

**New Kent County
Planning Commission
Minutes**

Monday, September 15, 2003

Chairman Hathaway called the meeting to order.

Members Present:

Louis Abrams	Present
Jack Chalmers	Present
Mark Daniel	Present
David Frank	Present
Howard Gammon	Present
Jay Hubbard	Present
Milton Hathaway	Present
Julian Lipscomb	Present
Edward Pollard	Present
Marty Sparks	Present
Robert Stroube	Present

Also Present:

George Homewood, Planning Director
Theresa Carter, Planning Technician
Lamont Myers, Economic Analyst
Courtney Jones, Environmental Planner
Phyllis Katz, County Attorney

IN RE: ROLL CALL AND ESTABLISHMENT OF A QUORUM

Chairman Hathaway asked for roll call and established that there was a quorum.

IN RE: MINUTES

Mr. Sparks moved that the minutes of the July 8 work session be approved, seconded by Mr. Chalmers. Motion adopted unanimously by roll call vote.

Dr. Stroube moved that the minutes of the July 21 meeting be approved, seconded by Mr. Abrams. Motion adopted unanimously by roll call vote.

Mr. Frank moved that the minutes of the August 26 work session be approved, seconded by Mr. Sparks. Motion adopted unanimously by roll call vote.

IN RE: PUBLIC COMMENT

Doug Houston Historical Path Road resident, had two points of order he wanted clarified before the meeting (public hearings) began. He stated that he realized that there was a fine line between being a good neighbor and good friend and a conflict of interest. According to Mr. Houston, Mr. Lipscomb had been seen at the vineyard tending to the grapevines and the developers of the Farms of New Kent apparently have employed Mr. Lipscomb's son. He went on to say that it appeared that the proposed water treatment plant that will serve the Farms of New Kent was originally slated to be constructed on property owned by Mr. Lipscomb. Mr. Houston asked the Commission if Mr. Lipscomb did not voluntarily abstain from voting on the applications would he be permitted to vote. His second point of order concerned those persons who spoke in favor of the Farms of New Kent. He asked the Commission to direct those speaking in favor state whether or not they had a financial interest in the proposal.

Reverend Hathaway stated that there was no requirement for those participating in the public portion of the hearing to state that they do or do not have a financial interest in the application and that it would be inappropriate to ask citizens to do so. He added that Mr. Houston's comments about Mr. Lipscomb and his son would be taken under advisement.

IN RE: UNFINISHED BUSINESS

None.

IN RE: PUBLIC HEARINGS

AFD-01-03: Addition to the York River AFD

Mr. and Mrs. Marvin Rhodes have requested to add 40.72 acres to the York River Agricultural and Forestal District. The property is identified as New Kent County tax map parcel 38-1.

The Agricultural and Forestal District Committee met on August 5, 2003 and recommended approval for this addition. Ms. Jones gave the staff report and stated that staff also recommended approval.

Mr. Daniel made a motion to adopt PC-17-03 and forward the application to the Board of Supervisors with a favorable recommendation. Mr. Frank seconded the motion. The motion passed with a roll call vote of 11:0.

AFD-02-03: Addition to the York River AFD

Mr. Robert Hogge has requested to add 64.52 acres to the York River Agricultural and Forestal District. The property is identified as New Kent County tax map parcels 36-19 and part of 36-20.

The Agricultural and Forestal District Committee met on August 5, 2003 and recommended approval for this addition. Ms. Jones gave the staff report and stated that staff also recommended approval.

Dr. Stroube made a motion to adopt PC-18-03 and forward the application to the Board of Supervisors with a favorable recommendation. Mr. Sparks seconded the motion that passed with a roll call vote of 11:0.

AFD-03-03: Addition to the York River AFD

Mr. Charles Harwood has requested to add 108.61 acres to the York River Agricultural and Forestal District. The property is identified as New Kent County tax map parcel 45-99.

The Agricultural and Forestal District Committee met on August 5, 2003 and recommended approval for this addition. Ms. Jones gave the staff report and stated that staff also recommended approval.

Mr. Chalmers made a motion to adopt PC-19-03 and forward the application to the Board of Supervisors with a favorable recommendation. Mr. Frank seconded. The motion passed unanimously with a roll call vote.

AFD-04-03: Withdrawal from the Old Tavern AFD

Mr. J. Harold Black has submitted an application to withdraw two parcels totaling 110 acres from the Old Tavern Agricultural and Forestal District. The property is identified as New Kent County tax map parcels 9-32 and 9-33.

