

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SIXTH DAY OF FEBRUARY, TWO-THOUSAND AND EIGHT, 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

Reese Peck

Jack Fraley

Tony Obadal

Rich Krapf

Chris Henderson

Joe Poole III

Staff Present:

Marvin Sowers, Director of Planning

Adam Kinsman, Deputy County Attorney

Melissa Brown, Deputy Zoning Administrator

Matthew Smolnik, Senior Planner

David German, Senior Planner

Michael Woolson, Senior Watershed Planner

Scott Thomas, Environmental Director

Terry Costello, Development Management Assistant

2. ANNUAL ELECTION OF OFFICERS AND COMMITTEE APPOINTMENTS

Mr. Sowers recommended the Commission 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. Poole made the motion to go into Closed Session.

Mr. Henderson seconded the motion.

In a unanimous voice vote the motion was approved.

The Commission convened into closed session.

At 6:50 p.m. the Planning Commission reconvened into open session.

Mr. Sowers recommended certification of the Closed Session Resolution.

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

Mr. Poole seconded the motion.

In a roll call vote the resolution was approved. (7-0) AYE: Obadal, Peck, Billups, Poole, Fraley, Krapf, Henderson.

Mr. Fraley made a motion to close the continued meeting from January 9, 2008.

Mr. Henderson seconded the motion.

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

The meeting was adjourned at 6:55 p.m.

3. ANNUAL ORGANIZATIONAL MEETING

A. Election of Officers & Committee Appointments

The regular scheduled Planning Commission was convened at 7:00 p.m. with a roll vote by Mr. Sowers.

Mr. Sowers opened the floor for nominations for chairman.

Mr. Krapf nominated Mr. Fraley as the new chairman.

Mr. Henderson seconded the nomination.

The Planning Commission elected Mr. Fraley as chairman with a unanimous voice vote.

Mr. Fraley opened the floor for vice-chairman nominations.

Mr. Henderson nominated Mr. Obadal.

Mr. Krapf seconded the nomination.

The Planning Commission elected Mr. Obadal as vice-chairman with a roll call vote. (7-0) AYE: Obadal, Peck, Billups, Poole, Fraley, Krapf, Henderson.

Mr. Fraley appointed Mr. Krapf, as Chairperson, along with himself, Mr. Obadal, Mr. Billups, and Mr. Poole to the Development Review Committee. He also appointed Mr. Peck, as Chairman, along with Mr. Henderson, Mr. Krapf, Mr. Billups, and Mr. Fraley to the Policy Committee.

Mr. Fraley appointed Mr. Krapf, Mr. Peck and Mr. Obadal to the Citizen's Participation Team, and to the Steering Committee he appointed along with himself, Mr. Billups, Mr. Henderson, and Mr. Poole.

4. PUBLIC COMMENT

Mr. Fraley opened the public comment period.

There being no public comments, Mr. Fraley closed the public comment period

5. MINUTES

A. January 9, 2008 Regular Meeting

Mr. Peck motioned to approve the minutes from the January 9th regular meeting.

Mr. Obadal seconded the motion.

In a unanimous voice vote the minutes were approved (5-0), Mr. Henderson and Mr. Poole abstaining.

6. COMMITTEE AND COMMISSION REPORTS

B. Policy Committee Report

Mr. Peck stated that the Policy Committee met on January 31, 2008 to review staff's presentation and proposed language for the riparian buffer revisions to the Chesapeake Preservation Ordinance. He stated that the Board of Supervisors directed staff to confer with the Policy Committee and Planning Commission and then report back to the Board of Supervisor's worksession on February 26, 2008. Mr. Peck stated staff presented background information, proposed grandfathering, vesting rules and proposed ordinance language. He stated the ordinance proposed to impose an additional variable width buffer not to exceed 175 feet to the existing 100 RPA along creek mainstems and the Board approved watershed management plans and a fixed 25 foot outer zone. Mr. Peck stated that also proposed was a 50 foot buffer along intermittent streams and non-RPA wetlands. He stated that these changes would not impact by-right developments for existing property owners. He stated that changes suggested by committee members included to not be more restrictive by the language adopted by the Board of Supervisors for legislative cases, provide a better foundation and rationale for the fixed 75 foot portion of the base zone, consider condensing the range of slopes required for additional buffer, maintain credits for the buffer toward satisfying the ten point and special stormwater criteria requirements, thinking the outer 25 foot zone as a building setback from the principle structure instead of a buffer on a buffer and reconsider the type of structures and encroachments that could be permitted in this zone, consider administrative waivers for reductions in the buffer for deployment of LID technologies, review County experience after one year of implementation, if the ordinance is adopted show examples of the changes on a small parcel.

C. Comprehensive Plan Update

Ms. Brown stated that the Community Participation Team (CPT) was very active in planning community conversation dates and fine tuning information provided at the JCC 102 for presentation to interested community groups. She stated that the CPT is preparing to receive public input from the two surveys taken in a press conference on February 12, 2008 at 2:00 p.m. in Building F. Ms. Brown stated that this date will also be launch of the comp plan website to the public and announce community conversation dates. She also mentioned the Speakers Bureau and that any interested parties should contact the Planning Department.

Mr. Fraley mentioned the website. He asked about the hotline

Ms. Brown stated the hotline is currently being setup and that information concerning the hotline and the Community Conversation meeting dates will be released at the press conference on February 12, 2008.

A. Development Review Committee

Mr. Fraley reported that the DRC met on January 30, 2008. He stated the committee considered a request for a sidewalk waiver to allow for an all weather trail at the Anderson's Corner Animal Hospital located at 8391 Richmond Road, SP-0021-2007. The committee voted 4-0 to recommend preliminary approval subject to agencies' comments.

Mr. Obadal made a motion to approve the DRC report with a second from Mr. Krapf.

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

D. Other Committee/Committee Reports

There were no other reports.

