

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SEVENTH DAY OF AUGUST, 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
Willafay McKenna
A. Joe Poole III
Peggy Wildman

ALSO PRESENT

John Horne, Development Management Manager
Andy Herrick, County Attorney
Don Davis, Principal Planner
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 July 5, 2000, meeting were approved by unanimous voice vote.

3. DEVELOPMENT REVIEW COMMITTEE

Martin Garrett presented the report in which the DRC heard three non-controversial cases. He stated the DRC recommended approval for Scotts Pond which submitted 97 lots for Section 2 development, Anheuser Busch Inc. which submitted a proposal for off-site parking spaces, and Mulberry Place Subdivision which contained 50 lots.

John Hagee stated he had a conflict of interest with Case No. SP-87-00 Anheuser Busch Inc. and would not be voting on it.

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

4. CASE NO. AFD-13-86. GOSPEL SPREADING CHURCH (GILLEY ADDITION) 2000 REES PROPERTY WITHDRAWAL.

Paul Holt presented the staff report stating the applicant had requested that approximately 80 acres of the 108 acre property be withdrawn from the Gospel Spreading Church (Gilley Addition) Agricultural and Forestal District. The AFD property was originally approved by the Board in 1986 and the Rees property was added in 1997. Staff found that the application met the withdrawal criteria as outlined in the staff report and recommended the property be withdrawn from the AFD. On July 17, 2000, the AFD Advisory Committee recommended the property be withdrawn by a 7-0 vote, with three absences.

Martin Garrett opened the public hearing.

Paul Brittle, representing the Powhatan Shores Homeowners Association adjacent to the ADF property, asked what percentage of the property was wetlands.

Paul Holt displayed a map which showed the areas within the wetlands. He stated the back three lots were divided into flag stems in order to avoid any disturbance of the wetlands and flood plain. He did not have a percentage but stated the wetlands did cover a large number of acres.

Paul Brittle stated their concern of additional development in the area was the drainage problems and how it would be addressed.

Paul Holt stated that the only potential development would be for the owner to sell the lots and to have one single family home built on each.

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

Willafay McKenna made a motion, seconded by Joe Poole, to approve staff's recommendation of withdrawal from the AFD. In a roll call vote, motion passed 6-0. AYE: McKenna, Hagee, Hunt, Poole, Wildman, Garrett (6); NAY: 0.

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

Martin Garrett reopened the public hearing. He stated there had already been two meetings in which people spoke and encouraged only those with new information to speak tonight.

Christopher Johnson presented the staff report stating the Planning Commission deferred this project on July 5, 2000, in order to allow staff and the applicant to address concerns shared by citizens as well as several proposed changes and additions to the conditions. Staff had worked with the applicant to address those concerns but noted that staff would find it difficult to enforce conditions which limited the source material, transportation of materials to vehicles registered only to Hertzler Clearing and Grading, to restrict the height of materials stored, and to eliminate the use of ground water and chemicals in the decomposition on the site. Staff found the proposal consistent with the surrounding zoning, development and Comprehensive Plan. Staff continued to recommend approval of this application as outlined in the staff report.

Willafay McKenna understood the difficulty in enforcing these regulations but asked if they did violate one of the conditions, would staff then be able to enforce the conditions.

Joe Poole asked if the applicant was comfortable with the conditions required by staff.

Christopher Johnson stated the applicant was generally comfortable but did have a few issues with the language with the limitation on the number of days the tub grinder could be in operation. He stated the applicant wished that be changed to 20 days per year rather than 15 days as proposed by staff.

Martin Garrett opened the public hearing.

John MacDonald of 2088 Harpers Mill Road spoke on behalf of the applicant and stated it was time that someone spoke on behalf of Steven Hertzler. He said Steven Hertzler was trying to be a good neighbor and said it appeared that the residents had taken this project out of scale and that in reality this was a small operation. He continued to state the applicant would only be allowed four dump trucks to transport materials into and out of the site and the material storage area was only on 2.5 acres. He concluded that all 14 conditions were acceptable to the applicant.

