

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIFTH DAY OF MAY, 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:

Jack Fraley

Reese Peck

Joe Poole

Chris Henderson

Mike Maddocks

Rich Krapf

Absent:

Al Woods

Staff Present:

Allen Murphy, Director of Planning/
Assistant Development Manager

Adam Kinsman, Deputy County Attorney

Chris Johnson, Principal Planner

Jason Purse, Senior Planner

Leanne Reidenbach, Senior Planner

Kate Sipes, Senior Planner

Scott Thomas, Environmental Director

Brian Elmore, Development Management Assistant

Mr. Reese Peck called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENT

There were no public comments.

3. MINUTES

A. MARCH 3, 2010 REGULAR MEETING

Mr. Rich Krapf motioned for approval of the minutes.

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

B. APRIL 7, 2010 REGULAR MEETING

Mr. Chris Henderson stated that on page 35, the references to "Mr. Whitfield" being the owner should be "Mr. Whitt Richardson".

Mr. Henderson moved for approval of the minutes as amended.

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

4. COMMITTEE AND COMMISSION REPORTS

A. DEVELOPMENT REVIEW COMMITTEE (DRC)

Mr. Krapf stated the May meeting of the DRC was held on April 28th at 4:00 p.m. The DRC reviewed a proposed 57 lot subdivision for S-0048-2009 Stonehouse Tract 12. The DRC previously reviewed and endorsed a conceptual plan layout for this tract in June 2008. The DRC granted preliminary approved by a vote of 3-0 subject to agency comments, and added a recommendation that staff review all applicable proffers and the applicant is in compliance with those proffers. The DRC also reviewed SP-0028-2010, Pavilion at Williamsburg Place. This addition will include 40 beds for acute psychiatric treatment as well as adult and older psychiatric inpatient services. By a vote of 3-0, the DRC granted preliminary approval subject to agency comments.

Mr. Fraley moved for approval of the report.

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

B. POLICY COMMITTEE

Mr. Fraley stated that the Policy Committee did not meet in April. The next meeting will be May 12th at 6 p.m. Sign Ordinance amendments and Subdivision and Site Plan Review Improvement Team (SSPRIT) recommendations will be discussed. The Committee may meet May 25th if more discussion is necessary.

C. OTHER COMMITTEE / COMMISSION REPORTS

There were no other reports.

5. PUBLIC HEARINGS

A. Z-0002-2009 / MP-0002-2009 – GOVERNOR’S GROVE SECTION III PROFFER AND MASTER PLAN AMENDMENT

Mr. Peck opened the public hearing.

Mr. Peck stated the applicant had requested a deferral until the June Planning Commission meeting.

Mr. Peck continued the public hearing until the June Planning Commission meeting.

B. SUP-0004-2010 – COURTHOUSE COMMONS

Mr. Henderson stated that he had a conflict of interest and recused himself from discussion of the application.

Mr. Peck opened the public hearing.

Mr. Peck stated that staff recommended deferral.

Mr. Greg Davis, representing New Town Six, the applicant, stated he did not object to staff recommending deferral.

Mr. Peck continued the public hearing until the June Planning Commission meeting.

C. Z-0001-2009 / MP-0001-2009 / SUP-0007-2010 – COLONIAL HERITAGE DEER LAKE

Mr. Jason Purse stated Mr. Greg Davis, on behalf of Lennar Corporation, applied to rezone 130.3 acres of the 731.5 acre Deer Lake parcel at 499 Jolly Pond Road from A-1, General Agricultural, with Proffers, to MU, Mixed Use with Amended Proffers. A special use permit is also requested to extend public utilities to the site. The applicant is no longer requesting a special use permit for the residential cluster, since Mixed Use zoning would allow the cluster's density and yard requirements. The proposal has been amended since the last Planning Commission public hearing to allow for private streets. Schools proffers have been withdrawn after the cluster was revised from workforce housing to age-restricted housing. Park proffers will develop an on-site trail rather instead of payments to the County. Access points have been moved, resulting in the removal of the Jolly Pond traffic study proffer. Staff finds the proposal contrary to the Comprehensive Plan and violates the Primary Service Area (PSA). The proposed 90 acre open space area shows no distinct environmental benefit compared to the rural cluster. The development's 4.6 dwelling units per acre exceed the 0.33 units per acre for rural lands without public utilities. Staff recommends denial of master plan amendment, rezoning, and special use permit.

