

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

1. ROLL CALL ALSO PRESENT
 Jack Fraley Marvin Sowers, Planning Director
 Don Hunt Leo Rogers, County Attorney
 Anthony Obadal Toya Ricks, Administrative Services Coordinator
 Mary Jones Jose Ribeiro, Planner
 George Billups Kathryn Sipes, Planner
 Shereen Hughes John Horne, Development Manager
 James Kennedy Matthew Arceiri, Senior Planner
 David German, Planner
 Joel Almquist, Planner
 Ellen Cook, Senior Planner
 Scott Thomas, Senior Civil Engineer
 Mike Woolson, Senior Watershed Planner

2. MINUTES

A. FEBRUARY 6, 2006 REGULAR MEETING

Mr. Kennedy motioned to approve the minutes of the February 6, 2006 regular meeting.

Mr. Billups seconded the motion.

In unanimous voice vote the minutes were approved (7-0).

3. COMMITTEE AND COMMISSION REPORTS

A. POLICY COMMITTEE

Mr. Billups presented the report stating that the committee held five meetings to discuss the County's Capital Improvements Program (CIP) including meetings with directors of several departments. Mr. Billups stated that the CIP report was included in the Commissioners' packets to be discussed later in the meeting. He also stated that Ms. Hughes would discuss the selection process at that time.

B. DEVELOPMENT REVIEW COMMITTEE (DRC)

Mr. Kennedy presented the DRC report stating that the DRC heard 3 cases at its March 1st meeting. He stated that Prime Outlets had met their obligations to staff concerning another case

and that preliminary approval subject to agency comments was granted for the Prime Outlets subdivision as amended by a vote of 4-0. Mr. Kennedy stated that preliminary approval was also granted by a 4-0 vote for Noland Commercial Site. He said that Liberty Crossing has been deferred pending review of recreation facilities.

Mr. Billups motioned to approve the DRC report.

Mr. Hunt seconded the motion.

In a unanimous voice vote the report was approved (7-0).

4. PLANNING COMMISSION CONSIDERATION

ZO-1-06 Initiating Resolution - Zoning Ordinance Amendment – Athletic Field Lighting

Mr. Matthew Arceiri presented the staff report stating that the intent of an initiating resolution is procedural in nature to allow staff to begin the review of the matter prior to bringing forth an ordinance amendment. Mr. Arceiri stated that staff has requested to begin consideration of a zoning ordinance to permit athletic field lighting with an approved height waiver by the Board of Supervisors. Staff recommended adoption.

Mr. Obadal motioned to adopt the initiating resolution.

Mr. Hunt seconded the motion.

In a unanimous voice vote the initiating resolution was adopted (7-0).

5. PUBLIC HEARINGS

- A. Z-13-05 Village at Toano
- B. Z-12-05 Moss Creek Commerce Center (Toano Business Center)
- C. Z-15-05/MP-12-05 Stonehouse Planned Community MP Amendment
- D. Z-13-04/MP-10-04/SUP-31-04 Monticello at Powhatan North
- E. Z-10-04 112 Ingram Road Rezoning

Mr. Fraley stated that the applicants for cases 5A-5E requested deferral of those cases for one month. Mr. Fraley also stated that the applicants for cases Z-15-05 Stonehouse Planned Community MP Amendment and Z-10-04 112 Ingram Road Rezoning have requested indefinite deferral.

Mr. Sowers said staff concurred with the requests.

Mr. Fraley opened the public hearings.

Hearing no requests to speak the public hearings continued.

F. Z-1-06 Warhill Proffer Amendment

Mr. Matthew Arcieri stated that James City County has applied to amend the proffers of the 164.71 acre Warhill Tract to modify the list of prohibited uses. The properties are currently zoned PUD-R, Planned Unit Development - Residential, with proffers and PUD-C, Planned Unit Development - Commercial, with proffers. The properties are located at 5700 Warhill Trail and 6450 Centerville Road and can be further identified as Parcel Nos. (1-12) and (1-13) on James City County Real Estate Tax Map No. (32-1). The Comprehensive Plan Land Use Map designates this site as Mixed Use. Mixed Use areas are centers within the PSA where a broad spectrum of land uses are encouraged. Consideration of development proposals in mixed use areas should focus on the development potential of a given area compared to the area's infrastructure and the relation of the proposal to the existing and proposed mix of land uses and their development impacts. Staff recommended approval of the application.

