

**New Kent County
Planning Commission**
January 22, 2002
New Kent, Virginia

IN RE: CALL TO ORDER

Mr. David Frank called the meeting to order.

Members Present:

Louis Abrams	Present
Mark Daniel	Present
Rev. Hathaway	Present
Julian Lipscomb	Present
Edward Pollard	Present
Marty Sparks	Present
Robert Stroube	Present
Jay Hubbard	Present
James Wallace	Absent
Isabell White	Present
David Frank	Present

Also Present:

George Homewood, Planning Director
Leah Mills, Planning Technician
Kenny Vaughan, Zoning Administrator
Phyllis Katz, County Attorney

IN RE: ROLL CALL AND ESTABLISHMENT OF A QUORUM

Mr. Frank asked for roll call and established that there was a quorum

IN RE: MINUTES FROM DECEMBER 17, 2001

Mr. Pollard stated the word "have" should be removed on page 11, the second paragraph, and 4th line from the bottom. Mr. Pollard also stated that Barhamsville was misspelled. Mr. Abrams made a motion to approve the minutes as corrected. Rev. Hathaway seconded the motion. All in favor.

IN RE: PUBLIC COMMENT

Mr. Frank asked if anyone had comments for the public portion. Several individuals had signed to speak about a specific application. Mr. Frank explained that there would be an opportunity for them to speak during the public hearing portion of the meeting.

IN RE: UNFISNISHED BUSINESS, S-33-01 Bluegreen Properties

Mr. Homewood stated this is a request by the Bluegreen Properties to approve a grant preliminary Subdivision approval Brickshire Section L. This application has been seen twice before by the Planning Commission and it has been tabled both times at the mutual request of staff and applicant. The only outstanding issue involved is the length of the cul-de-sac. The real issue as mentioned is not so much the cul-de-sac in Section L but how further sections in Brickshire will be reviewed as far as their cul-de-sacs. Here it is not simply just the length, the question is how to measure the length of the cul-de-sac.

Mr. Homewood stated because he is relatively new that his interpretation may not coincide with his predecessors, and the associate records of the deed is not the same way as it is defined by a number of his predecessors. Mr. Homewood stated his predecessors determine the cul-de-sac should be measured by the end of the determination back to the fist intersection of any street, rather than the position he is taking which measures the cul-de-sac from the end all the way back to the first intersection where you have an alternative means of ingress and egress to the street and to the subdivision.

However, one of the things that is apparent, there are a large number of cul-de sacs in other sections that have been approved and built that exceed the 1500ft length and the 20-lot restriction that is found in the subdivision ordinance . This is a result of the different definitions of measuring a cul-de-sac. The plan for Brickshire the Planning Commissioners have before them is consistent with all the approvals gone before it, as well as consistent with the master plan. Consequentially the staff is recommending approval, and will use this definition for further construction in Brickshire. However, any other developments other than Brickshire and any other further development in Kentland that goes beyond a doubt that has been approved in the master plan, the applicant is aware and the staff tends to recommend an application with more stringent standards on e with that is more closely

in line with what staff believes is the true intent of the subdivision ordinance which in effect to promote public safety through the eliminating long cul-de-sacs. The staff is recommending approval of this application, with a few conditions. First is the lots that are backed up to Kentland Trail that have no access to Kentland trail that have no access to Kentland Trail, and road names to be approved.

Mr. Frank asked if approving this would be setting precedent for future development anywhere in the county. Mr. Homewood stated he believes precedent has already been made, but if a strong statement is made that we will not accept this elsewhere in the county.

Rev. Hathaway asked that we need to look in our ordinance and clarify what our standards are. Mr. Homewood stated he would like to go back to our standards and also add a definition, so we do not have to go through this again. Rev. Hathaway stated he would like to see the commission to do this before we make any statements on taking action on any plans, let us deal with the ambiguities in our ordinance. Mr. Homewood referred to the agenda that they may want to add this in their ordinance amendments to clarify the definition of the correct way to measure a cul-de-sac.

Mr. Daniel asked Mr. Homewood how long [the cul-de-sac] is the Section L and how much longer is it with something you would be comfortable with. Mr. Homewood stated the requirement is 1500ft or a maximum of 20 lots, from experience I believe this is too long. Typically these regulations stem from a certain number, for example if a road is blocked and a house is on fire at the end of a cul-de-sac how much hose is on a fire truck to reach to the house. Typically that number is 600-900ft (the amount of hose on a truck) However this cul-de-sac approaches 2300ft and has several more lots than twenty.

Mr. Pollard stated he is concerned that the Commission has not satisfied the main issue of the definition of a cul-de-sac and the environmental issues. Mr. Homewood asked if Mr. Pollard would like for him to address the environmental issue and Mr. Pollard replied yes. Mr. Homewood stated this land is fit by very pronounced ridgelines that fall off into some very significant valleys many of which that are filled with wetlands area. So in essence they have put in place in the rose ways on top of the ridgeline and minimized the amount of the number of crossings of the streams, the valleys and particularly the wetlands. So from that standpoint the use of long cul-de-sac is perfectly understandable it is not being done to get around an ordinance or to save money, it is doing this for environmental reasons. The staff is supportive of that.

In this case, we saw that there was an opportunity to eliminate the cul-de-sac and turn it into a new street, by simply taking the existing street and cutting it through what is a utility easement, carrying it back to Kentland Trail. The staff believes this would be the better design option in this particular section, however the applicant has been unwilling to accept this for fear of precedent that sets for the remainder of Brickshire.

Mr. Daniel stated we have a design criteria 1500ft and 20 lots, this here is almost two times what the design criteria for everyone else other than Brickshire. Mr. Daniel asked how wise is it, if there is a problem of a safety issue where there is another viable approach that has not been considered, to say yes to this applicant. Mr. Frank stated the county has already said yes several times. Mr. Daniel asked would we correct what we have done in the past by doing it all over again. Mr. Frank stated this section would be the end of this. The county is somewhat locked in because of precedent of this section, but from here on out they would not be allowed. Mr. Daniel asked if we would be compelled to do this. Mr. Frank stated he believed the commission was compelled.

