

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg VA 23185
November 2, 2022
6:00 PM

A. CALL TO ORDER

Mr. O'Connor called the meeting to order at 6:00 p.m.

B. ROLL CALL

Planning Commissioners Present:

Tim O'Connor
Rich Krapf
Jack Haldeman
Frank Polster
Rob Rose
Barbara Null
Stephen Rodgers

Staff Present:

Paul Holt, Director of Community Development and Planning
Liz Parman, Deputy County Attorney
Josh Crump, Principal Planner
Thomas Wysong, Senior Planner
Terry Costello, Principal Planner
Paxton Condon, Deputy Zoning Administrator

C. PUBLIC COMMENT

Mr. O'Connor opened Public Comment.

As no one wished to speak, Mr. O'Connor closed Public Comment.

D. REPORTS OF THE COMMISSION

The Policy Committee and the Development Review Committee did not meet in October, and therefore there were no reports.

E. CONSENT AGENDA

1. Minutes of the October 5, 2022, Regular Meeting

Ms. Null made a motion to approve the Consent Agenda.

Mr. Krapf and Dr. Rob Rose stated that they would abstain from voting on the Minutes of the October meeting as they were not present at that meeting.

On a voice vote, the Commission voted to approve the Consent Agenda. (5-2-0)

F. PUBLIC HEARINGS

1. AFD-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal

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

AYES: 5 NAYS: 2 ABSTAIN: 0 ABSENT: 0

Ayes: Haldeman, Krapf, Polster, Rodgers, Rose

Nays: Null, O'Connor

This application was presented and reviewed in tandem with SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project. Discussion is combined and recorded with Special Use Permit (SUP) application.

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

On a roll call vote, the Commission voted to recommend approval of AFD-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal. (5-2)

2. SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project

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

AYES: 5 NAYS: 2 ABSTAIN: 0 ABSENT: 0

Ayes: Haldeman, Krapf, Polster, Rodgers, Rose

Nays: Null, O'Connor

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

AYES: 5 NAYS: 2 ABSTAIN: 0 ABSENT: 0

Ayes: Haldeman, Krapf, Polster, Rodgers, Rose

Nays: Null, O'Connor

Mr. Thomas Wysong, Senior Planner, stated that Mr. Buzz Becker of Pivot Energy, Inc. has applied for an SUP to construct a solar farm on an approximately 64.9-acre portion of parcels located at 7294 and 7296 Richmond Road. Mr. Wysong stated that the parcels are zoned A-1, General Agricultural and designated Economic Opportunity (EO) on the 2045 Comprehensive Land Use Map and located outside the Primary Service Area (PSA).

Mr. Wysong stated that the property located at 7296 Richmond Road is not located within an Agricultural and Forestal District (AFD); however, the property located at 7294 Richmond Road is currently within the Hill Pleasant Farm AFD. Mr. Wysong stated that as part of the 2022 AFD renewal process, the owner withdrew 42 acres of that property from the AFD. Mr. Wysong further stated that after the renewal period closed, the applicant recognized the need to withdraw an additional 10 acres from the AFD for stormwater facilities and this withdrawal proposal does require Board approval because it occurred after the renewal period closed.

Mr. Wysong stated that withdrawal requests outside of the renewal period are considered per the criteria listed in the Board of Supervisor's Policy governing the withdrawal of properties from AFDs. The criteria are:

- The request is caused by a change in circumstances that could not have been anticipated at the time application was made for inclusion in the district. (This has historically been interpreted as death of a property owner.)
- The request would serve a public purpose, as opposed to the proprietary interest of the landowner that could not otherwise be realized upon expiration of the AFD. (Staff

interprets a public purpose as using the land for a public facility such as a school or fire station.)

- The request would not cause damage or disruption to the existing district. (The AFD would continue to meet the minimum acreage requirements if this withdrawal is approved.)
- If the request for withdrawal is in conjunction with a proposal to convert the land use of a property to a different use than is currently in place on the property, the new land use would be in conformance with the Comprehensive Plan.

