

AT A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE THIRD DAY OF MARCH, NINETEEN HUNDRED AND NINETY-SEVEN AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Mr. Alexander C. Kuras, Chairman
Mr. Jay H. Everson
Mr. John F. Hagee
Mr. Martin Garrett
Mr. Donald C. Hunt
Ms. Willafay McKenna
Mr. A. Joe Poole, III

ALSO PRESENT

Mr. Marvin Sowers, Jr., Director of Planning
Mr. John T.P. Horne, Manager, Development Management
Mr. Frank Morton, County Attorney
Mr. Paul D. Holt, III, Planner
Mr. Matthew W. Maxwell
Mr. Gary A. Pleskac, Planner
Ms. Tamara A. M. Rosario, Planner

2. MINUTES

Upon a motion by Ms. McKenna, seconded by Mr. Garrett, the Minutes of the February 3, 1997 meeting were approved as presented by unanimous voice vote.

Upon a motion by Mr. Hagee, seconded by Mr. Everson, the Minutes of the February 18, 1997 Policy Committee were approved as presented by unanimous voice vote.

3. DEVELOPMENT REVIEW COMMITTEE REPORT

Mr. Garrett presented the report and stated that on Case No. SP-1-97, Waterford at Powhatan Secondary, staff did not recommend construction of the fence in the required 30' landscape area, but the Committee determined that the developer should be able to build a fence within the area but that it be 15' from the right-of-way. Mr. Kuras requested that the requirement be reflected in the report.

Upon a motion by Ms. McKenna, seconded by Mr. Garrett, the Development Review Committee Report was approved, as corrected, by unanimous voice vote.

4. CASE NO. AFD-8-86. CASEY WITHDRAWAL (WILFORD/NEW)

Mr. Gary Pleskac presented the staff report (appended) for a withdrawal of approximately 121 acres from the existing Casey Agricultural and Forestal District located at 4008-4010 News Road. Mr. Pleskac stated that staff concurs with the applicant's request to defer this case indefinitely. Mr. Pleskac further stated that Mr. Vernon Geddy, III, the applicant's attorney, informed staff that this case will be reactivated in the near future when plans are further developed.

Mr. Kuras opened the public hearing. There being no speakers the public hearing was closed with no further action required by the Planning Commission.

5. CASE NO. Z-9-96/MP-4-96. HIDDEN PROPERTY/POWHATAN CROSSING, INC.

Mr. Paul Holt presented the staff report (appended) to rezone approximately 404 acres from R-8, Rural Residential, to R-4, Residential Planned Community, in order to construct 540 single family and timeshare units off Ironbound Road between Powhatan Crossing development and Powhatan Creek. Staff concurs with the applicant's request to defer this case until the April 7, 1997 meeting to allow additional time for staff to review and comment on revised proffers and master plan which were not received in a timely manner for review.

In response to Mr. Everson's inquiry regarding the interconnecting roadway to Powhatan Crossing, Mr. Sowers stated that the Comp Plan has been revised to primarily encourage pedestrian and bikeway connections but allowing vehicular connections where appropriate on a case by case review.

In response to the proffer on performance bonding for the drainage, Mr. Holt responded that the Environmental Division is looking into the matter and it will be incorporated in the April staff report.

Mr. Garrett expressed concern that too often developers do not present the best plan possible with the initial submittal and consequently numerous deferrals are required to arrive at an acceptable plan.

Mr. Sowers stated that staff is under an obligation to process a case unless the applicant either requests withdrawal or deferral.

Mr. Horne stated that, in general, the Commission is not obliged to grant deferral, but if deferral is denied, then the Commission must either approve or deny the application.

A brief discussion followed regarding the advantage of deferral in order to develop a better project vs the developer who submits an inadequate plan and then requests numerous deferrals in order to meet the staff's requests.

Ms. McKenna stated that this is a rezoning case and there are some initial policy issues here before even getting to the details of the development and if the Commission has the opportunity to

take a vote it might be that there is no point in proceeding with the case.

