

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

1. ROLL CALL

Martin Garrett
John Hagee
Don Hunt
Wilford Kale
Alexander Kuras
Willafay McKenna

ALSO PRESENT

O. Marvin Sowers, Planning Director
Leo Rogers, Deputy County Attorney
Andy Herrick, Assistant County Attorney
Tammy Rosario, Senior Planner
Paul Holt, Senior Planner
Jill Schmidle, Senior Planner

2. MINUTES

Upon a motion by Alex Kuras, seconded by John Hagee, the minutes of the December 7, 1998 meeting were approved by unanimous voice vote.

3. DEVELOPMENT REVIEW COMMITTEE

Alex Kuras reviewed the cases brought to the DRC and recommended approval by the Commission for three of the four cases. He stated the fourth case, The Meadows, Section 5 was denied. John Hagee seconded his motion. In a unanimous voice vote, motion passed.

4. CASE NO. SUP-7-98. J. W. CROSSING (formerly C & N Dining).

Jill Schmidle presented the staff report stating the applicant had continued to work with representatives from Ewell Station and County staff to resolve issues and concerns. The applicant has requested deferral to the February Planning Commission meeting. Staff concurred with their request.

Martin Garrett asked if anyone wished to speak on this matter. There being no speakers, the public hearing remained open.

5. CASE NO. AFD-5-86. BARNES SWAMP AGRICULTURAL AND FORESTAL/ MOUNTCASTLE ADDITION.

Tammy Rosario presented the staff report in which the applicant requested to add his property located at 9444 Richmond Road to the existing Barnes Swamp AFD. Staff found the proposed addition consistent with the surrounding properties and zoning and the Comprehensive Plan. At the December 16, 1998 meeting of the AFD Advisory Committee they voted 9-0 to recommend approval. Staff concurred with their recommendation.

Martin Garrett opened the public hearing. There being no speakers, the public hearing was closed.

Willafay McKenna made a motion, seconded by John Hagee, to recommend approval of this application. In a roll call vote, motion passed. AYE: McKenna, Hagee, Hunt, Kale, Kuras, Garrett (6); NAY: (0).

6. CASE NO. SUP-24-98. WILLIAMSBURG/JAMES CITY COUNTY ELEMENTARY SCHOOL #7.

Jill Schmidle presented the staff report stating the applicant requested to construct an elementary school within the A-1, General Agricultural District, for the purpose of alleviating overcrowding in the existing elementary schools in the County and to prepare for expected future growth in the Stonehouse District. Staff found the proposal consistent with the surrounding properties and the Comprehensive Plan and recommended the Commission approve this application for a special use permit.

Martin Garrett opened the public hearing. There being no speakers, the public hearing was closed.

Alex Kuras commented that, Jay Everson, a former member of the Planning Commission served on the School Selection Committee and the DRC reviewed the site plan for the school.

Wilford Kale had some concern regarding the identification of a pond on the property and asked if it extended into the school site.

Wayland Bass stated what was shown on the plat was a combination of a pond and some topographic contours. He said the pond was farther away from the school site than shown and it straddled the property line of two adjoining properties.

Alex Kuras made a motion, seconded by Willafay McKenna, to recommend approval of this application. In a roll call vote, motion passed. AYE: McKenna, Hagee, Hunt, Kale, Kuras, Garrett (6); NAY: (0).

7. CASE NO. AFD-1-86. ARMISTEAD AGRICULTURAL AND FORESTAL DISTRICT/CARTER WITHDRAWAL.

Paul Holt presented the report stating staff had recommended denial at the January Planning Commission meeting since staff did not believe that all three criteria for withdrawal of property from an AFD were met. Since that meeting, he stated there were several changes made associated with the rezoning and master plan amendment applications as outlined in the staff report. He said, due to one unresolved issue in the rezoning case at this time, staff was still asking for denial of this case. He stated that, if this issue were resolved, staff would support the rezoning application and subsequently support the withdrawal of the Carter property from the current AFD.

