

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING

County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185

June 5, 2019

6:00 PM

A. CALL TO ORDER

Mr. Jack Haldeman called the meeting to order at approximately 6:00 p.m.

B. ROLL CALL

Planning Commissioners Present:

Jack Haldeman
Rich Krapf
Tim O'Connor
Danny Schmidt
Frank Polster
Odessa Dowdy

Planning Commissioners Absent:

Julia Leverenz

Staff Present:

Paul Holt, Director of Community Development and Planning
Max Hlavin, Deputy County Attorney
Tom Leininger, Planner

C. PUBLIC COMMENT

Mr. Haldeman opened Public Comment.

As no one wished to speak, Mr. Haldeman closed Public Comment.

D. REPORTS OF THE COMMISSION

Mr. Frank Polster stated that the Development Review Committee (DRC) met at 4 p.m. on May 22, 2019. Mr. Polster stated that there was no quorum and, therefore, no business was discussed. Mr. Polster stated that on recommendation of the Deputy County Attorney, the meeting was adjourned until the regularly scheduled DRC meeting on June 19 at 4 p.m. and the Chair would request that the Planning Director call for a special DRC meeting on June 5 at 5 p.m. to hear C-19-0036. 8770 Croaker Road - Overhead Utility Waiver and C-18-0082. 7082 Menzels Road Subdivision.

Mr. Polster stated that a meeting of the DRC was convened just prior to this meeting at 5:00 p.m. Mr. Polster stated that the Committee approved Case No. C-19-0036. 8770 Croaker Road - Overhead Utility Waiver, 4-0 and Case No. C-18-0082. 7082 Menzels Road subdivision, Lot 1, 4-0 and Lot 2, 3-1.

Mr. Rich Krapf stated that he would provide the Policy Committee report in Ms. Leverenz' absence. Mr. Krapf stated that the Policy Committee met at 4:00 p.m. on May 9, 2019. Mr.

Krapf stated that the Committee discussed issues and options for amending the County's Ordinance for wireless communication facilities. Mr. Krapf noted that the General Assembly passed legislation that affects deployment of small cell facilities and specifies which types of projects may be processed administratively. Mr. Krapf stated that Committee discussion focused on how best to incorporate the required changes in the existing Ordinance. Mr. Krapf stated that given the rapid changes in technology and the likelihood that wireless communications will be a subject of the upcoming Comprehensive Plan review, the Committee agreed with staff to make limited changes now, sufficient to meet the state requirements. Mr. Krapf stated that staff will propose draft amendments to the Ordinance for Stage II review at a future meeting.

Mr. Krapf stated that staff discussed recent changes to the Code of Virginia, which appear to address the concerns that caused the County to decide in 2016 not to accept further residential proffers. Mr. Krapf stated that in response to an Initiating Resolution by the Board of Supervisors, staff has studied the Code changes and are evaluating the effect on the County. Mr. Krapf stated that in anticipation of being able to use proffers as a tool again, staff proposed reversing the 2016 change to Section 24-16 of the Zoning Ordinance.

Mr. Krapf stated that in response to a request by the DRC following an applicant requested a waiver of the County's Ordinance requiring underground utilities to a temporary construction office, staff proposed language that would allow the Director of Planning to waive the requirement if appropriate. Mr. Krapf stated that future requests could be administrative, at the discretion of the Planning Director, if the amendment passes. Mr. Krapf stated that the proposed amendment inserts the following in Section 24-111 – Temporary offices:

If the Director of Planning finds that it is not practicable for the application to meet the requirements of Section 24-200, then such requirements shall not apply to the temporary office, provided that all other provisions of this section are met.

Mr. Krapf stated that the Committee voted to recommend approval of this amendment to the Planning Commission.

E. CONSENT AGENDA

Mr. Krapf stated that he would abstain from voting on the May 1, 2019 Minutes because he was absent for that meeting.

Mr. Haldeman noted that he was absent as well.

Mr. Polster made a motion to approve the Consent Agenda.

On a voice vote the Commission approved the Consent Agenda.

