

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE ELEVENTH DAY OF JULY, TWO-THOUSAND AND TWELVE, 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:

Rich Krapf
Tim O'Connor
Robin Bledsoe
Chris Basic
Mike Maddocks
George Drummond
Al Woods

Staff Present:

Chris Johnson, Acting Planning Director
Leo Rogers, County Attorney
Ellen Cook, Senior Planner II
Luke Vinciguerra, Planner
Jason Purse, Senior Planner II
Leanne Reidenbach, Senior Planner II
Jose Ribeiro, Senior Planner
Bryan Soukop, Summer Law Clerk

Mr. Tim O'Connor called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENT

Mr. O'Connor opened the public comment.

There being none, Mr. O'Connor closed the public comment.

3. MINUTES

A. June 6, 2012 Regular Meeting

Mr. Rich Krapf stated on page 11, on the third paragraph, were Mr. Krapf stated 'he appreciates historical preservation efforts taken.' He stated to add '...in the surrounding community.'

Mr. O'Connor stated on page 10, 'restorated' should be changed to 'restored.'

In a unanimous voice vote, the minutes were approved as amended (7-0).

4. COMMITTEE/COMMISSION REPORTS

A. Development Review Committee (DRC)

Mr. Mike Maddocks stated the DRC met on June 27th to discuss SP-0045-2012, Colonial Heritage Phase 4, Section 2, Jolly Pond Access Road. He stated that the applicant was proposing a temporary road for a construction entrance along Jolly Pond Road to serve the Colonial Heritage Development. He stated that the entrance was previously used by the Boy Scout Camp though was not shown on the Colonial Heritage Master Plan. He stated that the road would not be used by the

public. He stated that staff found the proposal generally consistent with the Master Plan subject to incorporation subject to outstanding comments from other agencies. Mr. Maddocks stated that Mr. George Drummond moved for DRC approval. He stated the DRC voted 3-0 to recommend approval of the master plan consistency determination subject to agency comments.

B. Policy Committee

Mr. Krapf stated that there was no Policy Committee meeting to report on.

C. Regional Issues Committee

Mr. Maddocks stated that there was no Regional Issues Committee meeting to report.

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

5. PLANNING COMMISSION CONSIDERATIONS

A. Initiating Resolution, ZO-0005-2012, Section 24-24, Additional Requirements for Submittal

Mr. Leo Rogers stated that staff will draft comments and at a later date, present recommended changes to this section of the Ordinance.

Mr. Krapf made a motion to approve the initiating resolution. In a unanimous voice vote, the initiating resolution was approved (7-0).

6. PUBLIC HEARING CASES

A. Z-0003-2012/MP-0001-2012 New Town Section 12

Ms. Leanne Reidenbach stated that Mr. Greg Davis of Kaufman and Canoles has applied for a rezoning for Section 12a of New Town to allow development of 274 for-rent townhomes. She stated that Section 12a is currently zoned R-8 with proffers and is the one of the last sections on the New Town master plan to be rezoned to Mixed Use. She stated that Section 12a is located in the West side of New Town, which is the area west of Route 199 near the end of WindsorMeade Way in between the WindsorMeade Retirement Community and WindsorMeade Marketplace. She stated that both of these developments are designated and zoned Mixed Use. The project site is also bordered by Route 199 to the east.

Ms. Reidenbach stated that the properties in New Town were originally rezoned to R-8 with proffers with a binding overall master plan and design guidelines in 1997. She stated that the master plan listed uses and residential and non-residential caps for development. She stated that since that time, the Board of Supervisors (BOS) has approved rezonings for each section to Mixed Use with more detailed master plans, proffers and design guidelines. She stated that this process has resulted in the gradual buildout of New Town and allows the Planning Commission and BOS to evaluate proposed development in light of the current situation to best mitigate impacts. She stated that the

intent of the 1997 master plan was to allow for flexibility to adapt to changing conditions and to permit shifts in units and square footages within New Town. She stated that several shifts have already occurred, particularly between Sections 11, 12 and 13. This applicant has proposed to shift unused residential and commercial development from the east side of Route 199. She stated that staff, the applicant, and New Town Associates have done a detailed review of existing development in New Town in comparison to the specific master plan caps and determined that there is enough extra density to move 65 units to Section 12. She stated that after the transfer, the revised density caps for New Town West and New Town overall still fall within the ranges approved on the 1997 master plan, with the exception of the commercial square footage cap in New Town West.

Ms. Reidenbach stated that a traffic study for Monticello Avenue was submitted with this proposal and Virginia Department of Transportation (VDOT) agreed that the project has minimal impact on Monticello Avenue and so no improvements were necessary. She stated that as a result of citizen meetings, the applicant did a traffic study for WindsorMeade Way and designed a project entrance. She stated that the County hired an independent consultant to review the findings of the study. She stated that the consultant agreed that the proposed entrance design, with the construction of a right turn lane and some other minor improvements, was safe and adequate to serve the 274 units. She noted that she received VDOT comments since the time the staff report was written and VDOT concurred with the safety of the entrance with an increased taper length.

Ms. Reidenbach stated that the applicant has proposed voluntary proffers to address impacts of the development. She stated that included in the proffers are a natural resource survey for endangered species, a pre-construction meeting with the WindsorMeade residents, enhanced buffering along Route 199, a right-turn lane on WindsorMeade Way, ten workforce housing units, and cash proffers towards water, schools, public safety and improvements at the Monticello Avenue and News Road intersection.

Ms. Reidenbach stated that Engineering and Resource Protection staff, the Fire Department and JCSA staff have reviewed the Community Impact Statement and Master Plan and concur with the materials, while noting that additional information can be addressed at the site plan design stage.

Ms. Reidenbach stated that the proposed master plan and design guidelines have also been approved by the New Town Design Review Board. She stated that future development including building elevations, site layouts, materials, signage, streetscape and landscaping are all required to be reviewed and approved by the DRB before the project could be built.

Ms. Reidenbach stated that staff finds the proposal to be compatible with the 2009 Comprehensive Plan and the original New Town master plan and design guidelines. She stated that staff recommends the James City County (JCC) Planning Commission recommend approval of this application and acceptance of the voluntary proffers to the BOS.

Mr. Chris Basic stated that he was previously an active member on the applicant's team therefore he recused himself from voting on this application.

Mr. Krapf stated that the staff report Ms. Reidenbach prepared was exceptional. He stated that the report was very thorough and thoughtful.

Ms. Robin Bledsoe asked for more information regarding the entrance onto WindsorMeade Way. Ms. Bledsoe asked if it would be similar in layout to the entrance to the County Government Center as well as the entrance off of McLaws Circle going to the guard gate in front of Kingsmill.

Ms. Reidenbach stated that the proposed entrance is similar but that there is one difference between the two examples and the proposed road. She stated that WindsorMeade Way is one lane in each direction but that the entrance outside the Government Center is two lanes in each direction.

Mr. Al Woods stated that the staff report was exceptional. Mr. Woods stated that VDOT provided commentary on the entrance design. Mr. Woods asked if VDOT had provided any comment on WindsorMeade Way traffic counts.

Ms. Reidenbach stated that VDOT provided overall comments on the traffic study the applicant submitted for WindsorMeade Way, including the design for the entrance. She stated that VDOT concurred with the findings made by the consultant team that put the traffic study together as well as the independent consultants with Kimley-Horn, with a few modifications.

Mr. Woods stated that the report had discussed several fiscal deficiencies. Mr. Woods asked staff to elaborate.

Ms. Reidenbach clarified that Mr. Woods was referring to the Parks and Recreation Proffer Guidelines. She stated that the first deficiency is related to trails internal to a development. She stated that there are a certain number of linear feet per unit that the proffer guidelines recommend, this would total 880 linear feet for this project. She stated that the design guidelines go on to discuss the benefits of having longer trails. She stated that trails that are shorter than 1,500 linear feet do not provide a great deal of benefit. She stated that in those instances, cash is preferred in lieu of the trail. She stated that the proffers do allow for that discussion to occur during the site development phase. She stated that if the applicant determines that it is not feasible to fit a trail on the property than payment of the cash is an option. She stated that the second Parks and Recreation item is related to fields. She stated that the applicant has proffered to provide cash in lieu of constructing a field on the property given the size of the development. She stated that the third item is courts and pools. She stated that these two are interchangeable. She stated that the guidelines for pools asks for a 25-meter pool so that it may be used for competitive swimming. She stated that the pool that is currently proposed for Section 12 does not meet the minimum requirements. She stated that there is a clause that allow pools of an equivalent design to meet the proffer if determined that way by the Director of Planning. She stated that staff will be evaluating that information during the site development phase to determine if it meets that equivalent benefit to the development. She stated that the last item for Parks and Recreation are playgrounds. She stated that the design guidelines specify that for a development of this size that one playground be provided on site, which is the preference of the Parks and Recreation Department. She stated that the applicant can provide cash in lieu of the playground. She stated that for this development the cash would be about \$4,800. She stated that according to the fiscal study and the community impact statements submitted by the applicant, this neighborhood is not marketed towards families. She stated that therefore, the applicant feels that the playground would not be an appropriate feature to this neighborhood. She stated that the applicant has instead proffered grills and activity areas to serve the community. She stated that this would be a

positive asset to the development but that the proffer guidelines find this as an acceptable alternative only if the neighborhood is proffered to be age-restricted.

Mr. Woods stated that staff identified three schools that might be impacted. He asked if the schools have temporary trailers.

Ms. Reidenbach stated that she would need to verify her facts but, she thinks most of the trailers have been removed.

Ms. Bledsoe stated that it would appear that the rear of buildings 30 and 31 would be visible from the WindsorMeade guard shack. Ms. Bledsoe asked if the applicant is willing to landscape to improve the viewshed from the WindsorMeade development.

Ms. Reidenbach stated that she would defer to the applicant to address landscaping. She stated that since this is in New Town it would be subject to review by the New Town Design Review Board (DRB). She stated that the DRB is very aware of the back of building design and will likely scrutinize the elevations to ensure that they appear more like the front of the building rather than the rear.

Mr. O'Connor asked about the location of the balloon that was floated relative to this row of buildings.

Ms. Reidenbach stated that the applicant may have some maps depicting the location of the balloon. She stated that it was about mid-way down the row of apartment buildings.

Mr. Krapf quoted the staff report regarding the Parks and Recreation proffer status: "the project does not comply completely with the guidelines." He stated that the applicant is either going to construct the hard trail or provide cash in lieu of the trail. He stated that the applicant intends on making this decision once they get further along and have had the opportunity to examine the site.

Ms. Reidenbach responded affirmatively.

Mr. O'Connor reminded the Planning Commissioners that a policy has been adopted concerning disclosing meetings with applicants. He stated that he had a phone conversation with Mr. Davis two days ago.

Mr. Krapf stated that he and Mr. Drummond met with Mr. Davis yesterday concerning the project. Mr. Krapf stated that he also had a conversation with Mr. Vernon Geddy earlier that day.

Ms. Bledsoe stated that she had a meeting with Mr. Davis.

Mr. Woods stated that he had spoken with Mr. Davis as well.

Mr. Greg Davis of Kaufman and Canoles stated that he represents Oxford Properties, LLC. He stated that Will Holt, also of Kaufman and Canoles accompanied him this evening. He stated that Bill Hall of Oxford Properties, LLC is also present. He stated that Robert Casey of whose family

owns Section 12 is present. He stated that Arch Marston and James Peters of AES are also present.

