

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIRST DAY OF AUGUST, TWO-THOUSAND AND SEVEN, AT 6:30 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:

Allen Murphy, Principal Planner/Zoning  
Administer  
Adam Kinsman, Assistant County Attorney  
David German, Planner  
Kathryn Sipes, Planner  
Leanne Reidenbach, Planner  
Michael Woolson, Environmental Engineer  
Christy Parrish, Administrative Services  
Coordinator  
Luke Vinciguerra, Planner

Absent:

None

2. CLOSED SESSION

Mr. Krapf motioned for the Commission to go into closed session pursuant to Section 2.2-3711 (A)(1) of the Code of Virginia to consider personnel matters, including nominations for Commission Chairman and Vice-Chairman and consideration of appointments to Commission committees.

Mr. Fraley seconded the motion.

In a unanimous voice vote the motion was approved.

The Commission convened into closed session.

At 7:00 p.m. the Planning Commission reconvened into open session.

Mr. Murphy read the certification of Closed Session Resolution. and recommended approval.

Mr. Kennedy motioned for adoption of the resolution for closed session.

Mr. Billups seconded the motion.

In a unanimous roll call vote the motion was approved (7-0).

Mr. Kennedy stated that he and Ms. Jones are seeking election to the Board of Supervisors and are therefore stepping down as Chairman and Vice-Chairman, respectively of the Planning Commission.

Mr. Kennedy nominated Ms. Hughes for the position of Chairman.

Ms. Jones seconded the motion.

In a unanimous roll call vote the Commission confirmed Ms. Hughes as Chairman.

Ms. Hughes nominated Mr. Obadal for the position of Vice-Chairman.

Mr. Kennedy seconded the motion.

In a unanimous roll call vote Mr. Obadal was confirmed as Vice-Chairman.

3. PUBLIC COMMENT

Ms. Hughes opened the public comment period.

Ms. Linda Rice, 2394 Forge Road, congratulated the Commission for recognizing the need to improve the master plan approval process. She also stated her disappointment that the County has not done a better job of making the public aware of the procedure for processing master plan applications.

Ms. Sarah Kadec, 3504 Hunters Ridge, represented James City County Concerned Citizens and stated support for Ms. Rice's comments. She stated that through the administrative processing of master plan amendments the final appearance of a project could differ significantly from the originally approved plan without the public having an opportunity to offer input.

Hearing no other requests the public comment period was closed.

4. COMMITTEE/COMMISSION REPORTS

A. Development Review Committee (DRC) Report

Ms. Jones presented the report stating that the DRC along with Mr. Fraley, who was temporarily re-appointed for that meeting, met on July 25, 2007 to consider SP-143-06 White Hall Section 1. She stated that the application was preliminarily approved as amended,

subject to agency comments (4-1). Ms. Jones thanked Ms. Sipes and Mr. Fraley for their work on the application. The DRC will hold its next regular meeting Wednesday, September 5, 2007 at 4 p.m. in the conference room of building A.

Mr. Kennedy indicated that he had been misquoted in a newspaper article and stated his opinion that the case requires legislative action for approval. He said he is not content with either the proposed changes or the originally submitted plan. Mr. Kennedy stated his concerns regarding disclosure. He asked that a recommendation be forwarded to the Board of Supervisors to require any proposed amendments to a previously approved master plan be posted on the County's website, regardless of significance, for public awareness.

Mr. Obadal stated that this case is a great example of the concerns Ms. Kadec made. He stated that the Commission is being asked to approve a site plan with their only options being approval, denial or deferral of the case. Mr. Obadal stated that if the proposal had been submitted as an amendment to the master plan it could have been treated more easily as a legislative issue. He stated that consequently the Commission appears to be bound by the earlier approval by Planning Director of an amendment to the master plan. He also explained the issues of the case relative to the mix of the types of the housing proposed not being binding in the originally approved master plan. Mr. Obadal stated his opinion that administrative approval of the amendment was unlawful and that he will object. Mr. Obadal commended Ms. Jones and Mr. Fraley for their work on the project.

Ms. Hughes asked for comments from staff concerning the legality of the process.

Mr. Kinsman stated that Staff is confident that the Planning Director had legal authority to accept the amended master plan. He stated the Commission's options to approve, deny, or defer the case as the only legal process to move the case forward.

Mr. Fraley explained why the Board of Supervisors appealed the decision of the Planning Commission in the Marywood case that Mr. Kennedy mentioned earlier. He explained to the public the differences in that the Residential Cluster Ordinance allows the Planning Director to approve amendments to a master plan that met six criteria as stated in the Ordinance. He said Staff believes those criteria have been met. Mr. Fraley stated that later in the meeting he will recommend the Commission direct staff to initiate a resolution to amend that ordinance so that it is consistent with other districts. He also stated that the current plan is far superior to the originally approved plan. Mr. Fraley thanked Ms. Hughes and Ms. Jones for their support in working with him to get the plan to that state. He noted the improvements in the plan relative to environmental improvements, open space design principles, and enhanced buffers saying it would be a shame to require the developer to build the original plan.