The Agricultural and Forestal District Committee met on August 5, 2003 and recommended approval for this withdrawal. Ms. Jones gave the staff report and stated that staff also recommended approval. She added that the Old Tavern AFD was renewed in 2000 for a 10-year period and that Mr. Black has been made aware that he will have to pay the roll back taxes on the property should it be withdrawn.

Mr. Hubbard asked why Mr. Black requested this withdrawal. Jay C. Francisco, representative for the applicant, stated the Mr. Black is experiencing health problems and is taking steps to get his affairs in order.

Mr. Daniels made a motion to adopt PC-20-03 and forward the application to the Board of Supervisors with a favorable recommendation. Mr. Abrams seconded the motion. The motion passed with a roll call vote of 11:0.

AFD-05-03: Renewal of the East Providence Forge AFD

The East Providence Forge Agricultural and Forestal District is comprised of 646.26 acres and is currently set to expire December 2003.

The Agricultural and Forestal District Committee met on August 5, 2003 and recommended approval for this renewal. Ms. Jones gave the staff report and stated that staff also recommended approval.

Mr. Frank made a motion to adopt PC-21-03 and forward the renewal application to the Board of Supervisors with a favorable recommendation. Mr. Chalmers seconded the motion. The motion passed unanimously with a roll call vote.

AFD-06-03: Renewal of the Pamunkey Church AFD

The Pamunkey Church Agricultural and Forestal District is currently set to expire December 2003. This AFD has a total of 536.77 acres.

The Agricultural and Forestal District Committee met on August 5, 2003 and recommended approval for this renewal with the exclusion of tax map parcels 26 (2) 1, 26 (2) 2, 26 (2) 3 and 26 (2) 4. According to the minutes of the August 5 meeting, Ray Davis suggested that those four parcels be excluded from the renewal because they had been created by the sale of a parcel in the district that was subsequently divided into the four parcels in excess of 25 acres. He had added that he did not want parcels created under the Large Lot subdivision exemption to be added to any districts as such parcels are usually for home sites and not for farming of forestry. Ms. Jones gave the staff report and stated that staff also recommended approval subject to the exclusion of the four noted parcels.

After a short discussion Mr. Abrams made a motion to defer the application until the September 29, 2003 Planning Commission meeting in order for Ms. Jones to collect additional information requested by the Commission concerning the wishes of the owners of the four excluded parcels. Mr. Gammon seconded. The motion passed with a roll call vote of 11:0.

AFD-07-03: Renewal of the Osborn AFD

The Osborn Agricultural and Forestal District is currently set to expire December 2003. The 234.87 acres encompassed by the district is owned entirely by the Harwood Trust.

The Agricultural and Forestal District Committee met on August 5, 2003 and recommended approval for this renewal. Ms. Jones gave the staff report and stated that staff also recommended approval.

Mr. Frank made a motion to adopt PC-23-03 and forward the renewal application to the Board of Supervisors with a favorable recommendation. Dr. Stroube seconded the motion. The motion passed unanimously with a roll call vote.

PUD-1-03: Farms of New Kent
CUP-4-03: Riley and Helen Lowe

New Kent Farms, LLC is requesting to rezone approximately 2,800 acres from A-1 (2,200± acres), R-1 (135± acres) and M-2 (445± acres) to Planned Unit Development authorizing a mixed use development. Application PUD-1-03 also includes certain voluntary proffers that will become part of the overall project in the event this project is approved.

New Kent Farms, LLC has also applied for a Conditional Use Permit to construct a wastewater treatment plant on a portion of a 425-acre± parcel identified as Tax Map 31-70 owned by Riley and Helen Lowe.

Reverend Hathaway addressed the audience to respond to the comments concerning conflict of interest made by Doug Houston during the Citizens Comment portion of the meeting. He explained that each member of the Commission is required by law to state whether or not they have a conflict of interest and that it is responsibility of the member to disqualify himself from the discussion and voting on that application. The Commission has no legal requirement to determine if a member has a conflict of interest. Mr. Lipscomb then addressed the audience to respond to the other comments made by Mr. Houston regarding any involvement Mr. Lipscomb, or his son, has with the Farms of New Kent. He stated that the property originally proposed to house the wastewater treatment plant was not owned by him, but allowed that Mr. Houston may have confused it with the property across the road which had been owned by Mr. Lipscomb. He added that he was interested in the vineyard and that he had been on numerous occasions inspecting its progress. He went on to say that it was in his nature to lend a helping hand when needed and would try to give assistance when asked. He further stated that his son has been employed by the Farms of New Kent as a temporary laborer but added that his son is an adult who is the head of his own household and is in charge of his own affairs.