Mr. Davis provided an aerial photo of the site and pointed to several landmarks. He stated that the proposed project provides some very attractive architecture by Corcoran-Ota the project architect from Atlanta. He stated that it is very similar to The Pointe project in New Town, also an Oxford Properties, LLC project. He stated that attention has been paid to the ends of the units and the architecture on the rear of the buildings. He stated that the design and appearance of the units have been a key feature of the project team's work. He stated that Paul Milana, who had won the design competition for New Town back in 1997, had provided input on the layout of the architecture to this project. He quoted from a letter Mr. Milana had written: "the focus of New Town is on the built environment. You should see the buildings; they should be visible and well designed."

Mr. Davis stated that Section 12 represents a combination. He stated that the design is subject to the DRB. He stated that the DRB has already approved the design guidelines to ensure that this is attractive construction. He stated that there will also be large undisturbed areas surrounding the project. He stated that there will be a tree buffer and extensive wetlands and ravines systems surrounding the property.

On the image provided, Mr. Davis pointed to the areas that will remain green. Mr. Davis stated that substantial portions of the property will remain preserved.

Mr. Davis stated that the engineering team had measured the distances between the closest units in WindsorMeade. He stated that the closest is farther than a football field away at 370 feet and the farthest is two football fields away. He stated that measuring to the closest point on the main building at WindsorMeade to an Oxford Section 12 townhouse is 676 feet. He stated that they also took a measurement of the trees that would be preserved between the guard house in WindsorMeade and the Oxford buildings themselves. He stated that the narrowest point is 33 feet of trees and the farthest is 117 feet. He stated that The Pointe at New Town was developed by Oxford and is a good example of the quality of construction and the product offered. He provided images. He stated that the Section 12 project is much less dense than The Pointe at New Town by more than half. He stated that there will be centralized maintenance and landscaping, ensuring consistency. He provided images of the recreation areas at The Pointe. He stated that this project is designed to attract working adults, not families. He stated that the development will have little impact on the schools. He provided images of existing models at The Pointe. He provided images of the clubhouse at The Pointe. He stated that Oxford will not be renting to college students. He stated that the income of tenants would be verified. He stated that this income cannot come from a parent or co-signer. He stated that the project is best defined as workforce and affordable housing. He stated that the 2009 Comprehensive Plan established a goal of increasing the availability of workforce housing. He stated that the rent projection of all the units fall within the 2009 Comprehensive Plan definition of workforce housing. He stated that ten units have been proffered to be offered at the affordable housing level. He stated that these would be the same type of units as the market-rate units, just offered at a lower rate.

Mr. Davis stated that there have been a number of meetings held with the WindsorMeade board and residents. He stated that the applicant has proffered a pre-construction meeting with WindsorMeade to attempt to minimize construction impacts on the neighbors. He stated that units

will be rented once completed so that it is in the owner's interest to minimize interruption caused by construction. He stated that construction would be completed in phases with residents occupying the units.

Mr. Davis stated that traffic is a focus in New Town. He stated that traffic generated by Section 12 has been factored into the Monticello corridor traffic studies for the last five years. He stated that the projected density for Section 12 was 300 units in those studies. He stated that that number is 26 more units than what is being proposed. He stated that the traffic study performed by the applicant's consultant and reviewed by Kimley-Horn and VDOT concludes that there is no impact on Monticello Avenue traffic from the 274 units proposed. He stated that there is no decrease in the level of service at the intersection of Monticello and WindsorMeade Way. He stated that the level of service will remain a "B" even after construction. He stated that traffic on WindsorMeade Way was a concern brought up by the residents of that development. He stated that AES had been brought in to design the entrance way to the Oxford project. He stated that this is typically done during review of the site plan. He stated the entrance was reviewed by Kimley-Horn and VDOT. He stated that the entrance has been deemed safe and there are no cited safety issues on WindsorMeade Way. He stated that the capacity of WindsorMeade Way was questioned by the neighboring residents. He stated that a two-lane road like WindsorMeade Way will handle 15,000 vehicles per day, as noted in the staff report. He stated that at full build-out of both the WindsorMeade project and the Oxford development on Section 12 there will only be 3,000 vehicles a day on WindsorMeade Way. He stated even at the shopping center there will only be 9,000 vehicles per day. He stated that the road will only be at one-fifth of capacity at build-out.

Mr. Davis stated that the residents of WindsorMeade had stated a concern regarding security. He stated that the concern was about people parking at the Oxford project accessing WindsorMeade development. He stated that Kingsmill, Governor's Land and Ford's Colony are not fenced and each of these gated communities uses topography, wetlands, buffers and natural barriers. He stated that there are significant natural barriers surrounding Section 12. He stated that Mr. Peters from AES had gone down into the ravine system to see how easily he could cross them. He stated Mr. Peters determined that there is a substantial barrier between Section 12 and WindsorMeade.

Mr. Davis stated that when you talk about density of development in New Town it is about the number of units, not proximity. He stated that in 1997, JCC accepted a master plan for New Town which established a limit on the number of units in each section of New Town. He stated that the master plan and all subsequent rezonings said density can be moved around. He stated that the topography will dictate where more or less development can go. He stated that this has happened 11 times since the inception of New Town. He stated that WindsorMeade in New Town Section 13 was initially planned for 170 units. He stated that there is a clear track record with density transfers in New Town. He stated that the Oxford site was originally designated for 300 units. He stated that the number of houses in New Town will not change by virtue of this project. He stated that the impacts of this development have been studied and determined to create no negative impacts. He stated that under the 1997 master plan, the applicant proposes to move a half of one percent of the total New Town density. He stated that in 2007 density was eliminated in New Town through the Section 7 and 8 rezoning. He stated that the top maximum density for New Town is currently much lower already. He stated that this project is just moving density that is already accounted for and well below the limit. He stated that New Town is an area where development is anticipated. He stated that

businesses have located in New Town in reliance of density.

Mr. Krapf asked Mr. Davis to elaborate on the fiscal impact study. He stated that the report indicates that staff's fiscal analysis anticipates a negative fiscal impact on JCC. He stated in comparison, the applicant saw an extremely positive fiscal impact over the initial ten year time frame.

Mr. Davis stated that the County's fiscal impact methodology uses reoccurring expenses and income, while the applicant's fiscal impact study showed income to the James City Service Authority and other income that is not typically counted. The County's fiscal analysis is more conservative and views the project as slightly negative, but the County should view the fiscal impact in light of the entire New Town development and all the commercial development it has attracted.

Mr. Maddocks asked if the Oxford site planned to have at least 300 units as of 1997.

Mr. Davis stated yes.

Mr. Maddocks asked if that information had been readily available to the public since 1997.

Mr. Davis stated yes.

Mr. Woods asked if it was correct that using County fiscal impact methods, the project would be fiscally negative.

Mr. Davis stated that was correct.

Mr. Woods asked if Mr. Davis was proposing the County reexamine the methodology it employs.

Mr. Davis stated his fiscal impact analyst would. He stated his analyst would be available to answer questions. The applicant was comfortable with the County's numbers since John McDonald had stated that Section 12 should be looked at in conjunction with the rest of New Town. New Town draws both commercial, which is generally positive, and residential, which is generally negative. Overall, the impact is positive so there was no need to discuss the variation in fiscal impact methods.

Mr. Woods asked if representatives of the developer participated in a number of meetings with residents of the area.

Mr. Davis stated the developer met with WindsorMeade's Board first, and then were invited back to speak to a very large group. He stated they also met with WindsorMeade administration on a number of occasions.

Mr. Wood asked Mr. Davis to give specifics on how the developer's vision has been modified by input from the community. He asked what specific concerns had been incorporated into the plan.

Mr. Davis said that one of the biggest concerns heard was that the traffic generated by the project was prohibitive, that the traffic on WindsorMeade Way would be dangerous and place it over capacity, that the intersection at WindsorMeade Way and Monticello Avenue was untenable and that the entrance to the Oxford project was dangerous. The developer performed traffic counts, which were not required, to confirm that current traffic projections are accurate. The count showed less traffic than the study initially projected. The entranceway will be reviewed by VDOT and by the County's consultant Kimley-Horn and the applicant will do what is necessary to make the entrance safe. Residents also asked the applicant to review alternate access. Residents said it would be better for construction trucks and Oxford residents to access the site from a second location. The developer considered direct access from Rt. 199 but due to the limited access nature of the road this was not feasible. The applicant also had difficulty finding an alternate access due to the number of nearby wetlands. An offer to place an access in a nearby shopping center was rejected. The shopping center said anchor tenants control access, and that all those leases would have to be renegotiated to provide a new access. The shopping center also did not want the additional traffic through its parking lot. VDOT did not recommend a second access. The County's Fire Department did not determine a second access was necessary. The developer has spoken with WindsorMeade administration about buffering unacceptable view sheds.

Mr. Woods asked if the construction equipment would be using the same entrance as current and future residents.

Mr. Davis stated yes.

Mr. Woods asked what safety features would be built in to prevent an unfortunate occurrence.

Mr. Davis stated laws already control dirt and trash left on the roadway. He stated the project will not have 24-hour shift work, but is typically an 8-to-4:30 construction site which will be built out relatively quickly. The major construction would be done inside a year-and-a-half window. Oxford has every incentive to make this construction you can live around since it will take tenants before the remaining buildings are constructed. The developer has proffered a meeting with WindsorMeade residents and anticipates that staff will participate and take input and if there are additional measures needed, the applicant would implement them.

Ms. Bledsoe stated she had concerns about security since it was not gated. She stated a wooded area buffered the villas. She asked if that was an area that allowed access into the villas and what does the applicant know about the property.

Mr. Davis stated the broadest common area between the two properties, where there is a 350' to 650' spread between units, is a wetland. He stated it would be difficult to access in the wet season. The area includes debris and ravines. The area is walkable but not easily. Other adjoining areas are within views of the guards.

Ms. Bledsoe asked if construction would take around two-and-a-half years and if occupants would move in as units were completed.

Mr. Davis stated that was correct. He stated construction would be completed in one-and-a-half-to-two years. He stated the project would be split into phases. After construction of a phase, it would be rented and construction of the next phase would begin.

Mr. Woods asked if the project would be cleared in phases.

Mr. Davis stated the clearing would not be done in phases. He stated that due to the grading required, the clearing would have to be done all at once.

Mr. Woods asked if the plan was to raze the entire area and take two years to construct the project.

Mr. Davis stated yes.

Ms. Bledsoe asked whether clearing was for infrastructure or for convenience.

Mr. Davis stated that in this case, it is for the site's grading. He stated the site is turtle-shell-shaped, and material must be moved from the center to the edges to make it developable. On some projects where the land is flatter, clearing could be done in phases.

Ms. Bledsoe asked if that was an environmental decision.

Mr. Davis stated it was an engineering decision.

Mr. O'Connor asked if the area along the western edge of Windsor Meade Way between the shopping center and the entrance would be left as a natural buffer.

Mr. Davis stated that was correct, the area is a protected wetland.

Mr. O'Connor if the areas on the northern side would be protected.

Mr. Davis stated his area was also a wetland.

Mr. O'Connor asked if the land would be put into a conservation easement or if it would be left as RPA wetlands.

Mr. Davis stated conservation easements are not necessary in areas where proffers, master plans, and ordinances protect them already. He stated the applicant would not object to an easement if it was a concern.

Mr. O'Connor asked if the applicant had performed a Phase I archeological study.

Mr. Davis stated a Phase I archeological study was performed for New Town 10 years ago.

