

PLANNING COMMISSION
County of New Kent

MINUTES

THE REGULAR MEETING OF THE NEW KENT COUNTY PLANNING COMMISSION WAS HELD ON THE 22nd DAY OF FEBRUARY IN THE YEAR TWO THOUSAND FIVE OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING 6:30 P.M.

IN RE: CALL TO ORDER

Chairman Jay Hubbard called the meeting to order at 6:40 p.m.

IN RE: INVOCATION AND PLEDGE OF ALLEGIANCE

Reverend Milton Hathaway, New Covenant Community Church led the invocation and Pledge of Allegiance.

IN RE: ROLL CALL

Attendance:

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| Jack Chalmers | Present |
| Thomas Evelyn | Present |
| Howard Gammon | Present |
| Sylvia Godsey | Present |
| Mark Hill | Present |
| Jay Hubbard | Present |
| Charna Moss | Absent |
| Edward Pollard | Present |
| Sam Snyder | Present |
| Tommy Tiller | Absent |
| Patricia Townsend | Present |

Also attending:

Rodney Hathaway, Planning Manager
George Homewood, AICP, Director of Community Development
Phyllis Katz, County Attorney
Pam Crosby, Recording Secretary

Chairman Hubbard established that there was a quorum.

IN RE: PRESENTATION

Commendation to Mr. David Frank:

Mr. Rodney Hathaway presented Mr. David Frank with a Resolution commending and thanking him for his service to the County of New Kent.

Mr. Frank commented that he will miss working on the commission and stated that you have your work cut out for you, from here on out it's going to be a lot worse than it was when I served on the commission. You have a lot of tough decisions to make and I feel confident that there is enough knowledge on the commission that you will make proper decisions, but if you have any questions, you have my number.

Commendation to Mr. Mark Daniel:

Mr. Rodney Hathaway presented Mr. Mark Daniel with a Resolution commending and thanking him for his service to the County of New Kent.

Mr. Daniel stated I have my oldest daughter here with me tonight and I would like to thank you for honoring us. I would also like to thank Mr. Frank, Reverend Hathaway, and Mr. Abrams for the chance to serve with you. Thank you so much for all you have taught us.

IN RE: APPROVAL OF MINUTES

A motion was made by Ms. Townsend and second by Mr. Gammon, to approve the minutes of the 18 January 2005 – Regular Meeting as presented.

The members were polled:

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| Jack Chalmers | Aye |
| Thomas Evelyn | Aye |
| Howard Gammon | Aye |
| Sylvia Godsey | Aye |
| Mark Hill | Aye |
| Jay Hubbard | Aye |
| Charna Moss | Absent |
| Edward Pollard | Aye |
| Sam Snyder | Aye |
| Tommy Tiller | Absent |
| Patricia Townsend | Aye |

The motion carried, 9:0:0

A motion was made by Mr. Pollard and second by Mr. Chalmers, to approve the minutes of the 31 January 2005 – Work Session as presented.

The members were polled:

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| Jack Chalmers | Aye |
| Thomas Evelyn | Aye |
| Howard Gammon | Aye |
| Sylvia Godsey | Aye |
| Mark Hill | Aye |

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|-------------------|--------|
| Jay Hubbard | Aye |
| Charna Moss | Absent |
| Edward Pollard | Aye |
| Sam Snyder | Aye |
| Tommy Tiller | Absent |
| Patricia Townsend | Aye |

The motion carried, 9:0:0

IN RE: CITIZEN COMMENT PERIOD

Chairman Hubbard reminded the citizens that at this time the citizen comments would be heard and are limited to those on planning related issues that are not scheduled for a public hearing later on the agenda. Those wishing to speak should sign up on the sheet at the back of the room prior to the meeting is required.

Ms. Gilbey Campbell of Club Drive, Quinton would like to know a functional date for the Water and Sewer system to Patriot's Landing, she would also like to know what the consequences are when the sewer system doesn't make it to its expected deadline.

Staff informed Ms. Campbell that they would forward those questions to the Public Works Department and contact her with a response.

IN RE: UNFINISHED BUSINESS

None.

IN RE: PUBLIC HEARINGS

None.

IN RE: NEW BUSINESS

S-39-04: Dispatch Station Preliminary Subdivision Approval: H.W. Owens, Inc. has applied for preliminary subdivision approval for the Dispatch Station Subdivision. The applicant proposes to create 150 lots with a minimum lot size of 20,000 square feet. Single family dwellings are proposed for each new subdivided lot.

Staff gave a presentation on the proposed preliminary subdivision. The Commission asked questions.

