

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

Reese Peck  
Jack Fraley  
Al Woods  
Rich Krapf  
Mike Maddocks

Absent:

Joe Poole

Staff Present:

Allen Murphy, Director of Planning/  
Assistant Development Manager  
Adam Kinsman, Deputy County Attorney  
Christopher Johnson, Principal Planner  
Luke Vinciguerra, Planner  
Melissa Brown, Zoning Administrator  
Ellen Cook, Senior Planner II  
William Cain, Environmental Engineer  
Jennifer Van Dyke, Administrator Services  
Coordinator  
Robert Middaugh, County Administrator  
Erin Waugh, County Attorney's office extern

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

Mr. Peck welcomed Mr. Robert Middaugh, the new County Administrator.

Mr. Robert Middaugh stated he looked forward to working with the Planning Commission at the upcoming Commission/Board of Supervisor work session. He thanked the citizens for attending the meeting.

2. RECOGNITION

Mr. Peck thanked Mr. Chris Henderson for his service on the Commission. He stated Mr. Henderson brought a development perspective and intellect to the Commission. Mr. Henderson worked hard on improving Capital Improvement Program (CIP) project rankings. Mr. Henderson will be missed on the Commission.

Mr. Peck presented Mr. Henderson with a Certificate of Appreciation.

Mr. Henderson stated it was an honor to serve on the Planning Commission. He thanked the Commissioners for their friendship and congeniality while keeping the best interests of the County in mind.

Mr. Jack Fraley stated Mr. Henderson had taught him a great deal about site design and layout. He stated Mr. Henderson has a good heart and will be missed on the Commission.

3. PUBLIC COMMENT

Mr. Peck opened the public comment period. He asked citizens to be courteous to other citizens, staff, and Commissioners when speaking. He asked for comments to be in writing and relevant to planning and development. Although Development Review Committee (DRC) reports normally have no public comment, citizens will be able to speak about Courthouse Commons.

Mr. Sasha Digges, 3612 Ironbound Road, stated that Courthouse Commons tree-saving details should have been worked out with the Planning Director ahead of time. He stated the developer would work with the County to protect nature and save as many trees as possible.

Ms. Jean Migneault, 107 Crown Point Road, stated that the Courthouse Commons applicant did not discuss the amount of money he would save by mass clearing the site. She stated that if there were multiple tenants on the parcel, they would have been discussed already.

Mr. Robert Richardson, 2786 Lake Powell Road, stated the proposed tree clearing plan made sense due to the size of the Courthouse Commons parcel. He stated Courthouse Commons is across the street from Settler's Market, with its proposed 500 homes. Properties zoned M-1 are required to have an additional 25 foot setback when across the road from residential units.

Mr. Robert Spencer, 9123 Three Bushel Drive, representing the James City County Concerned Citizens (J4C), thanked Mr. Henderson for meeting with the group. He stated that members of J4C were happy that the proposed clearing plan reduced dump truck trips and agreed with the stormwater improvements.

Mr. Jack Fowler, 107 Wilderness Lane, stated he was happy with increased citizen attendance and participation at Commission meetings.

Mr. Peck closed the public hearing.

4. MINUTES

A. July 7, 2010 Regular Meeting

Mr. Mike Maddocks moved for approval of the minutes.

In a unanimous voice vote, the minutes were approved (5-0; Absent: Poole).

5. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC)

Mr. Rich Krapf stated that the DRC met July 28<sup>th</sup> and discussed C-0026-2010 Charlie's Antiques. Due to economic conditions, the partners of the Charlie's Antiques 2007 rezoning would like to downsize the existing business and relocate it to a smaller parcel. No action was required for the conceptual plan. The DRC also reviewed SP-0049-2010 Courthouse Commons.

Drawings for Phase I of the project showed 29,592 square feet of grocery and retail space and infrastructure. Clearing, grading, and site preparation was also proposed for areas of the site where no buildings are currently proposed. The DRC voted 1-1 on whether to approve clearing, grading, and stormwater for the entire parcel, as opposed to only approving clearing for the area of the proposed grocery and retail space.

Mr. Peck asked staff and the applicant to make presentations.

Ms. Ellen Cook stated that staff recommended preliminary approval subject to agency comments. She stated that various special use permits (SUPs) could be triggered during different development stages.

Mr. Krapf asked if stormwater management systems needed to be installed simultaneously.

Mr. Bill Cain stated that based on the plans submitted the entire site would need to be cleared. He stated improved stormwater systems would mitigate additional watershed impacts. A single installation of stormwater system improvements is consistent with the site plan.