Mr. Krapf asked if staff had received inquiries about extending the PSA to new or existing developments since the April Commission meeting.

Mr. Purse stated that at least one developer has contacted JCASA staff regarding requirements to connect to public water.

Mr. Krapf asked about the proposal's net environmental benefits.

Mr. Scott Thomas stated Colonial Heritage has a 10-Point Stormwater Master Plan. He stated the system uses BMP's, open space, and low-impact development throughout the area. Deer Lake itself serves as BMP. Different points are awarded for different types of open space. More points are earned for buffers beside existing resource protection areas (RPA's). The reconfigured proposal layout reduces additional RPA buffering. Although 90 acres of open

space is added, only 8.25 additional acres can be added to the stormwater system. Open space areas have to be natural and undisturbed.

Mr. Krapf stated the previous proposal used distributed impacts for its impervious cover. The current proposal uses concentrated impervious cover with stormwater passing through forebay treatments and into Deer Lake.

Mr. Thomas stated there were positives and negatives to each proposal. The rural cluster fits the natural topography better. Clearing could be minimized during both utilities installation and construction. The Mixed Use cluster would have to be mass cleared and would concentrate pollutants in Deer Lake.

Mr. Fraley asked about the benefits of the area being subject to the Yarmouth Creek Watershed Management Plan.

Mr. Thomas stated that the Yarmouth management plan's application was beneficial.

Mr. Fraley stated that newly proposed blocked open space was agreeable due to the parcel's large size. He stated the new proposal preserves high-permeable Types A & B soils.

Mr. Thomas stated the elimination of septic drain fields would be a positive environmental impact.

Mr. Fraley stated that distributed stormwater runoff was preferable to concentrated stormwater runoff. He asked if there would be discharge into Yarmouth Creek under the rural cluster design.

Mr. Thomas stated that either proposal would have some impact on Yarmouth Creek. He stated that under the residential cluster, the road could impact multiple headwater streams. The rural cluster, following a ridgeline, would avoid most of the intermittent streams. Under the residential cluster, the runoff only pours into a small section of Deer Lake.

Mr. Peck asked if incremental development was a major source of watershed pollution over the past decade.

Mr. Thomas stated that non-point source pollutions, including urban development, agriculture, and transportation, impact the watershed.

Mr. Peck stated the large yards use large amounts of fertilizer outside County control. He asked if those fertilizers are a significant source of pollution.

Mr. Thomas stated that fertilizers were a source of pollution, but that the County has several fertilizer use educational programs. He stated he was unsure if smaller lots lead to less fertilizer usage.

Mr. Peck asked about the primary policy goals of the PSA. He stated the PSA should

reduce the cost of public utilities and reduce sprawl-driven environmental impacts.

Mr. Purse stated that the PSA is one of the County Comprehensive Plan tools. Staff expects development to occur in the PSA and tries to guide growth there. The rural cluster will not be a part of the PSA.

Mr. Peck asked if the rural cluster wells would have a unified rate structure.

Mr. Purse stated that they would have a unified rate structure.

Mr. Peck stated that individual groundwater systems are costly compared to using central water systems. He stated the services were being extended one way or another, in violation of PSA policy. Current ratepayers would pay for this extension of the PSA.

Mr. Purse stated that the PSA and central wells were growth-management tools for the rural lands. He stated central wells were very cost prohibitive, and few of those developments have taken place. Densities in A-1 have also been reduced to lessen growth.

Mr. Peck asked Mr. Purse to elaborate on the use of the PSA to sequence the provision of County services.

