

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIFTH DAY OF MARCH, TWO-THOUSAND AND FOURTEEN, AT 6:30 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
Tim O'Connor
Chris Basic
Robin Bledsoe
George Drummond
John Wright, III
Heath Richardson

Staff Present:

Paul Holt, Planning Director
Jose Ribeiro
Christopher Johnson
Adam Kinsman, Deputy County Attorney

Mr. Rich Krapf called the meeting to order at 6:30 p.m.

2. ORGANIZATIONAL MEETING

Mr. Krapf opened the floor for nominations for Chair.

Ms. Robin Bledsoe nominated Mr. Krapf as Chair.

In a unanimous voice vote, the Commission elected Mr. Krapf as Chair. (7-0)

Mr. Krapf opened the floor for nominations for Vice Chair.

Mr. Chris Basic nominated Ms. Bledsoe as Vice Chair.

In a unanimous voice vote, the Commission elected Ms. Bledsoe as Vice Chair. (7-0)

The Chair requested the Commission recess the meeting for a five minute break.

Mr. Krapf reconvened the meeting at approximately 6:40 p.m.

Mr. Krapf stated that the following Planning Commissioners were appointed to serve on the Policy Committee: Mr. O'Connor, Ms. Bledsoe, Mr. Krapf and John Wright and that Mr. O'Connor would serve as the chair.

Mr. Krapf stated that the following Commissioners were appointed to serve on the DRC: Mr. Basic, Mr. George Drummond, Mr. O'Connor, Mr. Heath Richardson and Mr. Krapf and that Mr. Basic would serve as the Chair.

Mr. Krapf stated that Ms. Bledsoe was appointed to represent the Regional Issues Committee.

Mr. Krapf moved to approve the 2014 Calendar.

In a unanimous voice vote, the Commission approved the 2014 Calendar. (7-0)

Ms. Bledsoe moved to adopt the Updates to the Bylaws and to rescind the 1990 Planning Commission Resolution dealing with Limitations on Public Hearing Presentations and the 2010 Planning Commission Policy dealing with Outside Communications with Applicants.

In a unanimous vote, the Commission adopted the Updates to the Bylaws and rescinded the referenced 1990 Resolution and the 2010 Planning Commission Policy. (7-0)

Mr. Krapf recessed the meeting at 6:45 and stated that the meeting would reconvene at 7:00 p.m.

3. PUBLIC COMMENT

Mr. Krapf opened the public comment.

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

4. CONSENT AGENDA

A. Minutes from February 5, 2014, Planning Commission meeting.

B. Development Review Committee

i. Case No. S-0041-2012, Colonial Heritage, Phase 5, Section 1

Mr. Krapf stated that the DRC voted 3-0 to approve subject to agency comments.

ii. Case No. S-0006-2014, Colonial Heritage, Phase 6, Section 1

Mr. Krapf stated that the DRC voted 3-0 to approve subject to agency comments.

Mr. Basic moved to approve the Consent Agenda.

In a unanimous vote, the Commission approved the Consent Agenda. (7-0)

5. REPORTS TO THE COMMISSION

A. Policy Committee

Ms. Bledsoe stated that the Policy Committee met on February 13, 2014 and approved the minutes from January 16, 2014 meeting.

A. Case No. Z-0007- 2013, Amendment to consider the keeping of chickens in residentially zoned areas in the County

Ms. Bledsoe stated that the meeting was opened for public comment allowing the Committee to hear from several chicken keepers and one Homeowner Association representative. The Committee discussed the feasibility of recommending the expansion of chicken keeping to R-1, Limited Residential.

B. Case No. Z-0008-2013, Accessory Apartments

Ms. Bledsoe stated that the Policy Committee discussed revisions to the Zoning Ordinance pertaining to the definition, provisions and procedures pertaining to accessory apartments.

B. Regional Issues Committee

Mr. Krapf stated that the Regional Issues Committee did not meet in February.

6. PUBLIC HEARING CASES

A. Case Nos. Z-0003-2013/MP-0001-2013. Rezoning and Master Plan Amendment for Kingsmill

Ms. Bledsoe stated that she had met with Mr. Geddy, his client and Mr. Drummond in September 2013, and that she had met with Mr. Geddy, his client and Mr. Wright in a separate meeting.

Mr. Basic stated that he had met with Mr. Geddy and his client.

Mr. Basic further stated that he was hired by KCSA approximately two years ago for mini designs and community improvements but that he does not currently have a conflict of interest with respect to this application.

