

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

1. ROLL CALL

Alexander Kuras
Martin Garrett
John Hagee
Donald Hunt
Wilford Kale
Willafay McKenna
A. Joe Poole, III

ALSO PRESENT

John T.P. Horne, Director of Development Management
Marvin Sowers, Jr., Director of Planning
Paul Holt, Planner
Jill Schmidle, Planner

2. INTRODUCTION OF NEW PLANNING COMMISSIONER.

Alex Kuras introduced Wilford Kale who was appointed to the position of Planning Commissioner for the Powhatan District.

3. ELECTION OF OFFICERS.

Marvin Sowers asked for nominations for Chair of the Planning Commission. Willafay McKenna said the Nominating Committee met and proposed the following slate of officers: Martin Garrett as Chair and Joe Poole as Vice Chair. By unanimous voice vote, the Planning Commission approved the recommendation of the Nominating Committee.

Alex Kuras commended the Nominating Committee for their selection of officers and then turned the meeting over to Martin Garrett.

Martin Garrett had several comments to make prior to the beginning of the public hearing. He stated he wanted this Commission to be more proactive than it had been. He asked Willafay McKenna to remain as Chair of the Policy Committee with other members being Don Hunt, Wilford Kale, and Joe Poole. He appointed Alex Kuras as Chair of the Development Review Committee with other members being Martin Garrett, John Hagee, and Joe Poole. He added that Wilford Kale would be replacing Jay Everson on the Zoning Ordinance Review Committee.

Martin Garrett stated it would facilitate the process, if the members of the Board of Supervisors heard essentially the same case as it was presented to the Planning Commission. He explained that the Commission was an advisor to the Board but it was difficult to advise if the Commission didn't advise them on the same case. He suggested the following: 1. develop a binding submittal schedule for proffers which ensured that citizens were given adequate time to review agreements in advance of public meetings; 2. maintain a system which allowed staff and applicants adequate time to review and discuss proffer statement submittal; 3. create a system which would permit and encourage substantial review of proffers statements during the Commission consideration for a project. He stated he had spoken with members of the Commission, Board and staff and he requested staff draft a memo to the Board to address the above issues and propose a new schedule for proffer statement submittal.

He also said the Commission had adopted a resolution which stated that presentations by staff, applicants, and those speaking for a group be limited to 15 minutes and comments from individuals be limited to five minutes. Beginning with the March meeting they would strictly adhere to this with two exceptions: 1. when staff and applicant need more than 15 minutes, they must have approval by both the Director of Planning and Commission Chair at least one week in advance; 2. if there was more than one person representing a group, ten minutes should be a sufficient amount of time. He asked the Policy Committee to take this into consideration.

His final comment was in reference to the citizens concern in preserving the environment and ambiance of the community with increasing green ways and open space. He stated the Board last year supported this effort and staff had been working on identifying specific areas which would add significantly to open space throughout the County. He appointed John Hagee and Joe Poole to work with staff and offer their recommendations to the Board of Supervisors.

4. MINUTES

Alex Kuras commented that, on page 12 of the minutes, the AYE's and NAY's were reversed for the vote on Case No. SUP-37-97. Upon a motion by Willafay McKenna the minutes of the January 5, 1998 meeting were approved, as amended, by unanimous voice vote.

5. CASE NO. Z-14-97. NELSEN FUNERAL HOME.

Jill Schmidle presented the staff report to rezone 3.65 acres from LB, Limited Business, with proffers to LB, Limited Business with proffers for the purpose of constructing a funeral home. She stated the applicant requested deferral of this case until March 2, in order to finalize proffers. Staff concurred with this request.

Martin Garrett opened the public hearing.

Alvin Anderson, representing Blair Nelsen, spoke on behalf of his client stating this request was merely an amendment to the existing proffers in order to allow a funeral home which would provide for a binding conceptual plan, architectural treatment to the exterior, sidewalk along Midland Road, tree protection and enhanced landscaping buffer area. He stated if the Commission had any questions between now and the next meeting to contact him.

There being no further speakers, the public hearing was continued to the next meeting.

6. CASE NO. SUP-35-97. JACK L. MASSIE CONTRACTOR, INC. BITUMINOUS CONCRETE FACILITY.

Paul Holt presented the staff report stating the case had been deferred in order to allow the applicant to respond to the Commission's and citizens' questions and concerns and to allow for the applicant to arrange a site visit to a similar facility in Leesburg, VA. He stated the applicant's responses to those questions raised at the last meeting were provided in the staff report. He reviewed the concerns as outlined in the staff report and concluded that staff continued to recommend approval of this application.