Mr. Purse stated that one current school and two under construction were built outside of the PSA. Their locations were selected in part to place them in proximity to the most users. The School Selection also considered land availability.

Mr. Peck stated that schools, a major sports complex, a major park, a recycling center, a new police station, and fire station were all in the PSA near the proposal.

Mr. Purse stated that no public facilities were lacking in that area, and that staff attempts to direct all growth inside the PSA. He stated incremental development outside the PSA ultimately causes the need for more facilities.

Mr. Peck stated that denying the proposal would not achieve PSA policy goals to reduce JCSA costs or reduce pollution.

Mr. Purse stated that Planning staff would not support a suburban residential development outside of the PSA. Suburban development is considered between one and four units per acre. By-right developments outside of the PSA include the 1 unit per 3 acres density.

Mr. Fraley stated that staff was receiving by-right rural lands proposals with central wells that were not subject to public hearings. He stated central wells and higher densities were not cost-prohibitive enough.

Mr. Purse stated that as part of the Zoning Ordinance update, several actions can be taken to remedy those types of situations.

Mr. Fraley stated the Comprehensive Plan contained three action items on PSA boundary review.

Mr. Purse stated the approval of the proposal could result in many more units in the area, with a proposed density of 4.6 units per acre.

Mr. Purse stated that proposed units are within the Colonial Heritage master plan limit.

Mr. Henderson asked if the trigger for Planning Commission review of the proposal was private roads being prohibited in R-2 zoning.

Mr. Purse stated that due to the proposed change in zoning, staff had to re-advertise the proposal, and it essentially became a new application.

Mr. Henderson stated that the applicability of private roads in R-2 should be considered during Zoning Ordinance updates.

Mr. Krapf stated that if any part of an application is returned to the Planning Commission, the entire application is subject for discussion. He stated the Deer Lake case was one of the most significant cases ever before the Commission. The Commission has an obligation to clarify all aspects of a returned case.

Mr. Peck stated that most of the County's water comes from groundwater. He stated the JCSA does not expect the State to grant any withdrawal increase since the aquifer is stressed.

Mr. Allen Murphy stated that the County has an agreement with Newport News for supplemental groundwater. He stated the aquifer is stressed at certain times of the year. The Newport News contract was based on surface water.

Mr. Peck stated that the State was monitoring the peninsula's aquifer for stress. He stated the Hampton Roads Planning Commission discussed the State tightening groundwater withdrawals. Central groundwater systems are mandated under current rural cluster policy. Those policies are mandating additional aquifer stress.

Mr. Peck opened the public hearing.

Mr. Greg Davis, representing the applicant, stated the case had gone through minor technical changes since last month's meeting and approval. He stated that since the Commission recommended the development become part of Colonial Heritage, the proposed access to Jolly Pond Road has been eliminated. Private Colonial Heritage roads will be used. The cluster design and benefits are retained, with only minor changes to access. There will be no additional units or traffic impact. The age-restricted development would create a positive fiscal impact due to creating very few school children. Dispensing with central wells would benefit JCSA.

Mr. Krapf asked if the applicant agreed with the staff position that neither the rural or residential cluster proposals result in positive fiscal impacts for the County.

Mr. Davis stated that the age-restricted proposal would provide a positive fiscal impact of \$89,000 annually. He stated if the Commission had guided the development as workforce or market rate housing, the fiscal impact would be negative due to students.

Mr. Purse stated that age-restricted housing has a better fiscal impact than other forms. Colonial Heritage has a positive fiscal impact to due to large commercial spaces.

Mr. Krapf stated that the school proffers had been withdrawn in violation of the Board of Supervisors policy that age-restricted communities should pay school proffers.

Mr. Davis stated the age-restricted development will place no burden on County schools. He stated the Board proffer policy does not exempt age-restricted housing, but mandates "reasonableness and rough proportionality." Colonial Heritage, with 580 homes, has generated 2 school kids total. Colonial Heritage's positive fiscal impact improves with the approval of the Deer Lake cluster. Elimination of the Jolly Pond access will cost the applicant another \$400,000 to connect to Colonial Heritage.

