

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FOURTH DAY OF JUNE, 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
George Drummond
John Wright, III
Heath Richardson

Staff Present:

Paul Holt, Planning Director
Jose Ribeiro, Senior Planner II
Leanne Pollock, Senior Planner II
Jennifer VanDyke, Planner
Luke Vinciguerra, Planner
Ellen Cook, Senior Planner II
Leo Rogers, County Attorney

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

2. PUBLIC COMMENT

Mr. Krapf opened the public comment.

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

3. CONSENT AGENDA

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

Mr. Chris Basic noted that one line in the minutes were attributed to him, when they should be attributed to Mr. Tim O'Connor.

B. Development Review Committee

i. Case No. C-0029-2014, 1584 Harbor Road, Ron & Gail Gilden Conservation Easement Encroachment

Mr. Krapf inquired if the Commissioners had any comments.

Mr. Basic moved to approve the Consent Agenda, with the recommended revisions to the minutes.

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

4. REPORTS TO THE COMMISSION

A. Policy Committee

Mr. Tim O'Connor reported that the Policy Committee met on May 15, 2014 in preparation of the May 27, 2014 Joint Worksession with the Board of Supervisors. Topics for discussion included the results of the 2014 Citizens Survey, an update on the 2035 Comprehensive Plan, and updates on the Longhill Road and Mooretown Road Corridor Studies.

B. Regional Issues Committee

Ms. Robin Bledsoe stated that the Regional Issues Committee met in May.

5. PUBLIC HEARING CASES

A. Case Nos. Z-0002-2014/MP-0002-2014, Kingsmill Rezoning and Master Plan Amendment, Land Bay Areas 1, 2, 6 and 7

Mr. 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.

Mr. Krapf inquired if the Commissioners have any disclosures they wished to note.

Ms. Bledsoe, Mr. George Drummond, and Mr. John Wright noted that they have recently spoken with Mr. Vernon Geddy regarding the case.

Mr. Krapf opened the public hearing.

Mr. Geddy, of Geddy, Harris, Franck and Hickman LLP, addressed the Planning Commission, giving an overview of the proposal.

Mr. Heath Richardson asked for a description of the proposed Country Road trail.

Mr. Geddy gave a description of the changes being made to the Country Road.

Mr. Richardson asked if there will be a 150 foot buffer between the trail and Busch Corporate Center.

Mr. Geddy stated that there is a proffered 75 foot buffer to the property line.

Mr. Richardson asked how wide the trail will be.

Mr. Geddy replied that it will be the width of the existing road, with the exception of the area that is being moved, which will be approximately eight feet wide.

Mr. Wright asked which portions of the Country Road would not be conveyed to the Kingsmill Community Services Association (KCSA).

Mr. Geddy indicated on the map which portions are not a part of the proposal.

Mr. Wright asked for a description of the proposed buffers.

Mr. Geddy gave an overview of each of the proposed buffers.

Mr. Wright asked if they will be comprised of the existing trees or vegetation.

Mr. Geddy confirmed.

Mr. Wright noted that the declarations indemnify the brewery and Xanterra, but does not indemnify the residents.

Mr. Geddy replied that the purpose is to make clear to buyers the potential impacts of living beside a brewery or amusement park as well as protect the brewery and Busch Gardens from complaints from residents. Mr. Geddy noted that the residents were not included because there is no situation in which they could be held liable for anything.

Mr. Wright inquired about language from a previous Master Plan agreement.

Mr. Geddy stated that it does apply to this case because it deals with land not shown on the Kingsmill Master Plan.

Ms. Bledsoe noted that the Country Road is important to the Kingsmill residents and inquired as to when the Country Road would be repaired.

Mr. Geddy stated that it will be repaired concurrently with any development.

Mr. Krapf asked for more information on the methodology of the sound study.

Mr. Geddy replied that it was most likely modeled based on the topography.

Mr. Michael McGurk, 177 Jefferson's Hundred, addressed the Planning Commission in opposition to the application.

Ms. RubyJean Gould, 309 Archer's Mead, addressed the Planning Commission in opposition to the piecemeal approach for Xanterra's proposals.

Mr. Andrew Lloyd-Williams, 120 Captaine Graves, addressed the Planning Commission in opposition to the application.

Mr. Robert Cetola, 120 Roffingham's Way, addressed the Planning Commission in opposition to the application.

Mr. Lenny Berl, 105 William Richmond, addressed the Planning Commission in opposition to the application.

