

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIRST DAY OF SEPTEMBER, 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
Joe Poole
Jack Fraley
Mike Maddocks
Rich Krapf
Al Woods
Tim O'Connor

Staff Present:

Allen Murphy, Director of Planning/
Assistant Development Manager
Adam Kinsman, Deputy County Attorney
Ellen Cook, Senior Planner II
Kate Sipes, Senior Planner
Jason Purse, Senior Planner
Sarah Propst, Planner
Brian Elmore, Development Management Asst

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

2. MINUTES

A. August 4, 2010 Regular Meeting

Mr. Rich Krapf moved for approval of the minutes.

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

Mr. Joe Poole stated he was surprised by the differences in the Autumn West and Courthouse Commons cases that had been acted upon while he was on vacation. He stated that although there was compromise on the Autumn West case, regarding Courthouse Commons, he could not remember another circumstance where a case moved so rapidly through the Commission, Board, and then back to the Commission with substantial changes, including a clear-cutting plan. He stated he was disappointed with the approval of both cases.

Mr. Jack Fraley stated that one-and-a-quarter acres of trees on the Courthouse Commons property would be preserved and that three acres of the property were previously developed.

Mr. Poole stated that although he expected the site to be developed in the future, he was surprised by the extent of the tree clearing despite the County's inventory of vacant commercial sites.

3. COMMITTEE AND COMMISSION REPORTS

A. Development Review Committee (DRC)

Mr. Krapf stated that the August meeting of the Development Review Committee was held on August 25th. First, the DRC reviewed conceptual plan C-0028-2010 AAA Member Services Center. The applicant sought a determination if consistency with the Lightfoot Mixed Use Area master plan to allow construction of the AAA Member Services Center on a site previously approved for the Noland Building. The Center will include office space for travel services and a fully enclosed auto service facility. The DRC found the proposal consistent with the master plan by a 3-0 vote. The DRC also reviewed subdivision plan S-0023-2010 Colonial Heritage, Phase 4, Section 1. The DRC focused on the layout of street trees. Staff had expressed concern that the placement of trees was more like yard trees than street trees. The applicant felt that constraints associated with driveway and sidewalk placement and utility access, there was limited flexibility in placing street trees. The Committee recommended preliminary approval by a 3-0 vote with the condition that the applicant and staff have further discussions on creative tree layouts. The Committee also reviewed site plan SP-0064-2010 Anderson's Corner Animal Hospital Exercise Area SP Amendment. The Committee discussed the consistency of the fenced dog exercise area and infiltration basin with the area shown on the Anderson's Corner Animal Hospital master plan. The Committee recommended site plan approval in a 3-0 vote.

Mr. Al Woods moved for approval of the report.

In a unanimous voice vote, the report was approved.

B. Policy Committee

There was no Policy Committee meeting.

C. Other Committee/Commission Reports

There were no additional reports.

4. PUBLIC COMMENT

Mr. Peck opened the public comment period.

Ms. Dorothy Piper, 501 Spring Trace, stated that the County did not notify Spring Trace homeowners of the revised Autumn West case. She stated homeowners had no opportunity to review or refute the new proposal. Lack of walkout basement details, lack of fill removal details, using the tot lot space for tree preservation, density based on developable versus total area, proximity to Autumn West Road and other properties, and absences from the Commission when the vote was taken were all concerns.

Mr. Jack Fowler, 109 Wilderness Lane, stated there were unkept properties near the County's reservoir and streams. He stated many new developments do not consider stormwater's impact to the environment and the taxpayers. Stormwater runoff should not be ignored until it requires drastic action, like the upcoming stormwater bond referendum.

Mr. Peck closed the public comment period.

5. 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 and asked if staff had any objections to the request.

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

Mr. Poole asked how long the deferral was expected to continue.

Mr. Murphy stated staff had discussed submitting more clearly defined plans with the applicant. He stated he believed a more defined plan was pending.

