

MINUTES
JAMES CITY COUNTY POLICY COMMITTEE
REGULAR MEETING
Building A Large Conference Room
101 Mounts Bay Road, Williamsburg, VA 23185
May 9, 2019
4:00 PM

A. CALL TO ORDER

Ms. Julia Leverenz called the meeting to order at approximately 4:00 p.m.

B. ROLL CALL

Present:

Julia Leverenz, Chair
Rich Krapf
Tim O'Connor

Absent:

Jack Haldeman

Staff:

Paul Holt, Director of Community Development and Planning
Ellen Cook, Principal Planner
Tammy Rosario, Principal Planner
Tom Leininger, Planner
John Risinger, Community Development Assistant
Max Hlavin, Deputy County Attorney

C. MINUTES

1. April 11, 2019 Meeting Minutes

Ms. Leverenz stated that "York County" should be added to the last sentence of the first paragraph for Item D.1. She stated that the end of the minutes for Item D.1 should reference the next step of the process for the Ordinance amendment.

Mr. Rich Krapf made a motion to approve the April 11, 2019, meeting minutes as amended.

The motion passed 3-0.

D. OLD BUSINESS

1. Proposed Ordinance Amendments to Address Code of Virginia Changes Regarding Wireless Communication Facilities, Stage I

Mr. Thomas Leininger stated that in 2017 and 2018, the General Assembly passed legislation requiring changes to how local Zoning Ordinances may treat applications for wireless communication facilities. He stated that the County would need to update its Zoning Ordinance to be consistent with state and federal requirements. He stated that the new legislation classifies Small Cell Facilities (SCF) projects in two ways. SCFs installed on new structures are classified as Administrative Review Eligible Projects (AREP) - Criteria 1. SCFs installed on existing structures are classified as Small Cell Facilities. He stated that other wireless communication facility projects have three classifications. AREP - Criteria 2 classifies the co-location of wireless facilities on existing structures. Standard Process Projects classify other

types of wireless communication facilities projects such as new towers. Maintenance/Replacement classifies routine maintenance or the replacement of wireless facilities or wireless support structures within a six-foot perimeter wireless facilities or wireless support structures that are substantially similar, or the same size or smaller. He stated that the legislation does not permit the County to require a Special Use Permit, special exception or variance for any application that meets one of the two AREP criteria or for SCFs. He stated that staff recommends creating a new category of the Ordinance for SCFs and AREP – Criteria 1 applications. He stated that staff recommends eliminating or combining the multi-antenna systems category with the new SCF category. He stated that amendments would need to be made to the submittal requirements and review process for new and existing towers. He stated that changes to the process may result in changes to the fee amounts and review times.

Ms. Leverenz asked where the definitions for communication facilities are in the Zoning Ordinance.

Mr. Leininger stated that the definitions are in Section 24-2 of the Zoning Ordinance.

Ms. Leverenz asked if “communication facilities, antennas, towers and/or support structures” (CATS) was a commonly used term.

Mr. Leininger stated that the term was created in 2016 with the last amendment to the wireless communication facilities Ordinance.

Mr. Krapf asked how existing towers would be impacted by the new legislation.

Mr. Leininger stated that adding or the co-location of antennas on existing towers would fall under AREP – Criteria 2 and the replacement of antennas would fall under Maintenance/Replacement.

Mr. Krapf stated that staff’s recommendation to include a new category in the Ordinance for SCFs make sense. He asked if there would be further discussion before staff creates a draft of the proposed Ordinance amendments.

Mr. Leininger stated that staff would create a draft of the Ordinance unless there were additional points the Policy Committee would like to discuss.

Ms. Leverenz asked if SCFs could be required to go through administrative review.

Mr. Leininger confirmed.

Ms. Leverenz stated that the main changes with the new legislation are the required review process for different types of wireless communication facilities. She stated that it might make sense to structure the Ordinance so that sections that apply to all wireless communication facilities are listed first. She stated that a section could then be added to list out which review process would be required for the different types of wireless communication facilities.