Mr. O'Connor asked if anything was found in the area.

Mr. Davis stated that nothing had been found in the limits of Section 12.

Mr. O'Connor stated that at some point New Town Section 12 was zoned for 300 units.

Mr. Davis stated it was master planned for 300 units in 1997.

Mr. O'Connor asked when did the plan become 209 units and why.

Mr. Davis stated that there were units transferred from Section 12 to Section 13 as a part of Windsor Meade. He stated other units were transferred to Section 11 as well.

Mr. O'Connor stated he wanted to discuss The Pointe at New Town. He asked what kind of rules they have for its residents. He stated he was concerned with what people see when they approach the gatehouse. He recently heard of a complaint about a motorcycle that was parked on a rear deck in The Pointe and he asked whether this would be allowed.

Mr. Bill Hall, representing Oxford, stated his firm no longer owns The Pointe at New Town. He stated that is something that management should have been made aware of and corrected.

Mr. Davis asked if rules prohibit that sort of use.

Mr. Hall stated he strongly suspects so. He stated it should be in the tenant leases.

Mr. O'Connor asked if The Pointe had been successful as far as occupancy and if it was market driven.

Mr. Hall stated yes. He stated in response to a question from one of the community meetings, he pulled police incident reports. He stated there were two reported crimes, both thefts, over the five years his firm owned it.

Mr. O'Connor asked what type of buffering he would propose for units near the gate.

Mr. Davis stated the New Town DRB will impose landscaping standards. He stated the applicant proposes to leave additional undisturbed trees. The applicant would be open to additional landscaping if the Commission recommended it.

Mr. Krapf stated the applicant mentioned he would be amenable to enhanced buffering near buildings 30 and 31. He asked if they would consider enhanced landscaping by the units immediately adjacent to the BMP (buildings 28 and 29), specifically addressing the view shed along WindsorMeade Way.

Mr. Davis stated yes. He stated BMP construction standards require plantings on the slope. He stated there will also be street trees along WindsorMeade Way. There will also be a nearby park where County policy will require at least 30% trees.

Mr. Bledsoe asked about the likelihood of Oxford selling the complex.

Mr. Hall stated he did not know. He said in the case of The Pointe, the property was so attractive that his firm's institutional partner made a good offer.

Mr. Davis stated that Oxford had sold less than half of the 40 projects that it had developed across the United States.

Mr. Woods stated that in 2011 the Commission was clarifying its thoughts regarding clearing, particularly regarding projects of this size. He asked about the status of that discussion.

Mr. Reidenbach stated amendments to the landscaping ordinance were approved in December, but the size of this project would fall just shy of the County phased clearing requirements. She stated the standard is based on disturbed area.

Mr. Woods asked if the Commission was dealing with gross area at the time.

Ms. Reidenbach stated she was unsure. He stated the final adopted ordinance was based on disturbed area.

Mr. Woods stated that regarding the community's sensitivities, was there any discussion with the applicant regarding clearing.

Ms. Reidenbach stated there was discussion at the conceptual level, and that their discussion of the clearing noted that it was needed for grading due to topography.

Mr. Woods asked if the applicant gave the impression the project would not be financially feasible if it was not cleared in phases.

Ms. Reidenbach stated she did not have the conversation.

Mr. Woods asked if the applicant understood the County's sensitivity to environmental issues and clearing.

Ms. Reidenbach stated she believed so but recommended addressing the question to the applicant.

Mr. O'Connor opened the public comment session.

Mr. Don Nelson, 4312 Southberry Square, stated he was the vice president of the WindsorMeade resident association. He stated he was concerned with higher density and crowding, trailers, boats, younger people, and out-of-state cars at The Pointe at New Town. He stated he was also concerned with character differences between the neighborhoods, 400 additional parking spaces, and construction and residential traffic.

Mr. Richard Houston, Windsor Hall Drive, stated WindsorMeade residents had asked him to speak and were concerned with traffic and safety along WindsorMeade Way. He was concerned

with accessibility, lack of a separate construction entrance, construction trucks crowding the road, trucks blocking entrances, trucks having difficulty accessing the property, and traffic flow. He asked the Commission to withhold approval of the project until safety concerns were addressed.

Ms. Barbara Hildenbrand, 4223 Corleridge Court, she was representing the 189 residents who signed the petition. She stated residents were concerned with thefts in gated communities through common access areas, security breaches, minimal natural barriers around Buildings 30 and 31, and a lack of a proposed security fence in a 350' foot area. She asked the Commission to defer approval until a solution was found.

Mr. Doug Springman, 24 Frenchmen's Key, stated his wife had expanded her dental practice in New Town with the understanding that the area would be built out. He stated he would like to retire to WindsorMeade in the future. New Town businesses rely on people moving there. Section 12 should develop in a way that does not harm WindsorMeade.

Mr. Vernon Geddy, 1177 Jamestown Road, representing Virginia United Methodist Homes, the owner of WindsorMeade, stated his clients expect Section 12 to develop, but has issues with a few specifics of the proposal. United Methodist Home's concerns are with visual impact on WindsorMeade residents. The applicant held a balloon test to simulate the height of the proposed buildings. Residents would be looking at the back of a 120' foot long building. The density transfer should not adversely affect WindsorMeade. The buildings could be moved, set back further, or buffered. His client also has security concerns. It would be an easy fix to put an attractive fence in an area where there are no natural barriers.

Mr. Larry Salzman, president of New Town Associates and the New Town Commercial Association, stated he had no financial stake in the proposed apartments. He stated more residents are better for New Town businesses and medical offices. New Town was conceived as a small town with a broad mix of units, uses, and people, and includes a variety of housing units and price points. The new residents will enhance New Town.

Mr. O'Connor closed the public hearing.

Mr. Drummond stated that safety concerns would be easier to address if the construction project had an additional entrance. He stated that regarding security, a fence could provide a quick fix. If those conditions could be met by Oxford, the problem could be resolved.

Ms. Bledsoe stated the applicant researched an additional entrance, but it was not possible at this point due to the wetlands and failed negotiations with the shopping center.

Mr. O'Connor asked if the wetlands up front precluded connection to the first entrance to the shopping center.

Mr. Davis stated yes, there are wetlands adjacent to the shopping center.

Mr. O'Connor stated it was the only entrance due to the wetlands near the entrance and no connection through the back side of the shopping center, as well as no access through Rt. 199. He

stated with the addition of a turn lane, there would be no need for a second entrance on WindsorMeade Way.

Mr. Woods asked if construction hours would be managed to accommodate WindsorMeade. He asked what Mr. Davis was thinking of for security regarding the buffer going forward.

Mr. Davis stated that the Commission may include a condition in the recommendation that the applicant work with WindsorMeade and find solutions acceptable to Planning staff. He stated that would leave screening, buffering and construction traffic issues to staff expertise. The applicant wants to make the project satisfactory to the neighborhood.

Mr. Woods stated the Commission could alternatively table the proposal until the applicant communicates with neighbors and presents a package that removes any ambiguity.

Mr. Davis stated the applicant deferred the case in June to conduct balloon tests, to redesign an entrance and to negotiate with the shopping center. He stated that asking the landowner and Oxford to defer again would be a burden in these economic times. A deferral would delay the applicant two and a half or three weeks to work with neighbors before another staff report cycle began. The applicant prefers staff expertise as an arbiter between the two layers.

Mr. Krapf stated the applicant has already agreed to proffer enhanced landscaping around the buildings referred to earlier. He stated those enhancements should be included in any motion. He could not support deferring the application further due to the thoroughness of the package. The Commission's role is land use. The case is a 1997 master planned community with density transfers. A gated community does not entirely fit into the mixed use concept by definition, which includes easy access and pedestrian flow. He was supportive of the proposal. He noted that the suggestion to have the applicant work with WindsorMeade residents and staff to refine concerns is an excellent idea.

Mr. Woods stated he was for the development of this area. He stated it is part of the original mixed use concept. While the case is primarily land use, one of the Commission's primary concerns centers on issues such as safety. He would support approval provided the Commission include conditional language noting concerns and ask the Board to address them further. He asked if that was practical.

Mr. Rogers stated it was. He stated the Commission can express its concerns with a recommendation. The Board will ultimately vote the project up or down and any changes will occur between the Commission meeting and the Board.

Mr. Woods stated his concerns extended beyond buffering to phasing, security, hours of construction and heavy equipment on the road. He stated that without imposing an economic penalty on the applicant, between now and the Board of Supervisors, the applicant should meet and do what is possible, if anything, relative to the Commission's concerns.

Ms. Bledsoe stated the case was a land use issue. She stated the Commission is charged with reviewing it as such. She stated the proposal is consistent with the 1997 New Town master plan and

2009 Comprehensive Plan. New Town as a whole makes up for any negative fiscal impact of this project specifically. The proposal increases work force housing without increasing overall density. Representatives of WindsorMeade and the applicant could meet and resolve concerns without inserting conditional language into the recommendation. She had safety concerns that must be addressed before the Board meeting, but would support the proposal.

Mr. O'Connor asked if WindsorMeade sells security to its residents.

Mr. Geddy stated that was correct.

Mr. O'Connor stated it was not incumbent on Oxford to provide security for WindsorMeade. He asked if the case went forward, would WindsorMeade have any plans to put up a fence.

Mr. Geddy stated he did not know.

Mr. O'Connor stated this was a difficult case. He stated his question may have been unpopular with the residents but was necessary. WindsorMeade advertises that it provides its clients with security. He stated that he manages Kingsmill and there is a fence around most of it. His homeowners expect him to repair the fence when damaged. The WindsorMeade facility, built inside New Town, is urban, not suburban. The area was approved as an Urban Development Area and the business community has certain expectations of New Town's population. This will also support struggling shopping centers.

Mr. Maddocks stated New Town is a mixed use development with a wide mix of people. He stated he was an early businessman in New Town and that construction in a still-developing area is to be expected. VDOT has determined there is no need for additional traffic improvements on Monticello Ave. A variety of housing prices is part of mixed use development. He stated he supports the application.

Mr. O'Connor stated that given the costs of construction in the question about phasing, because the area is so small, he would support clearing all at once to place infrastructure. He stated it would also be less expensive and a benefit to the whole community to perform the clearing at once.

Mr. Drummond stated WindsorMeade residents' biggest issues were security and construction entrances. He stated that a separate construction entrance was not possible and that the security issue could be addressed before the Board meeting. The visibility of buildings 30 and 31 could be easily addressed as well without great expense. He would support it.

Mr. Woods made a motion to recommend approval, with language stating the Commission's concerns to the Board. He stated he would remove phasing as one of his concerns. The concerns included security and hours of construction.

Mr. Krapf asked Mr. Woods to amend the motion to include enhanced landscaping as a proffer.

Mr. Woods accepted the amendment.

Mr. O'Connor asked if the applicant would agree to enhanced buffering along the buildings in question.

Mr. Davis stated yes.

Mr. O'Connor stated he was confident the applicant would meet with staff and WindsorMeade residents to address the Commission's concerns. He stated it was incumbent upon the Commission to move the case along.

Mr. Johnson stated the motion is to approve the application with the addition of enhanced buffering as a proffer and the applicant and staff will work on the issues of security and hours of construction prior to Board action.

In a roll call vote, the Commission recommended approval (6-0: Abstain: Basic).

Mr. O'Connor recessed the meeting at 9:15 p.m.

Mr. O'Connor reconvened the meeting at 9:20 p.m.