Mr. Billups stated his concerns relative to road frontage, proximity to Anderson's corner corridor, and his desire to see a different type of development in that area. He also stated that the lack of workforce housing excludes the people who serve the county. Mr. Billups recommended the case be referred to the Board of Supervisors for their comment.

Mr. Krapf asked if the changes that were approved by the Planning Director comply with the original rezoning and proffers as approved by the Board of Supervisors.

Mr. Kinsman stated that the matter was well within the legal purview of the Planning Director to administratively approve the plan as well as to determine whether the six criteria were met.

Mr. Krapf stated that his question is whether the underlying zoning remained the same.

Mr. Kinsman said it did and that the original proffers remained intact.

Mr. Krapf stated his concern that if the master plan as amended still meets the approved rezoning and the proffers are intact then this body has no authority to require changes or to refer it to the Board of Supervisors. He stated that the Commission's options are to approve, deny or defer the application. Mr. Krapf stated that at the time the case was originally heard he was part of a citizens group that spoke out against the project and although he didn't agree with the original project it is an approved master plan and rezoning.

Ms. Jones stated that her opinion has already been expressed that she concurred with Mr. Fraley.

Ms. Hughes said she has reviewed the original master plan and the revised plan. She stated that this style master plan contains no specifics as to housing types. She also stated that the Board of Supervisors has already approved the number of units and she sees no significant difference between the two plans although there are some improvements with the second. Ms. Hughes stated that the DRC and Planning Commission have discretion at the site plan and subdivision stages and that she will be looking for mixed cost and types of housing in the rest of development. Ms. Hughes stated her support and reminded Commissioners of their options relative to the application before them. Ms. Hughes also recommended the Board of Supervisors address their concerns relative to consistency with the Zoning Ordinance and a defined process of master plan review and approval.

Mr. Obadal stated his concerns that sections two and three are also not binding and can eventually have the same problem with the developer changing the mix of housing types, that the character of the original plan was three separate villages as opposed to one development, and that according to the Cluster Ordinance the development should contain affordable housing. He stated his unwillingness to exchange affordable housing for environmental enhancements.

Ms. Jones asked Mr. Kinsman if mixed cost housing is being affected by the site plan being considered.

Mr. Kinsman stated that Mr. Obadal was referring to the Cluster Ordinance. He stated that the Commission's role is to compare site plan being presented to the approved master plan as amended.

Ms. Jones asked if what was approved by the Board of Supervisors for the project in its entirety has changed concerning mixed cost housing.

Mr. Kinsman stated that the master plan approved by the Board of Supervisors was amended by the Planning Director as provided in the Zoning Ordinance, and he determined that it does comply with the Cluster Ordinance and the six criteria. He stated that the Planning Commission should compare this site plan with the amended master plan.

Mr. Obadal said major changes have been made to the original master plan. He agreed with Mr. Billups' suggestion that modifications be made for affordable housing also.

Ms. Hughes stated that proffers approved by the Board of Supervisors must be included in the new master plan. She stated her belief that the applicant stayed under the density threshold that would have required affordable housing. Ms. Hughes also stated that the plan does include mixed cost housing and housing types and that the DRC will be watching for those items when the site plan and subdivision plan come forward to that body. Ms. Hughes continued by stating that the Commission does not have discretion to require new proffers and restated their options. She stated that they can forward their concerns with the site plan or Cluster Ordinance to the Board of Supervisors.

Mr. Obadal asked if the case can be referred to the Board of Supervisors.

Ms. Hughes said no and confirmed with Mr. Kinsman the process the applicant has for appeal should they deny the application.

Mr. Kinsman said the appeal process would be to the circuit court.

Mr. Fraley motioned to approve the DRC report.

Ms. Jones seconded the motion.

In a roll call vote the report was approved (4-3). AYE: Fraley, Hughes, Krapf, Jones (4). NAY: Obadal, Billups, Kennedy (3).

5. PLANNING COMMISSION CONSIDERATION

A. Initiating Resolution – Zoning Ordinance Amendment – Floodplain Ordinance

Mr. Murphy stated that the initiating resolution is to direct Staff to draft amendments to the Floodplain Ordinance to comply with federal law. He stated that the resolution allows staff to draft the Ordinance amendments and that those amendments will be brought the Commission for consideration and recommendation in September for eventual consideration by the Board of Supervisors.