7. PLANNING COMMISSION CONSIDERATIONS

A. Initiating Resolution – Permitted uses in B-1 General Business District (Kennels)

Mr. Smolnik stated staff received a request from Mr. and Mrs. Matthew DiBiaso to amend the Zoning Ordinance to allow for kennels in the B-1, General Business zoning district. He stated adoption of the resolution does not mean that any particular action is being taken with regard to the proposed amendment; it simply is a necessary precursor to their consideration by the Planning Commission. He stated staff recommends the Planning Commission adopt the attached resolution, and to refer this matter to the Policy Committee.

Mr. Obadal asked about requiring a special use permit for a kennel to be allowed.

Mr. Smolnik answered that yes, it would be an issue that the Policy Committee could review, either to allow by-right or with a special use permit.

Mr. Obadal asked if this was a permitted use in the B-1 district.

Mr. Smolnik answered it was not a permitted use at this time.

Mr. Fraley clarified that this was an initiating resolution and this matter will come back before the Planning Commission once the Policy Committee has reviewed it.

Mr. Kinsman reiterated the fact that once the Planning Commission adopts this initiating

resolution, staff would be given the authority to look at both by-right use and specially permitted use sections.

Mr. Poole asked whether other zoning districts in which less intensive uses are permitted will also be examined where kennels are allowed by-right and specially permitted.

Mr. Smolnik stated they would be considered.

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

## 8. PUBLIC HEARINGS

### A. Z-0008-2007 / MP-0006-2007 Ford's Colony Section 37

Mr. Sowers stated staff's concurrence with the applicant's request for a deferral to the March 5, 2008 Planning Commission meeting.

Mr. Fraley asked for public comment. There being none, he left the public hearing open.

Mr. Krapf made a motion to approve the deferral with a second from Mr. Henderson.

In a roll call vote the deferral was approved. (7-0) AYE: Billups, Krapf, Peck, Poole, Henderson, Obadal, Fraley.

### B. Z-0012-2007 / MP-0010-2007 / SUP-0033-2007 Williamsburg Honda Expansion

Mr. Smolnik stated that Mr. John Dodson on behalf of The Williamsburg Auto Group has requested to rezone 5.56 acres at 110 Nina Lane from LB, Limited Business to B-1, General Business with proffers and has also applied for a special use permit to allow for vehicle sales and service on the property. He stated the parcel is designated Neighborhood Commercial on the Comprehensive Plan. Mr. Smolnik stated the applicant is proposing to construct a 23, 000 square foot building with an additional 238 parking spaces on the property. He stated the applicant has proffered to install an underground infiltration BMP, convert the existing BMP to a bioretention facility, and has proffered water conservation standards as well as a 50 foot well protection easement.

Mr. Smolnik stated that staff believes this proposal will not negatively impact the surrounding properties. He stated that although the application is inconsistent with the land use designation on the Comprehensive Plan, it is an expansion of an existing business which staff believes would be an appropriate use on the property with the proposed conditions and the submitted proffers. Mr. Smolnik asked that the Planning Commission recommend approval of this project to the Board of Supervisors with the acceptance of the voluntary proffers and conditions.

Mr. Billups asked about the land use designation with regards to the Comprehensive Plan.

Mr. Smolnik stated that neighborhood commercial means that it is small business around a neighborhood development. He stated that the current proposal for the 23,000 square foot building is not consistent with the recommended uses. He stated that staff believes that with the proffers and SUP conditions that the nearby residential developments will be protected.

Mr. Billups asked if staff received any complaints from the residents in the surrounding neighborhoods.

Mr. Smolnik stated he has received none.

Mr. Obadal asked if the entrance would be on Kristiansand Drive.

Mr. Smolnik answered yes. He stated that Mr. Geddy had more visual aids and will be showing them during his presentation.

Mr. Obadal asked if this entrance would be used for sales and service.

Mr. Smolnik stated that it was his understanding that it would be utilized for large truck traffic and if mechanics need to test drive a vehicle, that entrance would be used. He stated the majority of traffic would still be coming into the business from Richmond Road.

Mr. Obadal asked about the three adjoining lots on Richmond Road.

Mr. Smolnik stated that they were business lots, one was a 7-11 and the other two are not residential but he was unsure of what they were.

Mr. Billups asked about the inventory levels.

Mr. Smolnik stated that there is an additional 238 spaces. He stated that is no limit in the proffers with regards to inventory other than what is allowed per the site plan.

Mr. Henderson asked if there was any discussion as to where any inoperable vehicles may be stored, whether inside the building or on the surface lot.

Mr. Smolnik stated that there was no discussion concerning that topic.

Mr. Fraley opened the public hearing.

Mr. Vernon Geddy spoke regarding this application. He stated that Williamsburg Honda has been operating at this location for 23 years and has expanded on the existing site twice. He stated the owner, Mr. Dodson, owns Williamsburg Dodge also. He stated this is a local business that wants to expand to better serve its customers. Mr. Geddy stated that prior to filing this application, Mr. Dodson held a community meeting at the dealership. He stated that Mr. Dodson presented his application to those who attended and asked for their comment. Mr. Geddy reviewed the master plan and showed where the business would like to expand. He stated that

deliveries are made to the dealership a couple of times a day by tractor trailer. He showed where the enhanced landscaping would be. Mr. Geddy stated that there will be no adverse impact on the neighbors and it is well buffered and extensively landscaped. He stated that lighting will be used that shines the light down rather than disperses it. Mr. Geddy stated that the environmental protections proffered will enhance the area. Mr. Geddy requested approval of this application to the Board of Supervisors.

Mr. Poole asked about the west elevation of the proposed building and whether there would be windows or openings toward the residential units in the back.

Mr. Geddy stated he believed there were none.

Mr. Henderson asked if there were any plans for underground storage tanks as a part of this facility.

Mr. Geddy answered no. He believed the only underground tank would be the BMP.

Mr. Fraley asked for additional comments on the width of the buffers along Nina Lane.