Mr. Homewood stated this is a legal issue that he could not address and a policy issue that the Commission is best to address. Mr. Lipscomb stated when looking at the overall plan of Brickshire this is probably the longest cul-de-sac in the whole subdivision. Mr. Homewood referred to a picture addressing an entire section coming from this one cul-de-sac. There is a very significant wetland area and ravine in this area, while you could loop the street back on this side and loop back to Kentland trail this would probably require the applicant to reopen their core of engineer wetland permit and this is not an easy process.

Mr. Frank stated the commission must consider that prior staff persons have told them they could have these long cul-de-sacs. Mr. Daniel asked if this has been documented. Mr. Homewood stated they do have letter to document the applicant was told this was allowed. The bottom line is this development is under a master plan, that has gone through a lot of discussions, consider amount of public hearing, and not only approved by this commission but approved by the Board of Supervisors. What the applicant proposes here is entirely consistent with the master plan. Once a master plan has been approved sections like this should never come back into a public forum. Mr. Frank stated the commission was told that when the Master Plan was presented to the commission this was just an outline, but the actual details would be approved at this point. The master plan may not have been looked as carefully as it should have because the master plan was to be of what could happen.

Mr. Daniel asked Mr. Homewood if he could go into more detail of a proposed easement. Mr. Homewood stated in Section L there is an

easement that goes between those two lots (referred to a picture) and Kentland trail. This area has already been cleared and there already utilities in the ground there. To cut that in and make a road, would not be that difficult or expensive. If the commission is struggling to find some sort of middle ground that could give the commissions what they want as far as an emergency access, it would be possible to use some sort of averse to create something for emergency access for fire trucks but could possibly be greased over. This would solve the problem of having an emergency access but not cutting a street all the way through. Mr. Daniel asked if Mr. Homewood has brought this idea before the applicant. Mr. Homewood stated this is the first time he has mentioned this because it is the first he has thought of it.

Mr. Sparks asked if there were any potential access for the long cul-de-sac. Mr. Homewood stated he was not quite sure what the possibilities are. Cutting a street through Kentland Trail could be a difficult task.

Rick Melcher, from Brickshire, requested permission to speak on the application. Mr. Frank replied yes. Mr. Melchor stated he would like to discuss the safety issues. Quite a few of the Commissioners remember several years ago the land phasing plan and zoning process of this subdivision. One of the issues brought up was emergency access. It was determined at that time based on public record, based on documentation between there engineers and our representative, the planning department as well as the county administrator, that provided we give the county two emergency access points within Kentland, that we were taking care of the concerns of emergency access. Regards to the cul-de-sac issues, three Planning Directors said the cul-de-sac interpretation was the last intersection with another cul-de-sac or another road whether it gave you additional ingress or egress points or not. Therefore it is consist with other interpretations.

The problem with this property is that the traffic study, the impact analysis, VDOT and the county when looking at our master plan, in regards to safety and cul-de-sacs throughout Kentland were also based on that zoning and the phasing of safety issues. The stein roads are pretty much set in stone by those early zoning cases and those traffic impact analysis. The emergency access that has been proposed is not objectionable to us, but the problem is this is not possible to any future section of the 600 lots of the Brickshire. Because of the Topography within the property. And the individual wetlands permit which has been issued by 24 months gives us a certain max limit of impact on wetlands which are litigated on site.

Bluegreen has from the start proceeded with the Mater Plan, and everything we have presented to the county is consistent with this plan.

Going back to the cul-de-sac interpretation, we did uncover under section 1 plat approval process where on eof the road assigned B-1 was specifically not need the 1500ft criteria, then our engineer added another cul-de-sac to that and it was then interpreted as that met the ordinance, and this was put before the commission, and approved. We also have cul-de-sacs in section F and D & E under the current interpretation.

Mr. Daniel asked Mr. Melchor if they would consider an emergency access for Section L. Mr. Melchor stated he would consider this as long as it was understood that they still believe in the original interpretation this is what we should be operate under for the remainder property that we have on the plan. Mr. Daniel asked if this meant yes, or no. Mr. Melchor stated it means they will provide this emergency access under the understanding that we do not believe this would be possible in future sections of Brickshire.

Mr. Melchor stated as far as the topographic features of our community as Mr. Homewood mentioned there are some large ravens that we are protecting. Part of this is in our wetland permit, where we redesigned some sections of the subdivision so those places were not impacted. There are some large crossings that really would not be possible especially using the master plan and the requirements of VDOT to make those crossings on an emergency bases. Also the master plan was put in place with the golf course, where it is operating.

Mr. Homewood stated that Mr. Melchor speaks the truth that this is going to be an issue with every single section of Brickshire. When looking at the topographical maps this is the only cul-de-sac that has a simple solution. All other are costly and time consuming to the developer. Mr. Lipscomb stated the interpretation is what this is about. Along the lines the interpretation was another cul-de-sac intersection would stop at that. Not a true intersection. And then in one place the County even had them add a cul-de-sac intersecti on. To back up now on the county intersection has been, with the cul-de-sac intersection, the Commission would be doing the applicant an injustice. Rev. Hathaway stated he agreed with Mr. Lipscomb, stated he felt uncomfortable changing definitions in the middle of a development if prior staff has made that interpretation and commitment. Also the commission needs to take into account the environmental issues.

Mr. Daniel stated Section L is what is in front of this commission, it's confusing that we have gone through this process and our plans are already in place and there is nothing we can do about it but to hear the commission talk about the typical excepted standard length has been exceeded two times when there is an option that could be volunteered which would cause the safety issue to go away. If the Commission is

here tonight to promote health safety and welfare of the people of New Kent County, an opposing side should be taken. Mr. Frank stated the problem with this is not all other section can be fixed only this section. Mr. Daniel stated that this is a development where people are spending good money on , but he won't accept that nothing can not be worked out in the future, whatever that my be, but that is not in front of us tonight. WE have got a way to insure an access can be done, with an access put in, then he would consider supporting the applicant.

