

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

1. ROLL CALL

A. Joe Poole
George Billups
John Hagee
Wilford Kale
Joe McCleary
Peggy Wildman

ALSO PRESENT

Greg Dohrman, Assistant County Attorney
John Horne, Development Manager
Marvin Sowers, Planning Director
Paul Holt, Senior Planner
Christopher Johnson, Senior Planner
David Anderson, Planner
Lee Schnappinger, Landscape Planner

2. MINUTES

Peggy Wildman requested a correction to page 6, paragraph 2, to read: "...to get citizen participation..."

John Hagee made a motion, seconded by Joe McCleary, to approve the minutes of the April 1, 2002, meeting. In a unanimous voice vote, motion passed.

3. COMMITTEE AND COMMISSION REPORTS

A. DEVELOPMENT REVIEW COMMITTEE (DRC)

John Hagee presented the DRC report stating there were five cases before the DRC, one being heard tonight for a 51,000 sq. ft. building in the James River Commerce Center. He said the additional cases were fairly uneventful except for the Williamsburg Crossing Shopping Center, Lot 11, a 15,000 sq. ft. office and retail space. He said the applicant had requested an eight-foot rear yard setback reduction to accommodate the proposed building and noted the DRC had an issue regarding a parking bay adjacent to the main drive into the shopping center and they requested an architectural rendering of the proposed building because of its proximity to Route 199. He said this case was deferred to the next meeting. He said DRC recommended approval for an exception to the Subdivision Ordinance for property located at 257 Neck-O-Land Road that requires all new utilities be placed underground; Stonehouse, Section 5-A, Lisburn, which exceeded 50 lots and for an exception to allow a cul-de-sac greater than 1,000 feet in length; McKinley Office Building which was required by the special use permit conditions approved by the Board of Supervisors to come before the DRC for review and for the 51,000 sq. ft. building at the James River Commerce Center.

Peggy Wildman made a motion, seconded by Wilford Kale, to recommend approval.

Joe Poole abstained from the vote on the James River Commerce Center.

In a unanimous voice vote, motion for approval passed.

B. DEVELOPMENT POTENTIAL ANALYSIS COMMITTEE (DPA)

Joe McCleary updated the Planning Commission on the ongoing meetings being held by the DPA Committee. He stated they have held two meetings with an additional two meetings planned in order for the committee to define for the consultant information they need to do their counting. He said that counting the lots was only the first and easiest part of this committee's work and noted that the object of this process was to also count the potential in areas that were not already platted.

C. POLICY COMMITTEE

Wilford Kale stated the Policy Committee did not meet since the last meeting.

Joe Poole stated that the Commission received suggested revisions to the its bylaws which will be reviewed at the June 3, 2002, meeting. He said Wilford Kale suggested that the Policy Committee meet to review the revisions before the June 3rd meeting.

4. PLANNING COMMISSION PRESENTATIONS

A. GREENWAY MASTER PLAN

Lee Schnappinger made a brief presentation on the Greenway Master Plan which was the result of 14 months of collaboration between the Divisions of Parks and Recreation, Planning staff, the Greenway Steering Committee, and members of the community. She reported that the Parks and Recreation Advisory Commission unanimously agreed to support the draft Greenway Master Plan at a public hearing on April 17, 2002, and introduced its Chair, Allen Robertson.

Allen Robertson stated his purpose was not to go into great detail but to present to the Commission the most recent edition of the Greenway Master Plan. He thanked the Parks and Recreation Advisory Commission members for their support, the citizens who served on the Greenway Steering Committee, the many citizens who came forward during the public hearings, and Paul Tubach, in particular, for all his work in pulling the plan together. He said the purpose of the Plan was to create a comprehensive system of greenway and trail connections in the community so that open space is kept to preserve the communities' character. By doing this, the County would also be protecting environmental assets, providing recreation and transportation alternatives, and safeguarding the natural scenic and historic nature of the County. He said the Greenway Master Plan was guided by the development of a ten-year action plan to be revised concurrently with the Parks and Recreation Plan. He noted that there were already six trails projects that were in various stages of design or completion that were part of this Master Plan. He concluded by stating that the Commission believed that this Greenway Master Plan will serve well the very unique character of the community and recommended that Commission support this Plan.

Joe Poole asked what critical thoughts the Greenway Steering Committee received during the Master Plan review process, and what sort of citizen comments were recurring.

Allen Robertson said that almost all the comments the Greenway Steering Committee received were positive. Citizens told the Greenway Steering Committee that they felt the final document alleviated their concerns.

Paul Tubach stated the main citizen concerns were safety, security, and privacy. He added that these concerns would be addressed in detail during the trail design process. He said there were ways to physically design the trails to minimize the potential for any incidents, such as wide buffers. He noted that although some citizens did not want trails running through their backyards, other citizens were very interested in having trails located in close proximity to their property.

Joe Poole thanked both Mr. Robertson and Mr. Tubach, and asked the Commission if there were any further questions.

John Hagee asked Mr. Tubach to briefly describe the main areas of the County where the Greenway Master Plan proposed trails.

Paul Tubach said the focus of the Plan is connections, so the Greenway Steering Committee was looking at trails which would link existing recreational trails, public facilities, and

historic sites. The main corridor would run East to West through the County, and is an existing utility corridor. There would also be a North to South corridor which would link York River State Park and Jamestown Island. There would also be two loop systems. The inner loop runs along Route 199, and the outer loop runs along Centerville Road and the Colonial Parkway. Communities would then connect to these trails whenever they desired.

Joe Poole thanked Mr. Tubach, and commended all who worked on this endeavor.

B. JCSA - WATER SUPPLY AND SEWAGE TREATMENT CAPACITY

Larry Foster gave a brief presentation on water-related issues such as water supply and how development has impacted the water supply. He also gave a brief presentation on sewer capacity and how sewer is handled in the County.