Mr. Geddy stated the buffer is 50 at the most narrow point.

Mr. Fraley asked about the landscape plan.

Mr. Geddy showed the conceptual landscape plan which he stated was binding.

Mr. Henderson asked about the inoperable vehicles.

Mr. Geddy answered that there is no body shop at this location so there will be no wrecked vehicles towed to this location or stored on the site.

Mr. Danny Garrette, 113 Nina Lane, stated he has lived there for thirty years. He stated that this business has been an excellent addition to the neighborhood. He stated he was 100% behind this expansion.

Mr. Bill West, 102 Astrid Court, stated he has lived there for 19 years. He stated that Williamsburg Honda has been a good addition to the community and that the noise level has been very minimal from the business. He felt that this was a good use of the land.

Mr. Chris Maye, 103 Nina Lane, stated he has lived there for 17 years. He had concerns with the dealership with the unloading during different hours of the day and night. He stated that the landscapers who worked on the property were there very early in the morning. Mr. May would like some of these issues addressed. He spoke about the car alarms going off in the middle of the night and stated that the alarms can last up to an hour. He felt that this is not compatible with the surrounding property, and that this might cause more traffic problems on Route 60. He thought that this application was before the Board of Supervisors a few years ago and was denied. He felt that this application should not be approved.

Mr. Geddy stated the unloading of cars takes place at the Dodge Dealership not at the Honda site which is where this application is referencing. He stated that cars are driven from the Dodge site to the Honda site.

Mr. Geddy stated that car alarms sometimes go off. He stated that there was a problem this past fall with a motion detector at the Hyundai store but that has been resolved.

Mr. Dodson further confirmed that there was a problem with the alarm at that building. He stated it took some time for the security company to resolve the issue. He stated that if there are any additional issues they will definitely look into. Mr. Dodson stated that after 6:00 pm that part of the site will not be active.

Mr. Krapf asked if there were lawn care activities taking place very early in the morning. He asked whether it would be acceptable to expand that proffer talking about no nonsecurity lighting after 10 p.m. and to add a clause for a quiet time between that time and maybe 6:00 or 6:30 a.m.

Mr. Obadal asked about the hours of the service department.

Mr. Dodson stated that the service department closes by 6:00 p.m. He stated that generally those employees are gone by then. He stated that there have been exceptions, such as a tourist breaking down, and that might cause a later time but most of the time this is not the case.

Mr. Obadal asked whether there could be a condition added that would state that the building would be closed at 7 p.m.

Mr. Dodson said that might propose a problem because there have been emergencies in the past. He did state that this would be the exception.

Mr. Henderson asked about a provision for a dumpster enclosure.

Mr. Lockhardt showed where on the master plan the dumpster would be located which would be enclosed in the building.

Mr. Fraley asked whether that would be on the site plan.

Mr. Sowers stated that yes this would need to be on the site plan.

Mr. Obadal commented about the left hand turn on Kristiansand Drive. He asked about the tractor trailer traffic.

Mr. Geddy showed on the plan where the trucks would be entering and felt that there was adequate space for them to make the turn.

Mr. Billups asked about the obstruction of traffic and the impact of traffic.



Mr. Dodson stated that this improvement is not intended to increase customer traffic. He stated that this is to accommodate their existing customers. He stated that there are normally up to three deliveries a day.

Mr. Billups then asked about the delivery of cars.

Mr. Dodson stated that all cars are delivered to the Dodge site. He stated the cars are then driven to the Honda site.

Mr. Fraley closed the public hearing.

Mr. Krapf made a motion to approve this application, with an added comment to the Board of Supervisors about having a quiet time to some reasonable time in the morning. It was seconded by Mr. Henderson.

Mr. Fraley stated he would like the applicant to show the dumpster enclosure on the master plan prior the Board of Supervisors Meeting.

Mr. Poole commented that in his opinion the applicant has shown a keen sense of responsibility to the adjacent neighborhoods and uses nearby. He endorses this application.

Mr. Henderson complimented the applicant on a thorough application and for working with the nearby residents.

In a roll call vote the application was approved with the above comments regarding a quiet time and a dumpster enclosure. (7-0) AYE: Billups, Krapf, Peck, Poole, Henderson, Obadal, Fraley.

C. Z-0014-2007 / MP-0011-2007 Chestnut Grove Proffer and Master Plan Amendment

Mr. David German presented staff's report for an amendment to the approved Master Plan and the approved Proffers for the Chestnut Grove Townhouse development. He stated this amendment is to allow for the relocation and change of shape for the LID features on the site. He also stated that the change is being requested to correct the language that deals with the Marshall & Swift index adjustments outlined in various sections of Proffers #4 and #14. Mr. German stated that staff finds the proposal consistent with the character of the originally approved project, and believes that the changes would represent positive improvements in both the project's design and its proffers. He stated staff recommends that the Planning Commission recommend approval of this application to the Board of Supervisors.

Mr. Joel Almquist stated that during the site plan process it was determined that the LID features near the RPA and playground area would be less effective once the curb and gutter system was installed. In an effort to continue with the promise of good stormwater management, there is a request to realign those areas to treat greater capacity and keep the same square

footage. He stated the other change was a housekeeping measure requested by staff.

Mr. Poole asked for examples of LID.

Mr. Almquist stated that the largest one was a bioretention basin. He stated that this allows a greater amount of stormwater to come in, be treated naturally, seep into the soil as opposed to the entire amount being runoff.

Mr. Fraley opened the public hearing.

Being no public comments, Mr. Fraley closed the public hearing.

Mr. Fraley discussed protocol. Mr. Henderson suggested making a motion and a second and then open it up for discussion. The Commission agreed.

Mr. Henderson made a motion to approve the application with a second by Mr. Poole.

In a roll call vote the application was approved. (7-0) AYE: Billups, Krapf, Peck, Poole, Henderson, Obadal, Fraley.

