

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

1. ROLL CALL

Planning Commissioners

Present:

George Billups  
Mary Jones  
Tony Obadal  
Jack Fraley  
Shereen Hughes  
Rich Krapf  
Jim Kennedy

Staff Present:

Marvin Sowers, Planning Director  
Adam Kinsman, Assistant County Attorney  
Matthew Smolnik, Planner  
Jose Ribeiro, Planner  
Leanne Reidenbach, Planner  
Scott Thomas, Environmental Director  
Toya Ricks, Administrative Services Coordinator  
Luke Vinciguerra, Planner  
Michael Woolson, Environmental Planner

Absent:

None

2. PUBLIC COMMENT

Mr. Kennedy opened the public comment period.

Ms. Sarah Kadec, 3504 Hunters Ridge, represented James City County Concerned Citizens stating concerns that environmental inventories should be included earlier in the review process. She stated that currently problems surface very late in the review cycle resulting in costly delays and changes to the proffers. Ms. Kadec submitted a report where GS Stonehouse submitted environmental inventories during conceptual review. She stated that they are currently working with GS Stonehouse to determine the cost to the developer but believes it will not be any more than in later stages when major changes are often required causing lengthy delays and changes to the proffers. Ms. Kadec requested the report be forwarded to the Board of Supervisors

Hearing no other requests; the public comment period was closed.

3. MINUTES

- A. May 2, 2007 Regular Meeting
- B. June 6, 2007 Regular Meeting

Ms. Jones motioned to approve the minutes of the May 2 and June 6 regular meetings.

Mr. Krapf seconded the motion.

In a unanimous voice vote the minutes of the May and June 6 regular meetings were approved (7-0).

4. COMMITTEE/COMMISSION REPORTS

A. Development Review Committee (DRC) Report

Ms. Jones presented the report stating that the DRC met July 5, 2007 to review 6 cases. She stated that SP-47-07 Nicewood Building Expansion and C-87-07 Ironbound Square Redevelopment Phase 1 were unanimously approved subject to agency comments. Ms. Jones also stated that C-47-07 Powhatan Plantation Phase 10 was deemed to be consistent with the master plan while the proposed sidewalk deletion of C-87-07 Liberty Crossing was deemed to be inconsistent with the master plan. Ms. Jones stated that the following cases were deferred: SP-25-07 Prime Outlets Phase 7 due to outstanding agency comments and SP-56-07 Whitehall Clubhouse due to environmental concerns that may affect recreational amenities. The next DRC meeting will be held on July 25, 2007.

5. PLANNING COMMISSION CONSIDERATION

A. Initiating Resolution – Zoning Ordinance Amendment – Heavy Equipment in M-2 Zoning District.

Ms. Melissa Brown presented the staff report stating that Staff has received a request for an Ordinance to amend JCC Code by amending Section 24-436, Permitted Uses, to include “heavy equipment repair and service with major repair limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.” Staff recommended adoption of the resolution.

Mr. Fraley motioned for adoption of the resolution.

Ms. Jones seconded the motion.

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

4. PUBLIC HEARINGS

A. SUP-12-07 Verizon Co-location at Brick Bat Road

Mr. Sowers stated staff's concurrence with the applicant's request for deferral.

Mr. Kennedy opened the public hearing.

Ms. Febronia Christ, LeClair Ryan, represented the applicant requesting deferral of the case until August 1, 2007.

Mr. Kennedy continued the public hearing.

Mr. Fraley motioned for deferral.

Ms. Jones seconded the motion.

In a unanimous voice vote the application was deferred (7-0).

B. SUP-17-07 Wireless Tower Longhill Road

Mr. Matthew Smolnik presented the staff report stating that Ms. Diane Borchardt has applied for a special use permit to allow for an existing 128 foot tall monopine telecommunication tower located at 4451 Longhill Road. The existing tower extends to 123 feet above grade with monopine branches extending to 128 feet above grade. The property is also known as parcel 3230100003 on the JCC Tax Map. The property is zoned R-8, Rural Residential and is designated Low Density Residential and Conservation Area of the Comprehensive Plan. Staff recommended approval of the application and attached conditions.

Mr. Obadal asked how much time staff has spent on the project.

Mr. Smolnik stated that he had spent 10 hours and that other planners and zoning officers also worked on the case. He stated that it was not a lot of time compared to other SUP applications.

Mr. Obadal confirmed that the applicant had been proceeding under a by-right process and made an engineering mistake. He asked if any efforts had been made to mitigate the cost and effort that the County has put into the case.

