

Unapproved Minutes of the January 24, 2019 AFD Advisory Committee Meeting  
C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

Ms. Tori Haynes stated Hampton Roads Sanitation District currently operates the Williamsburg Treatment Plant located at 300 Ron Springs Drive. This is a landlocked parcel that is wholly surrounded by 250 Ron Springs Drive and the Carter's Grove AFD.

HRSD has stated that it requires a facility expansion adjacent to the Williamsburg Treatment Plant. This expansion is in response to federal enforcement action taken by the EPA and Dept. of Justice. HRSD has stated there is insufficient property on their current parcel to accommodate the facility expansion, and as such has stated its intent to acquire 250 Ron Springs Drive by condemnation for public utility purposes.

HRSD is not requesting a withdrawal of the property from the AFD at this time. Rather, per State Code, utilities may acquire interests in properties within an AFD provided that the Board of Supervisors, in consultation with the AFD Advisory Committee and Planning Commission, reviews the proposal and specifically examines the following criteria found in §15.2-4313: (i) the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

The evaluation and analysis of the proposal against these three criteria are a State-Code mandated process that is required when acquisition of a parcel by a political subdivision of the state is proposed.

Ultimately, the Board of Supervisors will consider the above criteria and make a determination as to whether the proposed action might have an unreasonably adverse effect upon state or local policy.

This review does not withdraw any portion of the parcel from the AFD or grant any sort of approval for the facility expansion itself. Should HRSD be successful in acquiring ownership of the subject parcel, they would then need to apply separately for those items, and accordingly, the AFD Advisory Committee would consider the withdrawal request at that time.

Staff recommends that each of the above criteria be discussed individually to make clear the findings of the Committee to the Planning Commission and Board of Supervisors.

In consideration of the criteria, staff ultimately found that the proposal was necessary to provide service in the most economical and practical manner, and that it will not have an unreasonably adverse effect upon state or local policy.

Mr. Taylor disclosed to the Committee and staff that he is affiliated with companies represented by Kaufman and Canoles law firm. However, he does not feel this will sway

his opinion or recommendations while serving on the Committee.

Mr. Taylor then asked staff to clarify whether the Committee would be voting to agree or disagree with the HRSD proposal.

Ms. Haynes stated the Committee would not be considering any AFD withdrawal at this time but needed to determine if the action of taking the parcel would have an adverse effect on State or local policy. She said this is an automatic review of three criteria triggered or prompted by the intent stated by HRSD to acquire the parcel by condemnation for public utility purposes. Their findings will then go to the Planning Commission and Board of Supervisors.

Ms. Haynes suggested discussion of the three criteria found in §15.2-4313 and stated that representatives of HRSD and Carter's Grove Associates, LLC are available to answer questions.

Ms. Haynes then shared staff's understanding of the proposal. HRSD is looking to expand beyond their current borders into the Carter's Grove AFD. They propose clearing approximately 7 acres, but a final site has not been located yet.

Mr. Wanner stated HRSD is under Federal mandate to make improvements to the facility.

Ms. Haynes confirmed there is a Federal action against HRSD, and existing lands cannot accommodate the necessary expansion. They require an additional seven acres.

Mr. Taylor stated HRSD is attempting to acquire 76 acres.

Ms. Haynes stated HRSD is pursuing ownership of the entire parcel but not necessarily withdrawal of all 76 acres from the AFD. She reiterated that this review is prompted by the intent to condemn lands within an AFD by a political subdivision.

Mr. Hitchens asked staff why HRSD would need to withdraw land from the AFD if they are a public entity.

Ms. Haynes answered that a Special Use Permit (SUP) is not allowed in an AFD unless it is related to farming practices. If HRSD takes ownership of the parcel, and a use is permitted with a SUP, they will need to withdraw that portion of land from the AFD.

Mr. Abbott asked the HRSD representative for an explanation of their plan.

