

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SIXTH DAY OF AUGUST, TWO-THOUSAND AND EIGHT, 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
Reese Peck
Jack Fraley
Tony Obadal
Joe Poole III
Chris Henderson

Staff Present:

Allen Murphy, Zoning Administrator
Adam Kinsman, Deputy County Attorney
Leanne Reidenbach, Senior Planner
David German, Senior Planner
Shawn Gordon, Capital Projects Coordinator
Phil Mease, Superintendent of Parks
Terry Costello, Development Management Assistant

Absent

Rich Krapf

2. PUBLIC COMMENT

Mr. Fraley opened the public comment period.

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

3. MINUTES

A. July 2, 2008 Regular Meeting

Mr. Fraley asked if there were any additions or corrections to the minutes.

Mr. Henderson had a correction in the spelling of a name.

Mr. Poole made a motion to approve the minutes with the correction noted.

Mr. Obadal seconded the motion.

In a unanimous voice vote the minutes were approved as amended (6-0)

4. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee

Mr. Fraley gave the report for Mr. Krapf. He stated the DRC met on July 30th to review SP-0080-2008, Road Widening at St. Bede's Church. St. Bede's Catholic Church requested revisions to the master plan that included widening the access road, widening the drop off area,

and increasing the loop area. By a vote of 3-0, the DRC determined that the changes are consistent with the previously approved master plan. The DRC did suggest that the applicant replace certain trees that would be affected by the widening process.

Mr. Henderson made a motion to approve the report.

Mr. Poole seconded the motion.

In a unanimous voice vote the report was approved (6-0).

B. Policy Committee

Mr. Peck stated that the Policy Committee met on July 9, 2008 to discuss revisions and changes to the Capital Improvements Planning Process. The Committee will present a final document to the Planning Commission and get the members' feedback before having a finalized document for the September 10, 2008 Policy Committee meeting. The August meeting will not take place due to the Community Conversation meeting that will be taking place that same date. Mr. Peck then called on Mr. Henderson to discuss the document that will be circulating among the Commission.

Mr. Henderson stated the goal was to provide greater transparency for the citizens, greater alignment with the Comprehensive Plan, greater predictability, and superior financial management. He stated the document would be ready for a combined work session with the Board. Mr. Henderson stated that he believed the Policy Committee memorandum established a framework for a conversation with the Board of Supervisors concerning the proposed changes.

Mr. Fraley mentioned that staff was integral in this process along with representatives from the Financial and Management Services Department in the County.

C. Comprehensive Plan Update

Mr. Bill Spaller gave an update as a member of the Community Participation Team (CPT). He displayed a flyer stating the dates for the second round of Community Conversation meetings. He stated that during the month of July, organizations were given the opportunity to make presentations on their concerns for the Comprehensive Plan update. Mr. Spaller stated there were over 15 organizations that made presentations and that the Team found these to be very informative. He stated the second round of meetings will have certain topics of discussion that were suggested during the first round of meetings. He further stated that the Team came up with eight topics that were most prevalent during the first round of meetings. Mr. Spaller stated the meetings will be centered on these topics and that staff experts in the field will be there to answer questions and provide information as needed. In addition, questionnaires will be given to attempt to solicit more detailed input from the citizens attending.

Mr. Spaller stated there is a series of essays that will be posted on the web in an effort to further educate the public. He stated that invitations have been sent to organizations, churches, and neighborhoods listed with the Neighborhood Connections office, in an outreach effort. Mr.

Spaller stated that listening stations have been placed around the County to encourage comments and feedback.

Mr. Obadal asked if it might be beneficial to have experts available for questions that were not County staff but others in the field.

Mr. Spaller stated that the Team's objective is to educate and provide information so that citizens understand the topic areas. It is not the intent to provide answers, but to provide the pros and cons to a certain topic. He believes that having individuals outside the County staff might prove helpful after the initial summarizations are done. Mr. Spaller suggested that this might be a beneficial forum for the Steering Committee.

Mr. Obadal asked what types of organizations were targeted for their mailings.

Mr. Spaller stated churches, community organizations, business groups such as the Chamber of Commerce, and homeowner's associations.

Mr. Henderson suggested the idea of changing the questions on the flyer that were aimed at drawing citizens to the meetings. He suggested more general and positive questions.

Mr. Spaller stated that in the first round of meetings, general questions were asked. Some questions were what was positive about the County, what was negative, what progress has been made, and where could there be room for improvement. Mr. Spaller explained that the second round of meetings was set up to be geared more toward the topics that were mentioned most often in the first round of meetings.

Mr. Fraley stated the Steering Committee is scheduled to begin meeting on September 15, 2008. He stated the members of the Steering Committee are Mr. Billups, Mr. Henderson, Mr. Poole and himself. He stated Mr. Vaughn Poller was elected by the Community Participation Team to the Steering Committee. Mr. Fraley stated the Board of Supervisors will name additional members to be added.