Mr. Melchor stated Mr. Gallaher did not have negative comments on this. Mr. Daniel stated that Mr., Gallaher and Mr. Homewood should get together so the Commission could have a recommendation. If we are to consider section L, and there is something that could be done so that there would be no question in the minds of the commission with the public safety, he would be glad to support the applicant if the applicant agreed to place this extra access. Mr. Melchor stated they would be willing to stipulate if a motion was made of approval that they would provide an emergency access that would be determined between now and 5-5 approval subject to Mr. Homewood, Mr. Gallaher and VDOT, in this section. Yet we would like to go on record that " we do believe the interpretation of the cul-de-sac should dictate the remainder of the subdivision. The interpretation that was set 2 ½ years ago."

Rev. Hathaway stated the commission cannot keep changing their interpretations, a number of phases are going to come before us and we should have a consistent interpretation through out that. Mr. Daniel stated that this was brought forth to the Planning Commission that there would be flexibility, and things we could fix as we went along. But to hear now that this is the way we have done, so this is the way it needs to be done, this is not what was brought forth when this application was placed before us.

Rev. Hathaway also stated the commission needs to be careful of any legal issues, if the Commission keeps changing their minds then someone is going to hold us accountable. Mr. Daniel stated he would rather be accountable for that then for there to be a safety issue that could be resolved.

Mr. Frank suggested the Commission read the section in the ordinance that talks about cul-de-sacs. Mr. Homewood read from section 90-70 titled cul-de-sacs. A cul-de-sac shall not exceed 1,500 feet in length or serve more than 20 residential building lots. Each cul-de-sac shall be terminated by turnaround right-of-way of not less than 100 feet in diameter. Mr. Daniel stated this does not sound very confusing. Rev. Hathaway asked if this was consistently applied in prior developments. Mr. Homewood stated it has been consistently applied with inconsistent

results. The issue here is where you measure the cul-de-sac, measure it from the end of the cul-de-sac to the first intersection, or do you measure it from the point where you have an option to get out of the subdivision.

Rev. Hathaway stated that for each subdivision, however a person decides to measure the first cul-de-sac, would be the standard for the other. Mr. Homewood stated there should be a single standard of a cul-de-sac across the board. Rev. Hathaway agreed with Mr. Homewood, but stated the staff that decided the length of the cul-de-sac, they established a standard definition, what if we have a new planning director will it be changed again. Mr. Homewood stated this standard only applies to those subdivisions that are created and go through the entire subdivision process. This does not apply to any exempt subdivision, which in 2001 comprised 85% of the lots created in New Kent County.

Mr. Pollard asked Ms. Katz to apply this to our new code. Ms. Katz stated this is the exact same language prior to the adoption of the code. This is entirely of interpretation and this is a safety issue. How can a person service with a fire truck that has a fire hose with a cul-de-sac that is longer with a hose. The interpretation has been if a road is blocked a cul-de-sac can be no longer than the length of a fire hose. Yet 1500ft is longer than the length of a fire hose. Rev. Hathaway asked if the Commission knew how long a fire hose is in New Kent. Mr. Homewood stated the average length is 600-900ft. Rev. Hathaway stated this is a very serious range and at that point the commission is not helping anybody.

Mr. Daniel stated only section L is before the commission tonight, and the developer stated they would be willing to provide this additional access, if they are willing to do this we should go forth and vote. Mr. Frank stated the question here is the interpretation of the cul-de-sac. The interpretation was made several years ago by the county, and mid-stream the commission is going to change that interpretation and agreeing with Rev. Hathaway this is no the way to do it. Mr. Daniel stated the developer had agreed to put in the access there is no issue. Mr. Frank stated he believed there was an issue.

Mr. Frank asked if anyone has a motion. Mr. Daniel asked if we could clarify whether or not the applicant the applicant is will to put in the extra access. Mr. Melchor stated he is willing to put in the additional access, but would like to clarify they are not agreeing with the new interpretation, the original interpretation that sets the precedent is what the applicant will continue to follow. Ms. Katz stated if this is going to be approved based on the additional road access then make a motion to approve it based it on that access and that alone, and the commission will deal at a later date when this issue should come in future

developments on whether a precedent has been set by the prior actions of the Planning Commission.

Mr. Daniel made a motion to approve Brickshire Section L with the following conditions. Note A. No lot shall directly access Kentland Trail. An easement at least ten feet (10') in width along Kentland Trail shall be incorporated into the plans for lots 38-55, 58, 59, and 77-81, across which there shall be no right access. This easement area shall be used for the cultivation of buffer plantings; notes to this effect shall be incorporated into all original deeds and plats transferring affected property from the developer to individual owner. And B, the street names shall receive approval from the Richmond Regional Planning District Commission. And finally an additional access be provided for section L. Mr. Hubbard stated he did not understand the last comments made by Mr. Daniel. Mr. Daniel stated it would be an emergency access. MR Hubbard seconded the motion. Mr. Frank called the question. The vote was 8:2. The motion carries to recommend approval to the Board of Supervisors with the above conditions.

IN RE: UNFINISHED BUSINESS, CUP-07-01 VoiceStream
Wireless

Mr. Homewood stated VoiceStream Wireless applied to construct a 250' Multi-user guyed lattice tower plus various appurtenances on a 0.23-acre portion of a 38.68-acre parcel located on the southeast side of Criss Cross Road (SR 617) immediately north of I-64. The property is owned by Mr. Edward Harrison and is further identified as tax amp and parcel number 23-70A. The address is 9701 Criss Cross Road. The subject property is zoned A-1 (Agriculture).

Mr. Homewood stated at the December meeting the Commission tabled this application to allow the applicant to provide additional information to the staff and the Commission base don their overall plans and locating their towers and the opportunities there are to allow them to fully explore collocation possibilities. Unfortunately nothing has been turned into the staff. We have had one contact with the applicant to withdraw the application with the tower close to the ai rport. However we have not received anything further. In December the staff recommended denial of the request based on the apparent availability of collocation opportunities, and the staff continues to recommend denial, due to not receiving any informati on to cause the staff to think any different. Should the commission decide they would support the application there are 15 conditions the staff has listed the applicant would need to comply with.