Mr. Howard Ware, 46 Whittaker's Mill Road, addressed the Planning Commission in opposition to the application.

Mr. Wade Swink, 11 Whittaker's Mill Road, addressed the Planning Commission in opposition to the application.

Mr. Edward Fang, 108 Edward Grindon, addressed the Planning Commission in support of the application.

Mr. Earl White, 113 John Wickham, addressed the Planning Commission in opposition to the application.

Mr. Jim Zinn, of KCSA, addressed the Planning Commission in support of the application and responded to several concerns raised by previous speakers.

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

Mr. Krapf asked Mr. Leo Rogers, County Attorney to address the comments regarding the legality of the application.

Mr. Rogers stated that the County Attorney's office has reviewed the case and determined that Xanterra is within their legal rights to pursue the application. Mr. Rogers noted that there is a private legal dispute that may have to be resolved in the future.

Mr. Krapf opened the floor for discussion by the Planning Commissioners.

Mr. Richardson inquired if there are any missing documents regarding the Master Plan that the Commission is not aware of.

Mr. Ribeiro replied that he is not aware of any.

Mr. Richardson inquired if the application will be abiding by the Housing Opportunities Policy by providing 12 affordable housing units.

Mr. Geddy confirmed.

Mr. Richardson inquired regarding the point at which those units will be provided.

Mr. Geddy replied that it is written in to the proffers and noted that half of the units must be provided when 50 Certificates of Occupancy have been issued, and the other half when 100 Certificates of Occupancy have been issued.

Mr. Richardson noted that the Commission has heard concerns regarding traffic, and inquired if any traffic considerations have been made.

Mr. Geddy replied that a traffic study has been done, showing that no improvements were needed.

Mr. Wright asked if there have been any discussion with In-Bev or Busch Gardens regarding the possibility of building sound barriers or decreasing the decibel of the train whistle.

Mr. Geddy replied that he is not aware of any such conversation.

Mr. Wright noted that he believes an agreement could be reached between the two parties to help make it a more hospitable place to live.

Ms. Bledsoe noted that Mr. Geddy indicated during their conversation that the affordable housing units would be provided in the condominium area.

Mr. Geddy confirmed.

Mr. Richardson stated that he believes the applicant should consider the issues brought forth by the Kingsmill residents, and an exchanging of ideas should take place in the future between the various parties.

Mr. Krapf noted that this is a very difficult case because many aspects are outside of the realm of the Commission. Mr. Krapf stated that the Commission must consider the application based solely on Land Use, and thus he must support the application. Mr. Krapf also noted that the ultimate authority comes from the Board of Supervisors.

Mr. George Drummond stated that although the Commission's decision is based on Land Use, he understands the concerns raised by the Kingsmill residents. Mr. Drummond stated that if the Commission recommends approval, he hopes the developer will be a good steward to the residents, and that both parties will be able to reach an agreement.

Mr. Wright stated that the two parties must work together to resolve their issues, or it will be a losing situation for everyone. Mr. Wright stated that due to the language of the original Master Plan referencing the home owners, he is unable to support the application without the buy-in of the home owners.

Ms. Bledsoe stated that she commends the citizens for effectively gaining the attention of a powerful entity such as Xanterra, as well as that of the County. Ms. Bledsoe stated that although the Planning Commission is charged with determining if an applicant has met all of the County's Land Use requirements, it is very difficult to hear citizens so opposed to changes in their community that they do not want. Ms. Bledsoe noted that the citizens have made a significant difference in Xanterra's proposal.

Mr. Basic noted that significant changes have been made from Xanterra's original proposal, and this application provides a good compromise. Mr. Basic stated that he believes an applicant should not walk away from a proposal due to existing conditions, such as the brewery and amusement park. Mr. Basic also requested that Board reevaluate the Housing and School Proffer Policies in regards to this case, because it is difficult to apply modern policies to a previously existing community. Mr. Basic further stated that he believes applying full weight of those policies to this case is inappropriate.

Mr. Richardson moved to approve the application.

On a roll call vote, the motion to recommend approval of the application neither carried nor failed, with a tie vote of 3-3-1; Mr. Wright, Mr. Drummond, and Ms. Bledsoe voting Nay and Mr. O'Connor abstaining.

B. Case No. SUP-0004-2014, WindsorMeade Marketplace Wendy's (New Town Sec. 11)

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

Mr. Wright stated that he is concerned with traffic exiting the proposed establishment and trying to turn left on Monticello Avenue.