Martin Garrett stated that Shireen Parsons spoke at the last meeting about chip mills and that he reviewed the materials she handed out at that time. He stated the applicant had not applied for a chip mill operation but for an operation to grind up trunks of trees. He further stated that the applicant would not be grinding up trees to make chips to sell for the manufacture of wood products.

Shireen Parsons of Christiansburg, VA stated that this was not a full scale chip mill at this time but this was very often how full scale chip mills were eventually located into a community.

Martin Garrett said that as mentioned at the last meeting the applicant would have to come before the Commission and Board if it wished to increase the size of the operation.

Shireen Parsons responded that once a project comes into an area, it was typical that a request to increase the size of a project would be approved. She stated that, after all the information and comments presented during the public hearing, she felt it was difficult to understand how the revised staff report could continue to recommend approval. She felt the staff report still left many questions unanswered. She reviewed several of the conditions of the revised proposal and concluded by recommending that the Commission deny this application.

Glen Besa, Director of the Sierra Club of VA, addressed the issue of stump dump fires and handed out information regarding a stump dump fire in Baltimore County, Maryland. He stated this was an industrial operation and therefore, should be put on an industrial site. He asked the Commission to deny this application.

Margaret Tucker of 187 Racefield Drive spoke against this application with her main concern being the traffic situation on Barnes Road.

Betty Smith of 9347 Barnes Road spoke against this application and stated she had a petition with additional signatures which she presented to the Commission members. She stated that landowners did have rights and, with the 106 signatures already on petition and the signatures she presented tonight, she asked if their rights were being taken away from them by this application. She stated that Steven Hertzler also had rights but felt this type of operation was in the wrong location. She asked the Commission to deny this application. She asked how many vehicle trips would be generated by his clients that would be in addition to the truck and employee traffic.

Christopher Johnson stated that, with no sales allowed on the site, he was not sure what clients she was referring to. He stated that the majority of the business came through solicitation by phone adding that he presently operates his business from his home.

John MacDonald of 2088 Harpers Mill Road again spoke on behalf and in support of Steven Hertzler stating it was unfair to compare the size of this operation to a chip mill.

Rosa Mayes of 135 Racefield Drive spoke against this application with traffic being her main concern.

Raymond Stewart of Barnes Road spoke of the 106 signatures he presented at the last Commission meeting and stated that this project was being proposed at the wrong location and asked to Commission to deny this application.

Brian Schrecengost a young resident of Racefield Road spoke against this application and asked the Commission to deny this application.

Tanya Howell of Racefield commented on another case when someone said "you knew that this was a possibility when you moved there, what was your concern. You knew that this parcel had been designated as one that might become industrial." She stated when families moved to Racefield Drive and Barnes Road there was not a thought as to what type of industry would be developed down the street. She felt for this property to be used in an industrial way was unfair.

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

Willafay McKenna stated as a Commission member she looked at the use of the property, its location, and the conditions that were placed on it. She stated the petitions were a much greater consideration to the members of the Board of Supervisors because their way of looking at projects may be somewhat different than the Commissions. She recommended approval for the following reasons: most of the property was located adjacent to I-64; only 25% of the property would be used for the business, leaving 75% undeveloped; the SUP would not go into effect until all improvements required by VDOT were made; and the excessive amount of conditions imposed on this project.

Don Hunt stated he had no comments to make on this application.

John Hagee stated his position did not change and he believed that this was a small time operation. He felt Steven Hertzler was trying to open a business in a rural area with a rural usage and he did not know of a better area. He felt this application had been blown out of proportion and agreed with the comments made by Willafay McKenna.

Joe Poole seconded the motion for approval. He stated he had strong concerns initially based on access to the site and his perceptions that this was a more intense use than he now believed it to be. He said based on the conditions set upon this application, he did not think that this project was as aggressive as a chip mill and was comfortable with approving the application.

Peggy Wildman stated that given the conditions proposed on this applicant, which she believed addressed all the issues of concern, this was a viable application and she supported it.

