

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE THIRD DAY OF OCTOBER, 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  
Rich Krapf  
Jack Fraley  
Shereen Hughes  
Jim Kennedy

Staff Present:

Marvin Sowers, Director of Planning  
Adam Kinsman, Deputy County Attorney  
Jason Purse, Senior Planner  
Leanne Reidenbach, Planner  
Kate Sipes, Senior Planner  
Ellen Cook, Senior Planner  
Matt Smoknik, Senior Planner  
Terry Costello, Development Management Assistant

Absent:

Tony Obadal

2. PUBLIC COMMENT

Ms. Hughes opened the public comment period.

Ms. Judith Dean, 10225 Sycamore Landing Rd, expressed her concerns over the sewage treatment plant proposed in the Stonehouse Development. Her understanding is that this plant would be used to generate reclaimed water from sewage to be used in irrigation in Stonehouse. She is of the understanding that HRSD and JCSA are studying viability of project. Her concern is that the plant will be operating only during the irrigation season for a few months and this does not make sense. All byproducts will be returned to the force main and pumped to the treatment plant in Grove. Treating sewage twice is expensive. She was also concerned that if the sewage from Stonehouse and other subdivisions isn't enough to feed the plant, some sewage from West Point may be pumped to the facility in Stonehouse. She felt it would make more sense to take the reclaimed water in Grove and pipe that water to West Point. She understands that the treatment plant will be a closed system now, she felt that this might change in the future. She is concerned about any future discharge that may occur in the York River.

John Schmerefeld of 172 Red Oak Landing, represented Friends of the Powhatan Creek

Watershed, stated this group has scheduled a natural stream design monitoring and restoration workshop December 13<sup>th</sup>. The place was not known at this time but he wanted to inform the Commissioners of the workshop.

There being no further public comments, Ms. Hughes closed the public hearing.

3. MINUTES

A. September 12, 2007 Regular Meeting

Ms. Jones motioned to approve the minutes from the September 12 regular meeting.

Mr. Krapf seconded the motion.

In a unanimous voice vote the minutes were approved (6-0). (Absent: Obadal)

4. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC) Report

Ms. Jones presented the report stating that the DRC met September 26, 2007. The DRC reviewed five cases. The DRC recommended preliminary approval subject to agency comments, and granted a setback modification for SP-0085-2006 Settlers Market, Phase II. The second case was SP-0025-2006, Prime Outlets Expansion: the DRC determined that the Site Plan was consistent with the Master Plan, and recommended preliminary approval subject to agency comments, and 25 conditions attached to the SUP. The DRC reviewed and approved the White Hall Design Guidelines. The Committee reviewed SP-0031-2007, The Colonies at Williamsburg, which Ms. Jones pointed out the developers exclusively used LID measures to manage stormwater. This case was recommended for approval subject to agency comments and conditions. The DRC approved the modification to the setback requirement for C-0096-2007, Ironbound Square, Phase 2 Setbacks.

Mr. Kennedy motioned to approve the report.

Mr. Krapf seconded the motion.

In a unanimous voice vote, the DRC report from September 26, 2007 was approved (6-0). (Absent: Obadal)

B. Policy Committee Report

Mr. Fraley stated the Policy Committee met on September 16, 2007 to review

proposals from staff to amend the residential cluster section of the ordinance for master plan consistency. After receiving the Committee's input, staff has indicated that they will present their recommendations at the next Policy Committee meeting. The Committee also discussed height limitations for telecommunication antennas mounted on alternative structures such as water tanks. Staff indicated they would present further information of this matter at the next Policy Committee meeting. The Committee expects to further review these two matters as well as an update to the County's definition of affordable housing in October 2007.

C. Comprehensive Plan Update

Mr. Fraley spoke about the Comprehensive Plan Update. He stated that the due date for the Citizen Participation Team (CPT) applications has been extended until October 15, 2007. Mr. Fraley will be compiling these applications and will be reviewing them with the Planning Commissioners and Board of Supervisors. A special meeting, in closed session, will take place to review these applications in October. A recommendation will be made to the Board of Supervisors in November. The Board will make the final determination for the CPT team.

D. Other Committee/Committee Reports

Ms. Hughes reported that the Better Site Design Committee met in a work session with the Board of Supervisors. The Committee received some guidance from the Board to proceed with some of the Committee's recommendations. These recommendations will be presented to the Policy Committee and Planning Commission for consideration.

5. PLANNING COMMISSION CONSIDERATIONS

A. ZO-9-07 Initiating Resolution – Wireless Communication Facilities Height Waivers

Mr. Jason Purse brought forth a request from AT & T Cingular to amend the Zoning Ordinance to allow for alternative mounted wireless communication antennas atop water towers over the height of 120 feet. This request is coming forward at this time because antennas are currently located atop water towers in the County that are scheduled to be torn down. The new water tanks have already been approved, but under the current language in the Zoning Ordinance the antennas will not be allowed to relocate. Staff recommended the Planning Commission adopt the resolution and refer this matter to the Policy Committee.

Ms. Hughes asked for comments and/or questions from the Commissioners.

Mr. Kennedy made a motion to approve the resolution.

Ms. Jones seconded the motion.

In a unanimous voice vote the resolution was approved (6-0). (Absent: Obadal)

B. Z-10-07 Initiating Resolution – Affordable Housing

Ms. Kate Sipes presented a resolution that would amend the definition of affordable housing as it appears in the Zoning Ordinance. Staff has requested revised language be considered at a future meeting of the Policy Committee. Staff recommended approval of this resolution and referral of the matter to the Policy Committee.

Ms. Hughes asked for comments and/or questions from the Commissioners.

Mr. Kennedy motioned to approve this resolution.

Mr. Krapf seconded the motion.

In a unanimous voice vote the resolution was approved (6-0). (Absent: Obadal)

C. December DRC Schedule Change

Ms. Hughes stated that it was proposed to change the DRC meeting from December 26, 2007 to December 19, 2007.

Mr. Kennedy motioned to approve the change.

Ms. Jones seconded the motion.

In a unanimous voice vote the change was approved (6-0). (Absent: Obadal)

D. Direct Discharge Sewer Systems

Ms. Leanne Reidenbach gave a report as to the results of staff's research into the possibility of amending the Zoning Ordinance to permit direct-discharge sewer systems in certain districts of the County. The request was made by Mr. Tripp Clark, whose lot in Cypress Point was determined unsuitable for any other type of sewage treatment system. Staff, in consultation with the Peninsula Office of the Virginia Department of Health, a private maintenance provider, and multiple nearby localities, researched the technology, potential geographic areas the amendment could affect, and issues encountered by other localities where the systems are currently operating. Overall, staff believes that the criteria considered are insufficient and do not adequately mitigate issues with the systems, their maintenance, and overall long-term impacts on public and environmental health. Additionally staff does not believe that the Ordinance amendment would be compatible with objectives laid out in the Comprehensive Plan to protect and improve the water quality of the Chesapeake Bay and surrounding waterways.

The Policy Committee voted 3-0 (with one member absent) to support staff's recommendation not to pursue an amendment to the Ordinance to permit direct-discharge

systems. Mr. Clark has requested that consideration of this item by the Planning Commission and the Board of Supervisors be deferred to a future date; however, staff believes that due to recent consideration by the Policy Committee that consideration at the Planning Commission level should proceed. Staff advises that the Planning Commission not recommend the proposed Ordinance amendment to the Board of Supervisors.

Ms. Hughes asked for comments and/or questions from the Commissioners.

Mr. Fraley made a motion to support staff's recommendation.

Mr. Krapf seconded the motion.

In a unanimous voice vote the recommendation was approved (6-0). (Absent: Obadal)

6. PUBLIC HEARINGS

A. Z-5-07 Ingram Road Rezoning

Mr. Sowers stated staff's concurrence with the applicant's request for a deferral to the November 7, 2007 Planning Commission meeting.

Mr. Kennedy motioned for deferral.

Ms. Jones seconded the motion.

In a roll call vote the deferral was approved. (6-0). AYE: Billups, Krapf, Jones, Kennedy, Fraley, Hughes. (Absent: Obadal)

B. Z-4-07 / MP-4-07 Stonehouse Planned Community Amendment

Mr. Sowers stated staff's concurrence with the applicant's request for a deferral to the November 7, 2007 Planning Commission meeting.

Mr. Krapf motioned for deferral.

Ms. Jones seconded the motion.

