

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

C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

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

Ms. Haynes stated that HRSD has stated that it requires a facility expansion adjacent to the Williamsburg Treatment Plant. Ms. Haynes further stated that this expansion is in response to federal enforcement action taken by the Environmental Protection Agency (EPA) and the Department of Justice. Ms. Haynes stated that 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.

Ms. Haynes stated that HRSD is not requesting a withdrawal of the property from the AFD or any approvals for the facility itself 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 three criteria: the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; the necessity of the proposed action to provide service to the public in the most economical and practical manner; and whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

Ms. Haynes stated that ultimately, the Board of Supervisors will make a determination as to whether the proposed action is necessary to provide service to the public in the most economical and practical manner, and whether it will have an unreasonably adverse effect upon state or local policy.

Ms. Haynes stated that in consideration of the State Code criteria, HRSD has stated that they will reduce clearing impacts to approximately 7 acres, and would not need to remove the entire parcel from the AFD. Ms. Haynes stated that undeveloped portions of the parcel and the resources therein would be preserved in the AFD and subject to AFD regulations. Ms. Haynes stated that the proposed action is in response to a federal enforcement action taken against HRSD and the proposed facilities would provide necessary service to the public by alleviating groundwater shortages in the Hampton Roads region. Ms. Haynes stated that given the landlocked nature of the HRSD parcel, staff finds there is no practical way to avoid action within the Carter's Grove AFD if the project is to be completed in the most economical and practical manner possible. Ms. Haynes stated that should HRSD pursue a nearby non-contiguous parcel, they would still need an access and utility corridor through the subject parcel, and per HRSD's estimate, this would increase capital costs.

Ms. Haynes stated that staff recommends that the Planning Commission find the proposal necessary to provide service to the public in the most economical and practical manner and that it will not have an unreasonably adverse effect upon state or local policy.

Ms. Haynes stated that at its January 24, 2019 meeting, the AFD Advisory Committee voted 5-1-1 that the proposal is not necessary and would have an unreasonably adverse effect upon state or local policy.

Mr. Krapf inquired if there had been any recent developments on the discussion of the conservation easement

Ms. Haynes stated that HRSD does not own the parcel at this time so there have been no formal talks. Ms. Haynes stated that HRSD has indicated that they would be willing to put some of that land in a conservation easement.

Mr. Holt stated that those details would come as part of a later decision. Mr. Holt further stated that the Commission's recommendation should focus around the three specific criteria. Mr. Holt stated the Commission would have an opportunity to consider legislative applications at a later time that would allow the Commission to consider those design details.

Mr. Krapf stated that he believed the question was germane to the three criteria, particularly Criteria No. 1, the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies. Mr. Krapf stated that he was looking at the case from both the standpoint of the criteria as well as from the historic perspective of a landmark case which would affect the Carters Grove property which would be affected by activities taking place within the buffer.

Mr. Haldeman noted that acquiring more acreage than is actually needed would affect the economic viability of the project. Mr. Haldeman noted that the additional costs would potentially affect water rates.

Mr. Krapf commented that at this time the action is for a taking of the property since HRSD and the property owner have not been able to agree on a purchase price.

Ms. Haynes stated that this was staff's understanding as well.

Mr. O'Connor inquired if there is a market value attached to the property as part of the condemnation process.

Mr. Max Hlavin, Deputy County Attorney, stated that there are a number of steps that there are a number of steps that a political subdivision or municipality must take as part of the condemnation process. Mr. Hlavin further stated that at the time the taking is finalized, there must be a valuation attached to the property. Mr. Hlavin stated that assessing the valuation is part of a separate process than what the Commission is considering at this time. Mr. Hlavin

stated that what the Commission is making a recommendation on is the effect of the purchase or taking of the property on the district as a whole.

Mr. O'Connor stated that his concern with the valuation is to compare the cost with the cost of acquiring a portion of 200 Ron Springs Road in order to determine if it fits the criteria of a reasonable alternative.