Reverend Hathaway advised that there were three actions to be discussed in considering the Farms of New Kent proposal; the planning and development proposal, the proffers, and the phasing schedule.

Mr. Daniels declared he was abstaining from any vote called on the application because of a perceived conflict of interest but retained his seat. His real estate firm has been involved in direct negotiations for one of the parcels involved.

Mr. Homewood prefaced the staff report by speaking of the constant meetings and negotiations that led to hundreds of changes to the documents that were being presented at this meeting and of the challenge to staff and development team to keep track of all of those changes.

He explained that during the Planned Unit Development process the first step is the rezoning application that sets forth the general concepts, the “bubble” plan basic parameters, the backbone infrastructure and the basic performance measures. The Approval Ordinance sets out the process for subsequent plan approval and the timing of and relationship between component parts. He went on to add that detailed, fully engineered plans would come later.

Mr. Homewood gave a thorough review of both the PUD and CUP applications using a PowerPoint presentation. Lamont Myers reviewed the proffer statement dated September 15, 2003 which had been distributed at the meeting. Recent changes included the removal of the tie-in with a CDA (Community Development Authority), a new proposed location for the fire station and medical evacuation heliport with improved access to Interstate 64, additional funding for the fire station, a cap of \$1.2 million for the construction and furnishing of a library, and changing the terminology for the medical facility to a “shell building”.

There was a short discussion regarding the CDA. County Attorney Phyllis Katz stated that all references to CDA financing had been removed from the proposed proffers.

Mr. Myers reviewed the Phasing Schedule dated September 15, 2003. He stated that the applicant and staff had worked together to develop the schedule, which is a plan to ensure that the public improvements and proffered amenities were in place when needed. An example is the schedule for the water storage facilities. Prior to the recordation of any subdivision plat that creates lots for sale, the developer will design and provide the surety for completion of that part of the facility that includes the two water wells and the first water storage tank with a capacity of 1.5 million gallons. Construction would have to be completed as a condition of obtaining a building permit for the first non-model dwelling unit. Other items covered by the Phasing Schedule include the wastewater treatment facility, library and community building, site amenities (winery, golf course, and polo field), and commercial and office development.

Proposed Resolution PC-16-03R included the proffer changes and Phasing Schedule. Mr. Myers then outlined a few other changes to the PC-16-03R, most of which were to clarify the language.

Mr. Homewood stated that Land Bays I, II, and III correlate extremely closely with the county’s Comprehensive Plan and meet the definition of rural character and meet the Comprehensive Plan’s goals and objectives for the future of New Kent County and provide for the sort of exceptional living and working environment one expects from a planned unit development. However, Land Bays IV and V stray from the Plan in two significant ways – large-scale suburban density residential development and a relative paucity of commercial development in an area the County has determined it needs to protect and preserve for future economic well being and designated Economic Opportunity. Mr. Homewood stated that staff recommended denial. If the Commission should decide to approve the applications staff believed that the ordinance, proffers and phasing schedule fairly and adequately protects the County and the County’s interests in the long-term development of this project.

The applicant, Pete Johns, asked the Commission for its support and approval of the proposal adding that the property surrounding the Interstate 64 interchange was zoned for business and industrial that would allow many undesirable uses without any of the benefits available with the proposed development. He gave a PowerPoint presentation that summarized many of those benefits as well as the positive fiscal impacts.

Mr. Sparks opened the public portion of the hearing.

