

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE THIRD DAY OF FEBRUARY, TWO-THOUSAND AND TEN, AT 6:00 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
Reese Peck
Mike Maddocks

Staff Present:

Allen Murphy, Director of Planning/Assistant
Development Manager
Adam Kinsman, Deputy County Attorney
Luke Vinciguerra, Planner
Melissa Brown, Zoning Administrator
Chris Johnson, Principal Planner
Bill Cain, Chief Civil Engineer
Terry Costello, Development Management Assistant

Absent:

Al Woods

Mr. Rich Krapf called the meeting to order at 6:05 p.m.

2. CLOSED SESSION

Mr. Krapf welcomed new commissioners Al Woods and Mike Maddocks. He stated that Mr. Woods was not able to attend due to a previous engagement.

Mr. Krapf moved that the Planning Commission enter into a closed meeting pursuant to Virginia Code Section 2.2-3711(A)(1) discussion of respective candidates for appointment so that Planning Commissioners may consider appointments of Chair and Vice-Chair.

In a unanimous voice vote the motion was approved. (6-0, Absent – Woods)

The Planning Commission reconvened at 6:40 p.m. Mr. Krapf read the resolution stating that the Planning Commission conducted its meeting in conformity with the Virginia Freedom of Information Act.

Mr. Chris Henderson moved to approve the resolution.

In a roll call vote the resolution was approved. (6-0, AYE: Maddocks, Poole, Fraley, Krapf, Henderson, Peck; Absent: Woods.)

The Planning Commission recessed at 6:43 p.m and reconvened at 7:00 p.m..

3. ANNUAL ORGANIZATIONAL MEETING

A. Election of Officers

Mr. Adam Kinsman asked if there were nominations for the Chair of the Planning Commission for 2010.

Mr. Jack Fraley nominated Mr. Reese Peck for Chair. There being no further nominations, Mr. Fraley moved to close the nominations.

The Planning Commission elected Mr. Peck as Chair with a roll call vote. (6-0, AYE: Henderson, Maddocks, Peck, Poole, Krapf, Fraley; Absent: Woods.)

Mr. Peck asked for nominations for Vice-Chair.

Mr. Fraley nominated Mr. Henderson as Vice-Chair.

The Planning Commission elected Mr. Henderson as Vice-Chair with a roll call vote. (5-1, AYE: Henderson, Maddocks, Peck, Krapf, Fraley; NAY: Poole; Absent: Woods.)

B. Committee Appointments

Mr. Peck stated the he will be appointing members to the Development Review Committee (DRC) and Policy Committee by the end of the week. Mr. Krapf will serve as Chair of the DRC, and Mr. Fraley will serve as Chair of the Policy Committee.

4. PUBLIC COMMENT

Mr. Roy Schneider, 514 Spring Trace, spoke on the Autumn West application. He stated that he no longer is a member of the Seasons Trace Homeowners Association Board. He was speaking tonight as an individual homeowner. Mr. Schneider thanked the Commission for their careful attention to this development. He asked how the homeowners on the western side of the property will have access to their own backyards. He felt that the developer has never made clear how this access will be created. He felt that this was a serious design issue. Mr. Schneider stated that staff should determine whether the solution would meet code requirements. He felt that it was unfair to potential buyers if the County did not address this important problem.

Mr. Robert Richardson of James City Citizens for Ethical Government spoke. He expressed his concerns over the discussion at the last Planning Commission meeting on corruption within County Government. He expressed his thoughts on how campaigns are financed, who contributes, and how individuals are appointed to the various boards and commissions. Mr. Richardson felt that it was important to continue having public comment periods. He then spoke on the Autumn West development and the materials that he has provided to the DRC and to the Planning Commission. Mr. Richardson asked that this application be deferred another month so that the two new Commissioners have time to review the plans and that his previous comments be given to the two new Commissioners.

Ms. Beverly McGraw, 116 Puffin, spoke on Autumn West and stated that she felt that if this development were to be built, it would result in downstream flooding due to the increased

water runoff. She felt that these effects would be evident in three to five years, at which point the County would have to incur the expense of its correction. She expressed her concerns over other issues such as clear cutting and the effects on birds and other wildlife.

Ms. Sarah Kadec, 3504 Hunters Ridge, spoke on behalf of herself as a concerned citizen. She expressed her appreciation to Ms. Deborah Kratter and Mr. George Billups for their service on the Planning Commission. She felt that both of them always listened to the citizens and voted with their conscience. Ms. Kadec asked the Commission to not approve the DRC's report concerning Autumn West. She felt that that property was worth saving and not having it developed. She felt that this would be most beneficial to the citizens of the County.