Ms. Melissa Brown stated that Courthouse Commons setback concerns related to Zoning Ordinance Section 24-415, which requires increased setbacks from residential areas. She stated that Settler's Market was zoned Mixed Use and not strictly residential. The uses fronting Monticello Avenue, directly across from Courthouse Commons, were all commercial in nature so the increased setbacks would not apply.

Mr. Tim Trant, representing the applicant, stated that the Chesapeake Bay Ordinance allows clearing of an entire commercial project area. He stated that phased clearing would represent a significant cost to the applicant. The additional area proposed to be cleared represents two acres out of a nine acre site. Three acres are already paved from previous development. The one-and-a-half acre tree preservation and buffering plan have already been approved. Two-and-a-half acres would still need to be cleared in any phased plan. Fresh Market is concerned about possible ongoing construction and related noise, safety, and attractiveness issues after its opening. Any phased clearing would require the applicant to remove and then later purchase 8,000 cubic yards of fill dirt to level the site, which would be brought in using 1,600 dump truck trips. A single stormwater installation would also ensure all runoff was treated. Impervious cover would not be installed on the additional acres until tenants are found. Many of the site's mature trees will be preserved.

Mr. Krapf stated that parking was the visible predominant feature from the road in an urban/suburban character corridor. He stated nearby properties are designed around maximum visible building frontage with parking as a secondary use.

Mr. Trant stated several parking layouts were considered in the conceptual phase. He stated that the New Town Design Guidelines were the driving force behind the site layout.

Mr. Krapf stated he was concerned with a lack of tenants for the later phases. He stated

that one of the 2007 Better Site Design Roundtable Report's recommendations was to minimize site disturbance for infill developments. The Chesapeake Bay Ordinance includes two service standards related to clearing: (1) limiting land disturbance to area necessary for proposed development and (2) preserving maximum vegetation consistent with the use. There is no problem with approving Phase 1 of the project only.

Mr. Cain stated that the proposal promotes stormwater infiltration during and after construction. Infiltration designs will lessen stormwater effects. The plan is consistent with the Chesapeake Bay ordinance. Stormwater will be treated the entire time, but using different methods throughout the development process.

Mr. Fraley stated he favored phased clearing, but on larger parcels than the Courthouse Commons property. He stated only two additional acres would be cleared. The proposed clearing, grading, and stormwater installation made sense. He stated he would support the application.

Mr. Peck stated the parcel is small and already partially developed. He stated trucking out fill dirt and then bringing it back later would be a significant traffic impact. Most trees visible to the driving public would be preserved. He stated he would support the application.

Mr. Fraley moved to grant preliminary site plan approval, subject to agency comments.

In a roll call vote, the site plan was granted preliminary approval (4-1; Yes: Fraley, Woods, Maddocks, Peck; No: Krapf; Absent: Poole).

#### B. Policy Committee

Mr. Fraley stated the Policy Committee met on July 20<sup>th</sup>. He stated staff presented a list of topics for the August 10<sup>th</sup> Planning Commission/Board worksession. The Committee agreed to consider the City of Wayneboro's annual report as a visual template for the Commission's annual report. Comprehensive Plan implementation and public input forums for the ordinance update were also discussed. Updated public comment speaker guidelines will be discussed by the full Commission in September.

#### C. Other Committee/Commission Reports

There were no additional reports.

### 6. PLANNING COMMISSION CONSIDERATIONS

#### A. Initiating Resolution – Amendment to the Zoning Ordinance Section 24-666

Ms. Erin Waugh stated that staff recommends revising Zoning Ordinance Section 24-666 to reflect changes to the Code of Virginia Sections 15.22314 and 15.2311. Section 24-666 discusses appealing Board of Zoning Appeals (BZA) decisions. As of July 1, 2010, BZA ruling challenges will be heard through the State circuit court, and the BZA or its members

will no longer be party to the lawsuit. In the event of a lawsuit, the Zoning Administrator would now also provide the cost of the appeal and relevant County Code sections to the circuit court. Staff also recommends the Commission consider the text changes for the ordinance at the September meeting.

Mr. Krapf moved for approval of the initiating resolution.

In a unanimous roll call vote, the initiating resolution was approved (5-0; Absent: Poole).