Mr. Richardson asked if there is an image the Commission could view.

Ms. Pollock displayed an aerial drawing and noted the area with which Mr. Wright is concerned. Ms. Pollock noted that there is only one lane of traffic that must be crossed.

Mr. Wright stated that he wanted to ensure that traffic would not be forced to turn right on Monticello and then make a U-turn.

Ms. Pollock stated that the road layout was chosen as part of the Master Plan for New Town Section 11, and noted that it is a legislative case because of the fast-food use.

Mr. Basic noted that the DRC discussed the illegal turns taking place at that intersection, and asked what efforts are being made by all involved parties to keep the situation from becoming worse.

Ms. Pollock gave an overview of the proposed signage and striping improvements.

Ms. Bledsoe noted that the traffic issues associated with the access road are not a result of the Wendy's but were preexisting.

Ms. Pollock confirmed.

Mr. O'Connor inquired if the adopted Master Plan specified a use for the parcel.

Ms. Pollock stated that it is shown as non-residential, and any use requiring a Special Use Permit (SUP) in the Mixed Use District that is not specifically called out on the Master Plan must go through the legislative process.

Mr. O'Connor asked for more information regarding the condition for an external pedestrian accommodation listed in the staff report.

Ms. Pollock stated that this would be a crosswalk stretching across Old News Road from the Wendy's to the Ruby Tuesday's parcel, and noted that additional studies are still required.

Mr. O'Connor asked what the traffic speed is on Old News Road.

Ms. Pollock stated that she believes the speed limit is 35 MPH.

Mr. Krapf inquired if the Commissioners have any disclosures they wished to note.

Mr. Wright and Ms. Bledsoe stated that he had a conversation with Mr. Paul Gerhardt.

Mr. Krapf opened the public hearing.

Mr. Gerhardt, of Kaufman and Canoles, addressed the Planning Commission giving an overview of the proposal.

Mr. H. Donald Nelson, 4312 Southbury Square, addressed the Commission in support of the application.

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

Mr. Basic moved to approve 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 6-1; Mr. O'Connor voting Nay.

C. Case No. SUP-0005-2014, Creative Kids Child Development Center

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

Mr. Drummond inquired if the applicant has already received a permit to increase the size of the dwelling to accommodate the additional children.

Ms. VanDyke stated that at this time, she is allowed to have up to twelve children, and that permit is set to expire.

Mr. Krapf inquired if she already has the building permit for the addition to her home.

Ms. VanDyke confirmed that she has received a building permit.

Mr. Drummond asked if the permit is in order to accommodate more children.

Ms. VanDyke stated that the building permit was reviewed solely by the Building Safety and Permits division and is a separate issue from the SUP.

Mr. Richardson inquired if the covenants have officially been revised to allow a daycare in James Terrace.

Ms. VanDyke confirmed that the covenants have been changed to allow child care at 701 Mosby Drive.

Mr. Richardson inquired if the recommendation to only approve up to 12 children, versus 20, is due to the size of the lot and nature of the neighborhood.

Ms. VanDyke confirmed that staff has determined that an operation for 20 children would be out of scale for the neighborhood.

Mr. Krapf inquired if the Commissioners have any disclosures they wished to note.

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

Ms. Tracey Williams, 701 Mosby Drive, addressed the Planning Commission giving an overview of the proposal and requesting approval for up to 20 children.

Ms. Bledsoe inquired if Ms. Williams is still providing service to many families in her neighborhood, including overnight care for children.

Ms. Williams confirmed.

Mr. Drummond inquired if Ms. Williams has already met all of the requirements set forth by the Department of Social Services in order to increase to 20 children.

Ms. Williams responded that Social Services must visit her home to determine the number of children allowed. Ms. Williams noted that she has begun making improvements to her home in order to evidence what she would like to accomplish.

Mr. O'Connor inquired if all of the fire safety and handicap accessibility requirements have already been met or if those improvements are dependent on receiving approval for up to 20 children.

Ms. Williams responded that those changes will come with approval for up to 20 children.

Mr. O'Connor asked how many employees Ms. Williams has.

Ms. Williams stated that she has two employees and one floater.

Mr. O'Connor inquired if she will have a catering truck deliver food if she has 20 children.

Ms. Williams stated that she will have catering and parents will have the option of packing food.

Mr. O'Connor inquired if the 20 children receiving care would be spread throughout the day and how many children she could be caring for at any given time.