Mr. Wysong stated that Solar Farms are not specifically identified as a compatible land use in the EO Zoning District, but they may serve as a transitional land use until market forces determine a more intense economic use.

Mr. Wysong stated that staff finds that this application would not cause a disruption to the AFD and that the proposed land use would be a transitional use within the EO Zoning District; however, staff finds that this proposal is not caused by an unforeseen change in circumstances and that the request would not serve a public purpose. Mr. Wysong stated that since it does not meet all the criteria of the Board's withdrawal policy, staff recommends denial of this withdrawal request to the Board of Supervisors.

Mr. Wysong stated that at its October 20, 2022, meeting, the AFD Advisory Committee unanimously recommended approval of this withdrawal request by a vote of 7-0.

Mr. Wysong stated that the proposed solar farm facility will consist of ground-mounted arrays of solar panels mounted on single-axis trackers to orient the arrays toward the direction of the sun. Mr. Wysong stated that all new utilities will be placed underground and the solar farm will connect to existing overhead utility lines on the property. Mr. Wysong stated that the lease will be for 21 years with an option to extend for an additional 10 years.

Mr. Wysong stated that staff has proposed conditions to mitigate impacts from this proposal. Mr. Wysong further stated that these proposed conditions will require access to the facility during construction to be from the existing easement along the railroad connecting to Peach Street. Mr. Wysong stated that once the site construction is complete, normal sized vehicles can access the site from Richmond Road, but oversized vehicles will still be required to utilize the Peach Street entrance. Mr. Wysong stated that construction activities such as pile driving, clearing, and grading have limited hours per the SUP conditions. Mr. Wysong stated that a 50-foot vegetated buffer is shown along the perimeter of the development, with the buffer being increased to 75 feet along areas nearest to Richmond Road.

Mr. Wysong stated that the 2045 Comprehensive Plan Land Use Map designates the property EO. Mr. Wysong stated that the Comprehensive Plan does not specifically identify solar farm as a compatible use in EO; therefore, staff has reviewed this application as a transitional use given the limited lease of the property.

Mr. Wysong stated that according to Virginia Code Section 15.2-2232, unless a utility facility is shown on the adopted Comprehensive Plan or other master plans for the County, the local Planning Commission and a governing body shall review the facility to determine whether the location, character, and extent of the project is substantially in accord with the adopted Comprehensive Plan.

Mr. Wysong stated that staff recommends the Planning Commission find this application consistent with the 2045 Comprehensive Plan and recommend approval of the SUP to the Board of Supervisors subject to the proposed conditions and approval of the withdrawal

request from the AFD.

Mr. O'Connor opened the floor for questions from the Commission.

Mr. Krapf requested more information on the reason for requesting the additional 10 acres.

Mr. Wysong stated that during staff review, it was determined that more acreage was needed for the stormwater facilities and a small expansion to the footprint of the solar arrays.

Mr. Krapf inquired if this could be considered a circumstance beyond the applicant's control that would meet one of the withdrawal criteria.

Mr. Wysong stated that staff did not interpret it as meeting the criteria.

Mr. Krapf inquired about the access to the site during construction and the impact of the existing utility lines on the access.

Mr. Holt stated that in the interim, as follow up on the stormwater management piece, there has been updated guidance from the state on calculating impervious cover for solar farms. Mr. Holt stated that the panels are now considered impervious cover which increases the amount of area needed for treatment of stormwater. Mr. Holt further stated that there is also a cap on the amount of forested land that can be credited to stormwater management. Mr. Holt stated that this accounts for the withdrawal of the additional land from the AFD.

Mr. Wysong provided an overview of the construction access road to the property.

Mr. Krapf inquired if any road improvements would be required.

Mr. Wysong stated that there is a condition that the applicant would have to do an existing conditions assessment and calculate what the repairs would be. Mr. Wysong stated that those repairs would need to be completed after construction once the site is finished.

Mr. Krapf inquired if this would include the overhead utilities.

Mr. Wysong confirmed.