5. PUBLIC HEARINGS

A. SUP-0013-2008 Lafayette High School Wireless Tower

Mr. Murphy stated staff's concurrence with the applicant's request for a deferral to the September 10, 2008 Planning Commission meeting.

Mr. Fraley opened the public hearing.

Ms. Febronia Christ spoke on behalf of Verizon Wireless. She stated that a one month deferral is being requested to be able to work with staff. She stated there was a balloon test conducted on July 16, 2008 and there is a meeting scheduled for August 11, 2008 to finalize some issues as a result of this test.

Mr. Fraley continued the public hearing to September 10, 2008.

B. SUP-0014-2008 Freedom Park Waterline

Ms. Leanne Reidenbach stated that Mr. Aaron Small of AES has applied on behalf of James City County Parks and Recreation for the extension of a waterline to serve Freedom Park and connect in to the previously approved waterline which services the 4th middle/9th elementary school site. The property is zoned PL, Public Land and is designated Park, Public, or Semi-Public Open Space on the Comprehensive Plan. She stated that the location of the waterline extension is proposed to follow the route of the sewer force main approved by the Board in January 2008. Ms. Reidenbach stated that conditions have been added to limit connections to water service, which will reduce the impact that this project has on lands outside of the Primary Service Area. For each property adjacent to the extension, one additional residential connection shall be permitted for vacant properties and existing structures. She stated that this would allow three additional properties on Jolly Pond Road to connect. She also stated that staff finds this proposal to be generally consistent with surrounding land and the Comprehensive Plan, and recommends that the Planning Commission recommend approval of the waterline extension, with conditions, to the Board of Supervisors.

Mr. Obadal asked about the adjacent properties that are able to connect to the waterline. He asked how large those properties were.

Ms. Reidenbach answered that each lot would only be permitted to have one residential connection so the size of the lot did not make a difference in terms of the number of houses the connection could serve.

Mr. Obadal asked what the property owners would do if they wish to connect to the waterline.

Ms. Reidenbach answered that they would probably need to contact the James City Service Authority (JCSA), but she was unsure of what their procedures were.

Mr. Obadal asked if there was an additional charge to connect.

Ms. Reidenbach stated she believed there was a tap fee, but she was unsure of the dollar amount.

Mr. Obadal asked if the size of the pipe that would be used for the waterline could handle more than the residential lots allowed and the schools.

Ms. Reidenbach deferred to the applicant.

Mr. Aaron Small stated that in response to Mr. Obadal's previous question, there is a standard JCSA tap fee and it is County wide. Each lot is allowed a single residential connection which includes a ¾ inch water meter and a ¾ inch copper line. He stated that this size water meter limits what size the structure can be.

Mr. Obadal asked how the County would service those properties that may be involved in growth in the future.

Mr. Small stated that if a property owner wants to connect to the water, they would contact the JCSA. The owner would pay a fee, JCSA would do a tap or the owner can have the tap installed. The owner would have to pay all applicable fees in order to get water service, but the connection would only be valid for a single residential unit.

Mr. Peck asked if Centerville Road was the boundary for the PSA.

Ms. Reidenbach answered that generally speaking the PSA followed Centerville Road in that area.

Mr. Peck asked about the developments that are outside the PSA in that area and what the policy is with regards to these developments becoming part of the PSA.

Ms. Reidenbach answered that if the development is outside the PSA, it is required that a central well system be installed to service the lots. That central well system is eventually taken over and maintained by the JCSA.

Mr. Peck stated that while these developments do not connect to the County's water system, JCSA does ultimately take responsibility of all the development where those central well systems are developed.

Ms. Reidenbach stated the JCSA takes responsibility for the central well systems.

Mr. Peck stated that the JCSA is receiving a water source, and that the State has indicated that the upcoming water withdrawal permit that will be obtained by the County might be restricted due to overdevelopment.

Ms. Reidenbach stated the central well systems pull from groundwater sources.

Mr. Peck stated the County has contracted to secure surface water sources that relieve the County of the independent ground water sources.

Ms. Reidenbach stated that this was her understanding from the General Manager of the JCSA.

Mr. Peck asked if it was reasonable to assume that the Schools would have to develop their own ground water source if they were not able to connect to the water.

Ms. Reidenbach stated that the Board of Supervisors approved a separate waterline extension in January 2008 that would service the schools. She stated that this extension discussed now would complete a loop to the already approved waterline.

Mr. Peck stated that the policy in general that applies to everyone, except the County, is to develop a ground water source when the property is located outside the PSA.

Mr. Murphy stated that this was correct except for public uses and public lands that the Board of Supervisors consciously decides to locate and purchase outside the PSA and that provided a public benefit to the County as a whole.