In his presentation, Mr. Foster said that the James City Service Authority (JCSA) is the largest utility in the state of Virginia which is entirely dependent on groundwater. The JCSA has approximately 14,000 customers, with 700 new customers every year as a result of development. Average daily demand for water is 4 million gallons of water per day, but in peak months during the summer, daily demand goes up to 5.5 million gallons per day. The 700 new customers each year add 200,000 gallons to the average daily demand. Therefore, it is projected that the average daily demand for water will be 4.2 million gallons per day at this time next year. At this rate of growth, the County will not be able to supply water to additional customers after 2005. According to the Permit to Operate issued by the Virginia Department of Health, the JCSA is currently permitted to withdraw 4.7 million gallons of water per day. However, infrastructure upgrades will result in an upgrade to the Permit to Operate, which is expected in the near future. This will allow the JCSA to withdraw 5 million gallons of water per day, and 6 million gallons per day in peak months.

Mr. Foster said that the JCSA does not do any sewer treatment. The JCSA collects sewer at the site and sends it to the Hampton Roads Sanitation District (HRSD). The HRSD treats the waste water in its Williamsburg facility, which is located near the Newport News-James City County line. This facility can handle 22 million gallons a day, but currently handles 12 million gallons a day.

Joe Poole thanked Mr. Foster and asked about the Water Smart program and other water conservation programs.

Mr. Foster mentioned that Water Smart is a volunteer program where the JCSA provides information and educational material to citizens. A Board-appointed committee provides citizen input and feedback. The JCSA is also partnering with companies which are involved with outdoor water use, such as landscaping companies. These businesses promote the Water Smart program to other businesses.

Joe Poole asked if Mr. Foster was seeing a return on this program.

Mr. Foster said he was not sure as the Water Smart program is still in its early stages.

George Billups asked about the impact on fish and wildlife, as the JCSA has only made projections to the year 2040. He also asked if the groundwater pumping affected local canals, rivers, and creeks.

Mr. Foster replied that the State of Virginia has taken a very proactive stance in limiting how much groundwater the JCSA can pump per day. Typically, wells are 250 feet or deeper. Mr. Foster stated that, in his opinion, these wells do not impact canal levels in the Tidewater area. Monitoring wells are currently being installed throughout the region to get even more accurate readings of the groundwater supply.

Joe Poole asked for the status of the King William Reservoir.

Mr. Foster replied that the County has pursued the project, and it is currently under review of the Corps of Engineers' Regional Office in New York. The comment period has closed and the JCSA is awaiting the final decision from that office.

Joe Poole thanked Mr. Foster.

5. PLANNING COMMISSION CONSIDERATIONS

A. PROPOSED CLOSURE OF CENTERVILLE ROAD

Joe McCleary said that at its March meeting, the Commission discussed the proposed closure of Centerville Road. He stated that the Commission appeared to be unanimously against the closure of the road, and so deferred the case for three months. Shortly thereafter, Planning staff, the National Park Service, and the Commission all met in order to find a mutually acceptable solution. These agencies all decided to handle the closure in an incremental fashion. Specifically, the road will remain open while the Commission would make some recommendations to the Board for actions which will improve the road to match the surrounding use. These recommendations include paving the road to give it a "country" look, reducing the speed limit, increasing speeding fines, and realigning the southern junction between Centerville Road and Greensprings Road. Mr. McCleary emphasized that none of these steps are "set in stone;" the Commission can re-evaluate the situation at any time in the future. If the park was a success and received a lot of visitors, the Commission could consider closing the road for safety purposes. He said the attached resolution contained the changes agreed to by the Commission at its April 1, 2002 meeting. He then read the resolution out loud so the public could hear it. Mr. McCleary stated it was recommended that the Commission adopt the attached resolution.

Joe Poole thanked Mr. McCleary and asked if the Commission had any questions.

George Billups said he was concerned that the resolution included the possibility of closure in the future.

Joe McCleary said the resolution only stated that the matter was being handled in an incremental fashion. The possibility of reconsidering the matter and closing the road in the future is implied in the resolution, but the resolution does not mandate it.

Joe Poole said the Commission wanted a better sense of what the applicant was going to do with the property before taking a bold step and closing the road. He felt the connectivity of the road and emergency services issues could not be overlooked, so this incremental approach would allow those issues to be resolved while giving the Commission an opportunity to see how the applicant develops the park.

Wilford Kale said he was very pleased with the resolution and wanted to commend Mr. McCleary's work on this matter.

Joe McCleary made a motion, seconded by Wilford Kale, to adopt the Resolution. In a roll call vote, motion passed (5-1). AYE: Wildman, McCleary, Hagee, Kale, Poole (5); NAY: Billups (1).

B. CASE NO. SUP-18-01. WALTRIP CELLULAR TOWER

Paul Holt presented the staff reported stating this case was remanded back to the Commission by the Board of Supervisors since there was a significant change in the height of the proposed communication tower. He said staff found that many of the concerns noted in the

previous staff reports had been reduced by the revisions in the present proposal. Staff also found that the mono-pine structure would appear substantially out of scale with existing natural vegetation to an off-site viewer and from certain locations within the Kingspoint subdivision and Williamsburg Landing. Staff also noted that the mono-pine was not consistent with the Zoning Ordinance criteria or the Performance Standards for Wireless Communication Facilities. Staff recommended denial of this application.

Joe Poole thanked Paul Holt and asked if the Commission had any questions.

Peggy Wildman asked the approximate height of the treeline surrounding the proposed tower. She wanted to know how much lower the tower height would have to be in order to blend in to the surrounding vegetation.

Paul Holt answered that he did not know the exact height, but the average height of the tree cover in James City County is 80 to 85 feet.