B. SUP-0008-2012, Chickahominy Baptist Church Day Care

Ms. Reidenbach stated Ms. Alice Wilson has applied for a special use permit to allow a day care in an existing accessory building on the Chickahominy Baptist Church property. She stated that the property and adjacent parcels are all zoned R-8, Rural Residential, and designated Rural Lands on the Comprehensive Plan. The permit would allow a maximum of thirty occupants, including children and employees, with a playground behind the church. Conditions also require that the applicant have a valid Virginia Department of Social Services permit, limit the day care to children at least two years, six months, and one day old, and demonstrate that the septic system can handle the additional occupancy. Staff recommends approval of the special use permit with attached conditions.

Mr. O'Connor stated that occupancy would be limited based on Virginia Department of Social Services and County Building Safety and Permits requirements. He asked if the Commission would still want to limit the day care to 30 occupants if those departments allow a greater number of occupants than 30.

Ms. Reidenbach stated that 30 was a conservative estimate based on Building Safety's review and based on how many occupants per square foot would be allowed by the Virginia Construction Code. The building could be expanded, which would be the only way to allow for more than 30 occupants, but there are no plans for that. The Department of Social Services has a stricter method for determining square footage which may allow less than 30 occupants.

Mr. O'Connor asked Mr. Rogers to clean up the language in two sentences reading: "it shall be 30" and "it should be determined by the..."

Mr. Rogers stated that staff would make sure the language is clear.

Mr. O'Connor opened the public hearing.

Ms. Alice Wilson, the applicant, and member of Chickahominy Baptist Church, stated she was seeking a special use permit for a child day care. She stated that the hours of operation would be Monday thru Friday, 6 a.m. to 7 p.m. and Saturdays 7 a.m. to 5 p.m. Alice's Wonderland Playhouse will be monitored by the State, including certifications for classes, background checks and site visits. She wants to cater to community parents coming from Hampton Roads and Richmond to make sure they have adequate care when traffic occurs. She is certified as a volunteer provider, providing weekend and evening care, with five full-time kids and three drop-offs during the evening hours. She introduced other members of Chickahominy Baptist Church in attendance. She had community signatures in support of her application to present as well.

Mr. Woods asked if Ms. Wilson was aware of and comfortable with the conditions.

Ms. Wilson stated yes.

Ms. Bledsoe asked who would be running the day care.

Ms. Wilson stated she would. She stated she would be licensed under the Department of Social Services.

Mr. Corwinn Hammond, pastor of Chickahominy Baptist Church, stated Ms. Wilson had full support of the church. He stated that there are more families with children in the area and that there is a great need for this day care.

Mr. O'Connor closed the public hearing.

Mr. Krapf stated he was supportive of the application. He stated community day care, versus institutional day care, should be encouraged.

Ms. Bledsoe stated she hoped the Department of Social Services would help other communities replicate Ms. Wilson's idea. She stated she would support the application.

Mr. Maddocks stated he would support the applicant.

Mr. Maddocks made a motion to recommend approval subject to the proposed conditions.

In a roll call vote, the Commission unanimously recommended approval subject to the proposed conditions (7-0).

C. SUP-0007-2012 Jim's Well Service

Mr. Jose Ribeiro stated Mr. Frederick Johnson applied for a special use permit to allow for the operation of a contractor's office out of residential property at 194 Racefield Drive. Mr.

Johnson owns and operates a small well-drilling and pump service business. The site would be used for the operation of the business and storage of vehicles and machinery. No additional structures are proposed other than what is shown on the master plan. The property and adjacent properties are zoned A1, General Agriculture and designated Rural Lands on the Comprehensive Plan. Staff recommends approval of the application.

Mr. Basic asked how Condition #9, requiring an SUP amendment if the number of trucks onsite exceeds eight, is enforced.

Mr. Ribeiro stated staff relies on the applicant's honesty. He stated that the applicant also stated is currently only operating five of his six vehicles and does not expect to expand.

Mr. O'Connor stated that the SUP conditions do not put limits on the machinery being stored onsite.

Mr. Ribeiro stated staff wants to give the applicant the flexibility to expand. He stated the machinery will be stored in the covered area. All machinery will be removed from the site via trailer and would not represent a traffic impact.

Mr. O'Connor asked what steps could be taken to prevent this site from becoming a storage area. He asked how to prevent storage of other people's equipment.

Mr. Ribeiro stated that the SUP covers only 0.25 acres out of a 44-acre total property. He stated that the master plan also shows future covered areas for materials storage. He stated that materials can only be stored in these two areas and an SUP amendment would be needed for any further expansion.

Mr. Basic asked if the Treasurer's office can share information with Zoning Enforcement concerning personal property taxes paid on the applicant's vehicles.

Mr. Rogers stated that personal property taxes are confidential though the property owner could sign a release allowing staff access to this information.

Mr. Basic asked if it was self-policing.

Mr. Rogers stated it can be policed other ways, though he does not recommend this method.

Mr. Drummond asked if these vehicles were different from personal vehicles.

Mr. Ribeiro responded affirmatively.

Mr. Drummond asked about personal vehicle use.

Mr. Ribeiro stated he would defer that question to the applicant. He believed that the owner, his wife, and two employees each have their own personal vehicles.

Mr. Basic asked if the applicant would be willing to share the anticipated number of vehicles

with the Zoning Administrator to verify that the conditions have been met.

Mr. Frederick Johnson responded affirmatively.

Mr. Rogers stated that the County has a Release of Information form.

Mr. Basic stated he had seen several contractors offices grow into something that the community did not support.

Mr. Johnson stated that the County has a similar condition that has been applied to daycare facilities, placing a cap on the number of students. He stated that it would be easy to revise the condition to include annual reporting.

Mr. O'Connor closed the public hearing.

Mr. Maddocks moved to recommend approval as amended.

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

D. SUP-0012-2011 Ntelos Rt. 199 Wireless Communications Facility

Mr. Luke Vinciguerra stated Ms. Gloria Frye, on behalf of Ntelos, has applied for special use permit to allow the construction of a 172' wireless communications facility located on the east side of Route 199, north of New Town Section 7 & 8, and adjacent to Eastern State Hospital. Due to the height of the tower, which is significantly higher than the adjacent tree canopy, the applicant is not in compliance with Wireless Communication Facility performance standards. Staff recommends denial of the application.

Mr. Drummond asked if there are different standards for camouflaged towers.

Mr. Vinciguerra stated there is a higher criteria for camouflaged towers, but that this tower is not camouflaged. He stated camouflaged towers have vigorous standards and cannot be seen by the casual observer.

Mr. Drummond asked if a camouflaged tower could be disguised as a tree.

Mr. Vinciguerra stated that was an option. He stated camouflaged towers are often by-right.

Mr. Woods asked if the case were approved, would the applicant agree with the eleven conditions.

Mr. Vinciguerra stated the applicant agrees with the conditions, but asked staff to examine the conditions that discuss collocation. He stated the applicant had better wording they would like to propose. Staff will consider that language after the meeting.

Mr. O'Connor asked how close the tower is to nearest residence in Section 8.

Mr. Vinciguerra stated the development plans for that section are not in yet. He stated there is a master plan, but there is no specific number. Theoretically, a house could be 50' away from the New Town property line. The tower is over 600' from the nearest Ford's Colony house.

Mr. O'Connor asked how far the proposed tower was from the property line.

Mr. Vinciguerra stated it was 300' from the New Town property line.

Mr. O'Connor asked if it would be 350' from the rear property line of future New Town houses.

Mr. Vinciguerra stated it could be 350' as a worst case scenario.

Mr. Maddocks asked what height would be satisfactory to staff.

Mr. Vinciguerra stated staff reviewed the application at 172'. He stated he cannot say what height would be approval by staff should a tower come in at a lower height, reviewed against the performance standards.

Mr. Maddocks asked if there was a standard.

Mr. Vinciguerra stated staff cannot say it will approve something at a certain height.

Mr. Johnson stated similar towers have been reviewed along community character corridors. He stated when the initial balloon test for this site was flown, it was 200', with later tests at 150', 172' and 130'. Staff informed the applicant that 130' would be the maximum height that staff would be willing to support at this location. The applicant then changed their application from 200' to 172'.

Mr. O'Connor asked if the applicant wanted to discuss collocation.

Mr. Vinciguerra stated the applicant will submit alternative language to staff after the meeting. He stated this language has not been discussed with the Planning Director or County Attorney.

Mr. Bledsoe asked if the section of New Town that can view the tower was approved prior to this application, and was a part of Comprehensive Plan and New Town master plan.

Mr. Vinciguerra stated it has been rezoned, but development plans showing individual homes and roads are not in yet.

Mr. Drummond asked if the visibility was only from Rt. 199.

Mr. Vinciguerra stated staff was able to see the balloon from Rt. 199 and through the trees from one road in Ford's Colony. He stated the highest visibility would be from Rt. 199.

Mr. Johnson stated the balloon was only visible while traveling eastbound on Rt. 199. He stated it will be highly visible from New Town Section 8 when the trees finally come down.

Mr. O'Connor stated he had spoken with Ms. Frye shortly after the balloon test.

Mr. Basic stated he had also spoken with Ms. Frye after the balloon test.

Mr. Drummond stated he had also spoken Ms. Frye.

Ms. Gloria Frye, representing the applicant, made her presentation. She stated Ntelos needs a tower to serve the nearby area from Longhill Road to the north, Monticello Avenue to the south, Rt. 199 to the east, and Ford's Colony to the west. The search ring is only three-quarters of a mile in diameter. Ntelos indoor service is unreliable in these areas. A 172' tower would serve most of the area but would still leave some gaps on the propagation map. Ntelos has been spent years looking for a site in this area, including a collocation site, reviewing 15 sites. The application site is outside the search ring and only achieves 70% of wanted service improvements, but it represents a reasonable compromise. The site itself will allow it to achieve County performance standards and will minimize impacts. The tower is only visible for 13 seconds eastbound on Rt. 199, from one street in Ford's Colony during the winter, and may or may not visible from future New Town development. Because no homes or streets exist there today, there is no substantial evidence the pole would or would not be visible above the tree canopy. Under the 1996 Telecommunications Act requires any decision regarding wireless communications to be support by substantial evidence. Visibility depends on many factors: angle, grade, distance, and vegetation, all of which will not be known until New Town decides to develop. A slick stick tower would not detract from Rt. 199's character. Reducing the tower height to 130' reduces the service improvements to 45% and reduces collocation opportunities.

Mr. Maddocks asked what diameter was a slick stick.

Ms. Frye stated they taper to 24" at the top. She stated standard arrays are 12' in width.

Mr. O'Connor asked if the propagation maps focused on voice or data.

Mr. Frye stated Ntelos is trying to improve in home data service. She stated the tower must be taller further from its search ring. It is difficult to find sites that service homes that homes don't see.

Mr. O'Connor asked about current New Town coverage.

Ms. Frye said it was adequate, with a site at Berkeley Middle School.

Mr. O'Connor asked about service improvements with a 150' tower.

Ms. Frye stated it would be between 50% and 60%.

Mr. Krapf asked Ms. Frye to clarify the definition of service objective, and whether that included collocations.

Ms. Frye stated the service objective is to get the signal into as many homes as possible. She stated the ability to collocate is one of the goals of the jurisdiction to reduce the number of towers. Collocation also helps defer the cost of the facilities.

Mr. Woods stated the community made it known during the 2009 Comprehensive Plan that they wanted the issue of cell towers reined in. He stated the Commission recently reviewed a tower ordinance that was both advanced technologically and respected the interests of citizens. This is inconsistent with that ordinance.