In a roll call vote the deferral was approved. (6-0). AYE: Billups, Krapf, Jones, Kennedy, Fraley, Hughes. (Absent: Obadal)

C. SUP-25-07 Colonial Penniman Water Line Extension

Mr. Smolnik presented staff's report for a special use permit to allow for construction of up to a 16 inch waterline and two force mains on the property located at

8925, 8961, 8963, and 8965 Pocahontas Trail. The properties are zoned M-1, Limited Business/Industrial and M-2 General Industry and are designated as Mixed Use and General Industry on the Comprehensive Plan. A special use permit is required for transmission pipelines in both the M-1 and M-2 zoning districts. Staff believes this proposal, with conditions, would not impact surrounding properties and believes it is consistent with the 2003 Comprehensive Plan. Staff recommended that the Planning Commission recommend approval of this application to the Board of Supervisors with the acceptance of the special use permit conditions.

Ms. Hughes asked if there were any questions for staff.

Mr. Billups asked if this case was previously approved by the Board of Supervisors.

Mr. Smolnik stated it was previously approved by the Board.

Ms. Hughes asked for clarification on the comment "Environmental staff is comfortable with eliminating the condition of requiring boring underneath the RPA".

Mr. Smolnik said he would have Mr. Scott Thomas from the Environmental Division address that concern.

Mr. Thomas stated that the County's preference would be that the SUP condition remain. To protect the RPA, the County wants the best condition, which would be to keep the provisions for boring under the RPA, rather than allow direct encroachment into the RPA. However, when reviewing this case in 2002 there was very little RPA associated with this project. Mr. Thomas stated that there is now approximately 1000 feet in the new RPA line, and it would be an economic detriment to the project.

Ms. Hughes stated that there was a comment that this may be grandfathered.

Mr. Thomas stated that there are certain grandfathering provisions associated with this project because there was site plan approved under SP-106-02. Mr. Thomas stated that staff would determine the impact that the current project would have had in 2002 to the RPA versus the impact now. Mr. Thomas felt the impact is minimal and this would probably fall under administrative approval for the Environmental Division and not have to be reviewed by the Chesapeake Bay Board. If it were determined to have a larger impact then it would need to be reviewed by the Chesapeake Bay Board.

Mr. Krapf asked if Mr. Thomas knew what the additive cost would be for boring underneath the RPA and what the impact would be on the applicant.

Mr. Thomas stated he was not sure but he felt that this amount through this terrain would be excessive. He would defer to the applicant on this question.

Mr. Billups asked Mr. Kinsman about the grandfathering of conditions given the

original SUP was void.

Mr. Kinsman stated the Virginia code states a recorded site plan is valid for five years after it has been recorded. The original site plan was recorded in 2003 making it valid until 2008.

Mr. James Bennett spoke on behalf of Williamsburg Developments Inc; the Economic Development Authority (EDA) of James City County, BASF Corporation, and Colonial Penniman, LLC. He stated that Colonial Penniman purchased the property in 2007 and was aware of the approved site plan, but was not aware of the special use condition that had previously expired in 2004. In Spring 2007 there were negotiations with the County to acquire an easement through the James River Commerce Center property from the end of Columbia Drive to BASF property. There were also negotiations with BASF to acquire an easement through BASF property to the applicant's site. During the negotiations there were several discussions concerning the water line. The EDA would have access to that waterline and in return has given the easement. The BASF property is currently being marketed and it is unclear as to what will happen to that property in the future. The City of Newport News has expressed concerns over the 16 inch waterline. Mr. Bennett did make the point that this project does not require this size waterline; however the James River Commerce Center could well trigger needs for that size.

Mr. Bennett addressed the question about the cost of the bore underneath the RPA. The longest RPA encroachments would be 600 feet, but it is in an area that is already cleared and already has utility lines in it. Mr. Bennett stated he has not contacted Newport News as to whether they would accept a waterline that is largely bored underneath the ground and is not accessible. He stated another concern was that the waterline itself would be in a two foot casing and that if bored shallow it would be extremely difficult to keep the ground from bulging. The cost of the directional bore is extremely expensive. Mr. Bennett gave the figure of \$ 50 - \$ 75 a foot for a traditional waterline for labor plus materials. A directional bore would be in excess of \$300 per foot for labor plus materials.

Ms. Hughes asked if there were any questions for the applicant.

Mr. Fraley asked Mr. Bennett if he was requesting removal of the condition requiring the direct boring.

Mr. Bennett stated that it was not clear whether there was a grandfathered site plan or not. Mr. Bennett stated the alignment has not changed since 2003 with an exception of an area that is outside the RPA.

Mr. Fraley asked for clarification.

Mr. Kinsman stated that there is a valid site plan. He said the question is implementation and it requires a valid special use permit to actually implement. Mr.

Kinsman stated that construction cannot take place until the special use permit is attained. He stated that the proposed special use permit conditions would be imposed on this applicant regardless of whether the site plan was valid in 2003 or whether they submitted a new site plan. He further stated that condition #3 if approved this evening would be imposed on this applicant.

Ms. Hughes asked if the RPA designation is grandfathered.

Mr. Kinsman stated that as Mr. Thomas mentioned the site plan is valid, so there is no need for Chesapeake Bay Board approval. It would just go through administrative review. He stated that there will be a question if there are any deviations from the original site plan, but that would be determined at a later date.

Mr. Fraley asked if the applicant was requesting that the Planning Commission consider removal of this condition.

Mr. Bennett stated yes.

Mr. Fraley asked what would be the plan for the 600 feet that would be going through an already disturbed RPA.

Mr. Bennett stated that they came to an agreement with the EDA. The applicant would provide for labor and piping for the alignment through their EDA property; in exchange, the EDA would provide mitigation needs required to satisfy the RPA encroachments.

Mr. Smolnik stated that the applicant was asking for a water line up to 16 inches. The clarification was made to emphasize "up to".

Ms. Hughes asked for public comments.

Steven Yavorsky, Office of Economic Development (OED), stated that he was here to support changes to condition #3 of the SUP requirements. He stated that both EDA and the Colonial Penniman properties are designated general industry by the Comprehensive Plan, and both currently zoned for industrial uses. Mr. Yavorsky felt that the time constraint of completing this project before the current site plan expires is critical. He reiterated the EDA and the OED have agreed to environmental mitigation on the EDA property to compensate for the disturbed land that is currently within the RPA. Mr. Yavorsky felt that approving this application and removing condition #3 will revitalize a used building but also provide for future development of M-1 property and the James River Commerce Center.

Ms. Hughes closed the public hearing.

Ms. Jones made a motion for approval without condition #3 and to allow the water main to be up to 16 inches. She felt that this property is an industrial site and the



Planning Commission needs to be supportive of economic development.

Mr. Fraley agreed with Ms. Jones. This property is zoned industry and designated for industry. Mr. Fraley stated that he believed that a large portion of the BASF property was a superfund cleanup property to begin with. Mr. Fraley stated the Architectural Review Board of the Commerce Center is actively recruiting businesses. This service is needed to fully develop James River Commerce Center.

Mr. Krapf felt that this provides a public benefit for the individuals involved and also supports the long range strategic objectives of James City County.

Ms. Hughes commented that she felt this was a site that was classified as "brown field development." She explained this term and the need to use appropriate development in the appropriate area. Ms. Hughes felt this has been accomplished here. This area has had several contamination problems and she felt that this was an appropriate use.

Mr. Kennedy seconded the motion.

In a roll call vote the application was approved. (6-0). AYE: Billups, Krapf, Jones, Kennedy, Fraley, Hughes. (Absent: Obadal)

D. Z-9-07 Michelle Point Proffer Amendment

Ms. Kate Sipes presented the staff report concerning a request to amend the proffers of an approved residential development. The applicant was proposing amended proffer language in the way the 2004 dollar values, as stated in the approved proffers, are adjusted over time. The current language uses the Consumer Price Index (CPI); the applicant is proposing the Marshall & Swift Index be used. Staff acknowledged that the calculations in the staff report were not accurate. These figures have been corrected by the County's Proffer Administrator. The applicant proposed the base cash amounts in the approved proffers be adjusted each year using the Marshall & Swift Index. Staff noted that policies revised since 2004 significantly alter the standards for proffer packages, including the addition of the cash proffers for schools. Staff believed that it is not prudent public policy to approve proffer amendments and rezoning proposals in a piecemeal fashion; therefore, staff recommended denial of the proposed proffer amendments to the Board of Supervisors. Should the Planning Commission recommend approval to the Board, staff found the amended sales prices to be reasonable, but believed soft second mortgages assigned to James City County for a period of 15 years should be added to the amended housing proffer language.