Mr. Paul Holt stated that updating the Ordinance in two phases may be beneficial for managing staff workloads. He stated that bringing the Ordinance into compliance with the new legislation would be the first priority.

Mr. Krapf asked if creating a table for the different communication facilities and their requirements would make it easier to comprehend.

Ms. Cook stated that staff would consider using tables or other forms of organization when creating the draft Ordinance.

Mr. Tim O'Connor stated that he has concerns about how many SCFs would be needed to provide coverage across neighborhoods and whether there would be consistency with the type of poles used to mount SCFs.

Mr. Leininger stated that examples of SCFs found in the City of Virginia Beach and the City of Norfolk had the antennas on top of the pole.

Mr. O'Connor stated that SCF technology is still advancing and having a separate section within the Communications Facilities Ordinance would make future Ordinance amendments for the section easier.

Ms. Leverenz agreed. She stated that she would like staff to consider when a more comprehensive update of the Communications Facilities Ordinance would be viable. She asked how the new regulations would affect the administrative review of Communication Facility applications.

Mr. Leininger stated that the overall process would remain the same. He stated that when an application is submitted, staff would need to determine which category it falls under and determine if it is a complete application within 10 days. He stated that fees would be different for SCF applications and that up to 35 SCFs could be shown on one site plan.

Ms. Leverenz asked how many applications for Communication Facilities have been submitted in the past five years.

Mr. Leininger stated that most of the applications received by the County are amendments for existing towers. He stated that he was not aware of any recent application for a new tower.

Ms. Leverenz asked if any applications had been submitted for SCFs.

Mr. Leininger stated that he is expecting to receive applications for SCFs in the future.

Mr. Holt stated that other localities in the Hampton Roads area have started to receive applications for SCFs. Mr. Holt stated that most of the recent applications received by the County were to update the technology on existing towers. He stated that the next trend of applications would likely be to provide support for 5G technology on new towers.

Ms. Leverenz stated that a summary of the discussion was that staff would tweak the existing Ordinance to bring it in to compliance with the Code of Virginia while also considering the possibility of a complete rewrite of the Ordinance.

Mr. Holt stated that there might be a point in the future where it is more advantageous to rewrite the Zoning Ordinance entirely than to rewrite individual Ordinances.

Ms. Leverenz asked what would happen if an application is received before the Ordinance was amended.

Mr. Max Hlavin stated that staff would have to abide by the requirements in the Code of Virginia.

Mr. Holt stated that if an application was received, staff would analyze the Ordinance and the Code of Virginia to determine what regulations would apply.

Mr. Hlavin stated that the Ordinance amendment would make it easier to follow for staff and applicants.

Mr. O'Connor asked if the procedure for height waivers was determined by the Code of Virginia or by the Zoning Ordinance.

Mr. Holt stated that the procedure is defined in the Zoning Ordinance.

Ms. Leverenz asked if there were any further questions.

There were none.

E. NEW BUSINESS

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

Mr. Holt stated that in 2016, the General Assembly passed legislation that created barriers for localities implementing proffers. He stated that some of those barriers were removed in legislation passed during the 2019 Session of the General Assembly. He stated that amending the Ordinance would take place in two phases. He stated that the first phase would be to amend the Section 24-16 of the Zoning Ordinance to delete the sentence that prohibits proffers from being accepted.

Mr. Krapf asked if the second phase would be scheduled for future Policy Committee meetings to discuss the implementation and procedures for accepting proffers.

Mr. Holt confirmed.

Mr. O'Connor asked if Section 24-16 should state that the unavailability of proffers is not detrimental to the application.

Mr. Hlavin stated that it was not necessary for the current amendment. He stated that other localities in Virginia are including specific procedures in their proffer Ordinances. He stated that future discussions could be held to determine if the County should have specific procedures in Section 24-16.