8. CASE NO. Z-4-98 AND MP-3-98. FORD'S COLONY 1998 AMENDMENT.

Paul Holt presented the staff report stating staff did not believe that a Fiscal Impact Study should be used to override proffers which were designed to mitigate impacts of the development on the public. Staff did not support the substance of the argument made by the applicant that the proposed rezoning did not add any new units, and therefore, no new impacts were created. Staff stated that many changes had occurred since the last Ford's Colony rezoning, as outlined in the staff report, and they believed additional units would create impacts which could not have been forecasted and mitigated during the original and previous rezonings. Staff believed the impacts should be mitigated by all 368 proposed units. As a result of the last meeting, staff and the applicant had met several times and the developer was now offering new proffers as outlined in the staff report.

Alex Kuras questioned if there were any recreation areas in other subdivisions, besides Ford's Colony, that meet the County standards.

Paul Holt stated that large residential projects that require SUP's and rezonings were encouraged to adhere to the Park and Recreation Master Plan standards for their recreational areas. He said the Hidden proposal was one example where these standards were applied.

John Hagee asked if the other amenities, such as pools, multi-purpose playing fields, and golf courses would be given credit even if a new applicant came in and already had these types of amenities.

Paul Holt stated that staff would count them and would acknowledge their existence as they had done with this case, and compare how the capital cost and needs balanced each other.

John Hagee felt that staff might want to develop a different format so when a development adds amenities, they are given credit.

Marvin Sowers stated that the Recreation Committee developed these standards, and should be part of any amendment.

John Hagee had a question regarding the first two paragraphs of the staff report. He asked what negative impacts do the items mentioned in the report have on this application.

Paul Holt stated it was in response to issues raised during the last meeting that these units were included in the original 3250 number approved in the mid 1980's and that all the impacts by those units were accounted for. He said this was just documentation in respect to the improvements made to News Road that at least a portion of the 368 units, those on the Wilford and New properties, would use News Road to get to the new major commercial area, Monticello Marketplace and the new surrounding road infrastructure.

John Hagee stated he saw these as improvements, and that these new infrastructures could handle more than the 368 units.

Leo Rogers stated these were not fully funded improvements and that it was the actual and not projected units that caused the impact to the County. He said staff was not looking at the 3250 units, which cannot be reached, but at the actual number that can be reached and that determined the impact. He said some of the improvements had not been paid for, therefore, when looking at a new development with actual units on the grounds, staff wanted to mitigate the impact that those units would have. That was the position staff took when negotiating with Ford's Colony. He concluded by saying that from the Commissions' perspective, staff was speaking of fire service which was the only issue that their proposal did not fully mitigate. There was a verbal proposal which the Commission could consider, but that was inconsistent with the County's position on the timing of proffers. The applicant offered payment of proffers at the time of building permit, but there could be no type of accurate tracking by the County, and staff felt it would be paid by the property owner five or ten years from now and not by the applicant.

John Hagee said staff stated they were unable to adequately track sales of individual homes. He asked if they were selling individual homes or lots. He felt the fees could be tracked if paid at time of the sale of the lot and questioned if the County had done that in the past.

Leo Rogers stated that the County had one prior negative experience.

John Hagee asked why the money could not be escrowed at the time of sale of property by Ford's Colony. He did agree that it would be harder to track if done at time of building permit, but felt when title of property was transferred it would be paid by the Seller.

Leo Rogers stated the applicant was proposing payment at time of building permit. If it was done at the sale of the lot, staff would be relying on the competency of the closing attorney to find the hidden lien, especially if it was to be found in a set of proffers.

Martin Garrett opened the public hearing.

Vernon Geddy spoke on behalf of Realtec, Inc. He recalled that at the last meeting both the staff and applicant were miles apart but since then, staff and the applicant had met several times and negotiated the proffer package that was before the Commission tonight. He stated the sole disagreement between staff and the applicant was the emergency services proffer. The applicant took the figure of \$312 per household which was \$120 per capita, based on the average County-wide resident size of 2.6 people per household. He stated the number of lots they applied the \$312 to was 126 units. That number was based on the number of lots Ford's Colony could build if the additional land was not included within the project. He closed by asking the Planning Commission to recommend approval of this application and stated he would answer any questions of the Commission.