Ms. Hughes asked if there were any comments/questions for staff.

Mr. Fraley verified his understanding of the figures presented.

Ms. Hughes asked if this case already had an approved site plan.

Ms. Sipes stated that there is an approved site plan.

Ms. Hughes asked if the only change to the proffer language was from the CPI to the Marshall & Swift calculation.

Ms. Sipes verified that this is true, that the base price in the proffer would stay the same; it would just be that the calculation method would be different.

Ms. Hughes opened the public hearing.

Mr. Joel Almquist spoke on behalf of the applicant, Health E Community. He stated that the request was to change the annual adjustment from the CPI to the Marshall & Swift Index. Mr. Almquist stated there was a need to update their prices due to delays of three years caused by wetlands, stream restoration, and mitigation permitting. The end result was an additional \$425,000 in mitigation costs along with increased building costs due to delays and increasing costs for material and labor. He stated that these delays have increased the per unit cost by \$18,000. He also stated that since 2005 the Marshall & Swift Index has been the standard annual adjustment used in proffer submittals to James City County. Mr. Almquist stated that the Marshall & Swift Index is a more comprehensive index that is focused on building costs and will on average generate higher and more accurate annual adjustments for cash contributions and for building costs. In 2004 when the proffers were originally approved, the proffered price for the affordable townhome unit was \$99,300. If adjusted for 2007 dollars, using the CPI Index the prices would be \$108,027. If the Marshall & Swift Index was used the price would be \$121,940. There would be an increase of \$13,000 in using one index over the other. In 2004, the single family affordable unit was approved at \$110,000. Using the CPI Index the price would be \$119,688 and using Marshall & Swift it would be \$135,080. The difference between the two methods would be \$15,000. Mr. Almquist also noted that the Marshall & Swift adjusted price for a single family home is still considered affordable by the County's standards.

Mr. Almquist stated that when adjusting for price using the Marshall & Swift Index the cost to the developer for subsidizing the twenty two affordable units ends up being just over \$1,000,000. He also stated that the applicant would like to change the cash contributions to the Marshall & Swift Index in order to make it more consistent. When adjusted using the CPI Index the cash contribution would increase from \$750 to \$815. Using the Marshall & Swift Index it would increase from \$750 to \$976. Mr. Almquist stated that using the Marshall & Swift would provide an overall benefit to the County of \$28,000 over using the CPI Index. Mr. Almquist showed a breakdown of housing projects that have been submitted and approved by the County with an affordable component. He showed that 70% of the affordable units built are built by Health E Community. He stated that 30% if the units that Health E Community builds are affordable. Finally he noted that due to the applicant's affordable program, there were 10 homeowners in 2006 that were given forgivable deeds of trust in the amount of \$300,000. Mr. Almquist stated in 2007, the numbers rose to 52 homeowners with forgivable deeds of trust totaling over \$1,000,000. All of these homes were priced at \$160,000 or below.

He stated that by allowing the adjustments according to Marshall & Swift index, the County will allow the applicant to continue to provide affordable housing within the County.

Mr. Kennedy stated that he has spoke with individuals and businesses in the community, and was informed that some building costs have decreased. Mr. Kennedy asked why this criteria is used in their proposal.

Mr. Almquist stated that since the original case was approved in 2004, the applicant's building costs have increased.

Mr. Kennedy asked for a comparative to show the Planning Commission.

Mr. Almquist stated that he did not have that information with him.

Mr. Kennedy stated that information is something he would like to see before he would use it in the equation to change the pricing of affordable housing. Mr. Kennedy felt these changes were substantial. He asked Mr. Almquist what kind of allowance does the applicant leave for a changing market, that would factor in inflation, a rising market, etc.

Mr. Mike Ware, partner in Health E Community and counsel to the applicant spoke. He stated that their company has not seen a decrease in prices for cost and labor. The company buys in volume and when the market shifts the company's margins are so fine they do not see the decrease in costs. Mr. Ware did mention that the County increased its proffer requirements to \$17,000 and he felt this was largely due to increased costs that the County was incurring. He stated that the only way these projects function is with the forgivable deeds of trust. He also stated that the market priced units carry the load for the affordable units. The company loses money on them. Mr. Ware stated that if the market rate units do not sell, the company does not have the money to support the affordable housing. He further stated that using the Marshall & Swift Index is tied to building costs whereas the CPI is tied to consumers. When applying the Marshall & Swift, he stated the recovery to the County is greater and the expense to the builder is greater with respect to proffers. Mr. Ware stated that the applicant was here to state that the market has changed, and the goal is to get everything on equal footing. Everything currently is adjusted by Marshall & Swift.

Mr. Kennedy verified that Mr. Ware stated his prices have escalated.

Mr. Ware stated yes.

Mr. Kennedy asked for the numbers to verify the rising costs.

Mr. Ware said the applicant can provide this.

Mr. Kennedy asked about the wetlands and mitigation costs. He asked whether

the applicant knew about these costs at the beginning of the project.

Mr. Ware stated that two environmental groups and James City County reviewed the site. When the company purchased the property, there were two studies done that stated there were no environmental issues. There was some discrepancy concerning 400 feet. DEQ and Corp of Engineers determined the land in question to be classified differently. In order to correct this problem, the company had to buy bottom land in New Kent County and put a deed of easement on it, so that the Corp and DEQ controlled it.

Mr. Krapf spoke about the requirement of soft second mortgages, and asked if they would be open to this?

Mr. Ware stated that they would not be opposed to this. He stated that this program is one of their trademarks.

Mr. Fraley asked for some clarification on Ms. Sipes spreadsheet.

Mr. Ware verified the numbers, stating what the original request was in 2004. It took some time working with the County to determine what the dollar amounts would be using Marshall & Swift.

Mr. Almquist stated that the soft second mortgage was included with the original request.

Mr. Fraley felt he was put in a position to rifle shot proffers. This particular proffer benefits the applicant. Mr. Fraley wanted the applicant to understand the complexity of the case. The project was approved with an entire set of proffers and this application is looking to change one particular section.

Mr. Ware did state that there is some benefit to the County with the increased amounts in the cash proffers using the Marshall & Swift Index.

Ms. Hughes asked for public comments.

Ms. Hughes closed the public hearing.

Mr. Kennedy had some difficulty deciding on this case without some kind of figures to back up the increased costs that the applicant was stating. Mr. Kennedy stated he would like to see this case come back before the Planning Commission. If this case goes to the Board of Supervisors, he feels that some documentation showing the increased costs should be included. Mr. Kennedy stated his inclination is to deny this application. He feels that when it comes to affordable housing, that when agreements are made, then it is final. When markets change and costs rise and fall, that is a risk a business owner takes.

Mr. Kennedy made a motion for denial.

Mr. Ware stated that he had the figures, but Mr. Kennedy said it was irrelevant at this point.

Mr. Billups stated the Policy Committee is working on the affordable housing definition. From a process perspective, the Board of Supervisors outlines those areas in which the County will accept proffers. As a business person, one takes a risk. This is all part of the process of projecting the costs. Mr. Billups stated he was against this application. By increasing the prices, he feels like it's another barrier and handicap. Mr. Billups would like to wait until the Policy Committee makes a recommendation to the Planning Commission regarding affordable housing.

Ms. Hughes stated this was a difficult case to review. It is weighing what seems to be a minor change in an existing proffer, but also the principle of allowing change to a couple of proffers, not the entire package. The entire package is what is approved by the Board. She would recommend denial of this case.

Mr. Fraley stated that it makes sense to use the more current calculation and the one used more often. He stated he was uncomfortable about approving with the stipulation of the soft second mortgages. Mr. Fraley would recommend denial.

Ms. Jones thanked the applicant for the opportunity for citizens to purchase affordable homes. She stated she had problems with piecemealing the proffers instead of considering the entire package. She would recommend denial.

Mr. Krapf seconded the motion.

