by, a licensed engineer or surveyor or permissible on-site verification by the Environmental Division Director or his designee, documenting items A-H below. One such report shall be submitted between January 1 and January 31 of each year.
 - A. The extent and depth of the area mined over the previous calendar year.

- B. The extent and depth of the area expected to be mined over the upcoming calendar year.
 - C. A certification that no unauthorized encroachment has occurred into an RPA, RPA buffer, the transitional screening buffer described above, or any Natural Open Space easement.
 - D. For areas which are wooded as of the date of issuance of this permit, a delineation of any encroachment into such wooded areas.
 - E. A certification as to the amount of disturbed acreage on site.
 - F. A certification that all fill used after the date of issuance of this permit is "inert material," as defined above.
 - G. A delineation of all areas that have been restored, but not yet released under the State Mining Permit. This delineation shall show final grades for the restored area as well as any stabilization and/or reforestation plan, with implementation time schedule, if applicable.
 - H. A delineation of the extent of the areas covered by the State Mining Permit.
10. A CE-7 Land Use permit shall be renewed from The Virginia Department of Transportation within 60 days after the date of issuance of this permit for continued use of the access onto State right-of-way for hauling operations.
 11. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.
 12. This special use permit shall be valid until December 31, 2018.

**SPECIAL USE PERMIT-0009-2010, USA Waste of Virginia Landfills, Inc. Renewal
(Amendment to SUP-0020-2005)**

**SPECIAL USE PERMIT-0010-2010, Branscome, Inc. Borrow Pit Renewal
(Amendment to SUP-0019-2005)**

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Board of Supervisors:

Building F Board Room; County Government Center

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Mr. Vernon Geddy, III

Land Owner:

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Branscome, Inc. (SUP-0010-2010)

Proposed Use:

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Location:

700 and 750 Blow Flats Road

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(60-3) (1-2) is the Branscome owned property
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Parcel Size:

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approximately 139 acres (USA Waste of Virginia property),
for a total of approximately 420 acres

Zoning:

M-2, General Industrial

Comprehensive Plan:

General Industrial

Primary Service Area:

Inside

STAFF RECOMMENDATION

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Staff Contact: Kathryn Sipes, Senior Planner

Phone: 253-6685

Project History

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The applicant had previously proposed to create tidal wetlands on the three western peninsulas on the USA Waste of Virginia Landfills, Inc. property. The process of creating tidal wetlands would involve mining to an elevation of -15 feet to mean sea level on portions of the peninsulas that would become inundated by water during high tide. The Environmental Division is receptive to the idea and will oversee and provide guidance set forth by conditions of the special use permit. The largest peninsula to the south has not been previously mined and is set aside for future mining operations. The two other peninsulas have been previously mined and were both reclaimed and were released of their bonds by the state in 2001. In order to re-mine the two smallest peninsulas, the mine operators would have to apply for and be approved for an amendment to their current state mining permit. Per an existing SUP condition, the Office of Economic Development will aid the Environmental Division in delineating the limits of the tidal wetlands to ensure that there will be viable land for future economic development. The limits of the tidal wetlands will be delineated over time to meet the demands of the market and possible changing environmental regulations.

Access

Access to the site is provided by a private road to the south-west of the Wal Mart distribution center addition. This road, which is approximately 5,300 feet in length, has a 30 foot easement and a travel surface of 21B stone built to VDOT specifications. Trucks access this gravel road from an existing commercial entrance located at the end of Blow Flats Road. The applicant estimates that the site generates 70 truck trips on an average day and approximately 120 truck trips on a peak day. Historical data from the company has shown the busiest month generated approximately 4,000 total trips and an average 160 daily trips. The north side of Blow Flats Road contains approximately 20 residences and is characterized by front yards with shallow setbacks. The south side of the road is primarily vacant and is part of the Greenmount tract.