Mr. Kuras opened the public hearing.

Mr. Vernon Geddy, representing the applicant, stated that the applicant met with surrounding property owners on four occasions and through this process beneficial changes have been made. Mr. Geddy discussed the proposal and surrounding area: the road system, activity centers, schools, shopping areas, surrounding area subdivisions, the Route 5 Transportation Improvement District, Alternate Route 5, donation of right-of-way, buffers and other proffers, etc.

Mr. Geddy stated that the applicant will continue to meet with anyone who is interested and will offer suggestions on the plan. Mr. Geddy said that the plan before the Commission was a good plan and that they would appreciate input and comments on the plan from the Commission.

Mr. Leonard Sazaki, 3927 Ironbound Road, stated that R-6 was an option and suggested it be considered. Mr. Sazaki objected to additional housing and was fearful that he would lose his home to more new road construction.

Mr. Jay Sexton, 4488 Powhatan Crossing, representing a group of concerned residents, stated the residents opposition to the rezoning. Mr. Sexton stated that Powhatan Crossing was unique since there is one road into the subdivision with homes lining that one road which in some instances are less than 50 feet from the roadway and pose a serious problem. Mr. Sexton stated that another access was needed.

There being no further speakers the public hearing was continued to April 1, 1997.

Mr. Kuras stated that with the concurrence of the Commission the public hearing would be continued to the April meeting.

In response to Mr. Garrett's question regarding whether this housing was needed for Alternate Route 5 to be completed, Mr. Horne stated that there is not an accurate count of the values in the corridor as to whether these homes would be critical but they were included in the original financial calculations. Mr. Horne further stated that if other values in the corridor are higher than what was projected then that would tend to make the proposed units less critical, but if they are not any higher then it makes the proposed units important.

Ms. McKenna made a motion, seconded by Mr. Garrett, to deny the request for deferral.

Ms. McKenna quoted the definition for R-8 as her reason for denial as follows: "... R-8 is intended for application for rural areas of the County which remain inside the Primary Service Area where utilities and urban services are planned but not yet fully available and where urban development may be expected in the near future. The district may also be applied to certain outlying areas where residences exist at similar densities or may be appropriate in view of housing needs." Ms. McKenna stated that on the occasions this case has been heard there has not been anything that addresses this change of zoning and that the burden is on the developer to show that there is reason

to change this piece of property from R-8 to any other zoning.

A discussion followed on the intent of the R-8 district, the lack of infrastructure, traffic generation, lack of housing need, and whether it was fair to the applicant to deny his request for deferral which is contrary to former policy by the Commission.

For an expressed lack of support Ms. McKenna withdrew the motion to deny the request for deferral.

The public hearing was continued to the April 7, 1997 Planning Commission meeting.

6. ARCHAEOLOGICAL ASSESSMENT STUDY

Mr. Gary Pleskac presented the staff report (appended) and introduced Mr. Dennis Blanton, Center for Archaeological Research, William & Mary, co-author of the study; Mr. Randy Turner, Regional Director of the Virginia Department of Historic Resources, Portsmouth Office; Mr. Jim Dorsey, Chairman of the Historical Commission, and Alain Outlaw, local archaeologist and a member of the Historical Commission. Mr. Pleskac stated that tonight's program is to answer any questions by the Commission or public may have about the assessment. Mr. Pleskac stated that with the Commission's approval, staff will use the assessment as part of the development review process as outlined in the User's Guide and in the February 3, 1997 staff report.

In response to Mr. Everson inquiry as to how short term and long term recommendations would be addressed as it applies to rezoning and special use permits, Mr. Sowers said that staff would look closer at the reports recommendations to include all development projects and be part of the subdivision and site plan ordinances.

Mr. Blanton discussed regional and local significance and pointed out that James City County enjoys national significance; e.g., Jamestown Island.