In a roll call vote the application was denied. (6-0). AYE: Billups, Krapf, Jones, Kennedy, Fraley, Hughes. (Absent: Obadal)

E. SUP-21-07 Tiki Climbing & Grinding Professional Tree Services

Ms. Ellen Cook presented the staff report for a special use permit for contractor's office and storage. The applicant, Mr. Soderholm is pursuing this application in order to bring his operation into conformance with the zoning requirements. Staff noted that the operation on the property exceeds the Home Occupation standards as defined in the Ordinance, and therefore falls in the special use permit category due to two factors: having outdoor storage of equipment on-site, and having employees visit the site. The project is within the Yarmouth Creek Watershed. Based on impervious stormwater management/BMPs will be required for the project. The property is designated as Low Density Residential on the Comprehensive Plan Land Use Map. Staff does not find the proposal consistent with the Low Density Residential Comprehensive Plan designation, consistent with the character of the surrounding area, and does not find that the size of the parcel, and the location and intensity of the use on the parcel, allow for conditions which would sufficiently overcome these concerns. For these reasons, staff recommends denial of this application to the Planning Commission.

Ms. Hughes asked for any questions for staff.

Ms. Jones asked if it were possible to have a case come back before the Planning Commission for review within a certain time period. This would allow for feedback if there were any issues after it was approved.

Ms. Cook answered that conditions such as those could be written into the special use permit.

Mr. Kinsman stated that the County generally tries to avoid sunset type clauses. The conditions where they are used would be for temporary uses, where there is a specific time when the use will end. He would not recommend using these types of clauses.

Mr. Kennedy asked for examples of A-1 uses.

Ms. Cook named several, for example, farmers' markets, general agricultural, greenhouses, houses of worship, home occupations, etc.

Mr. Kennedy asked if the applicant's business is considered agricultural.

Ms. Cook believed that the applicant's use is being classified as contractor's office and warehouse.

Mr. Sowers stated these types of cases have are classified as a contractor's office and warehouse as opposed to an agricultural use.

Mr. Kennedy asked how much business is conducted at the residence.

Ms. Cook stated that it was her understanding that the home was a base of operations. The employees come to the site, the equipment is stored there, but the employees go to the place of work and then return at the end of the day.

Mr. Fraley asked Mr. Sowers about the designation. He asked about the applicant's use in A-1 zoning, the site seemed to be relevant in A-1 zoning, then when compared to the Comprehensive Plan, the site is deemed Low Density Residential. This is a case where the Zoning does not match the Comprehensive Plan designation. Mr. Fraley asked for guidance.

Mr. Sowers answered that the guidance that the professional planning staff uses in legislative cases is to use the Comprehensive Plan as the primary guide. The Zoning Ordinance is used if asking for something permitted by right.

Mr. Fraley stated that this use has relevancy to A-1 because the Ordinance allows it with a special use permit, although not by right.

Mr. Sowers noted that the ordinance allow the Planning Commission to take into consideration the impact of the uses when listing them specially permitted.

Ms. Hughes mentioned another case where a similar use was approved. Ms. Hughes asked Ms. Cook to briefly discuss the other case and its relevance here.

Ms. Cook spoke about a case where the Comprehensive Plan designated the site as Rural Lands. It has a different set of language in making a recommendation as opposed to the Low Density Residential in this case. The second factor was the character of the surrounding area, the other case involved an area where there were some residential sites, but also primarily agricultural and forestall uses. With this current application, it is generally residential, and the commercial sites surrounding it are generally non-conforming and pre-date the Comprehensive Plan. Another factor is the size of the parcel. The other application involved a much larger site and was able to mitigate some of the other factors.

Mr. Sowers also mentioned that the previous applicant provided some public benefit; they provided an unusually large buffer across the front of the property. It helped maintain the character of the surrounding area, plus the use was towards the back of the property. With the buffer, it appeared to be a rural site.

Mr. Kennedy asked what the surrounding property was zoned.

Ms. Cook stated that the northern area is general agricultural with some mixed use to the western side. To the south is R-8, with R-2 to the west.

Mr. Kennedy questioned whether it was generally R-8 or A-1.

Ms. Cook answered that it was equally R-8 and A-1 with some R-2 and mixed use.

Mr. Kennedy asked whether R-8 had some agricultural uses permitted.

Ms. Cook said yes.

Mr. Sowers stated that lot size needs to be considered in this case. Generally when a property is zone agricultural, minimum lot size is three acres. On an agriculture zoned property, it is a much larger piece of land, so that the impacts can be internalized.

Mr. Kennedy stated that the Zoning Ordinance needs to the same as the Comprehensive Land Designation. There have been several cases where there is no land use predictability. He felt that the County does not benefit nor does the landowner and that the County is holding the homeowner accountable.

Ms. Hughes opened the public hearing.

The applicant, Mr. Soderholm, 6293 Centerville Rd, stated that he is asking to be able to store three trucks and four trailers. He then asked Mr. Kevin Grady, a friend to speak for him.

Mr. Kevin Grady, 400 Richardson Run, spoke on behalf of the applicant. Mr. Soderholm obtained his business license in 2004 and his business has grown to include two full time and two part time employees. Mr. Grady stated the nature of the business is clearing land, grinding stumps, trimming trees, clearing trees, especially after storms etc. Mr. Soderholm has established his services as an integral part of the community and is the primary vendor for several construction companies that are local. Mr. Grady stated that both of the adjacent properties on Centerville road store trucks and trailers for commercial and personal uses. One of these involved a freight transportation cattle feed business. Mr. Grady stated that the presence of trucks in this neighborhood is not unusual. Mr. Grady further explained that Mr. Soderholm's business is a small scale, tree trimming service. There are no semi trucks, just pick up trucks. The trailers are those that can be pulled by a pickup truck. They are no larger than a boat trailer. Mr. Grady stated that when Mr. Soderholm purchased the property, his intentions were to further his business because it is zoned A-1. Mr. Grady stated there is no actual work done on the property. He stated the nature of the business involves employees coming in the morning and then returning at the end of the day.

Mr. Grady stated that the staff report stated there are two employees that park their trucks on the property during the day. He stated this is inaccurate. Mr. Grady said that all of Mr. Soderholm's employees are either dropped off or walk to work every day. Mr. Grady stated that the use of this property does not alter the nature of the neighborhood, and he understands the concerns of the neighbors. Mr. Grady believes that the neighbors are witnessing a work in progress type of situation. Mr. Soderholm has been developing the property since 2006. He stated the landscaping is not entirely complete. Mr. Soderholm has begun to construct a six foot fence that will surround the property that will screen the back yard, and completely covering the back yard area where the equipment will be stored. Mr. Grady stated the property will be in strict conformance with the surrounding parcels. Mr. Soderholm's property will not look like a warehouse or an industrial freight yard. Mr. Grady said that the appearance of the neighborhood will not be offended, and the County's Comprehensive Plan will not be violated. Mr. Grady showed pictures from Settlers Lane to give an idea of what work is going on at this point. Mr. Grady stated Mr. Soderholm has taken efforts to landscape a berm to comply with the recommendations of landscaping.

Mr. Grady mentioned another special use permit application where the Comprehensive Plan designation did not match the intended use. The Planning Commission approved the application and believed the use did not have an additional impact on surrounding zoning and development. Mr. Grady asked that the Planning Commission follow this line of reasoning to approve Mr. Soderholm's application. Mr. Grady also stated that his business is not completely appreciated until times of crisis. Mr. Grady felt that there is a public benefit in providing this service, at a reasonable cost,



while providing steady employment to others, and by giving something of great value to the community. Mr. Grady stated that this is Mr. Soderholm's livelihood, and provides employment to others. He stated that Mr. Soderholm has tried to address issues and concerns with his neighbors. This included applying for a special use permit, planting trees, building a fence to screen the equipment, etc. Mr. Grady stated that Mr. Soderholm will comply with any conditions of the special use permit.

Mr. Kennedy asked if the applicant would be agreeable to limited hours of operation.

Mr. Soderholm said he would. He stated one of the conditions of the special use permit would be that hours of operation would be from 6:00 am to 6:00 pm. He also stated that his normal starting time is 7:00 am; no trucks would be started until roughly 7:15 am, leave the site, and return around 5:30 pm.

Mr. Kennedy asked if Mr. Soderholm would be agreeable to limitations of future equipment.

Mr. Soderholm stated he was informed he had a 5800 square foot parking pad, which has all the equipment he has outside.

Mr. Kennedy stated his concern was that as his business grew, he would have future acquisitions, future uses, and larger equipment that might be stored such as large bucket trucks.

Mr. Soderholm stated he would be more than willing to come to some agreement concerning future acquisitions. He stated he had no plans at the moment to purchase any more equipment that would be over the height requirement.

Mr. Kennedy asked about the weekend hours of operation.