Mr. Holt stated that Peach Street and Peninsula Street are in the VDOT secondary system for maintenance. Mr. Holt stated that on the other side of the railroad tracks, it becomes a shared easement. Mr. Holt stated that much of the private easement may need to be improved.

Ms. Null stated that this is her concern as well. Ms. Null inquired if the site could be accessed from Rochambeau Drive or from Route 60. Ms. Null noted that there could be huge impacts to the CSX operations if a vehicle was stuck on the track crossing.

Mr. Holt stated that access from Rochambeau Drive for this site is distinctly different from the other solar farm to the south because the route passes a number of residential units on one end and is encumbered by environmentally sensitive land at the other end.

Mr. Krapf inquired about a bond to ensure appropriate decommissioning of the panels at the end of their life.

Mr. Wysong stated that there is a condition for a surety bond to decommission the panels and remediate the site in the event the applicant is no longer in business.

Mr. Polster stated that part of the condition for the surety bond is to reevaluate it periodically

to ensure it will cover any increase in costs over the years.

Mr. O'Connor opened the Public Hearing.

Mr. Buzz Becker, Director of Project Development, Pivot Energy, Inc., made a presentation to the Commission in support of the application.

Mr. Polster inquired about the use of the property between the buffer and the boundary line with the adjacent property owner.

Mr. Becker stated that the property owner will be reimbursed for that property so that it can be open space; most likely a meadow with pollinating plants.

Mr. Polster inquired about the ground cover under the solar panels.

Mr. Becker stated that the plan is for a native pollinator seed mix with up to quarterly mowing or maintenance.

Mr. Polster inquired about the size of the largest vehicles bringing in equipment.

Mr. Becker stated that the solar panels would be delivered on a tractor trailer. Mr. Becker further stated that the vast majority of the vehicles would not be that large.

Mr. Polster inquired about whether the tractor trailer would have difficulty crossing the railroad tracks and navigating the turn.

Mr. Becker stated that it would not be a problem.

Mr. Polster inquired about the buffering along the road adjacent to the neighboring property.

Mr. Becker stated that they are working with the adjacent property owner to establish a satisfactory mix of plantings.

Dr. Rose inquired about the subscription service for low-to-moderate-income customers.

Mr. Becker stated that they have a manager of subscriptions that reaches out to the community to find potential subscribers.

Dr. Rose inquired if the subscriber opportunity was limited to residents near the solar farm.

Mr. Becker stated that it was not limited by proximity.

Mr. Rodgers inquired if the project could move forward without the additional 10 acres.

Mr. Nick Robertson, Kimley-Horn and Associates, Inc., stated that without the additional acreage, it would be necessary to reduce the number of panels or not go forward with the project. Mr. Robertson stated that a reduction in the panels may affect support from Dominion Energy.

Mr. Polster inquired if staff did the stormwater calculations.

Mr. Roberson stated that Kimley-Horn did the calculations.

Mr. Polster inquired if the Stormwater Division supported those calculations.

Mr. Robertson stated that staff supported the calculations.

Mr. Polster inquired if there were any alternative.

Mr. Roberson stated that there is no alternative except reducing the number of panels which the applicant cannot do.

Mr. O'Connor inquired if any other portion of the property could be used for stormwater management.

Mr. Robertson stated that the location of the retention ponds is determined by topography; the ponds must be placed where water will drain. Mr. Robertson stated that it would not be possible to move sufficient panels to another area or be detrimental to the adjacent property owner.

Mr. Polster inquired if he is correct that the calculations for impervious cover are based on the amount of water coming off the panels and where it drains to which is why the retention ponds must be located where they are.

Mr. Becker confirmed that this is correct.

Mr. Gary Campbell, 230 Peach Street, addressed the Commission in support of the application.

As no one further wished to speak, Mr. O'Connor closed the Public Hearing.

Mr. O'Connor opened the floor for discussion by the Commission.