Mr. Cliff Nordac, representing VoiceStream Wireless, stated we were required last month to receive denial letters from towers we were not allowed to collocate on. At this time we are asking for a continuation of an additional 60 days. We have sent out letters to seven towers, and we have only received one letter of denial. Another tower requested they needed a formal application to collocate in order to receive a formal letter of denial. They would need forty-five days to process this application and send out the formal denial letter. This leaves only two out of seven sending denial letters. The other carriers have not provided any correspondence.

Mr. Frank asked if the applicant would like to withdraw the application. Mr. Nordac asked they would like to be deferred so they could receive all denial correspondence letters. Mr. Rev. Hathaway stated he would have liked this request of deferral communicated to the commission prior to tonight. Mr. Nordac stated they were hoping they would receive all letters before tonight. Mr. Homewood stated Mr. Frank asked if the commission is allowed to follow through with this request because under state laws there are requirements that the Commission and Board of Supervisors act upon an application. However these provisions do not come into play when the applicant requests the deferral.

Mr. Daniel made motion to table CUP-7-01 until the March Planning Commission meeting. Mr. Hubbard seconded the motion. Mr. Frank called the question. The vote was 9:1. The motion was approved for deferral until the March Planning Commission meeting.

IN RE: PUBLIC HEARING, C-5-01 Wilton Real Estate and Development

Rev. Hathaway explained the process for the public hearing to the Audience. Rev. Hathaway then asked for the staff report.

Mr. Homewood stated this application was submitted by Wilton Real Estate and Development to rezone approximately 110 acres (out of a 112-acre parcel) from A-1 (Agricultural) to R-1 (Single-Family Residential) subject to proffers for the purpose of developing 73 lots, all with a size of 1 acre or greater. The property is located on the east side of Old Roxbury Road (SR 640) immediately north of I-64 and is further identified as tax map parcel 20-71. Mr. Homewood stated the following considerations.

1. The New Kent County Comprehensive Plan designates the subject area for low-density residential uses, which are envisioned as residential development (including single-family detached, duplex, cluster and manufactured housing subdivisions) at densities

ranging between 1 and 2 dwelling units per acre. At that ratio, the subject property could yield 110-220 dwelling units.

2. The subject property is currently zoned A-1 which permits a wide variety of agricultural, public, and recreational uses as well as single-family detached homes on minimum 1.5-acre lots. Under current zoning, adjusting for the presence of non-developable environmentally sensitive lands and the area in roads, the theoretical yield is approximately 65 lots, considerably less than what the Comprehensive Plan suggests. That yield is only theoretical because A-1 land cannot be subdivided except by one of the 3 "exempt" subdivision categories. Under the parent tract option, four 2-acre lots and 4-6 15-25-acre lots would be possible and the family transfer could yield as many lots as the re were family members meeting the definition in the Code.

Mr. Homewood stated this is strictly a theoretical yield; the real yield on the property is 8-10 lots because of the various regulations that are currently in place in New Kent County of zoned A-1 land. The staff suggestion to the commission that the A-1 be used as a transitional center. That is a full plan in the lesser develop category until the property is ready for further development.

3. The frontage property across Old Roxbury Road from the subject parcel is zoned R-1 and the property to the east is zoned RO-A. Interstate 64 is immediately to the south of the subject property and it and the land to the north are zoned A-1.
4. The applicant has proffered 9 legally binding conditions that would apply to the subject parcel if rezoned in the manner requested by the applicant. Among the proffered conditions are design requirements—maximum of 73 lots, perimeter buffer along Route 640, minimum house sizes, masonry foundations and a prohibition on manufactured housing. Also proffered are access management requirements—no lots directly accessing Old Roxbury Road and 2 street entrances only. Finally, the applicant proffers to pay a cash proffer of \$6,505 per lot which represents a calculated pro rata share of the capital costs for schools, public safety, libraries and general government based on a study completed in October 2001.
5. The maximum of 73 lots proposed is more than would be possible as a matter of right under A-1, but is still considerably fewer than what the Comprehensive Plan suggests.

6. The proposed development will access State Route 640, Old Roxbury Road. The most recent traffic count provided by VDOT for this section of SR 640 is 9 years old and indicates an average daily traffic of 530 vehicles per day. Based on the ITE standard multiplier of 10 trip ends per occupied single family home, the development as proposed would generate 730 additional trips per day onto Old Roxbury Road—more than doubling the January 1993 counts. This number is significant and Old Roxbury Road is not designed or constructed to anything that resembles current secondary road standards for new construction. Moreover, some of the intersections along Old Roxbury Road are already less than optimal. The developer is required to dedicate half of the right-of-way deficiency along their property frontage, but nothing more. No improvements to Old Roxbury Road are certain, though turn lanes may be required during subdivision review. Consequently, if approved and constructed, the internal roads will be superior to the existing public road that the development will access.
7. The development can be expected to generate approximately 57 school children at full build-out and occupancy.

Mr. Homewood stated the applicant stated this number is 42, because they used a different methodology than staff did. But what is important is there will be more children added to already over-crowded schools

8. The cash proffer applies only to the programmed capital needs of the County. It makes no contribution to the capital needs of VDOT with respect to reconstructing Old Roxbury Road or to the operating cost requirements of New Kent County. In most localities—and New Kent is no exception—single-family homes require more in services than they contribute in taxes so the cash proffer is certainly a help, but it does not balance the books. This is equally true of homes being constructed as a matter of right across the County and would also apply to any homes that would result from a by-right development of the subject property.
9. Physically, the property has an extensive wetland area on the eastern boundary of the property and Chesapeake Bay regulations will require application on a 100-foot RPA buffer. The tentative sketch plan for the property indicates that the required buffers can be provided while meeting other design parameters. Please note that the sketch plan is not being proffered and so is for illustrative purposes only. If this application is approved, the specific subdivision layout will have to be presented to and approved by the Planning Commission before construction could begin.