Martin Garrett continued the public hearing from the January 5 meeting.

Alvin Anderson, representing the Jack L. Massie Contractor organization, thanked the Commission, residents, and staff members who attended the public forums and visited the Leesburg facility. He stated the facts of concern were noise relating to truck traffic, odor, and environment. He presented his report and concluded stating the zoning permits this use with a special use permit and both the 1991 and 1997 Comprehensive Plan support this use. He asked that the Commission support this application and staffs' recommendation.

Martin Garrett asked to hear from speakers representing a group, then those who visited the plant in Leesburg, and finally comments from others.

David Bailey, an attorney representing adjacent property owners and other residents in the surrounding area, stated this application might appear to be reasonable because it was an industrial use, with special conditions, in an industrial zone as outlined by both the applicant and staff, but, in fact, the case was not that simple. He said the Commission would be hearing from a variety of speakers who would demonstrate that, due to the size of this facility and the proximity to residential areas, schools, public facilities, and road conditions, this proposed project was not compatible with surrounding areas or consistent with parts of the Comprehensive Plan and that it was not a reasonable use of this property. He concluded that for these reasons, the Commission should base their recommendation and deny this application.

James Kennedy of 7681 Thacher Drive representing Toano Woods Subdivision handed out one of several signed petitions to the Commission members. He stated he was here in opposition of a facility that was not suited for the area proposed. He stated that staff's recommendation had several inconsistencies on subjects ranging from buffers, noise studies, truck traffic studies, and odor levels. He added the studies did not even consider the effects of property values for existing properties and those available for future growth. He stated that representatives from neighborhoods would discuss such issues as taxes generated by this plant, noise levels, traffic issues, odor and the fact that no hours of limitation would be placed on this facility.

John LaRose of 208 Plainsview, representing Mirror Lakes Subdivision, spoke on traffic issues. He emphasized the fact that the additional traffic was not ordinary vehicle traffic but large heavy trucks that represent considerably more wear and tear on the roads, and represent a considerable safety hazard. He noted all the traffic studies done did not take this into consideration. He acknowledged the need for these trucks and paved roads, but questioned if this type facility should be within a residential area and near schools, stores, and the library. He asked the Commission to take into consideration the real risks involved and deny this application.

John Hagee asked John LaRose if he felt there was any area within the County that this facility might exist.

John LaRose stated that Route 143 was more accessible to the interstate and railroad with much less development around it.

Todd Tyree of 242 Loch Haven Drive thanked the Commission members for their service to the community, welcomed Wilford Kale to the Commission, and congratulated Martin Garrett on his election as Chair and commended him on his initial steps to make changes. He spoke on behalf of Mirror Lake residents in regards to the way staff handled this application. He asked why the staff enthusiastically supported this proposal in light of all the public outcry and the real and perceived costs. He explained reasons why this application was not consistent with the Comprehensive Plan.

He stated the residents strongly believed the safety and quality of life throughout the County would be negatively impacted and asked the County to evaluate the concerns of the residents. He asked why the County was continually subjecting citizens to public battles over land use. He suggested the formation of a Citizen Action Team of neighborhood representatives, business and industry leaders and members of County staff to cooperatively study and recommend a well planned course of action for the long term development of the Upper County. He also said that, for industrial and commercial development, the County should clearly define the criteria used in making recommendations and decisions, adding there should be written policies and ordinances where necessary. He asked that the Commission deny this application.

Felix VanDriem of 7686 Richmond Road spoke on the issue of noise. His main concern was the absence of adequate buffers for the residential areas. He stated there was no buffer between his home and the facility and that he could hear noise from the trucks backing up and proceeding onto Richmond Road. He said If this land needs to be developed industrially, it must be developed sensitively and sensibly. He asked the Commission to deny this application.

John Hagee asked what type of noises Felix VanDriem heard.

Felix VanDriem stated he was heard a lot of noises. He said he had called the Massie facility seven times over the last ten months because they had disturbed his sleep or kept him from sleeping or had been bothersome during the day. He said he asked the Massies to investigate back-up alarm systems that were radar sensitive. He said they experimented with that but were not completely satisfied with the results. He added he had a demonstration and he too was not satisfied that they worked. He said the banging of the trucks, back-up alarm systems, dumping of the gravel, and the trucks themselves caused the most noise. He was not objecting to development, but felt that this type of heavy industry was not capable with the surrounding areas.