Ted Henifin, General Manager at HRSD, addressed the Committee and began with a discussion on the impact of topography in the subject parcel. He explained the land has steep slopes, wetlands and Resource Protection Area and is largely undevelopable. He stated that of the 76 acres, maybe only 30 acres are buildable. He showed the Committee on a map the area of the parcel most likely suitable for their facility expansion and access points. Mr. Henifin stated there have been many discussions with the property owner

regarding alternatives to condemnation in the past year with no resolution. Regarding the consent order, Mr. Henifin stated the federal enforcement action is driving the timeline tied to the project.

Mr. Henifin explained HRSD requires the 76 acres because of the unusual, unique residual that would be created by the project and buildout. The mostly unbuildable, remaining land would serve as a buffer between the WTP and surrounding properties to protect the investment and property, in case slopes erode. He said they have an outfall through an easement on the beach and have already had to make improvements on the beach for erosion. Mr. Henifin said they would like to have control long-term and do not find much residual value in the remaining property beyond the buildable acres. He stated it would be difficult to assess the value of the residual property, and there is also potential for further expansion requirements in the future. He noted HRSD has stated it is willing to dedicate a permanent conservation easement over the remaining portion of the parcel. He said they do not know the exact project location until they can access the land and survey.

Mr. Abbott asked about the purpose of the project or facility improvements.

Mr. Henifin stated this will be the first of several projects whereby HRSD is adding advanced water treatment capability and drinking water standards to their current treatment plants. Of the 22 million gallons of wastewater treated per day, 8 million gallons will be treated in this manner and discharged into the Potomac aquifer instead of the James River.

Mr. Henifin stressed HRSD does not currently have room to expand within their current site as it is mostly built out. He stated the proposal will protect their ability to advance wastewater treatment in as compact a footprint and most economical way as possible. The water will need to move through several process and control points, so use of an alternative or nearby property would still impact the AFD with easement connections. From a cost perspective, Mr. Henifin said sharing a property and fence line allows for the sharing of other resources such as operators and security.

Mr. Taylor asked about the purpose of owning the residual property if it is largely unusable.

Mr. Henifin expressed the difficulty in defining both the acquisition of land required and also the value of the residual property. A one-time take would avoid these issues and allow for additional land use if needed in the future.

Mr. Tim Trant, attorney with Kaufman and Canoles, introduced his law partner also present at the meeting, Mr. Paul Gerhardt. Mr. Trant said they represent Mr. Sam Mencoff, owner of Carter's Grove Associates, LLC and the 76-acre parcel located at 250 Ron Springs Drive in the Carter's Grove AFD which surrounds the HRSD WTP. Mr. Mencoff also owns the adjacent 400-acre Carter's Grove parcel. Mr. Trant said Mr. Mencoff's intent when purchasing the property was to fulfil the County and community interest in restoration and preservation of the historic Carter's Grove property, and he has since invested heavily in the property.

Mr. Trant said they object to HRSD's request at this time, stating the HRSD intent to take 76 acres and develop a small portion of seven acres does not meet the statutory criteria. He said Mr. Mencoﬀ desires to keep the buffer, the take is larger than it needs to be, the proposal is not the most practical way to provide the service, and there are reasonable alternatives. Mr. Trant stated they request that the Committee defer action on this item until they can continue their conversation with HRSD, and they do not support any plan to take the entire property.

Mr. Trant said HRSD approached them last year about the need for some additional land and felt there was constructive dialogue. However, he said, HRSD required them to enter into a Nondisclosure Agreement in connection with those conversations so he cannot disclose any details. Mr. Trant said they would like those conversations to continue. Regarding the compulsory timeline for HRSD, Mr. Trant said they did not create this sense of urgency and noted HRSD has been under the consent decree since 2010 to implement the changes.

Mr. Wanner noted all of Hampton Roads is under the same consent.

Mr. Trant said the timeline is a proposal, and as a landowner invested in historic property, his client would like the opportunity for thoughtful dialogue to reach a reasonable resolution.

Mr. Hitchens asked Mr. Trant if a survey would be possible.

Mr. Trant referenced the Nondisclosure Agreement but stated there is a willingness to engage in reasonable conversation about what is needed. He said the threat of condemnation of 76 acres is an attempt to short-circuit the process as a negotiating tactic.

Mr. Wanner asked the staff how long it might be possible to defer.