Ms. Williams stated that the children would be spread throughout the day.

Mr. Wright asked where the closest fire station is located.

Ms. Williams responded that the closest station is behind Magruder Elementary School.

Mr. Krapf noted that 12 children is the tipping point for many additional requirements, including fire suppression and parking. Mr. Krapf also noted that Ms. Williams' husband is operating a moving business from the same location and inquired if the property is capable of accommodating the number of parking spaces needed.

Ms. Williams responded that her property allows parking for up to nine vehicles, with two additional spots on a side street. Ms. Williams also stated that her husband's business is handled over the telephone, and no workers park their vehicles at the house.

Mr. Krapf inquired how many children would be on the premises at any given point.

Ms. Williams stated that the children are generally spread out throughout the day, and are only in her care when the parents are at work. Ms. Williams noted that she would like the number of allowed children to be increased for occasional circumstances, such as school holidays, where more of her enrolled children will need care at one time. Ms. Williams further noted that many parents have multiple children, thus decreasing the number of cars travelling to the location.

Mr. Krapf asked if Ms. Williams still plans to remain living in the home.

Ms. Williams confirmed.

Mr. Richardson inquired licenses are required for her two staff members in order for them to care for the children in her absence.

Ms. Williams stated that she is the director and will be there all of the time because she resides there.

Mr. Wright inquired if all of the care takers are required to receive first aid training.

Ms. Williams stated that they are all trained in first aid and CPR.

Mr. Wright inquired if some of the children she keeps reside on her cul-de-sac.

Ms. Williams confirmed.

Mr. Basic inquired regarding the number of children on the premises at a given time that would trigger additional safety requirements.

Ms. Williams stated that she would only need a monitored fire alarm, not a sprinkler system.

Mr. Paul Holt stated that additional changes to the structure would occur with any SUP approval for above 12 children.

Mr. Basic stated that those modifications make him hesitant to approve more than 12 children. Mr. Basic explained that he is supportive of the service Ms. Williams is providing the community, but believes it may best fit another location.

Ms. Bledsoe asked if Ms. Williams is prepared to make changes to her structure if the Commission recommends permitting 20 children.

Ms. Williams confirmed and noted that she has already begun making renovations.

Mr. Holt noted that the plans would have to be amended if more than 12 children are permitted.

Ms. Bledsoe asked if Ms. Williams understands that.

Ms. Williams stated that she received a recommendation for approval with twenty children last year from the Commission, but did not receive approval from the Board of Supervisors.

Mr. Holt stated that the SUP approved by the Board last year was for 12 children.

Mr. Richardson asked where the legal requirements for the additions come from.

Mr. Holt stated that the requirements come from Building Code.

Mr. Rogers stated that the Department of Social Services also has requirements for the number of square feet required per child.

Mr. Richardson noted that the Department of Social Services had given approval for up to 24 children and inquired if this was based on the square footage after the renovations are complete.

Ms. Williams stated that that recommendation was based on her moving out of the residence.

Mr. Wright inquired if the SUP would still apply to the property if Ms. Williams moves to another location.

Mr. Holt stated that the SUP is for the property, but there is a 3-year expiration clause for the permit.

Mr. O'Connor inquired if Ms. Williams will be required to come back every 3 years to renew her permit.

Mr. Holt confirmed.

Mr. Krapf noted that the Department of Social Services determined that the playground on the property has a capacity for 290 children and stated that it does not make sense for the physical structure to only accommodate 24.

Mr. Holt stated that he is not informed on their standards.

Mr. Rogers stated that the capacity for the playground is most likely determined based on use throughout the course of the day.

Mr. Drummond inquired if all requirements have been met for the Department of Social Services.

Ms. Williams confirmed.

Mr. Drummond inquired if she has met all requirements set forth by the County.

Ms. Williams confirmed that she has met all requirements in regards to the covenants.

Mr. Drummond inquired if the Department of Social Services has given permission for up to 24 children.

Ms. Williams stated that that determination was based on her moving out of the home, and that is why she has done a renovation.

Mr. Holt noted that that is a preliminary assessment.

Mr. Eric Williams, 701 Mosby Drive, stated that the square footage of the addition is the same square footage taken away from the assessment for residential living space.

Mr. Drummond asked when addition will be complete.

Ms. Williams stated that it should be complete by July or August.

Mr. Krapf inquired if the improvements would have to be inspected by County staff before Ms. Williams would be able to begin keeping more than 12 children, if approved.