Mr. Jack Haldeman stated that he plans to support the application. Mr. Haldeman stated that he finds that the AFD withdrawal does meet the criteria for a change in circumstance and further it also meets the criteria of being for a public purpose. Mr. Haldeman stated that this does meet a goal of the Comprehensive Plan as well as stated and federal goals to decarbonize energy production.

Mr. Rich Krapf stated that he also finds that the criteria for AFD withdrawal are met. Mr. Krapf stated that he believes the applicant would have removed the acreage during the renewal period if the stormwater information had been available at that time. Mr. Krapf stated that he would like to recommend that Condition No. 5 be amended to include that Item B read: The majority of evergreen shrubs and trees should be native species. Mr. Krapf further stated that he would recommend that Condition No. 6 be amended to read: Site ground cover that includes native pollinators and native grasses. Mr. Krapf further stated that he is in favor of solar and other power; however, he is concerned about the impact on the EO zone.

Mr. O'Connor stated that he has concerns about this use of the property in the EO zone. Mr. O'Connor stated that he did not support the other neighboring solar farm and does not intend to support this application.

Mr. Polster made a motion to recommend approval of the application with conditions as proposed by staff and with the recommended amendments.

On a roll call vote, the Commission voted to recommend approval of SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project. (5-2)

Mr. Polster made a motion to adopt the resolution finding the project to be in substantial accord with the Comprehensive Plan.

On a roll call vote, the Commission voted to find the application in substantial accord with the Comprehensive Plan. (5-2)

3. SUP-20-0010. Hertzler Clearing and Grading

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

AYES: 3 NAYS: 4 ABSTAIN: 0 ABSENT: 0

Ayes: Krapf, O'Connor, Polster

Nays: Haldeman, Null, Rodgers, Rose

Mr. Josh Crump, Principal Planner, stated that Ms. Mary Hertzler has applied for an SUP to allow the operation of a contractor's office, warehouse, and the manufacturing of wood products at 9537 Barnes Road. Mr. Crump stated that the property is zoned A-1, General Agricultural, is designated Rural Lands on the Comprehensive Plan Land Use Map, and is located outside the PSA. Mr. Crump noted that the business is currently operating on the property and this application has been submitted to bring the use into conformance with the Zoning Ordinance.

Mr. Crump stated that in 2020, the Zoning Division met with the property owner after receiving a complaint regarding the operation of the business. Mr. Crump stated that staff discussed the activities and violations occurring and that an SUP would be needed to bring the use into conformance. Mr. Crump noted that the applicant stated that the business has been operating from the property for approximately 20 years.

Mr. Crump further stated that in the year 2000, an SUP application was submitted for the operation of a contractor's office, warehouse, storage and repair of heavy equipment, and the manufacture and sale of wood products. Mr. Crump stated that the application was considered by the Planning Commission and recommended for approval and was then considered by the Board of Supervisors where it was ultimately denied.

Mr. Crump stated that since this time, the area utilized for the business operation has increased without the appropriate approvals or permitting from the County. Impacts to the Resource Protection Area (RPA) include land disturbance and clearing of trees, the construction of a pond, and the construction of a driveway onto a neighboring property. Mr. Crump stated that the construction of the pond and driveway have also impacted existing wetlands. Mr. Crump stated that these existing site conditions are shown on the master plan.

Mr. Crump further stated that staff has reviewed the application to address the impacts of the business. Mr. Crump stated that the Stormwater and Resource Protection Division has reviewed the application regarding stormwater management design for the current business operations. Mr. Crump noted that the proposed SUP conditions would require impacts to the RPA and wetlands be remediated, proof of appropriate permits for impacts to the wetlands, and that the stormwater management design be sufficient for all development on the property.

Mr. Crump stated that additional proposed conditions include, but are not limited, to restricting the hours of operation of certain activities from 8 a.m. to 5 p.m. to reduce potential noise impacts, prohibiting sales on the property, prohibiting signage associated with the business, restricting vehicular access to the business to only come from Barnes Road, providing buffering and screening the business from Barnes Road and adjoining properties, various fire safety measures, limiting the height of light poles, and prohibiting any light trespass onto adjoining properties.

