

A CONTINUANCE MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE TWENTY-FOURTH DAY OF MARCH, NINETEEN HUNDRED AND NINETY-SEVEN AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101C MOUNT BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Alexander Kuras, Chairman
Martin Garrett
John Hagee
Donald Hunt
Jay Everson
A. Joe Poole, III

ALSO PRESENT

Frank Morton, County Attorney
John T. P. Home, Mgr. of Development Management
O. Marvin Sowers, Director of Planning
Tammy Rosario, Planner

ABSENT

Willafay McKenna

2. 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.

Alex Kuras opened the meeting stating the Planning Commission would be discussing the one issue of changing the Zoning Ordinance to one unit per acre and vesting would be discussed and forwarded to the Board of Supervisors.

Marvin Sower requested to speak before the Commission continued. He stated that the Commission had before them a couple of new items. First, a letter from Perry DePue requesting that the Commission take no action on the vesting saying the Board would take up both the ordinance and vesting issues tomorrow at their regularly scheduled meeting. Second, there were two new vesting proposals. One which was received mid-afternoon today from Henry Stephens, which staff only had the opportunity to read, and one from John Kneist, which was presented prior to this meeting. He requested that the Commission determine what they would like to discuss before the staff presentation. The first issue was the ordinance change regarding the density in R-1, R-2 and Residential Cluster Overlay Districts. The second was the vesting options. He stated that staffs' recommendation would be that the Commission not take action on the vesting since the new vesting options had not been studied by staff.

Alex Kuras stated that this was a very important matter and felt, at this time, the Commission could not make a specific recommendation to the Board on vesting. He further recommended the Commission accept staffs' recommendation on vesting.

John Hagee stated that it would be more appropriate to have an explanation as to why the Commission would want to preclude a discussion on vesting. He commented that the original petition included the vesting options and requested the Commissions' recommendation. He also stated that most of the audience present came to discuss the issue of vesting and felt the Commission should be involved and make a recommendation to the Board.

Jay Everson agreed with John Hagee. He stated that the Commissions' charge was to give advice and send it forward to the Board. He was not comfortable about moving forward without including a recommendation on vesting.

Martin Garrett suggested that, instead of taking a vote on a particular vesting option, each Commission member make a statement which would then be taken to the Board for their consideration.

John Hagee inquired as to why the vesting had been eliminated from their discussion.

Marvin Sowers stated that, due to the proposals received today, it would take considerable research to determine what property would be affected. He stated that staff would attempt to research this vesting option prior to the Board of Supervisors meeting. He also stated that, during the update of the last Zoning Ordinance, the Commission had not made any decision on vesting.

John Horne stated that the Board felt they had already observed a few proposals that were using the density bonuses and cluster provisions where they did not feel a good quality subdivision was being produced but had followed the existing ordinance. He stated that staff suggested the Commission not discuss a specific vesting recommendation, but give an overall statement to the Board.

A discussion followed on vesting among the Commission.

Martin Garrett made a motion that the Commission not vote on the vesting issue.

Alex Kuras requested that the Commission make their statements prior to the public hearing as to how they felt about vesting.

Jay Everson felt that all cases that have been rezoned to R-1 or R-2 should be grand fathered, and the policy should apply only to new rezonings.

Don Hunt agreed with Jay Everson and was opposed to decreasing densities in the R-1 and R-2 zoning.

John Hagee stated he had a problem with possible down zoning. He added he did not see what the problem was with standard development as it now exists. He felt a discussion was necessary at the Commission level in order to vote on the Zoning Ordinance.

Martin Garrett was concerned in maintaining the ambiance of the community. He also stated that the Commission should not come to any conclusion or vote on the vesting options.

Joe Poole supported the amendment to the Ordinance. He stated he was in agreement with John Hagee in not being able to discuss the vesting options and having to comment on the ordinance before the general public had spoken. He felt the vesting policy should be somewhere in between the options presented by staff.

Alex Kuras stated the cluster ordinance should be done expeditiously. He felt that vesting options four and five should be reviewed and option 6 should be done selectively so that properties that have sat idle are not vested.

Tammy Rosario presented the staff report for amendments to the R-1, R-2 and Residential Cluster Overlay Districts to establish maximum gross densities at one unit per acre in the Zoning Ordinance. She stated that it was the Boards desire to move quickly on implementing these changes pending a comprehensive review of the Zoning Ordinance. The first phase was projected to be completed by November, 1997, although an expedited process could be undertaken.

Alex Kuras opened the public hearing and requested a five minutes time limit.

John Kneist, a developer, explained to the Commission the events that occurred in the process of the master plan for the Meadows that had been conceived years ago and had since been in the development stages. He requested to the Commission that this project not be effected by any ordinance change.

Tommy Norment, a representative for several developers, suggested that the Planning Commission members speak directly to the Board of Supervisors, giving them meaningful input during their meeting, rather than the Board receiving condensed minutes. He continued his presentation stating that in the last few weeks he met with members of the development community, attorneys and a representative from the finance community in order to come up with some proposals that have one compelling term: "fairness." He stated that they have offered six situations where R-1 and R-2 property would be vested and he acknowledged that some properties were significantly different than what was in the staff memorandum. He felt that there were some draconian consequences contained in the memorandum. He added that Alex Kuras suggested under the staff memorandum he could accept options one through five but was somewhat concerned about option six. Tommy Norment felt option six did affect, in particular, the Hazelwood project which has been in the development process. He continued his presentation and again requested the Commission speak directly to the Board at their meeting tomorrow.