Mr. Krapf stated that he and Mr. Basic met with the applicant in September 2013 for an overview of the plan and that he spoke with Mr. Geddy yesterday via telephone.

Mr. O'Connor stated that in the fall of 2013, he asked the Commonwealth Attorney to opine on a potential conflict of interest under the VA State and Local Government Conflict of Interest Act § 2.2-3100 et seq. of the Code of Virginia, 1950, as amended.

Mr. O'Connor stated that in an opinion dated October 30, 2013, it was his understanding from the Commonwealth Attorney that because he does not have a personal interest in a contract before the governmental body; that because he is an employee of FirstService Residential and not directly employed by the Kingsmill Community Services Association (KCSA) or Xanterra; that FirstService and Xanterra do not share a parent-subsidiary relationship and that he does not

have a personal interest in Xanterra, that he does not have a conflict of interest pursuant to the Code of Virginia.

Mr. O'Connor stated that the by-laws of the JCC Planning Commission state that "no member present shall abstain from voting on a roll call vote unless a member has a conflict of interest in the matter being voted upon" with a conflict being defined by the Code of Virginia; a policy adopted by the Board of Supervisors or as stated by the Commission member unless objected to by a majority vote of the members of the Commission.

Mr. O'Connor stated that as he does not have a conflict under the Code of VA nor a conflict as defined by a policy adopted by the Board of Supervisors, that unless a Commission member objects, than out of an abundance of caution given his role with KCSA as an employee of FirstService, that he will recuse himself from the discussion and abstain from any vote on the Xanterra application currently before the Commission.

The Commission did not raise an objection to Mr. O'Connor's request to abstain.

Mr. Krapf excused Mr. O'Connor for the remainder of the meeting.

Mr. Drummond confirmed that he had met with Mr. Geddy, his client and Ms. Bledsoe in September 2013.

Mr. Wright confirmed that he had met with Mr. Geddy, his client and Ms. Bledsoe. Mr. Wright stated that he accompanied Mr. O'Connor and Ms. Bledsoe on a drive around the proposed project.

Mr. Jose Ribeiro, Planner II, addressed the Planning Commission giving a summary of the staff report included in the Agenda Packet.

Mr. Krapf asked what the intention was of the applicant changing the 18 cottages located in section eight of the Master Plan currently designated as resort to single family.

Mr. Ribeiro stated that the 18 cottages are controlled by Xanterra and by changing the designation from resort to single family it will allow Xanterra to sell the units so they may be occupied as single family dwelling units.

Mr. Krapf opened the public hearing.

Mr. Vernon Geddy of Geddy, Harris, Franck and Hickman LLP, 1177 Jamestown Road, addressed the Planning Commission giving a summary of the proposed project.

Mr. Richardson requested a definition/measure of the homes categorized under the work force housing policy.

Mr. Geddy stated that units valued under \$380k are provided for by the County Housing Opportunity Policy.

Mr. Wright inquired why Mr. Geddy felt that school proffers did not apply to his application.

Mr. Geddy stated that the case is a master plan amendment where the zoning is already established, therefore, the case was submitted as a rezoning due to the proffers being offered to mitigate additional impacts.

Mr. Richardson inquired if the cash-in-lieu computations of the Housing Opportunity Policy were completed.

Mr. Geddy stated yes, the rough math; take an average lot in Kingsmill at the cost of \$225,000, and then the cost of \$125,000 to build the house that is approximately a \$360,000 cash contribution.

Mr. Richardson stated if the cash-in-lieu proffer included the cost of the house, lot, and square footage assessment.

Mr. Geddy replied yes, that is accurate.

Mr. Wright inquired if any houses were to be built on the property obtained by Busch.

Mr. Geddy replied yes, it would.

Ms. Bledsoe inquired if the nutrient management plan will be performed just once and if it was the responsibility of only the first owner or all future owners.

Mr. Geddy stated that the test will be taken initially then it will be up to the future homeowners to maintain it. Any common areas will be under the control of the Kingsmill Community Services Organization (KCSA).

Ms. Bledsoe asked if the disclosure forms were used elsewhere.

Mr. Geddy stated that he wasn't aware of the disclosure forms being used in the County, however, they have been utilized in connection with other various Busch Gardens Theme Park (Busch Gardens) with similar language.

Ms. Bledsoe inquired if the disclosure forms obtained a negative response.

Mr. Geddy stated the purpose of the disclosure form is to allot potential home buyers (prior to purchase) time to ponder/consider the amount of noise from Busch Gardens Theme Park.

