

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIFTH DAY OF JULY, TWO THOUSAND 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, Chair
John Hagee
Don Hunt
Wilford Kale
Willafay McKenna
A. Joe Poole III
Peggy Wildman

ALSO PRESENT

John Horne, Development Management Manager
Marvin Sowers, Director of Planning
Leo Rogers, Deputy County Attorney
Paul Holt, Senior Planner
Jill Schmidle, Senior Planner
Christopher Johnson, Planner

2. MINUTES

Upon a motion by Joe Poole, seconded by Willafay McKenna, the minutes of the June 5, 2000, meeting were approved by unanimous voice vote.

3. DEVELOPMENT REVIEW COMMITTEE

John Hagee presented the report in which the DRC heard four cases at its June 28, 2000, meeting. He stated the DRC recommended approval for the Mid-County Park lighting improvements for its recreation area and that the DRC had some concern regarding the hours of the night time operation and wanted to make sure someone was there to turn the lights off after evening events; Williamsburg Plantation Master Plan Amendment, in which two units were added due to the loss of eight units because of the widening of Route 199; Capt. George's Restaurant which requested a set back reduction for a Gazebo; and a conceptual plan for Sections 3 and 4 of the Westmoreland Subdivision.

Willafay McKenna made a motion, seconded by Peggy Wildman, to approve the DRC report. In a unanimous voice vote, motion passed.

4. CASE NO. SUP-8-00/SUP-9-00. LEE/BICKFORD BORROW PITS.

Paul Holt presented the staff report stating the applicant had requested the Commission defer this case until its August 7, meeting.

This case was deferred and the public hearing was continued to the next meeting.

5. CASE NO. SUP-17-00. PRIMECO TOWER ON CENTERVILLE ROAD.

Paul Holt presented the staff report stating the applicant had requested the Commission defer this case until its August 7, meeting.

Martin Garrett opened the public hearing. There being no speakers, the public hearing was continued to the next meeting.

6. CASE NO. SUP-7-99. GRIESENAUER RESIDENTIAL CLUSTER.

Jill Schmidle presented the staff report stating the applicant had requested the deferral of this case until the next meeting of August 7.

Martin Garrett opened the public hearing. There being no speakers, the public hearing was continued to the next meeting.

7. CASE NO. SUP-7-00. HERTZLER CLEARING AND GRADING.

Wilford Kale made a motion that the public hearing be reopened for this case. Joe Poole seconded his motion and by unanimous voice vote, the public hearing was reopened.

Christopher Johnson presented the staff report summarizing the questions raised by the Commission during its last meeting concerning the proposed conditions and the applicants intended business on the site. Staff had recommended several changes to condition #2 and #3 and added condition #9 as outlined in the staff report. Staff continued to recommend approval of this application.

Willafay McKenna asked why only a 50 foot buffer was required along I-64 when larger buffer areas had been required along that road and Route 199 with other applications.

Christopher Johnson stated, in this case, the topography was considerably above I-64 and staff felt that the retention of a 50 foot undisturbed buffer and the placement of berms adequately mitigated the impact.

Martin Garrett made a motion to add information under condition #8 "All traffic improvements required by VDOT or the DRC along Barnes Road....." Willafay McKenna seconded his motion and in a unanimous voice vote, motion passed.

Wilford Kale asked for clarification on the number of truck trips estimated at 24 to 36.

Christopher Johnson stated that into and out of a site counted as two vehicle trips and those numbers would mean 12 to 18 trucks based on the number of vehicles the applicant currently has in his operation.

Steven Hertzler thanked the Commission for reviewing this application and said he was surprised at the amount of opposition. He stated he reviewed the conditions presented by staff and supported staff and their recommendation. He said he'd answer any questions the Commission may have.

Shireen Parsons of Christiansburg, Virginia and a member of the Joint Subcommittee Studying the Impact of Satellite Chip Mills on Virginia's Economy and Environment appointed by the Virginia Legislature spoke on the growing number of wood chip mills in Virginia. She presented to the Commission members a copy of her statement which included comments and questions with respect to the recommended conditions presented in the staff report for this application, an article from the Washington Post on "Chipping Away at the South's Forests," and an article by Ted Williams from Mother Jones magazine. She urged the Commission to read all materials before deciding on the permit application before them tonight. She added that the residents in this area received a video tape featuring a chip mill community in North Carolina and stated it was an excellent representation on the impacts to a community of this industry, including chemical and water use, leaching, truck traffic, hours of operation, buffers, and reimbursement for damages.