Willafay McKenna asked for clarity on the number and time of payment for the 368 units.

Vernon Geddy stated the verbal offer was to pay \$312 for each of the 368 units to be paid at the time of closing on each lot by Realtec, Inc.

Willafay McKenna asked if it would be worth talking about paying the first 126 lots at time of subdivision plat approval and the remaining lots as they were sold by Realtec, Inc.

Vernon Geddy stated he would be happy to speak with Drew Mulhare regarding that suggestion.

Drew Mulhare stated they overlooked that scenario agreement with staff but would consider the proposal as an option and asked the Commission for their suggestion with specific guidelines regarding paragraph nine. He stated they did not ask to make payments at the building permit stage but at the initial closing of the lot, which would be a payment made by Realtec, Inc. He concluded by stating that Realtec, Inc. hoped to move past tonight with a favorable recommendation from the Commission.

Wilford Kale asked if there was a policy in place at this time where the Planning Commission saw and approved all proffers as a package and if there was a change in between the Planning Commission meeting and Board of Supervisors meeting, the application would be returned to the Commission.

Martin Garrett stated that was the present policy but only if there was a significant change to the proffers.

Wilford Kale hoped the Commission could reach a compromise with the applicant regarding paragraph nine tonight rather than in the future. He asked Drew Mulhare if he would seriously consider paying for the first 126 lots up front, with the remainder paid at time of closing on each additional lot.

Martin Garrett told Wilford Kale that several years ago, a committee, composed of staff members, developers, and citizens looked into proposing something like impact fees and it was the consensus of everyone on the committee that it would be almost impossible for the staff to collect the money once it got beyond the initial subdivision plat approval.

Wilford Kale stated that their proposal was for payment at the time of closing on the property and not at the time of construction.

Martin Garrett asked for verification of their proposal and asked if staff would have difficulty in tracking payments if done at time of closing on the property.

Leo Rogers stated there would still be the problem of tracking. There would have to be some type of notice and again the County would be relying on the closing attorney to do their due diligence and find the lien. He said he supported what Wilford Kale was trying to do but the Commission had to be very careful in not trying to extract something from the developer. This had to be a voluntary proffer by the developer.

Willafay McKenna asked at the time of subdivision plat, why couldn't it be recorded that there was a proffer attached to each lot, then no one could overlook it in a title search.

Leo Rogers stated if the applicant were to offer to place a lien or notice on the title, then that would satisfy the legal requirements. He said proffers do not need to be recorded, but the County did record them and again he felt the County would be expecting a lot from the closing attorney to find this in the proffers.

Willafay McKenna agreed with what Leo Rogers had just stated, but said that, if the proffer included giving the notice which would provide that information at time of closing, it wouldn't get lost.

Drew Mulhare said he was not opposed to Willafay McKennas suggestion of paying \$312 for the first 126 lots up front. He stated it was his understanding that the proffer package before the Commission tonight, knowing the paragraph nine differences, could be acted upon with a recommendation to the Board. He asked that option A, as written out; option B, as verbally proposed; option C, as the County would like; or option D, suggested by Willafay McKenna be discussed with staff before the Board meeting to bring closure to that issue.

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

Alex Kuras suggested there be a possible time limit set for payment of lots or even payment at time each of the sections had subdivision approval. He did have some concern that the County would have too much land in a gated community and it would not benefit the entire community.

Martin Garrett was in full agreement with staff's position and felt it would not be a burden on Ford's Colony to present payment up front instead of at time of closing on the individual lots.

John Hagee pointed out the contributions offered by Ford's Colony to organizations within the County. He felt a compromise should be met stating the proffer should be based on the 368 units and the dollar amount be changed. He was in general support of this application.