Mr. Smolnik said he was not aware of any.

Mr. Krapf asked if there had been any discussions about co-locating a second tower on the site to off-set any disadvantage the applicant claims will result with shortening the current tower.

Mr. Smolnik said no.

Ms. Hughes asked if the applicant had demonstrated that there is no other site suitable for co-locating the two carriers who would drop off if the tower is shortened.

Mr. Smolnik said he believed the applicant has propagation maps showing coverage for all four carriers intending to use the tower but none showing just the two that will be affected.

Mr. Fraley asked if there have been any discussions about the use of repeaters or other advanced technologies.

Mr. Smolnik said there had been no such discussions with Staff.

Mr. Billups asked for a precedent for approving the application.

Mr. Smolnik stated that Staff looked at the Comprehensive Plan and the Performance Standards for Wireless Communication Facilities and determined that while the tower is not 100% compatible it generally meets the intent of both documents.

Mr. Billups asked if Staff is trying to salvage a mistake on the part of the applicant.

Mr. Smolnik stated that Staff is taking necessary steps to complete the paperwork to allow the Board of Supervisors to grant a Special Use Permit for the site.

Mr. Billups asked how this affects other applicants who were denied similar requests for towers higher than 120 feet.

Mr. Smolnik stated that there had been an application for a taller tower on the site that was withdrawn and not heard by the Board of Supervisors.

Mr. Billups noted the Waltrip tower request 5 years ago for a 120 foot tower that was denied because of complaints from surrounding property owners about the unsightliness of a tower. He also asked if citizens have expressed concerns about the need for a tower at the requested height.

Mr. Smolnik stated that he had received only one letter of opposition that was included in the staff report.

Mr. Obadal confirmed that Mr. Hayes opposed the application by mail.

Mr. Sowers informed Commissioners that several members of the audience had requested to speak on the application.

Mr. Obadal asked if there is an exception to the height limitation and the parameters for applying that exception.

Mr. Smolnik said the process would be the granting of a special use permit.

Mr. Obadal stated his thought that there was a special exception for this case.

Mr. Sowers said the remedy is the issuance of a special use permit in which it is determined if the proposal adheres to the performance standards for wireless communications. He stated Staff's determination that some of the standards have been met in this case while others have not been met and some were only marginally met.

Ms. Hughes asked if staff had anticipated four carriers locating on the tower when it was approved at 120 feet.

Mr. Sowers said he was not aware of the number of carriers anticipated. He stated that the other 120 foot towers in the County have at least 2 carriers and in some instances 3 depending on the topography of the site.

Mr. Fraley explained that a 120 foot tower can be approved administratively as long as it is camouflaged and has proper buffering. He stated that citizens can still appeal an administrative approval.

Mr. Sowers stated that at the time administrative approval was there was no opposition to his knowledge.

Mr. Obadal asked if the additional 5 feet are necessary to accommodate the four carriers.

Mr. Smolnik explained that the additional 5 feet is necessary for artificial branches to camouflage the top of the antenna.

Mr. Sowers explained that the Waltrip Tower was evaluated under the same criteria as this application and was clearly in violation of those criteria.

Mr. Kennedy opened the public hearing.

Ms. Lisa Murphy, LeClair Ryan, represented the applicant and explained how the engineering mistake occurred. She stated that the actual steel structure is 123 feet with the camouflage branches being an additional 5 feet. Ms. Murphy stated the growth of cellular phone use and explained there are no other sites suitable for co-location. She also stated that reducing the structure height would cause the top centerline to be 108 feet instead of 120 feet was substantially limit use of the tower.

Mr. Obadal asked about a condition guaranteeing that only branches will exist in

the top 5 feet.

Ms. Murphy stated the applicant's willingness to add such a condition.

Ms. Hughes confirmed that the extension is only for camouflage.

Ms. Murphy said the steel structure stops at 123 feet.

Ms. Hughes how many co-locations were originally intended.

Ms. Murphy said the applicant's intent was four users.

Ms. Hughes stated that at 123 feet the tower could accommodate four users so there is no need for the additional 5 feet.

Ms. Murphy said the additional 5 feet is decorative only.

Ms. Hughes asked if the camouflage branches were not originally intended.

Ms. Murphy said they were. She also stated that the tower is similar to the VDOT (Virginia Department of Transportation) tower on I-64 where T-Mobile extended the height of the tower for the purpose of co-location.

Mr. Billups asked if the extension would have any ability for reception.

Ms. Murphy said it was just decorative.