Joe Poole asked Christopher Johnson to clarify that the area of activity would be restricted to 2-1/2 acres on the 28.6 acre site.

Christopher Johnson stated the wood processing area would be restricted to 2-1/2 acres with 7 acres, or 25% of the site, of total clearing.

Joe Poole asked Ms. Parsons to elaborate on her comment regarding the 100 mile radius.

Shireen Parsons stated that the 2 acre site was sufficient for a high capacity chip mill. She stated chip mill sources were trees taken from a radius of one hundred miles. She said the deforestation within that circle was devastating.

Raymond Stewart of 9583 Barnes Road spoke in opposition of this application and again showed a petition signed by 106 citizens of the County who also opposed this application.

Betty Smith of 9347 Barnes Road commented on Steven Hertzler's statement that he just wanted to slip in, be seen, and not be noticed. She asked how that could be done with the noise that would be generated from the trucks and wood grinding machine. She said his business was presently being run from three locations and by bringing it to one location there was no question that this would be a full fledged business and would have some impact on the adjacent property owners. She requested that the Commission deny this application.

Glen Besa, Director of the Virginia Chapter of the Sierra Club, stated if the Commission approved this application with the limits set forth in the staff report there was valid concern that the operation could be significantly enlarged into a full scale chip mill. He felt that the conditions presented in the staff report were not precise enough to protect the citizens. He stated that if business was slow in the terms of selling mulch then what the applicant would end up with would be a stump dump, something that had not been addressed. He stated there were no restrictions as to whether the applicant had to grind the stumps or not and no limit to the height of the stump dump and expressed concerns about fires occurring that are difficult to put out. He concluded by saying the use could be converted into a full-fledged chip mill and that if the Commission had to vote on this tonight, they had no choice but to deny this application.

John Hagee asked Glen Besa to elaborate on his comment that this could evolve into a bonafide chip mill.

Glen Besa said he believed that what Shireen Parsons referred to were operations for the chips to be used in paper products and for the manufacture of fiber board. He said those were serious problems and said that this operation could be converted into a high capacity chip mill.

John Hagee asked how it could be converted.

Glen Besa stated it could be converted by amending the special use permit.

John Hagee commented that the applicant would have to come before the Commission.

Glen Besa said yes, they would have to but he again stated the problems were with the current conditions and the facts that were set forth in the staff report.

Joe Poole asked if the concept of a stump dump was discussed by staff and the fire department.

Christopher Johnson stated the issue was discussed with the Deputy Fire Marshall in addition to debris and waste fires. He said the Deputy Fire Marshall stated that similar operations of a larger scale had not posed the County any problems. He added that the Fire Department reviewed the proposal stating they had no objections to this application and felt that any fire that could develop on the area would largely be self-contained and would have no problem addressing any fire response to the site.

Tyla Mattoson spoke as the Conservation Chair for the Virginia Chapter of the Sierra Club and encouraged the Commission to deny this application. She stated a chip mill or stump dump would diminish the quality of life for the residents living in the vicinity. She stated the noise, the fire hazard and loss of vegetation were only a few reasons not to permit this proposal. She asked the Commission to look at the permitted height and total volume of debris that would accumulate and examine the harm which may befall the quality of the ground water or wetland areas when chemicals are used in this operation.

Willafay McKenna asked Steven Hertzler what sources of materials would be used.

Steven Hertzler stated that 90% of the work was residential clearing and that he did not purchase tracts of land to timber. He said they were not trying to set up a chip mill to mass produce chips. All he intended to do was to recycle material that builders asked him to remove from residential lots and a few commercial lots.

Willafay McKenna asked the applicant if he would be reluctant to have a condition that would limit him to that source.

Steven Hertzler stated he had no problem.

Willafay McKenna asked if he would be using chemicals or water to hasten the process.

Steven Hertzler stated no to both questions.

Willafay McKenna asked if he had any problem with limiting the use of the tub grinder to a specified number of days per year.

