

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIFTH DAY OF JANUARY, TWO THOUSAND AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

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| 1. <u>ROLL CALL</u>
Martin Garrett, Chair
John Hagee
Don Hunt
Wilford Kale
Alexander Kuras
Willafay McKenna
A. Joe Poole III | <u>ALSO PRESENT</u>
John Horne, Development Manager
Marvin Sowers, Director of Planning
Leo Rogers, Deputy County Attorney
Paul Holt, Senior Planner |
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2. PRESENTATION TO HONOR ALEXANDER C. KURAS

Martin Garrett read and presented a Resolution and plaque to Alex Kuras in commemoration of his service of sixteen years as a member of the James City County Planning Commission. A copy of the resolution is attached to these minutes.

Alex Kuras thanked the Commission members and stated he decided not to ask for reappointment feeling it was time to pass the banner onto another. He took a few moments to summarize some key issues from his past years as a Commission member. He thanked staff for the outstanding job they have done over the years and to the Commission, he asked that they continue their excellent work on behalf of James City County.

3. MINUTES

Upon a motion by Willafay McKenna, seconded by Joe Poole, the minutes of the December 6, 1999 meeting were approved by unanimous voice vote.

4. DEVELOPMENT REVIEW COMMITTEE

Alex Kuras presented the report for the DRC and stated there were three large cases which the committee had seen before. He recommended approval of the cases for Pocahontas Retirement Community, Williamsburg Dodge, and the Prime Outlet expansion. Willafay McKenna seconded the motion. In a unanimous voice vote, motion passed.

5. CASE NO. Z-12-99. REZONING BY VOIDING JCC CASE NO. Z-20-86
CASE NO. Z-13-99. REZONING OF CERTAIN LOTS IN MIRROR LAKE ESTATES.

Paul Holt presented the staff report stating that in 1987 the Board of Supervisors approved Case No. Z-10-86 to rezone approximately 375± acres from A-2 to R-1. However, the voluntary proffers were not signed by one of the property owners and thus were not valid, binding, or enforceable. Due to this error, on December 15, 1999 the Board of Supervisors approved two resolutions concerning the zoning of Mirror Lake Estates. The first resolution initiated the voiding of Case No. Z-20-86 and the second initiated the rezoning of all properties back to R-1 which had been subdivided from the original 375± acres of land. The remaining two tracts of undeveloped land, approximately 269 acres would then become zoned R-8. Because staff found the proffers to be void, and thus not binding or enforceable, staff recommended the Planning Commission recommend approval of Case Nos. Z-12-99 voiding the original rezoning, and Case No. Z-13-99 rezoning a portion of the property to R-1.

Joe Poole asked for the total number of subdivided lots within the effected area.

Paul Holt said there were approximately 87 lots of which there was a small handful of undeveloped lots.

Joe Poole asked what the effect would be on those homeowners during the transition period and would there be any appreciable effect.

Paul Holt said it was his understanding that, at the January 25, 2000 meeting, the Board of Supervisors intended to approve the second case. So, while the properties would be zoned R-8 for a short period of time prior to the meeting, the Board would rezone those very same properties back to R-1.

Alex Kuras asked what proffers would specifically be affected by this action.

Paul Holt stated there was only one proffer associated with the original rezoning and that was a 15-acre dedication to James City County for a public use site.

John Hagee asked where the 15 acres were located on the site.

John Horne stated there was a master plan that generally showed a location but there had never been an agreement as to the precise boundaries of the site.

Willafay McKenna asked if anyone had ever challenged the fact that a site would be dedicated for public use.

John Horne stated that this particular case was before the Commission because the current owner of the property pointed out that they believed that the proffer was not valid. He added that this issue was not brought forth by the County staff, but after discussion between the County Attorney's Office and the property owners' attorney the County arrived at their current conclusion as to the status of the property and the Board of Supervisors then issued the two resolutions.

Wilford Kale asked Leo Rogers where the element of fairness in this situation was to the current property owner who purchased the property with the belief it was zoned R-1 and now the County was going to rezone it to R-8.

Leo Rogers stated the Commission was getting outside the area of land use and the issue that was currently before them. He said the current owner was aware that the proffers were not signed by the correct entity and, in fact, it was the letter received by the property owner's prior attorney that gave the County a title search with the title notes. The County followed up on this information and verified that in fact the property owner never signed the proffers and that these proffers would not be valid and enforceable against the current property owner.

Martin Garrett opened the public hearing.