Ms. Bledsoe stated the issue with clearing the lots is that it increases the possibility of non-buildable lots due to the noise pollution from Busch Gardens.

Mr. Geddy stated that the lots are purchasable, but that potential buyers need to be aware of what is next door.

Ms. Bledsoe stated that there were concerns relating to the schools being overcrowded and what remedies would be implemented to address those issues.

Mr. Geddy stated that it should be up to the school system to increase capacity since there was an issue with overcrowded schools.

Ms. Bledsoe stated that the argument with overcrowded schools is relevant due to purposely increasing school demand with the proposed project.

Mr. Chris Basic stated that planning has evolved since 1972 and schools have become an important role in today's planning and would the applicant be willing to address the school issue.

Mr. Geddy replied there has not been to date.

Mr. Basic inquired if an onsite assessment indicated sensitive natural resources than would the plan be revised to accommodate the findings.

Mr. Geddy replied yes and that they were acutely aware of the possibility.

Mr. Richardson inquired if the archeological study pertaining to the Captain Grave's Road and Mounts Bay Road was funded by the applicant.

Mr. Geddy replied yes, that is correct.

Mr. Rich Krapf inquired if the placement of three single family houses were really necessary to build in area seven and could it be left in its natural state.

Mr. Geddy stated that the applicant had reviewed the area and downsized from their original proposal. The area in question is believed to be zoned residential and in the same area where the Country Road corridor is being preserved.

Mr. Krapf inquired if there should be any concerns relating to tab four of the impact statement map which shows an area subject to future rezoning.

Mr. Geddy stated that the first submittal included a plan to place approximately 100 lots around four holes of the Woods golf course.

Mr. Geddy also stated that the area is zoned M1 – Limited Business Industrial and designated Industrial on the comprehensive plan, therefore, they have withdrawn that portion of the proposal until the County completes the comprehensive plan update.

Mr. Michael McGurk, 117 Jefferson's Hundred, representing Kingsmill United, addressed the Planning Commission providing a PowerPoint presentation regarding the groups concern to the proposed project.

Ms. Shereen Hughes, 103 Holly Road, representing Citizen/Wetlands Watch, addressed the Planning Commission providing an area map regarding conservation concerns in area five of the project.

Mrs. Rubyjean Gould, 309 Archer's Mead, yielded her time to speak.

Mr. David Graham, 221 William Claiborne, addressed the Commissioners regarding his concerns to the noise of the proposed project.

Mr. Richard Gould, 309 Archer's Mead, representing Kingsmill United, addressed the Planning Commissioners regarding his concerns to the proposed project (an area he refers to as "Greenbelt").

Mr. Ron Lynde, 401 Rivers Edge, yielded his time to speak.

Ms. Margaret Nelson Fowler, 406 Rivers Edge, addressed the Planning Commissioners regarding her concerns to the proposed project. She stated that the Development practices of Xanterra should be considered prior to voting.

Mr. Frank Polster, 420 Hempstead Road, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that Grove Creek needs to be preserved and to remain in its natural form.

Mr. Jeff Raskin, 7 Newman Court, representing Ford's Colony Trailblazers Club, addressed the Planning Commissioners reading a letter addressed to Mr. Geddy from Mr. Tom Thompson, President of the Fords Colony Trailblazers Club.

Mr. Jim Zinn, 147 West Landing, representing KCSA, addressed the Planning Commissioners supporting the proposed project. He stated that the Plan of Development Committee (PDC) and KCSA have worked with Xanterra on real estate related matters and other actions which effect Kingsmill homeowners.

Mr. James Adams, 159 Jefferson's Hundred, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that any planning entity should consider the general good, meaning the majority of the population being Kingsmill residents.

Mr. Lenny Berl, 105 William Richmond, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that the closing Attorney relayed the many amenities available to Kingsmill and these were the basis for purchasing his home.

Ms. Kathi Mestayer, 105 Gilley Drive, addressed the Planning Commissioners regarding her concerns to the proposed project. She stated that she is not a resident of Kingsmill, however, impact to the environment affects us all and to preserve the protected areas.

Mr. Andrew Lloyd-Williams, 120 Captaine Graves, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that James City County Ordinance

56A-17 adopted on April 12, 2011, prohibits any noise which is plainly audible at a distance of 100 feet from its source between the hours of 9 p.m. and 7 a.m. and no provisions of this article shall apply to theme parks or outdoor centers of amusement, therefore, Kingsmill residents are being affected.