Mr. John Morbits of Season's Trace stated he has been a resident there since 1982. He spoke on Autumn West and stated that he felt there were many reasons to oppose this development. He stated that he felt that the proposed development was not consistent with the topography in the area. He felt that there were numerous violations of the Zoning Ordinance. Mr. Morbits felt that there was too much emphasis on clear cutting and not tree preservation. He felt the best alternative was not to build at all, with the next best alternative being to reduce the number of units.

Mr. Gerald Johnson, 4513 Wimbledon Way, spoke on Autumn West stating that clear cutting was proposed due to the fact that the development was not being built consistent with the topography. He felt that there were other alternatives that would not require massive clear cutting. Mr. Johnson felt that some of the information provided by the developer concerning environmental issues was incorrect. He expressed his concerns over erosion and sedimentation that might occur over the next several years. He felt that the developer had not researched alternative designs. Mr. Johnson stated he would be more than willing to show the developer what he has come up with.

Mr. Jack Fowler, 109 Wilderness Lane, stated that he felt that Autumn West needs to be viewed as part of the entire master plan and not as a separate development. He felt that there were problems with these units not having access to the outside at the back of the property. He also expressed his concerns about the water runoff. Mr. Fowler asked that the Commission consider the entire County when making a decision on this development

Ms. Donna Ware, 14 Buford Rd, stated she was a botanist by profession also spoke on Autumn West. She stated that this area is not undisturbed and that it has been selectively cut in the past. She stated that this particular area is dominated by White Oak and American Beech trees. Ms. Ware estimated that some of the trees on this site are between 75 and 120 years old. She would like to see this area protected.

Mr. Henry Bluhm, 121 Southeast Trace, stated that his residence was directly downstream from Autumn West. He stated that what attracted him to this development was all of the mature trees and the greenspace. He stated that he may not have purchased the property had he known this development may occur.

Mr. Jim Icenhour, 101 Shinnock and a member of the Board of Supervisors, spoke on Autumn West. He stated he was speaking tonight on behalf of his constituents. He felt that the challenge for the County was to minimize the impacts on the current residents and he felt so far this has not be done. Mr. Icenhour felt that the developer may have paid too much for the land and is now trying to recoup the costs by building as much as possible on this site. He reminded the Planning Commission that they are making a land use decision and this does not include assisting a business entity from recovering from making a bad decision. He felt that staff's interpretations of the Zoning Ordinance as it relates to this development have been generous towards the developer. The plan includes a massive amount of clear cutting with intense development and huge retaining walls. Mr. Icenhour stated that this clear cutting will remove a buffer promised to the community in the special use permit for the athletic field lighting at Warhill Sports Complex. He stated that he felt the plan grossly extorts the impervious surface percentage by including undevelopable land. He felt that some changes could be made to make the plan more acceptable to the surrounding neighbors. Mr. Icenhour felt that by changing from four buildings with six units each to three buildings with seven units each would substantially reduce the cut and fill required and would possibly eliminate or reduce the need for retaining walls. He felt that the County has not done enough to protect the citizens' interest in this case. He felt that the County has a moral responsibility for its actions even if sovereign immunity absolves it from legal responsibility. Mr. Icenhour stated that the County should strive to do the minimal harm in this case. He asked that the Planning Commission defer action on this case for one month to allow the new Commissioners time to review the case.

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

5. MINUTES

A. January 13, 2010 Regular Meeting

Mr. Poole had some clarifications concerning the DRC report for the Zaxby's Chicken case. He stated that the DRC recommended that the applicant consider alternative exterior options, but that the DRC did not conditionally approve the case.

Mr. Krapf had one correction on page 5 concerning the DRC discussions. The paragraph should read that "He requested that staff prepare and deliver a packet on Autumn West to those two members before the February Planning Commission meeting." It was stated in the minutes "DRC meeting."

Mr. Henderson moved for approval of the minutes with the corrections noted.