Mr. Peck opened the public hearing. Seeing no one, Mr. Peck continued the public hearing until October 6, 2010.

B. AFD-02-86-2-2010 Hankins Property Croaker AFD Addition

Mr. Peck stated the applicant has requested deferral and asked if staff had any objections to the request.

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

Mr. Peck opened the public hearing. Seeing no one, Mr. Peck continued the public hearing until October 6, 2010.

C. AFD-05-86-2-2010 Racefield Property Barnes Swamp AFD Addition

Mr. Peck stated staff has requested deferral.

Mr. Peck opened the public hearing.

Mr. Bob Spencer, 9123 Three Bushel Drive, stated that adjacent property owners came to the meeting based on notification letters received from the County only to find the applications deferred. He asked how citizens can learn whether cases are being deferred in advance of the meeting.

Mr. Murphy stated that cases are deferred to specific dates. He stated citizens can contact the Planning office regarding the status of any advertised public hearing case.

Mr. Peck continued the public hearing until October 6, 2010.

D. Zoning Ordinance Amendment – Section 24-666

Mr. Adam Kinsman stated the recent revisions to the Code of Virginia's Board of Zoning Appeals (BZA) section were influenced by the Kingsmill tower lawsuit. He stated that the Kingsmill case created confusion regarding how BZA appeals are labeled, who is liable for any BZA suit, how costs are paid, who is a party to the suit and how those parties are served. Working with Ms. Abbitt at the General Assembly, the County Attorney's office clarified State Code. Judicial appeals have replaced the recourse of suing the BZA or its members. The revisions to Section 24-666 will align it with new State Code provisions. Staff recommends approval of the amendment.

Mr. Peck opened the public hearing. Seeing no one, Mr. Peck closed the public hearing.

Mr. Poole moved to recommend approval of the amendment.

In a unanimous roll call vote, the Commission recommended approval of the amendment (7-0).

E. SO-0002-2010 Subdivision Ordinance Amendment – Sewage Treatment Systems Pump Out

Ms. Ellen Cook stated the amendment revises Section 19-29 of the Subdivision Ordinance. She stated that Section 19-29 includes items now required to be listed on a subdivision plat, including a note mentioning the required five-year septic tank pump out and a reference to Section 23-9-6b of the Chesapeake Bay Ordinance. On subdivision plats, under resource protection for development areas, a note will reference Item G to Chesapeake Bay Section Ordinance Section 23-7. Both notes reference existing regulations. The Department of Conservation and Recreation identified the changes during the recent Chesapeake Bay Act compliance assessment. Due to compliance schedules determined by the state, these changes precede the remainder of the Zoning Ordinance updates. Staff recommends approval of the amendments to the Subdivision Ordinance.

Mr. Peck opened the public hearing. Seeing no one, Mr. Peck closed the public hearing.

Mr. Poole moved to recommend approval of the amendments.

In a unanimous roll call vote, the Commission recommended approval of the amendment (7-0).

F. SUP-0018-2010 American Heritage RV Park Expansion

Ms. Kate Sipes stated that Vernon Geddy has applied on behalf of Mr. and Mrs. William Rhodes to expand the American Heritage RV Park from 95 to 327 camping sites. The parcel is zoned R-8, Rural Residential, and designated Economic Opportunity on the 2009 Comprehensive Plan. The campground, a legally non-conforming use, operates on a Conditional Use Permit from 1973. Any expansion would require a Special Use Permit (SUP). Staff finds the campground a transitional land use until larger economic forces drive development of the Economic Opportunity area. The parcel is inside the Primary Service Area (PSA). Ms. Sipes

noted one correction to the staff report. Due to revised comments received from JCSA, the site will be required to connect to public water and sewer. Ms. Sipes indicated the applicant had been made aware of the change. Staff recommends approval with the understanding that the applicant be required to connect to public water and amending the conditions to remove Conditions 12 and 13 referencing well and septic systems. Residences on Maxton Lane are not connected to public water or sewer. JCSA discovered the campground would be required to connect to the PSA just prior to the Commission meeting. Ms. Sipes explained the extension of public water and sewer outside the PSA would require an additional SUP, which had not been advertised and would have to be presented to the Commission at a future date.