Mr. Hagee expressed concern regarding the costly outlay of money by a developer, the significance of what is found, and that the findings be interpreted and shared and not just stored in a warehouse. Mr. Hagee also felt that the burden of the cost should be removed from the property owner.

Mr. Blanton explained "integrity requirements" and stated that they are demanding that this study be applied properly and that sites be determined with no question to have superior integrity and superior research potential before any additional work is done. Mr. Blanton stated decisions are not made individually but, for instance, with the Historical Commission and the Virginia Department of Historic Resources, and the attempt is made to apply criteria so that there is no abuse or misappropriations.

Mr. Pleskac stated that part of the reason for conducting the study was the Policy Committee's request for a risk analysis or sensitivity analysis of the County. Just as important a part of this study along with the rank order is the County sensitivity map which shows the low,

moderate, high and ultra sensitive areas of the County which is how staff expects to use it early in the process when determining whether to recommend archaeological proffers or phase I.

Mr. Poole pointed out that applicants are willing to pay for traffic engineers, architects, attorneys, etc. Mr. Poole felt that the archaeological resources and particularly the historical resources in the County are the envy of many other areas and this document is equitable.

Mr. Hagee questioned if archaeological easements have been established in other localities and the benefits of the easement.

Mr. Randy Turner responded that the archaeological easement is a very popular and voluntary program administered by Virginia Department of Historic Resources.

Mr. Hagee stated that when a Phase 3 study is required the property owner has a choice of either carrying out the study or leaving it intact. If left intact, is it declared an archaeological easement.

Mr. Turner responded that if an easement is placed on an archaeological site, then the assessed tax value of the property may be decreased. Also, an easement placed on a property is never rescinded.

Mr. Kuras opened the public hearing.

Mr. Gary Parker, Executive Officer for the Peninsula Housing & Builders Association, agreed that archaeological sites should be protected and explored but also believe that it is imperative that citizens property rights are preserved and protected and both can be accomplished. Mr. Parker stated that the document is designed to accommodate the needs of many in historic preservation and admirably in detail does exactly that. The documents recommendations for management and planning recommendations leave a lot of unanswered questions; for example, it states that expectations should be explicitly stated and procedures clearly defined. Any ordinances or formal measures implemented by the County must be detailed and explained to minimize procedural guesswork to permit long range planning. But it doesn't give the details as to how this is to be done nor should it because it was not the intent of the document. But the county needs to answer questions to all property owners such as 1) what is the length of time a phase I examination is going to take and 2) exactly what is involved in phases 2 and 3. If further study is deemed is the property owner going to be reimbursed being his property is being taken for the good or the county and/or the nation. Will the county reassess the property for lower taxes while the property is not available to the owners use. Mr. Parker said that perhaps the County should consider funding this instead of the individual property owners. These questions and many more should be addressed prior to adopting this manual. He recommended the county define exactly what it intends to do concerning these problems prior to its adoption. If not the county will be adopting an open ended document that does not answer the rights of the property owner.

Mr. Norman Mason agreed with Mr. Parker's comments and applauded the County for taking the position that Phase I archaeological surveys will not be an automatic requirement of a rezoning

or special use permit request. This being the case, Mr. Mason felt it would be very useful if staff could define what other issues, other than the levels of sensitivity in the book, would be considered and what policy might be followed. Mr. Mason expressed concern as to what impact this report could have on the value of a piece of property and asked if there had been any consideration for the inverse relationship that might exist between a high level of sensitivity and the value of the piece of property. He felt a potential buyer might tend to shy away from a piece of property that has a high level of sensitivity when he recognizes the high cost of Phase 2 and 3 surveys, particularly. Also, a consideration is whether this presents the landowner with yet another issue of disclosure. Mr. Mason reiterated praise of the County's undertaking in the development of this document which he considered a valuable tool.

Mr. R. M. Hazelwood, Jr., property owner, considered this another burden on the property owner and stated that if his property was devaluated then he wanted compensation for it.

