

UNAPPROVED MINUTES OF THE APRIL 1, 2009 PLANNING COMMISSION
MEETING

Z-0003-2008 / MP-0003-2008 The Candle Factory

Mr. Ribeiro stated that on January 7, 2009 the Planning Commission voted 4-2, with one vacancy, to recommend approval of this application. However, staff was notified by the County Attorney's Office that the applicant had notified them of a procedural error that occurred when the applicant turned in the rezoning application for this project. The signature of one of the original owners of the property, Mr. Jack Barnett, was missing from the application. Mr. Barnett is the owner of a 25-foot-wide access strip which runs north-south through the property. Mr. Ribeiro stated that to ensure that there would be no further procedural issues, staff was advised by the County's Attorney's Office that the case needed to return to the Planning Commission prior to moving forward. At the March 10th meeting, the Board of Supervisors opened and closed the public hearing on the Candle Factory case and referred the case back to the Planning Commission for consideration.

Mr. Ribeiro stated this proposal has not changed much since its recommendation by the Planning Commission on January 07, 2009. The pertinent modification pertains to a new proffer, Proffer No. 21-Right of Way Reservation. This proffer was designed by the applicant to address comments made by the commission regarding connectivity with adjacent parcels. As highlighted in the staff report, staff finds that the proffer as written makes such connectivity difficult. As presented during January 09, 2009, staff finds this proposal not acceptable, and recommends that the Planning Commission recommend denial.

Ms. Kratter noted the overall negative impact on the economy if the proposed assisted living facility is not built. She also noted the report done by the Wessex Group, which proposed that there would be certain benefits to the County during the construction phase. Staff remarked that this may have been overstated. The Code Compliance and Environmental spending were not included with the figures. Ms. Kratter asked if staff knew what the diminution of the positive would be during that time period.

Mr. Ribeiro answered that he did not know. He stated he believed that building permits would be consistent with some of the positive aspects of this application. He did not know the exact numbers.

Mr. Henderson asked about the alignment of the twenty five foot access strip, does it provide for its relocation based upon an approved master plan. He stated that the road alignment shown as the proffered master plan differs from the 25 foot access strip that is reserved. He stated that without the property owner's compliance and agreement on the relocation, the proffered master plan would in essence be invalid.

Mr. Ribeiro deferred the question to the applicant.

Mr. Krapf opened the public hearing.

Mr. Vernon Geddy spoke on behalf of the applicant. He stated that the application presented is basically the same presented a few months ago. Mr. Geddy stated there is a contractual arrangement with Mr. Barnett, the owner of the twenty five foot road access strip. He stated that as the public road is constructed, Mr. Barnett will release the easement. Mr. Geddy stated that the first phase for development, if approved, would be the townhouse section. It would be located on the left from the entrance road. Mr. Geddy stated that the applicant intends to begin construction immediately. He stated that it would also be the applicant's intentions to clear what is necessary to begin construction. He stated that the entire site would not be cleared but just the area necessary for construction. This would include the footprints of the buildings, roads, and utility connections that would be necessary.

Ms. Kratter asked what this developer could do, that other developers have not been able to do in the County. She was referring to the fact that land has been cleared in the County, but no construction has taken place.

Mr. Geddy answered that many developers have halted building due to financing and a number of other factors. He does not necessarily feel it is because a product would not sell in this market. He stated that the applicant has done research as to what will sell in this area, and they are willing to commit their capital in order to begin the project.

Ms. Kratter asked for clarification as to what phases would be cleared and when.

Mr. Geddy stated that the site plan would illustrate the exact limits of clearing for a particular phase, but it has not been prepared for this project yet. He did show the vegetation currently on site and the limits of clearing that are proposed. He pointed out the area where work would begin, clearing associated with that, and then construction.

Ms. Kratter asked how many units are in the initial area.

Mr. Geddy answered he was not sure if exact numbers have been determined yet.

Ms. Kratter stated that it is the assisted living portion of the project that makes this a positive benefit to the County from a monetary standpoint. She stated that it was her interpretation of the plan that the assisted living would be developed later, and her suggestion would be to have the assisted living portion developed first.

Mr. Geddy stated he could not commit to that section being one of the first to be developed. Currently, the plan is to have the assisted living section be part of the Crosswalk Community Church. He stated that it was in the plan to have the Church build this section, own and operate it.