Mr. Mike Maddocks asked if there had been any citizen concerns from Mirror Lakes.

Ms. Sipes stated there were none.

Mr. Peck opened the public hearing.

Mr. Vernon Geddy, representing the applicant, stated the campground intends a phased expansion over the next five to seven years, increasing the number of campsites to 327, as well as additional recreational, storage, and office areas. He stated he agrees with staff recommendations and proposed conditions. The campground use fits the Economic Opportunity area well, allowing transient visitors and tourists to support local businesses and attractions. The transient population will put relatively few burdens on County services. Few permanent structures will be built, easing any future Economic Opportunity redevelopment. The applicant learned of the need to connect to public water the morning of the Commission meeting. The connection is required due to a small piece of the property, fronting Maxton Lane, coming within 1,000 feet of existing JCSA facilities on Croaker Road. The portion fronting Maxton Lane is not involved in the park's operation and is currently used as a driveway for two residences. The applicant seeks to agree on a boundary line adjustment with the two owners to avoid the connection requirement.

Mr. Fraley asked if avoiding JCSA connections would mean reinstating the well and septic conditions.

Mr. Kinsman suggested adding the language "If the property is not required to be connected to public utilities" at the beginning of Conditions 12 and 13 to cover any possible changes made by the Commission or Board.

Mr. Geddy stated he agreed with that SUP language.

Mr. Poole asked if the two residences shared a driveway easement.

Mr. Geddy stated there was no driveway easement of which he was aware, but as this issue had just arisen, more research was needed.

Mr. Maddocks asked about the status of the RV industry.

Mr. William Rhodes stated that the RV park was doing very good business in spite of the economy. He stated the campground caters to RV operators who want a comfortable experience.

Mr. Bart Montesano, 126 Maxton Lane, stated that Maxton Lane should be widened due to the difficulty RVs have sharing the effectively one-lane road. He stated the 25 mile-per-hour posted speed is also too high for RVs to handle the turns.

Mr. Jack Fowler, 109 Wilderness Lane, stated he was concerned with people in RVs using the campgrounds as their primary home.

Mr. Peck closed the public hearing.

Mr. Poole asked Ms. Sipes to address neighbors' concerns.

Ms. Sipes stated the SUP allows only RVs and cabins on the site, with a condition stating campers are limited to a 30-day stay within a 60-day period. She stated the Zoning Ordinance also limits camping to 30 days in a 60 day period. The condition was added as a reminder to the applicant. Any enforcement would be complaint driven. The Virginia Department of Transportation stated the proposal would not trigger any road improvements, and that Maxton Lane meets design requirements for the local street designation.

Mr. Poole stated the proposal was a good fit for both the parcel and the surrounding Economic Opportunity area.

Mr. Poole moved to recommend approval with amended conditions 12 and 13.

In a unanimous roll call vote, the Commission recommended approval with amended conditions (7-0).

G. SUP-0019-2010 Harmonious Hardscapes

Mr. Krapf stated that his wife has a limited business association with the applicant. He stated he and the County Attorney both agree he can objectively review the case.

Ms. Sarah Propst stated that Mr. David Barglof has applied for a SUP for the construction of a retail landscaping store with landscape material storage as an accessory use. The parcel is zoned A-1, General Agriculture, and designated General Industry on the Comprehensive Plan. The eastern neighboring property, owned by Dr. English, will have mature pines and fencing as sight and noise buffers, as stated in Condition 2. The site fronts on Richmond Road but will be accessed on Industrial Boulevard. Enhanced landscaping in Condition 6 provides compliance with the Comp Plan recommended Community Character Corridor buffer. A vacant, deteriorating home and driveway on site will be removed, while mature trees are intended to be preserved. The property is located inside the PSA. Staff recommends approval of the proposal with conditions.