B. Initiating Resolution – Subdivision Ordinance Amendment – Sewage Treatment System Pump Out.

Mr. Chris Johnson stated that the initiating resolution proposes adding notational language to Section 19-29 of the Subdivision Ordinance to address deficiencies in the ordinance found during an advisory review of the Department of Conservation and Recreation's Chesapeake Bay Local Assistance Division. The new language would require subdivision plats to note onsite sewage systems and Resource Protection Areas (RPA), as well as referencing Chesapeake Bay septic tank pump out requirements. Staff recommends the Commission consider the changes at the September meeting.

Mr. Maddocks moved for approval of the initiating resolution.

In a unanimous roll call vote, the initiating resolution was approved (5-0; Absent: Poole).

7. PUBLIC HEARING CASES

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

Mr. Peck stated the applicant has requested deferral until September 1, 2010.

Mr. Allen Murphy stated staff had no objections to the deferral.

Mr. Peck continued the public hearing until September 1, 2010.

B. SUP-0028-2008 – Ingram Road Tower

Mr. Luke Vinciguerra stated that Mr. Stephen Romine has applied for a special use permit for a wireless tower at 108 Ingram Road. The parcel is zoned B-1, General Business, and designated Mixed Use on the Comprehensive Plan. The proposed tower will be a 'slick stick' with no visible antennas. Originally denied by the Commission in April, the Board then remanded the case back to the Commission after the proposal was amended to move the tower from the front of the property to the western property line beside John Tyler Commercial Park. Staff found the tower would be briefly visible at the eastbound intersection of Ironbound and John Tyler Highway and from the westbound entrance of John Tyler Commercial Park. There would be limited visibility of the tower from Governor's Green Shopping Center, Airtight Self

Storage, Clara Byrd Baker Elementary School, the entrance of Powhatan Crossing, the terminus of Lancaster Lane in Baron Woods, and Bradington in Baron Woods. Staff finds the new location considerably less visible and finds the proposal consistent with surrounding land uses, the Comprehensive Plan, and the Wireless Communications performance standards policy. Staff recommends approval of the application. The tower will have co-location opportunities.

Mr. Dan Quarles, representing the applicant, Pegasus Tower, stated the application has been redesigned to reflect previous concerns of the Commission and staff. He stated the tower has been moved three times further from John Tyler Highway than the original location. The slick stick will have an AT&T antenna on top, along with slots for future co-location. Where the tower is visible at all, views are very limited. AT&T is seeking to improve coverage along the Ironbound Road corridor. AT&T investigated various nearby sites before deciding on 108 Ingram Road. The applicant stated the SUP conditions were acceptable, but asked for reconsideration of Condition #9. Condition #9 requires a 100' maintained buffer along the front of the property. The tower is already approximately 400' from the front property line. The property owner also has an approved site plan for a future building and the required buffer would impede that construction. There is little utility provided by the second 50' of buffering.

Mr. Vinciguerra stated the approved site plan for the site was from 1988 and had expired. A new site plan would be required for any new construction. Staff recommends keeping Condition #9 at 100' to maintain wireless performance standards and the recommended John Tyler Highway Community Character Corridor buffers.

Mr. Murphy stated staff was comfortable enough the tower relocation that the second 50 foot buffer was not critical. He stated that although a full 100' buffer is preferable, staff would still recommend approval with a 50' buffer.

Mr. Peck opened the public hearing.

Mr. Robert Richardson, 2786 Lake Powell Road, stated that from looking at AT&T coverage area graphics, it appeared additional local cell towers would be needed to provide full coverage. He stated he missed the balloon test advertisement and asked that any future legal advertising be sent on the listserv.

Mr. Peck closed the public hearing.

Mr. Fraley moved for approval as recommended in the staff report.

In a unanimous voice vote, the Commission recommended approval. (5-0; Absent: Poole).

#### C. SP-0064-2008 – Autumn West Townhomes

Mr. Adam Kinsman stated the Commission originally considered and denied the proposal in March 2008. After denial, the developer expressed interest in modifying the site plan. In June, the Commission adopted a resolution to rehear the case. Although no public hearing is

legally required, staff advertised the meeting date at which the PC would discuss the revised proposal

Mr. Brad Mars, representing the applicant, Autumn West Investments, stated the original proposal was approved by staff and the DRC before Commission denial of the DRC report. He stated the three main concerns he heard from Commissioners were the need for a formal tree preservation plan, appropriate site topography, and site aesthetics. Specimen trees within the developable area were surveyed and will be protected where possible. The previously proposed tot lot and emergency vehicle turn-around have been removed to preserve additional trees and provide additional buffering along Spring Trace. Wax myrtles will also be planted along the retaining wall by Spring Trace. The developed area will be almost hidden from Spring Trace views. The removal of the tot lot and turn-around would result in less intense site grading. Excavation from the previous plan has been reduced by 500 cubic yards. Entrances to all four buildings are now level and accessible from the parking area. Buildings 1, 2, and 3 follow the downward contour of the site. Retaining walls providing the level access will be built into natural slopes. The architecture will blend with the surrounding natural areas.