Mr. Fraley opened the public hearing.

Hearing no requests the public hearing was closed.

Ms. Jones motioned for approval of the application.

Mr. Hunt seconded the motion.

In a unanimous roll call vote the application was recommended for approval (7-0). AYE: Hunt, Jones, Hughes, Kennedy, Billups, Obadal, Fraley (7); NAY: (0)

G. SUP-3-06 Zion Baptist Church

Ms. Ellen Cook stated that Mr. John Morman has applied on behalf of Zion Baptist Church for a special use permit to expand the existing church by approximately 5,900 square feet. The site is zoned R-8, Rural Residential and is located at 6373 Richmond Road, at the intersection of Centerville and Richmond Roads. The property is further identified as parcel (1-47) on JCC Tax Map No. (24-3), and is designated Mixed Use on the Comprehensive Plan Land Use Map. Uses suggested by the Comprehensive Plan for this Mixed Use Area include public uses, commercial, office and limited industrial. Staff recommended approval.

Mr. Fraley opened the public hearing.

Mr. Morman represented Zion Baptist Church stating that the church needed additional space for the different activities that are held there.

Mr. David Alexick, 6436 Centerville Road, stated that citizens seated in the rear were having a difficult time hearing the speakers. Mr. Alexick stated that he did not oppose the case.

Hearing no other requests to speak the public hearing was closed.

Mr. Kennedy motioned for approval of the application.

Ms. Jones seconded the motion.

In a unanimous roll call vote the application was recommended for approval (7-0). AYE: Hunt, Jones, Hughes, Kennedy, Billups, Obadal, Fraley (7); NAY: (0).

H. AFD-1-98 Barrett's Ferry AFD – 2006 Renewal

Ms. Cook presented the staff report stating that the existing 198.9-acre Barrett's Ferry Agricultural and Forestal District (AFD) must now be reviewed for continuance of the AFD. The single-parcel District is generally located between Route 5 and the Chickahominy River, bounded on the east and west by the Governor's Land and Barrett's Ferry subdivisions. The property is further identified as Parcel No. (1-3) on JCC Tax Map No. (43-2). The district includes all the land on the above property with the exception of all land within 50 feet of the road right-of-way of John Tyler Highway. (Rt. 5) to allow for possible road improvements. The property is zoned A-1, General Agricultural, and designated Rural Lands and Conservation Area on the Comprehensive Plan Land Use Map. This district has dropped below the required 200 acre minimum and on February 23, 2006 the AFD Advisory Committee recommended termination of the district and transfer of the parcel to the Gordon Creek AFD (8-0). Staff recommended approval of termination of the district to allow the land to be transferred and continued under AFD-9-86 Gordon Creek.

Mr. Fraley opened the public hearing.

Mr. David Dafashy, 3535 Barrett's Ferry Road, asked if the property owner retained possession of the parcel. He also asked if the AFD program protected it from development.

Ms. Cook stated that there is no change in ownership. She also stated that an AFD is a preservation program.

Mr. Hunt stated that there is a minimum acreage requirement.

Mr. Dafashy asked what would happen in the following year if the transfer and termination were approved.

Ms. Cook said the District would continue for another four year period if the owner did not withdraw the property early.

Mr. Dafashy asked when the parcel would become part of the Gordon's Creek AFD.

Ms. Hughes and Mr. Fraley explained the process.

Mr. Dafashy asked what the benefits are for property owners.

Mr. Kennedy stated that the tax benefits are substantial.

Mr. Sowers advised Mr. Dafashy to stay in contact with Ms. Cook for the progression of the case. He also gave additional information on the process and benefits of the AFD program.

Mr. Dafashy stated his interest in information on placing his property in an AFD.

Hearing no other requests to speak the public hearing was closed.

Mr. Kennedy motioned to recommend approval of the application.

Mr. Hunt seconded the motion.

In a unanimous roll call vote the application was recommended for approval (7-0). AYE (7): Jones, Hughes, Kennedy, Billups, Hunt, Obadal, Fraley; NAY (0).

