

**UNAPPROVED MINUTES OF THE NOVEMBER 6, 2006 MEETING
OF THE PLANNING COMMISSION**

Z-5-06/MP-7-06 New Town Section 7 & 8

Mr. Matthew Smolnik presented the staff report stating that an application has been submitted by New Town Associates, LLC to rezone 108.1 acres of land located at 5240 and 5248 Monticello Avenue currently zoned R-8, Rural Residential to MU, Mixed Use. The property is also known as parcels (1-51) and (1-56) on the JCC Tax Map (38-4). Under the proposed Master Plan, a maximum of 62,300 square feet of commercial buildings are proposed with a maximum of 400 dwelling units. The site is designated for Mixed Use development by the James City County Comprehensive Plan. Mixed Use areas are centers within the PSA where higher density development, redevelopment and/or a broader spectrum of land uses are encouraged.

Mr. Obadal gave an overview of the history of rezonings of the New Town project.

Mr. Smolnik and Mr. Obadal discussed when various sections of the project were rezoned.

Mr. Obadal stated that in 2004 a request was made to reduce the buffer around the perennial stream in section 8 to allow more density.

Mr. Cook stated that the Chesapeake Bay Ordinance was amended in 2004 and that grandfathering was applied. He also gave an overview of the history of the environmental issues of the project.

Mr. Obadal stated that a variable buffer was allowed for 279 units. He stated his opinion that the density could have achieved without the perennial stream buffer reduction. He questioned the applicant's need for a reduction of the Community Character Corridor.

Mr. Cook deferred the question to the applicant.

Mr. Obadal and Mr. Fraley discussed the changes and amendments that have taken place with the project over time.

Mr. Obadal wanted to follow-up on the density and the prior rezonings. He stated that the buffer around the intermittent stream was one of the changes.

Mr. Billups suggested that the applicant be allowed to make his presentation before Commissioners continue their discussions.

Mr. Fraley asked for a comment on water quality

Mr. Cook stated that the variable width buffer that included buffers on both perennial and intermittent streams should result in better water quality protection than buffers on only perennial streams.

Ms. Hughes stated her concerns about steep slopes, nature trails in the reduced buffers, and lack of commitment to LID (Low Impact Design)

Mr. Cook stated that the steep slopes would not have been protected by the original buffer. He deferred the discussion of the nature trail location to the applicant.

Mr. Smolnik stated that 8 acres were transferred to section 9 not 80 as he had previously indicated.

Ms. Hughes asked the basis for determining the number of school children.

Mr. Smolnik deferred the question to the applicant.

Mr. Fraley opened the public hearing.

Mr. Gregory Davis, Kaufman and Canoles, represented the applicant presenting the proposal. He highlighted the architecture, cash proffers, and affordability component. Mr. Davis also detailed regulatory changes that have affected the project.

Ms Jones asked if the 8 acres set aside for the Small Whorled Pogonia exceeded requirement.

Mr. Davis stated that there is no specific requirement but a determination by various regulatory agencies.

Ms. Jones if that applicant was satisfied with the amount of land set aside.

Mr. Davis said that from a development stand point they are disappointed. He stated that the Army Corp of Engineers is delighted.

Mr. Hunt said they are concentrated in a small area.

Mr. Davis added that there is no impact to the Pogonia like there was with the WindsorMeade project.

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Mr. Fraley asked if there is an archeological site in that area as well.

Mr. Davis said yes.

Ms Hughes asked for an explanation of the term perennial stream restoration and mediation.

Mr. Davis said it is included in the Homeowners Association requirements.

Ms. Hughes said she had not seen it.

Mr. Obadal asked if the pollutants entering the streams would be monitored.

Mr. Davis said no and stated that the applicant and staff could look into it.

Mr. Fraley supported Mr. Obadal's suggestion.

Mr. Obadal thought monitoring could be beneficial to future projects. .

Mr. Fraley stated his concerns about building on steep slopes.

Mr. Robert Cosby with AES Consulting Engineers stated that the steep slopes are isolated in nature. He also stated that further review had found that most of the slopes were less than 25 %.

Mr. Fraley asked if the applicant would avoid building on slopes that are 25% or greater.

Mr. Cosby stated that in that scenario it would be discussed at site plan phase with staff.

Mr. Fraley stated his concern with the lack of commitment to LID.

Mr. Cosby stated that New Town has been very proactive with LID measures and that they would pursue them as much as possible.

Mr. Fraley asked about water quality.

Mr. Cosby stated that within New Town state requirements regarding removal of pollutants are exceeded.

Mr. Fraley asked how many of the buffers are reduced.

Mr. Cosby said 25% are reduced to 50 ft.