Mr. Crump stated that if the SUP were to be approved, a site plan would be required for the

business and would need to show all existing improvements being brought into full conformance with the master plan, conditions, Zoning Ordinance, and other applicable regulations. Mr. Crump further stated that the proposed conditions would require that the site plan be submitted within 12 months of the date of approval of the SUP and receive final site plan approval within 24 months of the date of approval of the SUP. Mr. Crump stated that the proposed conditions would also require that County staff inspect the property within six months of the date of approval of the SUP to verify existing site conditions and within 36 months of the date of approval of the SUP to verify that all improvements shown on the site plan are completed and that the site is fully in compliance with the SUP and the site plan.

Mr. Crump stated that staff finds that the proposal is compatible with surrounding zoning and development and consistent with the 2045 Comprehensive Plan and recommends that the Planning Commission recommend approval of this application, subject to the proposed conditions.

Mr. O'Connor opened the floor for questions from the Commission.

Ms. Null requested confirmation that the pond was installed without the necessary permits; a previous SUP request in 2000 was denied; and the business has been operating for 22 years without an SUP.

Mr. Crump confirmed.

Ms. Null inquired if any complaints had been received during that time.

Mr. Crump stated that staff received complaints in 2001, 2002, 2004, 2011, and 2019.

Ms. Null noted that another complaint had been received in the last week also.

Ms. Null inquired about the complaint received in 2019.

Mr. Crump stated that staff met with the property owner in 2019 to discuss remediation and that the current SUP application was submitted in 2020.

Ms. Null commented that the business has been operating for 22 years without any permits.

Mr. Haldeman inquired about the future of the business and the property if this application is denied.

Mr. Crump stated that all business activities would cease, and the property would need to be brought into compliance with the Zoning Ordinance and the Chesapeake Bay Ordinance. Mr. Crump further stated that it would require removing all business equipment, logs, debris, and provide RPA mitigation. Mr. Crump stated that staff would work with the County Attorney's Office to achieve compliance.

Mr. Krapf inquired if the SUP condition for staff being allowed to inspect the property could be broadened to allow staff more latitude to access the property in the event of further complaints.

Mr. Holt stated that he would not recommend changing the SUP Conditions at this time. Mr. Holt further stated that as proposed, the SUP Conditions allow staff to enter the property to verify existing conditions and later to confirm that all of the improvements have been made and are consistent with the master plan and the site plan. Mr. Holt further stated that once the final site conditions are verified, it would be like any other property where, should a complaint be received, staff would first look to work with the property owner which usually resolves the

situation. Mr. Holt stated that in the few instances where there the property owner is not responsive, staff can work with the County Attorney's Office to find other options.

Mr. O'Connor inquired if the mixed mulch and soil stockpile should have silt fences.

Mr. Holt stated that staff would review this during the site plan process; however, it would not be a requirement for stockpiles in active use.

Mr. O'Connor noted that the stockpile is adjacent to the pond. Mr. O'Connor inquired whether the stockpile activities could be inspected periodically to ensure that the stockpile is in good shape and compliant with Erosion and Sediment Control (E&S) regulations.

Mr. Holt stated that should the property move to site plan review, all of the E&S requirements and remediation will be factored in.

Dr. Rose inquired about the owner of the neighboring property where the driveway was constructed.

Mr. Crump stated that the property is also owned by the applicant.

Dr. Rose inquired if approving the SUP would give the County more opportunity to ensure that the conditions are continuously met.

Mr. Crump stated that there would be an inspection of existing conditions and staff would work with the applicant during the site plan review to ensure that all remediation was completed and regulations met. Mr. Crump stated that once the site plan was approved, staff would inspect the property to ensure that everything is constructed and in compliance with the site plan and existing regulations and requirements.

Mr. Holt stated that approval of the SUP does not convey extra authority to staff to access the property; however, should there be complaints, it is easier for staff to determine if the operation is in conflict with the SUP, the master plan, and the site plan.