Mr. Peck stated that he understood that some of these developments have been willing to proffer the construction costs or a portion of the costs in order to connect to the JCSA system. He asked from a policy standpoint, why are they not allowed to connect to JCSA's central water system.

Mr. Murphy stated that the policy decisions that are made for developments outside the PSA may not be made solely on efficiency or business motives. Instead, he believes it to be a combination of factors, such as encouraging or accelerating growth outside the PSA by allowing connections to developments outside the PSA.

Mr. Peck asked how one concludes that these policy decisions accelerate development outside the PSA.

Mr. Murphy stated that this has been a consideration that has been part of the policy historically and that making public water available makes a parcel more attractive to develop.

Mr. Billups asked if there is a pressing need for this extension of the waterline. He asked if staff has worked with the Historical Commission to determine what type of park will ultimately be there.

Ms. Reidenbach answered that Freedom Park does operate under an approved master plan, which was approved by the Board of Supervisors in 2008. This lays out proposed roads, trails, a visitor center, education center, and other amenities. She stated the waterline follows the road layout and is proposed to service any new amenities that come into the park.

Mr. Billups asked about the back part of the property.

Ms. Reidenbach answered that there were environmentally sensitive areas on the back of the property that they were trying to avoid. She stated that the waterline is proposed to run along a previously cleared old logging road.

Mr. Billups expressed his concerns about the immediate cost factor.

Mr. Small stated that the first phase of the waterline extension is to run up to the proposed visitor's center and along the Freedom Park entrance road. He stated that the connection out to the elementary and middle school could be completed in the future. Mr. Small stated that the extension is not needed for the schools, but that the waterline that was approved in January was the one needed for the schools. He stated that the extension would provide redundancy for the schools and enhanced reliability for the overall water system.

Mr. Obadal asked about the cost.

Mr. Small answered that assuming the length is 8,000 feet, and given the higher cost of doing the RPA crossing, the line would probably bring the cost to approximately \$100 a foot, which would be a total of \$800,000.

Mr. Obadal expressed concern that the County was not sure if the second phase would be built or not, but was seeking approval of it now. He asked if it were apparent it was needed in the future, approval could be sought then.

Mr. Small stated if other improvements were made such as the education center, it would be required to obtain a special use permit.

Mr. Billups asked whether a well could be constructed to serve Freedom Park amenities.

Mr. Small stated the main reason for providing a water supply was for fire protection for these buildings. He stated if a well system was constructed to do this, the cost estimate would be in excess of \$1,000,000.

Mr. Billups asked about emergency services and how quickly emergency vehicles could access buildings.

Mr. Small stated the proposed multi-use trail is to run in the easement for the water and sewer lines through the park. He stated the plan was for the trail to be wide enough to accommodate emergency vehicles.

Mr. Billups asked if they were going to be standard roadways.

Mr. Small stated the plan called for them to be a 10 foot multi-use path.

Mr. Billups asked about the cost factor of running the lines underneath Colby Swamp, and the length of the pipe underneath.

Mr. Small answered that the total length is approximately 600 feet and the cost is approximately 4 – 5 times as much as if it were trenched.

Mr. Henderson asked if the County was exempt from the buffer on the buffer with regard to the RPA.

Mr. Small answered that the property is in the Gordon Creek watershed and it is not subject to the buffer or a watershed management plan.

Mr. Peck asked about policy considerations when deciding where to locate the schools and why public facilities would be outside the PSA.

Mr. Murphy answered that the school site selection committee, which made recommendations to the Board of Supervisors, considered a variety of land use factors, including proximity to neighborhoods and developing areas, size of parcel, and cost to obtain the land.

Mr. Peck stated it was a balancing act with cost being one of the factors.

Mr. Murphy stated cost being one factor, the willingness to condemn another factor.

Mr. Peck stated he spoke with Mr. Larry Foster, General Manager of the JCSA. He was told by Mr. Foster that inheriting many of these private central ground water systems is inefficient when compared to allowing the developments to connect to public water. Mr. Peck felt that cost was a factor and that the County will be facing this long term with the current policy.

Mr. Obadal asked where the money will be coming from to pay for this extension.

Mr. Shawn Gordon, Capital Projects Coordinator, stated that the first phase of the water line falls under the 2005 Bond Referendum for Parks and Recreation.

Mr. Obadal stated he was unsure whether we could use that money right now.

Mr. Gordon stated the money for this project has already been appropriated.

Mr. Fraley opened the public hearing.

Mr. Robert Richardson, 2786 Lake Powell Road, spoke on this application. He stated the figure he was familiar with was pipeline per mile for reclaimed water and that it cost approximately \$1.32 million per mile. He stated however, this dollar figure was for a ten inch line. He was interested in the size of the line proposed and how it affects cost.

Mr. Henderson stated the size of the line proposed is a twelve inch line.

Mr. Fraley closed the public hearing.