Mr. John Haldeman, 1597 Founders Hill North, representing James City County Coalition known as the J4C, addressed the Planning Commissioners regarding his concerns to the preservation of the unique botanical resources within the Grove Creek Watershed.

Mr. Phillip Merritt, 3281 N Riverside Drive, representing John Clayton Chapter of the Native Plant Society, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that they are deeply concerned for the preservation of the Grove Creek Watershed.

Mr. Howard Ware, 46 Whittakers Mill Road, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that the application should be denied due to the failure of meeting all requirements.

Ms. Judy Tucker, 55 Winster Fax, addressed the Planning Commissioners regarding her concerns to the proposed project. She stated that the Xanterra project may not be in accordance to James City County Comprehensive Plan, therefore, she recommended denying the development or at least defer until more information is provided regarding environmental impacts.

Ms. Sonie Morton, 55 Winster Fax, addressed the Planning Commissioners regarding her concerns to the proposed project. She stated that an area allotted to Kingsmill residents to stage recreational vehicles would no longer exist.

Mr. Wade Swink, 11 Whittakers Mill, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that the three parts of emissions which need to be considered when approving this application would be acoustic, thermal and noise.

Mr. Charles Horton, 2 Bray Wood Road, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that the Country Road should be preserved and that development should not encroach into the existing buffer.

Ms. Chris Rodgers, 316 Littleton Quarter, yielded her time to speak.

Mr. Gerald Johnson, 4513 Wimbledon Way, representing Historic 5, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that approving this project would preclude an archeological education facility and create safety factors for future residents.

Ms. Dorothea Neiman, 105 Broomfield Circle, yielded her time to speak.

Mr. Scott Barner, 17 Bray Wood, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that the trees create a buffer for light and noise and that he wishes for the area to maintain its original state.

Ms. Jane Chambers, 108 Jefferson's Hundred, addressed the Planning Commissioners regarding concerns to the proposed project. She stated that their house is located adjacent to the noise zone and please do not subject anyone else to the horrific noise that emanates from the Theme Park.

Mr. Mike Kwiatkowski, 101 Edward Grindon, addressed the Planning Commissioners regarding his concerns to the proposed project. He stated that the Country Road and Eagle reserve are quite unique and should remain in its original state.

Seeing no other speakers, Mr. Krapf stated that the public hearing would remain open.

Mr. Basic inquired if the environmental constraints analysis for legislative cases should be applied.

Mr. Holt replied that planning staff met with Engineering and Resource Protection staff and the project complies with the policy.

Ms. Bledsoe inquired if they were permitted to ask Mr. Geddy questions.

Mr. Krapf replied yes.

Ms. Bledsoe inquired as to the exact number of homes that could be built out.

Mr. Ribeiro replied that the number of residential units is based upon the County's Zoning Ordinance which allows two residential homes on one acre of land. The residential acreage for Kingsmill is 2300, multiplied by two totals 4,600, with the caveat that 4,600 is the max number density permitted for development and that does not mean all the space is buildable.

Mr. Ribeiro further stated that he is not aware of a master plan capping a specific residential number.

Mr. Holt stated that the development patterns wouldn't allow an opportunity to achieve 4,600 units. The development has been built out to a much lower density and but for a legislative public hearing process those net new units could not be developed.

Mr. Drummond stated that many concerns surround this project for the residents of Kingsmill and a compromise or more discussion may assist with a better outcome.

Mr. Richardson inquired if there would be uninterrupted development from the beginning of the Country Road to the end and requested that staff obtain copies of Mr. McGurk's and Mr. Burrow's presentations.

Mr. Richardson further stated that he is unclear as to Xanterra's unwillingness to comply with the County's Housing Opportunity Policy and school proffers.

Ms. Bledsoe stated that Xanterra's presentation was created with a lot of effort, however, the residents of Kingsmill have not been appeased and that they are faced with the issue of overcrowded schools. She stated that she would not be able to move forward with this project.

Mr. Wright articulated that the homeowners have relied on promises set forth from Kingsmill Community when they had purchased their home. School proffers would be necessary should the project move forward.

Mr. Wright further stated that Kingsmill residents should have control of what changes occur within their community.

Mr. Krapf articulated concerns regarding proffer issues for Affordable Workforce Housing and the adequate public facilities test; those are Board of Supervisor approved and utilized as guidelines for making decisions on future applications. He stated that environmental impact concerns also need to be addressed.

Mr. Krapf requested Mr. Holt to relay information regarding proffers.