Ms. Jones stated her concern about the necessity for adding the 5 feet.

Mr. Sowers asked if the branches cover the antenna or simply add to the height of the tower.

Ms. Murphy said they cover the antenna in addition to adding to the height of the overall structure.

Ms. Jones stated that adding the branches makes more sense if adding camouflage around the antenna than adding something on top.

Mr. Krapf stated that it gives the antenna a tapered look that appears more like a tree.

Ms. Murphy said branch not antenna

Ms. Jones stated that it makes it look worse.

Mr. Obadal stated that the top two antennas can be seen and that the branches will add camouflage and makes the tower appear more natural.

Mr. Fraley asked if the applicant has photos of the tower taken during the winter.

Ms. Murphy said they have photos from the fall.

Mr. Fraley stated his desire to see photos when the leaves are off the trees.

Ms. Murphy noted that there were no complaints from citizens or church members during that time.

Mr. Fraley said all the trees would be without leaves except the tower. He asked about sound enclosures.

Ms. Murphy said the equipment is in a building so there is little sound and that one emergency generator would serve all four carriers.

Mr. Fraley said he would like to see that as a condition.

Mr. Sowers said staff could develop such a condition prior to the Board of Supervisors meeting.

Mr. Fraley asked if the applicant had considered newer technologies such as repeaters.

Ms. Murphy said the technologies Mr. Fraley mentioned are used to enhance cover not where there is a gap in coverage such as the current situation.

Mr. Fraley confirmed that Ms. Murphy's firm represented Verizon for the two 120 foot towers in Kingsmill which are 120 feet each and can each accommodate multiple users. He asked if there are antennas in the camouflage.

Ms. Murphy said the additional five feet is solely for camouflage.

Mr. Fraley asked about camouflaging the structure as its current height of 123 feet without adding the extension.

Ms. Murphy said the tower was designed by the manufacturer for an overall height of 128 feet with the branches.

Mr. Marc Cornell, Site Development Manager for Ntelos, stated their desire to occupy the third location. He stated that if the height is reduced that location would not be useful and they would look for another site to for co-location elsewhere.

Mr. Nelson Scott, 4451 Longhill Road, represented Christian Life Center, and stated that they look forward to better cell phone and they he has not received complaints from members.

Mr. Erick Sherman, Senior Radio Frequency Engineer T-mobile, urged approval of the application.

Ms. Kathleen Halteman, 109 Randolph's Green, wanted to know if there is a state law concerning locating towers in a residential area.

Mr. Sowers stated that this type of case is handled by local government agencies charged with permitting them from a land use perspective.

Ms. Halteman asked if a tower can be put in any residential area at any time.

Mr. Kennedy stated that any issue can be brought to any board or commission to determine the appropriateness of the proposal.

Mr. Sowers stated explained the three level screening process of Staff, Planning Commission, and Board of Supervisors prior to approval.

Ms. Halteman asked if she can come before this body to appeal if the Kingsmill tower is right outside her front door, bedroom or deck.

Mr. Sowers stated that notifications will be sent to give residents an opportunity to speak and that they can appeal if it is approved.

Mr. Fraley explained the notification process.

Mr. Sowers offered to send notification directly to Ms. Halteman if she gave her information to staff.

Ms. Barbara Pheiffer, 103 Links of Leah, suggested eliminating the topper and painting the structure green instead.

Mr. Kelvin Taylor, 618 Village Green, asked if the church benefits from having the tower located on its' site.

Mr. Nelson Scott said the church has leased the property to the applicant in exchange for a monthly lease payment.

Hearing no other requests; the public hearing was closed.

Ms. Jones asked if Code Compliance have a responsibility to ensure compliance to the height restrictions.

Mr. Smolnik stated that there was an error on the part of the County. He stated that the site plan that was submitted shows the height of the tower as it was ultimately built.

Ms. Jones stated that the applicant therefore has approval for the tower at that height.

Mr. Sowers stated that a staff error cannot validate the structure so that an SUP is still necessary for the structure to be permitted.

Mr. Fraley asked about the color.

Mr. Sowers stated that there is a condition that calls for the antenna to be painted the same color as the branches.

Mr. Smolnik stated that the SUP condition indicates brown.

Mr. Fraley questioned the point of the extra 5 feet and suggested eliminating the topper.

Mr. Smolnik stated that the purpose of the topper is aesthetic and does not affect the functionality.

Mr. Sowers agreed and stated that it could be left off if the Commission desires.

Ms. Jones motioned for approval of the application as amended to eliminate the 5 foot topper.