During the 1992 public hearing process, homeowners along Blow Flats Road were very concerned over the amount of truck traffic that uses the road. As a result of those concerns, the Board requested the applicant to look at different access alternatives. These included using the adjacent BASF property and Greenmount property as additional means of ingress and egress to the site. Those property owners, however, did not agree to such a proposal. At the request of the neighborhood, alternatives such as constructing a separate pedestrian trail and bike path, and making roadway and intersection improvements were also analyzed. However, according to the Virginia Department of Transportation (VDOT), Blow Flats Road is substandard in that there is insufficient right-of-way and pavement width to accommodate such improvements (the right-of-way is currently 30 feet while VDOT standards now require 50 feet and the pavement width is 20 feet while VDOT requires a minimum of 22 feet). Consequently, access was not substantially improved. The one improvement that did result from the 1992 public hearing process was that VDOT established a 25 m.p.h speed limit on Blow Flats Road. The speed limit for the road was previously unposted and therefore had a default limit of 55 m.p.h. No further public interest has been expressed to staff since the original public notification of the current request for renewal. As part of the notification process, letters were sent to all property owners along Blow Flats Road.

As part of this renewal application, the applicant expressed an interest in using the Greenmount property and future Greenmount Parkway for future access. While no formal request has been made, County staff expressed no objection and has encouraged the applicant to revisit discussions with the property owner. Initial discussions with VDOT staff indicate no objections, but noted a revised CE-7 would be required and access into the property may have to be modified when the proposed roadway is expanded from two lanes into four. Additionally, VDOT may request or require the removal of the existing access from Blow Flats Road.

Surrounding Development and Zoning

The site is bordered on the east and south by Skiffe's Creek while Wood Creek is located to the west of the site. Property to the north of the site is zoned M-2, General Industrial, and is the site of the Wal-Mart Distribution Center. There are several residences along Blow Flats Road as previously described; however, these homes are on property zoned M-2 as well. During the 1992 public hearings, the homeowners were very concerned over the potential negative effects the truck traffic would have on the area. As stated above, these concerns involved pedestrian safety, noise and dust. Examples of currently permitted uses in the M-2 district include breweries, drop-forge industries, industries that manufacture metals, glass, automobiles, machinery, electronic devices, etc. Any of these proposed uses, including a borrow pit, have the potential to generate various levels of noise, truck traffic, dust, and noxious emissions. Since the last special use permits were issued, Wal-Mart has completed construction on an additional one million square feet bulk distribution facility. Given the industrial nature of this use, the heavy truck traffic generation and the distance from the borrow pits, staff believes the two uses are compatible. Staff feels that, with a feasible land reclamation plan, a borrow pit has no more of a negative impact on adjacent land than other permitted M-2 uses. Therefore, staff feels the proposal, with the proposed conditions, is compatible with the surrounding zoning.

PUBLIC IMPACTS

Environmental Impacts

Watershed: Skiffe's Creek

Environmental Staff Comments:

Condition #7 (SUP-0009-2010). The Environmental Division supports the idea of creating tidal wetlands on the USA Waste of Virginia Landfills, Inc. property.

Condition #12. As part of the current renewal process, the applicant has requested that the Board of

Supervisors reapprove the two special use permits without any time limit in order to reduce administrative tasks for the businesses. The Environmental Division prefers to include a time limit on the Special Use Permit. The regulations regarding environmental protection change constantly and having an opportunity periodically to review the conditions of the operation allows the County to address these changes, which is critical for the potential future redevelopment of the property for economic development purposes. The sunset provision has been set at five years from the date of approval. Staff is comfortable with extending the time period from five years to eight years and is now proposing the expiration date be set at December 31 of the renewal year (2018).

Public Utilities

The site is served by public water and sewer.

JCSA Staff Comments: JCSA has reviewed the proposals and has no comments.

Traffic

Staff Comments:

Condition #10. VDOT has noted that there is an active VDOT Land Use Permit covering the use of the existing entrance and any maintenance of Blow Flats Road required due to the permitted hauling activities. This permit expires October 24, 2010. VDOT staff has recommended a condition of the renewal be the requirement of the applicant to apply for an extension of their existing VDOT Land Use Permit for a time period equal to the duration of the permitted use granted by the County.