I. Z-7-05/MP-5-05 Jamestown Retreat

Mr. Matthew Smolnik presented the staff report stating that Mr. Vernon M. Geddy III has applied to rezone 16.5 acres at 1676 & 1678 Jamestown Road and 180 Red Oak Landing Road currently zoned LB, Limited Business and R-2 General Residential to R-5 Multi-Family Residential. The property is also known as parcels (1-36), (1-37), and (1-39) on the JCC Tax Map (47-3). The applicant is proposing to consolidate three properties into one and proposes to redevelop the single property with six buildings containing a total of 66 condominiums for sale units at a density of 4.0 dwelling units per acre. The site is designated for Low Density Residential development and Conservation Area by the James City County Comprehensive Plan. Recommended uses for Low Density Residential land include very limited commercial establishments, churches, single family homes, duplexes, and cluster housing with a recommended gross density of 1 unit per acre up to 4 units per acre in developments that offer particular public benefits. Examples of preferred land uses for Conservation Areas include fish and game preserves and parks. This application was first heard by the Planning Commission on November 7, 2005 at which time the Commission recommended denial by a vote of 7-0. Following that meeting the applicant made significant changes to the master plan and proffers and was therefore remanded back to the Planning Commission by the Board of Supervisors on December 13, 2005 by a vote of 5-0. Staff recommended a recommendation for approval.

Mr. Fraley asked about the availability of Limited Business (LB) zoning along the Jamestown Corridor.

Mr. Smolnik indicated the parcels that are currently zoned LB.

Mr. Fraley asked if the traffic generation report considered commercial developments that might allow people to walk.

Mr. Smolnik stated that the report did not indicate whether such developments were considered.

Mr. Fraley wanted to know the rational used in the calculations that were provided.

Mr. Smolnik stated that the calculations were provided by the applicant.

Mr. Fraley asked if the County's traffic consultant had reviewed the report.

Mr. Smolnik stated that the County did not hire a traffic consultant for the case. He stated that the Virginia Department of Transportation (VDOT) reviewed the report.

Mr. Fraley confirmed with Mr. Smolnik that VDOT did not provide the basis for their assumptions.

Ms. Jones asked how many of the LB zoned properties have not been developed.

Mr. Smolnik said he did not know.

Mr. Obadal stated that the method used for perennial stream analysis was amended by the Board of Supervisors in July 2004. He stated that according to the previous method the stream on the site that was classified as intermittent would be considered perennial under the current method.

Mr. Smolnik agreed with Mr. Obadal's statement.

Mr. Obadal asked if Bay Environmental made the field determination that the stream was intermittent.

Mr. Scott Thomas stated that he believed Mr. Obadal was correct. He also explained the procedure used by the Environmental Division for confirming the consultants' findings.

Mr. Obadal stated his disapproval with relying on information supplied by an organization that is a member of the applicant's team.

Mr. Thomas said the applicant's report was a starting point and that there was extensive field and office review before the perennial stream determination was confirmed.

Mr. Obadal asked about the run-off from the church across the street from the site. He asked if the proposal would add to the increasing levels of pollutants in the Powhatan Watershed.

Mr. Thomas stated that storm water management plans are meant to key in on certain pollutants.

Mr. Obadal asked if the development would increase the amount of run-off of fecal matter.

Mr. Thomas stated that any development could increase run-off. He also stated that the Best Management Practices (BMP) that are applied are the best the Division knows of to offset those impacts.

Mr. Obadal stated that Ms. Hughes had some concerns on whether or not the proposed BMP could be moved to preserve more of the watershed area. Mr. Obadal also commended the Environmental Division for the fine work they do.

Ms. Hughes asked if the proposed Low Impact Design (LID) techniques would be considered unusual environmental protection or necessary and part of the protection strategy of the Powhatan Creek Watershed Management Plan.

Mr. Thomas said that compared to traditional designs, they are unusual. He also stated that the LID and open space design aspects were meant to show intent to comply with the Powhatan Creek Watershed Management Plan.

Ms. Hughes asked if the proposed techniques would be considered as meeting the minimum requirements for the Powhatan Plan or if they go above and beyond the requirements especially considering the condition of the Powhatan Creek.