Martin Garrett agreed with the comments of Willafay McKenna and the other Commission members and wanted the citizens to know that their decisions were not easily made. He said the Commission did give this application a lot of thought and there was an education process on their part and he supported staff's recommendation of approval.

In a roll call vote, motion passed (6-0). AYE: McKenna, Hagee, Hunt, Poole, Wildman, Garrett (6); NAY: (0).

6. CASE NO. SUP-7-99. GRIESEN AUER RESIDENTIAL CLUSTER.

Jill Schmidle presented the staff report stating staff received signed proffers in legal form on August 1, 2000, which was not in accordance with the adopted policy for proffers. Staff previously had notified the applicant of the proffer policy and in accordance with this policy, staff recommended the Planning Commission defer this case to allow staff adequate time to review the proffers.

Martin Garrett opened the public hearing.

Greg Dodd of Horton and Dodd stated he understood staff's recommendation of deferral and if that was the pleasure of the Commission, he would limit his comments. He said that if they were ever going to converge to a public hearing that's bonafide for a vote, there were some issues that might be worthy of discussion. He yielded to the Commission as to whether they wanted to hear those issues tonight or wait until the September meeting.

Martin Garrett recommended deferral since the applicant had ample notification to provide proffers within the required time period.

Greg Dodd stated the policy presented a problem since they had out-of-town owners. He said the proffer system as devised was a dynamic system in that they try to evaluate what proffers might be acceptable to all concerned. He stated they had presented proffers to staff for acceptance and then they had to contact their out-of-town owners for signatures and that the 21-day policy might not be met. He said it appeared to be a never-ending process and he wanted the Commission to know the type of problems they have incurred.

John Hagee asked if the applicant had any example of the changes that had been made that delayed the cut-off requirement.

Gregg Dodd said one example that was paramount to this was land use of the property versus off-site road improvements that were being required. He said he had tried to separate the land use issues from the off-site improvement that were required by presenting a proffer that was strong enough so if they overcame the obstacle of land use, the County still had another obstacle for them to pass before the project would be valid, that being a road system that would satisfy the County and VDOT. He said the cost of developing the off-site road plan to the satisfaction of the County and VDOT and the possibility of denial of the land use was something of concern. He felt the two could be separated and the County still be protected.

John Hagee asked for a response from staff as to whether that could be worked out.

Andy Herrick, Assistant County Attorney, responded by cautioning the Commission from giving specific instructions or requesting specific information regarding proffers since they were voluntary commitments made by owners.

John Horne assured the Commission that staff understood that the application had been in for a time and they would make every effort to bring to the Commission a package that they would be able to vote on next month.

The public hearing remained open for the September 6, 2000, meeting.

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

Paul Holt presented the staff report stating the applicant had applied to renew two existing special use permits to allow for the continued operation of borrow pits at the southern end of the County. The two permits would expire on December 22, 2000 and were last reviewed and approved by the Board of Supervisors in 1997 and 1992. Time limits were placed on the permits in order to give staff the opportunity to re-evaluate the impact of the operation. The applicant at this time had requested no time limit be placed on them. Staff found the proposal consistent with the Comprehensive Plan Land Use Designation, compatible with surrounding properties and zoning. Staff recommended approval as outlined in the staff report.

Willafay McKenna asked about the condition which stated only inert materials could be used as fill and asked if that would make the land unbuildable.

Paul Holt stated that to the contrary it was designed to make sure that the property would be buildable in the future.

Willafay McKenna also asked if the invasion into the RPA by the applicant occurred after the approval of the last special use permit.

Paul Holt stated that the invasion occurred before the special use permit was last renewed in 1997 and that the restoration that took place at the time was not acceptable to the Director of the Environmental Division. He added that this was an opportunity to make sure that everything would get done.

Peggy Wildman asked what impact the traffic would have on the Wal-Mart application.

Paul Holt stated the Wal-Mart site development plan had its own set of road improvements designed for Route 60 and under those improvements, the Wal-Mart traffic should blend with the existing traffic including traffic coming out of the borrow pits.

Joe Poole commented that the conditions as outlined in the report had been submitted without a time limit with the stipulation that there be an annual report on the activity on the site and asked why staff made that change.

