

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE THIRTEENTH DAY OF JANUARY, TWO-THOUSAND AND TEN, 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:

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

Staff Present:

Allen Murphy, Director of Planning/Assistant
Development Manager
Adam Kinsman, Deputy County Attorney
Jason Purse, Senior Planner
Leanne Reidenbach, Senior Planner
Terry Costello, Development Management Assistant

Mr. Rich Krapf called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENTS

Mr. Krapf opened the public comment session. He stated that citizens would be able to address the Autumn West townhome case during this period.

Mr. Bill Haldeman, 109 Randolph's Green, discussed the cellular-on-wheels (C.O.W.) concept. He stated that one of the C.O.W. units, used by AT&T, includes a 60 foot antennae and trailer, and is parked in front of the Kingsmill Conference Center. Mr. Haldeman forwarded C.O.W. information to the Commission, which included a letter from the vice-president of the Kingsmill Resort & Spa stating that the C.O.W. improved local cell service. The Kingsmill C.O.W. tower is not shown on existing local cell coverage propagation charts. He asked the Commission to periodically ensure the coverage charts are accurate.

Ms. Linda Reese, 511 Spring Trace, stated that attached garages and green spaces have reduced the Season's Trace neighborhood's impervious cover. She stated that the Autumn West applicant would not downsize the project due to expense and profitability. She stated that Autumn West excavations would damage both her property and that of the homeowners association. She stated she was also concerned about run-off, loss of greenspace, and sewer pollution. She asked the Commission to deny the Autumn West application.

Ms. Dorothy Piper, 501 Spring Trace, stated that she was concerned with the Autumn West project's crowded design, density, impact on wetlands, placement atop nine feet of fill, backyard access, garbage collection, traffic impacts, safety impacts, clear-cutting, and the resulting impacts of field-lighting from Warhill.

Mr. Robert Richardson, 2786 Lake Powell Road, stated that the Autumn West project has many errors and violates County Code and Comprehensive Plan. He stated the staff

recommendation of approval for Autumn West was coerced. He stated the applicant deflected questions about pavement and recreation area at the Development Review Committee (DRC) meeting. He questioned the layout and width of handicap-access sidewalks and the retaining wall. He stated he was concerned about run off into the proposed development and excavations harming vegetation.

Mr. Jack Fraley asked about County requirements for C.O.W. towers.

Mr. Adam Kinsman stated that C.O.W. towers tend to be used for temporary events. He stated that he had not been able to find the permit for the Kingsmill Resort C.O.W. tower. The County Zoning Administrator has begun the process of removing the resort tower. The resort has assured the tower's removal.

Mr. Allen Murphy stated that C.O.W. towers tend to be used for festivities and temporary events.

Mr. Krapf closed the public hearing.

3. MINUTES

A. December 2, 2009 Regular Meeting

Mr. Krapf stated that on page 3 of the minutes, where "Mr. Krapf opened the public hearing," it should be changed to "...opened the public comment session."

Mr. Joe Poole moved to adopt the minutes as amended, with a second from Ms. Kratter.

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

4. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC) – January 6, 2010

Mr. Poole stated that the DRC reviewed four cases at its meeting. For the first, SP-0098-2009, Zaxby's Chicken, the DRC recommended the applicant discuss alternate exterior material options, especially brick to match the shopping center, with the landowner. The applicant was also asked to consider additional landscaping along Rt. 199 and the protection of mature trees. The DRC recommended preliminary approval of the revised site layout along with the landscape modification request. The second case was SP-0091-2009 Lifepoint Christian Church Sidewalk Modification Request. Since the DRC had recently approved sidewalk modifications in the surrounding area, the DRC approved the request to install a multi-purpose trail along the road instead of sidewalk. The DRC asked staff to review establishment of a County sidewalk fund during upcoming Zoning Ordinance amendments. The third case, SP-0110-2009, The Colonies at Williamsburg, had been preliminarily approved at the September 2007 DRC meeting, but lengthy negotiations between the applicant and VDOT caused the approval to expire. The DRC recommended approval of the updated application. The DRC, after four months of review,