Jamie Bartlett of 221 Reflection Drive handed out a petition to the Commission representing concerned citizens from areas throughout the County. She addressed the topic of odor, the impact on health concerns, and the moratoria of several areas on asphalt plant construction. She said she visited the Leesburg facility and was shocked by what she saw, heard, and smelled. She quoted from a Boston publication which stated that "In most asphalt plants the amount of harmful asphalt fuels that actually puffs out from the smokestack was of minimal health risk, but when trucks of steaming asphalt mix drove around a plant site, large clouds of asphalt fume also move around the air." She stated the effects of those fumes increased the likelihood of mutations within the body, increased tumor production, and significantly increased the risk of cancer. She added that several counties and some states had distance requirements concerning asphalt plants of a minimum of one mile from residential areas. She said North Carolina had a statewide moratorium on new plants, expansions, and relocations until the issue of fugitive emissions could be further studied and that in 1996 the Boston Board of Health prohibited the construction of an asphalt plant because of the potential threats to public health and proposed a moratorium for the city. She read a letter from the Governor of Connecticut in reference to a proposed asphalt project in Waterbury and stated that he would introduce a bill at the legislative session for a statewide moratorium. She asked the Commission to deny this proposal.

Jim Stamm, representing Oakland Estates and Toano Trace, stated there were hundreds of other residents in the area who opposed the asphalt plant because it was not compatible with the surrounding residential areas, and it would produce great suffering and loss in property values. He asked why so many people should suffer and lose so much merely to enrich one man. He stated

this proposal was wrong, incompatible, and should be denied.

Dawn Spanozia of Mirror Lakes read a letter to the Commission from Dr. Ann P. Zilliox from Allergy and Asthma of Oyster Point Williamsburg, who was unable to attend, regarding the potential health hazards.

Robert Watson of 225 Reflection Drive spoke of his concern of traffic and children. He stated he sat in his vehicle at the corner of Rose Lane and Croaker Road and observed on several occasions children trying to cross this busy road to get to the library. He asked the Commission to deny this application.

Joe Cottrell of Forge Road spoke in favor of this application. He said he visited the Leesburg plant and did not find it to be offensive. He explained someone purchased property to be used as a housing development and people liked it so much, they came and moved in. He felt they should also accept some of the consequence the community might have. He added that it seemed everyone was looking for that perfect place.

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

Willafay McKenna stated Joe Cottrell's remarks struck very close to home because she saw it as the definition of the problem. She recognized that the property, in the Comprehensive Plan and Zoning Ordinance, had maintained its character as one where industrial uses were going to be applied. She also noted the Commission over the years made a concerted effort to limit access to major roads in the County by limiting the number of ingress and egress for the different developments. She stated Richmond Road was the main concourse across the County and agreed with Alvin Anderson that this facility would alleviate some of the traffic in the area and was satisfied the facility would be using the highest technology. She stated the County was not so unique that they could depend on getting and developing business that never poised a problem to anyone. She noted, as she saw the proposal, there would be no way, except for transporting asphalt across the County, which was being done already, that there could be no fugitive emissions coming out of the plant. She asked Gary Massie to respond to that statement.

Gary Massie stated Willafay McKenna was correct in her statement and in regard to the various controls on the facility, the load out enclosure and scavenger system not only would collect the fumes but takes fumes off the top of the silo, therefore, no longer having fugitive emission.

Willafay McKenna also asked for information on the trucks that transport the asphalt.

Gary Massie stated the trucks transporting the asphalt were the same as those used for the gravel operation. He stated that tarpaulin that went over the top was different but it was not an enclosure for the asphalt, it's used to retain the heat in the material.

Alex Kuras said that the plant was buffered enough not to be seen from Mirror Lakes. He stated he went to Leesburg and at a distance of 700 feet there were no problems with anyone trying to speak in a normal tone, at 1,000 feet there was very little noise, and at 1,200 feet which was near the collector road you heard no noise from the plant. On the traffic issue he felt there had to be in place safety programs and noted that traffic was a concern, not only near the facility, but throughout the County. He felt the hazards of asphalt had not been well defined because it was a product used all over the County and had not polluted the water system. His last concern was the possibility

of significant odor problems but found that the odor was not as severe as he perceived. He concluded that the issues of concern were well considered and felt satisfied with this application.