Dr. Rose inquired whether the business would be allowed to operate another 20 years without permits and approvals.

Mr. Holt stated that if the SUP is denied, the existing conditions would have to be brought into compliance with the Zoning Ordinance and the Chesapeake Bay Act. Mr. Holt stated that following the previous SUP denial, the violations were abated; however, at some point the activities commenced again. Mr. Holt stated that in this instance there would be follow up to ensure that the property was in compliance and the environmental impacts were remediated.

Mr. Rodgers inquired about the historical information on the property and the Board of Supervisors' rationale for denying the SUP.

Mr. Crump stated that there appeared to be a lot of public comment against the application; however, the minutes do not provide detail on the rational of the Board of Supervisors.

Mr. Holt noted that the minutes were more action-oriented minutes and did not provide robust details of the discussion.

Mr. Rodgers inquired why the County did not pursue action against the property sooner.

Mr. Holt stated that the County's long-standing practice is to respond on a complaint basis.

Ms. Null noted that there were several complaints over the years and inquired why no action was taken sooner.

Mr. Holt stated that the County did receive complaints in the past. Mr. Holt noted that without the ability to access the property, the typical inspection is legally limited to what can be seen from a public right-of-way. Mr. Holt stated that there are forested conditions on the site and it is not always easy to observe the day-to-day operations. Mr. Holt stated that his thought is that these complaints were investigated but there was not enough evidence available through the permitted investigative options.

Ms. Null stated that her concern is that approving this application may lead to other businesses operating without the appropriate approvals.

Mr. Haldeman inquired if this application is substantially similar to the one submitted in 2000.

Mr. Crump stated that to his knowledge it is very similar.

Mr. O'Connor opened the Public Hearing.

Mr. Krapf, Mr. Haldeman, and Mr. Polster stated that they each had spoken with the applicant's representative regarding the application.

Mr. Vernon Geddy, Geddy, Harris, Franck, & Hickman, LLP, made a presentation to the Commission in support of the application.

Mr. Polster inquired if the Hertzlers were aware of the work done on the proposed master plan.

Mr. Chase Grogg, Landtech Resources, Inc. (LRI), stated that the Hertzlers contracted with LRI to provide the topographic and boundary survey of the property. Mr. Grogg stated that the Hertzlers also contracted with Roth Environmental Consultants to get the wetlands delineated and confirmed by the Army Corps of Engineers. Mr. Grogg further stated that The United States Army Corps of Engineers had been on site and found no wetlands violations.

Mr. Polster inquired if this pond would be subject to the County's review of Best Management Practices every five years.

Mr. Grogg stated that the pond would be subject to review and further, that it would have a maintenance plan.

Mr. Polster inquired if the mulch and soil stockpiles would require any type of concrete storage facility.

Mr. Grogg stated that the concrete facilities could be helpful and that they could consider them during the site plan review.

Mr. Holt noted that the concrete barriers are mostly necessary when dealing with a final product where its integrity needs to be preserved.

Mr. Polster stated that his question stemmed from the possibility of the manure leaching out and impacting the pond

Mr. Joshua Mayes, 135 Racefield Drive, addressed the Commission in opposition to the application.

As no one further wished to speak, Mr. O'Connor closed the Public Hearing.

Mr. O'Connor opened the floor for discussion.

Mr. O'Connor inquired if there would be improvements on Barnes Road associated with the development of the Hazelwood property.

Mr. Holt stated that the conditions for the Hazelwood property specifically state that there shall not be any improvements to Barnes Road.

Mr. Haldeman inquired if the property owner has been paying taxes on the property assessed as a business or assessed as undeveloped property.

Mr. Holt stated that staff would follow up with real estate assessment.

Mr. Polster stated that the Traffic Impact Analysis for the Hazelwood property discussed modifications to the traffic signal at Barnes Road.

Mr. Krapf inquired if the prior SUP denial meant that none of the existing operations should be on the site.

Mr. Crump responded that the prior SUP was to bring the property into conformance with the Zoning Ordinance and that all uses were denied.