Mr. Fraley asked if 100 buffers would increase water quality.

Mr. Cosby said not substantially.

Mr. Fraley said the preference would be for the trail to be taken out of the buffer.

Mr. Davis stated the goal was to provide a woodland trail with permeable surfaces.

Mr. Obadal stated that a 100 ft buffer would achieve 75% reduction in sediments and 40% reduction of nutrients.

Mr. Cosby said a larger buffer would provide more pollutant removal but not significantly when compared to other measures.

Mr. Obadal said a better method was necessary.

Mr. Cosby said the run-off is not sent across the buffer it is collected and piped to the BMP and then treated.

Mr. Cosby and Mr. Obadal discussed the percentage of sediments and pollutants removed by a BMP versus a traditional buffer.

Mr. Obadal stated that an Ordinance should be a guide for conduct without a great deal of flexibility.

Mr. Fraley said there is no Ordinance requirement relative to Community Character Corridor in Mixed Use.

Mr. Hunt stated that the goal of the Commission is to be flexible and provide elasticity when possible and appropriate.

Mr. Fraley called for a 10 minute break.

The Commission reconvened at 9:35 p.m.

Mr. Fraley opened the public hearing.

Ms. Kensett Teller, 126 Lake Drive, read a letter from the Friends of Powhatan Creek Watershed recommending denial of the project due to environmental concerns. Ms. Teller also stated concerns about noise pollution.

Ms. Sarah Kadec, 3504 Hunters Ridge, represented James City County Concerned Citizens read a letter requesting denial due to concerns regarding environmental, traffic, and public safety issues.

Mr. Jay Eversole, 103 Branscomb, stated concerns about adequate schools facilities test, density based on non-developable acreage, and environmental concerns.

Mr. Fraley clarified that the 300 ft variable buffers Mr. Cosby spoke of applies to main stem streams of which there are none in this application.

Ms. May Sly, 3829 Cluster Way, stated her support for a 100 ft buffer and increased protections for the small whorl begonia.

Mr. Fraley explained that the 100 ft buffer staff referred to was around a perennial stream.

Mr. Smolnik addressed concerns that copies of the plan were not available to the public. He stated that the application was submitted 71 days ago and that Friday was the first day anyone from the public inquired about the project.

Mr. Obadal stated that citizens should not have to pay for copies. He stated that FOIA (Freedom of Information Act) required free copies at the state level.

Mr. Kennedy explained that staff time is not charged only the cost of the copies.

Mr. Obadal asked if staff time should be charged to applicants for the considerable amount of time staff spending working on their plan.

Mr. Sowers read a letter from Mark Sexton stated his concerns about the proposal.

Hearing no other requests to speak the public hearing was closed.

Mr. Hunt stated that provisions have been made regarding the perennial stream, and the Small Whorled Pogonia, and the provisions should be made for the Community Character Corridor.

Mr. Obadal stated his concerns about the protections offered for the perennial stream. He said he agrees with staff concerning the Community Character Corridor.

Ms. Jones stated that the project complies with the Watershed Management Plan, includes affordable housing, and is a fiscal positive. She stated that allowing a variance on the Community Character Corridor provides for a better project. Ms. Jones stated her support for the project.

Ms. Hughes stated that flexibility has already been allowed. She stated her support for the 150 ft Community Character Corridor and her concerns about school capacities. Ms. Hughes stated she will not support the project.

Mr. Kennedy said he has never supported the New Town concept. He stated that he could see the case for making an exception and stated his support for the proposal.

Mr. Billups stated his concern that the VDOT (Virginia Department of Transportation) ROW (Right-of-Way) buffer of 80 ft is combined with the applicant's required buffer. He asked what would happen should VDOT choose to exercise their right to utilize the ROW. Mr. Billups stated that he did not see a specific benefit of reducing the buffer. He also stated his concerns regarding school impacts, and the lack of confirmation of affordable housing.

Mr. Fraley stated that staff was in agreement with the proposal except the Community Character Corridor. He also stated that the adequate public facilities test was an issue for the Board of Supervisors to consider. He expressed his satisfaction with the proposed architecture. Mr. Fraley also stated his support to reducing the Community Character Corridor buffer and requested the applicant establish a program or process for the monitoring and remediation of water quality.

Mr. Davis agreed to look into it.

Mr. Fraley suggested the applicant meet with the citizens who spoke prior to the case moving forward to the Board of Supervisors.

Ms. Jones motioned to approval the proposal and suggestions for a water quality monitoring and remediation program.

Mr. Hunt seconded the motion.

In a voice vote the application was approved (4-3). AYE: Kennedy, Hunt, Jones, Fraley (4); NAY: Billups, Obadal, Hughes (3).