Mr. Peck stated he cannot support this application because he has reservations about the policies the County is pursuing and what he felt as an opportunity to revisit these policies. He stated there are several developments being built in the vicinity of this site, such as Liberty Ridge and a section of Ford's Colony, and at one time proffers were mentioned in lieu of constructing separate central well systems. He expressed his concerns about the \$25 million bond issue that is backed up by hookup fees. Mr. Peck stated that the largest cost is the cost of operating all of these facilities and infrastructure. He felt the time is right to reevaluate policies. He also felt that policies should be applied uniformly, with the County having to abide by the policies also. Mr. Peck urged for the application to be sent back and suggested staff to consult with the County Administrator and the Board of Supervisors if need be to review policies in place.

Mr. Henderson shared his concerns about different rules being applied to County projects

and other rules for the private sector. He felt the County should be the leader of doing what it asks others to do and be held to the same standard. Mr. Henderson also stated that extending the waterline would ultimately result in savings to the JCSA and the citizens of the County. He will support the application.

Mr. Fraley stated there have been other projects where two different standards apply. He asked for comments from Mr. Murphy.

Mr. Murphy stated the land use decision to locate public facilities with a deliberate process took in all factors that were mentioned. This does build in an inconsistency. He stated that a consistency may not be possible if development is to be encouraged mostly in the PSA and not outside the PSA. He stated that maybe the proper place to take up the policy issue is during the Comprehensive Plan update.

Mr. Peck asked where the justification was for accepting these ground water systems. He stated in essence service is being extended beyond the PSA when the central well systems are accepted by the JCSA.

Mr. Murphy stated that historically the County has had poor experience with private water systems. He stated, to his knowledge, all of the dealings have been negative.

Mr. Peck asked if it was a public responsibility to accept these systems, good or bad.

Mr. Murphy stated once a regulation is set to require a central water system, then the system must be accepted based on health, safety, and welfare of the citizens.

Mr. Peck asked about rate schedules for these systems.

Mr. Henderson stated that same rates apply for all water usage, regardless of the cost of maintaining any of these systems.

Mr. Obadal asked for clarification of acceptance of these systems outside the PSA.

Mr. Murphy stated it is in the interest of public safety that the system be a public system if the policy is to allow for private systems to be built.

Mr. Fraley asked what would be the ramifications if this extension was not approved.

Mr. Murphy stated there were reliability reasons; the ability to have a reliable water source that provides adequate fire flow despite anomalies that might come along.

Mr. Obadal questioned the importance of this project to density.

Mr. Murphy answered that the conditions attached to this application restrict the additions of any connections. He does not feel this would have any impact on density.

Mr. Obadal stated it was a twelve inch line and has the capacity to handle more than three additional residential connections.

Mr. Murphy stated it would take a legislative decision to lift the conditions limiting connection size to ¾” that are in this special use permit.

Mr. Billups expressed his concern with the need for this extension. He would like to see what types of facilities are planned for Freedom Park, and what the requirements of those facilities would be. He stated he is not ready to approve this application.

Mr. Gordon stated there are projects that have already been approved for this area. He said currently on site there have been three free black domicile cabins that are exhibit buildings. The interpretative center is part of the 2005 Bond Referendum project and is already funded and in development stages. He stated that the first phase of the waterline would provide fire flow to these facilities. Mr. Gordon stated there is no water currently on site and it is a mile from Centerville Road. He stated that if the waterline is not approved, then a well facility will need to be built.

Mr. Billups stated that he felt that a shorter, more direct line would be off of Longhill Road.

Mr. Gordon stated that the proposed waterline is being proposed as is, is because of all of the archeological sites that were found on the property and to follow areas that have already been cleared.

Mr. Billups stated he felt this needed to be addressed during the Comprehensive Plan update.

Mr. Obadal asked about the cabins and felt that these should not be used as justifications for the extensive of the waterline, due to perceived low construction costs.

Mr. Gordon stated the cabins are historically accurate, and that there are many artifacts in those buildings.

Mr. Murphy stated he felt that the line was sized to be built at one time, with the forethought of future structures at the park, and the need for a reliable water source for the schools.

Mr. Gordon stated this was the reason that it was decided to use a twelve inch pipe in lieu of an eight inch line.

Mr. Fraley asked when the original master plan was approved for Freedom Park.

Ms. Reidenbach stated the amended master plan was approved early 2008. She was unsure when the original master plan was approved.

Mr. Fraley asked whether a plan for providing water was considered or approved with the original master plan.

Mr. Gordon stated he did not think the original master plan addressed that issue. He said the plan was to provide service to the interpretative center which would have restrooms.

Mr. Henderson stated his recollection of that plan was to provide passive recreational uses and did not anticipate the newest additions. He would have doubted that there would have been an extension of public facilities.

Mr. Murphy stated there is an approved master plan that intends to be developed over a period of time, and the County is making a decision to build a waterline in thinking about the future.