1. Minutes of the May 1, 2019 Regular Meeting
2. Proposed amendment to the meeting calendar
3. Development Review Committee Action Item: Case No. C-19-0036. 8770 Croaker Road - Overhead Utility Waiver
4. Development Review Committee Action Item: Case No. C-18-0082. 7082 Menzels Road Subdivision

F. PUBLIC HEARINGS

1. SUP-19-0010. Norge Dental Center Expansion

A motion to Approve was made by Rich Krapf, the motion result was Passed.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Dowdy, Haldeman, Krapf, O'Connor, Polster, Schmidt

Absent: Leverenz

Mr. Thomas Leininger, Planner, stated that Adam Pratt of Kaufman & Canoles, PC applied for a Special Use Permit (SUP) to allow an expansion of 3,000 square feet to the existing Norge Dental Center site located at 7450 Richmond Road. Mr. Leininger stated that the property is zoned A-1, General Agricultural and designated Low Density Residential and is located inside the Primary Service Area (PSA).

Mr. Leininger stated that the expansion will add up to eight treatment rooms to the existing facility, 25 parking spaces and a storage building. Mr. Leininger stated that the project also proposes a boundary line adjustment with the property located at 127 Peach Street.

Mr. Leininger stated that medical clinics are a specially permitted use within the A-1 Zoning District.

Mr. Leininger stated that some of the SUP conditions include keeping consistent with the previous SUP design requirements, increased landscaping and a bike lane along the front of the property.

Mr. Leininger stated that currently, the Norge Dental Center has 16 treatment rooms for five dentists. Mr. Leininger noted that the site has 44 off-street parking spaces.

Mr. Leininger stated that the Board of Supervisors approved an SUP on December 11, 2001 to allow for a 10,500-square-foot dental clinic.

Mr. Leininger stated that staff finds this proposal to be compatible with surrounding development and consistent with the 2035 Comprehensive Plan and Zoning Ordinance. Mr. Leininger stated that staff recommends that the Planning Commission recommend approval of this application to the Board of Supervisors, subject to the proposed conditions.

Mr. Krapf inquired if the applicant's concern about SUP Condition No. 6 for a bike lane has been resolved.

Mr. Leininger stated that the subject is still under discussion.

Mr. Haldeman inquired if any of the proposed bike lane on the westbound side of Richmond Road between Croaker Road and the applicant's property has been constructed.

Mr. Leininger stated that the bike lane has not been constructed but is shown on the adopted Regional Bikeways Plan.

Mr. Holt noted that the bike lane from Croaker Road is part of the Croaker Road Widening project. Mr. Holt noted that the bike lane would extend approximately to the Norge Plaza.

Mr. Haldeman called for disclosures from the Commission.

There were no disclosures.

Mr. Haldeman opened the Public Hearing.

Mr. Greg Davis, Kaufman & Canoles, PC, 4801 Courthouse Street, made a presentation to the Commission on the proposed expansion. Mr. Davis provided an overview of the Dental Center operations and the need for the expansion. Mr. Davis noted concerns about the bike lane requirement and illustrated the site constraints on the property that would make the bike lane prohibitively costly for a small business owner. Mr. Davis requested that the Commission recommend approval of the application without the SUP Condition requiring the bike lane.

Mr. Haldeman noted that the rear of the property slopes and inquired if the plan was to build up the area to be level or to keep the existing slope.

Mr. Chase Grogg, LandTech Resources, 3125 Midlands Road, stated that it would retain the existing slope and have a new Best Management Practice (BMP) for stormwater treatment.

Mr. Haldeman inquired if it would be possible to locate the bike lane between the drainage ditch and the sidewalk.

Mr. Grogg stated that the requirement is for the bike lane to be attached to the edge of the pavement.

As no one further wished to speak, Mr. Haldeman closed the Public Hearing.

Mr. Haldeman opened the floor for discussion by the Commission.

Mr. Krapf noted that the desired connectivity for the Norge area would be difficult to achieve given that each parcel would have the same drainage and utilities issues. Mr. Krapf inquired if the applicant and staff had been able to hold fruitful discussions on the issue and how will staff address these same issues for future applications.

Mr. Holt stated that it would be the same as any development having to work through the utilities and stormwater issues as the development prepares to come on-line. Mr. Holt further stated that other than the few and far between road improvement projects, this is how bike and pedestrian accommodations are implemented. Mr. Holt stated that every site is different but the premise is the same that it would be part of the cost of development. Mr. Holt further stated that the Zoning Ordinance does not have provisions to take the cost into account.

Mr. Polster stated that the bike lane for Oakland Pointe will be on the eastbound side of Richmond Road and inquired why the bike lane is needed on the westbound as well.

Mr. Holt stated that it is to allow cyclists to ride with the flow of traffic. Mr. Holt noted that this is especially important since the facility is adjacent to the road and not separated like a multiuse path.