Ms. Frye stated Ntelos addressed the performance standards. She stated it comes down to a degree of visibility which is somewhat subjective. The homes that will be served will have no negative impact.

Mr. Woods stated the Rt. 199 corridor was established as sensitive.

Ms. Frye stated the County has done an excellent job keeping the corridor wooded. She stated there are other utilities visible along the corridor. This is a utility to serve the public. Ntelos will provide three times the recommended screen on its property to help keep a wood community corridor.

Ms. Bledsoe stated New Town Section 8 will be developed into a residential area at some point. She stated if the section had been built, those people would be here. There are some issues with the placement. A tower cannot be compared to a phone or water line that serves the whole community, as opposed to Ntelos customers.

Ms. Frye stated it can bring other providers in. She stated the service level the public expects is a public interest. It is a private utility to serve people with the least amount of impact.

Ms. Bledsoe asked if going down to 130' was no longer an option for Ntelos.

Ms. Frye stated the applicant never discussed going down to 130', but it did at that height service levels would be reduced to 40% and that may not be a viable business decision. A second pole would still be needed.

Mr. O'Connor asked if collocation possibilities have been exhausted.

Ms. Frye stated there are already antennae on the four nearby towers.

Mr. O'Connor asked if the Hospice House application had been withdrawn.

Ms. Frye stated yes. She stated moving that tower further away to serve more people just doesn't work.

Mr. O'Connor asked if the tower was 135', would the applicant ask for an external array.

Ms. Frye stated that at that height, external antennae would strengthen the signal somewhat.

She stated it would make it easier to swap out new or improved technology.

Mr. O'Connor asked if the 135' 40% service level was with the external array.

Ms. Frye stated yes.

Mr. Krapf asked if Ntelos looked into a lower slick stick and alternate technology.

Ms. Frye stated DAS was not a suitable alternative for this service area because of the distance and the infrastructure that would be needed. She stated DAS works better in small, defined areas.

Mr. O'Connor asked if there was anywhere on the site further north and west of New Town for the tower to be located.

Ms. Frye stated the tower cannot be shifted due to wetlands and the collapse radius. She stated its location maximizes the buffer towards Eastern State and New Town. There is no evidence to support future visibility from New Town.

Mr. O'Connor opened the public hearing.

Mr. Larry Salzman, president of New Town Associates, stated New Town was opposed to a tower of this size at this location. He stated the tower will be visible from future sections of New Town residences. A tower could be placed behind WindsorMeade Marketplace. The tower would restrict future New Town flexibility and marketability within sight of the tower.

Mr. O'Connor asked how many homes are proposed for New Town Section 8.

Mr. Salzman stated did not know. He stated with the reworking of density, he anticipates around 400 housing units in Section 7 and 8. West of the Archaeological Park and behind Settler's Market, there will be around 300 units.

Mr. O'Connor asked why placing a tower behind WindsorMeade Marketplace would be a better location.

Mr. Salzman stated is was physically further away, in view of fewer homes, and the use is more compatible with the shopping center.

Mr. O'Connor closed the public hearing.

Mr. Krapf stated that based on community feedback and the Comprehensive Plan, the Board adopted a set of guidelines that applications must meet. He stated the community character corridor low-visibility condition is not being met. The Commission must be concerned with precedent, with higher and higher towers being placed. Because it conflicts with the wireless communications and precedent, he would not support the application.

Mr. Basic stated adding an additional eyesore to Rt. 199 does not seem to be a reasonable approach. He stated the tower would be a visual terminus to Section 8. He would not support the application.

Mr. Woods stated he felt prohibited from supporting it because citizens have spoken so vividly their concerns over the subject.

Mr. O'Connor stated while not completely compatible, slick sticks are preferable to arrays. He stated consumers want more while there is less space. He could support the application due to its ability to collocate and was a slick stick. The tower may be more visible placing it near WindsorMeade.

Mr. Maddocks stated that we're a growing community that needs infrastructure. He stated a 24" slick stick was not that obtrusive. He would support the application.

Mr. Drummond how close were other New Town towers to Section 8.

Mr. O'Connor stated across Monticello and behind Courthouse Commons.

Mr. Johnson stated that many of the towers on the spreadsheet provided by staff predate the Wireless Communications Facilities ordinance, performance standards, and Comprehensive Plan.

Mr. Drummond asked about the community benefitting from the tower.

Mr. Johnson stated the propagation map showed an area almost exclusively west of Rt. 199, including Ford's Colony and Powhatan Secondary.

Mr. Drummond stated it may be more of a benefit for those communities.

Mr. Johnson stated the applicant's maps do not show the propagation extending east of Rt. 199 onto any portion of New Town.

Mr. Drummond stated he had mixed feelings, but one would have to have an eagle eye to notice it. He stated he would be inclined to support it.

Mr. Bledsoe stated the visibility from Rt. 199 did not concern her as much as future homes being built in New Town. She stated the tower was not in compliance with performance standards or Comprehensive Plan. She would not support it.

Mr. Rogers stated the Commission had heard from Ms. Frye that her claim was based on substantial evidence criteria of the Telecommunications Act. He stated part of that is based on a projection of what approved housing would have to see. Substantial evidence could be requested by the Commission, such as a computer projection. If the application was rejected, part of her claim would be that the Commission did not have substantial evidence. To help, the Commission should request an image of the tower showing approved housing built. The County should have a factual background behind the performance standards for any court.

Ms. Bledsoe stated she amended to her objections to include only the reference to the Comprehensive Plan.

Mr. Krapf stated it would make sense for the applicant to have a computer-generated image when it goes before the Board.

Mr. O'Connor asked if Mr. Rogers had a recommendation for whether the Commission should make a condition or ask the applicant to provide that.

Mr. Rogers stated it is entirely up to the Commission. He stated there are legal criteria if it goes to the Board and if the Commission thinks it's important to know the projection for the tower would look like with approved housing, that may be a substantial issue for the Commission and the Board. The Commission could add a condition to its recommendation or defer the case and ask the applicant to provide it if it was going to change any votes of any Commissioners.

Mr. Krapf stated he was still relying on the Comprehensive Plan and the performance standards for his decision. He stated a computer image may be more important to the Board since they design these guidelines. He would not recommend deferral.

Mr. Woods stated the Commission could forward either recommendation to the Board along with the suggested illustration.

Mr. O'Connor asked if Ntelos would be willing to bring forward that recommendation to the Board.

Mr. Frye stated yes, but Ntelos would need additional information from both the County and New Town property owners and would need full cooperation to create the image.

Mr. O'Connor asked Mr. Salzman if that was acceptable.

Mr. Salzman stated yes. He stated New Town has preliminary drawings it could furnish.

Mr. Krapf moved for denial of the application with the recommendation that staff provide the additional information to the Board.

In a roll call vote, the Commission recommended denial (Yes: Basic, Bledsoe, Krapf, Woods; No: Drummond, Maddocks, O'Connor).

E. AFD-04-86-03-2012 Pates Neck AFD Addition

Mr. Vinciguerra stated Ms. Lora Hineman has applied to enroll 131 acres of property located at 212 and 300 Turner's Neck Road into the Pates Neck AFD. He stated the properties are zoned A1, General Agricultural, and designated Rural Lands on the Comprehensive Plan. The AFD Advisory Committee and staff both recommend approval of the application.

Mr. O'Connor opened the public hearing.

Seeing none, Mr. O'Connor closed the public hearing.

Mr. Krapf moved to recommend approval of the application.

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

F. ZO-0002-2012 Definitions, ZO-0009-2011 Residential Districts, ZO-0008-2011 Multi-Use Districts, ZO-0007-2011 Residential Cluster Overlay, ZO-0005-2011 Green Building

Mr. Johnson stated that in the interest of time, Mr. Ribeiro could make a short presentation on all of these topics. He stated Ms. Cook and Mr. Purse could then be available to answer any questions.

Mr. Woods asked staff whether each section was materially consistent with the language reviewed by the Policy Committee.

Mr. Ribeiro stated his presentation did not include that information. He stated he could discuss changes to the Definitions section and his coworkers other sections.

Mr. Johnson stated Mr. Ribeiro, Mr. Purse, and Ms. Cook could give brief summations to what the Policy Committee reviewed previously.

Mr. Ribeiro stated that some definitions were previously submitted to the Committee and the Commission as part of the review of individual districts and sections of the ordinance. He stated all revised definitions are now being presented collectively under a single document in Section 24-2. In addition to the definitions and ordinance updates under review tonight, staff has also prepared a residential redevelopment policy, workforce housing opportunity policy, endorsement of green building incentives, and mixed use construction phasing guidelines for consideration.

Mr. Jason Purse stated a majority of the changes in the Multiple Use districts language is consistent with what the Policy Committee has seen. He stated that since the Committee's review, there was a Board work session where the Board discussed the density bonus table. Changes had been made to the table since the Committee saw it. Staff has also added more uses to these districts to make them more consistent with state code, such as group home and assisted living type uses.

Mr. Basic stated that PUD setbacks when adjacent to residential uses were reasonable. He asked if the 75' feet setback from PUDs to adjacent compatible commercial uses could be reduced.

Mr. Purse stated staff would be amenable to proposing a waiver provision to those sections. He stated it could be similar to the residential section, with waivers going to the Planning Director and appeals to the Commission. The language could be added to materials going to the Board next month.

Mr. Basic stated that sounded good.

Ms. Cook stated there was a lot of discussion of the Residential districts at the Board level

work sessions. She stated the density bonuses table is also used in Cluster Overlay, R1, and R2 districts. The other major changes of note since the Policy Committee are the refinements to density provisions. In R1 and R2, density had been based on gross area. Now density based on the developable area is applied to all districts and uses a step-scale method. Green Building incentives also saw substantial changes since the Policy Committee. It has changed from an expectations-based policy to an incentives-based approach. The Green Building policy is more a list of incentives now.

Mr. O'Connor asked if the step-scale method made it more consistent and predictable to calculate density for both staff and business.

Ms. Cook stated staff attempted to make it as user-friendly as possible. She stated the ordinance includes an illustration with the table.

Mr. Basic stated it was much more user-friendly.

Mr. O'Connor opened the public hearing.

Ms. Susan Gaston, representing the Williamsburg Area Association of Realtors, stated the density calculations are much more user-friendly, predictable, and consistent. She stated the association supports the density table and changes. She commended the affordable housing policy and supported the green building policy as well.

Mr. O'Connor closed the public hearing.

Mr. Krapf stated staff made changes to each district easy to follow and that the changes are positive.

Mr. Woods stated he had no issues with what had been presented, but had some questions with the process.

Mr. Basic moved to recommend approval as amended.

In a unanimous roll call vote, the Commission recommended approval of the ordinance amendments, policies, and guidelines, as amended (7-0).

G. ZO-0005-2012 Section 24-24, Additional Requirements for Submittal

Mr. Bryan Soukup stated the Section 24-24 amendments were essentially housekeeping changes to bring County Code in line with State Code. He stated before submitting an application for a special use permit, variance, erosion and sediment control permit, building permit, land disturbance or rezoning, the applicant will obtain a signature from the County Treasurer certifying certain delinquent fees are paid in full for property listed in the application, including real estate taxes, nuisance charges, stormwater utility fees and any other charges that constitute a lien against the property. The amendments will also clarify which individuals and entities are included in the class of applicants subject to these requirements.