recommended preliminary approval of SP-0064-2008, Autumn West Townhomes, subject to agency comments. The DRC also discussed American Heritage RV Park Expansion of 10 campsites and 69 cabins. Since the campground is a legally nonconforming use, the expansion would require legislative approval. The applicant understood that any expansion would also be impacted by the new Economic Opportunity (EO) designation. The DRC also received elevations for the CVS at Norge, with a proposed food market. The DRC recommended additional architectural changes for the Richmond Road-facing frontage to bring it more in line with community character. The DRC recommended the proposed grocery store adopt all the architectural features as the adjacent CVS.

The DRC also met January 13, 2010 to consider an expedited review for SP-0112-2009, New Town Sec. 3 & 6, Blk. 20, Parcel C-TPMG Medical Building. The DRC recommended preliminary approval for the site plan and approval of the off-site parking waiver subject to agency comments.

Mr. Krapf stated the Commission will treat the Autumn West DRC report separately from the rest. He stated the separation is due to the project's significant review time and the applicant requesting deferral until the February Commission meeting.

Mr. Krapf moved for separate consideration of the Autumn West case, with a second from Ms. Kratter.

In a unanimous voice vote, the Commission agreed to consider Autumn West separately and defer consideration of the application until the February 3rd Commission meeting. (7-0).

Mr. Fraley moved for approval of the DRC report, with the exception of Autumn West, with a second from Mr. Chris Henderson.

Mr. Henderson stated that the Zaxby's Chicken was encouraged to submit alternative exterior options, but that the DRC did not conditionally approve the case.

In a unanimous voice vote, the DRC report, with the exception of Autumn West, was approved (7-0).

Mr. Krapf stated that two Commissioners may not be fully aware of DRC discussions. He requested that staff prepare and deliver a packet on Autumn West to those two members before the February Planning Commission meeting. Any new Commissioner questions should be submitted to staff by January 22 to allow staff and the applicant time to prepare responses. He stated that the Autumn West case is by-right and not legislative. The Commission's role is to make recommendations based on the Season's Trace Master Plan and all applicable ordinances.

B. Policy Committee – December 10, 2009

Mr. Henderson stated that the Policy Committee had revised the Planning Commission's by-laws. The Committee also discussed third-party communications and will review a draft policy draft statement at its February 10 meeting. Finally, the Committee discussed changes in

minute-taking for Commission and Committee meetings. The Policy Committee will review three styles of minute taking at its February meeting. The Committee will meet on January 28, 2010 at 6 p.m. in Building A to finalize its Capital Improvements Program (CIP) rankings.

Mr. Poole moved for approval of the Policy Committee report, with a second from Mr. Reese Peck.

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

C. Other Reports

There were no other reports.

5. PLANNING COMMISSION CONSIDERATIONS

A. Planning Commission Bylaws

Mr. Kinsman stated the County Attorney's office had made additional changes to the bylaw revisions, mainly in formatting and grammar. He stated that in Article 6, Subsection 1, Voting, he added language stating that Commissioners cannot vote "if pursuant to any applicable Board of Supervisors policy or if a conflict is voiced, unless a Commission majority objects." Under Article 8, Subsection 3B, Policy Committee, additional changes were made to recognize the increased role the Policy Committee has taken, including CIP and ordinance amendments. The Article 8, Subsection C, Leadership Committee language has been completely rewritten. Changes to parliamentary authority and procedure were changed in Article 9 to reference Robert's Rules of Order for "small boards." Essentially, this change would remove the need for seconded motions. The revisions bring the Commission in line with Board bylaws and procedures.

Mr. Poole moved for approval of the revised bylaws, with a second from Mr. Peck.

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

6. PUBLIC HEARINGS

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

Mr. Krapf stated the applicant has requested deferral until the April 7, 2010 Commission meeting. He stated that staff agrees with the deferral. He noted the public hearing from the case was still open.

