

**UNAPPROVED MINUTES OF THE October 3, 2007 MEETING  
OF THE PLANNING COMMISSION**

SUP-25-07 Colonial Penniman Water Line Extension

Mr. Smolnik presented staff's report for a special use permit to allow for construction of up to a 16 inch waterline and two force mains on the property located at 8925, 8961, 8963, and 8965 Pocahontas Trail. The properties are zoned M-1, Limited Business/Industrial and M-2 General Industry and are designated as Mixed Use and General Industry on the Comprehensive Plan. A special use permit is required for transmission pipelines in both the M-1 and M-2 zoning districts. Staff recommended that this proposal, with conditions, would not impact surrounding properties and believes it is consistent with the 2003 Comprehensive Plan. Staff recommended that the Planning Commission recommend approval of this application to the Board of Supervisors with the acceptance of the special use permit conditions.

Ms. Hughes asked if there were any questions for staff.

Mr. Billups asked if this case was previously approved by the Board of Supervisors.

Mr. Smolnik stated it was previously approved by the Board.

Ms. Hughes asked for clarification on the comment "Environmental staff is comfortable with eliminating the condition of requiring boring underneath the RPA".

Mr. Smolnik said he would have Mr. Scott Thomas from the Environmental Division address that concern.

Mr. Thomas stated that the County's preference would be that the SUP condition remain. To protect the RPA, the County wants the best condition, which would be to keep the provisions for boring under the RPA, rather than allow direct encroachment into the RPA. However, when the Environmental Division reviewed this case in 2002 there was very little RPA associated with this project. Mr. Thomas stated that there is now approximately 1000 feet in the new RPA line, and it would be an economic detriment to the project.

Ms. Hughes stated that there was a comment regarding that this may be grandfathered.

Mr. Thomas stated that there are certain grandfathering provisions associated with this project because there was site plan approval under SP-106-02. Mr. Thomas stated that staff would determine the impact that the current project would have had in 2002 to the RPA versus the impact now. Mr. Thomas feels the impact is minimal and this would

probably fall under administrative approval for the Environmental Division and not have to be reviewed by the Chesapeake Bay Board. If it were determined to have a larger impact then it would need to be reviewed by the Chesapeake Bay Board.

Mr. Krapf asked if Mr. Thomas knew what the additive cost would be for boring underneath the RPA and what the impact would be on the applicant.

Mr. Thomas stated he was not sure but he felt that this amount through this terrain would be excessive. He would defer to the applicant on this question.

Mr. Billups asked Mr. Kinsman about the grandfathering of conditions being the original SUP was void.

Mr. Kinsman stated the Virginia code states a recorded site plan is valid for five years after it has been recorded. The original site plan was recorded in 2003 making it valid until 2008.

Mr. James Bennett spoke on behalf of Williamsburg Developments Inc, the Economic Development Authority (EDA) of James City County, BASF Corporation, and Colonial Penniman, LLC. He stated that Colonial Penniman purchased the property in 2007 and was aware of the approved site plan, but was not aware of the special use condition that had previously expired in 2004. In Spring 2007 there were negotiations with the County to acquire an easement through the James River Commerce Center property from the end of Columbia Drive to BASF property. There were also negotiations with BASF to acquire an easement through BASF property to the applicant's site. During the negotiations there were several discussions concerning the water line. The EDA would have access to that waterline and in return has given the easement. The BASF property is currently being marketed and it is unclear as to what will happen to that property in the future. The City of Newport News has expressed concerns over the 16 inch waterline. Mr. Bennett did make the point that this project does not require this size waterline; however the James River Commerce Center could well trigger needs for that size.

Mr. Bennett addressed the question about the cost of the bore underneath the RPA. The longest RPA encroachments would be 600 feet, but it is in an area that is already cleared and already has utility lines in it. Mr. Bennett stated he has not contacted Newport News as to whether they would accept a waterline that is largely bored underneath the ground and is not accessible. He stated another concern was that the waterline itself would be in a two foot casing and that if bored shallow would be extremely difficult to keep the ground from bulging above ground. The cost of the directional bore is extremely expensive. Mr. Bennett gave the figure of \$ 50 - \$ 75 a foot for a traditional waterline for labor plus materials. A directional bore would be in excess of \$300 per foot for labor plus materials.

Ms. Hughes asked if there were any questions for the applicant.

Mr. Fraley asked Mr. Bennett if he was requesting removal of the condition for requiring the direct boring.

Mr. Bennett stated that it was not clear whether there was a grandfathered site plan or not. Mr. Bennett stated the alignment has not changed since 2003 with an exception of an area that is outside the RPA.

Mr. Fraley asked Ms. Hughes for clarification.

Ms. Hughes asked for clarification.

Mr. Kinsman stated that there is a valid site plan. He said the question is implementation and it requires a valid special use permit to actually implement. Mr. Kinsman stated that construction cannot take place until the special use permit is attained. He stated that the proposed special use permit conditions would be imposed on this applicant regardless of whether the site plan was valid in 2003 or whether they submitted a new site plan. He further stated that condition #3 if approved this evening would be imposed on this applicant.

Ms. Hughes asked if the RPA designation is grandfathered.

Mr. Kinsman stated that as Mr. Thomas mentioned the site plan is valid, so there is no need for Chesapeake Bay Board approval. It would just go through administrative review. He stated that there will be a question if there are any deviations from the original site plan, but that would be determined at a later date.

Mr. Fraley asked if the applicant was requesting that the Planning Commission consider removal of this condition.

Mr. Bennett stated yes.

Mr. Fraley asked what would be the plan for the 600 feet that would be going through an already disturbed RPA.

Mr. Bennett stated that they came to an agreement with the EDA. The applicant would provide for labor and piping for the alignment through their EDA property, in exchange, the EDA would provide mitigation needs required to satisfy the RPA encroachments.

Mr. Smolnik stated that the applicant was asking for a water line up to 16 inch. The clarification was made to emphasize "up to".

Ms. Hughes asked for public comments.

Steven Yavorsky, Office of Economic Development (OED), stated that he was here to support removing condition #3 of the SUP requirements. He stated that both

EDA and the Colonial Penniman properties are designated general industry by the Comprehensive Plan, and both currently zoned for industrial uses. Mr. Yavorsky felt that the time constraint of completing this project before the current site plan expires is critical. He reiterated the agreement between the EDA and the OED for environmental mitigation to compensate for the disturbed land that is currently within the RPA. Mr. Yavorsky felt that approving this application and removing condition #3 will revitalize a used building but also provide the future development of M-1 property and the James River Commerce Center.

Ms. Hughes closed the public hearing.

Ms. Jones made a motion for approval without condition #3 and to allow the water main to be up to 16 inches. She felt that this property is an industrial site and the Planning Commission needs to be supportive of economic development.

Mr. Fraley agreed with Ms. Jones. This property is zoned industry and designated for industry. Mr. Fraley stated that he believed that a large portion of the BASF property was a superfund cleanup property to begin with. Mr. Fraley stated he was part of the Architectural Review Board of the Commerce Center, and this service is needed to fully develop James River Commerce Center.

Mr. Krapf felt that this provides a public benefit for the individuals involved but also supports the long range strategic objectives of James City County.

Ms. Hughes commented that she felt this was a site that was classified as "brown field development." She explained this term and the need to have appropriate development on the appropriate area. Ms. Hughes felt this has been accomplished here. This area has had several contamination problems and she felt that this was an appropriate use.

Mr. Kennedy seconded the motion.

In a roll call vote the application was approved. (6-0). AYE: Billups, Krapf, Jones, Kennedy, Fraley, Hughes.