Mr. Soderholm stated that on weekends they begin work around 8:30 am and it is normally half days.

Mr. Fraley asked about condition #4 which stipulates that there will be no work on Sundays.

Mr. Soderholm stated his company does not operate on Sundays.

Mr. Fraley asked about Mr. Soderholm's concerns about the limitations on the storage area mentioned in condition #2.

Mr. Soderholm's concern was that about the way he parks the equipment in a line. He wouldn't exceed the 5800 square feet; he would just park the equipment in a line for easy access, and this sometimes means parking outside the gravel area.

Mr. Fraley asked Ms. Cook for clarification.

Ms. Cook stated that under the Ordinance it is required for outside storage to have an all weather surface. She stated that in order for Mr. Soderholm to continue to park in the manner he has been, additional all weather surface, gravel, or similar substance would need to be put down. Staff felt that expanding the current area in the back would make the use more intense that is why it was recommended that Mr. Soderholm be limited to the area that is currently graveled.

Mr. Soderholm stated that if that is a requirement he would happy be to comply.

Mr. Fraley asked Mr. Soderholm about the sign condition presented in staff's report.

Mr. Soderholm questioned whether he would be only allowed a building sign or could he have a yard sign.

Mr. Sowers stated that what is stated in the report is drawn from the Home Occupation definition in the Zoning Ordinance for James City County.

Mr. Soderholm stated he will comply with whatever is expected.

Ms. Hughes asked when the property was purchased, was the applicant aware of any bylaws or covenants that might have been associated with the property.

Mr. Soderholm stated there was nothing presented to him when he was purchased or when he had the closing of the property. He stated that some information was given to him this week about some covenants from the 1970's. He stated that he received a letter from James City County that these covenants do not apply.

Ms. Hughes asked about the buffer area that has been cleared. She stated that the juniper ground cover will not provide a buffer.

Ms. Sowers stated that there is a special use permit requirement that would address this.

Ms. Cook stated that condition #2c addresses the requirements for the rear of the lot but also addresses the 50 foot along Centerville Road. The report specifies that the Landscape Ordinance be applied to that area.

Ms. Sowers stated the commercial standard is applied in this case. He stated that the Commission when deciding this case may want to decide whether the commercial or residential buffer standard needs to be applied.

Mr. Soderholm stated that either side of the berm did have 7 foot crepe myrtles but during the beautification process, one of his employees inadvertently cut these down.

He stated the future plan was to put 10-15 crepe myrtles across the berm to raise the height from Centerville Road.

Ms. Hughes asked for public comments.

April Stinger, 6 Settlers Lane, spoke about the berm Mr. Soderholm mentioned. She said his lot was overgrown until recently. Ms. Stinger has children that are at a bus stop at the end of the street and believes it is a safety issue. She stated Mr. Soderholm does not do background checks on his employees. She felt that it is putting a business on a very small street. She stated the neighborhood has only about 18-20 homes. Ms. Stinger has lived here since she was 2, and has great emotional attachment to this neighborhood. She stated that Mr. Soderholm has lived there for 10 months and comes and clears the trees. She felt that Mr. Soderholm will not keep up the property unless the County is constantly watching him. She felt strongly that this is not a place for a business; the property is not even an acre, and felt that her children should have a safe place.

Kristin Wilson, 16 Settlers Lane, purchased her property because of the small neighborhood and the beautiful wooded entrance to their street. Settlers Lane is a small street with very little traffic. She felt safe with her children outside, and enjoys the sense of community this neighborhood has. Ms. Wilson stated that when Mr. Soderholm purchased the property he tore down every tree, bush, and shrub on the lot leaving his neighbors without any privacy. She felt that Mr. Soderholm did not show any respect for his neighbors or their investment they have made in their properties. She said Mr. Soderholm placed a large sign on his property. She also stated that his equipment is not always parked behind his home. She said the equipment is sometimes in the driveway and at times the equipment in the street blocks the neighbors from having access to the road. Ms. Wilson said that several times when the children are at the bus stop, vehicles are leaving Mr. Soderholm's home driving too fast, creating a dangerous situation. Ms. Wilson stated that Mr. Soderholm's employees congregate in his front yard early in the morning, are very noisy, and the neighbors are awakened by 6:00 am by starting vehicles. Ms. Wilson was concerned about future considerations, and that this may open it up for other businesses. She felt that Settlers Lane is residential, and felt that Mr. Soderholm should have taken that into consideration before placing his business here. She asked the Commission to deny this application and keep this street residential.

Robert Scouse, 3 Settlers Lane, showed the layout of the lots on Settlers Lane. He showed the view from looking down Settlers Lane, and showed the turnaround. He took some pictures of some of the homes on Settlers Lane, their front and rear views and uses. Mr. Scouse felt that this subdivision does not need a business at the entrance to it. He said he has lived on Settlers Lane for thirty years and there has never been a business in that area. Mr. Scouse stated he was against this special use permit. He stated that the site's address is 1 Settlers Lane, not 6293 Centerville Road. He also stated that the County's tax map verifies this. He stated that the only entrance is Settlers Lane and one has to go right past his business. Mr. Scouse stated that as soon as Mr. Soderholm received his license, the sign was placed on the corner of Settlers Lane and Centerville

Road. He stated that Mr. Soderholm never applied for the special use permit until after his business began. He felt like allowing this business would change the character of the subdivision. Mr. Scouse requested that the Planning Commission deny his application and forward the case to the Board of Supervisors with a recommendation of denial.

Ms. Diane Flitchko, 5 Settlers Lane, has lived in this area for 35 years. She stated that the Warhill Project had made a significant change in this area, with the road being widened. She passes by Mr. Soderholm's property every day and felt like he has made some significant, positive improvements in the property. She felt it was the nicest house in that community and he provides a valuable service to the community. She was also concerned about the hardship to him and to his family if this is not approved. Ms. Flitchko felt that the equipment being stored is not a hindrance. She asked the Planning Commission to support this special use permit and allow him to have his home based business.

Ms. Hughes closed the public hearing.

Mr. Krapf stated this was a difficult case for him. He said there were inconsistencies with the Comprehensive Plan and Zoning Ordinance. He also stated that Settlers Lane is clearly residential. Mr. Krapf also expressed concerns that the photos shown by the applicant were different than those shown by a resident. He stated the biggest issue was the proximity of the school bus stop to the location where the vehicles are pulling out of. There is a potential safety issue. Mr. Krapf also stated that this case differs from the Johnny Timbers case in that the lot size is much smaller making the use more intense. Mr. Krapf does sympathize with the applicant; but his inclination is to deny this application.

Mr. Fraley stated he drove by the site. For him this is a highly residential area. Mr. Fraley stated that while he supports small business in James City County, he believed that this business does not fit in this neighborhood. He felt like the big trucks would be noticeable. Mr. Fraley stated that the lot size was too small and he cannot support the special use permit.

Mr. Kennedy stated his concerns were looking at the different set of pictures. He felt that the Zoning does not match the use. He further stated that he would like to see better definitions with allowable uses. Mr. Kennedy felt there are inconsistencies in how things are applied. Mr. Kennedy stated that there are several businesses in his neighborhood and his zoning is R-2. He also stated this was a difficult case. He was also concerned with the sign. He felt if the access was on Centerville he would feel more comfortable with it. He would like to see more done with Mr. Soderholm's application. Mr. Kennedy would like to see more concessions, and also would like Mr. Soderholm to work with his neighbors. Mr. Kennedy's recommendation would be for the applicant to request a deferral and try to work something out with the neighbors.

Ms. Jones agreed with Mr. Kennedy. She stated that there were extensive conditions in the special use permit limiting growth, but that she would support a

deferral. She felt this would give Mr. Soderholm and his neighbors an opportunity to work something out. Mr. Jones also had concerns with the bus stop and the equipment being used. She did feel however that with all the businesses on Centerville Road there was some compatibility. Ms. Jones expressed concerns over the fact that his business is on the entrance to a residential subdivision.

Mr. Billups felt that this was a “not in my backyard” issue. Mr. Billups saw nothing wrong with the business and had a hard time denying him a livelihood. He also stated that Mr. Soderholm employs two individuals, plus provides for himself and his family. He also felt that this was a case where there were inconsistencies with the Comprehensive Plan. Mr. Billups felt that this can be negotiated and that Mr. Soderholm should meet with his neighbors and try to work something out. Mr. Billups stated he would support a deferral.