Mr. Richardson stated the deferral fees for the case should be charged if appropriate.

Mr. Krapf continued the public hearing.

B. Z-0004-2009/SUP-0027-2009 School Operations Center Parking

Ms. Leanne Reidenbach stated that Mr. Bruce Abbott of AES has applied on behalf of WJCC Schools to rezone 20.5 acres of newly acquired property at 597 Jolly Pond Road to Public Lands. He has also applied for a special use permit to expand the existing school operations center onto the new property. The acquired property is zoned A-1, and the existing center is zoned Public Lands. The special use permit will include expanded parking and bus storage. No increase of bus traffic to the site is projected. Additional landscaping along Cranston's Mill Pond Road will help screen the new parking area. Any future development on the property will require an SUP. Staff finds the proposal generally consistent with the surrounding uses and the 2009 Comprehensive Plan and recommends that the Planning Commission recommend approval.

Ms. Kratter asked if anything could be done to mitigate chemical run-off from the gravel lot.

Ms. Reidenbach stated the Environmental Division reviewed the plans and made no recommendations. She stated that gravel is typically considered impervious and that any run-off would be treated for water quality before infiltrating. Oil run-off was not specifically considered under the current review.

Mr. Alan Robertson stated that the buses will be stored mainly during summer. He stated the new parking will allow buses to be kept in one location for maintenance. The buses are too well-maintained for significant run-off, but will be monitored. Schools works closely with Environmental on its site designs. Long-term bus storage would be a greater reason for run-off concern.

Mr. Henderson asked why the design was gravel instead of asphalt.

Mr. Robertson stated that WJCC Schools was taking advantage of the opportunity to acquire this property. WJCC Schools do not yet have a long-term plan for the property. Gravel suits a more short-term use. WJCC Schools also needs additional car parking and school trailer storage at the site.

Mr. Henderson stated the plans do not show the site's developable and non-developable acreage. Based upon RPA, slopes, and wetlands, it appears the site is more than 50% undevelopable.

Mr. Robertson stated that Schools scaled back the site design after learning that a significant portion of the property could not be used.

Mr. Bruce Abbott, the applicant, stated that Environmental recommended, in the future, closing the existing BMP and creating a larger one on the site. The larger BMP is not currently cost-efficient. Any oil leaks from stored buses would be trapped by the site's water quality features. Due to budget constrains, a full site master plan was not developed.

Mr. Henderson stated that the Commission requires a binding master plan from all other

applicants, showing how the property will be developed. He stated there seemed to be a lower standard for County projects.

Mr. Robertson stated that a public entity has to maintain long-term public interest for sites. He stated that in a few years, Schools will need to expand. Schools did not want to lose the property for lack of a master plan. A master plan could tie the County into buildings it may not need.

Mr. Henderson stated the private sector should be provided the same flexibility as the County.

Ms. Reidenbach stated that a master plan for the property had been provided and included only a gravel storage area and parking area. Any future changes to the property will require a SUP amendment, similar to how a private developer would be treated. She also noted that there was an archeological survey condition placed on the property, again similar to treatment of a private development.

Mr. Poole stated there are vast differences between for-profit private entities and community-oriented public entities. He asked if the applicant was comfortable with the SUP conditions.

Mr. Robertson stated that he was comfortable with the conditions.

Mr. Poole stated he liked the landscaping provisions written into condition four.

Mr. Fraley asked Mr. Murphy to review the run-off concerns that Ms. Kratter discussed. He stated the County has standards for how auto repair shops handle fluids. There will be some chemical run-off on the site.

Mr. Murphy stated that staff will investigate the matter. He stated the proposal was a relatively low-impact use.

Mr. Krapf opened the public comment period.

There being none, Mr. Krapf closed the public comment period.

Mr. Henderson moved for approval.

In a unanimous roll call vote, the Commission moved for approval (7-0).

