

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIRST DAY OF JULY, TWO-THOUSAND AND NINE, 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:

Deborah Kratter  
George Billups  
Joe Poole III  
Reese Peck  
Rich Krapf  
Chris Henderson  
Jack Fraley

Staff Present:

Allen Murphy, Director of Planning/Assistant  
Development Manager  
Angela King, Assistant County Attorney  
Leanne Reidenbach, Senior Planner  
Nicholas Bolash, Intern, County Attorney's Office  
Terry Costello, Development Management Asst.

2. PUBLIC COMMENTS

Mr. Rich Krapf opened the public comment period.

There being no speakers, Mr. Krapf closed the public comment period.

3. MINUTES – JUNE 3, 2009

Mr. Joe Poole III moved for approval of the minutes with a second from Ms. Deborah Kratter.

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

4. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC)

Mr. Poole stated the DRC met on June 30, 2009 to review one case, S-0014-2009, Summerplace. This was the third DRC review of this by-right development of 164 single family homes. Mr. Poole stated that conceptual plans for the subdivision were reviewed earlier in the year in which discussions took place concerning internal street connectivity, cul-de-sacs, sidewalks versus pathways, community well and well locations, and residential clustering. He stated the DRC recommended approval of the applicant's request and staff's recommendation to accept cul-de-sac length exceptions and sidewalk waiver requests. This was in recognition of the site's topography and also given shared interest to protect the wooded and rural nature of Jolly Pond Road in the vicinity of the project. Mr. Poole stated that the applicant had agreed to additional considerations regarding mature tree preservation during the project's construction phases. The applicant also agreed to consultations with the James City Service Authority regarding the community well's capacity and it's potential to handle future and adjacent

development. He stated that the applicant had agreed to a subsequent DRC review and approval of its entry features along Jolly Pond Road.

Mr. Chris Henderson moved for approval of the DRC actions with a second from Ms. Kratter.

In a unanimous voice vote, the DRC actions were approved (7-0).

Mr. Fraley stated that many citizens have contacted him concerning clear cutting. He stated that the developer for the Summerplace development agreed to phased clearing for this by-right development. He wanted to commend the applicant for this since there was no requirement to clear in phases.

#### B. Policy Committee

Mr. Henderson stated that the Policy Committee met in June and has concluded their discussions on the Capital Improvement Program (CIP) process. He asked Ms. Kratter to provide some additional background on the document that was included in the packets for this meeting.

Ms. Kratter stated that the Policy Committee's review of the process included input from resources available in book form, the internet, and research done by staff. Other formats from other jurisdictions were also considered. Ms. Kratter stated the Committee has come up with a "score sheet" that would be used for any CIP project that is reviewed by the Policy Committee to determine which projects should be listed as the highest priority and those which should be classified as the lowest priority. She stated that there are eight overarching factors but that the eighth one is one classified as "special considerations." Ms. Kratter stated the importance of this is that no matter what other elements other projects may have, if there is a project that is required for immediate health and safety for the citizens, or is required by a federal or state mandate, or a project where funds are available for a certain time period, this category may be used.

Mr. Henderson stated that the categories used in the evaluation are quality of life, infrastructure, economic development, health and public safety, impact on operational budget, regulatory compliance, timing and location, and special considerations. Each category was assigned a varying percentage based on 100%. The Committee feels that this is a rational means of evaluating the capital improvement projects that reflect the community values and will help the Board of Supervisors to properly prioritize the capital investments made by the community.

Mr. Henderson moved to adopt the CIP ranking criteria as distributed and dated July 1, 2009. He thanked staff for their work on this criteria, and also John McDonald from Financial Management Services for his input.

Mr. Krapf thanked Ms. Kratter for putting this package together, along with Mr. Henderson and Mr. Reese Peck for initiating this discussion last year.

Mr. Poole seconded the motion.

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

C. Steering Committee

Mr. Fraley stated the Steering Committee had its last meeting on June 25, 2009. The Committee unanimously recommended approval for the Comprehensive Plan draft to be presented to the Planning Commission.

Mr. Krapf thanked Mr. Fraley for all his work on the Steering Committee.

D. Other Reports

Mr. Peck stated that at the Board of Supervisor's meeting in June, the County Attorney, Mr. Leo Rogers issued an opinion on the role of covenants. Mr. Rogers clarified that while the County does not enforce covenants, if covenants are made known during the plan review process, and if a covenant provision is in conflict with the case that is being reviewed, that the recommendation should be that the covenant prevails. Mr. Peck asked staff to provide this information to the entire Planning Commission.

