

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SEVENTH DAY OF MAY, TWO-THOUSAND AND FOURTEEN, 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:

Rich Krapf  
Tim O'Connor  
Chris Basic  
Robin Bledsoe  
John Wright, III  
Heath Richardson

Staff Present:

Paul Holt, Planning Director  
Jose Ribeiro, Planner  
Scott Whyte, Planner  
Jennifer VanDyke, Planner  
Leanne Pollock, Planner  
Lola Perkins, Assistant County Attorney

Planning Commissioners

Absent:

George Drummond

Mr. Rich Krapf called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENT

Mr. Krapf opened the public comment.

Mr. John Niland, 503 Rivers Bluffs, addressed the Planning Commission to express his concern regarding Xanterra and the Kingsmill Community Service Association (KCSA).

Mr. Howard Ware, 46 Whittakers Mill Rd., addressed the Planning Commission to express his concern regarding Xanterra and KCSA.

Mr. Lenny Berl, 105 William Richmond, addressed the Planning Commission to express his concern regarding Xanterra and KCSA.

There being no other speakers, Mr. Krapf closed the public comment.

3. CONSENT AGENDA

A. Minutes from April 2, 2014, Planning Commission meeting.

B. Development Review Committee

i. Case No. SUP-0014-2013, Lightfoot Marketplace

Mr. Krapf inquired if the Commissioners had any comments.

Mr. Chris Basic moved to approve the Consent Agenda.

In a unanimous vote, the Commission approved the Consent Agenda 6-0; Mr. George Drummond being absent.

**4. REPORTS TO THE COMMISSION**

**A. Policy Committee**

Mr. Tim O'Connor reported that the Policy Committee met on April 14, 2014, with all members attending.

i. Case No. ZO-0007-2013, Chicken Keeping in Residential Districts

Mr. O'Connor stated that the Policy Committee reviewed the draft ordinance to be presented to the Planning Commission for consideration. Issues reviewed and considered in the final draft included language allowing exceptions to the rear yard requirements for unusual shaped lots and prohibition of chicken keeping in resource protection areas and conservation easements. The Policy Committee voted unanimously to move the draft ordinance forward to the Planning Commission for the benefit of a public hearing.

ii. ZO-0008-2013, Accessory Apartments

Mr. O'Connor stated that the Policy Committee also reviewed the draft ordinance for detached and attached apartments. The draft ordinance allows for attached apartments to be permitted uses in all districts, with the exception of R-5 due to its density, and it also allows for detached apartments in the same districts as a specially permitted use in order to have a public hearing to allow neighbors the opportunity to comment. The Policy Committee voted unanimously to move the draft ordinance forward to the Planning Commission for the benefit of a public hearing.

**B. Regional Issues Committee**

Ms. Robin Bledsoe stated that the Regional Issues Committee met on April 22, 2014. Topics of discussion included an update on Eastern State Hospital's 500 acres of undeveloped property as well as information about upcoming tourism events. In addition, a partnership between the Historic Triangle Collaborative and VDOT will result in VDOT posting signs in common areas of traffic congestion showing alternate routes and the time involved in taking them, much like those seen when driving to Norfolk or Virginia Beach.

**5. PUBLIC HEARING CASES**

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

Mr. Tim O'Conner recused himself from consideration of the case.

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

Ms. Bledsoe disclosed that she and Mr. Vernon Geddy exchanged voicemail messages.

Mr. John Wright, Mr. Basic and Mr. Krapf all disclosed that they also had brief conversations with Mr. Geddy in preparation for the meeting.

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

Mr. Heath Richardson stated that he had a question regarding the Housing Opportunities Policy. Mr. Richardson noted that four units must be provided that fall under the “workforce affordable” housing category and inquired when the building those units will be determined.

Mr. Geddy replied that the timeframe has been built into the proffers. Mr. Geddy noted that two units must be provided after six certificates of occupancy have been issued, and the other two must be provided upon twelve certificates of occupancy being issued.

Mr. Wright asked if those units will be within Kingsmill.

Mr. Geddy confirmed.

Mr. Krapf noted that the public hearing has remained open since the March 5, 2014 meeting and will be closed at the present meeting following all speakers in anticipation of future applications.

Mr. John Niland, 503 Rivers Bluffs, addressed the Planning Commission stating his belief that the residents of Kingsmill should vote on the issue.

Ms. Lenny Berl, 105 William Richmond, addressed the Planning Commission regarding his concern for the Cottage’s setback from the bluff and inconsistencies with James City County’s single-family dwelling regulations. He also stated his concern with the lock-out design of the units, and the requirement for affordable housing to be added to an existing community.