Paul Holt stated staff was confident that, with the requirement of the annual report documenting the items that would otherwise be checked when renewing an SUP, adequate control could still be maintained as to the future of the property.

Martin Garrett opened the public hearing.

Vernon Geddy of Geddy, Harris, Franck, and Hickman representing the applicant, Henry Branscome, spoke on the history of the property stating the applicant had been running his business for the past 33 years. He felt there was a significant improvement in the permit conditions that would benefit both Branscome and the County. He commented that it would benefit the County since the yearly report would be done rather than waiting until the permit was up for renewal to go out to the site and check the progress. He said the only point of disagreement with staff related to condition #9. The applicant proposed a 100' buffer around the top of the primary ecological boundary in order to do select timber harvesting and outside the 100' buffer the applicant wanted to timber the property. He stated they did not want to lose the value of that amount of timber but more important they did not want to set a precedent that the 40 acres would never be available for industrial development. He concluded by stating that the issues of safety and economic development had been addressed and he asked that the Commission approve this application.

Alvin Anderson of Kaufman and Canoles and representing the owners of Greenmount tract spoke in opposition of this application. He said the Greenmount tract was approximately 760 acres south of Route 60 and the subject site before the Commission was approximately 420 acres both of which were in the James River Enterprise Zone. He stated that on one hand, the County had recently gained substantial momentum with the construction of the new Busch Gardens Interchange, the location of the Wal-Mart Distribution Center and the renewed discussions about improvements on Route 60. But, on the other hand, the County tonight was faced with a special use permit expansion and extension of time for a total land area of approximately 18% of the James River Enterprise Zone. He asked the Commission to focus on the following three questions: Did the expansion of the land area and the removal of the time limitation adversely affect the development potential of the Branscome property and the adjacent Greenmount property? Did the use of the property immediately adjacent to the Wal-Mart facility encourage or discourage similar type of development as that of Wal-Mart on the adjacent or surrounding properties? Would a developer choose to locate their facility on virgin property or the alternative site which would be in a large hole filled with inert materials? He requested on behalf of his clients that the Planning Commission not approve the expansion of the area nor that the time limit be extended or eliminated altogether.

Henry Branscome stated that he had been mining that area years before the Wal-Mart planned on coming to the area and even before the present owners purchased Greenmount. He said he had over 500 employees and that he was not just a small time business but a large one that was a part of James City County. He felt that his property, even though adjacent to the Greenmount tract, had nothing to do with Wal-Mart or any future development in that area. He also mentioned the extinct plant life on the parcel that could not be disturbed, commenting that there were only three to five of them within a 30' square block at the edge of the marsh. He asked the Commission if they would want to give 40 acres of their property for a 30' square block for a plant they did not even know.

John Hagee asked why the applicant didn't want to have a time restriction on the permit and asked what impact there would be if a five year time limit extension was placed on the business.

Henry Branscome stated if they bid on a \$20,000,000 to \$30,000,000 job there could be a half million yards of dirt on the project. He said sometimes these jobs could extend from two to three years.

John Hagee felt the Commission should keep its perspectives open in terms of what may happen in the future but also it needed to make sure it did not restrict the applicants business. He suggested that the Commission place a limit of five years and asked if the applicant had any problems with that.

Vernon Geddy stated a problem may arise if limited to five years if the applicant received a contract three years out that might require delivery of material over a three year time period. He said the applicant could not guarantee that the permit would be renewed at the end of five years and the applicant would be taking a great risk in bidding on a job that would require delivery of material past the expiration of the current special use permit.

John Hagee commented that there were 148 acres left to be mined and with three to five acres being disturbed per year, there could be mining activity for another 37 years. He felt that was too long of a period of time to allow for the permit.

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

Willafay McKenna was concerned about not having a time limit on the permit and the harvesting provisions that were not included in the last application. She was uncomfortable leaving this to annual reports to staff and felt that the greatest reason that the Commission put limits on the last two proposals was simply to be able to take a look at the project and actually see what had been done over the years. She suggested that there be a time limit of three years and if the Commission chose not to renew the permit again that the applicant be able to continue the operation until all jobs under contract were completed.