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

Mr. Sowers asked that the Commission endorse the proposal process staff would apply to determine whether an archeological study should be done.

Mr. Kuras made a motion, seconded by Ms. McKenna, to endorse the process.

Mr. Hagee felt of utmost importance were James City County citizens, and that it was important to interpret what was found in surveys and why it was important. Mr. Hagee urged the Board of Supervisors to look at the possibility of participating in the funding of this venture.

The motion passed by unanimous voice vote.

7. CASE NO. SUP-2-97. WILLIAMSBURG FOODS.

Mr. Paul Holt presented the staff report (appended) for a special use permit to allow a contractor's office with inside storage on property located at 5306 Olde Towne Road. Mr. Holt stated that staff recommends approval of this application, with the stated conditions.

Mr. Kuras opened the public hearing.

Ms. Judy Rowe, 100 Tayside, felt her firm, Rowe Custom Homes, would be a good neighbor with no adverse impact on the community.

Ms. McKenna made a motion, seconded by Mr. Everson, to recommend approval of this application, with the stated conditions. By roll call vote the motion passed: AYE: Garrett, McKenna, Hagee, Hunt, Everson, Poole, Kuras (7). NAY: (0).

8. CASE NO. AFD-12-86. GOSPEL SPREADING CHURCH

Mr. Gary Pleskac presented the staff report (appended) for a proposed change in Condition (b) for the Gospel Spreading Church Agricultural and Forestal District. Mr. Pleskac stated that staff recommends the approval of this change in Condition (b).

Mr. Kuras opened the public hearing. There being no speakers the public hearing was closed.

Mr. Garrett made a motion, seconded by Mr. Everson, to accept the staff's recommendation of approval. The motion passed: AYE: Garrett, Hagee, Poole, Kuras (4). NAY: McKenna, Hunt, Everson (3).

9. CASE NO. AFD-12-86. GOSPEL SPREADING CHURCH (POWELL WITHDRAWAL)

Mr. Gary Pleskac presented the staff report (attached) for an application to withdraw approximately 26.46 acres from the existing Gospel Spreading Church Agricultural and Forestal District located at 2247 Lake Powell Road. Mr. Pleskac stated that staff recommends denial of this application for withdrawal for the reasons stated in the report.

Mr. Kuras opened the public hearing. There being no speakers the public hearing was closed.

Ms. McKenna made a motion, seconded by Mr. Garrett, to accept the staff's recommendation of denial of the application for withdrawal from the Agricultural and Forestal District. The motion passed. AYE: Garrett, McKenna, Hagee, Hunt, Everson, Poole, Kuras (7). NAY: (0).

10. CASE NO. ZO-1-97. ZONING ORDINANCE AMENDMENT. LIMITED RESIDENTIAL R-1; GENERAL RESIDENTIAL, R-2; residential CLUSTER DEVELOPMENT OVERLAY DISTRICT TO ESTABLISH MAXIMUM GROSS DENSITIES AT ONE UNIT PER ACRE

Ms. Tamara Rosario presented the staff report (appended) for amendments to R-1, R-2 and the Residential Cluster Overlay Districts to establish maximum gross densities at one unit per acre, and the vesting options affected by the proposed amendments. Ms. Rosario pointed out that the list of vesting options and affected properties that appear in the Commission packet were for illustrative purposes only. It was the staff's intention to show the status of various projects based on preliminary research. As the status of the projects changed and more precise information becomes available the list may change; therefore, Ms. Rosario urged the Commission to focus on the actual vesting options rather than the specific projects and whether they fit into a certain category.

Ms. Rosario stated that staff proposes that sections of properties be deemed vested if they (1) have proffers or conditions that define densities or lots/dwelling units, or (2) have an approved cluster master plan, or (3) have obtained at least preliminary subdivision approval. This mix of options would be more permissive than those only legally required, yet remain aggressive in its impact. It would vest approximately half of the existing developments in the County and leave approximately half to be affected by the Zoning Ordinance amendments. This proposal would also impose the new lower densities on proposed rezonings.