Mr. Sowers asked about Commissioners' comments about sound

Ms. Jones asked that they be added to the recommendation.

Mr. Smolnik confirmed that Mr. Obadal's recommendation favored the topper.

Mr. Kennedy confirmed that there are two motions; one with the topper and one without.

Mr. Fraley confirmed that his recommendation concerning sound would be included in both recommendations.

Ms. Hughes suggested testing the paint colors to determine which is most natural. She agreed with using the extension.

Mr. Kennedy stated that as citizens utilize the technologies the towers are necessary and must be placed somewhere.

Mr. Fraley seconded Ms. Jones motion which excludes the 5 foot topper.

Mr. Kennedy seconded Mr. Obadal motion which includes the 5 foot topper.

In a roll call vote the application was approved with the inclusion of the topper (4-3). AYE: Obadal, Billups, Krapf, Kennedy (4); NAY: Fraley, Hughes, Jones (3).

C. SUP-19-07 King of Glory Lutheran Church

Mr. Jose Ribeiro presented the staff report stating that Mr. Matthew Burton has applied for a special use permit to allow for the replacement of an existing modular building of 1,407 square feet with a larger one of 2,800 square feet at the church site located on 4897 Longhill Road. The proposed modular building will serve as additional preschool classrooms. The property is also known as parcel 3240100033 on the JCC Tax Map. The property is zoned R-2, General Residential and is designated Low Density Residential on the Comprehensive Plan. Staff found the proposal consistent with surrounding uses and the Comprehensive Plan Land Use Map and recommended approval.

Mr. Kennedy opened the public hearing.

Mr. Matthew Burton, DJG Inc, represented the applicant and requested that condition #6 concerning a re-forestation requirement be deferred until such time that it is determined to be necessary. He stated that the adjacent property is heavily wooded therefore re-forestation at this time is unnecessary.

Mr. Kennedy informed the applicant that the Commission could not defer one item. He stated that Staff had drafted an additional condition concerning re-forestation that could be considered or the entire case could be deferred.

Mr. Burton said the applicant did not want to defer the entire case.

Mr. Obadal asked if the requirement can be conditional.

Mr. Kennedy asked Mr. Ribeiro to distribute the additional condition.

Mr. Kennedy read the draft condition and asked if the applicant is considering a future purchase.

Mr. Burton stated that the applicant is interested in purchasing the adjacent property and as well as relocating the church in the future.

Mr. Sowers stated that once the Certificate of Occupancy is issued the County is unable to go back and require the landscaping. He stated that the options are to accept either condition as written or deleting the requirement altogether.

Mr. Kennedy asked if the condition could be bonded.

Mr. Kinsman answered yes and stated that a bond would not be staff's preference.

Mr. Sowers added stated that the cost of a re-forestation is low compared to planting a full size landscaping so that the cost of the bond is fairly close to the cost of re-forestation.

Mr. Obadal asked for an estimate of the cost.

Mr. Sowers stated that he thought the cost would be approximately \$1,000.

Ms. Jones informed the Commission that the applicant has stated that if the item could not be deferred they desired to move forward with the original condition.

Mr. Kennedy stated that he would be inclined to accept the applicant's word. He asked Mr. Kinsman for suggestions.

Mr. Kinsman gave other suggestions to ensuring compliance.

Mr. Kennedy asked if the applicant would be willing to submit a Letter of Credit.

Mr. Burton asked for an explanation of that process.

Mr. Kinsman explained the Letter of Credit process and suggested that the church could submit the funds to the County to be held in escrow.

Mr. Kennedy stated that he was confident something could be worked out.

Mr. Burton stated the applicant's satisfaction with either option. He also stated their willingness to comply with the condition if those options were not plausible. Mr. Burton stated that they appreciated staff's assistance in working with them.

Ms. Hughes asked if something could be worked out by the Board of Supervisors meeting.

Mr. Sowers stated that if Mr. Kennedy is comfortable then something could be worked it out.

Mr. Kinsman stated that the Church would benefit by submitted a Letter of Credit should they buy the other property because the landscaping would not be necessary.

Mr. Burton said he could accept that option.

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

Ms. Jones motioned to approve the application with the terms of condition #6 to be worked prior to BOS hearing.

Mr. Krapf seconded the motion.

In a roll call vote the application was approved (7-0). AYE: Obadal, Fraley Hughes Billups, Krapf, Jones, Kennedy (7); NAY: (0).

The Commission took a 5 minute break and reconvened at ??????