Mr. O'Connor noted that the Zoning Ordinance allows developers to provide cash in lieu of sidewalks and inquired if there was a similar provision for the bike lanes.

Mr. Holt stated that this would be something that is determined at the site plan stage.

Mr. Schmidt stated that this business provides a valuable service to the community and that the cost of installing the bike lane could prohibit the necessary expansion. Mr. Schmidt stated that he is a proponent of the Regional Bikeways Plan and would like to see more connectivity; however, it is a difficult decision in this situation.

Mr. Polster inquired if VDOT would be required to do the same for the Croaker Road improvements.

Mr. Holt stated that there would be a lot of utility relocation for that project.

Mr. Krapf inquired if the dental clinic was in the path of the Croaker Road project.

Mr. Holt stated that it was adjacent but would stop at Norge Lane.

Mr. Krapf inquired if the applicant has the option to meet the SUP condition by putting money against the Regional Bikeways Plan.

Mr. Holt stated that there is a provision; however, it is not an equal option and would be triggered at the site plan stage when engineering and site restraints bear out that it is not possible to install the bike lane. Mr. Holt further stated that there are stringent criteria that must be met.

Mr. Krapf inquired if there were a way for the Commission to recommend approval of the application with a caveat that further consideration be given to Condition No. 6 and allow the applicant and staff to develop an acceptable alternative.

Mr. Holt stated that staff would be happy to meet with the applicant; however, prescribing a looser SUP condition might make it unclear to the applicant what they are required to do.

Mr. Davis stated that the Zoning Ordinance does not require the bike lane to be an SUP condition; it is a requirement for site plan approval. Mr. Davis further stated that the Planning Director is empowered to waive the bike lane if the Board of Supervisors approves a master plan and an SUP without the condition. Mr. Davis further stated if the Commission made a recommendation and the Board agreed, there is still the Ordinance requiring the bike lane and the Planning Director has the discretion to waive the requirement.

Mr. Holt stated that if the Board adopts the master plan with the bike lane, then the Planning Director would not be able to waive the requirement. Mr. Holt further stated that when the site plan is submitted, it will have to be consistent with the Board's approval.

Mr. O'Connor inquired if there were an alternative, such as widening the existing sidewalk that would be acceptable to the applicant and staff.

Dr. Timothy Johnston, Applicant, 610 Colony Trail, stated that the right-of-way drops to create the ditch, then rises to the sidewalk level and drops again to create the BMP. Dr. Johnston further stated that when Norge Dental Clinic was built, all the requirements were met, but now the requirements are being changed and there were no allowances originally made for change. Dr. Johnston stated that there is no way to meet the requirement without relocating all the underground and overhead utilities. Dr. Johnston noted that this would be incongruous with the utilities for the adjacent properties.

Mr. Davis noted that, in response to Mr. O'Connor's question, there was no room to widen the sidewalk.

Dr. Johnston stated that the initial development of the site had been carefully designed to make everything fit and no one anticipated that there would be requirements for a bike lane. Dr. Johnston further stated that due to the site constraints, installation of a bike lane would be cost prohibitive and bring the project to a standstill.

Mr. Schmidt noted that unless the adjacent property were to change hands and become a

commercial property, there would be nothing to trigger installation of a further segment of the bike lane.

Mr. Krapf stated that he is extremely supportive of the application the expansion of a local business. Mr. Krapf stated that his dilemma is setting a precedent for the other parcels along the corridor that would be subject to the Regional Bikeways Plan as they are developed.

Mr. Schmidt stated that the difficulty with the Regional Bikeways Plan is that residential property owners will not be able to install a bike lane.

Mr. Krapf stated that the only way those gaps would be connected is if the Virginia Department of Transportation (VDOT) had a road improvement project along the corridor.

Ms. Dowdy stated that if the matter had not come up with the current application, it would have come up for some other development. Ms. Dowdy noted that the Regional Bikeways Plan is problematic in certain instances and the issues need to be addressed.

Mr. O'Connor stated that it is problematic from Lightfoot to Toano. Mr. O'Connor further noted that requiring bike lanes may not be a reasonable expectation due to the existing curb, gutter, and utilities.

Mr. Schmidt noted that the cost decreases exponentially when longer segments are done at the same time and perhaps should be publicly funded.

Mr. Krapf inquired if the Regional Bikeways Plan has a build out date.

Mr. Holt stated that it is an open-ended project.