The Commission asked who would connect the sewer system from Rte 249 to the development? Staff responded that this subject property is adjacent to the existing sewer service district. There will be a trunk line in the general vicinity and it is generally the applicant's responsibility to connect.

The Commission asked how far is the main trunk line from the proposed subdivision. Staff responded that we are not sure how far the trunk line is from this property.

The Commission asked will it cost a million dollars. Staff responded, that our Public Works department feels the cost are feasible.

The Commission asked about the \$750 for offsite road improvements? Staff responded that it would be road improvements outside of the development.

The Commission asked in regards to the sewer system and the applicant, what is their rationale for not being part of the sewer district. Chuck Rothenberg, attorney for the applicant responded that the re-zoning for this was done in 1996 and since that time the applicant has spent a substantial amount of money on designing and building a water system. I believe that the applicant is fine with all of the conditions for preliminary subdivision approval with the exception of the requirement that we apply for the sewer district. It is not feasible for a 150 lot subdivision to hook up to the sewer district.

The Commission asked if the County can legally make the applicant connect to the sewer district. Mr. Rothenberg responded that this is an administrative approval.

The Commission stated that if you didn't connect to the sewer, how would the applicant deal with the concern of the impact on the Chickahominy River and the erosion problem. Mr. Rothenberg responded that it is controlled by stated regulations.

The Commission asked if the developer was ready to break ground. Mr. Rothenberg responded that they are ready to dedicate the water system and after this approval go ahead and move forward.

The Commission asked what the price ranges of the homes are. The Applicant responded around \$225,000 - \$240,000 for homes.

Ms. Katz stated that at the last meeting of the Board of Supervisors Chapter 38 of the Code of New Kent County was amended to require any subdivision within a service area to be connected to public water and/or sewer and that within the service areas. She further stated that the Board has not yet adopted the service areas and until that is done, the Chapter 38 amendments can not be applied. Additionally, she informed the Planning Commission that the amendments to Chapter 38 also prohibit "community sewer systems."

The Commission asked if there is any type of grandfather clause allowed for a subdivision. Ms. Katz responded that clearly a subdivision that has been approved would not have to meet the newly adopted amendments. However, this subdivision has not been approved. It has re-zoning but not a subdivision approval. This is the first time that this body is looking at the subdivision. The zoning gives them the right to construct housing on lots of 20,000 square feet.

The Commission stated that the fact is that they are not in the sewer district.

The Commission asked how far are they away from the sewer district. Ms. Katz responded that if they are adjacent to the Williams tract then they are abutting property to the service district.

Mr. Hathaway showed the Commission maps of the service district.

The Commission stated that if they connect is it a safety issue, if they don't connect then there might be some safety concerns. Staff responded because there are some concerns about septic feasibility and the soil there is definitely some concerns that the land may not perk and would require an alternative septic system, we don't want the home owners to purchase a lot that does not perk. That condition is only asking the applicant to make a request to the Board of Supervisors, so that the board can consider the feasibility of connecting them to the sewer service district.

The Commission stated unless we are reading this map wrong that area is included into the service district. Staff responded it is included into the proposed service area.

The Commission stated that they don't see anything in reference to Affordable Housing. Staff responded that when this application was filed there were no affordable housing policy in place. The Commission stated so they are not obligated to the 12% rule. Staff responded that is correct they are not obligated to the 12% rule; actually no one is, as you know staff had proposed to form a board to look at creating a policy for Affordable Housing but it was voted down by the Board of Supervisors. Ms. Katz stated that it is only in a re-zoning that Affordable Housing can be put in place.

The Commission asked about the staff recommendation on streetlights it states: "At a minimum, streetlights shall be provided by the subdivider at roadway intersections and at such other locations as may be designated by the agent in consultation with Department of Transportation and the Fire Chief." Does the county have a policy regarding streetlights? Staff responded that this is something that we should have in fact we do have this in the new subdivision ordinance that is being considered by the Board of Supervisors.

The Commission asked the applicant how they feel about the requirement regarding streetlights. The applicant responded that they feel it is very important that at the entrance there be a streetlight and we don't mind adding streetlights inside the community.

Mr. Rothenberg commented on not understanding the point in having to apply for the sewer system and doesn't feel that this project is feasible for having to connect to the sewer trunk line. The applicant has already spent money and time in having a water system designed

Ms. Katz inquired if the applicant has already spent money and made plans for the septic systems and/or have they applied for the septic permit application with the Health Department.

Mr. Rothenberg responded that he does not know if they have done that and his comment was made towards the water system that has been designed and built and is ready to be implemented.