COMPREHENSIVE PLAN:

Land Use

Designation	<p>General Industry (Page 154): Areas located within the PSA that are suitable for industrial uses which, because of their potential for creating dust, noise, odor, and other adverse environmental effects, require buffering from adjoining uses, particularly residential uses.</p> <p>Staff Comments: A borrow pit can create noise and dust and, if not properly regulated, can prove to be an environmental hazard. A borrow pit also generates substantial heavy truck traffic. Staff believes that this property is well suited to accommodate this type of use because it is located in a relatively undeveloped portion of the County which is planned for industrial uses that would generate similar impacts. The residential properties on Blow Flats Road are also designated for Mixed Use and General Industrial. Additionally, proximity to an arterial road which is also a primary highway should minimize adverse traffic impacts. Furthermore, a condition is included requiring transitional screening along the perimeter of the site.</p>
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Economic Development

Goals, Strategies, and Actions	<p>Strategy 1.1 (Page 28): Encourage a balanced mixture of commercial, industrial, and residential land uses in a pattern and at a pace of growth supportive of the County's overall quality-of-life, fiscal health, and environmental quality.</p> <p>Action 1.1.1 (Page 28): Maintain an active and effective Economic Development strategy, which includes existing business retention and expansion, the formation of and assistance to new business, and new core business recruitment.</p> <p>Strategy 1.5 (Page 30): Encourage infill development, the redevelopment of existing parcels, and the adaptive reuse of existing buildings to efficiently use infrastructure and natural resources.</p> <p>Staff Comments: This project supports the continuation of an established County business in an existing industrial park. Additionally, Conditions #7 and 8 are intended to preserve opportunities for future development.</p>
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Environment

Goals, Strategies, and Actions	<p>Action 1.1.1 (Page 76): Promote development and land use decisions that protect and improve the function of wetlands and the quality of water bodies.</p> <p>Action 1.1.3 (Page 77): Through the Chesapeake Bay Preservation Ordinance, enforce Resource Protection Areas (RPAs), protecting all tidal wetlands, tidal shores, nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, perennial streams, and a 100-foot-wide buffer adjacent to and landward of other RPA components.</p> <p>Staff Comments: Retaining the condition that requires renewal of this special use permit allows staff the opportunity to monitor environmental impacts, including water quality and erosion.</p>
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Staff Comments:

Staff has drafted proposed special use permit conditions that are designed to keep the property above the floodplain level except in specific areas where tidal wetlands are to be created, prevent erosion and sedimentation damage, keep the property screened and wooded, protect sensitive environmental areas, and prohibit unusable fill. Staff believes that for these reasons, use of this site as a borrow pit, with the proposed conditions, would not prohibit the future use for conventional industrial development.

STAFF RECOMMENDATION

Staff finds the proposal consistent with the Comprehensive Plan Land Use Designation and compatible with surrounding properties and zoning. For these reasons, staff recommends that the Planning Commission recommend approval of the special use permit renewals for both parcels, subject to the attached proposed conditions.