Mr. Jason Wilkins stated that the preserved trees would be marked with protective fencing during the construction process.

Mr. Al Woods asked if a formal tree preservation plan was submitted.

Mr. Chris Johnson stated the site plan shows the former tot lot and emergency vehicle access areas now left in their natural state. He stated these areas would now effectively serve as a tree preservation area, although individual trees are not marked.

Mr. Woods stated the revised plan does not adequately address the tree preservation concerns.

Mr. Fraley stated the construction of a retaining wall 10 feet from the property line could damage neighboring parcels. He stated less-intense alternative construction techniques should be used and noted on the site plan.

Mr. Mars stated the applicant would be willing to note alternative construction on the site plan. He stated that heavy supports bored into the soil would not be required for the retaining wall's lower elevations. The retaining wall rises as it moves away from the property line. Heavy soil penetrations would be required only at sections further from the property line.

Mr. Fraley stated that the proposed non-bored anchors allayed his concerns.

Mr. Mars stated the site plan will include notation that no excavation will occur within five feet of the property line.

Mr. Woods asked if there were additional community meetings to review the revised plan.

Mr. Mars stated there were no additional meetings.

Mr. Woods asked if comparative data regarding density per developable acre of other Season's Trace neighborhoods had been provided.

Mr. Mars stated the density is 6.76 units per developable acre. He stated density is lower than other Season's Trace town home developments. Property considered developable when the master plan was approved would not be considered developable today. The applicant did not have the ability to access developable acreage data for other neighborhoods.

Mr. Peck opened the public hearing.

Mr. Peck stated the Commission had received a letter from James City County Concerned Citizens (J4C) regarding Autumn West concerns

Mr. Craig Metcalf, 4435 Landfall Drive, stated he concurred with the letter's statements.

Mr. Bob Spencer, 9123 Three Bushel Drive, stated he would read the J4C's letter. The letter stated that without substantial downsizing, the revised plan contains the same problems as the original. Excavations will damage adjacent property, stormwater facilities are inadequate, mass clearing and grading violates the County's better site design policy, development will impact RPA and wetlands, taxpayers could be liable for any future stormwater restoration needed, and concerns about whether R-5 zoning and a 1973 master plan are appropriate in this case. The County needs a policy to manage similar sensitive infill spaces. J4C requests denial of the proposal.

Ms. Dorothy Sloan, 512 Spring Trace, representing the Season's Trace Multi-family Homeowner's Association, stated her group agrees with J4C concerns. She stated she was concerned with the cost of ongoing pond maintenance, considering the ability of the 24 home Autumn West HOA to afford upkeep.

Mr. Stan Hicks, 102 Fall East, representing the Season's Trace Single Family Homeowner's Association, stated the community was designed with the intention of preserving as many trees as possible. He stated any development on the land should reflect the land's contours, preserve as many trees as possible, and reflect the neighborhood's interests.

Mr. David Hertzler, developer of the original Season's Trace, stated that his master plan met all regulations 37 years ago. He stated the case should have been handled administratively. County requirements have delayed the Autumn West parcel's development for decades. The master plan allows for attached housing on that parcel.

Mr. John Morovitz, 119 Season's Trace, stated that the revised plan has twice as many units per developable acre as the rest of Season's Trace. He stated information on density per developable acre can be obtained. Comprehensive Plan topographical standards are not met by the revised plan. The public hearing notice for the revised case was too short.



Ms. Willa Fay McKenna, 117 Deer Spring Road, stated that Season's Trace homes are usually arranged to provide forested views from the rear windows. She stated she was concerned with runoff impacts from a more heavily populated Longhill area since the master plan was approved. The application of less strict R-5 zoning on the property is also a concern.

Mr. John Stevens, 4 Spring West, stated he did not know whether Autumn West would join the Season's Trace HOA and contribute to maintaining common areas. He stated Season's Trace HOAs should not be responsible for the maintenance of Autumn West common area.