10. The property is under the flight path for aircraft using the New Kent County Airport. This raises no particular safety concern, however the potential for increases in noise and activity levels should be disclosed to prospective lot purchasers. If this project gets that far, staff will recommend that a condition to that effect be attached to subdivision approval.
11. This application has been reviewed by various state and County agencies; their comments are attached.
12. The development will utilize 2 looped community wells that will be turned over to the County and private on-site septic systems. As part of the subdivision approval process, a primary and reserve septic drain field will have to be located on each lot. Soils information for the property suggests that no significant problems would be anticipated in this regard. Because of the size of the development, the water system will have to be designed to provide appropriate storage and flows to meet firefighting requirements

Mr. Homewood stated the staff's position is the current zoning is not unreasonable. The cash proffer is a nice offer but it is not sufficient. The proposal is not a bad one, but concerns about safety and county schools, the staff is recommending denial.

Mr. Frank asked about the issue of cul-de-sacs. Mr. Homewood stated there will be cul-de-sac issues on the illustration before the Commission, but this is strictly illustration, if this is approved the subdivision design will be presented to the Planning Commission and discussed in further detail.

Mr. Hubbard asked if the front of the subject Property is R-1. Mr. Homewood stated the property across Old Roxbury Road is zoned R-1, so the applicant entire parcel is zoned A-1.

Mr. Henry Wilton, representing Wilton Development, stated after reading the staff report, the applicant feels they have accomplished everything that had been asked by the county. The cash proffer was requested by the county, the applicant did not come up with this number. The only issue we see is 73 lots coming out on this road. Mr. Wilton stated he would conduct a traffic study, from there would coordinate with VDOT and the Planning Department and request a deferral for thirty days, so to give this new information to make sure we had a safe subdivision. Mr. Wilton also state they would welcome a meeting after the Planning Commission meeting to answer any questions and concerns.

Mr. Daniel asked if the public would have another opportunity to speak on this application. Mr. Homewood stated the Commission could either close the public hearing or keep the hearing open. Mr. Wilton stated he would have a meeting prior to the next meeting to go over the finding in the traffic study with all persons concerned. Mr. Frank stated the commission has two options; we can keep the public hearing open for thirty days, or defer for thirty days and close the public portion. Mr. Lipscomb asked if we keep the public hearing open tonight until and continue to keep it open until the next Planning Commission meeting. Several members of the commission stated yes.

Rev. Hathaway opened the public portion of the hearing and asked for comments in a row-by-row manner.

Row 2:

Monty Terry stated he was opposed to changing the zoning because it would more than double the traffic on the small road of Old Roxbury. This would end up killing more people. The only way to increase this road would be to remove a graveyard. Mr. Terry also stated he moved to this area for the peace and quiet. The nine-year traffic study would also prove to be useless because very few houses have been built on this road and would not be realistic if this subdivision were to be placed here.

Row 3:

Bruce Wood, who lives across from this propose site, has had six (6) car accidents the 15 years he has been living there. Also concerned about the impact on water systems and well. A new well can cost \$500-6000 dollars. Mr. Wood asked why not everyone on Old Roxbury Road received a certified letter of notice. Mr. Wood stated the road is too curvy, and narrow for the additions of these lots. Wetlands are also a concern.

Lyn McClean stated he had moved to this area because it was rural. Mr. McClean stated that Hanover County has changes dramatically in the last twenty years, as far as houses everywhere. He does not want to see New Kent County turn into Hanover County. Also concerned about the equipment to build this subdivision. Also stated children are sitting three to a seat. Mr. McClean stated he strongly opposed this rezoning.

Dennis Williams stated he was opposed to this project. First of all the back of this property is wetlands and environmental protection has not been worked on. Also concerned about the number of houses in this small area. As far as the safety report in 1993, there more cars coming down the road then it was when that study was conducted. Mr. Williams

has experienced problems with well water tasting funny, when new wells were dug for surrounding houses. Mr. Williams also does not want his property to depreciate, because the cost of the houses that may be built.

Margaret Rice stated the main issue is safety. She does not care what kind of houses are placed, because the road will not be able the extra population. The road is small and curvy.

Devin McClean stated he has experienced on the buses how crowded they are. He stated his mother ran off the road due to the size of the road. He is opposed to this application .

Row 4:

Jennifer Caldrell asked to have clarified whether the county had asked for the proffer, which is disturbing to her. In additions to what has been said and has done research and have found 17 car accidents in the last 5 years. Rt. 640 is not on the proposed list of roads to be worked on in the future. Also addressed proffer of \$6500 that will not defray all the enquires on our sources. This property is accessed with a value of \$250,000 is divided into 5 acre tract, and Mr. Daniel stated in the past that Ms. Caldrell 5 acre property behind her house would be worth \$45,000, then this entire parcel could be worth \$900,000, which is a good profit. Is it fair to the taxpayers to have to supplement through tax increase this landowners right to make money. The Planning Commission is charged to decide this.

James Wadell stated one of the curves on this road was completely under water last year. Avoiding the water is something that cannot be done.

Kim Bragwell stated she was concerned about the Wetlands. She contacted the Chesapeake Bay Act and they told her that Wilton is in litigation on one of their other subdivisions. Also talked with the Army Corp and asked if Mr. Wilton needed a JPA.

Row 5:

Brendan Muelle stated that some of the road across from the property is zoned A-1. At school board meetings, schools are a #1 problem, we are at a maximum capacity. More than likely this subdivision will be completed before a school is built. Also asked if the county needs this subdivision.

Ann Sites questioned Old Roxbury being a 50ft right way. This road used to be a dirt road. When the road was paved it was paved over the dirt and no curves were straightened. Old Roxbury Road can not handle this type of subdivision.

Row 6:

Brenda Carter stated she was concerned about the voluntary services, these issues would be strained. Building inspections will also be a problem. The county does not have the staff to inspect all these houses.

Rev. Hathaway stated the public hearing would not be closed, it will remain open until it comes before the Planning Commission.

Mr. Pollard said thank you to all the audience members that came to speak before the Planning Commission and all their input is very valuable to him.

Mr. Lipscomb referred to the statement Mr. Wilton made about a community meeting. In the western end of the county there are about 600 R-1 lots, which are minimum from 1400sq ft to 1800square ft. There have been seven houses that have been built since 1993. Mr. Lipscomb calculated about 1350 trips are made on Old Roxbury Road. The water system will have to be a county water system.