Mr. Holt confirmed.

Mr. Drummond inquired if final approval would have to come from the Department of Social Services.

Ms. Williams confirmed.

Mr. Wright inquired regarding the demographics of the residents on Ms. Williams' street.

Ms. Williams stated that there is a mix of residents.

Mr. O'Connor inquired regarding the definition of "significant impacts" according to County policy.

Ms. VanDyke stated that it would include a combination of traffic and noise. Ms. VanDyke noted that staff does not find the impacts of this case compatible with an internal neighborhood location.

Mr. Richardson inquired if the County has received any complaints.

Ms. VanDyke stated that she is not aware of any.

Ms. Bledsoe inquired if Ms. Williams will be providing most of the transportation.

Ms. Williams stated that she will be doing transportation for her evening clients, and the catering truck will be coming during the day when most people are at work. Ms. Williams also stated that many of the children live on her street and walk to her home.

Mr. Holt stated that staff has also taken into consideration the changes to the exterior of the building resulting in the home appearing more like a commercial structure.

Mr. Drummond asked what the current square footage of the home is.

Mr. Holt replied that that staff report indicates the current square footage is 1,248.

Mr. Drummond stated that he believes an additional 300 square feet on the back of the home will not have a big impact. Mr. Drummond also noted that he has driven by the home and did not see any additional traffic.

Mr. Basic stated that he does not feel that the property is the best location for the childcare operation, and noted that he does not want to set a precedence of permitting similar uses in residential areas.

Ms. Bledsoe stated that she believes this is a unique case because Ms. Williams has the support of her neighbors and if another applicant did not, she would not support it.

Mr. Basic stated that both situations would be in conflict with the ordinance.

Ms. Bledsoe stated that Ms. Williams is not in conflict because she had the covenants changed.

Mr. Basic stated that he is referring to the handicap parking space, additional methods of egress, and deliver truck coming to her come.

Mr. Krapf stated that the issue of whether child care is permitted was resolved by the covenant change, and the issue now is the additional requirements triggered by increasing from 12 to 20 children.

Mr. Holt stated that the covenants do not state a limit on the number of children.

Ms. Williams stated that she was approved for 12 children in order to give her time to address any issues associated with approving 20 children. Ms. Williams also stated that she would not like her case to be considered based on any hypothetical applications that could be submitted in the future.

Mr. Krapf asked if any other members of the audience would like to speak.

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

Mr. Krapf opened the floor for discussion by the Commissioners.

Mr. Drummond stated that Ms. Williams has met all requirements, and he would support approval for 20 children based on the approval from the Department of Social Services.

Mr. Richardson inquired whether a condition could be added to ensure that any renovations are made within a specified period of time if Ms. Williams receives approval for 20 children.

Mr. Krapf stated that she will not be permitted to bring in additional children until the changes have been made. Mr. Krapf also stated that the major issue being raised by the Commission is whether or not an operation with 20 children will still fit the character of a residential neighborhood.

Ms. Williams stated that the food truck is an option, and parents could alternatively provide meals themselves.

Ms. VanDyke stated that, based on her understanding of the Health Department's requirements, Ms. Williams would have to either build a second kitchen or have a food truck deliver on a daily basis.

Mr. Drummond inquired regarding the size of the catering truck.

Ms. Williams stated that she does not need to have a second kitchen.

Mr. Krapf stated that he understands that installing a second kitchen is not a requirement, but he believes the food truck is.

Mr. Holt stated that the letter Ms. Williams provided states the conditions allowed if a food truck is provided, but does not state what the requirements are if a food truck is not provided. Mr. Holt stated that it is staff's understanding that she must either utilize a food truck or build a second kitchen.

Ms. VanDyke stated that the Department of Social Services requires that prepared food be served when caring for more than 12 children. Ms. VanDyke stated that the Department of Health typically requires a second kitchen, but had determined that the food truck would be an acceptable alternative. Ms. VanDyke also noted that she can follow up with the Department of Social Services for more clarity.

Mr. Krapf stated that this is an issue that will be resolved before the case goes to the Board of Supervisors, even if the Commission recommends approval.

Ms. Williams stated that food could be brought in from restaurants as well.

Mr. Drummond made a motion to approve the application with the conditions listed in the staff report, with the exception of increasing the number of children from 12 to 20.

Mr. Basic stated that he is more supportive of permitting 12 versus 20 children in a residential area.