Mr. O'Connor opened the public comment period.

Mr. O'Conner noted that Mr. Johnson requested the Public Hearing on the ordinance be continued to the August Planning Commission meeting.

Mr. O'Connor continued the public hearing until the August 1 Planning Commission meeting.

7. PLANNING COMMISSION CONSIDERATIONS

A. Zoning Ordinance Transition Resolution

Ms. Cook stated the transition resolution is for vesting or grandfathering those development projects that meet the development criteria listed in the resolution. She stated vesting or grandfathering would mean the proposed changes to the Residential and Multiple Use districts would not affect those developments as they move forward. The provision for vesting mirrors the provisions in the Code of Virginia.

Mr. Krapf moved to recommend approval.

In a unanimous voice vote, the Commission recommended approval (7-0).

8. PLANNING DIRECTOR'S REPORT

There were no other comments.

9. PLANNING COMMISSION DISCUSSION AND REQUESTS

Mr. Woods stated two of the Commissioners were recent graduates of the state's certification program.

Mr. O'Connor stated Mr. Woods and he discussed concerns of materials that came out of Policy Committee and going to the Board being drafted into a different version. He stated in the future, if items go up, and there are significant changes, the materials go back to the Committee.

10. ADJOURNMENT

Mr. Maddocks moved to adjourn.

The meeting was adjourned at 11:08 p.m.

Tim O'Connor, Chairman

Chris Johnson, Acting Secretary

MEMORANDUM

DATE: August 1, 2012

TO: The Planning Commission

FROM: Adam R. Kinsman, Deputy County Attorney

SUBJECT: Amendments to County Code section 24-24.

At its meeting last month, the Planning Commission adopted an initiating resolution and considered proposed changes to County Code section 24-24. The proposed changes clarify the requirements by which certain land use applicants must follow to ensure that their accounts with the County are paid in full. Because the Planning Commission did not have the proposed Ordinance in its packet, the application was continued until the August 1, 2012 meeting.

I recommend that the Planning Commission forward the attached Ordinance to the Board of Supervisors with a recommendation of approval.

Attachment:

1. Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 24-24, ADDITIONAL REQUIREMENTS FOR SUBMITTAL.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Section Sec. 24-24. Additional requirements for submittal.

Chapter 24. Zoning

Article I. In General

Sec. 24-24. Additional requirements for submittal.

Each person or entity *including the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent*, submitting an application for consideration under the provisions of section 24-23 including a special use permit, variance, erosion and sediment control permit, building permit, or any other land disturbance or rezoning measure, shall attach to such application a signed statement from the county treasurer certifying that for property listed in the application all real estate taxes, *nuisance charges, storm water management utility fees, and any other charges that constitute a lien on the subject property that are* owed to the county *and have been properly assessed against the subject property, and* have been paid in full. The statement of certification from the county treasurer shall be valid for 30 days. Should the application be submitted more than 30 days after the treasurer has certified payment of taxes, a new certification from the treasurer shall be required.

State law reference-Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties, Code of VA., §15.2-2286.
(Ord. No. 31A-247, 8-10-10)

Z-0007-2012/SUP-0002-2011, Greensprings Mobile Home Park Sanitary Sewer Force Main Extension. Staff Report for the August 1, 2012 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

August 1, 2012 7:00 p.m.
September 11, 2012 7:00 p.m. (tentative)

SUMMARY FACTS

Applicant: Mr. William Shewmake & Ms. Elizabeth White of LeClair Ryan

Land Owner: Greensprings Mobile Home Park, LLC

Proposal: To rezone the existing mobile home park property from A-1, General Agricultural, to A-1, General Agricultural, with proffers, and request a special use permit to allow the extension of public utilities.

Location: 4131 Centerville Road

Tax Map/Parcel: 3640100001

Parcel Size: ± 46.29 acres

Existing Zoning: A-1, General Agricultural

Proposed Zoning: A-1, General Agricultural, with Proffers

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

STAFF RECOMMENDATION

Staff finds that the extension of public utilities outside the Primary Service Area (PSA) is inconsistent with the Land Use goals, strategies and actions and the Public Utilities Policy of the 2009 Comprehensive Plan. Additionally, the extension of public utilities to a legally nonconforming use is inconsistent with the general intent of the nonconformities ordinance which is to discontinue nonconforming uses in favor of uses conforming to the ordinance and the zoning map. Staff recognizes the dilemma facing the residents of the Greensprings Mobile Home Park (the Park) and the property owner's challenges with on-going sewage disposal. The current owner purchased the Park with full knowledge of the challenges that came with continued operation of the rental business on the property. Protecting the public health, safety and welfare of all County citizens will always be a paramount concern for the County; however, failing septic fields are not a new problem on the property and continued pump and haul sewage disposal operations could continue, albeit at a more frequent rate. The proffers submitted by the applicant provide restrictions on connection of public sewer to no more than 86 manufactured or mobile homes at any one time and provide that no

additional dwellings will be permitted on the property but they do not reduce the nonconforming use of the property and provide no assurance that Park residents will remain in their homes after the sewer problem is resolved. The attached conditions address staff's concern for future connections to the water main from properties located outside the PSA with identical language that has been adopted by the Board of Supervisors in the past. Staff recommends that the Planning Commission recommend denial of the rezoning and special use permit applications to the Board of Supervisors. If the Planning Commission opts to recommend approval of these applications, staff notes that it should be subject to the attached proffers and conditions which slightly narrows the precedent that would be set should the applications be approved by the Board of Supervisors.

Staff Contact: Christopher Johnson, Principal Planner

Phone: 253-6690

Proffers:

The signed proffers have been submitted in accordance with the James City County Proffer Policy. The proffers will need to be notarized and dated prior to consideration by the Board of Supervisors.

The applicant has proffered that any connection to public sewer shall be limited to a maximum of 86 manufactured or mobile homes at any one time. In addition, the applicant has proffered that there shall be no other dwellings other than the 86 manufactured or mobile homes permitted on the property. Discussions between staff and the applicant regarding the draft proffers addressed the possibility of reducing the number of connections to public sewer as individual homes are removed from the property or are otherwise vacated as a means of reducing the degree of the nonconforming status of the Park. The applicant chose not to proffer such a limitation explaining that reducing the number of homes could result in potential increases in the lease costs for residents within the Park and would not make the significant private investment of extending public sewer to the site viable over time.

PROJECT DESCRIPTION

Mr. William Shewmake and Ms. Elizabeth White, of LeClair Ryan, have applied on behalf of property owner Greensprings Mobile Home Park, LLC to rezone the 46.29 acre Greensprings Mobile Home Park property located at 4131 Centerville Road from A-1, General Agricultural, to A-1, General Agricultural, with proffers. The applicants also request a special use permit to allow the extension of public sanitary sewer force main to the subject property. The special use permit application does not include a request to bring the Park into compliance with the A-1, General Agricultural, zoning district or Article IV of the zoning ordinance.

The Park currently contains 86 legally nonconforming mobile and/or manufactured homes that are all served by private septic systems and drain fields. The applicants stated purpose for submitting the special use permit application is to rehabilitate the Park with a new private gravity sanitary sewer collection system throughout the property with sewer laterals and clean-outs for each of the 86 mobile and/or manufactured homes. The proposed gravity sewer would be routed to two on-site privately owned and maintained pump stations before routing the discharge from these pump stations through a proposed force main that would exit the site at the Park's entrance at Centerville Road. The proposed force main would then continue south within VDOT right-of-way parallel to the west side of Centerville Road for approximately 960 linear feet, turn 90 degrees and cross Centerville Road before continuing south within VDOT right-of-way along the east side of the road for approximately 1,975 feet, at which point the proposed force main would run parallel to an existing

JCSA 6" force main for approximately 410 linear feet within an existing 15-foot JCSA utility easement that discharges into an existing manhole (MH#12041-124) along Philip Ludwell in Greensprings Plantation. The sanitary sewer flow would ultimately discharge into the Powhatan Interceptor Gravity Flextran line, which flows into HRSD Lift Station 1-2.

HISTORY

The Park was established in the late 1960s via the issuance of a series of Conditional Use Permits (CUP-9-69; CUP-44-70; CUP-27-71; CUP-20-72). In 1974, the Board of Supervisors approved Case No. CUP-23-74 which established an 85-space mobile home park known as Greensprings Mobile Village. Conditional Use Permits, much like specially permitted uses in today's zoning ordinance, were routinely issued with restrictions and time limits. Letters in the zoning property file indicate that there have been several violations and complaints filed regarding the Park over the years. Several spaces located at the end of Clay Circle were used to locate mobile homes illegally. The Park's original owners made several attempts over the years to utilize spaces at the end of Clay Circle, but in each instance zoning staff denied the requests to add additional spaces as it was determined to be an expansion of a nonconforming use and would have required the issuance of a Special Use Permit. While records are not clear as to the exact timing or placement of an 86th home within the Park, letters within the zoning property file appear to indicate that a water supply permit for the property allowed for 86 connections and the Park has contained 86 homes since at least 1986. There are no outstanding violations on record at this time.

The Housing and Urban Development (HUD) website states "*A manufactured home (formerly known as a mobile home) is built to the Manufactured Home Construction and Safety Standards (HUD Code) and displays a red certification label on the exterior of each transportable section. Manufactured homes are built in the controlled environment of a manufacturing plant and are transported in one or more sections on a permanent chassis.*" The Park contains both manufactured homes as well as mobile homes which were built prior to June 15, 1976 and so do not display a red HUD certification label on their exterior. This is important because mobile homes may not be located or relocated per the current Zoning Ordinance. Proffers submitted by the applicant reference both manufactured homes and mobile homes for this reason. The residents of each of the 86 manufactured or mobile homes own their homes and lease space from the property owner.

From the time the Park opened, the property owners managed the on-site septic systems by "pump and haul" operations, obtaining a permitted septic pump truck and staff to pump the systems as needed. Very few complaints from residents were received by the County or the Health Department during the initial thirty years of operation. Documentation on file indicates that the property owners took the initiative to remove residents from affected homes whenever septic systems were not functioning properly. Sometime around 2000, the property owner began investigating options for repairing the failing septic systems with the assistance of the Peninsula Health District. When the owner realized the costs associated with connecting to public sewer, they contracted with private soil scientists and an engineering firm to review the site for possible on-site options. Documentation of soil reports revealed no suitable sites for on-site repair.

The present owner purchased the Park from the site's original owner, Dudley S. Waltrip, around 2005. The new owner, like the original owner, has continued to manage the septic systems via pump and haul operation. Beginning in 2008, the present owner began discussions with County, JCSA and

Health Department staff regarding possible connection to the public sewer system. While initial discussions focused on potential routing of a proposed sanitary sewer extension and staff spoke favorably about routing alternatives, staff was clear that any extension of public utilities to serve a commercial business site outside the PSA, albeit one which also serves as a residence for 86 individuals and families, would be problematic.

Zoning records indicate that the Park, as it exists today, is a legally nonconforming use as it predates the establishment of an SUP requirement for a manufactured home park. The nonconformities ordinance states that it is the general intent, over time, to have nonconforming uses discontinued in favor of uses conforming to the ordinance and the zoning map. As stated previously, proffers submitted by the applicant provide that the proposed sanitary sewer extension serve no more than 86 manufactured or mobile homes at any one time and that no additional dwellings will be permitted on the subject property. As submitted, the proffers do not expand the Park nor would they constitute an expansion of the nonconforming use; however, they do not provide a means of reducing or discontinuing the nonconforming use over time.