Alan Staley, representing Atlantic Homes and specifically the Longhill Station Subdivision, commented that he found it interesting the Commission was given the task of handling the advisory land use recommendations to the Board but, had been asked not to make a recommendation on vesting. He added staff acknowledged that 9,000 parcels would be affected by down zoning and proceeded to explain what the financial impact would be on the development community. He stated the impact on the investors of the Longhill Station Subdivision would be devastating if they were not vested. He suggested that all properties which had been rezoned within the last six years be grand fathered.

Henry Stevens of Associated Developers found it interesting that the developers were concerned more about the vesting issues rather than the changes to the ordinance. He added that the development community had been committed to producing the best developments under the rules given them. He asked that, if the rules needed to be changed, the transition would be a fair one for developers who have been working on projects which already received rezoning approvals.

Ken Tudor of C. K. Tudor Engineering agreed with the ideas and statements of the previous speakers. He spoke to the Commission explaining how developers were required to submit complete subdivision plans in order to receive approval. He continued to explain the expenses incurred and the process in which the Scott's Pond Subdivision had undertaken in order to receive final approval of the first phase. He suggested that lowering densities would not guarantee quality and may cause sprawl in growth.

Steven Meade, an attorney with Patten and Watkins of Newport News, represented three developers in the James City County area. He cautioned the Commission of possible piece-meal litigation that could last five to ten years if not properly addressed now. He suggested that all current projects be vested under the old rules and that all new projects be under the new rules.

Frank Eck, an attorney representing Williamsburg Plantation Timeshares stated that the timeshares had a 3.99 density per acre and any change in R-2 zoning would dramatically impact them. He added that, while the lenders and developers would be impacted financially, the most impact would be to the investor. Since the Williamsburg Plantation Timeshares did not appear on the list, he stated there were concerns as to whether they were vested.

Rich Costello of AES Consulting Engineers stated he viewed this ordinance as a stop-gap ordinance and felt it would be a moratorium in the R-1 and R-2 zones. He continued by naming several developers who work in R-1 and R-2 and wondered if they could afford to stop development for a year while the County determined what they wanted to do. He stated the best situation would be for the County to move forward by putting this ordinance change on hold and begin working on the upgrades and ordinance changes the Board wished to make.

Norman Mason of Langley and McDonald stated his only concern was the difference in the purpose of this ordinance from the Planning Commission versus what he heard from one member of the Board of Supervisors when it was originally proposed. He heard nothing about improving quality only the reduction in the number of units in the R-1 and R-2 zones. He also stated that members of the Commission had suggested that they did not desire to reduce development to one unit but to have two units and above per acre.

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

Based on what was stated by Norman Mason, John Hagee asked for clarity relative to the real purpose for this ordinance change.

Marvin Sowers stated that the purpose was to deal with the quality of the developments and not the number of units. He stated that there was discussion by the Board and that his recollection and

understanding was clearly that the Board intended to change the ordinance, and eventually restore the number of units to four per acre but, with a different quality criteria.

John Hagee asked if there would be more leverage in the control of quality by changing the ordinance for new cases. He also questioned the need to change the R-1 and R-2 zonings when the Residential Cluster was the main concern during the Comprehensive Plan review.

Jay Everson suggested, if the real issues were one of quality, why not change the Subdivision Ordinance.

Marvin Sowers stated that the issues being discussed came up after the Planning Commission had recommended approval of the Comprehensive Plan to the Board of Supervisors. He stated the Board made a conscious decision to focus not only on cluster development but on development in general. He added that one of the Boards' last motions in developing the Comprehensive Plan had been to ask staff to quickly come forward with the text zoning amendments dealing with density. Staff was also directed to come forward with the cluster and residential ordinance amendments in general. He stated the Board felt this was a way that things could be addressed until the new ordinance changes were in place.

Jay Everson stated that he was present at the Board of Supervisors meeting and he understood the members as saying that something had to be done about the out of control growth and that they reduced the number of dwelling units per acre. He added that he felt the public policy was unfair to the developer.

Martin Garrett suggested that staff have something by July rather than the suggested November date.

A discussion followed on the necessity of changing the R-1 and R-2 zoning.

Joe Poole agreed with the remarks of the speakers as far as fairness to the developers already in the development process and felt they should be vested. He also stated he agreed with the recommended changes to the R-1, R-2 and Residential Cluster ordinance since there have been concerns within the community that, if we continue at the same pace, the quality, open space and natural environment could not be retained.

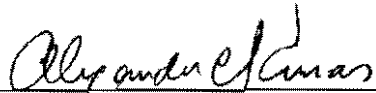
Additional discussion continued.

John Hagee made a motion, seconded by Don Hunt, to recommend denial of the Ordinance. In a roll call vote, the motion was defeated with a tie vote, as follows: AYE: Hagee, Hunt, Everson. NAY: Garrett, Kuras, Poole.

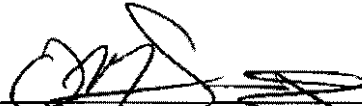
Alex Kuras then made a recommendation to amend the cluster ordinance by having a maximum 2 units per acre and to move expeditiously on the change in the ordinance. In a roll call vote, the motion passed 5-1. AYE Garrett, Hagee, Hunt, Poole, Kuras. NAY: Everson.

3. ADJOURNMENT.

There being no further business, the Planning Commission meeting adjourned at approximately 6:15 p.m.



Alexander Kurus, Chairman



O. Marvin Sowers, Secretary