Peggy Wildman asked if 80 to 85 feet is high enough for a cellular tower to be viable.

Paul Holt replied that staff believes it is high enough for a viable tower for a primary carrier, though it is not optimal for co-locating other antennas for secondary carriers. He noted that an 80 to 85 foot tower would not fill the coverage gap in the area, but neither would a tower at 165 feet. Therefore, staff feels it is a better to encourage a mono-pine structure approximately equal to the height of the surrounding treeline.

Peggy Wildman asked if multiple towers would fill the coverage gap.

Paul Holt answered that multiple towers would only fill the gap if they were placed in different locations. Multiple mono-pines at this site would only serve to accommodate different companies' antennas. He added that there are between 6 and 8 cellular phone service licensed to provide services in this area, so extra mono-pines could encourage additional companies to provide services.

Marvin Sowers pointed out that when the Wireless Communications Tower policy was adopted, it was intended to govern areas in the County where tall towers were warranted, but also to govern areas where smaller towers would be more appropriate. The policy recognizes that in areas where smaller towers would be required, multiple towers may be needed. He added that Albemarle County has a policy of using multiple mono-pines at treeline height, which has been a success.

Peggy Wildman asked about the costs of multiple smaller towers versus one large tower.

Marvin Sowers answered that he did not know, but in Albemarle County the rates for cellular phone usage were not higher than in James City County. He also said that in Albemarle County, the tree cover is a similar height, around 85 feet, and the towers there averaged 7 feet above the treeline.

John Hagee questioned the height of the balloon during the test as opposed to the height of the crane present on the site.

Paul Holt stated that the crane was from a cellular phone carrier who was testing the potential service capability of the tower and had nothing to do with the balloon test. He said that the balloon only appeared higher in the pictures due to the perspective of the photos.

John Hagee asked if the crane and balloon gave a good idea of what two smaller towers would look like.

Paul Holt replied that yes, the intent of the County policy is to maximize antenna locations at lower heights.

Joe Poole asked if there were any further questions. There being none, he asked the applicant, Mr. Vernon Geddy, if he wished to speak.

Vernon Geddy said that he represented Mr. Larry Waltrip and Ms. Jean Waltrip, who are the property owners, and Mr. C.E. Forehand of SBA Network Services, who would build and maintain the tower. He stated that the previous application was for a 165-foot monopole tower, which was planned to meet the service needs of that area of the County, but the applicants felt the proposal would not be approved due to the appearance of the tower. Thus, the applicant reduced the height of the tower to 133 feet so that no lighting would be required by the County or the FAA. The 133 foot height gives adequate coverage as well as opportunities for co-location. Additionally, the applicant changed the design of the tower to a more camouflaged monopine design, as shown in the pictures.

Mr. Geddy mentioned that these changes were ones that staff had been suggesting, and so he was disappointed that staff was still recommending denial after making the changes. He noted that all of the issues presented in the previous tower design had been mitigated, and the only outstanding issue was the visibility of the tower. However, he stated that the wireless communication coverage in the area remained poor, and there was still a no viable alternative location for a tower in the area. He said there is an undisputed need for cellular coverage in the area because people have grown to depend on their cell phones.

Then Mr. Geddy read aloud comments from Dr. Brian Claire, the head of Williamsburg Emergency Physicians, and Ms. Laura Jost, who is concerned with home security:

"We submit to you that this application strikes the right and appropriate balance between service, co-location, and aesthetics. But one issue seems to be the visibility of the facility above the treeline. Staff's interpretation is that this camouflaged tower should be denied because they believe it is out of scale with the surrounding trees. They point to Albemarle County as an example of a County that requires towers at or below the treeline."

Mr. Geddy then pointed out a significant difference between James City County and Albemarle County; namely, the topography. Albemarle is in the foothills of the mountains. It is easier there to place a tower on a hill, so that it blends into the treeline but remains high above ground level. He then suggested that the County look to Newport News as a model for cellular tower regulation. He said monopine towers are working very well in Newport News, and there have been few complaints about them.

Mr. Geddy then passed around a photo simulation of the monopine tower at the actual site. He noted that the basket hanging from the crane would be the height of the tower, not the height of the crane itself, and mentioned that the crane was situated about 300 feet west of where the actual tower would be, which accounts for some of the apparent differences in height.

Mr. Geddy said that at the current height, the tower would be briefly visible from the Westbound lane of the Route 199 bridge, Williamsburg Landing and parts of Kingspoint. He noted that Williamsburg Landing has not objected to this tower in any way. He also said that given the lower height and camouflaged design of the tower, the public traveling along Route 199 is not likely to notice it. The tower will be made to look like a tree, so it will blend into the background scenery along Route 199.

He then stated that the applicants do not see anything objectionable about a tower which looks like a large tree. He added that although the average County treeline is around 85 feet, there are certainly trees whose height extends beyond that line.

Mr. Geddy proceeded to say that the tower should not be objectionable to any neighbors. It will not be lit, produces no noise, generates no traffic, and will look like a tree. In summation, he stated that this tower proposal strikes the right balance between service, co-location, and aesthetics, and will meet an important need in the community.

Joe Poole thanked Vernon Geddy for his statement, and asked if the Commission had any questions. There being none, Joe Poole opened a public hearing.

William Schneider from the Kingspoint subdivision came forward to speak. He stated that his house would be directly opposite the cellular tower, and that he looked directly at the balloon test. He said that the treeline where the tower would be located is in the 75 to 85 foot range, whereas the tower itself is 133 feet tall, which is almost double the height of the trees. He felt that a tower which is nearly double the height of the natural vegetation is clearly out of scale. Mr. Schneider said that residents of Kingspoint are concerned with the tower, even if it was brought down to the height of the treeline. He advocates the towers at lower heights to meet the needs of the community. He also noted that during the balloon test, the balloon wire got wrapped around a tree and so was not photographed at its full height. He added that the crane had a tape measure on it, so the basket, which appeared to be higher in the photos, was in fact the correct height of the tower. He then asked the Commission to seriously consider alternatives, because multiple monopine towers at the tree height would be better for the community than a single tower which is double the height of the treeline.