Ms. Linda Reese, 511 Spring Trace, stated that Spring Trace homeowners were not adequately notified of the new public hearing. She stated clearing on the site would result in glare from Warhill sports lighting. Property damage from construction, landslides, and stormwater runoff; screening; facility maintenance; loss of common area; consistency with the larger neighborhood; safety; and traffic are all concerns.

Mr. Robert Richardson, 2786 Lake Powell Road, representing James City County Citizens for Ethical Government, asked how the public hearing related to the Autumn West lawsuit. He stated Commission concerns have not been adequately addressed by the revised plan. Trees within 15 feet of excavation areas are normally cleared due to the significant root damage and tree loss resulting from the process. There are concerns with damage to trees across property lines, inadequate BMPs, not applying current regulations to the master plan, and short notice of the public hearing.

Mr. Jack Fowler, 109 Wilderness Lane, stated the developer could have placed homes on the Autumn West property already but chose to keep the neighborhood smaller. He stated the master plan should be subject to current regulations.

Ms. Sarah Kadek, 3504 Hunters Ridge, stated the proposal has caused conflict between citizens and other citizens, government, and regulations. She stated if Autumn West were suitable for development, it would have happened long ago. Greenspace money should be used to buy this type of property.

Mr. Peck closed the public hearing.

Mr. Peck asked would anything preclude an applicant from correcting problems and resubmitting a site plan after staff or DRC denial.

Mr. Kinsman stated there was not.

Mr. Peck asked if applicants asking for site plan reconsideration was unusual.

Mr. Kinsman stated that when a proposal is denied by the Commission, applicants are within their rights to remedy and resubmit their plans.

Mr. Peck stated there were concerns about the validity of the Season's Trace master plan. He asked about the status of the master plan.

Mr. Kinsman stated staff had sent letters to Mr. Hertzler in 1994, 2005, and 2007 regarding vesting of the master plan.

Mr. Murphy stated that the Season's Trace master plan is a legally non-conforming use. He stated the revised plan would be approved already if it were a solely administrative plan.

Mr. Peck asked if the current Autumn West proposal would be approved by staff, if hypothetically there were the only body of review.

Mr. Murphy stated staff would recommend approval in that circumstance.

Mr. Fraley stated that the ordinances require Commissioners provide remedies for their denials. He stated the applicant has the right to address those concerns and return to the Commission.

Mr. Krapf stated that the proposal is a by-right development and part of the standing approved master plan. He stated that according to the master plan, 116 townhomes could be built in Autumn West, instead of the 24 proposed. Two-thirds of the property will remain undisturbed. Stormwater facilities will serve the new development and existing sections of Season's Trace, leaving the neighborhood in better environmental condition.

Mr. Maddocks stated that he will not try to interfere with any proposal when the developer has met all appropriate regulations.

Mr. Peck stated that there are many development issues to be addressed, but the Autumn West proposal was not the correct venue. He stated that although he voted to deny the previous proposal, the applicant has worked with the DRC and staff to make improvements. The Commission does not have a right to dictate development on any given parcel as long as County ordinances are followed. He stated that he will recommend approval.

Mr. Fraley stated the stormwater proposal was a significant improvement to Season's Trace. He stated when proposals are considered, he refers to three standards: designs based on site topography; designs consistent with surrounding uses, properties, and environment; and designs consistent with the Comprehensive Plan. An appropriate alternative use would be a small single-family home cluster that better fits the community and land. He stated he would not support the proposal.

Mr. Woods stated he had searched for ways to accommodate both landowner and community. He stated he expected the proposal to include reductions in grading, retaining walls, impervious cover, and density, as well as greater consistency with the rest of the neighborhood. He stated he would not support the proposal.

Mr. Krapf moved to recommend preliminary approval.

In a roll call vote, the Commission recommended preliminary approval (3-2; Yes: Krapf,

Maddocks, Peck; No: Woods, Fraley; Absent: Poole).

8. PLANNING DIRECTOR'S REPORT

Mr. Murphy stated he had no comments.

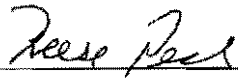
9. COMMISSION DISCUSSIONS AND REQUESTS

There were no Commission discussions.

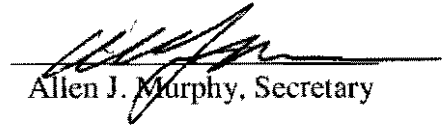
10. ADJOURNMENT

Mr. Peck adjourned the meeting.

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



Reese Peck, Chairman



Allen J. Murphy, Secretary