Ms. Haynes stated that, on counsel from the County Attorney's Office, deferral is not an option because of the State code requirements. The March 12, 2019 Board of Supervisor's meeting is the ninety day deadline from the date the original report was filed. If the Board determines there is an unreasonably adverse effect upon state or local policy, they may then hold a public hearing within the next 60 days.

Ms. Haynes stated the Committee needs to determine if the action of taking the parcel would have an adverse effect on State or local policy then forward their finding to the Planning Commission for their February meeting before the Board of Supervisor's March meeting.

Mr. Trant said HRSD could also withdraw their request, continue the conversation with Mr. Mencoﬀ and return with a proposal that meets the criteria.

Ms. Sue Sadler asked Mr. Henifin about the status of the Sustainable Water Initiative for Tomorrow (SWIFT) project.

Mr. Henifin said the SWIFT research center is putting water in the ground, and the aquifer is 400-500 feet below the surface. He said the issue with surveying is having relative assurance against the potential waste of money surveying land not yet acquired. Mr. Henifin mentioned the challenges of negotiations and said the Nondisclosure Agreement was actually a requirement of Mr. Trant's client. He said condemnation includes compensation for the legal value of the land, and they are seeking a willing partner.

Mr. Trant noted one of the County's articulated benefits for landowners in joining an AFD is a layer of protection from condemnation. He said the County would offend that commitment by recommending or condoning the action by HRSD.

Mr. Wanner stated he believes the public good is served by condemnation of some amount of land in this situation.

Mr. Abbott said he believes a buffer should be maintained and owned by the original owner.

Mr. Trant asked for a recommendation of deferral until an agreement is made between HRSD and the landowner.

Ms. Sulouff and Ms. Haynes stated that as long as there is an application, the Board is required to make a determination within 90 days. If HRSD chooses not to withdraw, the process moves forward in accordance with State code. The Committee may tailor its recommendation to reflect the discussion.

Mr. Henifin said with HRSD surrounded by the AFD, it will be impacted but any withdrawal will be brought forward later and separately. He said the full 76-acre parcel is required to protect the facility, slopes and beachfront.

Mr. Trant said there is a mutual interest in protecting the property and facility, and there have been no problems addressing any issues on the property to date.

Ms. Haynes suggested addressing each of the three criteria being considered. Regarding criteria (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies, Ms. Haynes noted to the Committee there is some planned, intended agricultural activities but no formal activity, and they are not receiving land use valuation. Ms. Haynes did note that Carter's Grove Associates, LLC representatives did appeal to the Department of Conservation and Recreation (DCR) to advise the County on this proposed action. DCR was not able to provide a full report based on access and timeline, but there are some known natural resource heritage areas there.

Ms. Sulouff stated this Committee review and recommendation is significant as an extra board hearing and part of the extra protection provided to landowners in an AFD.

Ms. Haynes then read to the Committee criteria (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and criteria (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Taylor said the third criteria is most troubling when considering how much of the parcel is required by HRSD and the Committee's commitment to AFD landowners.

Mr. Henifin stated he has little confidence an agreement could be made, given the proposals already rejected by the landowner.

Mr. Trant said they are also frustrated and feel there have been reasonable counter-offers.

Mr. Wanner asked how soon HRSD could reapply, if they were to withdraw their application.

Ms. Haynes answered the 90-day clock would start again upon resubmittal.

Mr. Hitchens said the landowner has made a great investment in the County and feels uncomfortable with HRSD taking the entire parcel.

Mr. Abbott motioned, based on the Committee's consideration of the three criteria found in §15.2-4313, that the proposed action by HRSD to acquire 250 Ron Springs Drive, located in the Carter's Grove AFD, by condemnation for public utility purposes might have an unreasonably adverse effect upon state or local policy. The proposed action (i) would have an unreasonably adverse effect upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies; (ii) there is no necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) there could be reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Harcum seconded the motion.

On a voice vote of 5-1-1, the motion was approved.

Ms. Garrett, Mr. Hitchens, Mr. Harcum, Mr. Abbott, and Mr. Taylor voted yes, the proposed action might have an unreasonably adverse effect upon state or local policy. Mr. Wanner voted against the motion, and Ms. Sadler abstained from the vote.