Mr. Michael McGurk, 117 Jefferson’s Hundred and representing Preserve the Carter’s Grove Country Road, addressed the Planning Commission providing a PowerPoint presentation regarding the groups concerns with Xanterra.

Mr. Howard Ware, 46 Whittakers Mill Road, addressed the Planning Commission stating that he believes Xanterra’s proposal should be a part of the resort, not the residential Kingsmill community.

Mr. Scott Barner, 17 Braywood, addressed the Planning Commission stating that he does not believe the proposed units should become a part of the Kingsmill community without a two-thirds vote from the residents, as required by the declarations.

There being no others wishing to speak, Mr. Krapf closed the public hearing.

Mr. Krapf stated that he would like clarification regarding the contractual issues between the owners of Kingsmill and its residents. Mr. Krapf noted that it is his understanding that it is a private matter, and the applicant has the right to continue with the application.

Ms. Lola Perkins confirmed that it is a private legal matter. Ms. Perkins stated that the County is merely evaluating the proposed use for the property.

Mr. Krapf stated that he heard several comments regard the density of Kingsmill, and noted that Kingsmill does not have a density cap. Mr. Krapf asked Mr. Paul Holt to address the concerns brought forward regarding the four units that already exist.

Mr. Holt stated that there are no minimum lot sizes or setback requirements set forth in the County Zoning Ordinance for the R-4 District.

Mr. Wright asked if the intention is for the units to be transferred from the resort to the residential community and will then be governed by the declarations and covenants.

Mr. Geddy stated that a condominium association will be initially created to control the units, which may or may not ever be brought under KCSA control.

Mr. Wright noted that a speaker had stated that renting is not permitted in the residential area.

Mr. Geddy replied that the declaration states that people can only rent with a minimum lease of one year, and noted that this property is not subject to those declarations.

Mr. Richardson stated that he believes it is important for the Housing Opportunities and School Proffer policies to be enacted across the county. Mr. Richardson noted that he would personally prefer to see the entire Kingsmill proposal brought forward at one time, instead of piece by piece. Mr. Richardson also stated that although he understands the separation between the County's considerations and private legal issues, he believes it is important for homeowners to be consulted regarding what is going on in their neighborhood.

Mr. Basic stated that although he dislikes that the County cannot consider this private legal matter, he must respect those boundaries. Mr. Basic noted that although the applicant has provided for the cash proffer policy, he believes he has not yet reached full participation and requested that Board to consider that issue. Mr. Basic made a motion to recommend approval of the application.

Mr. Krapf stated that is the role of the Planning Commission to make decisions based solely on the Comprehensive Plan. Mr. Krapf noted that this application is a straightforward rezoning from an R-4 designation to an R-4 with Proffers designation.

On a roll call vote, the Planning Commission voted to recommend approval of the application with the conditions listed in the staff report by a vote of 5-0-1; Mr. O'Conner abstaining and Mr. George Drummond being absent.

B. Case No. SUP-0003-2014, Amerigas Propane Tank Installation

Mr. Luke Vinciguerra, Planner, addressed the Planning Commission giving a summary of the staff report included in the Agenda Packet.

Ms. Bledsoe asked if proposals for further expansion would still be required to be reviewed by the County.

Mr. Vinciguerra stated that future expansions would only require site plan review.

Mr. Holt stated that any expansion outside of the currently fenced area would be required to come back to the Planning Commission.

Ms. Bledsoe asked how many storage tanks they will be allowed to have.

Mr. Vinciguerra replied that there is no limit on the number, but they must all fit within the currently fenced area, 50 feet away from the property line and 5 feet away from each other.

Mr. Wright asked how the County has ensured that this will not be a safety hazard.

Mr. Vinciguerra stated that each new tank will require a building permit and inspection.

Mr. Krapf opened the public hearing.

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

Mr. Richardson made a motion to recommend approval of the application.

On a roll call vote, the Planning Commission voted to recommend approval of the application with the conditions listed in the staff report by a vote of 6-0; Mr. Drummond being absent.

C. Case No. ZO-0007-2013, Chicken Keeping in Residential Areas

Mr. Scott Whyte, Planner, addressed the Planning Commission giving a summary of the staff report included in the Agenda Packet.

Mr. Krapf opened the public hearing.

Ms. Carol Bartram, 102 Pageland Drive, Yorktown and representing Peninsula Chicken Keepers, addressed the Planning Commission in support of keeping chickens.

Ms. Barbara Scherer, 114 King William Drive, addressed the Planning Commission in support of keeping chickens, citing them as pets.

Mr. Eric Danuser, 4091 S. Riverside Drive, addressed the Planning Commission in support of keeping chickens.

Ms. Joyce Felix, 115 King William Drive, requested that chickens also be permitted in the R-2 District.