C. ZO-0004-2009 SUP Use List for Limited Business (LB) and General Business (B1) Zoning Districts

Mr. Jason Purse stated that in July 2008, staff brought forward specially permitted uses to be changed to generally permitted uses in various business zoning districts. The Board subsequently approved changes to Limited Industrial and General Industry zoning. Decisions for

Limited Business and General Business zoning were delayed until adoption of the 2009 Comprehensive Plan. Staff is reintroducing the previously suggested changes. Staff compiled a list of special uses with similar impacts to existing by-right uses. Staff feels changing these special uses to permitted uses will not negatively impact similar-zoned parcels. Commissioners were given packets detailing a list of SUPs since 2002 and a list of undeveloped land in each district.

Mr. Krapf opened the public hearing.

Mr. Doug Gebhardt, James City County Economic Development Authority (EDA), stated that one of the Board-adopted recommendations of the Business Climate Task Force was a comprehensive review of legislatively-required land uses. The Task Force recommended reducing the legislative requirement for those cases where businesses and citizens would both benefit. Businesses are reluctant to invest in expanded facilities when the outcome is uncertain. The EDA supports the staff recommended SUP changes.

Mr. Krapf closed the public comment.

Mr. Poole stated he was protective of Limited Business areas. He asked if staff had reviewed size limitations on tourist homes. Different Limited Business areas may be able to accommodate different sized tourist homes.

Mr. Purse stated that tourist homes are limited to five rooms.

Mr. Henderson moved for adoption of the changes and noted that the Policy Committee already reviewed the SUP changes twice in 2008. The current changes are a deferred action, with recommendations from the Policy Committee.

Mr. Poole stated that while he was fine with many of the Limited Business changes, he disagreed with others, such as restaurants and contractor supply. He stated he did not want to lose the County's ability to place SUP conditions on businesses for community impacts such as noise and traffic. General Business zoning generally has more spacing and buffering from neighborhoods. He stated he wanted to help fill vacant storefronts instead of introducing intense businesses near neighborhoods.

Mr. Billups asked about the intent of the 100-seat restaurant limit.

Mr. Purse stated seat numbers were used to limit impact. The 100-seat limit was determined based on how many trips it would generate.

Ms. Kratter asked if there was a size limitation on construction, electrical, and plumbing supply businesses.

Mr. Purse stated there were no specific limits on supplier size, but there is a 10,000 square foot building size maximum and a traffic generator to trigger the commercial SUP requirement. Over 100 trips per peak hour triggers a SUP. Some Limited Business parcels are

also designated Neighborhood Commercial, which limits by-right buildings to 2,500 square feet.

Mr. Kratter asked if the SUP changes could be delayed until after the Zoning Ordinance amendments. She stated that only one of the SUPs since 2002 would have been switched to a permitted use under the proposed changes. There will not be a large number of new businesses brought in from these changes.

Mr. Purse stated that when staff began looking at SUP changes in 2008, they tried to bring forward the least controversial changes. He stated that after the smaller changes were approved more extensive work could be done on SUPs during the Zoning Ordinance amendments. He also noted that contractor's offices with storage limited to a fully enclosed building and professional offices are currently permitted in Limited Business zoning.

Mr. Murphy stated that commercial SUP triggers provide a threshold beyond a building's square footage. He stated the thresholds are not size limits, but they allow staff to review impacts and apply conditions. Contractor's offices would be limited to 10,000 square feet before triggering a SUP.

Mr. Purse stated that different traffic generation figures for different uses may reduce some commercial building sizes below 10,000 square feet. He stated that drug store is a permitted use in both General Business and Limited Business areas but often trigger commercial SUPs due to trip generation.

Mr. Fraley stated he was worried about the compatibility of Limited Business uses with the surrounding neighborhoods. He stated there was a recent case where a by-right pet resort was pulled due to community opposition. Changes in Limited Business may be premature due to each individual use being reviewed during the Zoning Ordinance amendments.

Mr. Krapf stated that the ordinance calls for Limited Business to be less intense than General Business. He stated that bakeries and fish markets are currently permitted in General Business, which could be very noxious uses. Staff's Limited Business change list was less intense than a fish market. Staff's list is consistent with current by-right uses, and has been reviewed by the Policy Committee.