Mr. Thomas stated the requirement is exceptional environmental protection. He stated that approval was given because the Division felt they are above and beyond.

Mr. Fraley stated that he felt LID techniques were not extraordinary. He said they were the minimum requirement.

Mr. Thomas enumerated the goals of the Powhatan Creek Watershed Plan for the sub-watershed area that the site is a part of. Mr. Thomas also stated that LID and treatment plans were just one aspect of protection. He also stated that protections are also included in the proffers, master plan, and community impact statement.

Mr. Obadal stated that the applicant would be requesting a height increase from 35 ft. to 40 ft. for two of the buildings by reasoning that the buildings would not be visible from Jamestown Road. Mr. Obadal asked if Mr. Smolnik knew if they would be visible from Powhatan Creek.

Mr. Smolnik said he did not know.

Mr. Obadal stated that he felt the buildings would be visible from Powhatan Creek. He also asked if they would be visible from the adjoining properties.

Mr. Smolnik stated that given the tree line he believed they would.

Mr. Fraley added that they would probably be visible from Jamestown Road in the winter. He also said that he did not think there was any LB zoned property along the Jamestown Road Corridor that had not been developed.

Mr. Billups asked how rezoning the parcel benefited the public's interest.

Mr. Smolnik stated some of the public benefits that were included in the staff report.

Mr. Billups stated that in exchange for those benefits the ability to have a commercial use on the front of the property would be lost.

Mr. Smolnik said that was correct.

Mr. Billups stated his concern about the proximity of the parking lots to the wetlands.

Mr. Smolnik stated that the revised plan increased the distance over six feet from the original proposal to twenty-three feet. He stated that staff felt that was a step in the right direction and that the parking lots could be constructed without impacting the wetlands.

Mr. Billups asked about the possibility of a young child straying off twenty-three feet and venturing into the wetland.

Mr. Smolnik said that might be possible.

Mr. Fraley stated that the Planning Commission was looking for particular extraordinary public benefits. He said that a lot of the benefits cited were minimum requirements. He also stated that it would be nice to have the property redeveloped but questioned how it would be developed.

Mr. Fraley opened the public hearing.

Mr. Vernon M. Geddy III represented the applicant stating that the property owners had decided to sell the property for some type of development. Mr. Geddy presented a PowerPoint outlining the benefits of the proposal. He also highlighted some of the changes in the proposal since it was considered by the Planning Commission in November.

Mr. Obadal asked if removing the underground storage tank located on the property would be considered a benefit since it was not leaking.

Ms. Hughes stated that due to the shallow groundwater system removing the tank would be an environmental plus. She also stated that she would like to see the storm water basin relocated to preserve the wooded area.

Mr. Geddy asked what other environmental changes Ms. Hughes would like to see.

Ms. Hughes said that relocating the BMP would be significant.

Mr. Kennedy asked if the applicant expected to complete the project prior to the 2007 Commemoration.

Mr. Geddy said that it was still possible to achieve significant site clean up by that time.

Mr. Kennedy asked Ms. Hughes if relocation of the BMP would be enough for her to give support to the project. Mr. Kennedy also stated that the Commission must be careful to apply requirements across the board in making requests for extraordinary protections.

Mr. Obadal stated that his minimum would entail relocation of the BMP.

Mr. Michael Brown, the applicant, stated that environmental protections were his foremost concern. He also stated his willingness to meet expectations if he knew what those expectations were.

Mr. Fraley reminded the audience of some of the public benefits required for a rezoning according to the Comprehensive Plan.

Ms. Sarah Kadec, 3504 Hunter's Ridge, stated her support of the letters submitted by the Friends of Powhatan Creek that expressed concerns about the project. She also stated her concerns about environmental impacts and decrease in quality of life.

Ms. Betty Morie, 115 Lake Drive, stated that the Lakewood homeowners' were opposed to rezoning the parcel due to traffic and school impacts.

Ms. Kensett Teller, 1654 Jamestown Road, stated that the changes in the proposal since the Planning Commission's recommendation for denial in November 2005 were not sufficient to change the recommendation. Ms. Teller also stated her concerns regarding traffic and environmental impacts and inconsistency with surrounding buildings.