Mr. Fraley stated that despite the opinion by Mr. Rogers, the Board of Supervisors approved the application that was being reviewed.

Mr. Peck stated that he believed that the Board of Supervisors did not base their decision on the opinion rendered or that they disagreed with the opinion. He felt that there were several provisions that were interpreted broadly and that the wording in the covenants provided some flexibility.

Ms. Kratter stated that she felt there was also a question as to whether the covenant document that pertained to that application in particular was given to all of the land owners when they purchased their property. There may have been some questions as to whether the covenants truly were tied to the land as opposed to some type of private agreement filed in court.

Mr. Krapf stated that the Commission will acknowledge future cases that involve covenants and that staff will alert the Commission that they may exist.

Mr. Henderson asked about having something being put on the application for a special use permit or a rezoning that might identify if covenants exist.

Mr. Murphy stated staff is making this change.

5. PLANNING COMMISSION CONSIDERATIONS

A. Initiating Resolution - To amend section 24-650 of the Zoning Ordinance, to eliminate the words "approaching confiscation" from the requirements for granting variances

Mr. Nicholas Bolash stated that this resolution was to consider an amendment for eliminating the words “approaching confiscation” will change the circumstances under which the Board of Zoning Appeals grants property variances. He stated that the Virginia General Assembly passed a resolution removing the requirement that when the Board of Zoning Appeals grants a variance on the property, the hardship imposed on the property without granting a variance has to be approaching confiscation. Mr. Bolash stated that under the proposed change to the County Code, a variance can be granted if the variance would alleviate clearly demonstrated hardship. The change would bring the County Code into compliance with the updates to the Virginia Code.

Mr. Bolash recommended that the change in code be approved for public hearing.

Mr. Krapf asked for more information concerning the significance of removing the words “approaching confiscation.”

Mr. Bolash stated that there are two circumstances under which the Board of Zoning Appeals can grant a variance. The first is if the property is unreasonably restricted in its utility and the second is to alleviate clearly demonstrated hardship approaching confiscation. He gave the example of if a property has large easements making the property not feasible for use, then the only option would be for the County to take the property. The current language would allow the Board of Zoning Appeals to grant the variance only if this were the case. The proposed language gives the Board more flexibility in granting variances.

Mr. Poole asked what the reasoning was for the General Assembly to make the change.

Mr. Bolash stated that he believed it was due to general confusion for a number of zoning boards. The Virginia Supreme Court was then asked for some clarification. The Virginia General Assembly then determined this was the way to alleviate those concerns.

Mr. Fraley stated that as a member of the Board of Zoning Appeals, he applauds this change. He stated the Board has struggled with the meaning of “approaching confiscation” in the past. He stated that other jurisdictions also applied the term differently adding to the confusion. Mr. Fraley believed that this change is a good step forward in clarification.

Mr. Henderson stated that there were several cases in Newport News where the City was compelled to sue the Board of Zoning Appeals over the strict interpretation. He supports the change.

Mr. Fraley stated that most of the cases that come before the Board of Zoning Appeals involved citizens, usually in the lower to middle income range.

Ms. Kratter moved to approve the initiating resolution with a second from Mr. Poole.

In a roll call vote the motion was approved. (7-0, AYE: Henderson, Billups, Poole,

Fraley, Kratter, Peck, Krapf)

6. PUBLIC HEARINGS

- A. Zoning Amendment – To amend section 24-650 of the Zoning Ordinance, to eliminate the words “approaching confiscation” from the requirements for granting variances

Mr. Bolash requested the Planning Commission recommend that the Board of Supervisors amend section 24-650 of the Zoning Ordinance. The change will clarify the terms under which a variance may be granted.

Mr. Peck asked if the Commission could recommend that the language remains, therefore creating a higher standard.

Ms. Angela King answered that it would be mandatory to make the change in order to match the standard in the Virginia Code.

Mr. Poole asked if staff has received any feedback from citizens.

Mr. Bolash answered no.

Mr. Krapf opened the public hearing.

There being no comments, he closed the public hearing.

Mr. Henderson moved for approval with a second from Ms. Kratter.

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

- B. Zoning Amendment – To amend section 24-2, 24-213, 24-349, and 24-521 of the Zoning Ordinance, to replace the term “mentally retarded” with the term “intellectually disabled”

Mr. Bolash stated the Virginia General Assembly approved a measure to change these references to “intellectually disabled.” He recommended the Planning Commission recommend approval of this change to the Board of Supervisors.