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

6. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC)

Mr. Poole stated that the DRC met on January 27, 2010 to discuss three cases. The first

case is SUP-0002-2010, CVS and Food Market. The DRC reviewed exterior elevations and expressed general approval with additional suggestions to make the food market more acceptable with Norge-like architecture. The DRC encouraged the applicant to make sure to adjust the height and width of the brick piers with the sloped roofs and to consider surface treatments, architectural elements, and step elevations in order to reduce the building's monolithic appearance from public and Community Character rights-of-way. He stated the applicant will bring revised elevations to the DRC before the special use permit application is heard by the Planning Commission. The second case was SP-0082-2009, JCC Police Headquarters, to review final building materials and colors for consistency with the rendering of the special use permit. The DRC reviewed and unanimously approved the plans. The third case was C-0059-2009, Chickahominy Riverfront Park RV Loop Improvements, to review the tree removal plan. The DRC unanimously approved the plan. The applicant was commended for presenting a tree site detail.

Mr. Krapf moved for approval of the DRC report for January 27, 2010.

In a roll call vote the motion was approved. (6-0, AYE: Maddocks, Poole, Fraley, Krapf, Henderson, Peck; Absent: Woods.)

Mr. Poole stated that at the January 13, 2010 Planning Commission meeting, the DRC provided a report for their January 6, 2010 meeting. He stated that in attendance were Mr. Krapf, Mr. Henderson, and himself. He stated that this was the DRC's fourth review of case SP-0064-2008, Autumn West. Mr. Poole stated that the DRC recommended preliminary approval subject to agency comments. He stated that at the January 13th Planning Commission meeting, it was decided to defer granting preliminary approval until the February meeting to allow the new Commissioners time to review the case.

Mr. Chris Johnson, Principal Planner for the Planning Division, gave a brief history of the case up until this point. He stated the Seasons Trace development was approved by the Board of Supervisors under a conditional use permit in 1973. The development was designated R-3 at the time and since then, that designation has been dissolved. The total development area of Seasons Trace is 109 acres and was approved for 534 single family units, which included 105 single family homes and 429 townhomes. In 1994, the Zoning Administrator determined that the remainder of the development which was not yet built would be reviewed under the R-5 Zoning District in the Zoning Ordinance. Mr. Johnson stated that five conceptual plans have been reviewed since 2006, and the site plan known as SP-0064-2008 was submitted in 2008 and called for twenty-four townhomes on an eight acre site. He stated that staff has reviewed four separate submittals for this site, all encompassing twenty-four units. He stated that the plan required DRC review because the square footage of the development was in excess of 30,000 square feet. Mr. Johnson stated that with the first two submittals, staff did not feel comfortable recommending preliminary approval and encouraged the applicant to refine the plans further. In June 2009, a resubmittal was received along with landscaping plans in August 2009. At this point staff felt comfortable recommending preliminary approval to the DRC. Since this point there have been four separate meetings, ultimately resulting in the January 6th meeting that Mr. Poole referred to earlier. The DRC recommended preliminary approval by a vote of 2-1.

Mr. Krapf asked if it was a requirement that when the plan involves the Resource Protection Area (RPA), that the developer post a sign stating that it is a protected area and no vegetation should be removed.

Mr. William Cain answered that it is a requirement to show on the site plan the location of those signs. When a building permit is requested, Code Compliance will process it through Environmental to make sure these signs are placed.

Mr. Krapf asked about citizens' comments about the long term detrimental effects on the treatment of the stormwater. There were several comments made about the long term effects on the Powhatan Creek Watershed, and the long term effects on current site conditions.

Mr. Cain answered that the Powhatan Creek Watershed Management Plan, which this application is subject to, contains several goals and priorities to be considered when designing a site plan. He stated that on this site there is an existing uncontrolled stormwater discharge. When Seasons Trace was originally developed, the regulations were not as stringent as they are today. Essentially, if the site dealt with most of the stormwater, the rest could be discharged and be, to some extent, uncontrolled. Mr. Cain stated that this occurs on the Autumn West parcel with stormwater from the Seasons Trace property which has resulted in a substantial amount of erosion on the Autumn West property. He stated that through the site plan process, the developer and/or applicant has been totally amenable to accepting offsite drainage and controlling it in their stormwater pond. This is provided in addition to the mitigation for the encroachment in the RPA which was required for the BMP outfall pipe. Mr. Cain stated that in order to get the water from the pond to the wetland area, going through the RPA is necessary. With the currently uncontrolled discharge of stormwater being treated in post-development, and with the potential for future erosion being minimized as a result of this development plan, the Environmental Division felt that this was overall a net positive for the Powhatan Creek Watershed and consistent with the intention of Powhatan Creek Watershed Management Plan. He stated that the stormwater pond meets all current regulations and that post-development drainage meets the pre-development drainage and should be able to handle the 100-year event, though not required under any of the current or applicable regulations. Mr. Cain did further indicate that there is some additional capacity in the pond that could handle larger events should they occur, and further stated that there will be an acceptable mode of bypass if this pond should get too full.