D. Z-10-06/MP-12-06/SUP-37-06 The Candle Factory

Mr. Jose Ribeiro stated that Mr. Vernon M. Geddy, III has submitted an application to rezone approximately 64.45 acres of land from A-1, General Agricultural District, M-1, Limited Business/Industrial District, and MU, Mixed Use District to MU, Mixed Use District, with proffers. The development proposed with this rezoning application will allow the construction of up to 180 residential units and 98,900 square feet of new non-residential uses. The property is located at 7551 and 7567 Richmond Road and is further identified as parcels 2321100001D and 2321100001E on the JCC Tax Map. The property is designated Low Density Residential, Mixed Use, and Limited Industry on the Comprehensive Plan. Mr. Geddy has also applied for a special use permit to allow for the construction of up to 45,000 square feet of new non-residential uses on adjacent property located at 7521 Richmond Road. The property is also known as parcel 2321100001C on the JCC Tax Map. The property is zoned M-1, Limited Business/Industrial District and is designated Mixed Use on the Comprehensive Plan. Staff recommended approval of the application and attached proffers and conditions.

Mr. Sowers added that a number of documents, some binding and some not, have been included in the plan and urged Commissioners to comment if they have questions or concerns regarding any of them.

Mr. Krapf stated that to mitigate the lack of a 150 foot buffer on Richmond Road the applicant has offered a non binding additional 432 square feet landscape buffer and asked that means.

Mr. Ribeiro stated that there is no condition requiring the landscape buffer so that it cannot be enforced. He also stated that believes it is the applicant's intent.

Mr. Krapf asked if there have been discussions with the applicant as to the current flexibility of the unit mix of housing types. He stated that he would be comfortable with a maximum being in place.

Mr. Ribeiro stated that there have been some discussions relative to certain land bays

having a maximum mix.

Mr. Kennedy asked what staff envisioned for the three retail mixed use building.

Mr. Ribeiro stated that staff envisioned offices and small retail services that will provide services to the public. He stated that the purpose is to provide transition from the commercial in front to the residential in the back.

Mr. Kennedy asked if there will be apartments above those buildings.

Mr. Ribeiro said he believes that is the intent.

Mr. Sowers said the proffers and master plan require a mix of commercial and retail but it is up to the applicant to determine the percentage of the mixture.

Mr. Kennedy confirmed that it will have to be mixed.

Mr. Sowers said yes and that it can be skewed toward one or the other under the current proposal.

Mr. Kennedy stated his concerns about the current vacancy and the nearby commercial area. He stated that he understands transitional zone but he is not sure mixed use would be desired here.

Ms. Hughes noted that pervious pavement is proposed for the townhouses and asked if that includes other housing types placed in the same area.

Mr. Ribeiro stated his belief that it refers only to the townhouses and deferred to the applicant.

Ms. Hughes asked Mr. Thomas about the type A soils in the low density residential areas and his assumption that the density would required the area be cleared and graded. She asked if he was trying to provide buffer around the steep slopes and RPA (Resource Protection Area) rather than considering the A soils.

Mr. Thomas said that although a final plan of development has not been submitted the division was provided with an inventory and concept plan. He stated that the back residential area fits the profile that would contain mass clearing and grading. Mr. Thomas stated that with that they would look to low impact design (LID) techniques.

Ms. Hughes confirmed that the area is headway water of the Yarmouth Creek Watershed and asked about the importance of recharge in that the headwaters area in addition to preserving intermittent streams and the RPA buffer.

Mr. Thomas said that was correct and added that it is also prime developable area so

that there is a balance.

Mr. Obadal asked if there was any discussion about monitoring the streams.

Mr. Thomas said there is a proffer for stream restoration.

Mr. Woolson stated that they discussed stream monitoring for water quality and channel stability but did not reach a conclusion.

Mr. Fraley asked if the areas with A/B soil will have an underground infiltration system.

Mr. Thomas deferred to that applicant and also stated that there is an opportunity to include those measures.

Mr. Sowers stated that the SUP (Special Use Permit) conditions for the current facility requires 30% of new impervious areas be treated by LID which is above the standard country requirement.

Mr. Fraley stated that the proffer is too general and that he is looking for the specific LID measures to be stated.

Mr. Thomas read some the measures included in the proposal and stated that they are designated very specifically.

Mr. Fraley confirmed that the site plan would be considered by the DRC.

Mr. Obadal stated that a binding master plan has to be submitted according to the Ordinance. He asked if the some of the non-binding items should be included in the binding master plans should as road locations, housing types, number of units, and public or private streets.