Mr. Wright stated that he is favorable of the application based on the applicant's work to get the covenants changed, as well as providing a service to the community. Mr. Wright also stated that if the applicant were to come back wanting an increase above 20 children, she should consider another location.

Mr. Richardson stated that he believes Ms. Williams is providing a service to the community, and the approval of the neighborhood is an important consideration.

Mr. O'Connor stated he does not believe a residential neighborhood is the correct location for a business operating until midnight, seven days a week. Mr. O'Connor stated that he could support 12 children, but not 20, based on the additional requirements.

Mr. Richardson asked if there is a County ordinance limiting the number of children being cared for in a residential area.

Mr. Holt stated that ordinance requires a SUP to care for more than five children in a residential area.

Mr. Basic stated that the Commission must determine if this will still be considered a residential use.

Mr. Drummond stated that there are a number of business in residential areas who have begun with a SUP.

Ms. Williams stated that there are several businesses operating in her area.

Mr. Krapf stated that it is unclear whether those are licensed businesses.

Mr. Holt stated that the motion on the floor is to approve the SUP with the conditions listed the staff report, with the exception that the number of children be 20, subject to final approval by the State.

On a roll call vote, the Planning Commission voted to recommend approval of the SUP application by a vote of 4-3; Mr. Basic, Mr. O'Connor and Mr. Krapf voting Nay.

D. Case No. SUP-0006-2014, John Tyler Highway Sewer Connection

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

Ms. Ellen Cook, Planner, addressed the Planning Commission regarding the County's Primary Service Area (PSA).

Mr. Wright asked where Chickahominy Riverfront Park gets their water from.

Mr. Rogers stated that the sewer is onsite, but he does not know where their water comes from.

Ms. Bledsoe inquired if they are being served by the County.

Mr. Rogers stated that they are not.

Mr. Drummond asked how far the connection is from the residence.

Mr. Vinciguerra stated that it is approximately 220 feet.

Mr. Holt noted that the existing sewer line is indicated in orange on the map provided.

Ms. Bledsoe inquired regarding the cost estimate.

Mr. Holt stated that the estimated distance or cost should not be a factor in the Commission's decision, as it is against County policy to extend water and sewer outside of the PSA.

Ms. Bledsoe stated that she inquired about the dollar amount because she recalled the estimate being very high.

Mr. Rogers stated that she may be referring to the James City Service Authority (JCSA) Utility Regulations.

Mr. Drummond asked how many feet are allowed by the JCSA Utility Regulations.

Mr. Rogers stated that is approximately 1,000 feet and only applies to properties inside the PSA. Mr. Rogers also noted that properties immediately abutting the line may be allowed to connect.

Mr. Wright inquired if there is a septic system already on the lot.

Mr. Vinciguerra stated that there is not, but there is approval from the Health Department for an onsite alternative sewage disposal system.

Mr. Wright inquired if the land will perc.

Mr. Vinciguerra stated that the land will most likely not perc, and this is why an alternative system is necessary.

Mr. Krapf noted that this is a vacant lot with no structures already existing.

Mr. O'Connor inquired if the property has ever been considered adjacent to the lines.

Mr. Vinciguerra stated that the property is considered adjacent to the water lines, as they extend further, but not the sewer lines.

Mr. Drummond stated that he believes it may be more environmentally friendly to allow the property to connect instead of using a sewer system.

Mr. Vinciguerra stated that any effluent would be regulated by the State regardless of the method determined.

Mr. Holt stated that the distinction between this case and other past cases that have received approval is that those cases had existing failing systems, resulting in health and environmental concerns.

Mr. Krapf inquired if the Commissioners have any disclosures they wished to note.

Mr. O'Connor stated that he has spoken with Mr. Geddy regarding the case.

Mr. Krapf opened the public hearing.

Mr. Geddy addressed the Planning Commission, giving an overview of the proposal.

Ms. Bledsoe inquired if the lot would be residential.

Mr. Geddy confirmed that is zoned A-1.

Ms. Zina Stokes, 2644 and 2638 John Tyler Highway, addressed the Commission in support of the proposal.

There being no one else wishing to speak, Mr. Krapf closed the public hearing and opened the floor for discussion by the Commissioners.

Mr. Krapf stated that he does not believe the Commission should set a precedent for extending service outside of the PSA for reasons of convenience.

Ms. Bledsoe inquired if the applicant is looking to extend the PSA.

Mr. Geddy replied that the PSA would not be extended.