Mr. Krapf noted that as part of the drainage improvements in Toano being funded through the Capital Improvements Program (CIP), has been designed as part of a traffic calming plan which reduces the width of the travel lanes and uses the remainder as bike lanes. Mr. Krapf stated that the Commission is not so much overturning the Regional Bikeways Plan, but recognizing that the implementation requires public funding. Mr. Krapf stated that he feels it is not reasonable to require property owners to relocate utilities. Mr. Krapf stated that since there is not a defined build-out date for the Regional Bikeways Plan, the bike lane would remain, but not be constructed until such time as it is part of a road improvement project in the area.

Mr. Polster stated that there needs to be more thought about what the vision is for Norge. Mr. Polster noted that he is also struggling with the application of the requirement to a small business owner.

Mr. Haldeman noted that traffic studies indicate that the traffic along this portion of Richmond Road has already been identified as needing improvement. Mr. Haldeman further noted that the study did not factor in potential residential development and yet shows the traffic counts doubling by 2035. Mr. Haldeman noted that there is no room to improve Richmond Road and that failure would be catastrophic.

Mr. Krapf made a motion to recommend approval of the application without SUP Condition No. 6.

Mr. Polster inquired if this was a recommendation to the Board to exclude SUP Condition No. 6.

Mr. Holt confirmed.

On a roll call vote the Commission voted to recommend approval of SUP-19-0010, Norge Dental Center Expansion without SUP Condition No. 6 to the Board of Supervisors. (6-0)

2. ORD-19-0001. Zoning Ordinance Amendment to Section 24-16, Proffer of Conditions

A motion to Deny was made by Frank Polster, the motion result was Failed.

AYES: 2 NAYS: 4 ABSTAIN: 0 ABSENT: 1

Ayes: Haldeman, Polster

Nays: Dowdy, Krapf, O'Connor, Schmidt

Absent: Leverenz

A motion to Approve was made by Tim O'Connor, the motion result was Passed.

AYES: 4 NAYS: 2 ABSTAIN: 0 ABSENT: 1

Ayes: Dowdy, Krapf, O'Connor, Schmidt

Nays: Haldeman, Polster

Absent: Leverenz

Mr. Holt stated that on September 13, 2016, the Board of Supervisors adopted Case No. ZO-0008-2016 (Ordinance No. 31A-304) which amended the Zoning Ordinance to state that the County would no longer accept proffers for applications for any portion of a rezoning application that included a residential component. Mr. Holt stated that this was in reaction to Senate Bill 549 which was passed and approved during the 2016 General Assembly session.

Mr. Holt stated that on March 5, 2019, the General Assembly's changes to Section 15.2-2303.4 of the Code of Virginia were approved by the Governor of Virginia and enacted as Chapter 245 of the Acts of Assembly ("Chapter 245"). Mr. Holt stated that upon review, the adopted changes in State Code appear to address many of the concerns stated by the Board when it adopted Ordinance No. 31A-304.

Mr. Holt stated that accordingly, on April 9, 2019, the Board of Supervisors adopted an Initiating Resolution directing staff to more thoroughly consider the effects of Chapter 245 and recommend any warranted changes to James City County Code Section 24-16 to accept proffers associated with any new residential rezoning or zoning map amendment, or any new residential component of a multiuse district rezoning or zoning map amendment. Mr. Holt stated that as such, attached is a proposed amendment to the Zoning Ordinance which reverses the Code amendment passed by the Board of Supervisors in 2016.

Mr. Holt stated that at its May 9, 2019 meeting, the Policy Committee recommended approval of this item by a vote of 3-0.

Mr. Haldeman opened the Public Hearing.

As no one wished to speak, Mr. Haldeman closed the Public Hearing.

Mr. Haldeman opened the floor for discussion by the Commission.

Mr. Haldeman stated that he is opposed to amending County Code to permit proffers at this time. Mr. Haldeman stated that the new state legislation addresses many, but not all, of the concerns that led to the Board of Supervisors to stop accepting proffers. Mr. Haldeman stated that the legislation adopted in 2016, limiting the localities' statutory authority enacted over the past 18 years under the Dillon Rule, threatened Virginians with untold risk and expense. Mr.

Haldeman further stated that the James City County Board of Supervisors, as well as other Boards and Councils around the Commonwealth, acted quickly to neutralize the effect by passing an Ordinance refusing to accept proffers on residential development. Mr. Haldeman noted that the state legislation has not benefitted anyone in the residential development process. Mr. Haldeman stated that the legislation should be repealed in its entirety.