In order for the park to be brought into compliance, a SUP would need to be approved by the Board. In addition, the Park would need to be brought into compliance with the Chesapeake Bay Preservation Ordinance. While the costs of bringing the site into compliance are not known, it is thought to be cost prohibitive and is not necessary for the Park to continue to operate under its legally nonconforming status.

PUBLIC IMPACTS

1. Engineering and Resource Protection:

Watershed: Gordon Creek

Proposed Condition:

1. The sanitary sewer force main extension shall be placed within areas previously cleared adjacent to VDOT right-of-way and the JCSA easement. Any additional clearing shall require the approval of the Director of Engineering and Resource Protection prior to site plan approval.

Engineering and Resource Protection Staff Comments:

The Engineering and Resource Protection Division has no comments on the proposed SUP application. Applicable Federal, State and local requirements will apply during the development plan review stage of the project especially as it pertains to the abandonment of the existing septic drain fields located within the Park.

2. JCSA:

The site is located outside the PSA, but is proposed to be served by extending public sanitary sewer force main from the Park and connecting to an existing JCSA sewer line within the Greensprings Plantation subdivision.

Proposed Condition:

1. No connections shall be made to the sanitary sewer force main which would serve any property located outside the PSA except for connections to the 86 manufactured

or mobile homes located on the subject property. In addition, for each platted lot recorded in the James City County Circuit Court Clerk's Office as of February 24, 2011, 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.

JCSA Staff Comments:

The JCSA has reviewed the proposal and concurs with the sanitary sewer force main extension routing as proposed. The condition placed on the utility extension is similar to those that have been approved by the Board of Supervisors on other similar requests to extend public utilities outside the PSA. None of JCSA staff's comments for the site plan propose significant changes to the off-site sewer extension, and staff is comfortable with the applicant's ability to meet all required regulations for this project.

3. Health Department:

The Peninsula Health District maintains records documenting a long history of noncompliance issues with respect to the onsite sewage disposal systems within the Park. There is documentation on file at the local health department of repeated attempts by the owners and the Health Department to secure permits for repairs to these systems. Evaluations, which have been conducted by three private sector soil scientists as well as Health Department staff, have all concluded that there is no on-site conventional sewage disposal option other than continued pump and haul operations for repair of the on-site sewage disposal systems for the Park.

Health Department Staff Comments:

In order to protect the health and welfare of the citizens of this community and the integrity of the environment and the waterways of the Commonwealth, it appears that the only viable option for sewage disposal for the Park is connection to the public sewerage system. The Peninsula Health District and the Virginia Department of Health supports approval of the SUP application.

COMPREHENSIVE PLAN

The project area is designated as Rural Lands on the 2009 Comprehensive Plan. Rural Lands are areas containing farms, forests and scattered houses, exclusively outside of the Primary Service Area, 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. Appropriate primary uses include 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.

The PSA defines areas presently provided with public water and sewer, and high levels of other public services, as well as areas expected to receive such services over the next 20 years. The Comprehensive Plan strongly discourages development outside the PSA. Promoting efficiency in the delivery of public facilities and services through land use planning and the timing of development is an important concept. The PSA concept encourages the efficient use of public facilities and services, avoids overburdening such facilities and services, helps ensure facilities and services are available where and when needed, increases public benefit per dollar spent, promotes health and safety through improved emergency response time and minimizes well and septic failures.

The 1975 Comprehensive Plan showed the PSA on its Water & Sewer Plan but did not address the concept in the Land Development Concept Map. The PSA was first shown on the 1981 Comprehensive Plan Land Use Map. Subsequently adopted Comprehensive Plans in 1987, 1991, 1997, 2003 and 2009 have all retained the PSA concept as the principal tool to managing growth within the County. The PSA line specifically excluded the Park property when it was established and has not changed since that time. If public sewer is extended to serve the Park property, it would set a precedent that would make it difficult to deny similar requests from property owners whose land sits adjacent to the PSA.

Utility Policy:

James City County's Utility Policy plays a major role in limiting growth to areas within the PSA. There are certain locations that have SUPs for public utilities located outside the PSA. These areas include John Tyler Highway (Governor's Land), Greensprings West (part of the Greensprings Plantation Master Planned Development, Jolly Pond Road (Hornsby Middle School and Blayton Elementary School), Cranston's Mill Pond Road, Chickahominy Road, Brickbat Road (Matoaka Elementary School), and Riverview Plantation. The Riverview Plantation water extension was approved to address a failing water system within the development that was maintained by the JCSEA.

In the case of the public utility extensions to Matoaka Elementary School on Brickbat Road and to Hornsby Middle School and Blayton Elementary School on Jolly Pond Road, the Board made the judgment that sufficient and significant public benefit existed to permit extensions of public utilities to occur outside the PSA, with minimal impact due to limitations placed on additional connections to the utilities. In the future, it is possible that development patterns and other factors may lead to proposals to locate or extend public utilities outside the PSA and as in the past, such decisions should be made only after careful evaluation of the public benefits to be gained, the impacts of the facility, and the likelihood that such action would significantly affect the integrity of the PSA. As was the case with the examples cited above, the practice of limiting the ability of adjacent parcels to connect to one residentially sized connection should continue as a standard policy in the future.

RECOMMENDATION

Staff finds that the extension of public utilities outside the Primary Service Area (PSA) is inconsistent with the Land Use goals, strategies and actions and the Public Utilities Policy of the 2009 Comprehensive Plan. Additionally, the extension of public utilities to a legally nonconforming use is inconsistent with the general intent of the nonconformities ordinance which is to discontinue nonconforming uses in favor of uses conforming to the ordinance and the zoning map. Staff recognizes the dilemma facing the residents of the Greensprings Mobile Home Park (the Park) and the property owner's challenges with on-going sewage disposal. The current owner purchased the Park with full knowledge of the challenges that came with continued operation of the rental business on the property. Protecting the public health, safety and welfare of all County citizens will always be a paramount concern for the County; however, failing septic fields are not a new problem on the property and continued pump and haul sewage disposal operations could continue, albeit at a more frequent rate. The proffers submitted by the applicant provide restrictions on connection of public sewer to no more than 86 manufactured or mobile homes at any one time and provide that no additional dwellings will be permitted on the property but they do not reduce the nonconforming use of the property and provide no assurance that Park residents will remain in their homes after the sewer problem is resolved. The attached conditions address staff's concern for future connections to the water main from properties located outside the PSA with identical language that has been adopted by the Board of Supervisors in the past. Staff recommends that the Planning Commission

recommend denial of the rezoning and special use permit applications to the Board of Supervisors. If the Planning Commission opts to recommend approval of these applications, staff notes that it should be subject to the attached proffers and conditions which slightly narrows the precedent that would be set should the applications be approved by the Board of Supervisors.

1. If construction has not commenced on this project within twenty-four (24) 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 sanitary sewer force main which would serve any property located outside the PSA except for connections to the 86 manufactured or mobile homes located on the subject property. In addition, for each platted lot recorded in the James City County Circuit Court Clerk's Office as of February 24, 2011, 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.
3. All permits and easements shall be acquired prior to the commencement of construction for the sewer transmission main.
4. For sewer main construction adjacent to existing residential development, adequate dust and siltation control measures shall be taken to prevent adverse effects on adjacent property.
5. The sanitary sewer force main extension shall be placed within areas previously cleared adjacent to VDOT right-of-way and the JCSEA easement. Any additional clearing shall require the approval of the Director of Engineering and Resource Protection prior to site plan approval.
6. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

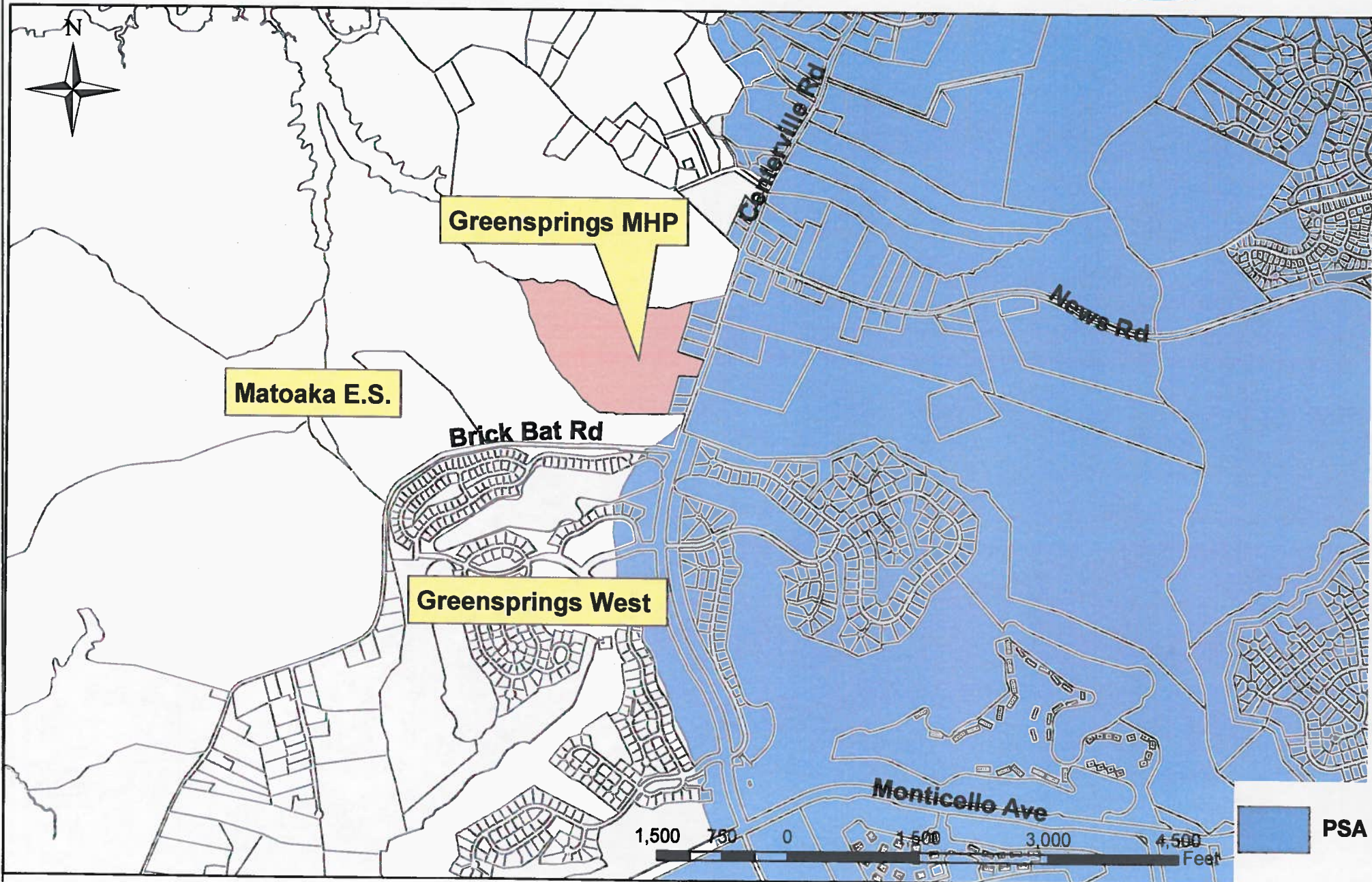

Christopher Johnson
Principal Planner/Acting Planning Director

ATTACHMENTS:

1. Location Map
2. Draft Proffers
3. Sanitary Sewer Force Main Extension Exhibit dated April 13, 2012, prepared by Prism Contractors & Engineers, Inc.