Alvin Anderson stated that, together with his partner Greg Davis, they were asked to represent Wellington, LLC only sixteen days ago and accordingly the information he handed out to the Commission was all he could attain during that period of time. He followed up on a comment of Wilford Kale's by asking the Commission to mentally transform themselves into the ownership of the property by Wellington, LLC. He then gave a brief history of the property and the transactions which had occurred stating that the current owner had paid over \$2,000,000 for the property and spent over \$75,000 on engineering. He stated there was a fundamental foundation to the proposal before the Commission and that foundation was that the format, not the substance, of the proffers was flawed. He explained how one corporation, Nice Properties Company, held the legal title to the

land and how they had multiple corporations that they used for the development of the land. He explained that on the proffers, the signature was not by Nice Properties Company, but by Nice Development Corporation, one of the development entities. He stated that the officers, directors, and the shareholders of all these corporations were one and the same. He felt that the fundamental foundation of the County's complaint was that the proffers were signed by an inappropriate party. He said that the prior attorney for Wellington, LLC had prepared a confirmation agreement that placed, as a matter of a public deed record, the relationship that existed between these various development entities and that the act of Beechwood Development Company was in fact an act of the owner. In conclusion, Alvin Anderson suggested to the Commission that he did not think it fair or appropriate to take a potential defect in form and leverage that into a change in substance. He stated that this was a legal issue and one that should be resolved before the Commission acts upon this case.

Alex Kuras asked if the 15-acre site was part of the development that was being proposed.

Alvin Anderson stated he thought not but stated there could be a subdivision plat prepared and a deed tendered forthwith and said he would instruct AES to proceed with that.

Willafay McKenna asked if the information submitted in section five of the report distributed by Alvin Anderson really negates any question.

Alvin Anderson felt it put to rest the issue as to what the relationship between the parties really was.

John Hagee asked what brought about the confirmation agreement.

Alvin Anderson stated he suspected that the developers former representative came to the County and questioned the validity of the proffer. He then suspected the County became concerned that they would not be getting the 15 acres as proffered and, as a result, this case was before the Commission tonight.

Leo Rogers responded to comments made by Alvin Anderson and explained what the County's position was. He said Alvin Anderson was missing the point when he claimed that the County was looking at something he called format. He stated it was validity and not format that was the County's concern. He explained that if someone owned a home and the home was in their name, no one but the homeowner could sign a document conveying that home to anyone and that's what the original property owners did; the wrong entity signed the proffers. The developer had it right the first time as did their first attorney and this was why they drew up the confirmation agreement. He said he questioned the validity of the confirmation agreement because the agreement was done when the property owner, back in 1986, no longer owned the property. He also stated that the developer indicated that they would not give the County the 15 acres and the reason was the invalid proffers. He concluded by again stating that these proffers were invalid not due to format but due to validity and the County could not enforce them against the current property, Wellington, LLC.

Wilford Kale stated that the discussion was in regard to one proffer and not proffers and asked if the applicant's representative previously stated that a deed would be forthcoming for that land, where was the fault.

Leo Rogers stated that the applicant was under no obligation to convey the property. He said the developer had already informed the County that they would not give them the property and after this meeting tonight there was no assurance or legally binding agreement that the County would get the 15 acres. The proffers in 1986 were invalid and the Board was inclined to reconsider the zoning of this case due the invalid proffers. He added that whether or not the County would get a 15-acre site, he did not know but right now the County did not have the 15 acres or the ability to get them.

Don Hunt stated that the proffer process as dealt with in the past was that the developer came forth with a proffer at the time of a rezoning and asked since everything was brought forward tonight wasn't that the procedure the Commission should be going forth with.

Leo Rogers stated this was somewhat a unique case and explained that during a rezoning the property owner, his agent, or contract purchaser could apply to have the property rezoned and in those cases voluntary proffers offered by the owner are permissible. This case was a County initiated rezoning when, in December, 1999, the Board adopted a resolution so that the County would down zone and then upzone a portion of this property. Therefore, the County could not require proffers as part of this process.

John Hagee asked when the developer stated that he would not give the 15-acre site.

Leo Roger said he understood there were several conversations with the developer and John Horne and it was back in September when the developer presented the County with a title opinion letter with title notes.

Alex Kuras asked if it would be legal, after the fact, for the developer to come forth with a new proffer.

Leo Rogers said the only way the County could except a proffer was through the rezoning process.

Alvin Anderson suggested that the matter be continued for a period of 30 days until the next meeting of the Planning Commission and that the developer agree that the current subdivision review process be delayed until after that meeting. He suggested that the developer prepare and tender to the County the deed to the 15 acres. He noted that the developer would have to abide by the current zoning requirement for R-1 but what the developer did not want to do was to go through a rezoning process that would impose year 2000 standards as related to water availability, adequate public facilities, etc.

John Hagee asked for an explanation of the legal situation that could be worked out, what would be involved, and how long would it take. He also asked how this could impact the Commission's decision or leverage.

Alvin Anderson believed that the resolution could take either of three routes. One would be to do this deed with the survey, sign it, and deliver it to the County for the 15 acres. Another would be through a declaratory judgment proceeding, where the County and developer would go to court for a decision as whether or not the proffers were valid. And finally, if the County stated they didn't want to go to court together and didn't want to agree with the developer, then the developer could go to the court under a declaratory judgment to find out if the proffers were valid nor not. He said the state statute stated that a declaratory judgment proceeding occupied a preferential spot on the docket and could be 60 to 90 days. He concluded by saying to his client that he should sign the deed and deliver the 15 acres to the County and abide by the obligation of the former property owner.