Mr. John Schmerfeld, 128 Jordan's Journey, represented the Friends of Powhatan Creek stating that the group was not in favor of the rezoning. He stated concerns about hydrology, water quality and other environmental impacts.

Mr. Gerald Johnson, 4513 Wimbledon Way, represented the Historic Route 5 Association stating that there has been further degradation of the Powhatan Creek since the Powhatan Creek Watershed study was completed. He also stated that the environmental standards were not high enough.

Ms. Kensett Teller stated that although the front of the property was ugly the back of it is beautiful with streams and hills. Ms. Teller suggested preserving it as a teaching tool or using it as park.

Mr. Geddy stated that the applicant was willing to move the BMP.

Mr. Brown asked Commissioners to consider the consequences of a by-right development on the property.

Mr. Kennedy asked if moving the BMP would preserve the tree line that was in question.

Mr. Geddy stated that he thought it would.

Mr. Kennedy asked County Attorney Leo Rogers for the procedure to make the change relocating the BMP.

Mr. Rogers explained the process.

Mr. Kennedy asked if previous speakers had additional thoughts on the proposed BMP relocation.

Mr. Schmerfeld stated that the relocation would not address his concerns.

Mr. Obadal asked Mr. Schmerfeld to repeat his earlier comments about run-off.

Mr. Schmerfeld explained the erosion issues he had talked about earlier.

Hearing no other requests to speak the public hearing was closed.

Mr. Billups stated his concerns about health, safety and environmental impacts and the lack of public benefits and affordable housing.

Ms. Jones stated her concerns for environmental impacts, inadequate public benefits, increased density, building height, and rezoning from a business use. She also stated that the LB zoning includes uses that comply with the Comprehensive Plan designation. Ms. Jones said she would not support the project.

Mr. Kennedy stated that he was concerned with the Powhatan Creek and the LB zoning and recommended conservation activities that all citizens could participate in. He also stated that with the moving of the BMP and preservation of the tree line he could support the project.

Mr. Obadal said that some of his questions had not been answered. He said that he was inclined to reject the project primarily due to environmental concerns.

Mr. Hunt stated his support. He asked if every environmentally sensitive property should be turned into a park. Mr. Hunt also stated that half of the parcel would still remain undeveloped with the proposal.

Ms. Hughes said she was pleased with the changes made to the plan. She asked if the Environmental and Planning Divisions needed to review the changes.

Mr. Thomas stated that the changes represented a minor shift and were interior to the site. He said that he would not need to review them. Mr. Thomas also asked if the LID feature would still be included.

Mr. Hunt asked if Cypress trees could be planted in a BMP.

Mr. Thomas said Cypress trees could be used as a buffer and landscaped around the BMP.

Mr. Fraley stated that the current zoning is appropriate. He also stated that the buildings did not conform to surrounding uses.

Mr. Hunt motioned to recommend approval of the application as amended.

Mr. Kennedy seconded the motion.

In a roll call vote the motion failed (4-3). AYE: Hunt, Hughes, Kennedy (3); NAY: Jones, Billups, Obadal, Fraley (4).

J. Z-19-05/MP-16-05/SUP-32-05 Jennings Way

Mr. Joel Almquist presented the staff report stating that Mr. Jay Epstein of Health-E Communities has applied to rezone 29.81 acres of land from R-2, General Residential and B-1, General Business to R-2, General Residential with a Cluster Overlay and proffers and B-1, General Business with proffers. The applicant proposes a development of 85 units, 75 single family and 10 condominiums with a gross density of 2.85 units per acre. The property is located at 7375 and 7345 Richmond Road and is also known as Parcels (1-30) and (1-30A) on the JCC Tax Map (23-2). The site is shown on the 2003 Comprehensive Land Use Map as Low Density Residential. Recommended uses include very limited commercial establishments, single family homes, duplexes, and cluster housing with a recommended gross density of 1 unit per acre up to 4 units per acre in developments that offer particular public benefits.

Mr. Fraley opened the public hearing.

Mr. Vernon M. Geddy III represented the applicant stating the benefits of the proposal. Mr. Geddy explained the proffers for on and off site stream restoration. He also stated that the applicant specializes in energy efficient homes and mixed cost housing.

Mr. Kennedy asked why the affordable ranges for this project are higher than the ranges of the applicants' Pocahontas Square project in 2005.