Steven Hertzler stated that the conditions in the staff report were already above the number of days he would need and therefore had no problem for further limitation.

Willafay McKenna asked staff to clarify what was stated in condition #7, which mentioned the total disturbed area on the site shall not exceed 25% of the site, and condition # 3, where staff cited that the 2-1/2 acres included everything.

Christopher Johnson stated that the 2-1/2 acres was part of the 7 acres and that everything, including a 5,000 office-warehouse building and storage and repair of his vehicles, would be on the total of 7 acres.

Willafay McKenna asked that it be made clear that the 2-1/2 acres was for the wood processing and that the 7 acres included everything else.

Willafay McKenna asked Steven Hertzler if he would be opposed to having a condition which required the materials hauled into the site be ground quarterly in order to avoid accumulation.

Steven Hertzler had no objection to her suggestion of adding that condition.

Willafay McKenna asked how many of the eight trucks he owned would be hauling materials to the site and would he have any problem with having a condition that would limit the total number of trucks that could haul onto the site and limiting it only to his trucks.

Steven Hertzler stated he only had two dump trucks that would be hauling clearing material to the site and would have no problem with adding a condition that would limit the number of trucks he could use.

Willafay McKenna made a motion to approve this very limited application. She stated that the information that had been presented to the Commission for this application has emphasized recycling of materials that were otherwise unuseable. Therefore, she proposed that the Commission vote on this with the following additions:

1. Condition #3 - there would be a more careful definition of the area so that they know that 25% of the site was going to include everything that was planned for the site, including the 5,000 sq. ft. building, the maintenance area and storage, and the 2-1/2 areas for the wood processing.
2. That a condition be placed that required the applicant to grind the stumps at least quarterly.
3. That a condition be placed that limited the number of days of operation to 2 days per quarter.
4. That a condition be placed that limited the applicants processing on the site to clearing material from development sites collected by his own company.
5. That a condition be placed that no chemicals or water are to be used on the 2-1/2 acre area where the wood is mulched or turned into top soil.

Martin Garrett commented that the material that Steven Hertzler would be hauling was for other contractors and this may be a loophole for timbering activities.

Marvin Sowers stated it was staff's interpretation that debris from land clearing that was part of an approved development project was what the Planning Commission wanted to allow and not from a forestry operation. He stated that there was a clear difference in permitting and that the County was not involved in permits for forestry but were for land development of residential or commercial sites.

Willafay McKenna stated that if the conditions was specifically written in that manner then that would satisfy what she was looking for.

Leo Rogers made a point of clarification that the Commission did have one more deferral. He stated the first time the case came before the Commission was on June 5, 2000, and the Commission had 90 days from that date to act which would be their August 7 meeting.

Martin Garrett closed the public hearing and commented on the rural areas of the County. He stated there were certain things that were rural by nature, such as, forestry and agricultural and not all of those things that were part of forestry or agricultural were always compatible with citizens living next door to them. He stated that almost any endeavor that took place in rural areas of this County would have to pass at least a half dozen houses if not more because there was that much development within the County. He felt that this application was forestry related and was appropriate to this site.

Martin Garrett seconded the motion by Willafay McKenna.

Don Hunt commented that across the street from his property the Commission approved the new Dodge Dealership which was now in the process of clearing and said he was in as rural an area as anyone. He stated that the developer burned the stumps and just about smoked out the Kristiansand Subdivision and said this application would reduce such burning and that the Commission needed to make a choice.

Wilford Kale commended Willafay McKenna for her due diligence in her SUP recommendations and supported those recommendations, however, as he stated last month, he did not feel that this was the proper location for this project. He said he was convinced that Steven Hertzler's intentions were good but according to one of the conditions, the applicant could bring in forty truck loads per day for 30 days and he would not be able to grind all that during a 2 day period. He said the applicant would then have to return to the Commission stating that business had been very good and with the estimated 12,000 or so approved lots it had the opportunity to be a very successful business. Again he stated he did not like the location and spoke not only of the adjacent property owners but also of the community that was across the interstate. He believed the site was inappropriate due to the traffic, the road was in horrendous condition, and the potential damage to the surrounding area included damage from mulch being washed off-site, and he had too many questions at this time to support this application.