Leo Rogers stated that the County was taking the appropriate legal steps by having a resolution and bringing it before the Planning Commission and the Board of Supervisors. He stated he felt very uncomfortable talking about a settlement because this was not the proper forum or the appropriate body. He said the Commission needed to give a recommendation to the Board as to whether they should now rezone this site. He added that the question of settlement and litigation that Alvin Anderson spoke of should be the decision of the Board of Supervisors.

Wilford Kale asked John Horne to clarify when the previous discussions were held regarding the 15 acres.

John Horne stated he spoke with Mr. Glisan, as a representative of the company, about two months ago.

Terry Hudgins of 111 Knollwood Drive asked if there was a legal requirement of placing signs because the signs that were placed indicated an SUP and not a Rezoning.

Leo Rogers stated signs were put up as a courtesy. The code required that letters be sent to property owners, adjacent property owners, and notice be published in the newspapers and that public hearings be held.

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

Martin Garrett stated he applauded the Board of Supervisors for their resolution and was supportive of these rezoning because with the rezoning the County could apply 2000 standards and not just get the 15 acres.

Willafay McKenna made a motion to deny these applications for the following reasons: She did not feel it was clear enough that these proffers were not valid, binding, or enforceable; that Alvin Anderson mentioned the declaratory judgment which she felt was the gentlemanly, reasonable way to approach this matter instead of putting at risk a substantial number of homeowners and a portion of property in the County by changing the zoning for a period of several hours; that if this was deferred, there would be a likelihood that this would be resolved; and that she believed there was no question that the County should get the 15-acre site.

Wilford Kale seconded this motion.

Alex Kuras commented regarding the County attorney's concerns but felt by approving this motion it would put some pressure on all parties to resolve this issue before it went to the Board of Supervisors.

In a roll call vote, motion to deny was approved 6-1. AYE: McKenna, Hagee, Hunt, Kale, Poole, Kuras, (6); NAY: Garrett (1).

6. CASE NO. SUP-30-99. WELLINGTON PUMP STATION

Paul Holt presented the staff report stating the applicant had applied for a special use permit to allow for the construction of a sewer pump station that would be built in conjunction with the proposed Wellington Subdivision. The pump station would be designed as a regional facility to serve surrounding future development. He stated the proposal for the pump station was integral to the proposed Wellington Subdivision and given the proposed zoning actions by the Board of Supervisors, staff recommended the Planning Commission defer consideration of this proposed.

Martin Garrett opened the public hearing.

Alvin Anderson stated that if the sole basis of staff's recommendation for deferral was based on the recommendation of the prior cases, then he recommended that the Commission's action taken upon this case should be consistent with the action they took on the preceding cases.

Randall Hudgins of 111 Knollwood in Mirror Lake Estates had some concern as to the location of the pump station in reference to his property.

Paul Holt stated that the location of the pump station was just south of Rochambeau and would be approximately 4,000 feet away from the lots in Mirror Lake Estates.

Joe Poole asked if access to the Wellington Subdivision would be from Mirror Lake Estates as well as Rochambeau.

Paul Holt stated there would be access from both locations.

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

Willafay McKenna moved to keep the public hearing open and defer this case to the February 7th Planning Commission meeting.

Alex Kuras seconded the motion. In a roll call vote, motion passed 7-0. AYE: McKenna, Hagee, Hunt, Kale, Poole, Kuras, Garrett (7); NAY: (0)

7. PLANNING DIRECTOR'S REPORT.

Marvin Sowers congratulated John Hagee on his reappointment to the Planning Commission. He also noted the appointment of Peggy Wildman to replace Alex Kuras. He said that Peggy Wildman had served on one of the Zoning Ordinance Update Committees.

Alex Kuras stated he felt her appointment was a good one. He stated he had served with her on the committee for about 1-1/2 years and commented that she was a tremendous person, opened minded, listened well, and felt she'd make an outstanding Commissioner.

Marvin Sowers also mentioned the Architectural Survey grant received by the County and invited the Commission members to attend a public input meeting about the survey on January 19 at 7 pm in the Board Room. He stated the purpose was to gather input from citizens that might be aware of structures of historic importance and to hear about the work of the consultants.

Marvin Sowers concluded by thanking Alex Kuras for his tenure on the Commission and said it was a pleasure to work with him over the years and wished him well.

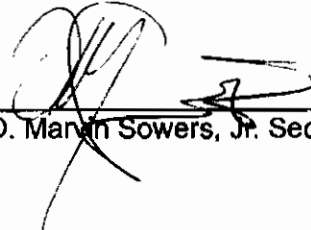
Marvin Sowers said that there needed to be a reorganizational meeting held prior to the next Commission meeting in order to nominate the Chair and Vice Chair of the Commission and various committees that are under the Commission. Under the Commission by-laws, members on the Nominating Committee should be the Policy Committee Chair, the DRC Chair, and the Commission Vice Chair and one member from the general membership. Since the DRC Chair was Alex Kuras, he suggested they appoint two members to the committee from the general membership.

The Commission appointed John Hagee and Wilford Kale to serve on the Nominating Committee along with Willafay McKenna and Joe Poole.

There being no further business, the January 5, 2000 Planning Commission adjourned at approximately 8:18 pm.



Martin A. Garrett, Chair



O. Marvin Sowers, Jr. Secretary