Mr. Phil Mease spoke on behalf of Parks and Recreation. He stated the purchase and initial planning of the Freedom Park property occurred before the Warhill site was purchased. He stated the facilities that are at Warhill were previously on the master plan for Freedom Park. Mr. Mease stated the original use of the park was a much more intensive use.

Mr. Poole made a motion to approve this application. He was in support of this because of the public use, although he thinks it is important to discuss policies during the Comprehensive Plan update. He further stated that he felt there was an important distinction between County owned and private development in that public amenities serve a greater constituency as opposed to a private venture.

Mr. Henderson seconded the motion.

Mr. Henderson asked if approval of this application extends the PSA.

Mr. Fraley answered it does not extend the PSA, but merely extends the waterline.

Mr. Peck stated he felt that this is an opportunity to review the policy. He felt that if time was not critical on this that the policy needs to be reviewed before approving this application. Mr. Peck asked Mr. Poole to amend his motion and move to defer the application.

Mr. Poole appreciated the suggestion to amend, but preferred to vote on the motion to approve the special use permit.

Mr. Billups stated the he felt that there was insufficient input from other groups, such as the Historical Commission, in the development of the Freedom Park master plan. He does not see the need for this waterline extension, especially before the Comprehensive Plan update. He felt the school had a sufficient water source so there was no need for this extension. Mr. Billups stated he cannot justify rushing to build this extension. He cannot support this application, but could support a deferral.

Mr. Obadal agreed with Mr. Billups. He cannot see spending the money on this waterline

before the actual need is shown.

Mr. Fraley stated that funding for park amenities and the first phase of the waterline is already established. He stated the original plan called for a private well, but the situation has changed with the schools being planned for the site. He appreciated all of the comments from the Commissioners. Mr. Fraley agreed that the policy needed a strong review. He did state that he believed this application and waterline provides a vital need. He stated that this seems to be the better way to go as far as extending water service but possibly suggested a review of the policy.

Mr. Poole agreed to an attachment to his motion to have the policy reviewed, especially in conjunction with the Comprehensive Plan update.

Mr. Peck suggested contacting neighboring developers regarding their interest in participating in a land use and utility extension discussion. He stated he could support this motion if the following were attached as recommendations: review of the policies conducted as part of the Comprehensive Plan and the developers are invited to participate in the review.

Mr. Poole accepted.

Mr. Henderson stated that the project will be paid for in its entirety by the County although one of the main reasons for the extension was for the use by the schools.

In a roll call vote the motion was approved. (4-2) AYE: Henderson, Peck, Poole, Fraley; NAY: Billups, Obadal.

C. Readoption of Emergency Ordinance No. 170A-15

Mr. David German reported that on July 20, 2007, Realtec, Inc. applied to rezone the property located at 3889 News Road in support of its plans to construct a Continuing Care Retirement Community (or CCRC), to be known as the Village at Ford's Colony. This application was considered by the Agricultural and Forestry District Advisory Committee on May 5, 2008, where it was recommended that the property be withdrawn from the Gordon Creek Agricultural and Forestry District (AFD), in support of the applicant's request, on a 4-2 vote.

Prior to the Board of Supervisors meeting on July 8th, it was discovered that the request to withdraw the subject property from the Gordon Creek AFD had not been properly advertised before the Planning Commission and Board of Supervisors meetings. To address this Staff oversight, the Board enacted Emergency Ordinance 170A-15 to allow for the withdrawal of the subject property from the AFD. The case has subsequently been properly re-advertised. The State Code requires that public hearings be held, and that the Emergency Ordinance be re-adopted by the Board of Supervisors within sixty days of its original adoption to remain valid.

In keeping with this requirement, the Emergency Ordinance has been brought before the Planning Commission for a public hearing this evening. The Emergency Ordinance will subsequently be taken before the Board of Supervisors for a second public hearing, and for a re-

adoption vote. Mr. German stated that Staff recommends that the Planning Commission recommend approval of the withdrawal of the subject property from the Gordon Creek AFD to the Board of Supervisors, in support of the Emergency Ordinance.

Mr. Billups asked about the determination as to whether the withdrawal from the AFD is in compliance with the Comprehensive Plan.

Mr. German stated that staff makes that determination, and that Staff had found the application to be in conformance.

Mr. Obadal asked if there was a motion by which this was declared an emergency.

Mr. Kinsman answered that there was no motion to declare it an emergency. He stated that the Board of Supervisors adopted an emergency ordinance. He stated that the Emergency Ordinance is good for sixty days, by which time the Board has to re-adopt that ordinance for it to remain valid.

Mr. Obadal expressed his doubts as to whether this is within the authority of the Board of Supervisors based upon the State Code and language of the ordinance. He stated that this emergency arose because the applicant, Realtec, Inc., needed to meet a contractual obligation, and stated so publicly before the Board of Supervisors. He stated that it was at this point that the error in notification had been discovered.