Ms. Kratter asked if there was a definition for what constitutes an intellectual disability.

Mr. Bolash stated he was not aware of any definition.

Ms. King stated it was not defined in the County Code, but she would have to do some research to see if it was defined in the Virginia Code.

Mr. Billups stated that some information may be listed in cases involving children who are labeled "intellectually disabled."

Ms. King stated that this proposed change is to reflect what is currently in the Virginia Code.

Mr. Krapf opened the public hearing.

There being no comments, he closed the public hearing.

Mr. Henderson moved for approval with a second from Mr. Peck.

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

C. Z-0002-2009 / MP-0002-2009 Governor's Grove Section III – Proffer and Master Plan Amendment

Mr. Murphy stated staff's concurrence with the applicant's request for a deferral to the August 5, 2009 Planning Commission meeting.

Mr. Krapf opened the public hearing.

There being no comments, he continued the public hearing to August 5, 2009.

D. SUP-0011-2009 - 7708 / 7710 Cedar Drive

Mr. Murphy stated staff's concurrence with the applicant's request for a deferral to the August 5, 2009 Planning Commission meeting.

Mr. Krapf continued the public hearing to August 5, 2009.

7. PLANNING DIRECTORS REPORT

Mr. Murphy had no additional comments to make but stated that Mr. Christopher Johnson has been hired by the Division as a Principal Planner.

8. COMMISSION DISCUSSIONS AND REPORTS

Mr. Krapf stated the Commission's representative to the Board of Supervisors for July was Mr. Fraley.

Mr. Peck initiated the discussion on the Comprehensive Plan draft. He stated that the prime concern of the citizens was growth management. He mentioned the policies from Fairfax County that addressed concerns such as these. He stated that Fairfax County had pulled out the governing policies on how growth was going to be managed. Mr. Peck thought this might be

something for the Commission to consider highlighting and focusing on for the public. He thought it would be beneficial to highlight those action items that would be addressed over the next five years. Mr. Peck requested that while the Commission was reviewing the draft that the Policy Committee look at this idea concurrently. He stated that he will send information to the Commissioners as to the other localities he has researched.

Mr. Krapf stated the Commissioners can then work with staff to determine where this will be on the agenda for the Policy Committee.

Mr. Murphy stated that implementation concerns can be reviewed by the Policy Committee, although there will most likely be a discussion concerning this with the entire Planning Commission.

Mr. Peck prefers that the Policy Committee work on this concurrently.

Mr. Henderson stated he will like to confer with Mr. Murphy and review the workload of the Policy Committee. He stated there was a list of objectives that the Committee would like to accomplish before the end of the year. His thought was that this would be a discussion with the entire Planning Commission so he was unsure about the role of the Policy Committee.

Mr. Peck would like the Policy Committee to have time to look at the various options concerning the implementation. It is important how this is presented to the public and how decision makers use this document. Mr. Peck felt that one problem is that the format includes many maintenance items and, as a result, some of the items deemed important may be lost. There are two basic approaches: one being page by page restructuring of the plan, or the second being leaving it in the format presented and pulling out those items deemed most important. He felt that with the concerns expressed, unless there is a concise focus statement as to what the guiding principles are on growth management, that the impact on growth might be lost. Mr. Peck felt that having this discussion concurrently would add value to the Comprehensive Plan itself.

Mr. Henderson stated the entire Planning Commission should discuss implementation issues but that it is still an option to remand something back to the Policy Committee if the Planning Commission desires.

Ms. Kratter asked if there was going to be a separate work session to address some of the over arching formatting ideas. There is content and substance, but then there are issues relating to form that actually have some important impacts.

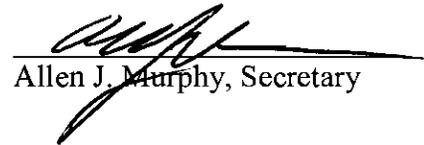
Mr. Krapf stated that would depend on how much feedback is received concerning format change. If the feedback received is so extensive that a separate work session is needed it could be, or if not much is received, the discussion should be built into one of the already scheduled work sessions.

9. ADJOURNMENT

Mr. Henderson moved for adjournment, with a second from Ms. Kratter.

The meeting was adjourned at 7:45 p.m.

  
Rich Krapf, Chairman

  
Allen J. Murphy, Secretary