Mr. Daniel made a motion to keep C-5-01 public hearing open and be continued until the next meeting at the request of the applicant. Mr. Sparks seconded the motion. Mr. Frank called the question. The vote was 10:0. The motion carries to keep the public hearing open until the next Planning Commission meeting.

Rev. Hathaway asked if the county was asking for proffers. Mr. Frank stated that proffers were not discussed in this meeting. Mr. Lipscomb stated that proffers are suggested not requested. Rev. Hathaway stated he was concerned about cash proffers.

Mr. Frank stated the Planning Commission would take a five minute break.

IN RE: PUBLIC HEARING, CUP-08-01 SBA Properties

Rev. Hathaway asked for the staff report.

Mr. Homewood stated SBA Properties, Inc., an agent for Triton/SunCom, has applied for a conditional use permit to construct a 141' monopole multi-tenant wireless Communications Tower on property located on the north side of Pine Fork Road (SR 610) approximately 0.75 mile east of Airport Road (SR 612), and further identified as tax map parcel number 21-82. The street address is 5830 Pine Fork Road. The property is zoned A-1 and an existing 107' telecommunications monopole is located approximately 125' east of the proposed tower on the same property.

The County Comprehensive Plan offers many guidelines with respect to communication tower. Number one is collocation. There is already a communication tower on the same property. The applicant is suggesting, by placing the tower directly beside another tower, in essence they are collocating by placing them together. This applicant is stipulating that the tower will provide 4 additional users plus availability for county use. Which is required, a propagation map was provided. The study proposes it will close the gap showed on the map (Mr. Homewood referred to the propagation map). The existing tower is too short for the towers needs.

The applicant conducted a Balloon Test, Mr. Kenny Vaughan was present if there are any questions he is here to answer them. At 141ft the tower should not have to be lit and painted under current FAA guidance. However the New Kent County airport manager has requested it to be lighted and painted and reduces the height by 50ft. Yet this will make the tower lower than the already existing tower. In the end, the airport manager stated the FAA should have the final call. The staff believes this tower meets the criteria of the comprehensive plan, and the applicant diligently tried to find additional places to collocate. The staff believes that because of the location of the tower it does meet collocation requirements. The staff is recommending approval with the 15 conditions.

Mr. Brenen Keen, representing Triton PCS, referred to the propagation map. He stated because of the restrictions of the airport it is difficult to close the gaps on this property. The existing tower on this property is actually 125 ft., the tower structure itself is 107 ft that can hold antennas. The tower holds a 18ft. tall lightning bolt. Because of the difference of elevation, the applicants site is lower, there is only a difference of between 14-16ft. This why the applicant proposed the tower at this height to provide collocation sites. In analyzing this site, a study by ASAC was conducted, which goes through and analyzes through the FAA regulations at what heights there may be some obligations and restrictions.

On January 14 we conducted a balloon test, which was advertised and letter sent out to 38 property owners. We invited those 38 property owners to a community meeting where two attended. Mr. & Mrs. McDaniel, who were at the meeting, just purchased land near the tower stated they were concerned about lighting of the tower. The FAA will not likely require lighting on this tower. Because of this we have ordered a FAA study to determine this. With that, the applicant is requesting approval of this application.

Rev. Hathaway opened the public hearing in a row by row fashion. He requested that each person to stand at the microphone when making their comment.

Row 4:

Jennifer Caldrell stated this tower will be placed beside her property. The tower is a nuisance. Ms. Caldrell also was confused about meaning of collocation, when you add onto a tower, not by adding to a tower.

Rev. Hathaway asked if anyone else would like to make a comment. Rev. Hathaway then closed the public portion of the hearing.

Mr. Daniel asked Mr. Homewood about who requested the tower to be painted and lit. Mr. Homewood stated it was the New Kent County Airport manager requested it to be lit and painted. The tower already existing is not lit or painted.

Rev. Hathaway asked who owns the existing tower. Mr. Keen stated the tower was built by Prime Co. but have sold the tower to American tower assoc. Rev. Hathaway asked if collocating also meant placing a tower on the same parcel. Mr. Homewood stated that calling this a collocation is a stretch, it is not the collocation the commission may think of. Rev. Hathaway stated he did not see this as collocating, he saw this as clustering and a concern with this is how many towers will a person cluster on. Mr. Frank stated this was one of the things we were trying to avoid, which is why we came up with collocation. Clustering may be something we need to re-think.

Mr. Daniel asked if the existing tower had any more space to collocate. Mr. Keen stated the section on the tower that holds the antennas is too low to work for the applicant. Mr. Sparks asked how many carriers are on the existing tower and who would that be. Mr. Keen stated there were two carriers on the tower, Intelos and sprint. Mr. Sparks asked how many PC types are left to collocate on the tower the applicant is proposing. Mr. Keen stated there are seven and they will eventually all be PCS because they will have to go digital. Mr. Sparks asked if they would be able to operate at those levels. Mr. Keen stated they would not know if this height would operate for other carriers.

Mr. Daniel asked Mr. Keen if the applicant has other towers some of these other towers are located on. Mr. Keen stated that SBA is a large company with towers in the thousands, with master lease agreements with most if not all wireless companies. Mr. Daniel asked if a carrier has done something on one tower and you as the applicant build a second or third tower wouldn't the towers be consistently at so many feet. Mr. Chip Floyd stated it depends on many factors such as tower distance and

gap coverage. Mr. Keen stated that towers operate at different frequencies. Companies such as Verizon and Altel run at about 800 Mega Hertz basically meaning the signal travels farther, but his type is limited.

Rev. Hathaway referred to the propagation map and asked how the gap coverage would be filled later. Mr. Keen stated that the yellow on the propagation map is good coverage; only where you see red and blue is where coverage drops. Mr. Daniel asked if the applicant would consider painting and lighting the tower. Mr. Keen stated that one adjacent property owners requested the tower not to be lit or painted and as the applicant would like to remain a "good neighbor".

