

COUNTY OF HENRICO, VIRGINIA
BOARD OF SUPERVISORS AND PLANNING COMMISSION
SPECIAL MEETING
November 22, 2016

The Henrico County Board of Supervisors and Planning Commission convened a special joint meeting on Tuesday, November 22, 2016, at 5:00 p.m., in the County Manager's Conference Room, Administration Building, Henrico County Government Center, Parham and Hungary Spring Roads, Henrico, Virginia.

Members of the Board Present:

Tyrone E. Nelson, Chairman, Varina District
Richard W. Glover, Vice Chairman, Brookland District
Thomas M. Branin, Three Chopt District
Patricia S. O'Bannon, Tuckahoe District

Member of the Board Absent:

Frank J. Thornton, Fairfield District

Members of the Planning Commission Present:

Chris W. Archer, C.P.C., Chairman, Fairfield District
Gregory R. Baka, Tuckahoe District
Eric S. Leabough, C.P.C., Varina District
Sandra Marshall, Three Chopt District
Robert H. Witte, Jr., Brookland District

Member of the Planning Commission Absent:

Frank J. Thornton, Board of Supervisors' Representative

Other Officials Present:

John A. Vithoulikas, County Manager
Joseph P. Rapisarda, Jr., County Attorney
Joseph T. (Tom) Tokarz, II, Deputy County Attorney
Barry R. Lawrence, CMC, Assistant to the County Manager/Clerk to the Board
Tanya B. Harding, Administrative Assistant/Deputy Clerk to the Board
Timothy A. Foster, P.E., Deputy County Manager for Community Operations
W. Brandon Hinton, Deputy County Manager for Community Services
Douglas A. Middleton, Deputy County Manager for Public Safety
Anthony J. Romanello, Deputy County Manager for Administration
Ralph J. (Joe) Emerson, Jr, Director of Planning, Secretary to the Planning Commission
Tamra R. McKinney, Director of Public Relations & Media Services

Mr. Nelson called the meeting to order at 5:04 p.m. and welcomed the members of the Planning Commission. Mr. Archer called the Planning Commission to order.

Mr. Vithoukas announced Mr. Thornton had been detained in Williamsburg and would not be present.

Briefing on New State Law Concerning Conditional Rezoning Proffers

Mr. Vithoukas noted the Planning Commission was meeting with the Board to receive a briefing on this item. He provided opening remarks, pointing out that this past summer Mr. Rapisarda alerted the Board and Commission to significant legislation enacted by the 2016 General Assembly concerning certain conditional rezoning proffers. The legislation was aimed at addressing complaints that cash proffers for residential development were excessive and that applicants were being told what types of building materials should be used in residential developments in order to gain approval. Although various localities have taken different approaches in the wake of the legislation, Henrico has chosen a measured and deliberative approach that views each residential application on a case-by-case basis. Since June, the law firm Greehan, Taves & Pandak has been working closely with County staff and in October conducted training sessions for approximately 50 County staff members on the new law and its potential ramifications. Mr. Vithoukas recognized Mr. Rapisarda, who in turn introduced Pat Taves as a respected expert in land use law with 36 years of experience in the field, including 26 with the Fairfax County Attorney's Office and 10 as a partner in Greehan, Taves & Pandak.

Mr. Taves narrated a slide presentation titled *The New Proffer Statute, a/k/a Va. Code Section 15.2303.4: A Brief Introduction*. He began by noting the statute is a game changer, became effective on July 1, and applies to all residential rezoning cases and proffer amendments. The County can no longer suggest, request, require, or accept any unreasonable proffer, and voluntariness is no longer a defense. In response to questions from Mr. Nelson and Mr. Glover, Mr. Taves recommended the County not suggest or request proffers and clarified that the courts will determine whether proffers are reasonable if an applicant sues the County. He clarified for Mr. Leabough that the new legislation applies only to the residential components of mixed-use developments. Mr. Glover expressed concern that the new legislation effectively puts judges in the position of being planning commissioners. Mrs. O'Bannon voiced concern that the legislation restricts the ability of residential property owners to help determine future development on adjacent property. She suggested the County might wish to consider changing its comprehensive land use plan to lower residential densities. Mr. Vithoukas commented on the statute's legislative history and the County's efforts to establish dialogue with legislators when the legislation was being considered by the General Assembly. Mr. Taves pointed out many developers did not like the legislation because it took away much of their flexibility to volunteer proffers that previously were regarded as routine. He responded to a question from Mr. Archer by clarifying that the legislation does not provide specifics as to what constitutes unreasonable proffers. Mr. Taves advised Mr. Nelson there have not been any court cases to date relating to the new legislation. He, Mr. Glover, and Mr. Leabough discussed how the legislation could affect proffers for school capacity and off-site transportation improvements.