Joe Poole thanked William Schneider for his comments.

Tim Murphy, president of the Kingspoint Neighborhood Association, came forward to speak. He said that the Kingspoint neighborhood feels the proposed tower would definitely be objectionable to look at and strikes no kind of balance. He also said that he does not feel that a cellular tower is an urgent need in the area. If a consumer chooses certain carriers, they can get coverage. He said that he finds anything greater than 50 feet taller than existing trees objectionable. Mr. Murphy was very concerned that the height of the tower was being driven by the commercial nature of the proposal. He said that "realistic opportunities for co-location" really meant realistic opportunities for a private citizen to get revenue and income. A taller tower would allow greater numbers of co-locations, which would mean more money. He said he was very concerned that a private citizen would take such a commercial venture to address a minor shortcoming in cell phone coverage. He then presented photographs of the balloon and the crane, which were taken the morning of the balloon test. He also showed a photograph of the balloon caught in the limbs of a tree, proving that it was not at its full height during portions of the test. To sum up, he said that this proposal would be out of place, out of scale, and not compatible with the surrounding vegetation. He felt it would be a disservice to the citizens to obliterate the view of the entrance to Williamsburg and James City County by placing a large and obtrusive structure at this site.

Joe Poole thanked Mr. Murphy for his statement and asked if any other person wished to speak. There being none, Joe Poole closed the public hearing and asked the Commission if they had any thoughts on the revised application.

John Hagee noted that the 133 foot tower would accommodate three antennas—one for the primary carrier, and two co-locations at 117 feet and 101 feet. He asked what the coverage would be for the co-locators at those heights.

C.E. Forehand, consultant to the applicant, came forward to answer the question. He said staff had been provided with propagation maps for the site showing the potential coverage for each antenna. He said that VoiceStream and Ntelos can use the co-locations at their current heights to fill gaps in coverage. He said that the antennas could actually be placed a little closer, probably at 120 feet and 110 feet, to get better coverage.

John Hagee asked if there was a third carrier interested in the tower, since there would be a total of three antennas.

Mr. Forehand replied that no, at the current time they did not have a third carrier interested in the site. Sprint was interested, but the site would not fill their coverage gap. He said that the lower the tower height, the less interest there would be in co-location.

Joe McCleary asked if multiple towers at a lower height would fill the coverage gap.

Mr. Forehand answered yes, that is a possibility, but towers 7 to 10 feet above the treeline would not be of much use to commercial carriers in the area. He said towers that low will only cover a half-mile to mile radius, which is not far enough for companies to invest in those towers. He said companies needed towers 30 to 40 feet above the treeline in order to carry a signal any distance which would make the antenna location economically feasible. He added that lower tower heights were also less desirable because they were subject to signal blockage when leaves or branches move in the wind.

John Hagee asked how far a signal could travel at the 120 foot level.

Mr. Forehand said that carriers could provide a decent amount of coverage at that height.

John Hagee asked how far the signal would travel from a tower 20 feet above the treeline.

Mr. Forehand replied that a signal from a tower at 20 feet above the treeline would carry roughly 4 or 5 miles.

John Hagee asked how far the signal would travel from a tower at 30 feet above the treeline.

Mr. Forehand replied that testing at each level would really be necessary to determine the distance a signal could travel. In this particular site, a tower 120 to 130 feet could transmit signals roughly 4 to 5 miles. He then proceeded to show the Commission propagation maps graphically showing the coverage the tower would cover.

Peggy Wildman noted that some carriers were not able to fill their coverage gap at the original proposed height of 165 feet. She asked Mr. Forehand how high a tower would have to be in order to fill all gaps or how many smaller towers would be necessary.

Mr. Forehand replied that the optimal height for most carriers is 165 feet. This height would allow for four co-locations, each with adequate coverage. He added that no single tower would address all coverage gaps in this area.

George Billups asked if this application was for one 133 foot tower or two.

Mr. Forehand replied that the County required applicants to apply for two towers at the same time to allow for future expansion, but at this time the applicant only wanted to construct one tower.

George Billups asked if multiple sites of multiple towers would be necessary to fill the gaps.

Mr. Forehand replied that at this site at 120 feet and 130 feet, Ntelos & VoiceStream would be able to match up coverage with another site on the other side of the Interstate. He said that he did not know of any company proposing any other sites in the area.

Wilford Kale asked staff if the applicant would have to appear before the Commission to build a second tower or if approval of this application would automatically grant approval for two towers.

Marvin Sowers replied that one of the conditions of this Special Use Permit would be automatic approval for a second tower, as per standard County cellular tower policies. He said that if the Commission needed more information on propagation and coverage distances, they could look at the County Wireless Communication Tower Policy, which gives detailed guidelines. He added that the Commission had not considered propagation and coverage information as part of a Special Use Permit application since the policy was adopted in 1996. He said that with all due respect to Vernon Geddy, the Route 199 corridor has significant topography and high bluffs which could be taken advantage of.

John Hagee said that he did not want to have this applicant continually returning to the Commission with revised proposals. He said he was hoping to give the applicant an idea of the type of tower the Commission would like to see. He said he was disappointed that the applicant was told to modify their proposal to a monopine structure, and after complying with that request, was told it was still unacceptable.

Marvin Sowers said that a key factor was not just the change to a monopine type of tower, but the scale of the structure. A reduction of 32 feet from the original proposal still does not blend in with the surrounding area.