- Jim Noctor Kenwood Farms resident, concerned about the impacts on schools and increased traffic as well as the use of roundabouts. He remarked that the proposed development did not fit in with the rest of the county.
- Pat Townsend St. Peters Lane resident, called the proposal a good project but the impact would be too great on fire and rescue, waste management, and the schools. She added that she would like time constraints to be placed on all approved planned unit developments and conditional use permits to ensure that approved projects get underway in a timely fashion. She also had concerns about the roundabouts and noted that New Jersey is now removing them as they have been deemed a safety hazard. She asked that the applications be deferred due to the amount of last minute changes that the Commission may not have had time to fully review.
- Mark Hill Greenwood Boulevard resident, spoke out in opposition to the Farms of New Kent. He is concerned about uncontrolled growth without the necessary infrastructure, government services, and schools to support it. He also remarked that there were 5,000 residential building lots already approved throughout the county.
- Lawrence Maier, Jr. Emmaus Church Road resident, voiced his total opposition to the project and asked the Commission to not give up on the rural atmosphere of the county.
- Lisa Guthrie Wensleydale Drive resident, urged the members to oppose the Farms of New Kent. She highlighted two issues that she believed had serious implications for the county the first of which was the possibility of a property owner lawsuit regarding sewage discharge in the Pamunkey River. She referred to an ongoing case concerning the State Water Control Board and Hanover County in which a property owner is challenging the SWCB permitting process for discharge into the Pamunkey, an EPA designated impaired waterway, claiming that a permit issued would not meet minimum water quality standards. Her second issue dealt with potential legislation that may come before the 2004 General Assembly. She had previously distributed a draft of an amendment to the Code of Virginia titled Adequate Public Facilities.
- David Horsley Providence Forge resident, disagreed with the all of the previous speakers during the public hearing and asked that the project be approved as it will also bring utilities to the commercially zoned land south of Interstate 64. He added that he had commercial holdings that would be improved 100% if the developers are permitted to proceed.

Susan Houston Historical Path Road resident, stated that there were 4,932 lots in the county that had been approved for residential dwellings along with 2,350 lots that had been zoned for homes but not platted. These lots total 7,282 and, if approved, the Farms of New Kent would add 3,800 lots for a grand total of 11,082 lots. She projected that given the known data compiled from the 2000 US Census along with the historical data available on new home construction it will take between 40 and 83 years to reach build out on those 11,082 lots.

Doug Houston Historical Path resident, asked the Commission to consider that there were more than enough lots readily available for new homes without the added impact of the Farms of New Kent and to vote no on the application.

Scott Wegar Courthouse Road resident, noted that the cash positive revenue generated by the project could be used to fund other ventures and infrastructure needs. He added that with the schools already in trouble means of financing other than raising taxes need to be found. He also remarked that there would be additional employment opportunities as a result of the development and that the county should support and promote local businesses.

Phillip Felts Tunstall Road resident, supports the project saying that the negative aspects to the proposed development such as traffic and pollution are outweighed by the positives. He added that the proposed development is well planned and coordinated, not hodgepodge and that the County never would realize any positive fiscal impact from piecemeal development.

Kevin Eddows Halstead Lane resident, stated that he was in favor of the Farms of New Kent and that economic growth will not occur without rooftops. He added that he did not want in his neighborhood the type of development allowed with the current M-2 zoning.

Cindy Clark Parrish Road resident, 1 mile south of Interstate 64, stated that the proposed wastewater treatment plant would be almost in her front yard and that she would not have purchased the property had she known that something like this could be built so close to her home. She added that given her occupation she has seen other age-restricted communities that always seem to have residing there an abundance of school-aged children. She asked who would monitor the residents of the proposed age-restricted element of the development.

Jennifer Caldwell Old Nottingham Road resident, stated that she does not believe when told that this development would not cost county residents. She also believes that while the applicant declares that job

opportunities will be created, they will be low paying. She asked the Commission to deny the application.

Willie Downs Crumps Mill Road resident, voiced his disappointment the 550 foot buffer originally planned for the area adjacent Crumps Mill as well as other historic sites has been whittled down to 300 feet.

Gary Green New Kent County resident, cannot believe that 500 acres of industrial development would be considered more rural than 1,100 acres of high quality homes. He remarked that the county will not have economic development without water and sewer, which is something the applicant has proffered. He urged the Commission to give the application a positive recommendation.

Rebecca Wegar North Courthouse Road resident, gave her support because the proposed development means planned growth rather than ad-hoc, random growth and would provide infrastructure, jobs, and consumers needed to support local businesses. The development would encourage additional tourism in the area, with folks stopping to visit the winery or play golf. She asked the Commission to recommend approval.

Shelia Morris New Kent Highway resident, updated the members on the present status of the schools and stated that the schools were already in a crisis without the increase in the rolls from future Farms of New Kent students. She added that the \$2 million proffer to schools would only serve existing and not future problems.

Rusty Foley Henrico resident, represents the owners of the Schiminoe tract, stated that he was in favor of the project and that the greatest benefit to be derived from the Farms of New Kent would be the water and sewer made available to the south side of Interstate 64 that will open up approximately 2,000 acres of property for commercial development.

Mr. Sparks closed the public portion of the hearing.

After a lengthy discussion that ranged from the historic area buffers to political risks associated with an age-restricted population, Mr. Chalmers made a motion to forward applications PUD-1-03 and CUP-4-03 to the Board of Supervisors with an unfavorable recommendation, seconded by Mr. Abrams. Mr. Frank made a substitute motion to adopt Resolution PC-16-03R and forward the applications to the Board of Supervisors with a favorable recommendation. Mr. Hubbard seconded the motion.