Mr. Geddy stated that another developer had the project approved and later found they could not build according to the prices proffered. He also stated that the time value of money and increased cost of materials contributed to the increase.

Mr. Jay Epstein explained the cost breakdown of the Pocahontas Square project. He also stated that the cost of building is sky rocketing. Mr. Epstein also explained how the affordability aspect of the Jennings Way project would be protected.

Mr. Obadal stated that the development was impressive. He asked how the architecture of the town homes fit in with the surrounding community.

Mr. Epstein described some of the architectural elements that would be used in the project. He also stated that colonial colors would be used.

Mr. Obadal asked if modular housing would be included in the project.

Mr. Epstein said modular housing was more expensive to build and would not meet the energy efficiency levels they were trying to achieve.

Mr. Obadal asked if there was any way to further buffer the houses on Nina Lane.

Mr. Epstein said he could increase the tree and bush plantings.

Mr. Geddy added that a certain number of the plantings were required to be evergreens.

Ms. Beth Ann Joyal, 144 Nina Lane, stated that she would have sold her home instead of renovating had she known the project would be coming forth. She also stated her concerns about density, schools, and strains on public services.

Ms. Rebecca McDonough, 154 Nina Lane, stated her concerns about impacts to traffic, and the Yarmouth Creek Watershed and increased density.

Mr. Scott Coursen, 160 Nina Lane, represented the Kristiansand Homeowners' Association stating their concerns about density, impacts to schools and traffic, and the rate of growth in the County.

Mr. Matt Kurdziolek, 157 Nina Lane, said that the Kristiansand Homeowners' Association had not met with homeowners' to poll their opinions. He stated his support for the project.

Mr. Dave Jarman, 117 Landsdown, stated that the 2003 Comprehensive Plan supports the inclusion of affordable housing. Mr. Jarman said that approval of the project would support that goal. He also stated that the benefits to the County would be affordable housing, significant cash proffers and on and off site stream restoration.

Ms. Kay Kelley, 302 Farmville Lane, stated that she and her sister interviewed several developers before selecting Jay Epstein. She spoke of her commitment to the community and affordable housing.

Mr. William West, 102 Astrid Court, recommended approval of the proposal.

Ms. Linda Rice, 2394 Forge Road, recommended deferral of the proposal due to public concerns about the lack of cumulative data on schools, water, and traffic, and fiscal impacts to the County.

Mr. Mike Ware, stated that several community meetings had been held and that the current proposal addressed public concern. He also noted Mr. Epstein's commitment to providing affordable housing.

Hearing no other requests to speak the public hearing was closed.

Mr. Obadal said he was impressed by the developer's position. He urged him to increase the screening between the site and the neighbors on Nina Lane. Mr. Obadal stated his support.

Mr. Hunt stated his support.

Ms. Jones stated that the Comprehensive Plan calls for affordable housing. She said she would like less density and more recreation but that she would support the plan.

Ms. Hughes said she would also like to see less density. She asked the applicant to address the negative fiscal impacts of the project.

Mr. Epstein stated that there is a price for providing affordable housing. He stated that without the affordable housing component the project would be a fiscal positive.

Mr. Hunt asked Mr. Epstein to explain his statement about shorter commutes.

Mr. Epstein said that providing affordable housings where employers are located would mean shorter commutes for residents.

Mr. Fraley asked what could be done to increase the privacy for the residents of Nina Lane.

Mr. Epstein gave several options for increasing the screening.

Mr. Obadal asked Mr. Epstein if he would provide the additional screening.

Mr. Epstein answered yes.

Mr. Kennedy stated that the affordable units were few in number and not integrated into the community. He also stated his concerns about schools, minimum standards for parks and recreation, and fiscal impacts. Mr. Kennedy said he could be supportive with a few changes.

Mr. Fraley asked Mr. Kennedy what it would take for his support.

Mr. Billups stated his support for the project. He stated that it was an infill development. He also supported its affordable component, support of the Comprehensive Plan, and that it had Staff's recommendation.

Mr. Fraley stated that if affordable housing was to be achieved that it will cost. He said he was satisfied that the applicant agreed to provide additional privacy for neighbors. Mr. Fraley motioned to recommend approval of the application with a requirement for additional buffering.