Mr. Billups asked if VDOT was consulted on the SUP traffic triggers.

Mr. Purse stated that uses that create more than 100 peak hour trips require special mitigation through the SUP process. He stated VDOT reviews all SUPs.

Mr. Murphy stated that VDOT concurred with the original 100-trip threshold. Staff works with VDOT in every case involving public streets.

Mr. Peck asked if it was procedurally acceptable to vote on changes to General Business and send changes to Limited Business back to the Policy Committee.

Mr. Henderson stated he would amend his motion to allow two separate votes.

Mr. Henderson moved to approve changes to General Business as proposed.

In a unanimous roll call vote, the Commission moved for approval of all General Business SUP changes (7-0).

Mr. Henderson moved to approve changes to the Limited Business zoning district as proposed.

Mr. Poole stated that mailing and facsimile centers would not impact nearby homes, but he had questions about other proposed changes.

Mr. Fraley stated the Limited Business changes should not be sent back to the Policy Committee again.

Ms. Kratter stated she would be more comfortable with Limited Business changes if they omitted lumber, electrical, and plumbing supply.

Mr. Billups stated he would support an up-or-down vote on Limited Business changes. He stated that lumber-supply type businesses exist in the County despite apparent restrictions.

Mr. Krapf stated if the Limited Business changes were voted down, the Commission could modify the list.

In a roll call vote, the Commission recommended approval of all Limited Business SUP changes (4-3; Aye – Billups, Henderson, Peck, Krapf; No – Kratter, Poole, Fraley).

7. PLANNING DIRECTOR'S REPORT

Mr. Murphy stated there will be an organizational meeting of the Planning Commission, which will begin at 6:00 p.m.

8. COMMISSION DISCUSSIONS AND REQUESTS

Mr. Fraley stated he had received many citizen inquiries on when the Zoning Ordinance update process might begin.

Mr. Murphy stated that staff was working with the Board and County Administrator on priorities and the budget available for ordinance amendments. Staff will develop a methodology based on Board priorities.

Mr. Peck stated that he disliked unsubstantiated charges against the County broadcast on television. He stated that if illegal activity occurred, it should be pursued as a law enforcement matter. Police should contact the accuser to inquire about proof of illegal activities. The accusations should be withdrawn from the County's Video-on-Demand website pending investigation. He stated that public comment at Commission hearings was a privilege, not a

right. Video-on-Demand is a useful tool for public discourse. If accusations continue, he will ask the Commission and County Attorney to look into ways to limit those statements.

Mr. Fraley stated that the Gloucester Board of Supervisors had recently ruled personal attack public comments out of order. He stated he had ruled certain comments out of order as chair of the Board of Zoning Appeals.

Mr. Krapf stated it was difficult to censor public comments. He stated that disappointment over a case should not turn into accusation.

Mr. Billups stated that the public sometimes makes negative comments about Commissioners and the principles behind them, not the people themselves.

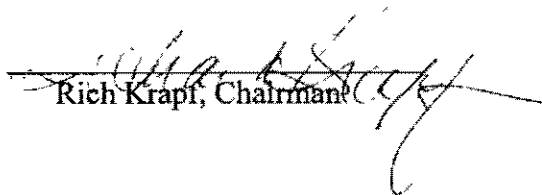
Ms. Kratter stated that restrictions on public comments may compromise citizens' First Amendment rights.

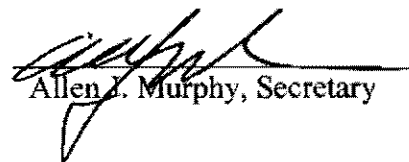
Mr. Peck stated that the public speaking podium should not be used as a legal shield when similar comments would not be published in the newspaper.

9. ADJOURNMENT

Mr. Poole moved for adjournment.

The meeting was adjourned at 8:45 p.m.


Rich Krapf, Chairman


Allen J. Murphy, Secretary