Mr. Fraley stated that although the applicant intends to preserve trees, there are no conditions related to tree preservation.

Ms. Propst stated that the applicant would like to preserve mature trees but that the existing home would be used for fire training purposes and nearby trees may be impacted. She stated several dying/diseased trees would be removed and the applicant would like the larger, healthier trees to remain, although he was unsure which trees would remain.

Mr. Fraley stated that enhanced language in the landscaping plan could discuss tree preservation. He stated he would like the landscaping plan to address which trees would be saved.

Mr. Murphy stated staff and the applicant would work together regarding tree preservation.

Mr. David Barglof, the applicant, stated he wanted to maintain specific trees for aesthetic appeal. The trees are intended to compliment the shopping experience.

Mr. Fraley asked about the vertical slats for the proposal's chain link fence.

Ms. Propst stated vertical slats were vinyl inserts that provided privacy between fence links.

Mr. Peck opened the public hearing.

Mr. Barglof stated the slats were woven between fence links.

Mr. Fraley stated that vinyl fencing does not weather particularly well and wears unevenly, creating a mismatched appearance. Enviroscreen, a knitted polyester, is a better alternative. Condition 2 should be amended to include language on Enviroscreen as an alternative fence material, which would let the business review its use without commitment to use the materials.

Mr. Barglof stated he did not object to the language.

Mr. Peck closed the public hearing.

Mr. Fraley moved to recommend approval with amended Condition 2.

Mr. Poole stated the proposal was a substantial improvement to the existing lot. He stated he would support the proposal.

In a unanimous roll call vote, the Commission recommended approval with the amended condition (7-0).

H. AFD-1-89, AFD-2-86, AFD-3-86, AFD-5-86, AFD-6-86, AFD-7-86, AFD-9-86, AFD-10-86,

AFD-11-86, AFD-12-86, AFD-1-93, AFD-1-02 Agricultural and Forestal District Renewals

Mr. Krapf requested that AFD-7-86 Mill Creek be voted on separately from the remainder. He stated his property was a part of the Mill Creek Agricultural and Forestal District (AFD) and he recused himself from reviewing that case.

Mr. Poole stated he may have a conflict due to his employer, Colonial Williamsburg, partially owning AFD-1-02 Carter's Grove.

Mr. Kinsman stated there was no conflict according to state and local laws. He stated the application could be voted separately in the interest of extreme prudence.

Mr. Poole requested that AFD-1-02 Carter's Grove be voted on separately from the remainder. He stated his employer was a part owner of the AFD. He recused himself from reviewing that case. Mr. Krapf indicated he was also employed by Colonial Williamsburg and would recuse himself from reviewing AFD-1-02 as well.

Mr. Jason Purse stated that 12 of the County's 14 AFDs are currently going through the renewal process. The Armistead, Carter's Grove, Barnes Swamp, Christenson's Corner, Cranston's Pond, Croaker, Gordon Creek, Gospel Spreading Church Farm, Hill Pleasant Farm, Mill Creek, Williamsburg Farms, and Yarmouth Island AFDs all have 4-year terms expiring between September and November 2010. Wright's Island was renewed by the Board in July 2010 for 8 years. Pate's Neck 6 year term expires in 2012. AFD renewal, additions, and withdrawals require public hearings. Out of all the renewals, only one withdrawal was requested – a 3 acre parcel from the Gordon Creek AFD. AFDs are consistent with surrounding land uses and the Comprehensive Plan. Staff recommends renewal of the AFDs with expiration set for October 2014 and subject to proposed conditions. The AFD Advisory Committee unanimously recommended renewal of all AFDs.

Mr. Peck opened the public hearing. Seeing no one, Mr. Peck closed the public hearing.

Mr. Fraley moved to recommend renewal with proposed conditions.

In a unanimous roll call vote, the Commission recommended approval of ten AFD renewal cases presented with the exception of AFD-7-86 and AFD-1-02, and with amended conditions (7-0).