Ms. Kratter stated that it could potentially be an economic deficit for the County if that section is not built. She was inquiring as to what the applicant can do to mitigate this. Ms. Kratter made the point that the assisted living portion is a significant part of the application. If it changes, many aspects of the development would be affected, such as density. Ms. Kratter

expressed concern should this section never be built. She understands that the applicant takes a risk, but she would like to do something to mitigate the risk for the County.

Mr. Geddy was not aware of anything that the applicant could do in this regard.

Ms. Kratter asked if there was any consideration given to increasing the school proffers since it was calculated using old standards, especially given the current economic conditions.

Mr. Geddy stated that the applicant has complied with the Board of Supervisor's adopted policies with regards to cash proffers. He envisions discussions taking place during the Board of Supervisor's meeting.

Ms. Kratter asked about the Homeowner's Association's (HOA) responsibility for the recreational areas and trails. She asked if there was a cost estimate associated with this.

Mr. Geddy stated that the numbers have been calculated, he was just unsure what they were.

Ms. Kratter expressed her concern given that this would be a small HOA it may be difficult for them to maintain the recreational areas and trails. She wanted to protect the County in that they would not be responsible for items that the HOA may not be able to maintain.

Mr. Geddy stated that the applicant was aware of the importance of balance. He stated the applicant has done extensive research on these types of projects, and has one similar in progress at West Point.

Ms. Kratter stated that the Commission is being asked to approve this application without knowing this study has been verified and deemed accurate.

Mr. Geddy stated the Homeowner's Association Act requires that a capital reserves study is done every five years in order to ensure sufficient funds area maintained to be able to provide maintenance for their facilities.

Ms. Kratter pointed out that yes it is a Homeowner's Association issue, but it becomes a community issue if it turns out the maintenance cannot be performed. She asked about responsibility of maintenance, whereas if other sections are not built on a continual basis, will the maintenance of infrastructure that is already in place, fall on those in sections already built.

Mr. Geddy stated that all the main streets are public and would fall under VDOT's responsibility. He stated homeowners would be responsible for their property and their parking areas, etc.

Ms. Kratter expressed her concerns that in other areas of the County, the developer has turned areas over to the HOA's and even lent money to the HOA to handle maintenance until buildout, and then there is not buildout. She is concerned with a small HOA being responsible for a very large expense.

Mr. Fraley asked if the applicant was willing to proffer the phased clearing and the purposes that the clearing would be done.

Mr. Geddy stated yes they would be willing to proffer this.

Mr. Henderson expressed his concern about the language concerning the right of way reservation. He stated the practicality of getting a permit to construct the road, would involve a court issue with the Resource Protected Area (RPA). He asked if the applicant would be securing a permit as a part of its development activities.

Mr. Geddy answered no, he did not believe so.

Mr. Rich Costello, of AES Consulting Engineers, stated that some permits would be required for the utilities. Permits from the Army Corp of Engineers may not be necessary. He sees a potential problem in obtaining these permits in that they have time limits.

Mr. Henderson stated that unless there was an agreement with the adjoining property owner to pursue it simultaneously, and to construct the access as part of the development of the site. He asked if that is how the applicant would approach this.

Mr. Costello stated that only a certain number of units will be allowed per year.

Mr. Geddy stated that at this point the adjacent property is zoned A-1, and the applicant has attempted to design the connection at the narrowest point of the ravine. He was unsure of proposed anything further without knowing what would be developed on the adjacent property.

Mr. Henderson expressed his concern about this situation creating a right of way that may be relocated by an issue with the Army Corp of Engineers.

Mr. Geddy felt that this was the best the applicant could do at this time without the knowledge of the adjacent property.

Mr. Henderson asked if the easement language provide some flexibility, and the ability to cross the property owner's property would be noted.

Mr. Geddy stated yes.

Mr. Henderson did not want to create a circumstance where something is dedicated, but ultimately cannot be built.

Mr. Billups asked if the applicant was willing to abide by the conditions in the staff report, even though staff recommended denial.

Mr. Geddy stated that the basis of the denial was due to interpretation of the Comprehensive Plan, and not specific items that may have been suggested, that the applicant was

not willing to do.

Mr. Billups asked about the interconnectivity standards, the road construction and VDOT's involvement.

Mr. Geddy stated this plan will meet VDOT and the County's approval.

Mr. Billups asked about the timeline for the affordable housing units and the assisted living units. He asked if there was any flexibility in the timeline that these sections were due to be constructed.

Mr. Geddy answered that it is possible.