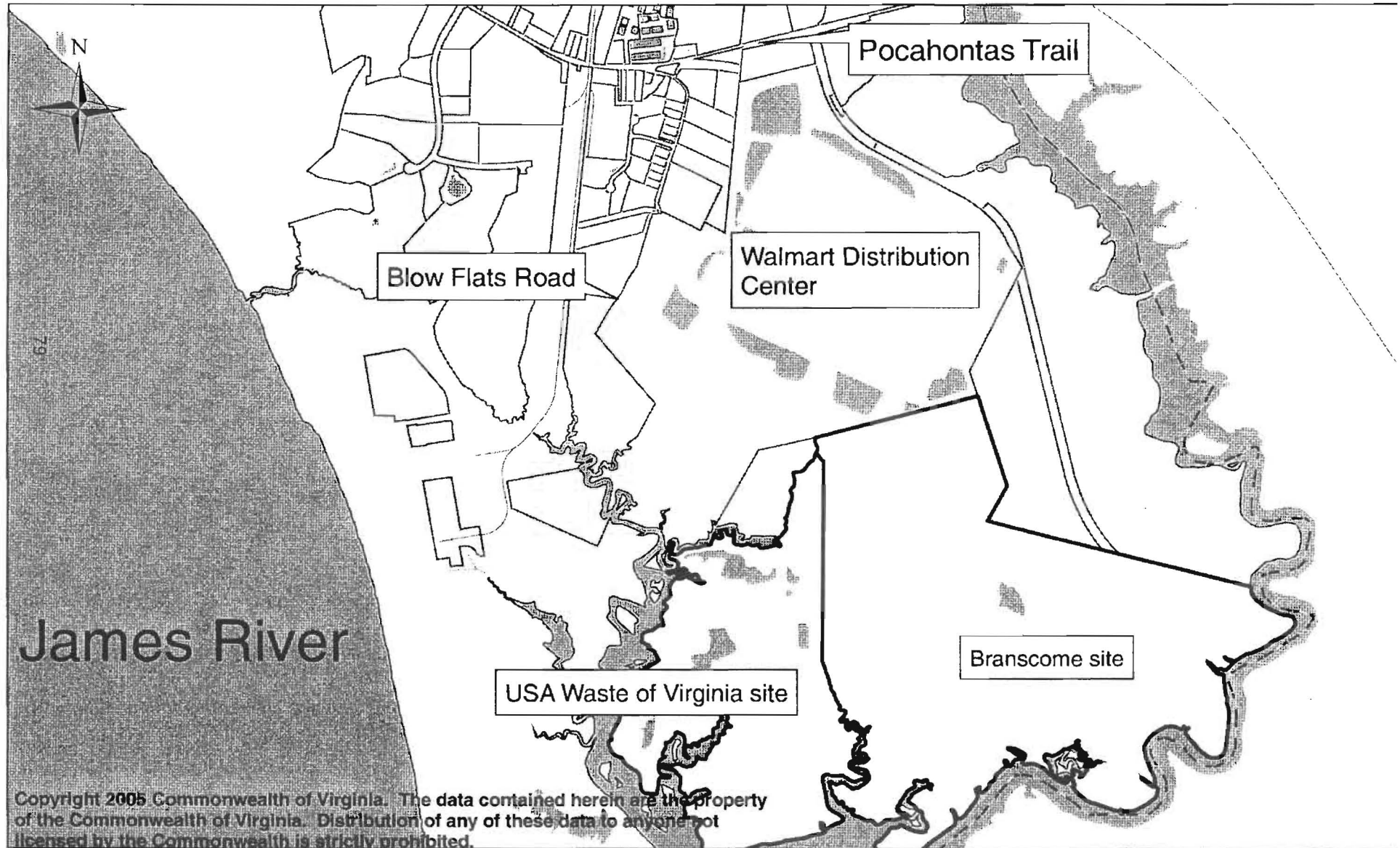

Kathryn Sipes, Senior Planner

ATTACHMENTS:

1. Location Map
2. SUP Conditions for SUP-0009-2010
3. SUP Conditions for SUP-0010-2010
4. Map of both parcels delineating mining areas dated April 2005. (Under separate cover)

ICC SUP-0009-2010: USA Waste of Virginia Renewal

ICC SUP-0010-2010: Branscome Renewal



CONDITIONS: CASE NO. SUP-0010-2010. BRANSCOME, INC.

1. An erosion and sediment control plan shall be submitted to, and approved by, the Environmental Division Director prior to any new land disturbance occurring on site. All approved erosion and sedimentation control measures shall be installed prior to any clearing or grading of any borrow pit cell.
2. No more than 40 acres of the site shall be disturbed at any one time.
3. A transitional screening buffer equal to or greater than 50 feet in width shall be provided along the perimeter of the site. The transitional screening buffer shall be established and maintained in accordance with Chapter 24, Article II, Division 4, Section 24-98 (a) *Transitional Screening* of the James City County Code, as amended.
4. All buffer areas shall be flagged in the field prior to any new clearing so the equipment operators know the limits of their work. This flagging shall be inspected by the Environmental Division.
5. The hours of operation shall be limited to daylight hours, Monday through Saturday.
6. The special use permit shall only be valid for those areas covered by the State Bureau of Mines, Minerals and Energy Mining Permit No. 10445AB, the limits of which are identified on the map submitted with the special use permit request and titled, "James City County Special Use Permit Branscome, Inc. U.S.G.S. Quadrangle: Hog Island" and dated April 2010.
7. No mining shall occur below an elevation of +10 feet to mean sea level in order to be considered for future economic development.
8. Only "inert material" shall be used as fill during the reclamation of the property. For the purposes of the special use permit, "inert material" shall be defined as "clean soil, broken concrete, broken road pavement, rocks, bricks, and broken concrete pipe." Under no condition shall fly ash, demolition debris, organic waste material, lumber, or household waste be used as fill.
9. For as long as the special use permit is valid, the property owner shall submit a report prepared by, or verified by, a licensed engineer or surveyor or permissible on-site verification by the Environmental Division Director or his designee, documenting items A-H below. One such report shall be submitted between January 1 and January 31 of each year.
 - A. The extent and depth of the area mined over the previous calendar year.
 - B. The extent and depth of the area expected to be mined over the upcoming calendar year.
 - C. A certification that no unauthorized encroachment has occurred into an RPA, RPA buffer, the transitional screening buffer described above, or any Natural Open Space easement.
 - D. For areas which are wooded as of the date of issuance of this permit, a delineation of any encroachment into such wooded areas.
 - E. A certification as to the amount of disturbed acreage on site.