Mr. Obadal seconded the motion.

In a unanimous roll call vote approval was recommended (7-0). AYE: Hunt, Jones, Hughes, Kennedy, Billups, Obadal, Fraley (7); NAY: (0).

L. SUP-1-06 Centerville Road Tower Relocation

Mr. Matt Smolnik presented the staff report stating that Mr. John Abernathy has applied for a Special Use Permit on the parcels located at 4338 and 4346 Centerville Road, which are currently zoned A-1, General Agriculture in order to relocate the existing 400 foot tall WMBG radio tower on Monticello Avenue. The properties are also known as parcels (1-31) and (1-32) on the JCC Tax Map (36-2). The parcels are designated Low Density Residential by the James City County Comprehensive Plan. Recommended uses for Low Density Residential land include very limited commercial establishments, churches, single family homes, duplexes, and cluster housing with a recommended gross density of 1 unit per acre up to 4 units per acre in developments that offer particular public benefits.

Ms. Jones stated that the County was very involved in the creation of the master plan for New Town and should have known about the need to relocate the tower. She asked if the County had been involved in trying to locate a suitable site.

Mr. Sowers said the County had several meetings early on and had suggested sites that the owners did not find suitable.

Mr. Fraley opened the public hearing.

Mr. Vernon M. Geddy, III represented the applicant stating the need to relocate the tower is to accommodate the proposed New Town Section 9 development. Mr. Geddy stated that the constraints for locating an AM radio tower are different than those of wireless communication towers. He also stated that analyzing the proposal against the County's wireless communications facilities policy is not appropriate. He said it would be impossible for an AM facility to meet those standards.

Mr. Obadal asked when public notices were mailed.

Mr. Smolnik stated that public notices were sent out although he did not know the exact date.

Mr. Obadal stated that during the day the existing tower is hardly visible. He asked about the need for lighting.

Mr. Geddy said that the tower would have to have white lights during the day or be painted red and white and would have to have red lights at nights.

Mr. Obadal said the balloon test showed that the lights would be visible from Ford's Colony.

Mr. Smolnik stated that white lights during the day were not very visible but that they would be visible at night.

Mr. Obadal stated that although the wireless ordinance was not suitable for analyzing this project, he said that he thought the Comprehensive Plan offered some guidelines.

Mr. Smolnik stated that Staff did not find the proposal generally consistent with the strategies or actions of the Community Characters section of the Comprehensive Plan.

Mr. Hunt stated that the discussion was about the relocation of an existing tower not the addition of one so that the net change is zero.

Mr. Obadal stated that the development of Section 9 of New Town was extremely important to James City County. He also stated that that section of New Town would not be developed for some time.

Mr. Geddy said the applicant wanted to begin construction in September.

Mr. Sowers agreed with Mr. Geddy that the sections of the ordinance Mr. Geddy referred to address towers constructed for a different purpose. Mr. Sowers also stated that the County has made a judgment in the past to apply those sections to all special use permit requests for communications facilities and have even applied them to County projects.

Mr. Obadal asked if the policy was in writing.

Mr. Sowers said it was in writing.

Mr. Billups stated that the developers of New Town knew the tower existed. He said he was concerned about moving the tower from a wealthy community and placing it in someone else's backyard.

Mr. Geddy said that the only impacts would be visibility not economic.

Ms. Jones stated her concern with trying to apply a set policy to something that is unique.

Ms. Hughes asked if the impacts of the lights on surrounding wildlife in Greensprings Park had been considered.

Mr. Horne stated that Staff had not considered this.

Ms. Hughes asked if there was another suitable site within New Town.

Mr. Horne acknowledged that the standard that was being applied due to past practices was not written for this type of tower. He stated that based on the standard Staff had no choice but to recommend denial with the understanding that the Planning Commission and Board of Supervisors had broad discretion in determining how to apply the policy.

Mr. Sowers stated that Staff had not received sufficient data to determine whether the proposal could meet the standards. He stated that some information that had been requested was just supplied this evening and that other information had still not been submitted.

Mr. Hunt stated that the applicant had proffered to put the entire parcel into a conservation easement.