Mr. Taves resumed his presentation by highlighting undefined terms and legal rules that have been changed under the new legislation. He advised Mrs. O'Bannon that video recording meetings between Board members and developers would not be helpful because voluntariness on the part of a developer can no longer be introduced as evidence in establishing the reasonableness of a proffered condition. Mr. Branin questioned whether it might be prudent for the Board to tighten its comprehensive land use plan and just vote "yes" or "no" on future rezoning cases that are filed with the County. Mr. Taves responded to a question from Mrs. O'Bannon pertaining to the feasibility under the new legislation of basing proffers on Virginia Department of Transportation road, sidewalk, and traffic standards. Mr. Emerson distributed a copy of the new statute from the Virginia Acts of Assembly.

On motion by Mr. Branin, seconded by Mrs. O'Bannon, the Board approved going into a Closed Meeting at 5:47 p.m. for Consultation with the County Attorney and Outside Counsel Regarding Specific Legal Matters Requiring the Provision of Legal Advice Pertaining to the New State Law Concerning Conditional Rezoning Proffers, Pursuant to Section 2.2-3711(A)(7) of the Code of Virginia, 1950, as Amended.

The vote of the Board was as follows:

<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
Tyrone E. Nelson		Frank J. Thornton
Richard W. Glover		
Thomas M. Branin		
Patricia S. O'Bannon		

On motion of Mr. Witte, seconded by Mr. Leabough, the Commission approved going into a Closed Meeting at 5:48 p.m. for Consultation with the County Attorney and Outside Counsel Regarding Specific Legal Matters Requiring the Provision of Legal Advice Pertaining to the New State Law Concerning Conditional Rezoning Proffers, Pursuant to Section 2.2-3711(A)(7) of the Code of Virginia, 1950, as Amended.

The vote of the Commission was as follows:

<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
Chris W. Archer		Frank J. Thornton
Gregory R. Baka		
Eric S. Leabough		
Sandra M. Marshall		
Robert H. Witte, Jr.		

On motion of Mr. Glover, seconded by Mrs. O'Bannon, the Board approved going out of the Closed Meeting at 6:46 p.m.

The vote of the Board was as follows:

Aye
Tyrone E. Nelson
Richard W. Glover
Thomas M. Branin
Patricia S. O'Bannon

Nay

Absent
Frank J. Thornton

On motion of Mr. Leabough, seconded by Mr. Witte, the Commission approved going out of the Closed Meeting at 6:46 p.m.

The vote of the Commission was as follows:

Aye
Chris W. Archer
Gregory R. Baka
Eric S. Leabough
Sandra M. Marshall
Robert H. Witte, Jr.

Nay

Absent
Frank J. Thornton

On motion of Mrs. O'Bannon, seconded by Mr. Glover, the Board approved the attached Certificate of Closed Meeting.

The vote of the Board was as follows:

Aye
Tyrone E. Nelson
Richard W. Glover
Thomas M. Branin
Patricia S. O'Bannon

Nay

Absent
Frank J. Thornton

On motion of Mr. Witte, seconded by Mrs. Marshall, the Commission approved the attached Certificate of Closed Meeting.

The vote of the Commission was as follows:

Aye
Chris W. Archer
Gregory R. Baka
Eric S. Leabough
Sandra M. Marshall
Robert H. Witte, Jr.

Nay

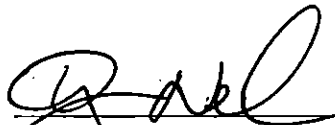
Absent
Frank J. Thornton

There being no further business, the Commission meeting was adjourned at 6:46 p.m.

Radio System and Tower Location Update

Mr. Vithoukas recognized Colonel Middleton, who made a brief slide presentation on the County's existing and proposed public safety communications network. Colonel Middleton displayed a map identifying the location of the existing and proposed towers and provided a list of 13 site tower locations originally considered by staff. He noted staff had narrowed the number of sites to seven and they were strategically located to maximize coverage throughout the County. He further noted the new public safety communications system will be one of the most robust in the country and through collocation of towers, the cost of the system was reduced by \$700,000. Colonel Middleton pointed out County staff held two public information sessions on the proposed sites, the Planning Commission unanimously recommended approval of the sites, and the Board will have a public hearing on the provisional use permits (PUPs) required for the sites at its December 13 meeting. Mr. Vithoukas advised the Board it will consider "substantially in accord" resolutions as well as PUPs for each of the seven sites. Mr. Nelson thanked Colonel Middleton for doing an exceptional job in coordinating this project. Colonel Middleton confirmed for Mr. Branin that there will be uniform coverage throughout the County if the proposed sites are approved.

There being no further business, the Board meeting was adjourned at 6:51 p.m.



Chairman, Board of Supervisors
Henrico County, Virginia