I. AFD-7-86 Mill Creek

Mr. Krapf left the dias.

Mr. Peck opened the public comment period. Seeing no one, Mr. Peck closed the public comment period.

Mr. Fraley moved to recommend renewal with proposed conditions.

In a roll call vote, the Commission recommended renewal with amended conditions (6-0; Abstain: Krapf).

J. AFD-1-02 Carter's Grove

Mr. Peck opened the public comment period. Seeing no one, Mr. Peck closed the public comment period.

Mr. Fraley moved to recommend renewal with proposed conditions.

In a roll call vote, the Commission recommended renewal with amended conditions (5-0; Abstain: Krapf, Poole).

K. AFD-09-86-1-2010 3889 News Road Gordon's Creek AFD Addition

Mr. Purse stated the applicant has withdrawn the additional request due to its efforts to continue marketing the continuing care retirement community approved there. He stated the Commission did not have to act on the case.

Mr. Peck opened the public hearing.

Mr. Peck closed the public hearing.

8. PLANNING DIRECTOR'S REPORT

Mr. Murphy stated he had no additional comments.

9. COMMISSION DISCUSSIONS AND REQUESTS

Mr. Fraley stated the Policy Committee had reviewed open public comment procedures. He stated the open comment period has been amended to include a three-minute time limit to all speakers, comments are to be limited to direct Commission, planning, and land use matters. New rules of decorum allow the chair to rule a speaker out of order if violating the new procedures. The chair has clear rules for controlling the open comment period. The open public comment period should continue under the amended rules. Alternatively, the open comment period could be eliminated or moved to the end of meetings.

Mr. Krapf stated he was comfortable maintaining the current open comment period with the new procedures.

Mr. Peck stated the public comment rules should be printed on the rear of Commission agendas in lieu of reading them prior to opening the public comment period.

Mr. Poole stated in his previous tenure on the Commission, there was no open public comment, only comment related to land use cases. Although the Commission wants to hear maximum public comment, many open public comment speakers address issues outside the

Commission's purview. Issues both outside the Commission's purview and unrelated to land use are best presented to the Board. The chair's current need to interrupt overtime speakers and provide direction to other ones distracts from the meeting. The open public comment should be eliminated, since the Commission's advisory-only role provides a poor platform for larger policy issues.

Mr. Maddocks stated that open comments often have little to do with the Commission's agenda. He stated comments unrelated to the Commission's proceedings should be taken up before elected officials. The open public comment period should be eliminated.

Mr. Woods asked how open comments related to previous Commission actions would be administered.

Mr. Poole stated the citizens concerned about past Commission actions should contact the chair for an opportunity to address the Commission. He stated the chair should always have the latitude to allow appropriate speakers.

Mr. Peck stated he is concerned about the personal attacks during the public comment period. He stated that personal attacks would be rebroadcast on cable without rebuttal. The open comment can be managed and should be retained with the recently amended policies.

Mr. Fraley stated that limiting public comment to public hearing cases would not allow for comment on past Commission decisions, committee reports, or activist group presentations. The new procedures address the current issues with open comment.

Mr. Poole stated he would still be receptive to any emails, calls, and other communications with citizens outside of the meeting, but public speakers at the meetings should focus on the cases presented. He stated he would support open comment if the procedures were strictly enforced. The recent distractions during open comment create difficulties for objectively reviewing cases.

Mr. Tim O'Connor stated that placing open comment after the public hearings on the agenda would help defuse disruptive speakers.

Mr. Poole stated he would be more supportive of a deferred open comment.

Mr. Fraley stated that speakers may not be able to stay throughout the meeting for various reasons. He stated he did not want people to have to sit through a potentially lengthy meeting in order to speak.

Mr. Krapf stated moving open comment to the end of meetings would effectively shut it down. He stated that open comment is infrequently used by the public now, which would make it easier to retain. Open comment should remain, with recent amendments, at the beginning of meetings.