Mr. Arch Marston stated that the \$400,000 in traffic costs was the net sum from moving access from Jolly Pond Road to Colonial Heritage.

Mr. Jacob Hostetter, 6323 Glen Wilton, stated that workforce housing was needed in the area, but has been removed from the proposal. He stated a road to the existing highway would make sense environmentally and financially.

Ms. Sarah Kadec, 3504 Hunters Ridge, stated that she expects the Commission to follow its own Comprehensive Plan. The Comprehensive Plan should prohibit expansion of the PSA. The proposal's school proffer removal and environmental impacts are negative.

Mr. Craig Metcalf, 4435 Landfall Drive, stated the Commission has gone against staff recommendations on the proposal. He stated he supported staff recommendations.

Mr. Bob Spencer, , Vice-President of the James City County Concerned Citizens (J4Cs), 9123 Bush Hill Drive, stated the newly adopted Comprehensive Plan was already being discarded. Staff recommendations are also ignored. The J4Cs recommended no expansion of the PSA during the Comprehensive Plan process. Proposed proffers should take effect immediately.

Mr. Peck closed the public hearing.

Mr. Joe Poole stated the application has gone from bad to worse since the last meeting. The density increase from .33 to 4.6 is unacceptable in an area designated Rural Lands by the Comprehensive Plan. Removed school proffers are also unacceptable. Moving outside the PSA sets a dangerous precedent. If the application is approved, proposals outside of the PSA will increase.

Mr. Krapf stated this case represents a litmus test of whether the Comprehensive Plan will be enforced. He stated if the proposal is approved, there will be heavy development pressure outside the PSA. The applications benefits are mostly hollow and already used for other requirements. Converting rural lands to Mixed Use outside the PSA is not the answer to growth.

Mr. Henderson stated if the PSA line were drawn topographically, and not arbitrarily, Deer Lake would already be in the PSA. He stated he would be prepared to support the applicant, but had wished to see additional restrictions. Colonial Heritage will not create a fiscal impact on Schools.

Mr. Fraley stated the proposal's benefits are substantial. He stated the proposal's Mixed Use areas extended too far. SUPs and rezoning are exceptions by nature, and will not set precedent for future PSA discussions.

Mr. Peck stated the Comprehensive Plan makes the PSA a tool; it does not make the PSA inflexible. Positive proposed benefits compensate for extending the PSA. Both County water and rural lands policies should be reviewed comprehensively. The project is in the best interest of the County.

Mr. Poole stated he wished the issue of PSA expansion had been thoroughly discussed during the Comprehensive Plan process.

Mr. Peck stated the proposal's facts lead him to believe it follows the Comprehensive Plan.

Mr. Henderson moved for approval of the rezoning, special use permit, and master plan.

In a roll call vote, the Commission recommended approval (4-2: Yes: Maddocks, Fraley, Henderson, Peck; No: Poole, Krapf; Absent: Woods).

D. SUP-0008-2010 – Busch Gardens Griffon Theatrical Lighting

Ms. Leanne Reidenbach stated that Ms. Suzy Cheely of SeaWorld Parks and Entertainment, LLC has applied to amend Condition #3 of the existing special use permit and height waiver for the Griffon roller coaster in Busch Gardens to allow 4 upwardly-directed LED theatrical lights. No changes to the height of the coaster are proposed. The property is currently zoned M-1, Limited Business Industrial and designated Limited Industry on the 2009 Comprehensive Plan. Originally, the special use permit and height waiver for the Griffon were combined in one resolution. The condition related to upward lighting is linked to the height waiver, which will be evaluated by the Board of Supervisors on May 11th, but because the height waiver conditions were combined with the special use permit resolution, the SUP amendment is required to be reviewed by the Planning Commission as well. With this application, staff proposed to separate the two applications to clarify the conditions related to each and to simplify any future amendments. The applicant conducted a lighting demonstration on April 14. The lighting was not visible until after 8:30 pm and due to the Griffon's location within the park, had

limited impacts on surrounding areas. Planning staff has reviewed this application and finds it to be consistent with the Zoning Ordinance, Comprehensive Plan, and adjacent development. Staff recommends approval of this special use permit amendment and forwarding the height waiver application to the Board of Supervisors for review.