Mr. Holt stated that if the Commissioners are satisfied with information presented then they have the option to close the public hearing and make a vote, however, the proffers were delivered just prior to the meeting therefore, preventing staff from making a recommendation or analysis. He said that the Commissioners have the option of keeping the public hearing open and defer to a future meeting for additional public comment.

Mr. Basic stated that the natural and built environment needs to coexist and that he is not opposed to the application but that a few revisions need to occur.

Mr. Krapf stated that the public hearing would remain open until the April 2, 2014 meeting.

Ms. Bledsoe inquired if the application would be deferred with questions and conditions or sent back to planning for additional review.

Mr. Krapf stated that the amended proffers submitted prior to the meeting need to be reviewed by staff for additional recommendation and analysis and allow for further public comment from citizens.

Mr. Krapf further stated that there were a few Commissioners requesting staff to validate any existing comments related to South of the Country Road and impacts on the residential cap.

Ms. Bledsoe inquired if a noise impact study could be performed.

Mr. Krapf replied that there are not any County policies in effect regarding noise standards.

Ms. Bledsoe inquired if there was a way to solidify causes regarding the noise issue.

Mr. Basic stated that denying this application wouldn't change the outcome of the noise issue, however, approval of the application could make it worse.

Ms. Bledsoe stated that her issue does not apply to the current noise issue rather, it applies to the additional noise impact expected from the proposed project.

Mr. Krapf requested if staff could provide additional information.

Mr. Holt stated that staff could provide Commissioners with additional information.

Mr. Krapf asked Mr. Geddy if the applicant would provide additional research, request a deferment, or opinion based on the current discussion.

Mr. Basic inquired if staff's inability to review amended proffers rapidly indicated automatic deferment.

Mr. Adam Kinsman stated that the Virginia Code allots 100 days for cases to be heard should the Planning Commission defer the case, however, this would not apply should the applicant defer and would allow staff and Commissioners more time to review the project.

Mr. Drummond inquired if the applicant would have another opportunity to present the case to the Commissioners should a vote occur this evening.

Mr. Krapf stated that a deferment initiated by the applicant or Commissioners would allow the case to be returned but should the Commissioners vote then the case would be presented at next month's Board of Supervisors meeting.

Mr. Richardson inquired how an applicant could defer a case in this forum.

Mr. Krapf stated that applicants in past cases would approach the podium and request a 30 day to 60 day deferral which was usually granted.

Mr. Richardson inquired if the Commissioners would grant a deferment should the applicant request a deferral.

Mr. Krapf stated yes, and that Mr. Geddy would consult with his client.

Mr. Geddy stated that the applicant requested a deferral.

Mr. Krapf inquired how long a deferment was necessary.

Mr. Geddy stated 30 days.

Mr. Richardson moved to defer the case until April 2, 2014 meeting.

In a unanimous vote, the Commission approved the deferral. (6-0; Mr. O'Connor abstaining)

7. PLANNING COMMISSION CONSIDERATIONS

Mr. Krapf stated that the Board of Supervisor meetings need to be covered and that he would contact Commissioners for their availability.

8. PLANNING DIRECTOR'S REPORT

Mr. Holt stated that the Planning Director's report for the month of March summarized significant activities and other projects that were in for administrative review.

Mr. Holt expressed gratitude to the individuals serving on the 2035 Comprehensive Plan Community Participation Team, known as the CPT and those members consist of Allen Ducet, Elizabeth Frill, Jack Holdeman, Jasmine Cohen, Susan Gaston, Lisa Trishea-Beavers as well as the Policy Committee members Mr. O'Connor, Ms. Bledsoe, Mr. Krapf and Mr. Wright.

9. COMMISSION DISCUSSION AND REQUESTS

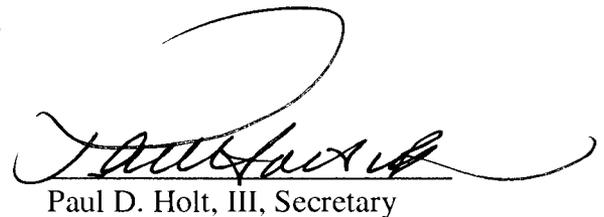
Mr. Richardson stated that he appreciated how staff was welcoming, professional and forthright to the new Commission.

10. ADJOURNMENT

Mr. Wright moved to adjourn the meeting until 7:00 p.m. on April 02, 2014.

The meeting was adjourned at approximately 10:32 p.m.


Richard Krapf, Chairman


Paul D. Holt, III, Secretary