- F. A certification that all fill used after the date of issuance of this permit is “inert material,” as defined above.
 - G. A delineation of all areas that have been restored, but not yet released under the State Mining Permit. This delineation shall show final grades for the restored area as well as any stabilization and/or reforestation plan, with implementation time schedule, if applicable.
 - H. A delineation of the extent of the areas covered by the State Mining Permit.
- 10. A CE-7 Land Use permit shall be renewed from The Virginia Department of Transportation within 60 days after the date of issuance of this permit for continued use of the access onto State right-of-way for hauling operations.
 - 11. This special use permit is not severable. Invalidity of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.
 - 12. This special use permit shall be valid until December 31, 2018.

PLANNING DIRECTOR'S REPORT
May 2010

This report summarizes the status of selected Planning Division activities during the past month.

- **New Town.** At its April meeting, the Design Review Board approved plan and landscape amendments for several duplex and townhome units in Section 2 and 4, Block 11. The DRB also reviewed signage requests for the Palladian building and Baker's Crust and final elevations for a single-family detached home in Section 7.
- **Policy Committee Meetings.** The Policy Committee has meetings scheduled for May 12th and 25th at 6 p.m. to discuss amendments to the sign ordinance and amendments tied to recommendations of the Subdivision and Site Plan Review Improvement Team.
- **Comprehensive Plan.** The 2009 Comprehensive Plan Land Use Map has been printed and is now available for \$10 at the Planning Division front desk. The full Comprehensive Plan text and Land Use Map can be downloaded by visiting www.jccplans.org or <http://www.jccgov.com/government/administration/comp-plan.html>.
- **Ordinance Update.** The methodology was refined and revised as a result of the feedback provided to staff during the month of March, and was endorsed by the Planning Commission at its April 7, 2010, Planning Commission meeting. Consideration of the methodology is scheduled for the Board of Supervisor's May 11, 2010 meeting.
- **Training.** Staff is taking advantage of webinars that are available from the American Planning Association. May's topics include the Design Graphics, Design Review, Planning Support Tools, and Vested Rights. Several staff members are also registered to attend the annual conference of the Virginia Chapter of the American Planning Association during the first week of May.
- **Monthly Case Report.** For a list of all cases received in the last month, please see the attached document.
- **Board Action Results** – April 13th and April 27th
Z-0003-2008/MP-0003-2008 The Candle Factory – Deferred until May 11th
SUP-0026-2009 Constance Ave Wireless Communications Facility – Deferred until June 8th
SUP-0003-2010 Gilley Properties Two Family Dwelling – Approved 5-0

Allen J. Murphy, Jr.