Mr. German stated that the error that was found is that the general public hearing notices that were originally published for the case prior to the Planning Commission and Board of Supervisor meetings did not include a disclosure that the public hearings would include the AFD withdrawal.

Mr. Obadal stated that he felt that the action of declaring this situation an emergency was for the benefit of a private individual, and not for the benefit of the citizens of the County. Mr. Obadal referenced Sections 15.2 1102, 1200, and 1201, which he felt made clear that a municipal corporation may exercise all of the powers not expressly prohibited by the Constitution or the general laws and which are necessary and desirable to secure and promote the general welfare of the inhabitants of the County. He felt that this emergency ordinance did not meet these qualifications and does not serve a public purpose.

Mr. Kinsman stated the Board of Supervisors adopted the Emergency Ordinance which is only valid for sixty days unless it is re-adopted. He stated that the only emergency that can exist arises when there is not enough time to properly advertise a given case. He stated that this is what happened in this particular case. Mr. Kinsman stated that it was solely within the Board's purview to determine whether it would adopt the ordinance, pursuant to that section, when it finds itself without the time to properly advertise, and then send it back through the process to have it properly advertised. He stated that this is what has been done to this point.

Mr. Obadal asked about the wording of this being an emergency.

Mr. Kinsman clarified that the only emergency that can occur is that there is not enough time to properly advertise a given case, which is what happened in this instance.

Mr. Obadal asked if Mr. Kinsman could cite a case.

Mr. Kinsman stated the County has done this in past cases and could produce a list of previously adopted emergency ordinances. In each case, an emergency ordinance was adopted because there was not enough time to advertise.

Mr. Obadal stated that he felt that this would not be for a public purpose.

Mr. Peck asked if the Planning Commission was operating under an emergency procedure, or if the normal publication timeline had been followed.

Mr. Kinsman stated the normal procedure of advertising had been done for this readoption.

Mr. Peck asked if the proper notices had been done, and noted that the issue of this being an emergency is an issue for the Board of Supervisors. He asked if the Planning Commission was to hear the merits of the withdrawal and that the application has been properly advertised in the proper time frames.

Mr. Kinsman answered this was correct.

Mr. Fraley asked about staff's recommendation and if the item the Planning Commission should be acting upon is to allow the withdrawal from the AFD.

Mr. Kinsman stated this is correct.

Mr. Henderson asked if the deliberations made tonight would have an effect on the rezoning and master plan application itself and also wanted to clarify that there would be no re-hearing of the rezoning application.

Mr. German stated tonight's deliberation by the Planning Commission would have no effect on the rezoning application, and that, that application would be heard again.

Mr. Fraley asked about the deliberations of the AFD Committee. He asked whether the Committee considered the withdrawal as being in compliance with the Comprehensive Plan.

Mr. German stated that staff made the recommendation to the AFD Committee that the withdrawal would be in conformance with the Comprehensive Plan.

Mr. Fraley asked about the two dissenting votes on the AFD Committee.

Mr. German answered that the two dissenting individuals felt that it was not in conformance with the Comprehensive Plan. He also stated that these individuals felt the project

was too intensive for the parcel involved. Mr. German noted that at this point in their deliberations, the AFD Committee was reviewing a larger version of the project than what was ultimately approved.

Mr. Fraley opened the public hearing.

Mr. Sheldon Franck spoke on behalf of the applicant. He stated he would answer any questions that the Commission might have.

Mr. Robert Richardson of 2786 Lake Powell spoke. He stated that he emailed his comments to the Commissioners and has put his comments on his website, jccgov.org. He stated that he does not feel that this is an emergency. Mr. Richardson felt that the developer, Realtec, and Mr. Henderson, want the application approved under the R-4 Zoning expansion of the Ford's Colony Master Plan. He stated he has no objections to the CCRC as designed with clustering, and with its environmental protections. He stated that this is a chance to resolve some of the issues still surrounding this case. Mr. Richardson stated that he felt the issues that still needed to be addressed were zoning, traffic, employee housing, and affordability. He felt that Mr. Henderson's involvement in this case began long before he began to serve on the Planning Commission. He felt that Mr. Henderson represents his own interests with regards to this case, and not those of the citizens of James City County. Mr. Richardson stated that his perspective is that Mr. Henderson has ethical conflicts of interest and should not have been appointed to the Planning Commission. He felt that a Commissioner should not stand to benefit from more commercial development and more commercial real estate sales. Mr. Richardson requested Mr. Henderson to recuse himself from this vote and requested that the Planning Commissioners send this project back under R-5 Zoning. He felt that this project should be rezoned to R-5 and stand on its own merit, and not be included in the Ford's Colony Master Plan. He felt that the traffic on News Road would be severely affected. He felt that housing for the workers that will be needed for this project will increase the need for housing. Mr. Richardson stated he felt this project would not benefit the "typical" citizen of James City County.