Ms. Bledsoe inquired regarding the zoning of the surrounding lots.

Mr. Geddy replied that he believes they are all zoned A-1.

Mr. Krapf stated that he believes allowing the property to connect to sewer is a de facto extension of the PSA.

Ms. Bledsoe noted that the nearby properties are all also zoned agricultural and receive sewer services.

Mr. Krapf stated that those were part of the agreement reached for Governor's Land.

Mr. Holt stated that those connections were based on the County policy that properties adjacent to the line are allowed to connect.

Mr. O'Connor inquired if there was a condition in the Governor's Land connection stating that only the properties adjacent to the line could connect.

Mr. Rogers stated that it was an amendment to the Governor's Land SUP.

Mr. O'Connor inquired regarding the use of the larger parcel behind the one in question.

Mr. Geddy stated that it is the western end of the property for the proposed cemetery.

Mr. Drummond stated that he believes the rural character of the land has already been changed by putting residential homes there.

Mr. Krapf stated that providing public utilities allows more dense development to occur, defeating the purpose of using the PSA as a growth development tool.

Mr. Drummond inquired if Governor's Land is in violation of the PSA line.

Mr. Holt stated that they are not because they received a SUP. Mr. Holt also stated that, in addition to preserving rural lands, staff indicated in their report several different reasons the PSA policy is important to uphold.

Mr. Wright noted that is difficult to weigh the responses of the Comprehensive Plan surveys, stating that growth should be managed, versus the potential environmental impacts of a septic system that could one day fail.

Mr. Richardson stated that he believes the citizens want to maintain the rural flavor of the County, and the PSA line is an important tool to utilize.

Mr. O'Connor noted that although he has seen the impacts of a failing septic system, extending sewer connections opens the door for many more properties wanting to connect.

Mr. Basic stated that he agrees with Mr. O'Connor.

Mr. Steve Clymer, 2604 John Tyler Highway, stated that each lot must be looked at on a case by case basis, and stated that the County can use zoning to control growth.

Mr. Krapf stated that he is still concerned with setting a precedent.

Ms. Bledsoe stated that, because a dwelling will be placed on the lot regardless of the outcome, the County would not be promoting growth by allowing them to connect. Ms. Bledsoe also noted that she believes it would be contrary to not allow this property to connect when his neighbors were allowed.

Mr. Krapf stated that he disagrees because those connections were a part of a previous SUP allowing connections only for those adjacent to the sewer line.

Ms. Bledsoe stated that she disagrees with the argument that not allowing the connection is a means to control growth in this case.

Mr. O'Connor stated that although zoning does control growth through density restrictions, the land itself controls growth because it does not perc and thus cannot accommodate a larger home.

Mr. Drummond stated that he agrees that it would be contrary to have allowed some lots to connect but not others now.

Mr. Krapf stated that those lots were allowed to connect based on the SUP for the Governor's Land development. Mr. Krapf also stated that this logic reinforces his argument that one approval will lead to another.

Mr. Holt stated that those lots were approved because they are directly adjacent to the existing main.

Ms. Bledsoe inquired regarding the reason for approving those lots.

Mr. Rogers stated that when Governor's Land was approved it did not include any connections to public water and sewer, and residents ended up with lots that did not perc right beside the

existing line. Mr. Rogers stated that the Board decided at that time to amend the SUP to allow connections for those adjacent to the line.

Mr. Holt noted that that exception was for lots that were in existence at the time.

Ms. Cook stated that the decision was subsequent to an examination during the Comprehensive Plan review process.

Mr. Holt stated that there are many areas where some people receive public water and sewer and others do not.

Mr. Wright noted that there are several Land Use proposals dealing with this this same issue.

Mr. Holt confirmed that there are several applications requesting extensions to the PSA.

Mr. Drummond inquired why the County would allow lots to be developed at all outside of the PSA if they are trying to use that to control growth.

Mr. Krapf explained that the PSA line is used to control the density of development.

Mr. Holt noted that these lots were subdivided out before the existence of the infrastructure.

Ms. Bledsoe inquired if the lot in question was in existence at the time the Governor's Land SUP was amended.

Mr. Rogers confirmed.

Mr. Basic stated that he believes zoning will determine the density allowed on that lot, not the connection to sewer, or lack thereof.

Mr. Holt stated that the Board made its decision so that there would not be an arbitrary cut off for where connections should end.