Mr. Fraley said the applicant had only agreed to work toward that end.

Mr. Granger stated that it is his intent and desire to place the parcel in a conservation easement. He said that the Williamsburg Conservancy recommended he proceed with the public hearing prior to their making a commitment to accept the parcel.

Mr. Kennedy asked about the possibility of the 40 acres being turned over to the Purchase of Development Rights (PDR) program.

Mr. Rogers said that such a condition could not be imposed in this process. He also stated that he was not sure that the property met the criteria of the PDR program and that the application deadline had pasted.

Mr. Kennedy asked how such a process could be done in order to ease the trepidation on the part of some Commissioners.

Mr. Fraley asked what condition could be placed on the SUP.

Mr. Rogers stated that he could not think of any.

Mr. Kennedy asked if a recommendation could be subject to the property being turned over to the Conservancy.

Mr. Hunt said the property could be placed in the Conservation Reserve Program (CRP) that runs in 10 year increments.

Mr. Granger restated his desire to preserve the property.

Mr. Ken Crumbly, 3418 News Road, stated that he would be impacted by the lights. He also stated his concern about property values and radiation impacts. He also stated that he did not receive notice of the balloon test.

Mr. Gene Burleson, 4338 Centerville Road, stated that the property had to be sold according to his brother's will. He stated his preference for a tower rather than clustered houses.

Hearing no other requests to speak the public hearing was closed.

Mr. Fraley stated that the proposal was a land use issue. He said the existing location could be put to better use for the County. Mr. Fraley suggested deferring for 30 days to allow the applicant to work with Staff to submit the appropriate data.

Mr. Kennedy concurred with Mr. Fraley. He also stated that the additional time would allow several outstanding questions to be answered regarding electronic interference and a conservation easement.

Mr. John Melany, the applicant's consultant, stated that the facility should not cause interference to telephones and cellular phones or other electronic equipment. He also stated that WMBG is licensed as a singular tower and would require federal approval and more land to operate multiple towers.

Mr. Kennedy asked about the number of lights.

Mr. Melany stated that the closer you are to the tower the less you would notice the lights. He stated that the FAA dictates the colors and lighting.

Mr. Kennedy motioned to defer the case.

Ms. Jones seconded the motion.

Mr. Billups asked for a stipulation that all requested data be provided to the Planning Department. He also asked that notice be given to Ford's Colony residents and surrounding communities.

Mr. Smolnik said that Springhill and Ford's Colony Homeowners' Associations were notified. He also said the Balloon Test had been advertised.

Mr. Billups asked Mr. Geddy if there will be any modifications to the tower to allow co-location of cellular phones.

Mr. Geddy said there were two additional uses now and that it would be possible to allow other users.

Mr. Billups asked him to supply the maximum number possible to Mr. Sowers.

Ms. Hughes added that the possibility of a conservation easement should be explored further.

Mr. Kennedy asked how far out adjacent property owner notifications are mailed.

Mr. Smolnik stated that typically notices are sent to property owners' directly adjacent to the parcel in question. He stated that in this case notices were also mailed to the Springhill and Ford's Colony Homeowners' Association.

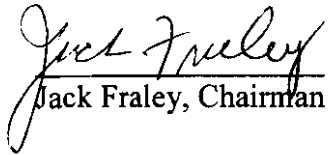
Mr. Obadal asked if notice of the meeting and Balloon Test results could be mailed to those Associations.

Mr. Smolnik said he would.

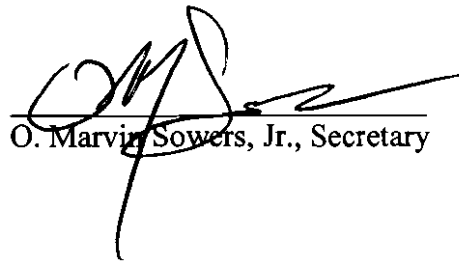
In a roll call vote the application was deferred (6-1). AYE: Jones, Hughes, Kennedy, Billups, Obadal, Fraley (6); NAY: Hunt (1). The public hearing was left open.

8. ADJOURNMENT

There being no further business, the Planning Commission meeting was recessed 12:45 a.m.



Jack Fraley, Chairman



O. Marvin Sowers, Jr., Secretary