Mr. Fraley closed the public hearing.

Mr. Henderson answered the comments made by Mr. Richardson. He felt that the comments made discredit Mr. Richardson, and not the Commission. He stated that he understands Mr. Richardson's disappointment in having his application to various boards and committees rejected by the Board of Supervisors. Mr. Henderson stated that his original application for the Planning Commission was filed over 8 years ago and was never acted upon. He stated that his disappointment is understandable, but that his reaction and continued berating of this Commission and Board of Supervisors is not. Mr. Henderson stated that he can understand Mr. Richardson's disappointment in not having his application to add a rental unit onto his residence denied. He stated that Mr. Richardson is not the first property owner who has had his plans to increase his net worth by overdeveloping his own property in a residential area to the detriment of his neighbors denied. Mr. Henderson stated that whatever Mr. Richardson may feel toward those who have rejected his applications to serve, and who have rejected his property improvement plans, does not constitute grounds for attacking him, the Planning Commission, or the Board of Supervisors. Mr. Henderson stated that he will not tolerate Mr.

Richardson's continued assault on his good name and reputation. He felt that Mr. Richardson's comments are defamatory, liable, and actionable. He stated that the majority of the Commission voted to approve the CCRC application, and there is no way to know whether the outcome would have been any different had Mr. Henderson not been on the Commission. Mr. Henderson stated that he does not benefit personally from serving on the Commission; instead it costs him dearly. He also stated that the majority of information on Mr. Richardson's website was not accurate.

Mr. Henderson stated for the record that he has no intention of resigning, and that he will fulfill the responsibilities of his appointed term. He stated he takes positions based on a set of principles that include the protection of the rights of the property owner, a belief in the free enterprise system, and a commitment to limiting government intrusion in our lives. He stated that the County Attorney and the Commonwealth Attorney have confirmed that he has no conflict of interest. Mr. Henderson voted that the withdrawal of the property from the AFD is not before the Commission tonight because of him. He stated that he was assured by staff that all appropriate measures had been taken for the proper withdrawal of the CCRC land site from the AFD. Unfortunately, this was not the case. The Emergency Ordinance is now before the Commission that was passed by the Board of Supervisors to correct staff's error. Mr. Henderson stated that he agrees with the majority of the Board, and that it would be unfair to penalize any applicant for such a staff error.

Mr. Obadal stated that it was his understanding that the Commission could discuss the Emergency Ordinance.

Mr. Billups stated that the decision before the Commission is to approve or deny the withdrawal from the AFD. He felt that the AFD withdrawal does not conform to the Comprehensive Plan. He does not see any public good coming out of this process.

Mr. Poole stated his concerns about the precedent that this may set. He cannot vote in support of this.

Mr. Peck stated that this was one of the most highly publicized projects in recent history. He felt that this meeting was held to clear up a technicality, and that ample notice was provided throughout the process. He appreciated staff's extra effort in providing notice. He felt comfortable supporting the withdrawal.

Mr. Fraley stated he does not feel that this would be a precedent but has concerns with the process being flawed. He also stated that he always felt that this project should have been brought forward as a stand alone project with R-5 Zoning. Mr. Fraley stated that the Planning Commission has spent eight hours in public meetings on this project; therefore, there was ample notice.

Mr. Obadal stated that a public hearing had to be held for this Emergency Ordinance within 60 days of adoption to remain valid. He felt that this is on the agenda and felt that the Commission should be able to consider it as such.

Mr. Kinsman stated that an Emergency Ordinance can be adopted without prior notice,

but that no such Ordinance shall be enforced for more than 60 days unless readopted. The Board of Supervisors made the decision to adopt the Ordinance. The decision before the Commission tonight is the withdrawal of the AFD.

Mr. Obadal felt that this involves following the law.

Mr. Poole made a motion to deny the Emergency Ordinance.

Mr. Obadal seconded the motion.

In a roll call vote the motion was not approved. (3-3) AYE: Billups, Poole, Obadal; NAY: Henderson, Peck, Fraley.

Mr. Fraley made a motion to approve the Emergency Ordinance.

Mr. Peck seconded the motion.

In a roll call vote the motion was not approved. (3-3) AYE: Henderson, Peck, Fraley; NAY: Billups, Poole, Obadal.

Mr. Kinsman suggested sending this case to the Board of Supervisors with a neutral recommendation.

Mr. Fraley made a motion to send the case to the Board of Supervisors with a neutral recommendation.

Mr. Poole seconded the motion.

In a roll call vote the motion was not approved. (3-3) AYE: Billups, Peck, Poole; NAY: Henderson, Obadal, Fraley.