Mr. Krapf stated that he is not taking into account the structure that will be built on the lot, but that the connection would be violating County policy without a reason of public health or safety.

Mr. Basic stated that almost all land outside of the PSA is zoned A-1, thus high density development could not occur without a rezoning.

Mr. Holt stated that three acre lots could occur on the larger parcel behind the one in question. Mr. Holt further stated that without connecting to public utilities, a communal well would have to be installed, which would be cost prohibitive.

Mr. O'Connor stated that the adjacency argument will result in a domino effect of SUP applications.

Mr. Basic inquired regarding the trigger for a central water system.

Mr. Holt stated that after nine lots, a central water system must be installed per the County ordinance.

Mr. Krapf stated that outside of the PSA, that central water system would have to be a communal well.

Mr. O'Connor noted that this system is what is being installed on Centerville Road.

Ms. Bledsoe inquired who pays for the communal well.

Mr. Krapf stated that the developer is responsible for the expense. Mr. Krapf also noted that this could lead to a situation in which a communal well fails, and a large number of lots would want to connect to public utilities as well.

Mr. Drummond inquired if all of the lots were developed at the same time.

Mr. Krapf stated that the most important issue is not how many other lots are out there or how long they've been there, but that the Board decided to only give permission to those adjacent to the line.

Mr. Drummond stated that if the purpose of the PSA is to control growth, the County failed by allowing the development of Governor's Land outside of the PSA.

Mr. Holt stated that it was a decision made by the Board at that point in time.

Mr. Drummond stated that the Commission is in the position to make an exception.

Mr. Krapf stated that the decision should be based on sound logic, not personal convenience.

Mr. Drummond stated that he believes there is logic for approving this case.

Mr. O'Connor stated that without a public health concern or public benefit to be provided, a precedent would be set.

Mr. Geddy stated that because these lots have been in existence, this could avoid setting a precedent that would allow a whole new subdivision to come in and want to connect to public utilities.

Mr. Rogers stated that the County utility policy is designed to control growth, and every time an exception is made it becomes harder to defend the policy. Mr. Rogers stated that the subdivision of a lot is not the same as the development of a lot. Mr. Rogers also noted that the fact that these lots have been in existence for some time without being developed shows that growth has been successfully controlled.

Mr. Krapf noted that the drawings provided from the 1997 SUP amendment specifically indicates which lots will receive water and sewer, water only, or nothing.

Mr. Holt stated that just because a lot is created, there is no guarantee that public water and sewer will be available.

Mr. Krapf moved to deny the application.

Mr. Basic asked if any residential development over nine lots would require water infrastructure based on the County Subdivision Ordinance, and if without a water line, a private well would be required.

Mr. Holt confirmed.

Mr. Basic inquired if a water system would still be built if a water line was nearby and the County denied access.

Mr. Holt confirmed that it could still be built at a great expense to the developer.

Mr. Drummond inquired if there would be a tap fee for the applicant to connect to the line.

Mr. Rogers confirmed that there would be fees associated with connecting.

On a roll call vote, the Planning Commission voted to recommend denial of the application by a vote of 4-3; Mr. Drummond, Mr. Basic and Ms. Bledsoe voting Nay.

6. PLANNING COMMISSION CONSIDERATIONS

7. PLANNING DIRECTOR'S REPORT

Mr. Holt gave an overview of the upcoming community outreach activities for the Comprehensive Plan update.

Mr. O'Connor inquired if the Land Use applications will be discussed at the public meetings.

Mr. Holt confirmed.

8. COMMISSION DISCUSSION AND REQUESTS

Mr. Krapf stated that Mr. Richardson will attending the June 10th Board meeting, and Ms. Bledsoe will be attending the June 24th meeting.

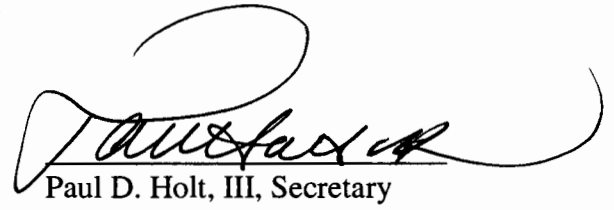
Mr. Richardson offered a reminder that the 70th Anniversary of D-Day is Friday, June 6th.

9. ADJOURNMENT

Mr. O'Connor moved to adjourn the meeting.

The meeting was adjourned at approximately 11:25 p.m.


Richard Krapf, Chairman


Paul D. Holt, III, Secretary