Ms. Rosario further stated that staff recommends approval of the Zoning Ordinance amendments and vesting options 1, 2 and 3, as outlined above.

Mr. Kuras opened the public hearing.

Mr. Tommy Norment was present for his partner, Mr. B. M. Millner, representing Richard Abbitt and Fred Blake, who own the Hazelwood Tract. Mr. Norment asked the Commission to delay action as he had not had adequate time to review the report. Mr. Norment said that there are monumental and significant fiscal impacts to the proposed ordinance changes and reviewed the history of the case he represents since its rezoning in 1995 and its accompanying proffers. Mr. Norment distributed a copy of a letter to Frank Morton which included a chronology of this particular parcel since its rezoning and the contact these developers had with James City County Planning staff. He further stated the developers had exercised some fairly due diligence which resulted in the developers investing approximately \$170,000 to \$180,000, a significant financial impact to them. Mr. Norment distributed a letter which addressed concerns of the particular property owners he represents.

Mr. Norment asked again that action be deferred to allow more time for review for those representing property owners, meet with staff, and possibly add more viable and reasonable alternatives on the vesting program which would not have quite so "aggressive" of an impact on the zoning.

Mr. Joe Latchum, attorney with Patten, Wornom & Watkins, 116 West Landing, was present to represent local lenders who financed several projects impacted by this amendment, and also to represent developers for Scott's Pond and First Settlers. Mr. Latchum stated that he had not had time to prepare a presentation or a chronology of the steps that either the lenders or the developers have undertaken thus far. Mr. Latchum stated that when developers have submitted preliminary plans, invested literally millions of dollars in acquiring the land, gone to extensive efforts obtaining feasibility studies, undergone efforts to construct off site and on site infrastructure, dealing with regional BMPs, roads, and the like, for them to be adversely impacted with no personal notice of an amendment such as this, which dramatically affects existing developments, is not fair and it should bare further scrutiny and further opportunity for those developers and lenders to come forward and speak to staff and address concerns particularly as related to vesting, which could have legal implications.

Mr. Latchum expressed concern regarding the amount of money that has been spent on the Scott's Pond project and the fact that the potential lot yield has been reduced from 270 lots to a significantly fewer lots. Mr. Latchum urged the Commission to defer this project because the proposed changes would create a very aggressive impact with "dark" consequences to the developer, tough consequences and decisions for the banks with regard to the projects that have already been financed, and vesting issues with legal consequences which he felt would be a waste of taxpayers money and potentially a large risk to the County.

Mr. C. K. Tudor, 3 Island View Drive, Newport News, a principal and engineer for the Scott's Pond project, also had little time to review the amendments and requested deferral following a brief review of the Scott's Pond project.

Mr. Allan R. Staley, attorney with Diamondstein, Becker & Staley, representing Wallace Associates and Atlantic Homes Development Corporation, 11817 Canon Boulevard, Newport News, currently developing Longhill Station on Centerville Road, a 177 unit subdivision, also felt he had too little time to prepare for this meeting, and that those citizens impacted by the change had not been notified. Mr. Staley presented a brief review of the Longhill Station project and also requested

deferral in order to arrive at a solution that would be equitable for the County and the taxpaying citizens.

Mr. Norman Mason, Langley & McDonald, referred to his firm's work with a landowner in the County that would not meet the vesting requirements under any of the proposed scenarios. Mr. Mason stated that the landowner had spent two years working in good faith working with the County and the staff in acquisition of federal permits for purposes that were initiated by the County. Mr. Mason also stated that he had too little time to review the proposed amendments and asked that the Commission defer action.

Mr. R. M. Hazelwood, Jr., Toano, property owner, expressed concern regarding impact on his land zoned R-8.