John Hagee said that it seemed obvious to him that a tower would have to be above the treeline in order to carry a strong signal. He said if the Commission was to accept a monopine design, they would have to accept it above the treeline.

Joe Poole said he was pleased with the progress the applicant was making. He felt the applicant was in the right direction, although he still had concerns about the height of the tower above the treeline. He also said cellular towers don't provide a starting and ending point, like electrical transmission lines, so he had concerns over what would come next and how many towers would be needed to fill all coverage gaps. Without a sense of what is required to provide complete cellular phone coverage for the area, he recommends the Commission follow the visibility guidelines set forth in the Wireless Communications Policy. He said the current proposal does not meet these standards, although he commended the applicant for making efforts to bring the proposal into compliance. He appreciated the patience of the applicant, but felt more revisions would be necessary before he could recommend approval.

Peggy Wildman said she agreed with Joe Poole, and said she was looking for a balance between adequate coverage and height. She said she felt the best way to achieve this balance is to use larger quantities of smaller towers, which is in line with the County policy.

Joe McCleary said he did not wish to deny anyone cellular phone coverage; he said that cellular phone usage was something important, especially in the event of an accident or medical emergency. However, he concurred with Joe Poole and Peggy Wildman that larger quantities of smaller towers would be better. He said that even if it cost more to build multiple towers, the cost would be passed on the cell phone user, so the extra cost, if any, was not truly significant. He said that the County has a cellular tower standard, and has had this standard in place for several years. Towers above the treeline can be acceptable if they do not appear to be above the natural vegetation; however, this tower would clearly have a visual impact.

Joe Poole asked if any member of the Commission wished to make a motion.

John Hagee asked if towers which were at or below the treeline had to be monopines, and how high above the treeline a tower could be and still be considered a "stealth" tower.

Joe Poole said that Section 24-122 (d)(2) of the James City County Ordinance answered these questions, and read it aloud:

The structure shall be located and designed so as to appear to be a naturally occurring tree, which is not noticeably dissimilar to nearby vegetation in terms of height, scale, texture, or color.

Joe Poole said this section was very clear, and allowed for scenic variances between different sites. If stealth towers are to be used, they need to be close to the treeline and look like a tree. He said that this application, while designed to look like a tree, is out of scale with the surrounding vegetation.

John Hagee said that the Commission should have some sense as to what height and scale would be acceptable for stealth towers, and that the description from the Ordinance was rather vague.

George Billups said that if the applicant was aware of the Wireless Communications Policy and the Comprehensive Plan, they should have been able to anticipate the type of height and scale the Commission would look for. He felt staff did an excellent job in this case, and made a good recommendation to the applicant. He said he had no problems making decisions on this case since there were obvious guidelines.

John Hagee said he would welcome a monopine design which was twenty feet above the treeline. He felt this was an adequate height to get good coverage while minimizing the visual impacts of the tower.

Joe Poole asked if any member of the Commission would like to make a motion.

Joe McCleary asked the applicant if they would defer or if they wished to have a vote.

Vernon Geddy said he wanted an action on this case.

John Hagee made a motion, seconded by Peggy Wildman, to recommend denial of this application. In a roll call vote, motion passed (6-0). AYE: Wildman, McCleary, Hagee, Kale, Billups, Poole (6); NAY: (0).

6. PUBLIC HEARINGS

A. CASE NO. SUP-25-01. VOICESTREAM WIRELESS COMMUNICATIONS TOWER

Paul Holt presented the staff report stating at the February 4, 2002, Planning Commission meeting the applicant requested a three-month deferral. He said since that time, the applicant had withdrawn the application and submitted a new one as an alternative. He stated the new application was currently scheduled for the June 3, 2002, Planning Commission meeting.

B. CASE NO. Z-1-02. 7249 MERRIMAC TRAIL REZONING / BAKER FARMER'S MARKET

David Anderson presented the staff report stating Michael H. Brooks of Teamsters Local 95 applied to rezone property at 7294 Merrimac Trail from B-1 to M-1 in order to permit the use of a farmer's market that would be operated by local farmer, James Baker, to sell his farm produce and

products from mid-June until the end of September. He stated the property was currently used as an office facility for the Teamsters and it would remain as the primary use. Staff recommended approval of this application with the attached proffers.

Joe Poole thanked Mr. Anderson and asked if the Commission had any questions for staff.

Peggy Wildman asked if staff received any comments from surrounding property owners.

David Anderson replied no, staff had not heard anything from adjacent property owners, although they were all notified of this hearing. He also said that a notice sign had been posted at the property.

Joe McCleary asked if the application is for any single farmer, not just Mr. James Baker, who is explicitly named in the application.

David Anderson replied that yes, this rezoning is for any single farmer. If Mr. Baker chose to stop his market, another single farmer could come in and sell farmed goods from the property.

John Hagee asked if there were any guidelines for what the market would look like.

David Anderson replied that Mr. Baker would drive his truck into the parking lot, park adjacent to the street, and sell his goods directly from the truck. There would not be any additional buildings or structures.

Joe McCleary asked if there were revised proffers.

David Anderson replied yes, the proffers were revised to restrict hours of operation to 9am-5pm, Monday through Saturday.

Wilford Kale asked how long the proffers on the rezoning would be binding.

David Anderson replied that proffers are binding forever. They run with the property.

Joe Poole asked if there were any additional questions from the Commission, and thanked David Anderson for his presentation. He then asked if the applicant wished to speak.

David Anderson said that the applicant, Mr. Michael Brooks, was not present at the hearing, but Mr. James Baker was present to answer questions.

Joe Poole asked if the applicant accepted the revised proffers.

David Anderson answered yes, the applicant was comfortable with the revised proffers.

Greg Dohrman said that the original proffers were in improper legal form. He stated that the revised proffers were corrected to a legal form.

Joe McCleary asked Mr. Baker how large his truck is.