JCC Case Nos. Z-0007-2012/SUP-0002-2011

Greensprings Mobile Home Park



Prepared by:

William H. Shewmake, Esq.
LeClairRyan, A Professional Corporation
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

Return to:

Adam R. Kinsman, Esq.
Deputy County Attorney
Post Office Box 8784
101-C Mounts Bay Road
Williamsburg, Virginia 23187-8784

PROFFERS

THIS PROFFER is made this ____ day of _____, 2012, by **Greensprings Mobile Home Park, LLC**, a Virginia limited liability company (together with its successors and assigns, "Owner") to be indexed as "Grantor," for the benefit of **The County of James City**, a political subdivision of the Commonwealth of Virginia (the "County") to be indexed as "Grantee."

Recitals

1. WHEREAS, Owner is the owner of certain real property in James City County, Virginia, being more particularly described on **Exhibit A** and attached hereto and made a part hereof (the "Property").
2. WHEREAS, currently on the Property are eighty-six (86) manufactured and/or mobile homes as defined by James City County Code § 24-2 (the "Park").
3. WHEREAS, septic systems at the Park have begun to fail, and Owner seeks to correct the problem by connecting any manufactured or mobile homes in the Park to public sewer without expanding the number of manufactured or mobile homes that can access public sewer at any one time and also ensuring that once public sewer services the Property, the public sewer will not be used for any purpose other than servicing manufactured or mobile homes in the Park.
4. WHEREAS, Owner has, therefore, submitted a request for a Special Use Permit Case Number SUP-0002-2011 and a rezoning with proffers, Case Number Z-0007-2012, to permit the Property to utilize public sewer, provided that the public sewer connections be limited

to manufactured or mobile homes and that no more than 86 manufactured or mobile homes be connected to public sewer on the Property at any one time.

NOW, THEREFORE, in consideration of the approval of the requested rezoning Case Number Z-0007-2012 and requested Special Use Permit Case Number SUP-0002-2011 and pursuant to Section 15.2-2303 of the Code of Virginia, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with the following conditions provided, however, if the Board of Supervisors denies the request to rezone the Property, Case Number Z-0007-2012, or denies the Owner's application for a Special Use Permit Case No. SUP-0002-2011, or if the proffered conditions impact or limit Owner's legally non-conforming rights and uses, then the proffered conditions shall be void and of no effect.

Proffered Conditions

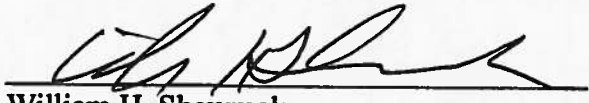
1. Connections to public sewer authorized and permitted by Owner's Special Use Permit SUP-0002-2011 shall be limited to manufactured or mobile homes as defined by James City County Code § 24-2 and there shall be a maximum of 86 manufactured or mobile home public sewer connections on the Property at any one time.

2. Other than a maximum of 86 manufactured or mobile homes on the Property at any one time, there shall be no other dwelling on the Property.

[The remainder of this page is left blank intentionally. Signatures appear on the next page.]

WITNESS the following signature:

GREENSPRINGS MOBILE HOME PARK,
LLC

By: 
William H. Shewmake
Its Authorized Agent

COMMONWEALTH OF VIRGINIA)
) to-wit:
CITY OF RICHMOND)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by William H. Shewmake, Authorized Agent for Greensprings Mobile Home Park, LLC, a Virginia limited liability company, on behalf of the said Virginia limited liability company.

My commission expires: _____.

Notary Public
Registration No. _____

EXHIBIT "A"

All that certain tract, piece or parcel of land containing 48.224 acres, more or less, situated in Powhatan District, James City County, Virginia, as shown and set forth on a certain plat of survey entitled, "Plat Of Property Standing In The Name Of Dudley S. Waltrip Situated In James City County, Virginia", dated September 21, 1969, made by Douglas E. White, C.L.S., a copy of which is of record in James City County in Plat Book 26, page 65, and is expressly incorporated herein by reference.

LESS and EXCEPT all that certain tract, piece or parcel of land, containing 1.84 acres, more or less, designated as Parcel A, as shown on a plat of subdivision entitled, "Plat Of Subdivision, Standing In the Name of Dudley Waltrip, Green Springs Mobile Home Estates," dated May, 1986, and made by Paul C. Small, Architects & Engineers, a copy of which is recorded in the Clerk's Office of the Circuit Court of James City County in Plat Book 42, page 71.

PLANNING DIRECTOR'S REPORT
August 2012

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

- **New Town.** At the July meeting the Design Review Board reviewed building elevations for three new buildings and the side elevation of one approved building in Section 9, designs for the pavilions along Settlers Market Blvd., and amendments to the site plans for the Walmart and Settlers Market shopping area. The DRB also considered a policy to govern sandwich board signs in the area.
- **Training.** Staff recently attended the annual conference for the Virginia Chapter of the American Planning Association (APA-VA). The overall subject of the conference was “Restoring Strength and Economic Prosperity to Virginia through Planning.” James City County Planning staff organized a panel discussion session about the status of transfer of development rights in Virginia and JCC County Attorney’s Office staff participated in a panel about chicken ordinances.
- **Awards.** The Planning Division was selected as the winner of two awards this spring:
 - **National Association of Counties (NACo)** selected the *2009 Comprehensive Plan: Historic Past, Sustainable Future*, as an Achievement Award winner. The Plan also received the Best in Category – Best Rural Program award, which is selected from localities with a population of fewer than 75,000. There were 592 NACo award applications submitted and only 16 programs were selected for Best of Category awards. The award was presented on July 15 at the annual conference in Pittsburgh, PA.
 - **APA-VA** awarded the Planning Division with the Planning Innovation Award – Technology for the Comprehensive Plan Implementation Tracking Tool. The tool was developed by Planning and Information Technology staff to enable better tracking of the progress made on the goals, strategies and actions of the 2009 Comprehensive Plan and to make it easier to collect updates from staff County-wide. The award was presented on July 19 at the annual conference in Wintergreen, VA.
- **Ordinance Update.** Staff has been preparing final ordinances for the remaining non-priority items, including the exterior signs ordinance. Board review of these materials is tentatively scheduled for September. Staff anticipates bringing the Subdivision Ordinance and housekeeping items forward for Policy Committee review this fall.
- **Regional Comprehensive Planning Effort.** Staff met with City of Williamsburg and York County staff to discuss the topic areas highlighted at the joint Planning Commission meeting.
- **Monthly Case Report.** For a list of all cases received in the last month, please see the attached document.
- **Board Action Results** – July 10th and July 24th 2012 –
- **ZO-0014-2012, Exterior Signage** – Deferred to August 14, 2012
- **Z-0005-2012/SUP-0006-2012 Fire Station #4 Replacement** – Approved 5-0
- **Z-0004-2012 Walnut Grove Proffer Amendment** – Deferred to August 14, 2012


Christopher Johnson

New Cases for July						
Case Type	Case Number	Case Title	Address	Description	Planner	District
Conceptual Plans	C-0028-2012	Courtesy Review of 725 Bypass Rd., York County		Courtesy review for York County rezoning at 725 Bypass Road for 118 condominium units at site of existing hotel.	Jason Purse	
Rezoning	Z-0007-2012	Greensprings Mobile Home Park	4131 CENTERVILLE RD	The use as existing mobile home park remains the same and would not expand. The proffers are intended to ensure the sewer connections will be used for mobile homes.	Chris Johnson	02-Powhatan
Site Plan	SP-0054-2012	Powhatan Resort Sidewalk and Parking Space SP Amend	4300 FITHIAN LANE	Applicant proposes 235 parking space additions and interconnecting sidewalks throughout the resort.	Leanne Reidenbach	03-Berkeley
	SP-0055-2012	HRSD Fords Colony Pumping Station SP Amend	430 HEMPSTEAD ROAD	Applicant proposes installing a 2500 gallon diesel tank to replace an existing, 1000 gallon emergency generator.	Jason Purse	04-Jamestown
	SP-0056-2012	Williamsburg Landing Moorings SP Amend.	5700 WILLIAMSBURG LANDING DR	Deck and 42 square foot living space addition to Unit D at the Moorings on Williamsburg Landing Drive.	Leanne Reidenbach	05-Roberts
	SP-0057-2012	New Town Settlers Market SP Amend.	4600 CASEY BLVD	Amend originally approved building footprint for Building C and make adjustments to the sidewalk layout and stormwater management plan in the center of the parking lot.	Leanne Reidenbach	04-Jamestown
	SP-0058-2012	Stonehouse Glen BMP SP Amend.	9304 STONEHOUSE GLEN	Repair the outfall and receiving channel downstream from the existing BMP.	Jose Ribeiro	01-Stonehouse
	SP-0059-2012	Mid County Park SP Amend.	3793 IRONBOUND ROAD	Redesigning Mid County Park per the adopted Master Plan	Luke Vinciguerra	03-Berkeley
	SP-0060-2012	Busch Gardens Black Forest Dessert Stand SP Amend.	7851 POCAHONTAS TR	Dessert stand to be constructed in the Black Forest area.	Jason Purse	05-Roberts

Special Use Permit	SUP-0010-2012	The King's Garden Contractor's Office	5892 CENTERVILLE RD	Allow existing structure to serve as a contractor's office and use of the property for a commercial landscaping business. Case was withdrawn by the applicant on July 2, 2012.	Jose Ribeiro	02-Powhatan
Zoning Ordinance Amendment	ZO-0004-2012	Stockpiling			Jason Purse	
	ZO-0005-2012	Section 24-24.			Chris Johnson	

A G E N D A
JAMES CITY COUNTY PLANNING COMMISSION
AUGUST 1, 2012 - 7:00 p.m.

1. ROLL CALL
2. PUBLIC COMMENT
3. MINUTES
 - A. July 11, 2012 Regular Meeting
4. COMMITTEE / COMMISSION REPORTS
 - A. Development Review Committee (DRC)
 - B. Policy Committee
 - C. Regional Issues Committee / Other Commission Reports
5. PUBLIC HEARING CASES
 - A. ZO-0005-2012, Section 24-24, Additional Requirements for Submittal
 - B. Z-0007-2012/SUP-0002-2011, Greensprings Mobile Home Park Sanitary Sewer Force Main Extension
6. PLANNING DIRECTOR'S REPORT
7. COMMISSION DISCUSSIONS AND REQUESTS
8. ADJOURNMENT

SPEAKER'S POLICY

The Commission encourages public participation, but also wants to remind speakers to use decorum when speaking during the public comment or during public hearings.

Please keep in mind the following when speaking:

1. Courtesy between the speaker and the audience is expected at all times.
2. Speakers shall refrain from obscenity, vulgarity, profanity, cursing, or swearing.
3. Every petition, communication, or address to the Commission shall be in respectful language and is encouraged to be submitted in writing.
4. Public comments should be for the purposes of allowing members of the public to present planning or land use related matters, which, in their opinion, deserve attention of the Commission.
5. The public comment period shall not serve as a forum for debate with staff or the Commission.
6. Citizens should refrain from using words or statements, which from their usual construction and common acceptance are orchestrated as insults, personal attacks, or a breach of peace.
7. The public comment section at the beginning of meetings are provided as a courtesy by the Planning Commission for citizens to address the Commission regarding items not scheduled for public hearing. These public comment sections are not required by law.