Mr. Ribeiro stated that the binding master plan shows general housing types by land bay area, and gives a range of the number of housing types. He also stated that the non-binding plan is an illustrative plan offers approximate location of streets and recreation area and the number of units.

Mr. Obadal stated that those items should be binding because they relate to the character of the community being created and should not be reserved for the applicant to change the ratio of the proposed housing types.

Mr. Ribeiro stated that the binding master plan is divided into land bay areas with each land bay only allowed certain housing types which provides some guarantee.

Mr. Sowers stated that the County has a history of accepting non binding plans.

He said the Ordinance provides for flexibility. Mr. Sowers also stated that the Commission can require more specificity if they desire and asked that reasons for the requests be given.

Mr. Obadal stated that he feels it is extremely important given recent history. He also stated that the proffers are signed by an entity that does not hold title to the property and asked what happens if the property is sold.

Mr. Sowers stated that the proffers, if approved, are binding and become the responsibility of the buyer to adhere to them.

Mr. Obadal stated his concern relative to language in the proffers that refer to the LLC its successors and assigns in title when he sees no title except in the owners of the LLC.

Mr. Kinsman stated that they will clear up the matter prior consideration by the Board of Supervisors.

Mr. Geddy represented the applicant and that the signatories of the proffers do own the property and the language referencing successors and assigns is done to bind this owner and all future owners.

Mr. Fraley asked about the proffer concerning residential phasing and asked what is meant by the phrase "The County shall not be obligated to grant..." instead of shall not.

Mr. Kinsman stated that it has been interpreted that to mean the County does not have to grant approval of any additional lots.

Mr. Fraley asked if that means it can be granted.

Mr. Kinsman said it probably does.

Mr. Fraley stated that the intent is to not grant approval. He said he does not want to leave open the opportunity for that to occur.

Mr. Kinsman said it can be changed to read shall not.

Mr. Krapf stated that on page 186 of the staff report the applicant offered cumulative cap on residential units and did not agree to a per year cap. He asked if that conflicts with what is on page 201.

Mr. Kinsman explained that if the number of units built in a given year are less than the number allowed for that year they can be added to the into the number allowed in subsequent years.

Mr. Fraley stated that that was important due to financial impact calculations.

Mr. Sowers said that had been discussed with the applicant who could shed some additional light on the matter.

Mr. Obadal asked the process for determining the number of school children when performing the adequate public facilities test. He stated that the process distorts the actual number of children towards the low side.

Mr. Ribeiro stated that the determination is made by the Financial Management Services Department.

Mr. Sowers agreed with Mr. Ribeiro stating that he understands the system is flawed and offered to look into the matter. He also stated that he had not heard that aspect of how the calculations are performed.

Mr. Obadal said that is his understanding from conversations with responsible parties and asked Staff to look into the matter expeditiously and asked that developments approved but not yet built be included in the calculations.

Mr. Sowers agreed to look into the matter.

Mr. Vernon M. Geddy, III represented the applicant and presented the proposal. He highlighted the binding master plan and the information provided on it including public roads. He detailed the changes since the proposal was last presented to the Commission. Mr. Geddy showed the area of most change which is designated for light industry. He compared the ratio of residential to business to other approved mixed use developments in the County. Mr. Geddy also addressed concerns relative to schools, financial impacts, and water and offered to proffer housing type ranges by land bay areas. He also said affordable housing of different types are proffered to be disbursed through the development. Mr. Geddy also highlighted environmental features, traffic improvements

Mr. Krapf stated his concern that the proposed mixed use is not consistent with the Comprehensive Plan.

Mr. Geddy stated that in looking at the entire area designated mixed use it is heavily commercial. He pointed out other parcels in the area where zoning conflicts with the Comp Plan designation.

Mr. Obadal stated his agreement concerning the zoning of the surrounding area. He also stated his concern about impact to the character of the community and the proposed density compared to existing zoning.

Mr. Geddy said the predominate designation on the Comp Plan is mixed use. He stated that the various densities are consistent with the current zoning.

Mr. Obadal said that was based on gross not developable acreage.

Mr. Geddy said densities are calculated on gross acreage.

Mr. Sowers agreed and stated that has been the interpretation of Staff and prior Board of Supervisors and Planning Commissioners. He also stated that are different calculations used at the development stage.

Mr. Obadal asked about A-1 zoned area.

Mr. Geddy said A-1 is the current zoning and is inconsistent with the Comp Plan designation. He stated that the single family detached homes are on the perimeter in order to be consistent with surrounding development.