Mrs. White asked if a tower can have a light without a strobe. Mr. Keen stated a tower would either have to be painted or have a strobe light. Strobe lights can change during day and night. It is better to have a white light during the day and a red light during the night. Mr. Lipscomb stated the original location of the already existing tower was moved across the road and the airport wanted it painted but the FAA said it did not have to be painted. At the end of the airport run way the tower is far out of the way that it would not have to be lit or painted.

Mrs. White asked because of the digital wave that is why there are more towers being built. Mr. Keen stated he is not the expert on this subject, but when a company goes from analogue to digital that the analogue carried a lot farther. This is not the case here so they may need more towers, but stated he does not do this work for the companies. Mr. Larry Horton stated he has done work in Northern Virginia with Verizon, and they have put digital antennas back on the existing towers. Mr. Abrams made a motion to forward application CUP-08-01 to the Board of Supervisors with a favorable recommendation with the 15 conditions. Mrs. White seconded the motion. Mr. Frank called the question. The vote was 10:0. The motion passed.

Rev. Hathaway recommended a work session on tower clustering.

IN RE: NEW BUSINESS - TO SET FOR PUBLIC HEARING

ZM-1-02

Mr. Homewood apologized for the information on ZM-01-02 is not in the Planning Commission Packets. This is an application submitted by Inez Walker to rezone approximately 0.5v acres for A-1 (Agriculture) to B-1 (General Business). The property is located on the west side of Barham Road (SR 633) immediately north of its intersection with New Kent

Highway (SR 30) and is further identified as tax map parcel 46-28. The County's Land Use Plan designates this area for village uses.

This application is best viewed by an effort to correct a mistake made in 1969 when the setting the original zoning of the county. The applicant believes this lot was always zoned B-1 and the Commissioner of Revenue office also has believed this because they have been taxing them as B-1 property. The applicant is now asking for the Planning Commission to make this area B-1. However, staff has suggested to the applicant for them not to do this, because there is a mobile home on the property. If the property is rezoned to B-1, this mobile home would have to be removed. As well, there are things as non-conforming uses, where you cannot create a non-conformity by your action. This has been told to the applicant, yet they wish to continue with this application. The staff recommends the Planning Commission to set this application for public hearing on February 19, 2002.

Mr. Pollard made a motion to set application ZM-1-02 for public hearing on February 19, 2002 Planning Commission meeting. Dr. Stroube seconded the motion. Mr. Frank called the question. The vote was 10:0. The motion passed.

CUP-1-02

Mr. Homewood stated this is a Verizon request. Mr. Homewood referred to the information in the Planning Commission packets. This tower is different than other towers that have come in front of the Commission. The request here places a monopole down the center of an already existing tower, and the antenna goes on top of this. Examples are located on I-295 in Henrico county near the Mechanicsville exit, and one on I-64 in Newport News at the Oyster point Road exit. In each case there is a small antenna attached immediately above a power transmission tower.

Mr. Homewood stated if it was not for this tower extending down to the ground this would simply be for a building permit and the Commission would never see this. But because this monopole reaches to the ground it fits the definition of a tower. Also, the Fort Worth system is designed to place one antenna above an electric power transmission. That one antenna disappears in the lattice structure of the Power transmission tower, and is not particularly noticeable. If the pole were to be extending above and to attach additional antennas to meet our requirements, one the tower would become more visible and two, Virginia Power would have second thoughts about permitting it.

The staff believes this application should be processed as an application and work on some proposed language that would call this a collocation

and allow it to be approved administratively within certain parameters. So in the future if applicants would come with the same proposal they would be directed to public safety with a building permit, and it would not be brought before the Planning Commission. There is the question of the property is privately owned but the tower is in the middle of a Virginia Power facility, which are taxed differently, what would be the tax ramifications. Hopefully Mr. Crump will have an answer to this before the next meeting.

The staff is recommending this application be advertised for public hearing for the next Planning Commission meeting. Mr. Frank asked if we know if someone would like to place something on the next tower. Mr. Homewood stated Mr. Chuck Boyd is here representing the applicant that can answer the technical questions. Mr. Chuck Boyd stated there were two points to clarify, one being collocation. The tower can only be 15 ft. taller than the lattice on the existing tower, or the structure is no longer sound. So placing anything else on this tower would cause it to be unstable.

Mr. Daniel made a motion to set application CUP-1-02 for public hearing Planning Commission Meeting February 19, 2002 and further move to consider recommending adoption of an administrative policy and interpretation with respect to the installation of communications antennae on existing structures within the County other than towers with a valid use permit that would permit installation upon applying for and receiving a building permit provided that the installation of the antenna or antenna array did not increase the total height or the bulk of the existing structure by more than 12.5% nor increase the height beyond 199' regardless of the percentage. Mr. Stroube seconded the motion. Mr. Frank called the question. The vote was 10:0. The motion passed.

IN RE: TO SPONDER AND SET FOR PUBLIC HEARING

SO-1-02

Mr. Homewood stated the next two items are not only to set for public hearing we are also asking the Planning Commission to sponsor the application. This deals with in the subdivision ordinance two definitions of immediate family. They are not the same definition. The proposal would make the language consistent. Mr. Homewood stated he is looking for guidance from the Planning Commission as to how to make the language consistent. The definition used in the definition section of immediate family includes siblings and grandchildren, while the

definition that is used for the purposes of what is permitted under the immediate family transfer does not include siblings and grand children.

Mr. Pollard asked if this had been settled before. Mr. Lipscomb stated It has except state law says that a person can do Aunts and Uncles and so forth. Lat year it was discussed to add Aunts and Uncles because the county has been going by using siblings up until Gary stated siblings should not be used. Then as a Commission we tried to get this straight.

Mr. Homewood stated he had accidentally reversed the two definitions; the definition in the definitions section in the subdivision ordinance does not include siblings and grandchildren, but under the prevision of the immediate family transfer, siblings and grandchildren are permitted. In either case it is perfectly acceptable, because New Kent County falls under category of Stet Code by Hybrid Community, so we are not bound by a state code definition of immediate. As a commission we can provide any definition we want and regulated Immediate Family Transfer. Rev. Hathaway stated he would like to see the Commission adopt the state definition and also asked if the state definition could be brought into the next Planning Commission meeting.