With regards to flooding, Mr. Cain stated that this proposal will not generate a flooding hazard to the Seasons Trace development as it does not drain in that direction, but toward and under Longhill Road. The proposed development will not have any effect as far as drainage and stormwater on the remainder of the Seasons Trace development.

Mr. Krapf asked if the stormwater facility being proposed is just for Autumn West or will it handle any other section's drainage.

Mr. Cain answered that the facility as proposed will be treating some uncontrolled drainage from Seasons Trace. He believes that this facility will treat approximately two acres of uncontrolled water. He wanted the Commission to keep in mind that the overall disturbed area for this project is three acres. Mr. Cain stated that from an environmental perspective this project

was seen as an overall positive.

Mr. Henderson asked if there was a current Army Corps of Engineers delineation for wetlands on this property that was made as part of the application.

Mr. Cain stated that there was a letter from the Army Corps of Engineers dated June 13, 2006 that is currently on file.

Mr. Henderson asked how long the delineations were good for.

Mr. Cain answered that he thought it was for a period of five years. Mr. Cain also stated that the site conforms to the regulations set forth in the letter from the Army Corps of Engineers.

Mr. Henderson asked about the issue of the discharge of stormwater and the construction of the outfall within the RPA and the wetlands area. He asked if this was a permitted activity under the National permit.

Mr. Cain stated that no vehicles will be permitted in the wetlands area. This area is not to be disturbed when developing this site. The contractor will typically start at the bottom to construct the pipe system and come out. Once this is completed the area will be heavily seeded with conservation area seed mix. There are no permitted activities in the wetlands and there are none proposed in the application. Mr. Cain stated that the proposed plan states that they will start activity on the edge of the wetlands.

Mr. Henderson asked about citizens' concerns about pressure on staff to approve this application. He asked Mr. Cain if he has been approached by anyone and asked if these recommendations are based on his professional opinions.

Mr. Cain stated that this application is based on good engineering judgment and consistent with all applicable regulations. He stated that everything that he has seen in this application is based on the best available technology.

Mr. Fraley expressed his concerns about stormwater ponds in general but felt this site is going to require it based on the current situation. He stated that in the County currently there are many failing stormwater ponds. He asked the question as to what makes this facility different than those that are currently in the County. He felt that these designs should make sure that it drains at pre-development conditions. Mr. Fraley stated that the length of time for pollutant removal is important. He felt that the linear design was important in this regard. He mentioned other features that could improve the current situation, such as forebays, filter systems, outlet control structures, and controls over emergency spillages. Mr. Fraley asked how the design proposed or incorporated some of these features, and whether or not they would be helpful.

Mr. Cain stated that this facility has been designed to attenuate all of the runoff from the developed area and those areas of Seasons Trace that are currently discharging uncontrolled. The manner in which the application has complied with the regulations negates the time period requirement for twenty-four hour attenuation. With the narrow, linear design as proposed, this

design provides the most distance from the inlet of the water to the outlet of the water. This provides the most time for the water to be suspended. Mr. Cain stated that the design of the pond prevents the water from overtopping the retaining wall associated with the stormwater pond. This is not to say that it will not happen, but the best engineering design is going into this to protect the health, safety, and welfare of the citizens. He stated that this design meets the regulations and in some ways exceeds them.

Mr. Fraley asked about overflow sections and emergency spillways.

Mr. Cain answered that emergency spillways are beneficial in some locations and not beneficial in others. One situation that is not beneficial is water running over large vegetated areas, but in proximity to the tributary into which drains. He stated that the Stormwater Division will do inspections during the construction phase to make sure these features are constructed properly. In addition, the Stormwater Division ensures that maintenance is provided on these facilities and is consistent with the Inspection and Maintenance Agreement associated with these facilities. Mr. Cain stated that he felt that this was designed on the best technology available.

Mr. Fraley expressed his concerns over the current financial constraints of the County. He was concerned that the County will be responsible if this design does not work. Mr. Fraley stated that he had great respect for Mr. Cain as an engineer and that this decision was based on his professional review.

Mr. Henderson asked about the density allowed under the R-5 zoning classification with the plan of development.

Ms. Melissa Brown stated that the plan of development is consistent with that classification, the conditional use permit, and the non-binding master plan.

Mr. Henderson asked if there was a variance in regards to the number of units allowed on the site in relation to the current plan.