Martin Garrett commended the applicant on this business but also felt that a time limit was necessary for the benefit of the County. He said the timber harvesting issue was of concern to him and asked if they could deal with that issue separately. He asked for a motion on the time limit.

John Hagee made a recommendation to approve a 40 acre limit over a seven year period.

Several Commission members felt that a five year time limit was more acceptable than the suggested seven years.

Joe Poole made a motion, seconded by Peggy Wildman, to limit this special use permit to a five year limit with a 40 acre limit as suggested by the applicant.

In a roll call vote, motion passed 6-0. AYE: McKenna, Hagee, Hunt, Poole, Wildman, Garrett, (6); NAY: (0).

Don Hunt felt the applicant's point was well made regarding the harvesting of the area reserved for the protection of a plant.

Paul Holt clarified that the applicant's proposal was not to timber within the primary boundary but to selectively timber in the 100' buffer around that primary area and timber outside the 100' buffer. Staff's proposal was not to timber inside the primary area of approximately three acres and that no timbering be done in an additional 100' buffer from the primary area. He said in between the 100' buffer and the secondary boundary staff recommended it be selectively timbered or the hardwood. He added that this was based on the state's recommendation that it was as important to protect the actual plant as well as protect the plant's habitat.

John Hagee suggested the applicant preserve three acres in the primary with a 100' buffer and allow the applicant to timber the remainder of the property and provide adequate drainage protection.

Staff agreed with John Hagee's proposal.

There was additional discussion on the options by staff and the applicants.

John Hagee made a motion, seconded by Martin Garrett, to recommend approval of a 100' buffer around the three acre area and the remaining thirty-four acres be timbered provided that erosion control measures were put in place and approved by the Environmental Department.

In a roll call vote, motion failed 2-4. AYE: Hagee, Garrett, (2); NAY: Hunt, Willafay, Poole, Wildman.

After some discussion, Martin Garrett stated the Commission passed a portion on this application and they would defer the timbering issue until the next meeting. He made a motion, seconded by Willafay McKenna, to defer this case.

In a roll call vote, motion passed 6-0. AYE: McKenna, Hagee, Hunt, Poole, Wildman, Garrett (6); NAY: (0).

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

Paul Holt presented the staff report stating the applicant had applied for a 175 foot monopole tower at 4881 Centerville Road with various accessory equipment huts and pads at the base of the tower to support the necessary electronic equipment. Staff believed that, with the proposed conditions and the distance of the setback, the proposed height of the tower would appear comparable with surrounding vegetation and was compatible with the surrounding zoning and uses. Staff recommended the Commission approve this application as outlined in the staff report.

Joe Poole recalled that when there were discussions on towers several years ago and it might even be in the Performance Standards of 1998, if these facilities ever became obsolete or did not function as originally designed would they be removed at the owner's expense? He asked if that, in fact, was enforceable.

Paul Holt stated that requirement was not written into the conditions because during the ordinance update it was written into the Zoning Ordinance so it would be enforceable and the company would be required to submit a bond.

Martin Garrett opened the public hearing.

Vernon Geddy of Geddy, Harris, Franck, and Hickman representing the applicant stated the applicant had worked hard to locate a site to cover the gap between the two existing facilities. He stated the application meet all the performance criteria and he urged the Commission to recommend approval to the Board.

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

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

9. PLANNING DIRECTOR'S REPORT

Don Davis informed the Commission that the Planning Division had had employee turnover but was once again fully staffed.

Peggy Wildman thanked the Community Character Committee and the Planning Division for their efforts in producing the Community Appearance Guide.

Don Hunt commented that he spoke with a citizen regarding the Greisenauer case that will be discussed at the September meeting stating the citizen's objection was the proposed density for the project.

There being no further business, the August 7, 2000, Planning Commission adjourned at approximately 9:50 p.m.



Martin A. Garrett, Chairman



O. Marvin Sowers, Secretary