Mr. Obadal school proffer is limited to single family detached.

Mr. Geddy stated that the proffer is in accordance with the adopted school proffer policy.

Mr. Obadal stated that it is a minimum to be used as a guideline to be evaluated on a case by case basis. He stated that the proposal offers no mitigation for children in the other housing types. Asked if applicant would be willing to accept the board draft policy

Mr. Geddy said they cannot commit. He stated that their working budget is based on the adopted policy.

Obadal asked about the stream monitoring.

Mr. Geddy stated that they recently heard about that and are willing to look into it.

Mr. Obadal stated his agreement with the Chairman that at least two Commissioners should be present for meetings with applicant and urged adopted of such a policy.

Ms. Hughes asked if pervious pavement would only be used for the townhouses or the entire land bay.

Mr. Geddy stated that the townhouses were considered because of the soils in the area their proposed for.

Ms. Hughes stated her concern that other housing types could be built and there be pervious pavement in that area since the housing types are not binding.

Mr. Geddy agreed to look into it.

Mr. Billups asked about the ratio of housing types.

Mr. Geddy said no decision has been made expect a proffer for a mixture of all housing types.

Mr. Billups stated that 80% of the proposal is non-binding.

Mr. Geddy pointed out the portions of the proposal that are binding. He stated that the designations are designed to allow flexibility.

Mr. Kelvin Taylor, ,stated that he owns a restaurant in the shopping center and supports the proposal.

Ms. Kensett Teller represented James City County Concerned Citizens and pointed out the difference between the proposed density and the Comp Plan allowable density. She their opposition to future development until the total impacts to the County from current and already approved projects has been determined.

Mr. Mike Maddux stated that it is a well thought out and aesthetically pleasuring project. Businesses in the area could use the support of additional residential.

Mr. John Wilson, 6304 Glenwilton, stated that he has worked with the developer and is pleased with his work. He also stated that need for the development in the area to draw more commerce and shoppers to the corridor.

Mr. Mike Mausteller, 109 Lakeview Drive, stated his support of the plan due to compliance with the corridor and the Comp Plan, affordable housing, and a local, responsible builder.

Ms. Sylvia Hazelwood, 3084 North Riverside Drive, stated that she attended community meetings were there was little opposition. She also stated her support.

Mr. John Colligan, 3064 Ridge Drive, represented St. Olaf Church and asked if the project will affect their plans to build. He stated their support of the project if it will not interfere with ther,

Mr. Billups asked Mr. Colligan the acreage of the church property.

Mr. Colligan said approximately 9.3 acres.

Ms. Hughs asked the location of the church.

Mr. Colligan stated that they are located on Norge Lane across the street from the project.

Mr. Sowers noted that traffic improvements that will benefit the St. Olaf's.

Mr. Colligan also asked that County staff be introduced when asked to address the Commission.

Mr. Wayne Nunn, 238 Loch Haven, stated his support of the project due to the responsibility to the Yarmouth Creek Watershed, and similarities with other projects in the area.

Ms. Terri Hudgins, 111 Knollwood Drive, represented Stonehouse District Citizens Association and stated their opposition due to congestion, school impacts, water resources, incompatibility with surrounding zoning, and impacts to Yarmouth Creek Watershed. She also suggested age-restriction and larger lots.

Ms. Terri Hudgins read a statement from Friends of Forge Road in Toano stating their opposition due to density, fiscal negative impacts, inadequate proffers for stream restoration, lack of connectivity, and lack of green building techniques.

Mr. Jonathan Faggart, 4500 Old Regency Drive, represented Crossroads Community Church and stated their support of the project.

Dan, 4869 Mildred Road, stated that with 180 houses and 44 school children it is not possible for the project to generate a positive fiscal impact. He also stated his concern that there will only be 9 affordable homes

Mr. Arch Marston, 7581 Richmond Road, stated that he is a paid, voting member of the Stonehouse District Citizens Association. He stated that although was not able to attend the meeting he was never notified that the group would be offering a negative opposition when only 10 members were present. He stated his support for the project.

Ms. Hudgins responded that of the voting members present the vote was to oppose the project.

Mr. Fraley asked the applicant to comment on proffering a water quality system.

Mr. Geddy agreed to consider.

Ms. Hughes asked for clarification of the location of the proffered sidewalks.

Mr. Geddy gave the locations.

Ms. Hughes asked if the improvements to the Croaker Road interchange and traffic improvements calculated in the fiscal impacts determination.