Ms. Brown stated that it meets the standard with regards to density in the R-5 designation.

Mr. Henderson asked if the building code required rear access to the property for an individual living unit.

Mr. Luke Vinciguerra stated that a rear exit is not required as long as the rear windows are a certain size.

Mr. Krapf asked about the applicant's willingness to donate the undeveloped portion of the lot as a conservation easement to an organization for a wildlife sanctuary, or to the County, as was stated in a previous meeting. He asked if they were willing to agree to this as a condition of approval of the site plan.

Ms. Joyce Wolf of Autumn West LLC, answered that they would be amenable to this

condition.

Mr. Fraley stated that under Section 24-314(q), of the Zoning Ordinance, maintenance of this facility shall be guaranteed by the developer, project owner, or a property established homeowners' association. He asked who was going to guarantee this and what form that will take.

Ms. Wolf answered that they have drafted covenants and restrictions for the property as it would be with townhouse residential dwellings. Articles and bylaws have been drafted for an association for the development. With that association a budget would be developed, with reserves set up for long term capital projects and long term maintenance costs. Ms. Wolf stated that replacement of retaining walls would be included in these capital projects. She believes that the stormwater pond would be part of an easement that would become the County's responsibility to maintain.

Mr. Kinsman stated that what typically is done is that these types of items are bonded and the bond is held until the stormwater facility is passed on to an entity, which in this case would be the homeowners' association. He stated that the declarations and covenants will be reviewed by the County Attorney's office. He will ensure that stormwater utilities, recreational areas, etc will all be covered.

Mr. Fraley asked about the reference to a bioretention rain guard feature that was mentioned in a letter from the applicant. He did not see this on the site plan.

Ms. Wolf stated that the passage he is referring to is wording that is taken from the Comprehensive Plan. She did not mean to implicate that this feature was included on the plan.

Mr. Fraley asked how the excavation for the retaining walls may affect adjacent property owners and the RPA.

Ms. Wolf stated that detail designs of the retaining walls and foundation walls were submitted to give the County a comfort level to assure that they would not infringe on the RPA as these facilities are installed. These designs included the detail of grading that will be done and assurances that the excavation activities will not be going into the RPA.

Mr. Jason Wilkins of Town Site Engineering spoke concerning disturbance during excavation. After discussions with the Environmental Division, the layout was revised to bring everything away from the RPA, as much as ten feet in some locations. Then the retaining walls were redesigned so that at the bottom where the footing is installed is designed to be completely on the project side. The construction of the retaining wall is done in layers and the top of it is three feet high.

Mr. Fraley expressed his concerns about the letter that was sent to the DRC about what may or may not be included in the plan with regards to LID measures.

Ms. Wolf explained that passage was meant to read that many of the design principles will

be incorporated without going into detail.

Mr. Wilkins added that one design that is included in the plan is that all of the inlets are being designed as bottomless inlets. Instead of the bottom being concrete and draining into a pipe, well-graded stone will be installed, so with the first flush of polluted water there will be groundwater recharge which will help with water quality. He stated that at the point of soil saturation the water will flow. Mr. Wilkins stated that the inlets are specified on the plan.

Mr. Fraley asked about rooftop and downspout drainage control.

Mr. Wilkins answered that the water will be piped into the same inlets.

Mr. Henderson asked if there were any offers to purchase the property.

Ms. Wolf answered that the owner gave the James City County Citizens' Coalition a price, but no offer has been received.

Mr. Henderson asked about the proposal of having a separate homeowners association. He asked what steps were taken, if any, to be able to have this development be part of the existing homeowners association.

Ms. Wolf answered that communication was sent to the owner that indicated that the existing homeowners association did not want this development to be a part of the existing group. She stated that they would like to be part of the existing organization but it was felt that these future residents are not wanted. In the interest of these future residents, it probably would be best to be a separate association.

Mr. Henderson wanted to acknowledge that the applicant did address his concerns about the safety issues with the retaining wall. He felt that the redesign was a far superior design and he realizes that it came at an expense to the applicant. He wanted to commend them for being a willing participant in the process, and consider suggestions that benefit everyone.

Mr. Fraley asked where the recreation area was proposed be located.

Ms. Wolf stated that it is on the final plan and is adjacent to the emergency access area between building one and the emergency turn around.

Mr. Peck asked that the applicant explain retaining walls, their function, and their relationship to other structures.

Mr. Wilkins stated that the topography of the site drops down and the retaining walls are used to go from the extreme high side of Spring Trace and come down to create a flat area for the buildings and the parking lots. On the other side near the RPA, the retaining walls would connect to the buildings.