Mr. Haldeman stated that in his memorandum of 2016, the County Attorney listed nine objections to the legislation: 1) the limits imposed by the legislation greatly reduce the opportunity for developers to offer outside the box proffers not accompanied by extensive data; however the current legislation further reduces flexibility; 2) all proffers dealing with on-site issues are deemed unreasonable unless they address an impact that is specifically attributable to a proposed new residential development. The term "specifically attributable" remains ambiguous without a definition; 3) a proffer condition or amendment whether on-site or off-site, offered voluntarily shall be deemed unreasonable unless: 1) an off-site proffer addresses an impact to public facilities such that the new residential development or use creates a need for one or more public facility improvements in excess of existing capacity at the time of the application. This remains unchanged and leave no room to consider cumulative impact; 2) each new each new residential development or use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvement. This is ambiguous as "direct and material benefit" remains undefined; 3) failure to submit proffers as set forth in Subdivision 1, shall not be the basis for denial of any rezoning or proffer condition amendment; 4) the Court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial; 5) if any successful action brought pursuant to this section contesting an action of a local government body in violation of this section, the applicant may be entitled to an award of fees and costs.

Mr. Haldeman questioned philosophically, why two competent individuals cannot negotiate a rezoning application without the heavy hand of the General Assembly interfering. Mr. Haldeman further stated that if a development application will impact County residents, why shouldn't only the developer and the County discuss the impacts of the application and discuss what can be done to mitigate those impacts without a battery of lawyers.

Mr. Haldeman stated that his second objection is a conviction that the County's original proffer policy did not come close to mitigating the effects of unrestrained development.

Mr. Haldeman stated that County residents must pay to build new schools to accommodate enrollment growth. Mr. Haldeman stated that there is no reserve from cash proffered from earlier development. Mr. Haldeman stated that the County appropriates millions of dollars each year to mitigate damage from stormwater and expand sewers, but without reserves from proffers from developments that necessitated these costs.

Mr. Haldeman stated that Senate Bill 549 provides localities with the opportunity to rethink the links between their development decisions and their long-term impacts on taxpayers.

Mr. Haldeman stated that his third objection to the Ordinance amendment is that the County has begun a revision to its Comprehensive Plan which will address a wide range of housing and land use issues along with related issues such as education, transportation, community character and public facilities.

Mr. Haldeman further stated that the Board of Supervisors has recently received a report from the Workforce Housing Task Force, which together with the Housing Conditions Study from 2016, contains recommendations and supporting data addressing housing needs for the workforce.

Mr. Haldeman stated that the Comprehensive Plan update would include a survey of County

Residents to define the direction in which they want the County to go.

Mr. Haldeman further stated that revisions to the Comprehensive Plan housing and proffer policies and the consideration of housing recommendations must not be implemented piecemeal but as part of an integrated approach to housing in the County.

Mr. Haldeman stated that there is nothing to lose and everything to gain by waiting to do it right.

Mr. Polster stated that he concurs with the concerns about the definition of "reasonable and appropriate" and the guidelines under which the Commission and the Board would make that determination, especially when what is offered in writing is deemed to be reasonable by definition.

Mr. Polster stated that he is not comfortable with how the County could prove that a proffer was reasonable. Mr. Polster stated that one of the tools to do so is the Financial Impact Analysis; however, it would have to be redone to ensure that it covers many criteria as proof. Mr. Polster further stated that the CIP only provides a five-year horizon, where the impacts are done in a cumulative way and far exceed that horizon.

Mr. Polster stated that the County's Strategic Plan will soon allow the CIP process to look out 10 years for cumulative impacts. Mr. Haldeman further stated that this would allow the Comprehensive Plan to express what would be reasonable for the future growth of the County.

Mr. Polster noted that the County is moving forward to have the necessary metrics in place to evaluate development proposals. Mr. Polster stated that the County should not rush to amend the Ordinance at this time.

Mr. Krapf stated that as others have said, far ranging metrics for evaluating development proposals is something that must be established. Mr. Krapf further stated that taking a broader view and identifying priorities is very important, but that those initiatives can work in tandem with proffers. Mr. Krapf stated that everyone recognizes that a development will have some adverse impacts, whether traffic or education or water. Mr. Krapf stated that when the State Code was amended prohibiting proffers, applicants were coming forward with more creative solutions to mitigate the impacts. Mr. Krapf noted that some of those solutions such as easements are more cumbersome and not as clear cut as a proffer.