Mr. Krapf made a recommendation to amend SUP Condition 9A to read: Existing vegetation in the buffer areas shall be retained and supplemented as necessary with additional plantings, a majority of which shall be native species to meet the requirements of Section 24-96 of the County Code.

Mr. Krapf stated that the Planning Commission role is not one of enforcement but determining if the use is appropriate for the property and conforms with the Zoning Ordinance and the Comprehensive Plan. Mr. Krapf stated that if the SUP is approved, the recommended conditions will bring the use into conformance. Mr. Krapf further stated that no matter how poorly the process was managed for 20 years, this would become a legally conforming business. Mr. Krapf stated that there have been other cases where businesses have been operating without the proper approvals and they have been brought into compliance. Mr. Krapf noted that this is no different although it is on a larger scale.

Dr. Rose stated that it is apparent that there have been ongoing impacts to the area and that those impacts to the community will continue regardless of whether the activities come up to code.

Mr. Polster stated that he believes the applicant is making a good faith effort to bring the property into compliance. Mr. Polster noted that the majority of adjacent properties are owned by the applicant and serve as a buffer to other property owners. Mr. Polster further stated that this is a business which should benefit the County with revenue from business taxes. Mr. Polster stated that the property owner is trying to do the right thing and they should be given the opportunity to make the necessary improvements. Mr. Polster stated that he intends to support the application.

Ms. Null stated that many of the complaints were related to excessive noise outside of normal hours. Ms. Null inquired about who would be responsible for enforcing the hours of operation.

Mr. Polster stated that the County would be able to fall back on the SUP conditions where there is a complaint.

Mr. O'Connor stated that he feels that approving the application would essentially be rewarding bad behavior; however, the Commission is neither a punitive body nor an enforcement body. Mr. O'Connor stated that the Commission's job is to work with the application that was submitted from a land use perspective. Mr. O'Connor stated that he views this application as meeting the Comprehensive Plan goal of encouraging and preserving an agricultural and forestal economy in rural lands. Mr. O'Connor stated that there have been concern about truck traffic for other similar uses and those applicants came into compliance with the SUP conditions. Mr. O'Connor further stated that it is important to look at what would come out of approving the application. Mr. O'Connor stated that ultimately there would be a site that is compliant and good for the wetlands with thriving business that is a different economic use for rural lands.

Mr. Polster made a motion to recommend approval of the application with the amended SUP Condition 9A.

On a roll call vote, the motion to recommend approval of SUP-20-0010. Hertzler Clearing and Grading did not carry (3-4).

4. SUP-22-0019. 4090 Ironbound Road Detached Accessory Dwelling

A motion to Approve was made by Jack Haldeman, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Haldeman, Krapf, Null, O'Connor, Polster, Rodgers, Rose

Ms. Paxton Condon, Deputy Zoning Administrator, stated that Mr. Hoa Huynh has applied for an SUP to allow a detached accessory apartment at 4090 Ironbound Road. Ms. Condon stated that the applicant proposes to convert part of an existing detached garage into a detached accessory apartment. Ms. Condon stated that the property is zoned R-2, General Residential, and is designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map.

Ms. Condon further stated that the single-family dwelling on the property is currently occupied by the applicant and building permits have been submitted for the proposed alterations and are under review. Ms. Condon stated that the existing structure is 896 square feet, and the proposed accessory apartment will be 394 square feet. Ms. Condon stated that the remaining portion of the structure will continue to be used as a garage.

Ms. Condon stated that the R-2 Zoning District allows detached accessory apartments as a specially permitted use in accordance with Section 24-32(b) of the James City County Code. Ms. Condon stated that staff has reviewed the proposed design and finds that all requirements have been met.

Ms. Condon further stated that staff also finds this proposal to be compatible with surrounding development and consistent with the 2045 Comprehensive Plan. Ms. Condon stated that staff recommends that the Planning Commission recommend approval of this application to the Board of Supervisors, subject to the proposed conditions.