Mr. Kennedy motioned to approve the resolution.

Ms. Hughes asked if citizens will be able to review the most recent updates to the flood insurance map.

Mr. Murphy said copies are available for public review.

Ms. Jones seconded the motion.

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

6. PUBLIC HEARINGS

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

B. Z-5-07 Ingram Road Rezoning

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

Mr. Murphy stated that Staff concurs with the applicants' requests for deferral. He stated that the applicant for case SUP-12-07 Verizon Co-location at Brick Bat Road has requested indefinite deferral while the applicants for the other two cases have requested deferral until the September Planning Commission meeting.

Ms. Hughes opened the public hearing.

Ms. Febronia Christ, LeClair Ryan, represented Verizon and stated that they are still working with Staff on outstanding issues and requested deferral.

Hearing no other requests the public hearings were continued until the September 12<sup>th</sup> meeting except SUP-12-07 which was closed.

D. Z-6-07 Public Land District

Mr. Jason Purse presented the staff report stating that on July 10, 2007 the Board of Supervisors created the Public Land Zoning District and initiated the rezoning of land for inclusion in the District. The 122 parcels are currently zoned A-1, General Agricultural; R-1, Limited Residential; R-2, General Residential; R-4, Residential Planned Community; R-8, Rural Residential; B-1, General Business; LB, Limited Business, M-1, Limited Business Industrial; M-2, General Industrial; PUD, Planned Unit Development; MU, Mixed Use; and AA, Airport Approach Overlay. Staff recommended approval.

Ms. Paige Hewlett, 516 Neck- O-Land Road, stated her concerns relative to rezoning from residential without a purpose. She stated that consideration should be given to whether citizens want land across from them to be used by the public. Ms. Hewlett also said she did not receive public notice by mail of the proposal.

Mr. Purse stated that a number of the residential zoned parcels are part of the Colonial Parkway Buffer and that rezoning will limit what is allowed on those parcels.

Ms. Hewlett stated that people live across the street from those properties. She stated that Neck-O-Land Road is a one lane road and that it floods. She said there are a large number of developments as well as traffic on the road and that she is not interested in having the road widened.

Mr. Kennedy asked Mr. Kinsman if the County is required to notify surrounding property owners when a rezoning is being considered and asked if it had been done.

Mr. Kinsman stated that with a rezoning of a few properties adjacent property owner notifications are required but not for mass rezonings above 25 parcels. Mr. Kinsman stated that for this case a full page ad was placed in the newspaper and staff posted signs on all the properties to be rezoned so that the County went above the legal requirement.

Mr. Kennedy stated that the government should be held to higher criteria than an individual.

Mr. Kinsman stated that the difference is the number of parcels not government versus individuals.

Mr. Kennedy said he still believes in notifying people.

Mr. Fraley asked if the case should be deferred until impacts on adjacent property owners can be considered.

Mr. Murphy stated that the rezoning seeks to place lands with various zoning categories, which are publicly owned, into a public land district. He stated that should the public entity later decide to dispose of that property legislative consideration would be required for another proposed use.

Mr. Kennedy asked if the person adjoining that property would be non-compliant if this change is made.

Mr. Murphy said they would not be non-compliant.

Mr. Kenney asked that if they came forward with their own rezoning request will they be impacted by having a public land next door.

Mr. Murphy said the Board of Supervisors will consider surrounding zoning.

Mr. Kennedy said that takes him back to his concern about adjacent property owner notices. He asked if future rezoning requests could be impacted.

Mr. Murphy stated that the purpose of the rezoning is to provide existing zoning categories for existing public uses.

Mr. Kennedy said he is still concerned about future individuals that border the public use site.

Ms. Jones stated that the Policy Committee, which is made up of members of the Planning Commission, raised concerns about what the public entity could do with its property. She stated they would be very limited as to the types of uses. She also stated that specially permitted uses would require public hearings that provide another set of checks and balances. Ms. Jones said the County must maintain compatibility with surrounding uses.

Mr. Kennedy asked if they discussed the County property not individuals parcels surrounding the publicly owned property.

Ms. Jones said they addressed both due to the impact.

Mr. Kennedy asked if they arrived at a conclusion about impacts on adjacent property owners who might seek rezoning.

Ms. Jones said they looked at what is permissible and discussed the different checks and balances.

Mr. Kennedy asked about the scope of the request's impacts on property owners adjacent to County property should they want to rezone their personal piece of property. He stated that he wanted to ensure that there is no compromise of individual public rights.

Mr. Kinsman said the uses on those properties would be very limited in scope and nature. He stated that the lands are generally identified as public use sites on the Comprehensive Plan. He also stated consistency of a proposal to the adjacent parcels' Comprehensive Plan Land Use Designation would be weighted and that he is not sure of the significance of having a public land use next door in that determination.