Mr. Peck stated that moving comments to the end of meetings would greatly reduce

comments. He stated one of the functions of open comment is to serve as a sounding board for community issues outside of the agenda. There are also problems with the Commission's review of DRC reports. Cases with substantial consequences, such as Autumn West, lack a public hearing. He stated he would like the Policy Committee to review how the Commission reviews DRC reports.

Mr. Fraley stated that DRC cases are not legislative and therefore not subject to full public hearing.

Mr. Peck asked if the Zoning Ordinance requires the entire Commission to adopt a DRC report.

Mr. Kinsman stated that the Commission votes to validate the recommendations of a DRC report.

Mr. Peck asked if the ordinance required public notification for DRC cases.

Mr. Kinsman stated there was no requirement. He stated that DRC cases are indirectly advertised through their discussion at the advertised Commission meetings. The ordinance requires the DRC meeting to be advertised, but not its agenda.

Mr. Krapf stated that the DRC exists to streamline the Commission's workload. He stated if the DRC reviewed a controversial case, the DRC could decide to bring the entire Commission to the process.

Mr. Fraley stated the DRC meeting was not a public hearing.

Mr. Woods asked whether the ordinance required the Commission to ratify or adopt DRC reports.

Mr. Kinsman stated he would have to review the language.

Mr. Woods stated if the Commission was required to adopt reports, they would need access to all DRC materials.

Mr. Fraley stated the Commission specifically accepts the DRC report.

Mr. Murphy stated that not accepting the report would give the Commission jurisdiction over the DRC report. He stated the DRC report is by practice ratified. On the rare occasion of controversial DRC cases, the DRC chair may forward case materials to the entire Commission with additional public comment at the DRC meeting.

Mr. Woods asked if applicants had clear expectations after DRC approval.

Mr. Fraley stated the Commission can only grant preliminary approval.

Mr. Murphy stated cases are reviewed administratively after preliminary approval.

Mr. Poole asked how the current open comment was added to the meetings.

Mr. Fraley stated open comment was written into the bylaws.

Mr. Fraley moved to continue the open public comment period as revised.

In a unanimous voice vote, the Commission approved continuing the open public comment period as revised (7-0).

Mr. Peck stated that the Commission has no procedure for reviewing potentially controversial or significant DRC cases. He stated it appears arbitrary to pick and choose which cases get full Commission review. There should be clear standards for when the full Commission holds a public hearing for a DRC case. Applicants should know when they are entitled to public debate of an otherwise administrative decision. Revised DRC review could be considered during the zoning ordinance update process.

Mr. Maddocks asked what would be the first action of revised DRC procedures.

Mr. Peck stated staff could review DRC procedures as a part of ordinance updates.

Mr. Fraley stated the DRC's purview and role as appeals board derive from the zoning ordinance. He stated he hopes the DRC takes a greater role through the recently approved enhanced conceptual plan review.

Mr. Krapf stated that the full Commission's review of Autumn West was a logical decision resulting from that case's many complicating factors. He stated the DRC allows applicants to gain important feedback before committing time and money into engineered site plans. The DRC also functions as a de facto architectural review board.

Mr. Peck stated the Commission is subject to charges of being arbitrary and capricious without established procedures for giving a DRC case a public hearing.

Mr. Murphy stated the Commission has not refused additional public input or quasi-public hearings for controversial cases in his recollection.

Mr. Woods asked if there was a downside to having improved procedural definitions.

Mr. Krapf stated the ordinance already accounts for DRC purview.

Mr. Peck stated he would like staff to review the DRC ordinances to provide additional clarity.


Mr. Fraley stated the chairs of the DRC or Commission can pull cases from the DRC report to allow additional review of DRC cases.

10. ADJOURNMENT

Mr. Peck continued the public meeting until September 27, 2010 at 6:30 p.m.



Reese Peck, Chairman



Allen J. Murphy, Secretary