

**Unapproved Minutes of the February 6, 2019  
Planning Commission Regular Meeting**

**Z-19-0001. Powhatan Terrace Proffer Amendment**

Ms. Haynes stated that Tom Tingle of Guernsey Tingle Architects has submitted a request on behalf of Housing Partnerships to amend Condition No. 19 of the adopted Proffers for Powhatan Terrace. Ms. Haynes stated that the development was approved by the Board of Supervisors on March 28, 2008 as a cluster development consisting of 36 townhome units. Ms. Haynes further stated that at that time, all units were intended to be offered for sale. Ms. Haynes stated that an amendment to Condition No. 1 of the original Proffers was adopted on January 9, 2018, which allowed the development the ability to offer units for rent.

Ms. Haynes stated that per the applicant, Powhatan Terrace is being developed with the use of the Low-Income Housing Tax Credit (LIHTC) program, an affordable housing tax credit program administered by the Virginia Housing Development Authority (VHDA) that focuses on rental housing.

Ms. Haynes stated that currently, Condition No. 19 requires at least three affordable units to be offered for sale. Ms. Haynes stated that the applicant has determined that having three units for sale could disqualify the project from the LIHTC program, and has requested to revise this condition to instead require at least three affordable rental units with rates at or below 60% of Average Median Income, with annual verification of rental rates to the Planning Director for 15 years.

Ms. Haynes stated that staff notes that the amended Proffer by itself doesn't fully satisfy the Housing Opportunities Policy; however, as the amended Proffer binds the owner to the requirements of the LIHTC program, staff felt that the combination of the voluntary amended Proffer and inclusion in LIHTC better satisfies the intent of the HOP than the original proffer.

Ms. Haynes stated that staff finds the proposal to be compatible with surrounding development and consistent with the adopted Comprehensive Plan regarding affordable housing. Ms. Haynes stated that staff recommends that the Planning Commission recommend approval of this application and acceptance of the amended Proffers to the Board of Supervisors.

Ms. Leverenz inquired if the concerns about the deep ravine were brought forward during previous discussions.

Ms. Haynes stated that she was not certain if the ravine itself was discussed; however, there is an environmental mitigation proffer and any of the policies and procedures that have been updated since prior approvals would apply.

Ms. Leverenz inquired whether this would apply to flood plain regulations as well.

Ms. Haynes confirmed.

Mr. Polster noted that the Commission had received a letter from a concerned citizen related to flooding issues on the property. Mr. Polster stated that sea level rise has been impacting that area for a number of years. Mr. Polster further stated that the issue is not that there is flood plain on the property but the siting of the development. Mr. Polster stated that the question for him is if the site plan would go through a legislative review that would allow the Commission to consider those implications.

Ms. Haynes stated that site plans are able to be reviewed and approved administratively; however, environmental proffers would have to be satisfied and current regulations would have to be satisfied. Ms. Haynes noted that in this early draft, none of the development occurs in an environmentally sensitive area.

Mr. Polster inquired if the Commission would consider this matter again.

Ms. Haynes stated that the Commission would not review the site plan; however, it will be held to the approved Proffers.

Mr. Haldeman inquired why the Proffer Condition was 15 years instead of 30 years. Mr. Haldeman noted that the VHDA requirement is 30 years.

Ms. Haynes stated that she would defer to the applicant; however, the LIHTC program does require the applicant to commit to a 30-year affordability time period. Ms. Haynes stated that the Proffer requires reporting to the Director of Planning for 15 years. Ms. Haynes stated that the Proffer combined with the LIHTC requirements brings the application closer to compliance with the HOP and the LIHTC requirement will keep the affordability period at 30 years.

Mr. Polster stated that he would like to understand the applicant's rationale for the 15-year time frame. Mr. Polster stated that the County no longer has a HOP and saying that the project conforms to the HOP does not hold any weight.

Mr. Haldeman inquired if the original conditions dating from 2008 are still in force.

Ms. Haynes confirmed.

Mr. Haldeman inquired about the 2008 requirement for establishment of an Owners Association when the proposal is now for all rental units.

Ms. Haynes stated that the County Attorney's Office believes that the requirement can be met in other ways.

Mr. Haldeman stated that his concern was how the financial responsibilities for maintenance of the property and stormwater facilities would be covered.

Mr. Haldeman inquired whether the cash proffers would remain the same.

Ms. Haynes stated that the cash proffers would be the same, with adjustment for inflation. Ms. Haynes noted that cash proffers are paid after the final inspection is approved.

Mr. Haldeman noted that this property seems vulnerable to flooding issues from stormwater runoff from adjacent properties that are at higher elevations. Mr. Haldeman asked staff to look carefully at the siting of the development at the site plan stage.

Mr. Schmidt called for disclosures from the Commission.

Mr. Haldeman noted that he visited the property.

Mr. Schmidt stated that he spoke briefly with one of the applicant's representatives.

Mr. Schmidt opened the Public Hearing.

Mr. Tom Tingle, Guernsey Tingle Architects, representing the applicant, stated that he did not have a formal presentation; however, he would be happy to answer the Commission's questions. Mr. Tingle noted that this is an opportunity for a significant affordable housing project with few new impacts to the infrastructure and surrounding development.

Mr. Tingle stated that the reason for the proffer amendment is to make the project eligible for the LIHTC program by making the three units rental units.

Mr. Tingle stated that the 15 year commitment is the initial compliance period under LIHTC. Mr. Tingle stated that LIHTC does require that the properties remain rent restricted for 30 years. Mr. Tingle further stated that the 15-year commitment under the Proffers is to provide additional assurance to the County that the units will remain affordable.

Mr. Tingle noted that the request is only to amend the Proffers and that the previously proposed site plan and master plan are not being changed.

Mr. Steve Romeo, VHB, 351 McLaws Circle, stated that his firm is developing the site plan for the project. Mr. Romeo stated that the property has a steep drop-off at the back and at least 50% of the parcel is undevelopable. Mr. Romeo stated that the development would be sighted more toward the front of the parcel. Mr. Romeo noted that the difference in elevation between the flood plain and the lowest sited apartment is at least 20 feet. Mr. Romeo further noted that the older adjacent developments discharge their drainage uncontrolled across the subject property thorough the natural ravine system which creates further incising of the ravine. Mr. Romeo further noted that the design for the property takes this into account with proposed remediation.

Mr. Polster requested additional clarification on the siting of the development.

Mr. Romeo stated that less than half the property is developable and that the farthest extent is approximately in line with Shibui Woods.

Mr. O'Connor noted that one of the main concerns mentioned in the letter was whether the units would be built on slabs or with a crawl space.

Mr. Romeo stated that the units would be built on slabs, primarily because of accessibility concerns.

As no one else wished to speak, Mr. Schmidt closed the Public Hearing.

Mr. Schmidt opened the floor for discussion by the Commission.

Mr. Polster stated that the clarification on the siting of the development has removed many of his concerns. Mr. Polster further stated that he still has reservations about the 15-year commitment in the Proffers. Mr. Polster noted that some other developments have actually increased their length of commitment to ensure that the units would not quickly become market rate units. Mr. Polster stated that he will support the application but would prefer to see the term increased to 30 years.

Mr. Holt clarified that these are voluntary proffers and that the County cannot further attach conditions or make recommendations as with an SUP. Mr. Holt noted that the Commission would vote on the application as submitted.

Mr. Schmidt noted that he is supportive of the application.

Ms. Leverenz made a motion to recommend approval of the application.

On a roll call vote the Committee voted to recommend approval of Z-19-0001. Powhatan Terrace Proffer Amendment (7-0).