Mr. Soderholm requested the Planning Commission to defer his case. He also stated that he previously met with the homeowners, and had agreed to place a twenty foot swinging gate to improve the view of the equipment. He also stated he would comply with everything staff had requested.

Ms. Hughes stated that this was a difficult situation because of the human element involved. She also suggested that Mr. Soderholm might want to consider constructing a bus stop for the children, since this was a major concern with the Commissioners and neighbors.

Ms. Hughes reopened the public hearing and stated it will remain open until the next meeting.

Ms. Jones made a motion to defer the case until the November 7<sup>th</sup> meeting.

Mr. Krapf seconded the motion.

In a roll call vote the application was deferred. (6-0). AYE: Billups, Krapf, Jones, Kennedy, Fraley, Hughes. (Absent: Obadal)

Ms. Hughes called for a five minute break at 9:35 p.m..

Ms. Hughes resumed the meeting at 9:45 p.m.

F. ZO-7-07 / MP-5-07 / SUP-20-07 Powhatan Terrace

Mr. Matthew Smolnik presented the staff report to rezone 16.5 acres at 1676 and 1678 Jamestown Road, and 180 Red Oak Landing, from LB, Limited Business and R-2, General Residential to R-2, General Residential with Cluster Overlay, with proffers. The parcels associated with this application are designated low density residential and conservation area by the Comprehensive Plan. If approved, the developer will redevelop the property with six 2-story buildings containing a total of 36 townhouse units for sale at

a gross density of 2.2 units per acre. Staff believes this proposal will not negatively impact the surrounding properties. Staff believes the proposed densities meet the intention of the Comprehensive Plan with respect to offering particular public benefits to achieve a density of 2.2 dwelling units per acre. In staff's opinion, the public benefits include: lessened traffic on Jamestown Road when compared to potential by-right uses, appropriate buffer along a Community Character Corridor, preservation of mature trees along Jamestown Road, removal of underground storage tanks, parking lots located behind the buildings fronting on Jamestown Road, pedestrian trails, sidewalks, curb and gutter construction, implementation of the County's Archeology Policy, implementation of the County's Natural Resource Policy, and implementation of the County's Streetscape Guidelines. Based on this information, staff recommends that the Planning Commission recommend approval of this project to the Board of Supervisors with the acceptance of the voluntary proffers.

Mr. Smolnik also stated that before the day of the meeting, staff had not received any opposition to this project. The day of the Planning Commission, he received five letters and/or emails.

Mr. Sowers stated the names and/or organizations who had written that they were opposed to this case. They were listed as the following: Michael C Teller, President of TK Asian Antiques, Lakewood Homeowners Association, Friends of Powhatan Creek Watershed, James City County Citizens' Coalition, Andrew Burge and Bronwen Watts.

Ms. Hughes asked for any questions for staff.

Mr. Krapf stated that the some of the opposition letters stated that this plan is not consistent with Powhatan Creek Watershed Management Plan and asked for clarification.

Mr. Smolnik deferred to Environmental Staff to answer that question.

Mr. Mike Woolson stated that staff believes that this plan is consistent with the goals outlined in the Powhatan Creek Watershed Management Plan. Mr. Woolson listed several items that the applicant has addressed such as preserving contiguous forest areas, targeting watershed education through the turf love and LID management proffers, used better site design principles and pledged to focus on fecal coli form removal through their stormwater pond. Mr. Woolson stated that during the site plan approval process the Environmental Division will make sure that this is complied with.

Ms. Jones asked if the Environmental Division has taken into consideration concerns about existing runoff that comes across Jamestown Road that comes onto this property.

Mr. Woolson stated that they have not considered it as part of the rezoning, it would be considered as part of the site plan issue and dependent on the applicant and how they wanted to handle that stormwater.

Mr. Fraley asked about upfront environmental inventory and pre-assessments. Mr. Fraley felt this seemed to be an ideal parcel to have this inventory.

Mr. Woolson stated that they have received a partial response to this. He stated that the applicant has surveyed the wetlands line and RPA line. He stated that the floodplain elevation is based on the Powhatan Creek floodplain which is 8 ½ feet above mean sea level. Mr. Woolson stated that has been shown on the plan.

Ms. Hughes asked about the latest adopted priorities of the Powhatan Creek Watershed Management Plan. She asked about two priorities, one stating open space design should be focused on the riparian buffer areas and the other was stream restoration. She stated the applicant's environmental consultant did an assessment of the stream between the adjacent property and this property and noted severe degradation and also mentioned a pipe feeding into that stream. Ms. Hughes suggested that this pipe presents more fecal coliform danger than what is potentially coming off the site. She asked whether the Environmental Division had any discussions with the applicant about addressing these two priorities with the Powhatan Creek Watershed Management Plan.

Mr. Woolson stated that the Environmental Division and the applicant have had discussions internally on those two issues. He stated that staff felt the pipe outfall condition could be corrected by a stilling basin or some other type of hard armoring. He also stated that the storm water coming through that pipe has degraded that channel. In Mr. Woolson's opinion, to do a restoration on that channel would eliminate the buffer that is out there. Mr. Woolson stated that the applicant has pledged a 50 foot intermittent stream buffer on that channel. He stated to restore that channel to any kind of stability would require clearing out those mature trees and replacing with smaller vegetation.

Ms. Hughes stated that it is a trade off that there is no filtering for the stormwater that is already there versus filtering associated with the intermittent stream buffer on the site.

Mr. Woolson said it is a tradeoff. Staff felt that the intermittent stream buffer was more valuable and the stream degradation would repair itself over time once the velocity control was placed at the end of the outfall pipe.

Ms. Hughes asked if there was a condition to place a velocity control at the end of the outfall pipe.

Mr. Woolson stated no it was not a condition of the rezoning, but would be handled during site plan review.

Ms. Hughes opened the public hearing.

Mr. Geddy spoke on behalf of the applicant, Associated Developers Inc. Mr. Geddy stated that this is a small local development company that knows the County and has worked in the County quite extensively. The Company has been involved with the

neighbors and has held meetings from the beginning of the project. Mr. Geddy showed diagrams of the site, existing conditions, the forested areas, the marshlands and where the buildings will actually be located. He stated this was a small project constructing 36 two story townhomes clustered around a central park area. He stated that these are low maintenance, energy efficient homes, that are targeting a blended age group. Mr. Geddy stated the projected sales prices would be in the range of \$265,000 and \$295,000. He stated that this project was compatible for the area, with the Raleigh Square townhomes nearby. Mr. Geddy stated three of the townhomes were designated to be sold for \$195,000 and that there will be a mandatory homeowners' association that will be responsible for all exterior maintenance, buildings and landscaping. He stated that the application has public benefits, such as environmental protections, community character corridor provisions, bringing this parcel into compliance with the Comprehensive Plan, less traffic generated than with a by-right development, and has a positive fiscal impact with the new school proffer policy. Mr. Geddy stated this application has a proffered stormwater plan that meets and exceeds the County's requirements by use of bioretention basins, enhanced slope stabilization, and enhanced outfall protection. He also listed the measures that were over and above the requirements for stormwater management. These include the use of rain barrels, porous pavement and the use of dry swales. Mr. Geddy showed by use of diagrams where these would be located. He stated the wetlands on site have been surveyed and documented by the Army Corp of Engineers. Mr. Geddy also stated that the Phase I Environmental Survey has been completed which showed underground fuel tanks which will be removed. He also stated the homes will be built under the Earthcraft and Energystar programs. He stated these are programs where inspectors come out during the building process and then certify the buildings upon their completion.

Mr. Geddy stated that the first group of townhomes is set about 165 feet from Jamestown Road. He stated that there is a 150 community character corridor buffer along with a 15 foot building setback. He stated that there are a large number of trees in that buffer that would be saved with this project that would not otherwise with a by-right development. Mr. Geddy stated that with a by-right commercial use there could potentially be a 50 foot building setback and nothing more. He stated that landscape berms would be used to further enhance the buffer. Mr. Geddy showed pictures of the buildings and the view from Jamestown Road.

Mr. Geddy stated that this project brings the parcel within the guidelines recommended by the Comprehensive Plan. He stated that traffic would be less with this project, and the applicant has proffered turn lanes. He also stated the requirements in the Cluster Ordinance have been fulfilled with regards to streetscape guidelines, sidewalks, recreation, trails, and curb and gutters with appropriate locations. Mr. Geddy asked the Planning Commission to recommend approval to the Board of Supervisors.