Mr. Peck opened the public hearing.

Mr. Neil Delorenzo, 101 Jefferson's Hundred, stated that his property is directly west of this site. He stated he was unaware of the lighting demonstration that was done. He asked when the case involving the height waiver involving the new attraction at Busch Gardens would be heard.

Ms. Reidenbach stated that the application for the height waiver for the new attraction will be heard by the Board of Supervisors on June 8, 2010. There will be a balloon test for this application done but it has not been scheduled yet. The date will be shared with Kingsmill residents and adjacent property owners.

Mr. Delorenzo stated that he and his neighbors have had issues with the noise in that area. He expected the height waiver will be an issue also. He expressed his concerns about how the lighting will affect the area since he can view the Griffon coaster from his home.

Mr. Peck closed the public hearing.

Mr. Fraley stated he was a resident of Kingsmill, and asked about the light test. He stated that it was mentioned that the lighting was not visible from Kingsmill.

Ms. Reidenbach stated that she and the Planning Director drove around Wareham's Pond and Jefferson's Hundred. She stated that the Griffon is not visible from Wareham's Pond, even when illuminated.

Mr. Fraley asked how the Kingsmill residents would be notified of any lighting or balloon test.

Ms. Reidenbach stated that generally with a cell tower application, adjacent property notifications are sent and it is advertised in the newspaper. That similar advertisement is not required for any kind of demonstrations or balloon tests that are conducted for height limitations and waivers. This test had not been advertised and was not required to be advertised.

Mr. Fraley recommended to Mr. Allen Murphy that some consideration be given to the residents concerning items that affect them. He suggested that notifications could be sent to the Kingsmill Community Services Association. He stated that height waivers go directly to the Board.

Mr. Henderson asked if the height waiver request was for the new attraction.

Ms. Reidenbach stated that the new attraction is a separate application that will be

reviewed by the Board of Supervisors on June 8, 2010. The reason for the height waiver for the Griffon is that this rollercoaster had originally received a height waiver to exceed the sixty foot limit. She stated that because the resolutions were grouped together both applications are before the Planning Commission. Prior approval was being reinstated.

Mr. Poole stated he supports tourism and realizes Busch Garden's importance. He stated he is also very concerned about aesthetic quality in this community. Mr. Poole wanted to emphasize that it is his expectation that these lights proposed shine on the rollercoaster itself. He stated that the ride is already above the tree line but that he does not want any lights in the sky. He emphasized the importance of Condition #4 which places a time limit on this of one year with the potential for the Director of Planning to extend the timeline barring unforeseen impacts. He is willing to support this application.

Mr. Peck closed the public hearing.

Mr. Henderson moved for approval of the application.

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

E. SUP-0012-2010 – Camp Road Tower Development Corporation Wireless Tower

Mr. Purse stated that Ms. Gloria Freye of McGuire Woods has applied for a special use permit for a 199' wireless communications tower to be built at 126 Camp Road. The parcel is zoned A-1, General Agricultural. The tower will occupy 1.22 acres of a 78.2 acre parcel, which currently holds an active farm as well. The property is in the Mill Creek Agricultural and Forestal District (AFD). AFD rules allow up to 5 acres to be used as a tower site. Staff finds the tower meets Board guidelines for wireless communications facilities, collocation analysis, location and design, and buffering. Staff finds the proposal generally consistent with the Comprehensive Plan and surrounded land uses and recommends approval. The tower will have minimum visual impact, only visible from the rear section of Camp Road.

Mr. Peck opened the public hearing.