Mr. Peck asked about the setbacks with the walls attached to the property.

Mr. Wilkins stated that the part of the building with the retaining wall is more than 35 feet away from the property line.

Ms. Wolf stated that the retaining walls closest to Spring Trace are considered accessory structures and are five feet away from the property line.

Mr. Fraley asked for clarification as to whether retaining walls are considered structures.

Ms. Brown stated that these retaining walls are not considered a structure. The retaining walls that are built into the foundation are part of the structure and meet the building setbacks.

Mr. Krapf stated that he felt this case was a conflict between what we would like to see, and what we are legally obligated to approve. His preference would be that this case never came forward. He stated that any perception that the Planning Commission has not taken citizens' comments into consideration is not true. He stated that the DRC met four times to consider this case, and at the DRC's request, the applicant scheduled a public meeting. He stated both the DRC and the applicant have deferred the case. Mr. Krapf asked the Environmental Division to provide detailed comments to address Mr. Johnson's concerns. He felt that overall everyone went to great lengths to make sure citizens comments were received and responded to. Mr. Krapf stated that the way he looks at this case is that it is not a legislative case. The charter that the Planning Commission is given is very narrow. He felt that the determination was to make sure that this preliminary plan conforms to the Seasons Trace Master Plan and to existing ordinances. His opinion is that it does. Mr. Krapf mentioned some points that he felt were important. These are that the original master plan calls for 116 units, this plan is for 24. Another point was that 67% of the site will remain undisturbed. The project is ADA accessible allowing residents the option of aging in place. Mr. Krapf felt that this project was better for this area as far as environmental issues. The applicant has included stormwater mitigation for another section of Seasons Trace other than Autumn West. This plan is consistent with Comprehensive Plan action items under Housing, 1.1.6, promoting infill residential development, and under Land Use 1.1.5, promote infill, redevelopment, revitalization, and rehabilitation within the Primary Service Area (PSA). Mr. Krapf also stated that the applicant is willing to make a legal binding condition providing for a conservation easement.

Mr. Henderson stated that he can find no basis to deny the plan and will support the application.

Mr. Poole wanted to thank members of the public, the applicant, and staff, for what he considers to be a civil discourse. He recognizes that the site will not remain undisturbed and untouched. He felt that progress has been made on the site plan which is within the DRC purview; he is not personally comfortable with recommending approval. The topography is a concern for him. He felt that where the development is proposed to be built, it does not conform to the natural topography that exists. Mr. Poole also does not feel that the proposed plan is in conformance with the master plan. He expects when the project is infill development, and there are mature trees, that there is some detailed plan to make sure that mature trees can be preserved. He is not prepared to support this plan.

Mr. Fraley stated that when he considered the site plan he did so in reference to five ordinances. He reviewed it under the R-5 Zoning District, the Site Plan Ordinance, the Landscaping Ordinance, the nonconformities section of the Zoning Ordinance, and the Chesapeake Bay Preservation Act. He stated that there are things about this plan that are good and beneficial to the rest of the Seasons Trace development. He believes that the stormwater pond is a good design. He felt that the rooftop and drainage control designs were good as well. Mr. Fraley stated that the Comprehensive Plan requires that the design be based on the use of the land, reflecting topographical and other features on the site. It also requires that the design maintain trees and existing vegetation to preserve the character of the site in its natural setting, favoring natural features over artificial or planted features. Mr. Fraley displayed two revisions that he put together that he would like the applicant to consider. He stated that Section 24-313 of the Zoning Ordinance states that features that enhance the residential environment, such as trees, should be preserved. He stated that the Landscaping Ordinance reinforces this theme by placing emphasis on preserving tree canopies. He stated that under the Conditional Use Permit, under condition #4, it is a requirement that the site be selectively cleared. The Chesapeake Bay Preservation Act also states that existing trees with a diameter greater than twelve inches should be preserved. Mr. Fraley is concerned that the proposed plan is to achieve the greatest density for that site. It appears that all of the existing trees and vegetation will be cleared in the developable area and replaced with new plants. He stated that in Section 24-151 of the Zoning Ordinance it states that the Planning Commission shall consider the intensity of land use including developable acreage. Mr. Fraley felt that a plan for 24 townhomes and 61 parking spaces on 2.2 developable acres is too intense for this site. He stated that Section 24-142 of the Zoning Ordinance states that "nothing herein shall require the approval of any development, use or plan, or any feature thereof, which shall be found by the Commission or the Zoning Administrator to constitute a danger to the public health, safety, or general welfare, or which shall be determined to be a violation of Federal, State or County laws or regulations." Mr. Fraley is concerned with the safety risks and the potential problems with the failure of the retaining walls. He expressed his concerns about the flooding issues currently in this development and stated that Seasons Trace is rated by the National Flood Program as high risk. He is concerned with the cut and fill leading to erosion issues. Mr. Fraley stated that he has asked the applicant to provide adequate signs but he has received no reply.