James Baker replied that his truck is a half ton.

Joe McCleary said that proffers go with the property forever. The current proffers simply state that goods will be sold out of a truck. If Mr. Baker ceases to have his farmer's market and another farmer takes his place, that farmer could sell goods out of an eighteen-wheeler. He subsequently suggested amending the proffers to say, "limited to one half-ton truck."

Greg Dohrman said that modifying an applicant's proffers is problematic because proffers are supposed to be voluntary.

Marvin Sowers said that, in the interest of time, if Mr. Baker approved of the amendment, the Commission could move forward with the case, and staff could speak to Mr. Brooks before the case goes before the Board of Supervisors. If any problems arose or Mr. Brooks did not agree to the modification, the case could be remanded back to the Commission.

Greg Dohrman said that this proposal is acceptable.

Joe McCleary said he felt comfortable with staff taking care of this issue.

Joe Poole said he would like to open the public hearing to see if any citizens had any comments or questions for staff or the applicant.

Nancy James of 7254 Merrimac Trail came forward to speak. She said she is usually the point of contact for the neighborhood surrounding the parcel to be rezoned, and that no neighbors have voiced disapproval of the farmer's market. However, she asked why a rezoning to an industrial use was necessary, and why a special use permit or variance would not suffice. Even though the proffers are supposed to last forever, in the future they could be changed and manufacturing uses could be permitted. She felt a rezoning was a very strong step just to allow a single farmer to sell his goods. She also said that at one point, she visited the Planning Division office to view the case file and staff recommendation, and was told she could not view them. She said she was upset by this and thought that, as a member of the community, she should be able to view information about a case which directly affected her.

Joe Poole thanked Ms. James for her comments.

David Anderson replied to Ms. James comments, stating that when Ms. James stopped by the Planning Division office, she requested to see the proffers, which at the time were not in final form. He said he was unsure if draft proffers were public information or not, and so he did not show them to her to err on the side of caution. He apologized for any misunderstanding.

Joe Poole said that staff reports were part of the public record, and could have been shown to Ms. James.

David Anderson replied that at the time, he thought Ms. James was only asking for the proffers, not the staff recommendation, and so he did not show her the staff report.

Marvin Sowers added that agendas, staff reports, and final proffers are available on the James City County website the Friday before Planning Commission meetings.

David Anderson then addressed Ms. James question about why a rezoning is necessary. He said that in the B-1, General Business Zoning District, a farmer's market is not a generally permitted use or a specially permitted use. Currently, there is no possible way to operate a farmer's market in the B-1 zone. The only way to have the farmer's market is to rezone to M-1, where a farmer's market is a generally permitted use. The proffers limit all M-1 industrial uses, so that only the farmer's market is allowed in addition to standard B-1 uses. The property will function as a B-1 property with a farmer's market. Additionally, these proffers will run with the land.

Joe Poole then stated that the County has discussed adding "farmer's market" to the list of specially permitted uses in several zoning districts. This issue will be visited during the Comprehensive Plan update in the next few months.

Wilford Kale said that this is a clear example of spot zoning. The property was first spot-zoned when it was changed to B-1, and now there is an application to further spot-zone it and decrease the property's compatibility with surrounding properties. He said he did not understand why this was not considered a retail establishment. He stressed that this was not a "farmer's market," but a "farmer market." Since there was only one farmer selling goods, he felt this should be considered a retail operation and not a market, albeit a mobile retail operation. He said the rezoning was too strong a step to allow a single farmer to sell his goods. He said he had nothing against Mr. Baker or his proposal, but felt that staff's handling of the matter was inappropriate. He said he would not approve this rezoning because as a retail operation on a business site, Mr. Baker's sales are permitted by-right. He said the idea of an industrial parcel in the middle of a neighborhood scared him, since the proffers could be amended in the future to allow industrial uses.

Joe Poole said that Wilford Kale had raised some valid points, and asked that the Commission wait until the end of the public hearing to discuss his comments further. He asked if there was any other person who wished to speak. There being none, he closed the public hearing.

Wilford Kale made a motion to deny the rezoning.

John Hagee said he wished to discuss the case further before making any motions. He said that although he agreed this was a strong step, he was unsure that any other remedy was available.

Wilford Kale asked what retail operations would be allowed on the site. He said that to him, a "farmer's market" denoted multiple farmers selling various goods for an extended period of time, which is a much larger operation than a single farmer temporarily setting up a place to sell goods. He asked why selling goods on a business site was not considered a retail operation.

Greg Dohrman said that a more specific definition will override a more general one, so that if a "farmer's market" is specifically mentioned, the act of a farmer selling goods cannot be called a "retail business," as a farmer's market is a type of retail business.

John Hagee said the proffers could essentially eliminate the worry of the property being used for industrial purposes. He suggested the Commission look at B-1 zoning and incorporate Wilford Kale's comments into that context. He said the Commission should not deny Mr. Baker his market because the specific "farmer's market" is not mentioned in the B-1 ordinance.

Wilford Kale said he was uncomfortable recommending approval for any rezoning to M-1 in the middle of a residential neighborhood, regardless of the proffers. Once the precedent is set, it cannot be revoked. He said that given the current rate of change in the County, in a few years the property could have new owners who amend and change the proffers.

Joe McCleary said in theory, he agreed with Mr. Kale. However, he acknowledged that the current ordinance is missing "farmer's market" from the list of permitted uses in B-1. He said that this was probably a mistake, as a farmer's market is not out of character for the B-1 business district. Therefore, the only way to operate such a market is to rezone the property to M-1 and proffer out all industrial uses. He added that the proffers will remain filed at the courthouse forever, so if the case is revisited 20 years from now, the same proffers will still hold. And if any future applicant wishes to amend those proffers, they will have to go before the Planning Commission and Board of Supervisors to do so. Thus, the property is protected.