The Commission has concerns and understands on where the applicant is coming from and suggests that we table this application in order to give the applicant and staff time to review all possibilities.

The Commission also has concerns for the soil and erosion that could occur with 150 septic tanks and having them eventually end up at the Chickahominy River.

A motion was made by Ms. Townsend and second by Mr. Pollard to defer Resolution No. PC-36-04 to approve Application S-39-04 Preliminary Subdivision Approval until the next regularly scheduled meeting. Mr. Rothenberg stated that he believes that if the action is deferred the time period to act on the application would have passed.

[At this point Mr. Rothenberg approaches Ms. Katz and they have a discussion]

Ms. Katz informed the Commission of the substance of the side discussion. She stated that the Code of Virginia requires that the Commission to act on a subdivision application within 90 days. Ms. Katz, stated that without more facts she could not determine if the 90-days is today or will have past before the next meeting - there is always a question when an application is submitted as to whether it is complete and without additional facts she could not tell what date the completed application was received. The consequences of not approving within the 90 days are that the applicant has the right to then take it to circuit court for approval.

Mr. Homewood stated that the applicant deferred this application on at least one occasion.

Kenneth Owens the applicant commented on the process in which this application has taken. He also stated that he had a meeting with the Public Works Department and it was decided that this project was moving to fast and would be way ahead of the plans for the water and sewer services.

The Commission asked the applicant when they plan on starting construction; the applicant responded that they would like to start as soon as they get approval.

Staff stated that if the Commission chooses to consider this application for approval, I would like to bring your attention to Section 90-115. Environmental Impact Statement. Our main reason for requesting that they connect to the water and sewer system is to protect the environment and I wanted to make you aware of another option. Section 90-115 the fourth or fifth sentence states that: *If the property of the applicant adjoins, abuts, surrounds, contains or is in a resource protection area, an environmental impact statement will be mandatory.* You can request that the applicant submit an environmental impact statement for this development.

Mr. Mark Daniel commented that the study was required in 1996 and was submitted at that time. Staff responded stating that the current staff has not reviewed any such statement that may have been submitted in 1996. Mr. Rothenberg stated that it has never been a requirement that has been imposed for this project.

Staff stated that their main concern has always been the protection of the environment. Staff has not proposed the requirement of an Environmental Impact Statement in the staff report because staff felt that if all lots were on a public sewer system it would not be needed. Staff is know proposing an Environmental Impact Statement, simply as another means of providing environmental protection.

The Commission asked if it could be two or more years before they could connect to water and sewer. Staff responded that the South side of I-64 the Board of Supervisors is continuing to promise that in January 2006 timeframe on the North side of I-64 is three or four months behind the South side.

A motion was made by Ms. Townsend and second by Mr. Pollard to defer Resolution No. PC-36-04 to approve Application S-39-04 Preliminary Subdivision Approval until the next regularly scheduled meeting.

The members were polled:

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|-------------------|---------|
| Jack Chalmers | Aye |
| Thomas Evelyn | Nay |
| Howard Gammon | Aye |
| Sylvia Godsey | Nay |
| Mark Hill | Abstain |
| Jay Hubbard | Nay |
| Charna Moss | Absent |
| Edward Pollard | Aye |
| Sam Snyder | Nay |
| Tommy Tiller | Absent |
| Patricia Townsend | Aye |

The motion failed with a 4:4:1 roll call vote.

A motion was made by Mr. Pollard and second by Mr. Chalmers to approve Resolution No. PC-36-04 to approve Application S-39-04 Preliminary Subdivision approval with a favorable recommendation, removing condition Number 3: *To preserve the adjacent Chickahominy River and to prevent the negative impacts that individual septic systems could have on this water body, the applicant shall apply to the New Kent County Board of Supervisors to be included into the Bottoms Bridge Sewer Service District so that, if approved by the Board, this development will be served by public sewer.*

The members were polled:

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|-------------------|--------|
| Jack Chalmers | Aye |
| Thomas Evelyn | Aye |
| Howard Gammon | Nay |
| Sylvia Godsey | Aye |
| Mark Hill | Aye |
| Jay Hubbard | Aye |
| Charna Moss | Absent |
| Edward Pollard | Aye |
| Sam Snyder | Aye |
| Tommy Tiller | Absent |
| Patricia Townsend | Nay |

The motion carried with a 7:2:0 roll call vote.

S-50-04: Patriot’s Landing Preliminary Subdivision Approval: East West Partners of Virginia has applied for preliminary subdivision approval for the Phase 1 of the Patriots Landing Planned Unit Developed. The applicant proposes to create 152 lots with a minimum lot size of 7,000 square feet. Single family dwellings are proposed for each new subdivided lot.