Mr. Fraley displayed two alternative designs for the site. The first alternative eliminates building four and the other buildings pushed forward. It was his determination that of the lost units, two may be able to be regained. He stated that with this design, 20 units could be built with 54 parking spaces. Benefits to this include less impervious cover, more of the mature trees would be saved, no need for retaining walls, less required cut and fill also provides for a larger buffer for the existing residents. The second alternative includes two outer buildings and also eliminates building four. With this plan, the maximum that would be lost would be four units. He stated that with a professional designer it might not be four units. He asked the applicant if they would consider any of these alternatives. Mr. Fraley stated he cannot support this application with the current design.

Mr. Henderson moved for adoption of the minutes of the January 6, 2010 DRC meeting that included the approval of the site plan by the DRC, with the condition that the applicant add

the conservation easement.

In a roll call vote, the motion was not approved due to a lack of majority vote. (3-3, AYE: Henderson, Maddocks, Krapf; NAY: Poole, Fraley, Peck; Absent: Woods.)

Mr. Fraley asked what the next step would be in this case.

Mr. Kinsman stated that an appeal of the denial of a site plan, such as in this case, would go directly to Circuit Court. Mr. Kinsman stated that the Planning Commission does have the option of deferring this case to a later meeting. The other option is that if any Commissioner wishes to change their vote that could be done with a motion to reconsider.

Mr. Fraley asked the applicant if they were willing to consider alternative designs, such as those that he proposed, so that he could support the development.

Ms. Wolf stated that they respectfully decline to redesign at this stage. She stated that five conceptual plans were submitted. She stated that the best design is not necessarily the most dense design, and at one point the plan called for 42 units. She reiterated that after working five years on this plan, they are not willing to change the design at this stage.

Mr. Kinsman stated that some action needs to be taken. If no one wanted to reconsider their vote, he suggested deferring this until the next meeting when all seven members should be present.

Ms. Wolf stated that as the applicant, they do not agree to the deferral.

Mr. Fraley restated that he is willing to reconsider if the applicant is willing to reconsider their design.

Ms. Wolf did not want to commit to anything that would defer this application any longer. She did not know if any redesigning could take place at this stage during the final approval process. She requested preliminary approval and ratification of the DRC preliminary approval that was given on January 6, 2010. Ms. Wolf stated she would pass along Mr. Fraley's suggestions to the engineer to see if any of the designs were feasible.

Mr. Henderson urged the applicant to reconsider some of the redesigns that were presented tonight.

Ms. Wolf answered that with the changes suggested, it would be a completely new design, and much more money spent on a plan that has been under review for the last five years.

Mr. Mike Maddocks asked if the applicant had to make a decision tonight concerning redesign.

Mr. Murphy stated that the applicant has provided definitive answers as to whether they would accept a deferral.

Mr. Henderson asked Mr. Fraley if he was willing to reconsider his vote if the applicant agrees to evaluate the alternatives that he has proposed.

Mr. Fraley clarified that even if the applicant considers the redesigns, his vote is dependent on the rationale for accepting or not accepting the changes.

Mr. Krapf suggested deferring this application until the March meeting when all seven members should be present and offer the suggestion to the applicant to review the redesigns offered during the time before the March meeting to see if they are feasible.

Ms. Wolf stated they are not willing to accept a deferral.

Mr. Poole stated that if a deferral is decided on, then he would like to see some type of tree preservation plan.

Ms. Wolf asked whether a tree preservation plan would be made a condition of approval.

Mr. Poole stated that he felt it could be, but it would need to also include graphics.

Ms. Wolf stated that a tree preservation plan is not a requirement; however, they could commit to this as part of the final approval process. It is the intent to preserve as many trees as possible.

Mr. Fraley stated that whatever is made subject to conditions will not come back before the Planning Commission or the DRC. It would be subject to administrative approval.

Ms. Wolf stated that although it is not a requirement, she is offering it up as part of the process.

Mr. Henderson asked Mr. Peck if there were conditions under which he could grant approval.