Mr. Krapf requested that Mr. Hlavin discuss the County's legal risk if proffers are accepted again.

Mr. Hlavin stated that the 2019 legislation changes were mainly to the right of action where to bring a claim for an unreasonable proffer, the claimant would have to have objected to that proffer in writing before the Board of Supervisors considers the legislative application. Mr. Hlavin stated that there are fewer risks with the 2019 legislation than there were with the 2016 legislation.

Mr. Haldeman inquired if there were more risks with the 2019 legislation than prior to the 2016 legislation.

Mr. Hlavin stated that there were more risks under the 2019 legislation.

Mr. O'Connor noted that he is not in favor of the easements. Mr. O'Connor stated that if proffers are not accepted, there will be more easements offered as work arounds. Mr. O'Connor stated that the enforcement opportunities that the Director of Planning has with the

proffers can ensure compliance more quickly than the process required to enforce the easement. Mr. O'Connor stated that he believes the County should accept proffers. Mr. O'Connor noted that all of the recent housing development discussions have incorporated the Housing Opportunities Policy requirements but there was no way to tie a proffer to it. Mr. O'Connor further stated that he intends to support the amendment.

Mr. Krapf inquired if surety bonds are tied to proffer milestones.

Mr. Hlavin stated that proffers address timing of improvements, but during the site plan review the County obtains the sureties for infrastructure and stormwater improvements. Mr. Hlavin stated that the surety system still exists.

Mr. Polster inquired about the easements for Oakland Pointe.

Mr. Hlavin stated that the easement documents were signed prior to the Board's action. Mr. Hlavin stated that the conditions of the easement were tied to Certificate of Occupancy and Land Disturbing.

Mr. Polster requested confirmation that the same tools of enforcement though the surety were available whether for an easement or a proffer.

Mr. Holt stated that it depended on whether or not the surety requirements for a public improvement is triggered by the rules in the Zoning Ordinance.

The Commission discussed concerns over the methods of enforcing what is offered by an applicant under an easement versus under proffers. The Commission further discussed whether some of the tools and metrics for evaluating applications would be worked out over the next two years of the Comprehensive Plan process.

Mr. Polster made a motion to disapprove the Ordinance amendment.

On a roll call vote the motion did not carry. (2-4)

Mr. O'Connor made a motion to recommend approval of the Ordinance amendment.

On a roll call vote the Commission voted to recommend approval of ORD-19-0001. Zoning Ordinance Amendment to Section 24-16, Proffer of Conditions. (4-2)

3. ORD-19-0002. Zoning Ordinance Amendment – Section 24-111, Temporary Offices

A motion to Approve was made by Rich Krapf, the motion result was Passed.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Dowdy, Haldeman, Krapf, O'Connor, Polster, Schmidt

Absent: Leverenz

Mr. Holt stated that in 2018, the DRC and the Planning Commission considered an applicant's request to waive the requirements of the Zoning Ordinance found in Section 24-200, Public Utilities, as it applied to a temporary storage trailer. Mr. Holt stated that at a subsequent meeting of the Policy Committee, a Committee member asked staff for a potential amendment to the Ordinance to make future requests easier for applicants. Mr. Holt noted that staff does not recommend creating an exception for all structures, generally. Mr. Holt further stated that the attached Ordinance language, however, would be applicable to structures used as temporary offices. Mr. Holt stated that staff notes that this is the only section of the Zoning

Ordinance that defines and permits temporary structures, and sets forth time limitations for the removal of such structures. Mr. Holt further stated that no other section of the Zoning Ordinance allows staff to attach a time limit to the placement/construction of structures that are otherwise allowed by-right.

Mr. Holt stated that at its May 9, 2019 meeting, the Policy Committee recommended approval of this item by a vote of 3-0.

Mr. Haldeman opened the Public Hearing.

As no one wished to speak, Mr. Haldeman closed the Public Hearing. Mr. Haldeman opened the floor for discussion by the Commission.

Mr. Krapf made a motion to recommend approval of ORD-19-0002. Zoning Ordinance Amendment – Section 24-111, Temporary Offices.