Mr. Gloria Freye, representing the applicant, stated Tower Development Corporation has applied for the special use permit on behalf of Ntelos. She stated Ntelos needs to expand coverage along Route 60 to the New Kent County line. If the tower is approved, cell signals would be good enough for indoor reception in the area. Other towers in the vicinity were too far away for collocation. The 100' tower buffer will be in place on three of four sides of the tower. The balloon test revealed the tower would not be visible from any major roads. Three adjacent property owners responded. One property owner, Ms. Howard, had concerns about visible. The applicant would discuss adding tree buffering to the property when it could contact Ms. Howard. A Ms. Phillips had concerns about health effects, and safety regulations were discussed with her. Ms. Phillips also had property value concerns, but local assessors do not account for tower proximity. A Ms. Moore noticed a 400' setback from a tower to an existing residence. She was informed that the setback only applies to the tower, not her property. The proposal has met all

performance standards for a wireless communications facility.

Mr. Henderson asked if collocation would be offered and if the height was the maximum allowed.

Ms. Freye stated that collocation would be offered. She stated the height was the maximum allowed without a light. Lights would increase the tower's visibility.

Mr. Peck closed the public hearing.

Mr. Henderson moved for approval of the application.

In a unanimous roll call vote, the Commission recommended approval (6-0; Yes: Maddocks, Poole, Krapf, Fraley, Henderson, Peck; Absent: Woods).

F. SUP-0009-2010 – USA Waste of Virginia Borrow Pit Renewal

G. SUP-0010-2000 – Branscome Borrow Pit Renewal

Ms. Kate Sipes stated that Mr. Vernon Geddy has applied on behalf of Branscome Incorporated and USA Waste of Virginia Landfills Incorporated to renew their special use permits to continue borrow pit operations at 700 & 750 Blow Flats Road. An SUP renewal has been filed for both sites. Separate applications were submitted but were prepared under a single staff report. Both parcels are zoned M-2, General Industrial and designated General Industry on the Comprehensive Plan. A borrow pit creates noise, dust, truck traffic, and can be an environmental hazard if not regulated. Staff feels the area is well suited to accommodate the use. The original borrow pits were approved by the Board in 1992, with continued sunset provisions. The applicant has requested renewal without any time limit. Staff recommends a time limit due to constantly evolving environmental regulation, and is comfortable extending the limit from 5 to 8 years. Staff recommends approval of both SUP renewals subject to the attached conditions.

Mr. Poole asked if the applicant was comfortable with the 8-year renewal term.

Ms. Sipes stated the applicant was happier with 8 years than 5 years.

Mr. Vernon Geddy, representing the applicant, stated that the 8-year period allows the companies better long-term business planning. The firms know over longer terms what projects are available to them and on what terms.

Mr. Peck opened the public hearing.

Mr. Henderson asked Mr. Geddy to describe the operation's on-site activities.

Mr. Geddy stated that gravel and clay were mined at the sites. He stated the USA Waste site has investigated mining the pits down to below sea level, and then creating tidal wetlands for

mitigation purposes.

Mr. Peck closed the public hearing.

Mr. Fraley moved for approval of the USA Waste of Virginia Landfill SUP renewal.

In a unanimous roll call vote, the Commission recommended approval (6-0; Yes: Maddocks, Poole, Krapf, Fraley, Henderson, Peck; Absent: Woods).

Mr. Fraley moved for approval of the Branscome Inc. SUP renewal.

In a unanimous roll call vote, the Commission recommended approval (6-0; Yes: Maddocks, Poole, Krapf, Fraley, Henderson, Peck; Absent: Woods)

9. PLANNING DIRECTOR'S REPORT

There were no Planning Director comments.

10. COMMISSION DISCUSSIONS AND REQUESTS

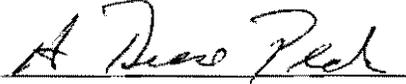
Mr. Maddocks stated he was the Regional Issues Committee representative.

Mr. Poole asked for future updates from the Regional Issues Committee.

11. ADJOURNMENT

Mr. Henderson moved to adjourn.

The meeting was adjourned at 9:10 p.m.


Reese Peck, Chairman


Allen J. Murphy, Secretary