Ms. Hughes asked about the number of townhomes, 35 on the plan but 36 listed. She asked for clarification on the type of townhomes listed.

Mr. Geddy stated that the plan showed 35 but that it was decided to combine two



of the larger units into three units.

Ms. Hughes asked Mr. Sowers about the building type, the one listed was type "B".

Mr. Sowers stated that the Ordinance sets a range of the number of units that can be in buildings. He stated that in this particular case it is 2 – 4 individual dwelling units in each building.

Ms. Hughes asked when they show a row of townhouses, for instance seven in a row, that it would really be only four in a row.

Mr. Sowers stated under the designation chosen it could only be four in a row.

Ms. Hughes stated that what is shown on the master plan can not actually be built.

Mr. Sowers stated that there is a binding master plan on a nonbinding master plan. He stated there is a note that states the unit type that will be built on the binding master plan.

Ms. Kensett Teller, owner of the businesses, TK Asian Antiques, and TK Arts Inc., which are located adjacent to this site spoke about the traffic that will be generated. Her business generates 60 trips a day along with the church across the street. She also stated her concern about how close the property was to the creek. Ms. Teller did compliment the applicant on all the meetings they have had with citizens' organizations and adjacent property owners. She felt there are environmental concerns with the property backing up to the Powhatan Creek Watershed. She felt that there will be too much damage to the watershed and wetlands. Ms. Teller felt that this application is not in compliance with the Powhatan Creek Watershed Management Plan. She felt that this application does not show a public benefit. Ms. Teller felt that this project will add to the problems with drainage and flooding in that area. She felt that no rezoning or special use permit should be approved until the County gets its water and infrastructure problems under control. Ms. Teller stated that Board of Supervisor Jay Harrison has asked for a pause in approving rezonings and special use permits, and the James City County Concerned Citizens Coalition has asked that these not be approved until the cumulative impact of such development projects has been established. Ms. Teller asked that the Planning Commission deny this application.

Ms. Sarah Kadec, 3504 Hunters Ridge Rd, spoke on behalf of James City County Citizens' Coalition. She stated that the applicant has been extremely helpful with her organization with information requested. Her organization is always concerned with development in the Watershed and any further damage to Powhatan Creek. Ms. Kadec stated that her organization would have hoped there would have been affordable housing in this development. She also stated that one of the objectives of her organization was that no rezonings or special use permit requests should be considered until the cumulative impact of such development projects has been established. Ms. Kadec asked that the Planning Commission deny this application.

Mr. Gerald Johnson, of 4513 Wimbledon Way, thanked the Planning Commissioners for their time, and also thanked the applicant for his work on the application addressing the environmental concerns. Mr. Johnson stated that he would like to see the completed Environmental Survey done, not just Phase I. He felt that before building there should be a complete assessment of the resources that are there. He also noted how the streams are degraded on the west and east sides. Mr. Johnson stated that if water is released at anything above sea level and this close to the creek, it will create more degradation. Mr. Johnson suggested taking another look at the BMPs that were proposed with this application. He stated that these applications need to have some kind of stream restoration funding. Mr. Johnson spoke about the need to keep the water on the site and handle it on the site, and the need to release very little water. He stated his major concern with the health of the streams. Mr. Johnson stated he was told that the cumulative impact of a single family home will cost a deficit of \$ 1000 over the amount proffered, so he felt that each individual unit in this development will not be a plus in the long term. Mr. Johnson requested the Planning Commission deny this application.

Mr. Craig Metcalf, 4435 Landfall Drive, stated he lives on the other side of the Powhatan Creek. He stated that he was impressed with staff, Commissioners and the public that are concerned with protecting the creek. He stated that this creek is one of the most biodiverse creeks in the south. Mr. Metcalf stated the creek has a lot to offer and that is why it needs our protection.

Mr. John Schmerefeld, 172 Red Oak Landing Rd, spoke as a nearby property owner. He felt that the applicant was trying to put too much on this site. He had concerns with the underground storage tanks. He was told by the previous owner that there were four tanks on this site and that they are or have been leaking. Mr. Schmerefeld did find some information on the DEQ website concerning the tanks. He found information on three of the tanks. He felt the possibility of these tanks leaking needs to be investigated. Mr. Schmerefeld felt that if the tanks are leaking this supersedes the rezoning case. He had some question on the proffer stating that no Certificate of Occupancy will be issued until the tanks are removed. He felt that this was too late, and this should be done early on. Mr. Schmerefeld had a question whether there was a fourth tank. He also asked what the tanks contained. Mr. Schmerefeld asked the Planning Commission to grant an indefinite deferral until the issues concerning the tanks have been addressed.

Ms. Ann Hewitt, spoke representing the Friends of Powhatan Creek Watershed. She stated her concerns about the water issue and questions concerning the tank. She mentioned an article in the Virginia Gazette stating a study was done concerning the BMPs in the County. She said it was stated the area BMPs in the County do not sufficiently slow down stormwater. She requested that the Planning Commission either deny this application or indefinitely defer it until the issue with the storage tanks is addressed.

Mr. Michael Brown, owner of the property of the proposed development spoke.

He stated that Mr. Stevens and Mr. Philips approached him with this offer. He stated that these individuals are known for addressing citizens' concerns. Mr. Brown stated that his original application was denied, and he is not of unlimited resources. He stated that he has to approach this property from a business standpoint. He also stated that if this application is not approved, he may have to develop it as a by-right development. Mr. Brown stated that economically he cannot keep going on, and he thought he had found the best situation.

Mr. James Peters spoke addressing Ms. Hughes previous question concerning the housing type "B". He stated that there was a typographical error on the plan.

Mr. Rich Costello stated that these requirements are stated on all master plans. The incorrect one was put on this plan.

Mr. Peters spoke about the emphasis on the open space planning toward Powhatan Creek. He showed some charts illustrating the qualifying space for an open cluster. He stated that this project also contains 3 acres of developable lands that are preserved and that are downstream from the development.

Mr. Fraley asked Mr. Woolson about the citizen's comments about the inefficiency of the BMPs.

Mr. Woolson asked Mr. Johnson to restate his comment.

Mr. Johnson stated he had done a study on BMPs 18 years ago. Mr. Greg Hancock at William and Mary has done a similar study with similar results. He had found that they were the wrong shape, had the wrong capacity and involved the wrong release discharges.

Mr. Woolson stated that he has not seen the study and the findings depend on which BMPs he studied, because BMPs may have been designed under different criteria. He did state that the current one year criteria have shown significant decreases in downstream channel erosion. Mr. Woolson said that the problems are in the older BMPs that were designed with the two year criteria. He stated the footprint of the BMP in this project will be addressed with the site plan review.

Mr. Fraley asked if there were any discussions with the applicant on channel restoration.

Mr. Smolnik stated there were not.

Mr. Fraley asked if the applicant considered any proffers addressing stream channel restoration.

Mr. Geddy said they have not considered it, but with the outfall protection the stream will heal itself.

Mr. Thomas, Director of Environmental Division spoke on the BMP issue. He stated the BMPs are the best way at this point to control stormwater, although volume is a problem. He stated that volume works on the channels and can erode them. He stated that is why staff looks for a mixture when it comes to a stormwater management plan. Mr. Thomas stated this reduces the reliance on a structural BMP. Staff encourages LID principles that will assist getting water back into the ground and reduce runoff. He stated BMPs have gotten much better over time.

Mr. Dan Santis, 4869 Mildred Road, addressed the issue of the tanks and the possibility of those leaking. He would like to know what the County's next step is to ensure the safety concerning those tanks.

Ms. Jones stated that with the previous applicant the tanks were fully disclosed and discussed.

Mr. Sowers stated that there was a proffer in the last case to remove the tanks, similar to the proffer in this case. He stated that he was not sure if the property were developed by right. Mr. Sowers stated he thought these issues fall under state review. Mr. Sowers stated staff did make a comment about the tanks, and that any information citizen's can provide with regard to the tanks leaking will be reviewed by staff.

Mr. Woolson stated that the County has no authority with regards to the tanks. He stated it is a DEQ issue. He said the County knows about it, and can receive a proffer concerning it, but otherwise has no authority to make the applicant remove it or remediate it.

Ms. Hughes asked whether the County would notify DEQ of the potential situation and have them address it.

Mr. Woolson stated that the County has no authority to do that. DEQ and the applicant are aware of the tanks and Mr. Woolson deferred to the applicant for further comments.