Ms Katz stated although there are the two definitions in the code, the action the commission will have to look at is broaden the definition of family in the definition section. The commission does not have to have the same definition. It comes up more in zoning cases that someone would run into family definition. It can be fine the way it is or the commission can chose in the subdivision ordinance is pout in an expansion ordinance. The commission can expand the definition for the family subdivision, but would not apply anywhere else. Mr. Homewood stated with the discussion of cul-de-sacs definition, is there anything else the commission would like to have in this amendments. Rev. Hathaway asked if a distinction was being made between clustering and collocation. Mr. Homewood stated a work session would be a great idea to have a discussion about towers.

Mr. Daniel made a motion for the Planning Commission to sponsor and set for public hearing application no. SO-1-02, Subdivision Ordinance Definition of "Immediate Family" for the February 19, 2002 Planning Commission meeting and the cul-de-sac definition and ask Mr. Homewood to bring in all information as we have discussed. Rev. Hathaway seconded the motion. Mr. Frank called the question. The vote was 10:0. The motion passed.

CUP-2-02

Mr. Homewood stated this is an application that we are requesting the Planning Commission to sponsor. Colonial Downs is not doing as well as expected. Consequently they want to add a number of activities at Colonial Downs. The list is attached to the memo, most do not present a problem, some of them do. The staff is asking the Planning Commission to take all the ones that do not present a problem all into a single use permit, without the ones that do cause concern, so the applicant can begin implanting some of these activities.

Rev. Hathaway asked which ones on the list cause concern. Mr. Homewood stated the auto racing and concerts that are held separate and apart from the horseracing program. Mr. Frank asked about concerts. Mr. Homewood stated the concerts Colonial Downs have in conjunction with racing are less concerned to us than concerts that occur outside the racing program because of the potential for noise, traffic, and bad behavior, on the adjacent property owners. Ms. Katz stated a problem with concerts, which are whole weekend events, 24 hour a day.

Mr. Pollard asked what are the difference then shows and concerts. Mr. Homewood stated that some of these items will need to be clearly defined. Mr. Lipscomb stated that horse shows should be added to this list. Rev. Hathaway asked what the automobile test drive demos consist of. Mr. Homewood stated after looking at a website as an example, they are a consumer reports outfit that go around the country that gives people the opportunity to test drive the cars without a sales man or woman. Typically they are held in large parking lots.

Mr. Lipscomb stated his concern anything that comes under the grand stand should be under "one blanket", use permit. But items where people end up around the track other than the horse race they should, because the difference in security, and fire and rescue comes in. The building is inspected for those particular reasons. Ms. Katz stated that Colonial Downs would need to acquire an entertainment permit, which would cover the security, so this would not exempt them from this permit. Mr. Lipscomb stated we want them to have a license so they will have all the safety precautions covered. Mr. Frank stated that Colonial Downs should group these items, possibly by indoor and outdoor lists. Rev. Hatchway agreed.

Mr. Homewood stated the staff would undertake this list as a performance kind of thing. For each type of performance they would have different requirements. That is why we had this list for one application. The applicant would have to plan these events 10 months in advance, and so on. Mr. Lipscomb stated there is a covenant on the deed that there are no motorized races allowed.

Mr. Daniel made a motion to sponsor an application to set for public hearing for the ancillary activities at Colonial Downs use permit for the February 19 2002 Planning Commission meeting an ask they consider two categories, an inside and an outside list. Mr. Sparks seconded the motion. Mr. Frank made a note to change the date in the memo to the 19 from the 20. Mr. Frank called the question. The vote was 9:1. The motion passed.

IN RE: CHAIRMENS REPORT

Mr. Frank stated the Board of Supervisors have requested that attendance reports of all boards and committees be give to them. Mr. Lipscomb stated this will allow the Board of Supervisors to keep members up to date. MR Franks stated the received a letter from Virginia Tech about the Planning Commission Program set for March 4th and 5th through May 15th and 17th. If anyone is interested in attending he needs to know by the 25th of January. Mr. Homewood stated the letter from the Environmental Planner was placed in the Planning Commission packets for their information. Mr. Frank stated next month is the Organizational Meeting.

IN RE: RRPDC APPOINTEE”S REPORT

Mr. Daniel stated no package was received from the RRPDC and assumes there was not a meeting this month. Mr. Daniel spoke about the 1st Annual Area Planning Commission forum, and stated the Commission should consider attending this forum. Mr. Daniel asked if is in the budget will the fee for this forum be paid for. Mr. Homewood stated if anyone who would like to attend, please send the form to the Planning Department, the county has enough money to pick up the cost for the Planning Commission. Those interested need to turn in their information by February 14th.

IN RE: STAFF REPORT

Mr. Homewood stated a Resolution was prepared to recognize Mrs. Townsend. This will be framed and presented to her. Mr. Homewood asked if the Planning Commission would like to have something for her before the February meeting. Mr. Daniel stated it would be a nice gesture to have something for Mrs. Townsend. Mr. Homewood stated the staff will prepare a small reception before the Planning Commission meeting. Mr. Frank stated Mrs. Townsend’s reception will be at 6:15pm in the old Courthouse. The Planning Commission meeting will not be adjourned it will continued until after Mrs. Townsend presentation.

Mr. Homewood stated the proposed meeting Dates for the Planning Commission meetings are in your packets. They will not be adopted until next month. Mr. Homewood stated an article written by Mr. Daniel is also placed in the Planning Commission packets. Last month the Commission requested FAA regulation dealing with towers, which are also in the packets. Mr. Homewood stated asked the Commission to leave their red binders behind and to keep anything they may need. Also please pick up a copy of the new code. Also starting Monday we have a part time Economic Analyst coming to the county, for 10 hours a week for the next 6 months. Mr. Homewood also stated the legislature is meeting and a bill to mentioned is one concerning mobile homes. Mr. Frank asked about establishing the Comprehensive Plan. Mr. Homewood stated he is un-sure. They are not meeting on March 1st.

Mr. Frank stated the Planning Commission meeting will continue until after the presentation to Mrs. Townsend.