Mr. Peck answered that he had no conditions but would like to see issues addressed that were raised by Mr. Fraley and Mr. Poole.

Mr. Henderson moved for deferral of the application until the March 3, 2010 meeting.

In a roll call vote the motion was approved, (6-0, AYE: Poole, Fraley, Henderson, Maddocks, Peck, Krapf; Absent: Woods)

B. Policy Committee

Mr. Henderson stated that the Policy Committee met on January 28, 2010 to review the Capital Improvements Program (CIP) list. He stated the Committee evaluated 55 projects and that they were ranked based on staff recommendations and the new CIP criteria. Mr. Henderson

wanted to recognize Ms. Deborah Kratter's efforts in developing those criteria. The results of this ranking will be presented to the entire Planning Commission at the March 3, 2010 meeting.

Mr. Fraley moved for approval of the Policy Committee report.

In a unanimous voice vote, the report was approved (6-0, Absent: Woods).

C. Other Reports

Mr. Krapf stated that on January 26, 2010, he attended the Regional Issues Committee meeting. This committee meets quarterly and there were many presenters and presentations.

Mr. Poole stated that he felt given the surplus of retail and commercial space within the three jurisdictions, it may prove beneficial to determine, as an area, what is currently out there and determine what is meaningful and prosperous retail establishments as a whole. He would hope that the three jurisdictions could work as a whole and not compete against each other in this area, especially with the current economic conditions.

7. PLANNING COMMISSION CONSIDERATIONS

A. 2009 Planning Commission Annual Report

Mr. Krapf asked for any comments, suggestions or changes to the annual report.

Mr. Peck moved to approve the annual report.

In a voice vote, the motion was approved. (6-0, Absent: Woods)

8. PUBLIC HEARINGS

A. SUP-0028-2009 AT&T Ingram Road, Pegasus Wireless Communication Tower

Mr. Peck stated the applicant has requested deferral until the April 7, 2010 Commission meeting. He stated that staff agrees with the deferral.

Mr. Murphy stated that staff has agreed to the deferral.

Mr. Peck opened the public hearing.

Mr. Steve Romine, counsel to Pegasus Wireless Communication, stated the deferral is requested to investigate some height issues and feedback from staff. Another balloon test will be scheduled in the future.

Mr. Poole stated that he appreciates the applicant's willingness to address some height and aesthetic issues.

Mr. Fraley wanted to encourage the applicant to look for alternative locations and alternative places to mount the antennas if available.

Mr. Romine stated that there are plans to re-engineer the design into a slick stick pole.

Mr. Robert Richardson of 2786 Lake Powell Road stated that Pegasus was a new carrier to this area. He would like to see carriers operate more cooperatively so as to limit the need for new poles.

Mr. Henderson moved for deferral until the April 7, 2010 meeting.

In a roll call vote the motion was approved. (6-0, AYE: Poole, Fraley, Henderson, Maddocks, Peck, Krapf; Absent: Woods.)

Mr. Peck continued the public until the April 7, 2010 meeting.

9. PLANNING DIRECTOR'S REPORT

Mr. Murphy stated that the next date for the Policy Committee to meet is scheduled for February 10, 2010. He wanted to note that the Commission may need to be flexible with this date depending on which members of the Commission are appointed to this committee.

10. COMMISSION DISCUSSIONS AND REQUESTS

Mr. Fraley stated that the Commission does not necessarily have to wait until the next meeting to decide on Autumn West. The Commission can decide to schedule a special meeting.

Mr. Kinsman stated that from a legal standpoint three days notice is required, but that five is requested for a special meeting. However, in this case it was deferred to a specific meeting.

Mr. Poole wanted to thank Mr. Krapf for all his work as Chair, especially through the Comprehensive Plan update. He thanked staff for all their work as well. Mr. Poole thanked Ms. Kratter and Mr. George Billups for their service on the Planning Commission. He also wanted to welcome Mr. Maddocks and Mr. Woods as new Commissioners.

Mr. Henderson asked what options are available to the applicant if a plan is approved by the DRC and denied by the Planning Commission.

Mr. Kinsman answered that one option would be for the applicant to appeal to the Circuit Court.

Mr. Henderson asked who would be responsible for defending the County on that matter.

Mr. Kinsman answered it would be the responsibility of the County Attorney's office.


9. ADJOURNMENT

Mr. Krapf moved for adjournment.

The meeting was adjourned at 9:30 p.m.



Reese Peck, Chairman



Allen J. Murphy, Secretary