Mr. Holt stated that the Code of Virginia lists specific procedures for proffers. He stated that it may be beneficial to have a broad approach for Section 24-16 so that the Ordinance may not need to be amended if changes are made to the Code of Virginia.

Mr. Krapf made a motion to approve Case No. ORD-19-0001. The motion passed 3-0.

Mr. Holt stated that the second phase of the discussion would be about proffer policies that had been rescinded by the Board of Supervisors (BOS) as a result of the legislation passed in 2016 by the General Assembly. He stated that the Policy Committee did not need to take any action during the meeting and that the discussion would be preliminary. He stated that the new legislation passed by the General Assembly requires that proffers contribute to a future needed capacity. He stated that the Outstanding Specimen Tree Option Guidelines and the Natural Resources Policy could be reinstated without changes. He stated that the Route 5 Road Improvement Proffer Policy could not be reinstated because the current traffic studies do not show a need to widen Monticello Avenue. He stated that the Cash Proffer Policy for Schools, Housing Opportunities Policy, and the Residential Redevelopment Policy would need to be altered before they could be reinstated. He stated that staff will continue to work on those three policies and then present their findings to the Policy Committee at a future meeting.

Ms. Leverenz asked if this would have any impact on the Parks and Recreation Master Plan.

Mr. Holt stated that the Parks and Recreation Master Plan had references to proffers for Parks and Recreation facilities and a cash-in-lieu option that had to be removed as a result of the 2016 legislation passed by the General Assembly. He stated that staff is analyzing the possibility of reinstating the cash-in-lieu option.

Ms. Leverenz asked if Section 24-16 could be amended to state that the acceptability of proffers shall be in accordance with the Code of Virginia in effect at the time of the application.

Mr. Hlavin stated that the legislation permits localities to adopt proffer Ordinances with limitations but does not guide the process. He stated that the legislation is supplemental to additional legislation related to conditional zoning.

Ms. Leverenz asked if a resolution for the proffer policies would follow the amendment to Section 24-16.

Mr. Holt confirmed.

Ms. Leverenz asked if the BOS might want to give staff priorities for the policies that need to be reviewed.

Mr. Holt stated that the BOS could give staff priorities for reviewing the policies.

Ms. Leverenz asked if the Policy Committee needed to take any action for the proffer policies.

Mr. Holt stated that no action was necessary. He stated that the policies will be discussed at a future Policy Committee meeting.

Mr. Hlavin stated that some of the past proffer policies would not be re-implemented.

Mr. Holt stated that the pedestrian and bicycle accommodations Ordinance and the standards for archaeological studies Ordinance had been adopted to replace their respective proffer policies.

Mr. O'Connor asked if Commissioners would be able to discuss desired proffers with applicants if the Ordinance amendment is adopted.

Mr. Hlavin stated that the Commissioners could verbally discuss desired proffers with applicants. He stated that a written request for a proffer from the governing body could result in a claim by the applicant.

Mr. O'Connor asked if a brief summary of the new legislation could be presented to the Planning Commission at a future meeting so that the Commissioners are aware of how they will be able to discuss proffers with applicants.

Mr. Holt stated that the updated Comprehensive Plan will result in new data that will better represent cumulative impacts and their costs. He stated that future discussions regarding proffers could be held after the Comprehensive Plan is adopted. He stated that the new legislation allows localities to assess impact fees. He stated that the Board may request for staff to research options related to impact fees.

Ms. Leverenz asked if the General Assembly might be interested in making additional changes to proffers in the next couple of years.

Mr. Hlavin stated that the General Assembly might wait to see the results of the 2019 legislation before seeking to make additional changes.

Mr. Holt stated that the next meeting for the Virginia Coalition of High Growth Communities might generate more feedback on the results of the 2019 legislation.

Ms. Leverenz asked if the 2019 legislation would have had changed the way the Forest Heights Master Plan and Proffer Amendment was reviewed.