Mr. Obadal proffer subject to indexing.

Mr. Geddy explained how the process worked.

Mr. Obadal asked about the affect of the cost of affordable housing.

Mr. Geddy said the amounts also adjust but based on a different index.

Mr. Sowers said agreed and stated that it is due to inflation.

Mr. Kinsman regarding the signatures on the applicant for the rezoning are the property owners.

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

Mr. Rich Krapf stated that there a positive aspects to the plan. He stated that he is still concerned with the amount of non-binding proffers, impact to Yarmouth Creek Watershed, lack of data on cumulative impacts, and impacts to traffic and schools and will not support the plan.

Ms. Hughes stated that she considered all the public benefits. She said she is concerned about the number of dwelling units, the presence and disturbance of type A soils, inadequate affordable housing, and impacts to the Watershed. She stated that she cannot support the plan.

Ms. Jones stated that growth is an issue in the County. She stated that the proposal has many positives and that the applicant addressed all the concerns that had been identified. Ms. Jones stated that unfortunately timing is the problem.

Mr. Obadal agreed with Mr. Krapf and Ms. Hughes. He stated his concerns that mixed use is not the correct designation for the area, proposed density is to high, and impacts on facilities and services. Mr. Obadal suggested the proposal be re-worked.

Mr. Fraley thanked the applicant for responding to comments from the last meeting. He suggested zoning in the County that would permit infrastructure to advance prior the infrastructure becoming overwhelmed. Mr. Fraley agreed with Ms. Jones that the timely in not right.

Mr. Geddy requested deferral of the application to re-evaluate the proposal.

Mr. Fraley supported the request if the application will look at density, and impacts to the Yarmouth Creek Watershed and on the A soils.

Mr. Kennedy stated his support for deferral.

Ms. Jones stated her feeling that timing will still be an issue. She said she will support the deferral.

Mr. Billups stated that the Commissioner must evaluate each project on its own merit and that timing will always be an issue. He stated that the proposal is an excellent project. Mr. Billups stated that he is not convinced of a need for a change in zoning and that he has for a long time championed looking at impacts cumulative suggesting moratorium on building.

Mr. Geddy restated deferral request.

Mr. Kennedy stated the need to develop land use predictability. He urged citizens to consider impacts to local firms like Mr. Henderson's due to the expectations placed on them. He said that communities that fail to grow will be sustained from within due to higher taxes. Mr. Kennedy also stated that the positive fiscal impacts of the proposal were tied to the commercial aspects of the plan.

Mr. Obadal motioned to defer the application.

Mr. Fraley seconded the motion.

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

##### 5. PLANNING DIRECTOR'S REPORT

Mr. Kennedy informed the Commission that he will be stepping aside as Chairman due to his decision to compete in the upcoming Board of Supervisors election.

Ms. Jones stated her support for the presentation earlier by the James City County Concerned Citizens recommendation for environmental inventory.

Mr. Kennedy suggested a meeting that would be open for public comment.

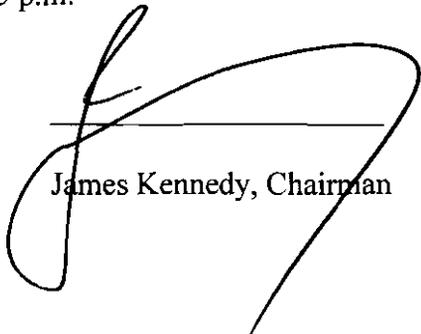
Mr. Fraley added that Staff should be given an opportunity to address the matter.

Mr. Sowers stated that the annual work session with the Board of Supervisors will be held at 5 p.m. August 24<sup>th</sup> and suggested that at the appropriate time meeting be adjourned until then.

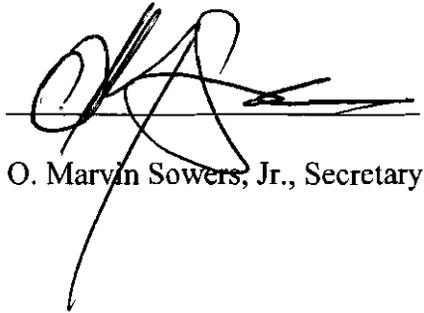
Mr. Fraley and Mr. Kennedy discussed starting the next regular meeting early to allow for nomination of a new Chairman.

6. ADJOURNMENT

There being no further business the Planning Commission meeting was adjourned at 8:45 p.m.



James Kennedy, Chairman



O. Marvin Sowers, Jr., Secretary