Mr. Gary Parker, Peninsula Housing & Builders Association, stated that he agreed with the former speakers as he felt that there was no urgency of adopting the proposal at this time. Mr. Parker stated that inasmuch as staff has indicated that revisions to the entire Zoning Ordinance should be completed by November, 1997, would it not be better to consider these densities in the overall context of the whole ordinance instead of doing it piecemeal. Mr. Parker questioned if property owners had been notified in accordance with Section 15.1-431 of the Code of Virginia. Mr. Parker stated that the vesting amendment could have catastrophic consequences for property owners and that time should be allowed to alleviate any of this hardship. Mr. Parker also requested that action be deferred.

At 9:37 the Commission recessed for approximately 10 minutes.

Mr. Hagee made a motion, seconded by Mr. Poole, to defer to the April meeting to allow an opportunity for the property owners to meet with staff.

A discussion followed regarding what would be accomplished by a deferral.

Mr. Kuras questioned if clustering should be eliminated in the multi-family district.

Mr. Garrett made a motion to amend Mr. Hagee's motion to have a work session.

Mr. John Horne clarified that the required legal notice was done on this project, and a number of property owners were aware of this project and have been in touch with the office, knowing that it was on this agenda. Also, Mr. Horne stated that this project is scheduled for public hearing at the Board's March 25th meeting, and that he urged the Commission to have a special meeting to further discuss the project. He pointed out that the project could go forward as an ordinance amendment, without taking a position on vesting, as has been done in the past with the Board dealing with the vesting issues.

Mr. Frank Morton stated that the comments by the attorneys at this meeting concerned vesting, and pointed out that the vesting issue was a matter of policy for the Board of Supervisors and there is no action required by the Commission on vesting. Mr. Morton suggested a joint public hearing at the Board's March 25th meeting with a work session held by the Commission prior to that meeting.

Ms. McKenna made an amendment to the motion to divide the case into two separate issues and vote on the ordinance on pages 36 through 40 at this time and defer discussion on vesting until a work session.

On the motion to defer to a work session on March 24, 1997 at 4 p.m. on both the ordinance and vesting the motion passed: AYE: Hagee, Hunt, Everson, Poole (4). NAY: Garrett, McKenna, Kuras (3).

At Ms. McKenna's request, Mr. Kuras stated that the issues would be divided into separate issues, the ordinance and vesting issues, for discussion purposes.

11. CAPITAL IMPROVEMENT PROGRAM FY1998-2002

Mr. Matthew Maxwell presented the staff report and the Policy Commission memorandum to the Board of Supervisors regarding a proposed Retreat Conference Center within the District Park (appended). Mr. Maxwell stated that the Policy Committee recommends that the Commission endorse its recommendation which is remove the Retreat Conference Center from the District Park Capital Project. The Policy Committee and staff recommend that the Planning Commission approve the Capital Improvements Program rankings as summarized in the report.

Mr. Kuras opened the public hearing. There being no speakers the public hearing was closed.

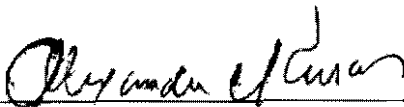
Ms. McKenna made a motion, seconded by Mr. Garrett, to approve the Capital Improvements Program and the request to remove the Retreat Conference Center from the District Park Capital Project. By roll call vote the motion passed: AYE: Garrett, McKenna, Hagee, Hunt, Everson, Poole, Kuras (7). NAY: (0).

12. PLANNING DIRECTOR'S REPORT

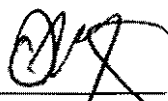
Mr. Sower's presented the staff report (appended) which was approved as presented.

13. ADJOURNMENT

There being no further business, the March 3, 1997 Planning Commission meeting recessed at approximately 10:15 p.m. to the March 24, 1997 work session at 4:00 p.m. in the Board Room.



Alexander C. Kuras, Chairman



O. Marvin Sowers, Jr., Secretary