Mr. Hlavin stated that the Forest Heights application was being reviewed under the legislation prior to 2016.

Mr. O'Connor asked if there would be a proffer for emergency services.

Mr. Holt stated that there was not an official policy regarding proffers for emergency services.

Ms. Leverenz asked if there was any further questions.

There were none.

2. Proposed Zoning Ordinance Amendment to Section 24-111, Temporary Offices

Mr. Holt stated that an application for an overhead power line to a temporary office had been heard by the Development Review Committee (DRC) in 2018. He stated that the DRC had requested staff to examine whether the Ordinance could be amended to make the process smoother. He stated that the Policy Committee could discuss the included draft Ordinance and that the next step would be for the Planning Commission to vote on an initiating resolution.

Mr. Krapf stated that the existing process was cumbersome for staff and applicants to obtain a waiver for a temporary overhead power line for a temporary office.

Mr. Holt stated that the proposed Ordinance amendment added a provision for staff to analyze whether a temporary office would need a waiver granted by the Planning Commission for overhead utilities. He stated that Section 24-111 (9) b on the proposed resolution could also be amended to state that any overhead electrical services must be removed when the temporary office is removed.

Ms. Leverenz asked if it should state any visible utilities instead of overhead electrical service.

Mr. O'Connor stated that it would be better to define it as overhead utilities instead of visible utilities because an electric meter used during construction could be left in place for permanent operation. He asked if the proposed language for Section 24-111 (8) should state applicant instead of application.

Mr. Holt stated that made more sense within the context of the language.

Ms. Leverenz asked if the proposed language for Section 24-111 (8) should state "If the Director of Planning finds that it is not practicable for the application to meet one or more of the requirements...".

Mr. Holt stated that the proposed language would be interpreted the same way as it would with "one or more" being included.

Mr. O'Connor asked if there was a limitation to the amount of times the time period for the temporary office could be extended.

Mr. Holt stated that there was not.

Mr. O'Connor asked if Section 24-111 (9) should only state that the temporary office shall be removed within 60 days of the completion of construction.

Mr. Holt stated that the one-year time period is helpful to provide a check in point between staff and the applicant.

Mr. O'Connor asked if the extension of the time period for a temporary office should be another one-year time period.

Mr. Holt stated that not defining the length of the extension allows staff to have flexibility for the situation.

Mr. Krapf made a motion to approve the draft Ordinance as amended.

Mr. Holt stated that the discussed amendment to the draft Ordinance was for Section 24-111 (9) b to state "The temporary office and any overhead electrical and associated equipment shall be removed from the site within 60 days after the completion of construction."

Mr. O'Connor asked if the language should reference any overhead utility.

Mr. Holt stated that the language could state "any overhead utility" instead of "any overhead electrical and associated equipment."

Mr. O'Connor confirmed.

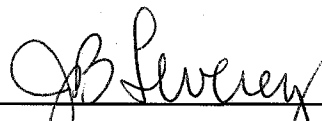
Ms. Leverenz stated that the motion was to approve the draft Ordinance as amended for Section 24-111 (9) b to state "The temporary office and any overhead utility shall be removed from the site within 60 days after the completion of construction."

The motion passed 3-0.

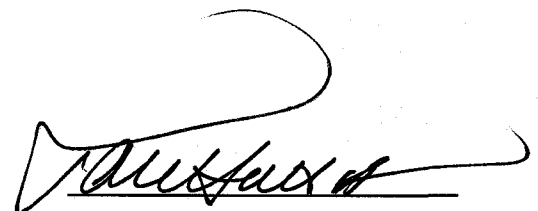
F. ADJOURNMENT

Mr. Krapf made a motion to Adjourn. The motion passed 3-0.

Ms. Leverenz adjourned the meeting at approximately 5:30 p.m.



Ms. Julia Leverenz, Chair



Mr. Paul Holt, Secretary