D. Chapter 23 Chesapeake Bay Preservation

Mr. Thomas gave a presentation on watershed management and the history leading up to this ordinance amendment. He also spoke on riparian buffers and the need to protect them. Mr. Thomas also mentioned the Better Site Design committee and the findings and recommendations that have been as a result of that committee. He stated that this proposal is due to be presented to the Board of Supervisor at the February 26, 2008 worksession.

Mr. Michael Woolson then gave a power point presentation on the proposed ordinance amendment. He spoke about adding performance standards for intermittent streams and Non-RPA wetlands. The proposal also included two separate buffers outside the RPA for the creek mainstem. This would apply in approved watershed management plan areas such as Yarmouth and Powhatan Creeks. This would include a base zone of a variable width from 75 feet to 175 feet. Also included is the outer zone which is an additional 25 feet. Mr. Woolson stated that 17 properties would be affected in the Powhatan Creek Watershed and 18 properties would be affected in the Yarmouth Creek Watershed.

Mr. Woolson then listed the exceptions proposed to the base and outer zone. He also discussed the conditions that would be applied to those lots that will be recorded prior to the adoption date of the ordinance amendment. He also listed exemptions which would include utilities, County or Regional Authorities, forestry and agricultural operations. Mr. Woolson then listed the legal references that give the County the ability to proceed with this amendment.

Mr. Woolson then spoke on the scientific support and literature that was reviewed when researching this topic. He then reviewed the benefits of protecting the riparian buffers. He also listed the site factors that enhance and decrease pollution removal effectiveness, Mr. Woolson

discussed flood issues, slope issues, and other site factors such as soil. A mention was made as to the different localities and their policies on buffer protection and management. Mr. Woolson then went through two examples of a subdivision plat that is already approved, and how these changes would have affected building.

Mr. Paul Sturm, a representative from the Center for Watershed Protection, gave a presentation on the rationale and background that supports this proposal. He stated that the rationale for this proposal was to provide essential habitat for wetland species, provide a cover effect for aquatic and terrestrial organisms, and provide proactive corridors for wildlife movement. He also stated that this large buffer width was especially important if open water was part of the wetlands.

Mr. Sturm also spoke about the Yarmouth Creek Watershed and Powhatan Creek Watershed and how important it was to protect them. He spoke about the need to protect the intermittent streams. He stated that in adding buffers along streams it would reduce water yield from upland parcels and decrease the chance of downstream flooding, it would increase vegetative growth which in turn would increase soil storage capacity, and would decrease erosion along the bank which would add less sediment to the stream and provide for more stabilization. Mr. Sturm said these proposed buffer sizes were determined after consulting several sources.

Mr. Krapf complimented Mr. Woolson on his presentation. He asked about the information that states that undeveloped natural property is not in need of any additional buffers even if it is adjacent to development.

Mr. Woolson deferred to Mr. Thomas.

Mr. Thomas stated there are certain subdivisions that are not required to have BMP's. He stated that there are some requirements for quality control. He stated that the riparian buffer is still recommended with multiple reasons why it is important.

Mr. Fraley stated that this was a method to get more protection for the watershed and that this proposal will not infringe on current property owners' rights to develop their land.

Mr. Woolson said this proposal was meant to be density neutral.

Mr. Fraley asked about business and commercial exemptions.

Mr. Woolson answered there are no exemptions in this proposal for business and commercial developments. He did state that there are not many properties that are zoned this to begin with.

Mr. Fraley recommended that staff investigate this area.

Mr. Henderson stated that staff should assess the implication of this change on business and commercial applications.

Mr. Obadal stated he would also like staff to look at this impact. He stated that these changes move toward protecting vital environmental aspects of these watersheds. He stated if staff investigates this he would expect a balancing of these two factors.

Mr. Peck stated that the 300 foot buffer determination was a general number since it was not site specific. He asked whether it was a reasonable assumption that flatlands would provide better control and there could be narrower strips of land.

Mr. Woolson stated that staff plans to investigate that area further. He stated that during the Policy Committee it was mentioned to reduce the base zone from 75 to 50 in these areas, and further clarifying the slope classifications in determining what the additional buffer would be.

Mr. Peck stated that 75% of the benefits are obtained by the first 100 foot buffer.

Mr. Woolson stated that is written in the Chesapeake Bay Ordinance.

Mr. Peck stated that this is the law of diminishing returns.

Mr. Woolson stated yes, and that this was some of the concerns of citizens that were brought up at the Policy Committee meeting. Mr. Woolson stated after Mr. Thomas pointed out, that the Chesapeake Bay Ordinance states that the first 100 foot buffer provides a 75% reduction in sediments and 40% reduction in nutrients. He stated that after about 150 foot the sediment and nutrient issue is accounted for.

Mr. Obadal asked about the Powhatan Management Study that has a 100 foot buffer for significant pocket wetlands and a 50 foot for intermittent streams. He asked why staff did not adopt the 100 foot buffer and the 50 foot buffer.

Mr. Woolson stated staff felt it would be easier to implement to make both of the scenarios 50 feet so as not to have discussions as to what was a non-RPA buffer and what was an intermittent stream. He stated that it was in the interest of fairness to make them both 50 feet as opposed to 100 feet. Mr. Woolson stated that 50 feet will also provide the additional water quality benefit, although it is a minimum, but staff feels it is adequate.

Mr. Obadal spoke about the 75/40 figures that were mentioned. He stated that according to that, 60% of the pollutants will get into the stream at that point. He stated it would be better if this number could be reduced, while at the same time allow the landowner to keep the current density so that there is no in effect, taking. Mr. Obadal stated the owner would place the same area as if there were no additional buffers.

Mr. Woolson stated this was correct.

Mr. Obadal mentioned other localities that have done this, Alexandria and Albemarle. He also appreciated Mr. Woolson's and staff's work and careful thought that went into it.