John Hagee agreed with both Martin Garrett and Willafay McKenna and felt where else could this project be located but in an agricultural area. He felt there were enough restrictions on this application and if Steven Hertzler's business were to expand to any great degree, he commented he did not feel that the business was taking on the capacity that was suggested by Shireen Parsons, and he would have to come before the Commission if he wanted to. John Hagee looked at this application as a man in business that saw an opportunity to improve it and he fully supported this SUP request.

Peggy Wildman also supported this application given the requirements added by Willafay McKenna this evening. She felt this was a very small parcel of land and she did not see it becoming a major issue due to the limitations placed on the application. Her only concern was the traffic but overall this was an appropriate site.

Joe Poole had strong concerns regarding the location and access to the site. He agreed that this would be a small operation but also worried about the traffic on Barnes Road. He stated he could support a deferral but not approval of this application tonight.

Joe Poole made a motion to defer as a substitute for Willafay McKenna's motion for approval.

Willafay McKenna seconded Joe Poole's motion of deferral until the August 7 meeting.

John Hagee asked what specific information they was looking for in this deferral.

Willafay McKenna understood that they would have in writing the conditions as spoken about tonight. She commented that they would be voting on a concept if they voted tonight.

Joe Poole stated that in addition to having the conditions in writing, he would also like to review some of the materials referenced this evening.

Martin Garrett asked for all those in favor of deferral. In a unanimous voice vote, the Commission approved deferral of this application to its August 7, 2000, meeting.

Martin Garrett commented that the Commission had heard a lot from the public tonight regarding this case and requested that anyone wishing to speak at the next meeting not repeat themselves but, if they had new information to offer, the Commission would be happy to listen to them.

8. CASE NO. SUP-18-99. OLDE TOWNE ROAD TIMESHARES.

Jill Schmidle presented the staff report stating that on September 8, 1999, the Planning Commission voted 7-0 to deny this application due to the impact it would have on Olde Towne Road. She stated the Board deferred this case on November 23, 1999, to allow the applicant the opportunity to provide additional information. Since that time, the applicant made significant changes to the project which staff felt warranted the proposal be returned to the Commission. Staff found the revised proposal consistent with the surrounding zoning and single-family, multi-family, and timeshare uses, requirements of the residential cluster zoning ordinance and the Comprehensive Plan. Staff recommended the Commission recommend approval of this application as outlined in the staff report.

Martin Garrett commented that staff stated that fiscal impacts would be better with timeshares than with 131 by-right single-family units and asked how many years staff ran that information out.

Jill Schmidle believed it was run out for ten years but would check on that information.

Martin Garrett stated that the fiscal impact information was incorrect and if it were run out 50 years, timeshares would not be beneficial to this community.

Wilford Kale asked how much of the land was undevelopable under the current guidelines.

Jill Schmidle stated that 23.47 acres were undevelopable.

Wilford Kale asked how many acres were left and how many units per acre were there.

Martin Garrett asked that during the Comprehensive Plan weren't there discussions and wasn't it decided that undevelopable property would not be counted as being given to the County.

John Hagee stated that the discussion allowed nondevelopable land to be included in the buffers but not in the terms of recreation. He added that the applicant had provided 49% of the developable land for open space and recreation.

Wilford Kale explained that what he was looking for was the total number of units per acre on the entire developable portion of the site. He stated he believed that even though the applicant reduced the number of units they still were providing a proposal that was three times larger than what could be done by-right in single-family units. He said his concern was that this was not an improved project over what was originally presented in November nor over what by-right use would be. He said the only thing that made a dramatic impact initially was the absence of school children.

John Hagee asked if they were looking at 131 by-right lots, what would be the requirement for open space and recreation.

Jill Schmidle stated that 10% - 15% of the net developable area of the site was required for recreation.

John Hagee said that by-right 15% of the acreage for recreation would be approximately 20 acres and what the applicant was offering was 50 acres out of the developable land. He commented that this proposal was giving an additional 30 acres of developable land for open space recreation.

Joe Poole commented that traffic was an issue to him back in September and said that staff indicated that traffic decreased. He asked if that was due to the opening of Route 199 and what was the level of service for Olde Towne Road.