Joe Poole said he realized this rezoning is not the best way to achieve the end result, but at the current time no other course of action is available. He said this rezoning was not precedent-setting, but an exception due to the omission of "farmer's market" from the list of generally permitted

uses in B-1. He said that the more intensive industrial uses in M-1 would clearly be objectionable to adjacent property owners, which is why they were all proffered out.

Wilford Kale suggested that this rezoning be rendered null and void upon the inclusion of "farmer's market" in the B-1 ordinance. He said that no matter how protected the site may seem, the future is always uncertain.

George Billups asked if there was any way for Mr. Baker to get a peddler's license.

Marvin Sowers replied that licenses do not drive rezonings, but that rezonings drive what uses and licenses are permitted.

Joe Poole said that he did not view this case as spot-zoning, but rather an effort to improve the community by adding the farmer's market. Additionally, the community will be protected by the proffers.

John Hagee made a motion, seconded by Joe McCleary, to recommend approval with the addition of the limitation on the size of the truck.

Wilford Kale asked if the Commission could condition approval in that manner.

Joe Poole replied that the limitation on the size of the truck was not a condition of approval, but rather a recommendation to the applicant for something which would strengthen their case.

Marvin Sowers said if the applicant agreed with that recommendation, they would revise the proffers before the Board of Supervisors meeting. If they did not agree, the case would be remanded back to the Planning Commission to determine whether or not approval would still be desirable. He said the limitation request was not binding on the applicant.

George Billups suggest the truck limitation be phrased as, "weighing one ton or less."

In a roll call vote, motion passed (5-1). AYE: Wildman, McCleary, Hagee, Billups, Poole (5); NAY: Kale (1).

C. CASE NO. SUP-22-01. JCSA GROUNDWATER TREATMENT FACILITY, PRODUCTION WELLS, CONCENTRATE DISCHARGE MAIN, AND ROUTE 5 WATER MAIN EXTENSION

Christopher Johnson presented the staff report stating that on November 5, 2001, the Planning Commission deferred action on this application due to concerns over the potential development impacts on adjacent properties and the lack of architectural elevations for the proposed water treatment facility. He said since then the applicant has provided an architectural elevation of the facility and has amended the application to include three uses identified in the original as future projects. Staff found the proposal, with the attached conditions, consistent with surrounding zoning and development and with the Comprehensive Plan and recommended the Commission recommend approval of this application.

Mr. Johnson also stated that the alignment for the concentrate discharge main has been changed since the case was first advertised. The line which was to be constructed along London Company Way in the Jamestown 1607 subdivision is now proposed to be constructed underneath the bike lane on the north side of Jamestown Road. Given this change, the applicant requested a deferral.

Joe Poole thanked Mr. Johnson and asked the Commission if they had any questions.

George Billups asked if Jamestown 1607 residents had any complaints about the proposal.

Larry Foster responded that he would address the concerns of the Jamestown 1607 residents during his presentation.

Christopher Johnson added that the proposed location for the discharge main had changed, and the new alignment should not affect the Jamestown 1607 residents as directly as the previous proposal.

Joe Poole asked if the Commission had any further questions for staff. There being none, he asked the applicant, Larry Foster of the James City Service Authority, to come forward and speak.

Larry Foster introduced the consultants for the project, and thanked Mr. Johnson for his work on the project as well. He said the project would have minimal noise, minimal traffic, and no odors or other safety hazards associated with it. Liquid chlorine would be the main chemical involved, and all chemicals will have secondary containment systems. The lighting for the site will be low and only around the building itself.

Mr. Foster said the project would help expand the Clara Byrd Baker playing field and provide walking trails as well as providing water for the community. He said this project would reduce reliance on the Chickahominy aquifer, which provides 65% of County water and is quite strained. He added that the treatment facility will reduce reliance on this aquifer and transfer it to the Potomac aquifer, which is better equipped to handle the demand.

Mr. Foster also mentioned all the community associations he has spoken to about this project, including the Chanco's Grant, St. George's Hundred, Jamestown 1607, and Powhatan Crossing neighborhood associations, as well as the Historic Route 5 Association and the Clara Byrd Baker PTA. He said the JCSA also volunteered to speak to the James River Association.

Mr. Foster said that although the project would be close to these neighborhoods, the project would be separated by at least 300 feet of mature trees as a buffer. The building housing the facility will be 12,000 square feet and will be built into a group of mature trees without disturbing the 300 foot buffer. He then showed conceptual drawings of the site to the Commission.

Joe Poole thanked Mr. Foster for his comments and asked if the Commission had any questions.

Joe McCleary asked if the JCSA intended to restore the bike path along Jamestown Road after the concentrate main is installed.

Mr. Foster said yes, the bike path would absolutely be restored.

Wilford Kale asked if Mr. Foster had any concerns about the walking trail providing easy access to the site by unwanted visitors. He also wanted to know if the JCSA was proposing any form of external security to protect the building.

Mr. Foster said that security would be built into the design of the facility, but he was unsure yet of what type since the site design was not complete.

Joe Poole opened the public hearing.

Mr. Steven Deere, President of the Jamestown 1607 Homeowner's Association, thanked Mr. Foster and the JCSA for taking his neighborhood's concerns seriously and taking the time to talk to them. He said the community was concerned that, if a pipe were to rupture, all the water would flow downhill into Jamestown 1607. He wanted to see some kind of sensor at the plant which would indicate a pipe leak or rupture as soon as possible so that water could be shut off and flooding prevented.

Mr. Deere added that at this time, the community has saved money to repave their parking lot, and the construction for the plant would overlap this repaving. He wanted to ensure that the construction would not tear up the newly paved areas.