Mr. Billups stated that he hopes that this proposal can stay flexible enough to show cause when reducing or increasing buffers. He stated he has concerns about making blanket guidelines, but would like to see the 100 foot buffer maintained. He would like to see fairness toward landowners so that there is no loss in property. Mr. Billups stated that all presenters did an excellent job in presenting the information.

Mr. Fraley asked about the data that states the 150 foot buffer achieves the greater numbers with respect to sediment and nutrients. He stated that after 150 feet the benefit is actually flood control.

Mr. Woolson stated this was correct.

Mr. Fraley then stated that the additional buffer from 200 – 300 feet is basically wildlife protection. He stated this is from the information he has received. He asked if the need was based on the habitat in the area. Mr. Fraley asked Mr. Woolson to look at the views of the Policy Committee. He asked about the recommendations and whatever staff was opposed to any of the concerns listed.

Mr. Woolson stated that staff was in agreement with all of the committee's recommendations and that they would be examining slope categories.

Mr. Henderson asked about DEQ's and the Corp of Engineer's role in intermittent streams and how they are involved in regulating these in James City County.

Mr. Woolson stated to the best of his knowledge, intermittent streams are jurisdictional in nature, in that they must have characteristics to indicate that water has been there. DEQ and the Corp of Engineers have encouraged more regulations with regards to preserving wetlands.

Mr. Henderson asked if the goal of the Chesapeake Bay Act was water quality and not habitat preservation.

Mr. Woolson answered that was correct.

Mr. Henderson stated that it appeared that a buffer greater than 200 foot was for habitat preservation which is a separate goal outside of the Chesapeake Bay Act itself. He felt this was a fundamental breaking point in asking homeowners to bear the responsibility of habitat preservation as opposed to water quality.

Mr. Woolson stated that staff had the option of proposing a brand new ordinance or try and somehow incorporate into the Ordinance, but chose this option since most of the procedures are in place for exceptions and how to grant them.

Mr. Henderson mentioned the example Mr. Woolson gave that showed the current plan of development that had a stormwater retention facility in that buffer zone, and called whether the developer be required to relocate that facility outside the buffer or would they be able to use that intermittent stream buffer for that facility?

Mr. Woolson stated the intention is to allow that intermittent stream to be used for stormwater. He stated that regulations from the Corp of Engineers, EPA and DEQ have become such that it is getting harder to do stormwater management on a regional basis. He stated stormwater ponds are getting higher up in the watershed where logically they need to be at the lowest point in the watershed. Mr. Woolson stated that this change does not go any further than what the Federal Government has done.

Mr. Henderson asked if there was a provision in the proposal to preserve density that deals with properties where, for example, in A-1 three acre lots may not be possible.

Mr. Woolson stated that without this buffer proposal in place there would still be requirements with regards to the Zoning Ordinance and the Chesapeake Bay Ordinance. He stated those lots may or may not be three acres minimum. He said typically once it gets closer to the RPA those lots are generally larger than three acres.

Mr. Fraley stated for example, if the property is 300 acres and zoned A-1, and the proposal is for 100 lots under the current ordinance. He stated the 100 foot buffer and other characteristics of the land may reduce the development from 100 lots to 80 lots. Mr. Fraley stated this proposal protects the rights to develop the 80 lots. Mr. Fraley stated it may be a matter of design.

Mr. Obadal stated he believes these buffers are intended for other creatures that we have. He referred to the chart that refers to the 300 foot buffer and that is supported by the Forest Service. He stated that the Forest Service recommends at least a 200 foot buffer for flood protection. Mr. Obadal felt that flood protection is absolutely vital for the County. He stated he would not trade off either of these. He felt that the same density can be achieved without diminishing the environmental quality of the County.

Mr. Fraley opened the public hearing.

Mr. Tim Cleary, 103 Lands End Drive, presented documentation on riparian buffers and their protection. He was questioning whether an addition to an existing buffer would provide environmental benefits commensurate with the expected costs. He does not feel that an informed decision can be made on this question this evening. Mr. Cleary stated that no specific water quality objectives have been offered; very limited data has been shown that existing buffers are not providing the water quality objectives in place, and no cost estimate has been provided showing whether that taxpayers will bear the cost to implement the increased buffer width. Mr. Cleary feels that before restricting owners' use of the property there should be some evidence that additional buffers are needed to supplement the performance of existing buffers. He stated that the literature suggests that narrow buffers of 33 feet or less contain the majority of runoff of contaminants from sediment, nitrogen, pesticides, etc. He suggested that the majority of contaminants are removed between the first 30 – 60 feet of a buffer. Mr. Cleary showed scientific data from Peer Review Scientific Studies. He stated the studies showed that 90% of contaminants were removed by buffers of 99 feet and no gain is achieved by doubling the buffer width. He cited another study that showed that the majority of the sediment removal occurs

within an 80 foot buffer. Mr. Cleary showed several charts showing that buffers of 100 feet or less sufficiently remove enough pollutants for adequate for water quality. He believes that the County owes landowners sufficient evidence that additional buffers are needed. He believes that staff should investigate other programs in various states that have buffers that are voluntary.

Mr. Ralph Goldstein, 240 Tazewell's Way, spoke in favor of rescinding this amendment. He stated that the effect of this proposal will result in his reduced usage of his land. He felt that this amendment goes beyond the provisions of the Chesapeake Bay Preservation Act and are invalidated by the Dillian Rule which is still valid in Virginia. Mr. Goldstein stated that while the Act protects the vested rights of any landowner under existing law it is not clear whether these provisions will be a taking of property without just compensation. He knows that citizens have concerns with regards to the bay, creeks and watersheds. He stated that those conditions were not caused by any development or activity on owners' property as expressed by those who favor the new amendment. Mr. Goldstein stated the problems in the Bay are due to an accumulation of runoff from existing developments over the years throughout the Tidewater area, inadequate BMP's, and the failure of local governments to force remediation of those problems created by high density development. He stated that taking of property to solve these issues should not be done without just compensation. He is opposed to any additional regulations and felt that the current regulations are sufficient. Mr. Goldstein felt that over the years those who own A-1 property have been harassed by those in the County that feel it is important to protect the rural atmosphere of the County.