Mr. Frank remarked that he was opposed to the proposal at first and it has taken a lot to change his mind. Mr. Pollard suggested that the Commission defer the application until the next regularly scheduled meeting considering the abundance of new information that was made available just today. Reverend Hathaway voiced his concerns about the size and scope of the proposed development but added that he preferred a single developer where the end product could be controlled rather than

development handled piecemeal. He went on to say that the Commission had spent more time on this application than any other in the past twelve years and that he felt the proposal had been given due consideration. Mr. Lipscomb added that the revised proffers that were received prior to the meeting were very similar to the version provided on the previous Thursday.

Reverend Hathaway called for a vote on the substitute motion that recommended approval. The motion failed on a roll call vote of 5:5:1.

Abrams	No
Chalmers	No
Daniel	Abstain
Frank	Yes
Gammon	No
Hathaway	Yes
Hubbard	Yes
Lipscomb	Yes
Pollard	Yes
Sparks	No
Stroube	No

Reverend Hathaway thereupon called for a vote on the original motion to forward the application with an unfavorable recommendation. The motion failed on a roll call vote of 5:5:1.

Abrams	Yes
Chalmers	Yes
Daniel	Abstain
Frank	No
Gammon	Yes
Hathaway	No
Hubbard	No
Lipscomb	No
Pollard	No
Sparks	Yes
Stroube	Yes

Mr. Frank made a motion to forward applications PUD-1-03 and CUP-4-03 to the Board of Supervisors with no recommendation. Mr. Pollard seconded. The roll call vote was 10:0:1 with Mr. Daniel abstaining.

RE: NEW BUSINESS

S-36-03: Bailey's Ridge Parent Tract Subdivision

Mr. Homewood advised the Commission that there was a single item of new business that was not announced on the agenda or in the meeting packets. He apologized for the late item, but indicated that the subdivider (who was not identified) was anxious to

obtain a decision. He distributed copies of a proposed subdivision indicating that it is a proposed subdivision of three adjacent parcels under the parent tract provisions with subsequent boundary lines adjustments that produce a total of six lots all to be served by a single driveway that is substandard by any measure found in the County Code. The applicant is requesting permission to do this because each lot is only being divided once and a passage in the Code suggests that such 1-lot divisions can be permitted with a shared driveway, yet another passage in the same section states that all lots must be accessed by a standard private road in a 50-foot right-of-way. Because of the confusion within the Code and since all six lots are on the same driveway that exceeds 2,500 feet and has a width at the intersection with Mountcastle Road of only 15 feet, Mr. Homewood indicated that staff was referring it to the Planning Commission for review as is specifically provided for in the Code. After considerable discussion, the Commission reached consensus that this subdivision could not be approved because it has the effect of making an existing bad situation worse and that the single access, albeit existing and already serving three lots, would have to meet the private road standards of the ordinance or become a public road. Mr. Homewood was directed by the Commission to so inform the applicant.

RE: CHAIRMAN'S REPORT

Mr. Homewood announced that Mrs. Carter has submitted her resignation effective September 19, 2003. Reverend Hathaway stated that this was the worst possible time for staff turnover, given the number of developments slated for consideration. He recommended sending to the Board of Supervisors a strong request for additional staff and to increase salaries in order to maintain the Planning Division staff. Mr. Gammon made a motion directing Mr. Homewood to prepare a resolution to forward to the Board of Supervisors asking for the money to acquire and maintain adequate staff in the Planning Division of the Community Development Department. Mr. Hubbard seconded. The motion passed with a 10:0:1 roll call vote. Mr. Lipscomb abstained.

RE: RRPDC REPORT

None given.

RE: COMMISSIONER'S REPORT

None given.

RE: STAFF REPORT

Mr. Homewood reminded the Commission members that a public hearing to receive citizen comment on the Patriot's Landing planned unit development application had been scheduled for 7:00PM on Monday, September 29, 2003. A work session had also been scheduled for 6:30 PM on Tuesday, September 30, 2003 to discuss the Patriot's Landing application.

RE: MEETING SCHEDULE

The next regular meeting is scheduled at 7:00 p.m. on Monday, September 29, 2003 in the Boardroom of the County Administration Building. A work session was scheduled for September 30, 2003 at 7:00 pm in the Old Courthouse.

ADJOURNMENT