Mr. Kinsman indicated that the case would be sent to the Board of Supervisors with a tied 3-3 vote, with the minutes of the Planning Commission meeting attached.

6. COMMISSION DISCUSSION AND REQUESTS

A. CaseTrak Overview

Ms. Reidenbach has an overview of the CaseTrak system used to track current and past cases for the County. She stated the system has been in place since 2007. She stated that it is an internet based system and that it is available to the public. Ms. Reidenbach stated the goals were to be able to make electronic versions of the comment letters available, make the process more transparent and expeditious, allow agencies outside the County to access case information, and also to standardize the data entry. She stated the software is available 24/7 to anyone with an internet connection and Adobe Acrobat Reader. She stated the system is updated in real time and can be accessed off of the Planning website. Ms. Reidenbach gave a quick demonstration on

searches and case information.

Mr. Poole asked about similar jurisdictions and their means of tracking applications.

Ms. Reidenbach stated that the County based this system off of Chesterfield County. She said there was great deal of effort put into making it user friendly.

Mr. Fraley complimented Ms. Reidenbach on her work with this system.

Mr. Obadal asked about the summarizations for the applications.

Ms. Reidenbach showed where the information was available. She did say, however, it is a new field so that some of the older cases may not have that information. She also stated that outside agencies have the ability to upload their comments into the system.

7. PLANNING DIRECTOR'S REPORT

Mr. Murphy had nothing to add to the reports already presented.

Mr. Poole had a correction to the Planning Director's report with regards to the voting results for the cases that went to the Board of Supervisors.

8. COMMISSION DISCUSSIONS AND REQUESTS

Mr. Kinsman suggested that any discussions on public comment can implicate a number of laws, case laws, and other principles. He offered to give some guidance for boundaries before the discussion ensues.

Mr. Peck asked if the public comment period was a privilege for citizens or was it required separate from the public hearings.

Mr. Kinsman answered that there need not be a comment period in the beginning of the meeting.

Mr. Fraley stated that there was not a public comment period in the beginning of the meeting until 2006.

Mr. Henderson mentioned that Mr. Bill Porter, Acting Development Manager will be retiring. He wanted to acknowledge his contributions to the community.

Mr. Fraley also expressed his sentiments towards Mr. Porter and his contributions to the community and to the Planning Commission. He also agreed with Mr. Kinsman's recommendation of providing guidance for the Commission's consideration regarding public comment during the meetings.

Mr. Obadal felt it was important to understand that free speech needs to be balanced. He

does not see any effort to limit the free speech of citizens as proper. He stated that the Commissioners are public officials and as such are subject to criticism at times. He further stated that as Commissioners they needed to use their positions properly. Mr. Obadal stated that as Commissioners they are subject to criticism. He thought it was important that all the Commissioners realize they need to work with different points of view and work with each other. He stated he is adamantly opposed to removing the public comment section in the beginning of the meeting.

Mr. Peck wanted to clarify his point in that the public comment period gives citizens the privilege to speak, and that it was not necessarily a right. He stated that all participants in the government process have certain responsibilities and obligations with respect to abiding by some acceptable standard of conduct. He believes that comments should be made that are pertinent to the hearings, and not derogatory and personal. Mr. Peck stated that not only do the Commissioners have obligations but so do the citizens that come before the Commission. He felt that the Commission may have gone too far in allowing these personal assaults.

Mr. Billups stated that when the public is making comments, the Commissioners should not take it personal, that the comments should be directed toward them being a public servant.

Mr. Poole stated he was comfortable with the comment period and felt that it was an enhancement to the agenda, but that discretion is always encouraged by the citizens speaking as well as the Commissioners. He also stated that political affiliations should not be part of the Planning Commission's discussions because their decisions should be based on land use issues.

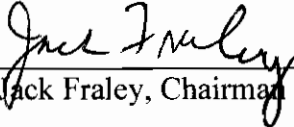
Mr. Fraley expressed his concerns about the civility of discourse. He would encourage comments and remarks to be civil in nature, and hopefully this in turn will prevent this Commission from becoming politicized. He stated that when members are attacked in public, it encourages others to do the same. Mr. Fraley stated he felt public comment is important but discourages anyone from attacking a Commissioner personally.

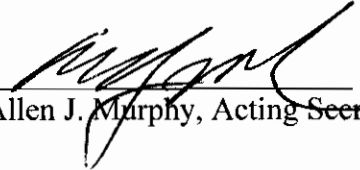
Mr. Henderson stated it was not his purpose to limit any public debate but there is work that the Commissioners have been appointed to do, and that is what needs to be done. He suggested focusing energies on the business at hand, but in those rare cases where public comment is not productive, it should not be tolerated.

Mr. Poole made a motion to adjourn the meeting.

Mr. Billups seconded the motion.

The meeting was adjourned at 9:55 p.m.


Jack Fraley, Chairman


Allen J. Murphy, Acting Secretary