Mr. Henry Stephens, president of Associated Developers Inc. addressed this issue. His company has already retained a consultant and provided recommendations on how to remove them. The consultant has been in contact with DEQ about the removal of the tanks. Mr. Stephens stated his company would like to remove them sooner than later. He also stated that the tanks would be removed prior to any construction on the site. Mr. Stephens has to wait until the appropriate permits are obtained in order to do this. He also stated that if there is leakage, that the soil would have to be removed as well.

Mr. Geddy stated that Mr. Stephens will continue to work with all those who have concerns about these tanks.

Ms. Hughes closed the public hearing.

Mr. Billups stated that there is not a public need for housing. He stated that there are over 14,000 units that have not been built yet. Mr. Billups felt adding another housing unit is not a priority. He felt like there is still an environmental issue. Mr. Billups asked if there was any flexibility in decreasing the number of units. He cannot support the number of units presented. He felt that 36 units are appropriate for that piece of property. Mr. Billups did not feel like more townhomes constituted a public benefit.

Mr. Fraley suggested that citizen's groups need to inform applicants what they would support. He asked those present to encourage their organizations to take a proactive approach to development and present what they would support. Mr. Fraley stated that the applicants need to know upfront what will be supported. He also stated he felt this application was much better than a by-right development. He also felt that he was not sure if a by-right development would have the same sensitivity that this application has. Mr. Fraley felt the environmental design in this case is extraordinary. He did state he did not feel the need for any more housing.

Mr. Kennedy agreed with Mr. Fraley. He felt that if the intent of the citizen's groups that were present was to preserve this property, there is a property owner to deal with. He would also recommend that these groups talk about getting easements to preserve this land. Mr. Kennedy stated Mr. Brown has rights as owner and developer. Mr. Kennedy said he would support this application. He stated that there is going to be development in James City County. Mr. Kennedy has concerns with a by-right plan on this property and the plan before the Commission has a lot to offer.

Mr. Krapf agreed that this application is better than a by-right development but has concerns about the cumulative impact of developments.

Ms. Hughes appreciated the way the applicants have worked with the community and the improvements with the environmental design of this application. She stated Jamestown Road is in a watch mode, and VDOT recommended a turn lane in an area where our Comprehensive plan suggests against it. She stated that the County needs to be careful as to what is approved along Jamestown Road. Another issue she has is the number of below market units proffered. She felt like it was a small number and not particularly affordable. Ms. Hughes stated she was not sure if this application has significant benefits. She stated that there needs to be equitable treatment among all applications.

Ms. Jones stated that she is hesitant to change a limited business zoning. She felt that this application was a vast improvement from the previous application. Ms. Jones stated she was not sure if the variable community character buffer was appropriate for this piece of property. She still had questions whether a by-right development would even be feasible on this site. Ms. Jones stated she is hesitant to recommend approval. She would want the Board of Supervisors to look very carefully at more affordable housing being provided by this project. Ms Jones felt that this is a sensitive area with stormwater runoff and has difficulty adding intensity with the stormwater issues in this

part of the County. Ms. Jones did state that she would hesitantly recommend approval to the Board of Supervisors on this application.

Mr. Kennedy made a motion to approve the application.

Mr. Fraley seconded the motion.

In a roll call vote the result was a 3/3 tie (3-3). AYE: Jones, Kennedy, Fraley.  
NAY: Billups, Krapf, Hughes. (Absent: Obadal)

Mr. Fraley asked Mr. Kinsman how to proceed with a split vote.

Mr. Kinsman stated that according to the bylaws no action of the Commission is valid unless authorized by a majority vote. He stated at this point the case would move forward with no recommendation but if that was their desire he suggested that the Commission take a vote to send the case to the Board with no recommendation.

Mr. Kennedy made a motion to recommend this application to the Board of Supervisors with no recommendation.

Ms. Jones seconded the motion.

Mr. Krapf asked if the Commission was going to send the application forward with suggestions, such as more affordable housing.

Mr. Sowers stated the application could move forward with suggestions.

Ms. Hughes stated that they would like to attach some recommendations and asked Mr. Sowers to go through what was already suggested.

Mr. Sowers listed the master plan amended correcting the building type, removal of the tanks before final CO is issued and adding affordable housing units as opposed to only below marked units.

Mr. Fraley asked what affordable was.

Mr. Kinsman clarified by stating at the moment the value is \$ 160,000 but that the Planning staff was working on updating the Ordinance that pertains to affordable housing.

Mr. Billups stated that the dollar amount to be used should be the figure that has been used in previous applications.

Mr. Sowers stated that the motion before the Commission was to send the application with the three suggestions mentioned, and with a no recommendation vote.

In a roll call vote the motion was approved (6-0). AYE: Billups, Krapf, Jones, Kennedy, Fraley, Hughes. (Absent: Obadal)

G. SUP-27-07/MP-8-07 Freedom Park Amendment

Mr. Sowers stated staff's concurrence that the application has been withdrawn.

H. SUP-24-07 4<sup>th</sup> Middle/9<sup>th</sup> Elementary Schools

Mr. Sowers stated staff's concurrence that the application has been withdrawn.

7. COMMISSION DISCUSSION AND REQUESTS

A. Disclosure Statement

Ms. Hughes stated that Mr. Kennedy asked for a deferral in discussing the Disclosure Statement until all Commissioners are present to discuss it.

Mr. Kennedy mentioned about the City of Suffolk adopting a policy on this subject and requested that the Commission review this as well.

Ms. Hughes stated that Mr. Fraley will not be present at the November meeting therefore discussion on the Disclosure Statement will be deferred until the December meeting.

B. Comprehensive Plan Update

Mr. Krapf mentioned the issue of cumulative impact on the County's infrastructure, schools, etc. He asked before the Comprehensive update is underway if the Commission could get an assessment on the status of the projections, and what the impact might be on infrastructure and so forth with the number of building units approved but not yet built. He asked Mr. Sowers where the County stands on looking at these various areas.

Mr. Sowers stated that staff is looking at several items. One area is the cumulative impact on the schools of approved developments. He stated staff hopes to bring some information before the Policy Committee within the next few months. Mr. Sowers stated the James City County Citizen's Coalition has done a project similar to the potential development analysis. He stated the Coalition has looked at County wide approved developments and staff is reviewing their information as well as what was done with the Comprehensive Plan back in 2002. Mr. Sowers stated that staff has received a draft of the 2030 Transportation Plan. He stated this plan also takes 2030 population and employment and disperses through the County into traffic zones, and projects impacts to the road system.

Mr. Krapf stated that he felt that this Comprehensive Plan was pivotal, in that the County is at a crossroads now, and he felt that as much information as was available would be beneficial as the Comprehensive Plan update gets underway. He felt that a total picture of where the County is now would be extremely helpful.

Mr. Fraley stated that he felt through the Comprehensive plan update one of the results may be some type of built out scenario. He hopes that we can determine potential impact on infrastructure through different scenarios. He also stated that to rationalize zoning with Comprehensive Plan land designation should be a priority with this Comprehensive plan update. Mr. Fraley also suggested what while updating the Comprehensive Plan, staff might want to update the Ordinances at the same time.

Mr. Sowers suggested that the Planning Commission representative provide that information when their representative attends the Board meeting.

Ms. Hughes made the comment that during the Comprehensive Plan update, the schools should be involved. She hopes that there is some method for handling this.

Mr. Billups mentioned that the School Board starts their budget process in November. He felt that there needs to be an assessment done to determine what is in place.

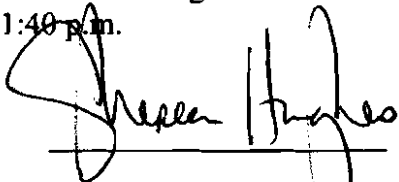
#### 8. PLANNING DIRECTOR'S REPORT

Mr. Sowers mentioned what was in his report.

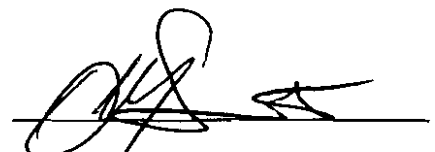
Ms. Jones mentioned that she is working with John Horne to coordinate a stormwater community update. The tentative date is November 1, 2007 and will be at a County Facility.

#### 9. ADJOURNMENT

There being no further business the Planning Commission meeting was adjourned at 11:40 p.m.



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Sheeren Hughes, Chairperson



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O. Marvin Sowers, Jr., Secretary