Mr. O'Connor opened the Public Hearing.

Ms. Noel Mahler, 4090 Ironbound Road, applicant's representative, addressed the Commission in support of the application.

As no one further wished to speak, Mr. O'Connor closed the Public Hearing.

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

On a roll call vote, the Commission voted to recommend approval of SUP-22-0019. 4090 Ironbound Road Detached Accessory Dwelling. (7-0)

G. PLANNING COMMISSION CONSIDERATIONS

There were no items for consideration.

H. PLANNING DIRECTOR'S REPORT

1. Planning Director's Report - November 2022

Mr. Holt stated that he did not have anything to add to the information that was provided in the Agenda materials.

Dr. Rose noted that there are some issues with parking for the Frothy Moon Brewery.

Mr. Holt stated that there was an approved shared parking plan with the adjacent business. Mr. Holt stated that Parks and Recreation is actively monitoring the situation and working with the business owner to reach a better solution. Mr. Holt stated that the grassy area is slated for plantings with trees and shrubs which should take care of that situation. Mr. Holt stated that the business owner has been very responsive to preventing parking in the VDOT right-of-way.

Mr. O'Connor inquired if there was anything to report from the public input gathered regarding Route 199 and Jamestown Road.

Mr. Holt stated that VDOT is currently distilling the information and will provide a report sometime in the next several months.

Mr. Haldeman noted that the traffic projections for Route 199 for the next 20 years indicate that the road will not meet demand. Mr. Haldeman further stated that the land use planning for the City of Williamsburg and the County did not account well enough for infrastructure.

Mr. Rodgers inquired about notifications sent to residents about legislative cases.

Mr. Holt stated that immediately adjoining property owners receive a letter. Mr. Holt further stated that Public Hearing signs are posted at the subject properties. Mr. Holt stated that the hearing is advertised in the *Virginia Gazette*, and the Agenda materials are posted on the Agendas page.

I. PLANNING COMMISSION DISCUSSION AND REQUESTS

Mr. Polster stated that with solar farm approvals, he would like to see maintenance and plantings plan added to the site plan review process. Mr. Polster stated that this might also apply to cases where buffers were required.

Mr. Holt stated that this could be incorporated in the series of Ordinance amendments to align the Zoning and Subdivision Ordinances with the 2045 Comprehensive Plan. Mr. Holt further stated that staff could manage these consistency and conditions recommendations over the short term and then consider them with desired improvements to the Landscape Ordinance.

Mr. Holt stated that the ordinance amendments would then apply to both legislative and by-right applications.

Mr. Polster further stated that he would recommend that monitoring and periodic review be included in the requirements as appropriate.

Mr. Holt stated that expectations for maintenance is difficult to be included in early discussion. Mr. Holt stated that this aspect should be tailored to the individual situation when final plans are presented. Mr. Holt further stated staff does have the ability to provide very basic suggestions and examples that can be developed by the applicant.

Mr. Krapf stated that he concurs with incorporating these requirements in plan review. Mr. Krapf stated that this should be part of the culture that native plants are used.

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

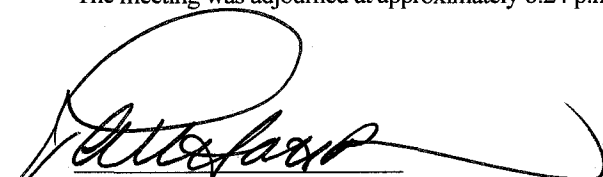
Mr. O'Connor stated that he would be out of town in December and that Mr. Polster would chair the December 7, 2022, meeting.

Mr. O'Connor expressed appreciation to the Commissioners for their diligence and consideration of the applications.

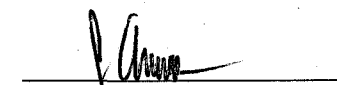
J. ADJOURNMENT

Ms. Null made a motion to adjourn.

The meeting was adjourned at approximately 8:24 p.m.



Paul D. Holt, III, Secretary



Tim O'Connor, Chairman