Ms. Kratter expressed her concerns that this plan was being viewed in isolation without knowing the cumulative impact of what is planned for the future, and the nature of those plans. She is concerned of the number of affordable homes and workforce housing that are approved and yet to be built, given that the market has slowed and prices are decreasing. She stated it was difficult to determine the real public benefit without an ability to accurately assess the need, especially since it appears that the project will not provide favorable benefits to the County during difficult economic times.

Mr. Geddy stated that the initial construction phase of the project is all favorable.

Ms. Kratter asked about the construction dollars generated in the initial phases, although it will dependent on how much of the materials and labor will utilize County resources.

Mr. Geddy answered that the owner, the site contractor, and the builder are based in the County.

Ms. Barbara Pfeiffer, of 103 Links of Leith, questioned the number of units that are built in the different phases. She expressed her concerns of clearing the land, either in phases, or clear all in anticipation of building. She stated staff recommended denial of the application due to nonconformance with the Comprehensive Plan. Ms. Pfeiffer then questioned the need for a Comprehensive Plan if it were not followed.

Mr. Krapf closed the public hearing.

Mr. Murphy wanted to clarify the comment of funding for private streets. He stated there is a proffer provision that provides for seed money for all private streets, provided by the applicant.

Mr. Henderson mentioned that there is a land use application before the Steering Committee to change the land use designation. This change, if approved, would make the proposed development in compliance with the Comprehensive Plan. He stated that this change was brought forward by staff.

Mr. Poole mentioned that the revision to the Comprehensive Plan is not yet in place, and expressed his concerns about making a decision based on the fact that it may change in the future. He expressed his appreciation for the architectural designs and the applicant's interest in phased clearing. He did not, however, like the idea of leapfrogging, of what he considered high density residential from Williamsburg, to Lightfoot, to Norge, to Toano, etc. Mr. Poole felt that this proposal continues this type of transformation of A-1 property into multi-family. He felt that the County should not continue to incrementally add residential units in addition to what has already been approved.

Ms. Kratter added her concern about the character of the County. She wanted to compliment the applicant on a very thoughtful plan that has some great environmental sensitivity. She stated overall, she did not feel that this was something that the County can risk from a financial standpoint.

Mr. Fraley mentioned that staff has allowed for work to be done in assessing cumulative impacts in the work management program. He stated some work has been done concerning this already. He stated the traffic study did and has included cumulative impacts over the last few years. Mr. Fraley stated that on principle he stands opposed to new residential development in the County. He feels that there is a large inventory of homes currently existing. He feels that in this case there are other considerations. Mr. Fraley stated that according to citizen input during the Comprehensive Plan update, citizens rated the availability of affordable housing was rated excellent or good by 23% of the respondents. It also showed the variety of housing options was rated excellent or good by 35% of respondents. Mr. Fraley stated these responses represent two of the three least positive ratings provided by the citizens. He stated the Va Tech survey showed the same questions decreasing in percentages as to being excellent or good from the last survey conducted for the last Comprehensive Plan. He stated that the Citizen Participation Team determined housing as a topic of concern among the citizens that participated. Mr. Fraley stated the respondents wanted to see more mixed cost housing, and more workforce and affordable housing, and have these types of housing integrated throughout the community. He stated he felt the benefits of the project were mixed cost housing, inclusion of affordable and workforce housing, unusual environmental protections, and adherence to the principles of open space design. These are all mentioned as public benefits in the current Comprehensive Plan. Mr. Fraley stated that these benefits will cost the County money. He felt the commercial component of the project has potential to make the project a positive benefit.

Mr. Krapf agreed many of the comments from his fellow Commissioners. He stated the Comprehensive Plan is a guideline to go by. He is very much against residential development until it is determined what is already planned, but felt in this case the positive benefits outweigh those concerns, such as the environmental protections, the quality of design, the low density, and the affordable and workforce housing proposed.

Mr. Billups expressed his concerns of approving an application that staff has recommended denial. He would like to see the completion of the Comprehensive Plan update done before more residential developments are approved. He does not believe this application provides a public benefit to the County.

Mr. Poole moved to deny the application.

Ms. Kratter seconded the motion.

In a roll call vote the motion failed. (3-4) AYE: Poole, Kratter, Billups; NAY: Fraley, Henderson, Peck, Krapf.

Mr. Henderson moved to approve the application.

Mr. Fraley seconded the motion.

In a roll call vote the motion was approved. (4-3) AYE: Fraley, Henderson, Peck, Krapf; NAY: Poole, Kratter, Billups.