New Cases for April 2010

Case Type	Case Number	Case Title	Address	Description	Planner	District
Conceptual Plans	C-0010-2010	108 / 110 Chesapeake Ave	108 CHESAPEAKE AVE	Boundary Line extinguishment	Kate Sipes	Stonehouse
	C-0011-2010	Cox Cable, Liberty Ridge	3423 LIBERTY RIDGE PKWY	Installation of Cox power supply unit will service a new subdivision, Liberty Ridge	Jose Ribeiro	Powhatan
	C-0012-2010	8407 / 8415 Richmond Road BLA	8415 RICHMOND ROAD	This application is for a boundary line adjustment	Leanne Reidenbach	Stonehouse
	C-0013-2010	Colonial Heritage Land Bay V	6799 RICHMOND ROAD	This application determines land bay consistency prior to development plan submittal	Jason Purse	Stonehouse
Site Plan	SP-0030-2010	Busch Gardens Ireland Smoking Deck SP Amend	7851 POCAHONTAS TR	Applicant proposes a 12' x 16' deck behind Ireland Emerald Isle merchandise shop	Kate Sipes	Roberts
	SP-0031-2010	Busch Gardens, Vehicle Gates SP Amend.	7851 POCAHONTAS TR	Applicant proposes construction of 2 new vehicluar vertical gates within the park (England Village) to replace one existing gate and one temporary barrier.	Sarah Propst	Roberts
	SP-0032-2010	Marriotts Manor Club Grill SP Amend	240 FORDS COLONY DR	Applicant proposes replacing some gravel areas with concrete and replace some grills	Jose Ribeiro	Powhatan
	SP-0033-2010	New Town Block 11 Lots 23-27A SP Amend.	4301 CASEY BLVD	Site plan amends SP-0096-2008 to make rear areas of the units (driveway, fencing, patio, and storage sheds) consistent with final as-built designs. Does not add any new units.	Leanne Reidenbach	Berkeley
	SP-0034-2010	Roman Rapids Dryer, Busch Gardens SP Amend.	7851 POCAHONTAS TR	Add a second body dryer next to an existing dryer adjacent to the Roman Rapids water ride with a landscape bed	Jason Purse	Roberts

Site Plan	SP-0035-2010	Villas at Five Forks Grading SP Amend.	248 INGRAM ROAD	Revised grading for Buildings 13-C and 14-D. Revised grading, location, and sewer for Building 15-B	Luke Vinciguerra	Berkeley
	SP-0036-2010	Patriots Colony Sidewalks SP Amend.	3400 JOHN TYLER HGWY	Installing new sidewalks and dumpster pad	Jason Purse	Berkeley
	SP-0037-2010	Wililamsburg Landing Woodhaven Exp Phase II	5560 WILLIAMSBURG LANDING DR	Proposed expansion to the existing Williamsburg Landing facility. Expansion includes a new skilled care building, 2 new buildings for independent living, a grounds maintenance building, additions to the existing Woodhaven building, and some expanded parking.	Kate Sipes	Jamestown
Special Use Permit	SUP-0013-2010	Chickahominy Road Manufactured Home	2818 CHICKAHOMINY RD	Special use permit to replace existing dwelling with a manufactured home	Luke Vinciguerra	Stonehouse
Subdivision	S-0011-2010	Kingsmill Padgetts Ordinary Ph. 4	1000 KINGSMILL ROAD	Subdivision of 2 lots on 1.338 acres which are owned by Busch properties, Inc	Jason Purse	Roberts
	S-0012-2010	Carter's Grove Country Road BLA	1000 KINGSMILL ROAD	Boundary line adjustments between Carter's Grove Country Road and Busch Properties Parcel R-9	Sarah Propst	Roberts
	S-0013-2010	Spencer's Grant, Lots 1-38, Plat of Correction	WILLIAM SPENCER	Plat of correction for the first phase of Spencer's Grant in Kingsmill to clarify labels.	Leanne Reidenbach	Roberts
	S-0015-2010	Murer, Westmoreland Drive BLA	4900 WESTMORELAND DR	Boundary line adjustment between 4900 and 4904 Westmoreland Drive. Both parcels will remain previous total square footage.	Jose Ribeiro	Powhatan
	S-0016-2010	Kingsmill Halfway Creek West		Preliminary subdivision plat for review	Luke Vinciguerra	Roberts
	S-0017-2010	Kingsmill Wareham's Pond		Preliminary subdivision plats for Wareham's Pond	Kate Sipes	Roberts

Zoning Ordinance Amendment	ZO-0001-2010	Pedestrian/Directional Signage		This amendment is to address directional signage in mixed use districts and areas designated mixed use on the comprehensive plan.	Melissa Brown
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