On a roll call vote, the Commission voted to recommend approval of ORD-19-0002. Zoning Ordinance Amendment – Section 24-111, Temporary Offices. (6-0)

4. ORD-18-0013. Zoning Ordinance Amendments Regarding Master Plan Consistency Determinations

A motion to Deny was made by Frank Polster, the motion result was Passed.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Dowdy, Haldeman, Krapf, O'Connor, Polster, Schmidt

Absent: Leverenz

Mr. Holt stated that currently, Section 24-23 of the Zoning Ordinance states that final development plans may be approved after approval of a master plan by the Board of Supervisors. Mr. Holt further stated that all final development plans shall be consistent with the master plan, but may deviate from the master plan if the Planning Director concludes that the development plan does not: significantly affect the general location or classification of housing units or buildings; significantly alter the distribution of recreation or open space areas; significantly affect the road layout; or, significantly alter the character of land uses or other features or conflict with any building conditions placed on the corresponding legislatively-approved case.

Mr. Holt stated that in the event the Planning Director determines that a proposed change would deviate from the approved master plan, the applicant may appeal the decision to the DRC.

Mr. Holt stated that at its May 22, 2018 work session, the Board of Supervisors asked the Commission to consider limiting the number of residential dwelling units that could be transferred via a master plan consistency determination that is made under Section 24-23 of the Zoning Ordinance.

Mr. Holt stated that the Policy Committee discussed this Code section and possible revisions on July 10, 2018 and August 9, 2018. Mr. Holt stated that at the request of the Policy Committee, the Board of Supervisors provided input into this matter at its November 27, 2018 work session. Mr. Holt stated that the Policy Committee discussed this item further at its December 13, 2018 meeting, and at its meetings on January 10, March 7, and April 11, 2019. Mr. Holt stated that at its April 11, 2019 meeting, the Policy Committee found that the attached Ordinance amendment reflected the Board's requested amendments and voted to

forward this item to the Planning Commission by a vote of 3-0.

Mr. Haldeman opened the Public Hearing.

As no one wished to speak, Mr. Haldeman closed the Public Hearing.

Mr. Haldeman opened the floor for discussion by the Commission.

Mr. O'Connor requested that Mr. Hlavin discuss how vested rights work in the context of having to come back through the legislative process to transfer density between land bays.

Mr. Hlavin stated that vested rights protect an approved development or something that has received a significant governmental act from subsequent changes to the Zoning Ordinance. Mr. Hlavin further stated that the master plan that is approved as part of a rezoning is a significant governmental act and does vest the developer's rights in that master plan. Mr. Hlavin stated that if the developer is bringing forward an amendment to the master plan, they do not have a right to amend the master plan except as allowed by the locality. Mr. Hlavin further clarified that it does not implicate a vested right to ask for a change in what was previously approved.

Mr. Holt noted that by definition, the change would say that it is a significantly different plan and should not be assumed to be approved.

Mr. Hlavin stated that in the existing section, there is a process adopted by Ordinance that allows a master plan amendment and gives the Planning Director the authority to approve the change. Mr. Hlavin stated that this Ordinance amendment removes change that are too significant to be handled administratively and provides for legislative review.

Mr. Krapf noted that the Policy Committee voted to move this forward to the Planning Commission but did not vote to approve the amendment. Mr. Krapf stated that as the amendment is currently proposed, the DRC is an appeal authority when the Planning Director determines that certain modifications change the character too much and must go through a site plan amendment. Mr. Krapf further stated that the amendment provides anything changing dwelling unit types and dwelling unit locations does not have an avenue for appeal and must go through the legislative process. Mr. Krapf noted that he has concerns about whether it is reasonable to require a developer who has approved plans for a site to go back through the legislative process. Mr. Krapf further noted concerns about financial and time impacts.

Mr. Haldeman noted that his concern related to the dwelling unit count. Mr. Haldeman stated that the purpose of the master plan and community impact statement is to set an overall population and development ceiling for the planned community, to determine off-site impacts of the development and to identify the general arrangement of internal land uses. Mr. Haldeman noted that the community impact statement covers items such as adequate public facilities, archaeology, fiscal impact, and traffic. Mr. Haldeman further stated that for a development where the unit count changes drastically, he is not opposed to requiring the developer to go back through the legislative process.

Mr. O'Connor stated that there has always been flexibility in the master plan because the developer is not doing the engineering upfront and may find as the site develops that there are some areas that cannot be built out to full potential. Mr. O'Connor noted that for the County's purposes, it should not matter if the units are shifted from one land bay to another as long as the unit cap is not exceeded. Mr. O'Connor stated that one goal set for the Planning Division by the Business Climate Task Force was to make the development process more predictable. Mr. O'Connor stated that this amendment could potentially affect the viability of a previously approved plan.