Jill Schmidle stated that with the opening of Route 199 the level of service on Olde Towne Road remained at a level of service "D."

John Hagee said he spoke with someone from VDOT and it was suggested since the opening of Route 199 that there be another traffic count done on Olde Towne Road.

Martin Garrett opened the public hearing.

Vernon Geddy of Geddy, Harris, Franck and Hickman spoke on behalf of the applicant. He introduced the property owner Phil Richardson and from the Berkeley Group, J. P. Otino and Frank Eck. He gave a brief history of the property and of Jim Lambert, owner of the Berkeley Group. He stated the company had been in business for 26 years and had 19 timeshare resorts in various stages of development and sales including the Williamsburg Plantation project directly across from Route 199 from this site. He stated it was important to note that this was not a rezoning request but a special use permit under the new cluster ordinance for a density of over one unit per acre and could be developed by-right into a 130 unit subdivision of single family homes. He said this proposal was different because it was limited by conditions as a timeshare use and could not be changed without the approval of the Board of Supervisors. He stated staff had done an excellent job in outlining the significant changes made by the applicant in the staff report. He stated that as previously discussed traffic appeared to be of concern at this location and since the last meeting a number of new studies and work had been done. He stated traffic counts were taken last September and October by the applicant's traffic consultant and at that time it showed traffic reductions of approximately 25% in the AM peak and 9% in the PM peak. As staff stated more recent information revealed a more significant reduction of traffic as a result of the opening of Route 199. He also said to confirm the accuracy in the trip generation numbers actual counts were taken at the Powhatan Plantation and the Fairfield Communities Resorts. Finally, he stated that a study was done of the level of service at the Olde Towne Road/Longhill Road intersection and the results showed the intersection now operated at the level of service C. He also spoke of the 3,500 foot multi-use path and the mulched path that would be tied into the greenways systems developed by Parks and Recreation. He concluded by stating the applicant supported the recommendation of approval by the staff and said he would answer any questions of the Commission.

Joe Poole asked if the traffic analysis prepared by Dexter Williams on behalf of the applicant was reviewed by VDOT and if so, what was their determination.

Jill Schmidle stated VDOT did review the traffic study and concurred with Dexter Williams' recommendation.

Peggy Wildman had some concern regarding the two BMPs being the sole source for water for landscaping and the shallow well as a backup. She asked if there was bad drought how would the applicant handle the situation.

Vernon Geddy said the applicant would design landscaping that would be drought resistant.

Peggy Wildman asked why the weekend was not taken into account during the traffic studies and did they take into consideration that vacationers might make multiple trips in one day to and from the timeshares.

Vernon Geddy stated they used the week day because that was when the vast majority of non-vacationing public would be going to and from work and when the traffic was the heaviest. He also stated that multiple trips into and out of the timeshares were taken into account during the study.

Allan Clark of 615 Beechwood Drive in the Piney Creek Estates Subdivision in Williamsburg was concerned about water and traffic and asked the Commission to reject this plan. He stated it was only a few months ago that members of this Commission commented that they had nothing against timeshares but thought timeshares did not belong here. He said he and residents of Piney Creek Estates agreed with the Commission then as they do now. He said he was also very concerned about the multi-use path that would be constructed within the 35 foot buffer area between the adjacent property owners. He concluded by again asking the Commission to reject this proposal.

A resident of Piney Creek Estates commented that both James City County and the City of Williamsburg were more interested in the financial affairs of the communities rather than anything that affected the citizens and asked the Commission why Williamsburg needed another timeshare community.

Bob Stowers of 1619 Beechwood Drive applauded the applicant who listened to the Planning Commission and the Board of Supervisors when they heard negative issues regarding the project. He stated the applicant heard negative issues because these timeshares were not a good idea then and they are not a good idea now. He asked what benefits the community would gain from this type of proposal and asked the Commission to deny this application.

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

Martin Garrett questioned the necessity of the bike path since most bikers do not use paths but stay on the main roadways and felt if they were to protect the adjacent homeowners the path should not be placed so close to their property lines.

Willafay McKenna stated that if she had young children she would not send them out onto the County roadways but would prefer these type of bike paths.