Mr. Norman Hofmeyer, 17100 Tomahund Drive and with the Farm Bureau, spoke against adding additional buffers to the current Ordinance. He stated that farmers have used technology such as no-tilling to preserve the Chesapeake Bay. He stated that commercial and business development has increased over the years and blacktop has caused increased runoff to enter our streams and rivers. Mr. Hofmeyer stated that all farmers have to have a conservation plan on file to reduce runoff.

Mr. Chuck Roadley, 9065 Marmount Lane, and with Williamsburg Environmental Group, stated that the watershed management plans are thoughtful documents. He does question why there is disagreement with mandatory buffers. He mentioned the grandfathering conditions proposed and hopes that all language is incorporated and that the conditions are clear. Mr. Roadley stated the expanded buffer addresses more than just water quality. He stated that these changes seem to address inefficient stormwater practices. He stated that the State is also in the process of reviewing major stormwater practices. He felt that there may be other strategies to consider as opposed to burdening landowners with additional regulations. Mr. Roadley mentioned the cluster ordinance to achieve the same effects as these additional buffers. He stated that it is a common misconception that what is trying to be achieved is a reduction of density, but studies have shown that this may contribute to environmental issues such as increased runoff.

Mr. Ware Warburton, a landowner in James City County, stated he is an environmentalist and has worked with the EPA and DEQ. He stated he has worked on remedial action sites throughout all of the waters of the Chesapeake Bay and its tributaries. He stated 95% of the projects he worked on were due to improper management by governments. Mr. Warburton

stated that the remainder of the projects were those involving large industry and high density development. He felt that the majority of the projects were due to improper engineering. He stated that when these items are not engineered correctly or managed correctly, problems occur. He stated that if this ordinance is passed he will not be able to utilize the property as he sees fit. Mr. Warburton felt that he will lose 30 years of his investment. He feels as though he will be restricted as to what he can construct on his property. He stated that the State has a 100 foot buffer to take care of the wetlands.

Ms. Ann Hewitt, 147 Raleigh Street, spoke on behalf of the Friends of the Powhatan Creek Watershed. She thanked the Policy Committee, the Environmental Division, and all the citizens who have worked towards these goals. She cited a study "Where Rivers Are Born" that was published in 2005. Ms. Hewitt stated that the study uses over 235 scientists to demonstrate the necessity of healthy streams and wetlands. She stated the study notes that 2 out of 3 Americans receive their drinking water from surface water and the remaining rely on ground water. She stated the alteration of streams and wetlands disrupts the quality, quantity, and availability of citizens' drinking water. She felt that with the revised language in the Ordinance, the safety of our streams, main stems and wetlands are guaranteed. Ms. Hewitt stated that with the additional measures clearing such as Settler's Market, which disturbed the RPA would not have happened. She stated that this example and other violations in the County prove to show that RPA buffers alone have not protected our streams and wetlands. She felt that there are reasonable and flexible options expressed in the Ordinance they represent a winning situation for all. She and the Friends of the Powhatan Creek, urge members to continue the work of implementing the County's watershed management plans and send this Ordinance as is on to the Board of Supervisors.

Mr. Branch Lawson spoke in behalf of Chickahominy Summerplace LLC. He believes that the issue of riparian buffers is water quality. He stated that the habitats that will be protected with these additional regulations are already being done when one submits a plan. He did not feel that additional burden on the rest of the County was necessary. Mr. Lawson stated that he thought the Ordinance was a heavy-handed approach to the issue. He found no definitive source that supports the increase of the buffer from 100 to 300 feet. He mentioned the CRE/CREP program that is a voluntary program that offers financial incentives to encourage farmers and ranchers to enroll in a conservation reserve program. Mr. Lawson stated that the DCR manual referring to riparian buffers states that the width of the buffer is the primary determining factor for its effectiveness. He also read where it stated that 100 feet has been deemed efficient to protect water quality through the removal of sediment and nutrients. He stated he would like for the Commissioners to think of the landowners and their rights when it comes to this costly taking. Mr. Lawson stated there is no viable evidence to support a 300 foot buffer to protect water quality, but there is evidence that suggests the 100 foot buffer is sufficient. He believes this Ordinance will result in decreased density and a decrease in property values. He stated that Albemarle County was not subject to the Chesapeake Bay Preservation Act and that locality adopted the regulations stated in the Act. Mr. Lawson stated that locality did not go beyond the 100 foot buffer except for land surrounding drinking sources.

Mr. John Haldeman, 1597 Founder's Hill North, stated buffers in general are needed but that there is no agreement of an ideal size of a buffer. He stated there is a wide variety of



literature that supports many ideas. He stated much of the literature states that soil quality is very important to the effectiveness of buffers. Mr. Haldeman cited a Virginia Tech study mentioning soil quality although it did not address the width. He stated that the best reason for extending the buffers is that the present regulations have not worked. He stated that he was told that every stream and river in James City County is on the State's substandard list in terms of pollution and clarity. Mr. Haldeman stated the Board of Supervisors has included money in the budget for stream restoration and stormwater management. He felt that if existing buffers were sufficient this expenditure would not be necessary.

Mr. Aaron Millikin, owner of Liberty Ridge and Chickahominy Summerplace LLC, felt that it was debatable whether the density would change with the new buffer requirements. He stated that by reading the materials he believed that encroachment would not be allowed so a lot would be taken away from an owner. He felt that this does not take in consideration the devaluation of the lot. Mr. Millikin referred to one of the examples shown in the presentation where there was a dramatic difference in the distance from the waterway that would have reduced the value of the property. He felt it was unclear about the vesting portion and the grandfathering provision. He also felt that there are other options available to achieve these goals stated in revising the Ordinance.