Ms. Kelly Lockeman, 121 Kingspoint Drive, addressed the Planning Commission in support of keeping chickens in all single-family residential areas.

Ms. Susan Hoffman, 107 Edgewood Lane, addressed the Planning Commission in support of keeping chickens as pets.

Mr. Leland Chandler, 3305 Durham Court, addressed the Planning Commission in support of keeping chickens.

There being no one else wishing to speak, Mr. Krapf closed the public hearing.

Ms. Bledsoe thanked Ms. Bartram for her communications with the Commission members. Ms. Bledsoe stated that she is concerned that if the ordinance is expanded to allow chicken keeping, people will not abide by the regulations and homeowners' associations (HOA's) will have to litigate. Ms. Bledsoe noted that she has received several phone calls stating that these neighborhoods will not be able to afford such litigations. Ms. Bledsoe stated that she does not believe chickens are compatible with neighborhood experiences, and she can no longer support the ordinance amendment.

Mr. Richardson stated that he grew up with chickens and supports the sustainability argument. Mr. Richardson also stated that the regulations could be very difficult to enforce and agreed with Ms. Bledsoe that it could cause issues within HOA's. Mr. Richardson stated that he cannot support the ordinance amendment.

Mr. Wright stated that he also grew up on a large farm. Mr. Wright stated that the proposed ordinance provides a good balance of permission and restriction.

Mr. Basic reviewed the Policy Committee's discussions regarding chicken keeping in each district. Mr. Basic stated that the Commission can not simply tally votes for or against chickens and that he did not see chickens as a nuisance upon the site visits that he made. Mr. Basic also noted that Ms. Bledsoe and Mr. Richardson raised valid considerations.

Mr. O'Connor stated that although most of the survey responses against chickens came from one neighborhood, those responses should not be discounted because those citizens could move to other parts of the County in the future. Mr. O'Connor stated that he is also concerned with the impact the ordinance could have on HOA's, as well as the impact on residents who purchased

homes in a particular area with the understanding that chickens would not be allowed, and he cannot support the ordinance amendment.

Mr. Krapf stated that he believes R-1 is a good location to begin allowing chickens because it is low density, and the restrictions should protect any neighbors from impacts. Mr. Krapf stated that he is supportive of the ordinance amendment moving forward.

Mr. Basic noted that covenants are being discussed in this case because the ordinance change will affect everyone across the county, as opposed to a single private issue.

Ms. Bledsoe stated that the phone calls she received were from residents in the R-1 District.

Ms. Perkins noted that HOA's can be discussed in this case because the Commission is factoring in the citizens' positions on actions the HOA's could have to take due to the County's decision, as opposed to stating an opinion on the validity of a covenant or declaration.

Mr. Basic stated that he believes the Commissioners are not concerned with the "good" chicken keepers, but instead are concerned with how difficult it could be to govern the "bad" chicken keepers.

Mr. Richardson stated that it is also impossible to tell which chicks will grow to be roosters or hens until they are several months old.

Mr. Basic stated that he has still not determined his stance, and noted that a rooster would be much easier to identify by the County than other violations, such as odor.

Ms. Bledsoe stated that she believes the proposed ordinance does contain a number of safe guards, but those only apply to those who would adhere to them.

Mr. Krapf moved to approve the ordinance.

On a roll call vote, the motion to approve the ordinance failed by a vote of 2-4; Mr. Richardson, Mr. Basic, Mr. O'Connor and Ms. Bledsoe voting Nay, and Mr. George Drummond being absent.

D. Case No. ZO-0008-2013, Accessory Apartments

Ms. Jennifer VanDyke, Planner, addressed the Planning Commission giving a summary of the staff report included in the Agenda Packet.

Mr. Wright asked if buildings within 10 feet of the main structure will be considered attached.

Ms. VanDyke responded that any building within 10 feet of the house are considered to be part of the primary structure and must follow the more stringent setback requirement, as opposed to accessory structures, which only have a five foot setback requirement.

Mr. Wright asked if a home with a deck and additional structure within ten feet would be considered attached or detached.

Ms. VanDyke responded that because there is no separation of 10 feet or greater, it would be held to the primary structure's requirements, and confirmed that there must be a gap of 10 feet for determination of an accessory structure.

Mr. Krapf opened the public hearing.

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

Ms. Bledsoe moved to approve the ordinance.

On a roll call vote, the Planning Commission voted to recommend approval of the ordinance by a vote of 6-0; Mr. Drummond being absent.

E. Case No. SUP-0008-2013, HRSD Microwave Tower – 300 Ron Springs Dr.

Ms. Leanne Pollock, Planner, addressed the Planning Commission giving a summary of the staff report included in the Agenda Packet.