John Hagee stated that the Commission needed to rethink what they were trying to encourage in the cluster ordinance. He felt this was a difficult case but thought that what the ordinance encouraged were bike paths and usable recreation space. He stated that all the years he's been on the Commission clusters had been encouraged because they do provide a benefit but it appeared that whenever a cluster proposal came forward, the Commission found ways not to like it. He thought that the Commission could not discriminate against timeshares and that they had to look at them as they would any other residential type of proposal. He felt that of all the timeshares within the County this area seemed to be the best location since it was just off of the main tourist corridor of Richmond Road.

Martin Garrett stated that the purpose of the cluster was to allow for significant space between the cluster and what was next to it and in this case they had placed a bike path very close to the property line. He stated if all that were left natural then the residents in Piney Creek Estates would be protected.

Wilford Kale commented that one or both of the paths would have to get state approval since they would encroach upon wetlands and there was a good chance that the mulched path would never get approved. He stated he felt this was a bad location, it was not low-density, the traffic was

a problem, and the County was not actually benefitting. He said he could not support this application.

Martin Garrett stated there was no data available since timeshares were too new. He did not feel this proposal would be a long term asset for the community and could not support this application.

Willafay McKenna spoke in favor of the application because she was pleased with the changes the applicant had made. She felt the proposal offered an opportunity to connect a long area of bikeways that would not be done if this were a by-right development and there would be an economic impact that would be favorable to the County. She did not think that they should look to see if these timeshares were beneficial 50 years from now since they don't do it for any other type of development. She commented that, according to the table provided for the traffic, the average for a timeshare development for trips in and out was lower than a residential area.

A brief discussion on traffic along Olde Towne Road took place among the Commission members.

John Hagee felt the use and location of the property was ideal for this project and felt it also met the cluster requirements and supported this application.

Joe Poole had to give the applicant credit for the improvement from what was initially presented but stated he was still not as supportive of this project as he would like to be due to the location and the issue of traffic on Olde Towne Road. He felt a by-right use of this property would be less of an impact than this proposal.

Martin Garrett felt at this point the Commission was not ready to take a vote on this project and asked if it would help to defer this another month.

Joe Poole stated it would not help him by waiting.

Peggy Wildman stated that her question regarding the water situation was answered.

Don Hunt said that the shallow wells were not a water source for the timeshare use but specifically for irrigation to water the grass.

Willafay McKenna said there were several things they should look at when it came to development on this parcel. If it was done by-right there could only be a 35 foot buffer between Piney Creek and the other development; that the question brought up by Peggy Wildman needed to be resolved and if the development went by-right what impervious surface would be required within the interior property. She also commented on the petition that was signed by residents in favor of this proposal.

John Horne stated the applicant said he would not object to a deferral if that was what the Commission desired. He also suggested that since the Commission would be deferring every case tonight, August would be a long agenda and, it would be helpful if they gave staff some direction as to what additional information the Commission wanted.

Martin Garrett didn't think staff could bring back anything additional that would help the Commission.

Joe Poole made a motion, seconded by Wilford Kale, to deny this application. In a roll call vote, motion failed 3-4. AYE: Kale, Poole, Garrett (3); NAY: McKenna, Hagee, Hunt, Wildman (4).

Don Hunt made a motion for approval, seconded by John Hagee. In a roll call vote, motion passed 4-3. AYE: McKenna, Hagee, Hunt, Wildman (4); NAY: Kale, Poole, Garrett (3).

9. PLANNING DIRECTOR'S REPORT.

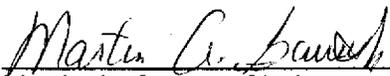
Marvin Sowers reminded the Commission of the scheduled work session with the Board of Supervisors on July 10 at 7 PM in the Board Room.

Don Hunt stated he spoke to the his Board Supervisors and said that one topic that was expected to come up was water issues.

Martin Garrett asked if any Commission member had any topics they wished to discuss, please let him know prior to the meeting.

Martin Garrett stated that the Commission needed a better definition of what land use in this County ought to be and suggested that this might be brought up. He said that he would inform the Board that the Commission won't do a whole lot with respect to cash proffers until they received direction from the Board.

There being no further business, the July 5, 2000, Planning Commission adjourned at approximately 9:45 p.m.



Martin A. Garrett, Chair



O. Marvin Sowers, Secretary