Mr. Fraley stated that just for the record it is up to the Board of Supervisors whether ordinance changes such as those presented would be applied to existing watershed plans.

Ms. Sarah Kadec, 3506 Hunter's Ridge, spoke on behalf of the James City County Citizen's Coalition. She stated that her group supports the evidence shown tonight to increase the width of the buffers. She had several documents in support of this and cited one that addressed soils and slopes. Ms. Kadec stated that buffers of 50-100 feet are recommended to trap sediments, with the buffer expanding for high sediment loads and steep slopes. She stated that buffers should expand 5 feet for every 1% increase in slope. She cited the report stating that on flat sandy soils where sediment loads are low, narrow buffers may be effective. Ms. Kadec stated that this report demonstrated that grass filter strips 300-400 feet wide would be required to successfully remove clay sediment. She also quoted information from a Virginia Tech report on "Understanding the Science of Riparian Buffers on Water." She also encouraged the reading of the book, "Turning the Tide, Saving the Chesapeake Bay." Ms. Kadec felt that these amendments culminated from a long period of studies, hearing and staff work. She felt that these amendments serve the common good and may not necessarily reflect individual's rights. However, she and her organization felt that it is essential that the rights of landowners be recognized in the management and ownership of their property. Her and her organization believe an equitable system to compensate can be devised for the landowner and the County's requirements. Ms. Kadec felt that increasing the buffers would relieve some of the more flood prone areas. She quoted information from the Center for Watershed Protection on the importance of buffers. She stated that more attention should be given to the flooding issues.

Mr. Dean Vincent, a professional engineer and landowner in James City County, stated he had some issues concerning these amendments. He questioned whether the call as to what is a main stem should be solely up to staff. He believes this needs to be worked out and clearly stated. Mr. Vincent also questioned the change stated where only dead or diseased vegetation is

allowed to be removed, where he thought one should be able to create a visual corridor. He questioned the exemptions listed for the base and outer zones and the development capability of the land. He also questioned the wording in the document that allowed for buffer reduction for principle structures only. Mr. Vincent stated he was uncomfortable with the discretion left up to staff to determine a reasonable footprint. He stated that there are innovative ways to achieve the goals that these amendments are attempting to achieve. He stated, for example, in Liberty Ridge, there are 21 BMP features installed to address water quality. Mr. Vincent also felt that this would have an effect on density without a cluster provision by right.

Mr. Fraley stated that trimming for view is permitted.

Mr. Woolson stated that it is staff's intent to allow sight lines to be cleared.

Mr. John Schmerfeld, 172 Red Oak Landing, stated he lives on the Powhatan main stem. He stated that these changes have been done in other states and localities. He stated that Albemarle County has instituted a 50 foot buffer on intermittent streams. Mr. Schmerfeld stated that a balance needs to be achieved. He supports these proposals although the concerns about the taking of land are valid. He stated that all citizens should take responsibility for the water quality issues in the County.

Mr. Robert Duckett, of the Peninsula Homebuilders Association, spoke on behalf of the organization. He stated that increasing the buffers would not achieve the goals that it is intended to. He cited information from Virginia Tech that stated buffers of 125 feet are for nutrient removal, and for sediment removal 150 foot buffers are recommended. Mr. Duckett cited documents from the James River Association that stated 100 foot buffers remove 97% of sediment, 80% of nitrogen, and 70% of phosphorous. He gave an example taken from the Center for Watershed Protection, a schematic of a 3 stage stream buffer, and showed outer, middle and base zones. He showed how much sediment and pollutants were removed at the different stages. Mr. Duckett stated that in Virginia, a 100 foot buffer has been deemed sufficient to protect water quality through the removal of sediments and nutrients. He stated that the purpose of the Chesapeake Bay Regulations is for water quality, where some of the proposed regulations address flooding and wildlife habitat. He further stated that if wildlife habitat is important, then the Greenspace program needs to address this. Mr. Duckett stated there is no evidence to support that James City County's waterways are in more danger than any other locality. He stated that DCR and DEQ suggest that 14% - 15% of the effects on the waterways are from private property owners. He feels that the County is targeting the wrong area. Mr. Duckett suggested adding 50 - 65 feet to the 100 foot buffer currently required, having some flexibility where water quality is based on performance, no loss of density, and no support a 50 foot buffer on intermittent streams.

Mr. Wayne Nunn, of 238 Loch Haven, gave a presentation on his research on buffer widths. He spoke of all the wildlife that he has observed that have not been affected by any construction. He stated he formed the group known as the James City County Landowners Association. Mr. Nunn said he can speak for over 6,000 acres of land in the A-1 Zoning District with a very conservative value of \$1,000,000. He stated that 50% of the water in the Chesapeake Bay comes from the Susquehanna River. He also stated that 50% - 75% from that section of the

watershed is held by dams on the Susquehanna River. Mr. Nunn stated that Ms. Mary Jones, who is currently serving on the Board of Supervisors, is on public record stating that the primary cause of flooding on Powhatan Creek other than tidal flooding is the lack of enforcement of BMPs in development. He feels that the increase in buffer widths on this creek is minimal, the number being 86 acres. Mr. Nunn showed several areas in the County that have stormwater and retainage issues. He asked if all of the parcels in Yarmouth Creek were developed by-right in A-1 zoning District with state of the art septic systems and wells, using the current plans, would they damage the creek more. He would like to see it stated in writing what the major sources of pollution are on the Powhatan and Yarmouth creek Watersheds. Mr. Nunn would like to see what measures have been taken to combat pollution in these and their effectiveness. He stated that there were 64 farms in the County as of 2002, with a total of 6340 acres. He believes that farms and agriculture have been targeted as being a problem with regards to runoff and pollution. Mr. Nunn said there is a lot of science that has been brought up this evening. He believes that increasing the buffer width will increase enforcement issues.

Mr. Peyton Harcum stated he has been a County resident for fifty years. He does not feel that the amount of acreage that was presented as being affected is correct.