Mr. Deere also said that, although he commended the JCSA for trying to move the concentrate line, he did not understand why it could not be placed on the southern side of Jamestown Road. He said that there was a creek on that side of the road anyway, so he did not see why the concentrate main could not be put there. In the event of a leak, the water would just flow into the creek instead of flooding houses.

Mr. Deere said that he acknowledges that fresh water is needed throughout the County, and he simply wants to make sure this project is carried out in a thorough and careful manner.

Joe Poole thanked Mr. Deere for his comments.

Ms. Maryanne Teal, Jamestown 1607 resident, said she was happy the applicant was deferring the case, but that did not change the basic fact that she was uncomfortable with a water line running in close proximity to Jamestown 1607. She said that the neighborhood was essentially in the bottom of a bowl, and that the houses were at the lowest point in the area. She said she supported the project but did not want it in her backyard. She said she was still recovering from the flooding of Hurricane Floyd, and could not deal with further flooding.

Ms. Teal said she wanted assurance that the discharge main, wherever it ended up, will have adequate drainage and containment systems for excess water. She also said that she absolutely wanted an alarm system or immediate shutoff should the pipe leak and water flow into the neighborhood. She said she wanted an on-record assurance that construction will not interfere with property values, will not pose any harm to any children, and will not allow any further flooding in Jamestown 1607.

Joe Poole thanked Ms. Teal for her comments.

Mr. Don Frou, Jamestown 1607 resident, said he wanted to know who would be responsible for water damage if the discharge main did rupture. He said he generally approved of the project, but was concerned that if the pipe leaked or ruptured due to faulty construction or maintenance oversight, the homeowners would have to pay for all the damage. He also said he was concerned that this project would impact the water quality of Jamestown Beach.

Joe Poole thanked Mr. Frou for his comments.

Ms. Mary Pugh, Chanco's Grant resident, said her lot would be directly impacted by the proposed walking trail. She was concerned that the trail going down to Powhatan Creek would affect the Powhatan Creek watershed. She said that according to the Powhatan Creek Watershed Management Plan, rezonings should not be done, and no construction should be done to impact the already endangered species in that area. She said this plan was in place to protect the neighborhood's property values and quality of life.

Ms. Pugh said she was concerned over the vague nature of the proposal. Although Mr. Foster said the project would produce minimal noise and light, she wanted to know exactly how many decibels of noise the plant would produce and how many iso-footcandles of light. She also wanted to know how much discharge would be dumped each day, and how many fish that could kill. She said that she worked for Jamestown Settlement, and they did not want the plant to ruin the natural wildlife out there, especially before the Jamestown 2007 celebration.

Ms. Pugh also asked if the plant construction would coincide with Jamestown Settlement's 2007 celebration. If so, she wanted to know if the two schedules would conflict or hinder each other. She also wanted to know what the river would smell like after all the waste concentrate is dumped.

Ms. Pugh said that by her house, there is a very large and very old tree. If construction of the walking trail tears down that tree, she wanted to know who would pay for it. She said if it came down, she could not afford to have it chopped up and cleared from her property. She wanted to make sure that if vegetation was killed, the party responsible would clean up the damage.

Joe Poole thanked Ms. Pugh for her comments and asked if anybody else wished to speak. There being none, he closed the public hearing and asked the Commission if they had any comments.

Joe Poole said that he had high expectations for this project, and felt that Mr. Foster had made a remarkable improvement over the proposal offered at the November meeting.

Joe McCleary said he agreed with Joe Poole, and asked Mr. Foster if he would have answers to the questions raised by the citizens when he returned before the Commission in June.

Mr. Foster said that he would certainly have answers.

Joe Poole asked if Mr. Foster was comfortable with all of the Special Use Permit conditions proposed by staff.

Mr. Foster answered yes, he was comfortable with all the conditions.

Joe Poole asked if there were any further comments. There being none, he said that there would be another opportunity for a public hearing in June.

7. PLANNING DIRECTOR'S REPORT

Marvin Sowers said that the Commission made a recommendation to the Board on a specific Comprehensive Plan Methodology, Option B, and the Board agreed with that option and directed staff to go forward. He said information should be coming to the June 3rd meeting.

George Billups asked the Assistant County Attorney to explain what governed participation on a tour to consider it a meeting and not a site visit.

Greg Dohrman stated the definition of a public meeting and the requirement that all public meetings give notice to publications. He said if there were more than two Commission members assembled for the discussion of any business related to the activity segment of this Commission then that would fall in the definition of a meeting.

Wilford Kale said that with every one of the standing Committees there has to be notification because the Virginia Code specifically reads three or more. He said every time that the DRC or Policy Committee meets there should be notification.

Marvin Sowers stated the a yearly calendar is put out for the Planning Commission and DRC meetings which covers notification but for the Policy Committee there has to be special notification.

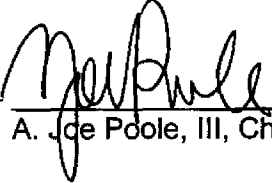
Joe McCleary said the key, however, was discussion of public matters. He said the Commission held a going away party for Martin Garrett in which four or five members attended but since there was not business conducted, notification to the press was not required.

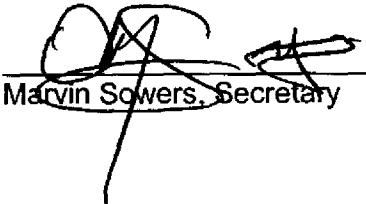
Joe Poole stated that if this situation were to occur again, where notification was not given to the press, staff could offer another tour for other interested members.

Peggy Wildman asked Marvin Sowers to review what the policy on e-mailing between Commission members was.

8. ADJOURNMENT

There being no further business, the May 6, 2002, meeting of the Planning Commission was adjourned approximately at 10:10 p.m.


A. Joe Poole, III, Chairman


Marvin Sowers, Secretary