Staff gave a presentation on the proposed preliminary subdivision.

The Commission asked questions.

The Commission asked if there is a cap on the number of lots per year that can be developed. Staff responded not per year but there is a cap on the total number of lots which is 640.

The Commission asked has staff gone over the recommendations with the applicant. Staff responded yes, the reports have been forward to the applicant and there have been no comments.

The Commission asked about Fire Chief Larry Gallaher has any concerns about the single entrance that is proposed and the names of the streets. Staff responded we have addressed the names of the streets with the applicant and they have been changed. The PUD does address the entrances and I believe that it allows up to 99 homes to be built before the second entrance is constructed.

The Commission asked how many residents will be in a cul-de-sac. Staff responded that the PUD states 20 units in a cul-de-sac they propose 22 and staff has determined that this is a minor change.

The Commission asked for an update on the repair of the dams. Staff referred to Ivan Wu a representative for the applicant.

The commission asked if a traffic report has been done. Staff responded that a traffic report was done during the Planned Unit Development approval.

The Commission stated that there is no Affordable Housing mentioned. Staff referred to the applicant.

Ivan Wu stated that in reference to Affordable Housing right now you are seeing the single family portion of the development for the western portion of this development there are other aspects to be considered; and as for the dams we are only allowed 100 building permits before we have to start rehab of the dams.

A motion was made by Mr. Evelyn and second by Mr. Chalmers to approve Resolution No. PC-07-05 to approve Application S-50-04 Preliminary Subdivision approval with a favorable recommendation.

The members were polled:

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| Jack Chalmers | Aye |
| Thomas Evelyn | Aye |
| Howard Gammon | Aye |

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| Sylvia Godsey | Aye |
| Mark Hill | Abstain |
| Jay Hubbard | Aye |
| Charna Moss | Absent |
| Edward Pollard | Aye |
| Sam Snyder | Aye |
| Tommy Tiller | Absent |
| Patricia Townsend | Aye |

The motion carried with an 8:0:1 roll call vote.

IN RE: CHAIRMAN'S REPORT

Mr. Hubbard thanked Mr. Pollard for his leadership last year and thanked the Commission for the opportunity to chair the commission this year.

IN RE: RRPDC REPORT

Mr. Evelyn stated that there was no report for the RRPDC however that he was scheduled to attend an orientation on 03 March 2005.

IN RE: COMMISSIONER'S REPORT

Ms. Snyder stated that she feels that we should not be allowed to vote on anything at work sessions and should only vote at a regular meeting; also we need to make a real effort to send out notices to the county citizens.

IN RE: STAFF REPORT

Mr. Hathaway reported that at our 21 March 2005 meeting we have a preliminary approval of The Oaks Subdivision; The Oaks Subdivision is the subdivision off of Egypt Road.

Mr. Homewood reported that at the 21 March 2005 meeting we will be having a public hearing on beginning the process on adopting certain Proposed Water and Sewer Systems into the Comprehensive Plan. We took our county comp plan and we overlaid the sewer service areas on those areas in which the comp plan suggests need to be served mainly economic opportunity areas at interstate interchange areas; as well as those areas of high density development. These sewer service areas are intended to be reviewed with some degree of regularity approximately every one to five years. Before we advertise for a public hearing is there anything here that you are not comfortable with in terms of concept. Are all of you aware of what the concept is, that is: if you are in the sewer service area you must connect and it doesn't matter if you are the guy at the very edge of the service area and no one has developed between you and the trunk line or if you're the guy right next to the trunk line.

The Commission asked how this would affect individual homeowners. Staff responded that the Board has been pretty adamant that they do not want to have a mandatory connection for existing connections. If your septic system fails you wouldn't be allowed to put in another system you would be required to connect.

The Commission asked if businesses south of I-64 and Rte 106 would have to connect. Staff responded that is correct.

The Commission asked at the March meeting to more or less adopt the proposed service area. Staff responded you've been given a map and by adopting that map and a little bit of language will be before the public for public hearing as to whether or not you feel at that time comfortable with it or tweaking it here or there is something you will decide. There is no deadline ticking on this, the Board would like you to respond within a reasonable amount of time.

Mr. Homewood announced that we received a preliminary application for a proposed landfill for New Kent County in the office today.

IN RE: NEXT MEETING

The next Planning Commission meeting will be held on Monday, 21 March 2005 in the Boardroom of the County Administration Building at 6:30.

IN RE: ADJOURNMENT

A motion to adjourn was made and seconded by all.

Respectfully submitted:

Pam Crosby
Recording Secretary