Mr. Basic asked the diameter of the two microwave dishes.

Ms. Pollock responded that they are six feet.

Mr. Wright asked if she has received any comment from Kingsmill or Xanterra.

Ms. Pollock stated that applicant hosted a public meeting and no one attended.

Mr. Richardson stated that he a conversation with Mr. Romine regarding possible colocations on the tower. Mr. Richardson asked if revenue generated from a colocation could offset costs to the County for sewage treatment.

Ms. Pollock stated that she will defer to the applicant.

Mr. Krapf and Mr. Richardson disclosed that they had telephone conversations with Mr. Romine.

Mr. Krapf opened the public hearing.

Mr. Stephen Romine, of LeClairRyan, addressed the Planning Commission giving a summary of the proposed project. Mr. Romine stated that any revenue from a collocation would decrease the operating costs for HRSD and thus provide a benefit to all rate payers.

Ms. Bledsoe asked if the colicators will be cell providers.

Mr. Romine confirmed.

Mr. O'Connor asked if there would be any impact to Carter's Gove.

Mr. Romine deferred to Mr. Tim Dennis of Milestone Communications.

Mr. Dennis stated that balloon tests, during leaf-less conditions, have determined that there were no impacts to Carter's Gove.

Mr. Wright asked if the top of the tower could be camouflaged.

Mr. Dennis stated that it could be painted or concealed with a wrap to cut down on reflections.

Mr. Wright noted that there is a tower near New Town that is visible on clear days.

Mr. O'Connor asked at what heights colocations could occur and whether they would be internally or externally mounted.

Mr. Dennis stated that the proposed structure is a monopole, and can carry up to four additional colocations that would be placed inside. Mr. Dennis also noted that there is room for a second monopole.

Mr. O'Connor asked the height at which a colocation could occur.

Mr. Dennis stated that it could occur anywhere from one foot high to the very top.

Mr. O'Connor noted that there are not any companies that would want to located below 100 feet.

Mr. Dennis confirmed and stated that the ideal range falls from the top down to as low as 82 feet, depending on the tree cover

There being no one else wishing to speak, Mr. Krapf closed the public hearing.

Mr. Basic asked the diameter of the balloon used in the tests.

Ms. Pollock responded that it is a four to five feet diameter balloon.

Mr. Basic made a motion to approve.

On a roll call vote, the Planning Commission voted to recommend approval of the application with the conditions listed in the staff report by a vote of 6-0; Mr. Drummond being absent.

## **6. PLANNING COMMISSION CONSIDERATIONS**

Mr. Krapf stated that Mr. Basic would be covering the Board of Supervisors meeting for the month of May.

Mr. Krapf stated that the Rural Economic Development Committee is sponsoring a presentation on May 12, 2014 from 4 – 6 pm.

Ms. Bledsoe stated that the County is currently updating the Comprehensive Plan, and recommended that everyone encourage their friends and neighbors to participate in the process.

Mr. O'Connor stated that he is concerned that the Commission has been applying the Wireless Communications Facility (WCF) standards to proposals that are not for WCF's. Mr. O'Connor suggested that the Commission examine this in the future.

Ms. Bledsoe agreed and asked how this can be accomplished.

Mr. Holt stated that the Policy Committee could consider this following the Comprehensive Plan update.

Mr. O'Connor stated that tower outside of New Town provides a good example of the WCF policies, as most recently amended. Mr. O'Connor noted that it is not very noticeable from Route 199.

Ms. Bledsoe noted that it depends on the location from which it is viewed.

**7. PLANNING DIRECTOR'S REPORT**

Mr. Holt stated that he did not have anything to add to the material in the Agenda Packet.

**8. COMMISSION DISCUSSION AND REQUESTS**

Mr. Basic stated that he did not have any issues with the text of the Accessory Apartments ordinance, but did want to consider whether the Special Use Permit application should be revised.

Mr. Holt stated that there are some parts of the application that would not apply. Mr. Holt stated that he would not want confusion to prevent someone from applying, and noted that staff is always willing to meet with and assist anyone interested in applying.

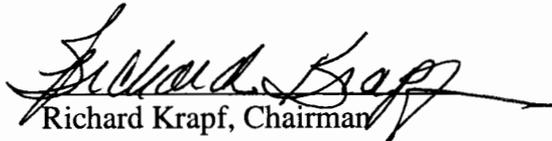
Mr. Basic agreed that staff is always very helpful, but is mostly concerned with the proactive citizens downloading the application online.

Mr. Holt confirmed that those comments have been noted.

**9. ADJOURNMENT**

Mr. Wright moved to adjourn the meeting.

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

  
Richard Krapf, Chairman

  
Paul D. Holt, III, Secretary