Martin Garrett understood the concerns of the Van Driems' since they were so close and would be effected. He stated the main concern of the residents appeared to be traffic because they were directly involved but he explained that the Commission had to look at it from the County's perspective, which would be reducing the number of miles trucks travel on the roadways.

Joe Poole thanked those citizens who spoke at both meetings. He stated that, in order for him to approve any special use permit, he had to be satisfied that the conditions provided protection for off-site property owners. He stated he had an opportunity of visiting several neighborhoods in the area and the Massie plant. He felt that the conditions recommended by staff and accepted by the applicant did provide protection. He commented that when development was next to transportation corridors such as interstates, railroads, and highways there were going to be uses that were not always residential. He stated that the County presently had the Kingsmill Subdivision and the Anheuser-Busch Brewery as an example where industry and residential were compatible and could co-exist.

Martin Garrett acknowledged that comments by Jamie Bartlett did concern him. He also added that the plant had to be inspected annually by the state for air quality and other environmental issues.

Don Hunt felt there were two items that could be addressed immediately. First, the speed limit in front of the library and schools. Second, change the grade near the Candle Factory going east on Route 60.

Willafay McKenna commented that one of the proffers stated, prior to the issuance of a building, all permits required by all local, state, and federal laws, rules, and regulations shall be obtained by the applicant. She felt that having to have everything in place first was a safeguard. She added the studies cited were on going and, if something adverse came up, there would either be a country wide moratorium or further development of guidelines to address the problems.

Wilford Kale thanked the audience for their attendance and the manner in which they spoke. He said that he sought advice of several attorneys and on their advice and in fairness to both the applicant and residents, he would not be casting a vote tonight. He stated his basic concern was how the County ever got to a situation where there was an M-2 zoning surrounded by residential.

Katie Helwig, acting president of the Hunter's Creek Homeowners Association, stated that the applicant was requesting a special use permit that was outside the existing purview of his land use and since there were two designated industrial parks, she was confused as to the purpose of the industrial parks, if not for industrial use. She asked if the Commission members had any reservation about putting this facility near their homes, than they had a responsibility to the residents to put that consideration on their property.

John Hagee said his concern was to ask what made this a special use permit, why was this a more intense use, and what impact it would have on the area. After being satisfied about the impacts of noise, traffic, etc. his main focus was odor. He said he went to the Leesburg site and the odors emitted were smelled in certain areas and, in his opinion, did not feel they were overwhelming. The closer to the facility the greater the odor, but the further back near the

developments, the odor was almost non-existent. He also noted the Leesburg facility did not have the additional equipment to contain odor as proposed by the Massie plant. Questioning residents who were on the trip, he concluded that their main concern was not odor but traffic. He did not feel the traffic impact would be different from any other use that might be developed in the district.

Willafay McKenna made a motion, seconded by Alex Kuras, to recommend approval.

Joe Poole asked to amend Willafay McKenna's motion by adding that a recommendation be given that speed limits in this vicinity be studied accordingly.

By a roll call vote, motion passed: AYE: McKenna, Hagee, Hunt, Poole, Kuras, Garrett (6). NAY: (0). ABSTENTION: Kale (1).

7. PLANNING DIRECTOR'S REPORT.

Martin Garrett asked that staff prepare a Resolution of Appreciation for Jay Everson and Alex Kuras to be presented at the March meeting.

Marvin Sowers stated there was an expanded section on the Zoning Ordinance update in the Director's Report which would become the primary source of keeping Commission members informed.

Marvin Sowers congratulated Wilford Kale on his appoint as a Commissioner and Martin Garrett on his election as Chair.

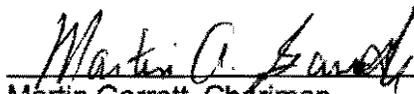
8. ADJOURNMENT.

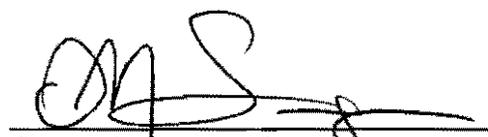
There being no further business, the February 2, 1998 Planning Commission Meeting adjourned at approximately 9:45 pm.

Sam Hazelwood asked to make a public comment. Martin Garret reopened the meeting.

Sam Hazelwood requested the County ease up on the big box retailer because if they do go to York County we would still have the traffic problems without the benefit of taxes. He opposed the resolution that would limit the time an applicant or staff could speak.

Martin Garrett readjoined the meeting.


Martin Garrett, Chairman


O. Marvin Sowers, Secretary