Willafay McKenna again suggested that a notice of lien be placed on the plats of subdivision which would be found by closing attorneys before actual sale of lots.

Leo Rogers suggested the Commission defer this case.

Martin Garrett asked if there was any objection to a 5 minute deferral from this case so that the applicant could come to a compromise regarding the remaining issue. With concurrence by the Commission, this case was deferred for 5 minutes.

Marvin Sowers suggested that while staff and the applicant were meeting, that the Commission go forward with the next presentation. The Commission concurred and considered the Sidewalk and Trail Comprehensive Plan.

The case resumed with Vernon Geddy offering a new proffer. He stated that Realtec, Inc. was offering to pay \$312 on each lot for the first 126 lots at final subdivision approval and the remaining 242 lots would be paid at time of closing of the property. He stated there would be a notice placed on the subdivision plat regarding the lien on each of the properties.

Martin Garrett asked if Leo Rogers agreed with what Ford's Colony was now offering.

Leo Rogers stated he could not speak on staff's position, but he did think this was the compromise the Commission may have been looking for and this was the new proposal Ford's Colony had put forward. He said it was in a reasonable form and he believed, although there may be some difficulty with enforcement, it was legally correct as well.

Willafay McKenna made a motion, seconded by Alex Kuras, to recommend approval of this application with the new proffer presented by the applicant. In a roll call vote, motion passed 5-1. AYE: McKenna, Hagee, Hunt, Kale, Kuras (5); NAY: Garrett (1).

Alex Kuras made a motion, seconded by Wilford Kale, to recommend approval of Case No. AFD-1-86. In a roll call vote, motion passed 6-0. AYE: McKenna, Hagee, Hunt, Kale, Kuras, Garrett (6); NAY: (0).

8. PLANNING COMMISSION CONSIDERATION.

A. SIDEWALK AND TRAIL COMPREHENSIVE PLAN.

Wayland Bass gave a presentation to the Commission on the James City County Sidewalk and Trail Comprehensive Plan. He stated prior to 1989 sidewalks were not required and that the plan incorporated bikeways with the proposed sidewalks. He said the Recreation Committee encouraged multi-use paths and many of the existing sidewalks had been funded by both the County and the developer. He added that approval of this plan merely updated remedial funding of this program.

Martin Garrett asked if there was anything in the plan regarding recent opposition to bikeway paths.

Marvin Sowers stated there were areas that in the Bikeway Plan had been revised due to citizens objections and there would be future studies done in other areas that also had some opposition by citizens. He said this Comprehensive Plan was a guideline and the plan was flexible. He added that the Board of Supervisors would make recommendations on a case by case basis.

John Hagee asked what the cost was to the County per year.

Wayland Bass stated the average cost was \$150,000.

Alex Kuras asked whose responsibility it would be to maintain these sidewalks.

Wayland Bass said VDOT kept up with the maintenance on almost all sidewalks.

Wilford Kale asked if any studies of usage on sidewalks had been done.

Wayland Bass stated that areas with sidewalks usually began as foot paths.

Willafay McKenna made a motion, seconded by Alex Kuras, to recommend approval. In a unanimous voice vote, motion passed 6-0.

9. PLANNING DIRECTOR'S REPORT.

Marvin Sowers stated if anyone had any questions regarding the Director's Report in the Commissioners agenda packet, he'd be happy to answer them.

The Commission needed to convene and select another member of the Commission to participate in the nominations for Commission officers.

Alex Kuras nominated John Hagee, seconded by Wilford Kale. In a unanimous voice vote, motion passed.


The Committee tentatively scheduled their meeting for Thursday, January 14 at 12 noon at the Cascades Restaurant. The members attending this meeting would be: Martin Garrett, Alex Kuras, Willafay McKenna, Joe Poole, and John Hagee.

10. ADJOURNMENT

There being no further business, the Planning Commission adjourned at approximately 9:00 P.M.



Martin A. Garrett, Chair



O. Marvin Sowers, Jr., Secretary