Mr. Kennedy asked for confirmation that individual property rights are not affected by this action.

Mr. Kinsman stated that it is an additional consideration that is made by the Planning Commission and the Board of Supervisors when considering a rezoning.

Mr. Kennedy asked that Mr. Kinsman's statement be reflected in the public record.

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

Mr. Obadal stated that he is in favor of the proposal. He said the Policy Committee spent extensive time on the proposal and that the uses permitted are very limited. Mr. Obadal said it would be similar to citizens' property being next to any other type of district. He also stated that approval would not affect citizens' right to use their property.

Mr. Billups stated his concern that the County does not control those properties.

Mr. Krapf stated that rezoning will add a layer of consistency with the Comprehensive Plan designation and is more restrictive. He stated that he is in favor.

Mr. Kennedy stated his support as long as he has assurance from Mr. Murphy and Mr. Kinsman that it will have no affect on private property rights.

Mr. Fraley motioned for approval

Ms. Jones seconded the motion.

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

#### 7. PLANNING DIRECTOR'S REPORT

Mr. Murphy stated that there were no additions to the Planning Director's report. He stated that he would be happy to pass along any comments to the Director.

Mr. Kennedy asked that the Planning Commission consider adopting a Board member meeting form. He asked that copies of a similar form used by Loudon County be distributed for consideration at the Planning Commission next meeting. He stated his goal is transparency in government.

Ms. Hughes also stated that the Commission needed an opportunity to meet to discuss issues and ideas that are of concern to them and asked for suggestions on the best way to do that. She urged Commissioners to review their bylaws and other ethics documentation. Ms. Hughes informed the Commission that the Better Site Design Committee has reviewed the Cluster Ordinance for recommendations in to both the Planning Commission and Board of Supervisors. She suggested a review of the master plan process as it relates to the Cluster Ordinance be coordinated with that initiative.

Mr. Fraley stated his concern about the Cluster Ordinance and delay in review of the master plan process. He recommended an initiating resolution to direct staff to amend the Cluster Ordinance to bring the master plan process into conformance with the rest of the Ordinance

Mr. Murphy confirmed the recommendation is that the master plan process be amended to align with other districts that require the Planning Commission to review site plans and subdivisions for consistency with the master plan and that other changes must be done by the legislative process.

Mr. Obadal asked if Mr. Fraley's proposal is limited to the master plan.

Mr. Fraley said yes and explained that the six criteria and administrative approval would no longer exist.

Mr. Obadal asked about the affects on R-4 Zoning.

Mr. Murphy explained that the recommendation would remove the unique feature in the cluster Ordinance that allows the Planning Director to administratively approve changes to the master plan.

Mr. Obadal stated his support for an initiating resolution.

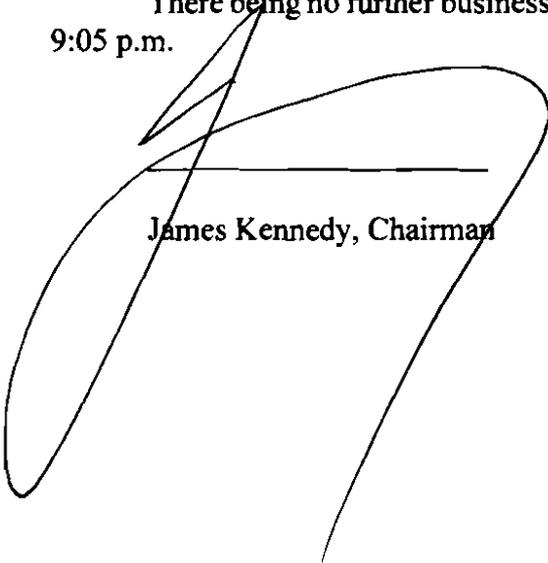
Mr. Fraley motioned for approval of the resolution.

Ms. Jones seconded the motion.

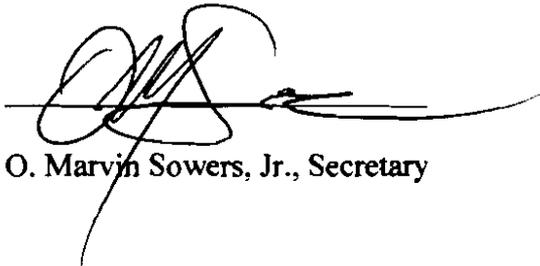
In a unanimous roll call vote the resolution was approved (7-0).

7. ADJOURNMENT

There being no further business the Planning Commission meeting was adjourned at 9:05 p.m.



James Kennedy, Chairman



O. Marvin Sowers, Jr., Secretary