Mr. Polster stated that this is a bureaucratic process to provide a solution for a problem that does not exist. Mr. Polster further stated that he has concerns about the role of the homeowner's association and its elected Board in terms of protecting the resident's interest, or is it something that the government gets in the middle of which forces the developer to come back to the legislative process. Mr. Polster he would not support the Ordinance amendment.

Mr. O'Connor stated that he concurs with Mr. Polster.

Mr. O'Connor stated that the recourse for the homeowner is independent of governmental actions. Mr. Polster made a motion to recommend denial of the Ordinance amendment.

On a roll call vote the Commission voted to recommend denial of ORD-18-0013, Zoning Ordinance Amendments Regarding Master Plan Consistency Determinations (6-0).

G. PLANNING COMMISSION CONSIDERATIONS

1. Initiation of Consideration of Amendments to the Zoning Ordinance Regarding Inoperable Motor Vehicles and Oversized Commercial Vehicles

A motion to Approve was made by Rich Krapf, the motion result was Passed.

AYES: 6 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Dowdy, Haldeman, Krapf, O'Connor, Polster, Schmidt

Absent: Leverenz

Mr. Holt stated that during the 2019 session of the General Assembly, amendments were made to Chapters 779 and 798 of the Acts of Assembly of 1993, which provide a charter for the County of James City County. Mr. Holt further stated that this charter amendment grants additional authority to James City County under Section 15.2-905 of the Code of Virginia to regulate the keeping of inoperable motor vehicles on residential, commercial, and agricultural zoned properties two acres in area or smaller. Mr. Holt stated that Section 15.2-905 of the Code of Virginia allows certain localities to restrict the keeping of vehicles not screened from view and which are not in operating condition, or do not display valid license plates, or do not display inspection decals. Mr. Holt stated that in order to more effectively address inoperative vehicles in James City County as granted by the General Assembly, Section 24-37 of the James City County Zoning Ordinance will need to be amended. Mr. Holt stated that in addition, staff has received complaints regarding the parking and/or keeping of oversized commercial type vehicles in residentially zoned areas. Mr. Holt stated that this situation is not adequately addressed in the Zoning Ordinance. Mr. Holt stated that it is recommended to direct staff to research neighboring localities and recommend changes to address the parking and keeping of oversized commercial type vehicles in residential zoned areas. Mr. Holt stated that staff recommends the Planning Commission adopt the attached resolution to initiate consideration of such.

Mr. Krapf made a motion to adopt the Initiating Resolution.

On a roll call vote the Commission voted to adopt the resolution Initiating Consideration of Amendments to the Zoning Ordinance Regarding Inoperable Motor Vehicles and Oversized Commercial Vehicles (6-0).

H. PLANNING DIRECTOR'S REPORT

1. Planning Director's Report - June 2019

Mr. Holt stated that he had nothing to add to what was included in the agenda packet.

Mr. O'Connor inquired if the oversight of the parking of commercial vehicles pertained only to those on a lot or also those parked in the street.

Mr. Holt stated that restrictions on parking in the right of way are different from those in the Zoning Ordinance; however, staff would look at this going forward.

Mr. Schmidt inquired if weapons were allowed in all public buildings except schools and the Courthouse.

Mr. Hlavin confirmed.

I. PLANNING COMMISSION DISCUSSION AND REQUESTS

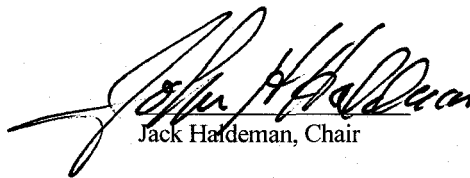
Mr. Haldeman stated that Mr. O'Connor has Board of Supervisors coverage for June 11.

Mr. Haldeman further stated that Mr. Krapf has noted that the full Planning Commission has access to the Policy and DRC agenda materials in Novus.

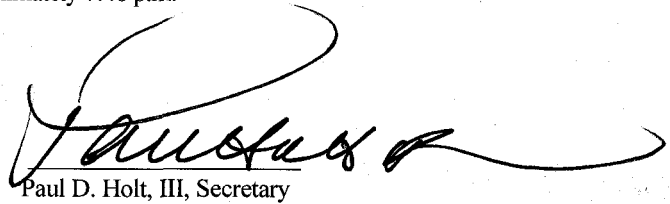
J. ADJOURNMENT

Mr. Krapf made a motion to adjourn.

The meeting was adjourned at approximately 7:48 p.m.



Jack Haldeman, Chair



Paul D. Holt, III, Secretary