Mr. Woolson stated that the mainstream buffer will not increase further than what was shown in the presentation.

Mr. Harcum stated he was concerned who was going to bear the cost of all these regulations. He stated that the problem starts at the top of the stream and if the problem is taken care of at that point, the time is gets to this area; it should not be a problem. He also felt that just compensation needs to be given to the landowners involved.

Ms. Shereen Hughes, 103 Holly Road, spoke because she was involved in this project and has studied this. She stated that the Planning Commission did study agriculture and trying to keep things as easy as possible on existing property uses and property rights. She stated the real concern is about site conditions, desired functions, and adjacent land use. Ms. Hughes said it is important to minimize site disturbance. She stated that the majority of the plans that come before the Commission maximize site disturbance. She would definitely support the County in trying to promote clustering by-right. Ms. Hughes stated this is recommended in the watershed plan and is being explored through the principles of Better Site Design. She stated that a 150 foot buffer is recommended to remove the maximum amount of sediment and nutrients. She said slopes, quality of vegetation, and soils all need to be considered. Ms. Hughes stated that enforcement is also another issue to be addressed. She stated that the Chesapeake Bay Ordinance has language that addresses water quality and protecting the fish in the water and the aquatic plants in the water. She stressed the importance of infiltration on site. Ms. Hughes stated that all citizens are responsible.

Mr. Rich Costello, 10026 Sycamore Landing Rd, stated that if the County is going forward with the addition of buffers then the landowners need to be compensated. He stated that tax money needs to be used for new installation of BMPs in older developments that have drainage and flooding issues. Mr. Costello stated he felt that the County's flooding issues have more to do with storms and inadequately sized culverts under existing roads.

Mr. Jerry Moore, of 2273 West Island Road, stated he is a landowner at Stonehouse. He felt this amendment will make it difficult for businesses and commercial to develop in certain areas due to topography. He also felt that compensation needs to be given if these changes are enacted.

Mr. Fraley closed the public hearing.

Mr. Fraley mentioned that the clearing issue needed to be added before the worksession. He also suggested incorporating the grandfather clause as part of the ordinance. He suggested addressing the business and commercial uses and how it might address those concerns. Mr. Fraley requested addressing the logic of the 50 foot intermittent stream and non-RPA wetland buffers. He also suggested it would be helpful if the definition of a mainstem was clarified.

Mr. Henderson stated he would like to see clustering as an integral part of the discussion because without it the objective may not be attainable. He also thought it was important to provide performance bonuses for those that exercise that option as a matter of right. He believes that the County should be encouraging developers, builders, and citizens to do what is in the Community's best interest. Mr. Henderson stated it is important to be fair in the assessment and that if compensation is needed, then it should be given.

Mr. Poole complimented the Environmental Division and all those who spoke. He stated that this is a struggle between what is better for the community and landowners' rights. He believes this proposal strikes a remarkably fair balance between the interests of property owners and the greater good for this Community. Mr. Poole felt that the citizens have to take this responsibility.

Mr. Krapf agreed with Mr. Poole and felt that this was a very strong package that was put together. He felt that one strong point to be made was that it was a variable width buffer. He would like to see more definition or detail on LID credits. Mr. Krapf has concerns that the County is setting goals to achieve the minimum rather than something more. He would like to see goals set that are higher than the minimum to avoid future problems.

Mr. Obadal thanked everyone who participated in this. He commended staff in their efforts to find a fair and balanced approach. He agreed with his fellow Commissioners with respect to the value of this proposal. Mr. Obadal stated that it was his understanding that agricultural uses were exempt. He would like to see agricultural structures included in the exemptions.

Mr. Peck complimented the staff on attempting to make the balance between the environment and the landowner, and their continuing effort to do so. He would like to see all parties involved continue working toward a solution. Mr. Peck realized that it will effect more than a few landowners. He would like to see the legal authority and what considerations are taken into account for justifying these changes.

Mr. Billups stated that this is all about public trust, and the health, safety and welfare of

the County. He stated the Commission will do the best they can but it all revolves around public trust. He would hope that the decisions made will be fair and balanced.

Mr. Thomas asked for clarification concerning the business and commercial uses.

Mr. Fraley stated he was interested in business parcels and how these changes would affect them.

Mr. Fraley stated the Planning Commission has completed what the Board of Supervisors has asked them to do in reviewing these changes. He stated that the Planning Commission felt that this was a worthwhile endeavor that should be considered.

Mr. Obadal suggested sending it forward with all the comments and suggestions made by the members of the Planning Commission.

Mr. Henderson stated that this policy needs to be reviewed, and that he encourages a sunset date to see how implementation is working. He also suggested a permanent annual review.

Mr. Obadal suggested that after the one year review the need for a yearly review should be evaluated.

Mr. Peck suggested also in the review to include modifications.

Mr. Fraley stated this ordinance is scheduled to be heard at the Board of Supervisors' work session on February 26, 2008.

#### 9. PLANNING DIRECTOR'S REPORT

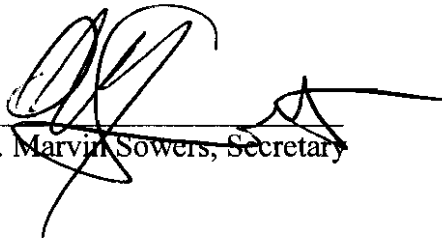
Mr. Sowers stated that staff has a meeting packet for those who were selected for the Policy Committee, which will be given to them at the end of the meeting. He also distributed the Development Management's proposed work program for the next two years. He requested any comments or suggestions concerning the work program be directed to him.

Mr. Fraley stated Mr. Obadal was the representative from the Planning Commission to the Board of Supervisor's meetings in February, and Mr. Krapf was the representative in March. He also stated that staff is working on training schedule modules.

#### 10. COMMISSION DISCUSSION AND REQUESTS

There were none.

  
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Jack Fraley, Chairman

  
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O. Marvin Sowers, Secretary