Mr. Polster stated that he understands that the reason for acquiring the entire 76 acres is because HRSD has not been allowed to make a site visit to determine where the project could reasonably be located which would result in acquiring something substantially less. Mr. Polster further stated that if HRSD did pursue the alternative site, they would still need an easement across 250 Ron Springs Drive to access the project. Mr. Polster stated that if they cannot reach an agreement on acquisition of a portion of the property, then they likely will not be able to acquire the easement either.

Ms. Leverenz inquired if the property required for the easement would have to be negotiated or could it be condemned rather than taking the entire property.

Mr. Schmidt noted that this is not a public hearing case and inquired if letting the applicant speak would then require opening the floor for others to speak.

Mr. Hlavin stated that it is within the Commission's prerogative to ask questions of the applicant on this matter.

Mr. Hlavin noted that an easement or any other property right can be acquired by condemnation.

Ms. Robyn Hansen, of Jones, Blechman, Woltz & Kelly, P.C., stated that she serves as counsel for HRSD. Ms. Hansen stated that HRSD has considered the parcel at 200 Ron Springs Drive; however, the current HRSD facility is completely surrounded by the 76 acre AFD parcel. Ms. Hansen further stated that to develop and operate the new facility, the facility must be able to work with the existing treatment plant. Ms. Hansen further stated that the AFD will be impacted no matter which parcel is acquired.

Ms. Hansen stated that HRSD is committed to developing as little of the parcel as necessary to accomplish what is required. Ms. Hansen further noted that much of the parcel is undevelopable. Ms. Hansen stated that the remainder of the parcel would be used to protect its facilities. Ms. Hansen stated that acquiring the parcel is the most economical option.

Ms. Lauren Zuravnsky, PE, stated that by seeking approval for a more open-ended plan at this time, it would allow HRSD to find the best location for the new facility without having to return to the Commission multiple times. Ms. Zuravnsky stated that HRSD seeks have the flexibility to layout the site in the most cost effective manner with one action and put the remaining land in a preservation easement.

Mr. Polster inquired about the location of the existing easement across the AFD parcel.

Ms. Zuravnsky stated that the easement runs where the force mains exist. Ms. Zuravnsky stated that those easement would not be available for the new facility.

Mr. Polster inquired if there were any other easements on the property.

Ms. Zuravnsky stated that she was not aware of other easements.

Mr. Polster inquired about the footprint of the HRSD Sustainable Water Infrastructure for Tomorrow (SWIFT) research facility in Suffolk.

Ms. Zuravnsky stated that the facility in Suffolk is a research and public outreach center which is of a different character and size than the full scale facility.

Mr. Polster inquired if the treatment processes are the same.

Ms. Zuravnsky stated that the process is the same; however, the intent with the research facility was to have a flexible design to support all of the permitting and development going forward.

Mr. Polster stated that he was looking for an idea of the scale and footprint of the facilities on the proposed site and how the SWIFT facility interacted with the existing treatment plant.

Ms. Zuravnsky explained the flow of the process through the existing facility. Ms. Zuravnsky noted that there would be some additional facilities constructed on the existing site to support the SWIFT process. Ms. Zuravnsky stated that HRSD hopes to nest the new facility on a potentially buildable area close to the existing influent force mains. Ms. Zuravnsky further stated that the additional wells to support the process would primarily be scattered throughout the existing site with one or two located on the new site.

Mr. Polster inquired about the reason for the increased cost of locating the new facility on the alternate parcel.

Ms. Zuravnsky stated that some of the wells would be relocated as not all of them can be on the same site. Ms. Zuravnsky further stated that it is more efficient for the new facility to be located as close to the existing facility as possible.

Mr. Polster inquired if there was a plan to monitor subsidence.

Ms. Zuravnsky stated that there are associated monitoring wells; however, they are not monitoring subsidence. Ms. Zuravnsky further stated that there is an extensometer at the Nansemond facility in Suffolk through a partnership with the U.S. Geological Survey (USGS).

Mr. O'Conner inquired about the approximate cost of the project.

Ms. Zuravnsky stated that the construction cost for the treatment works is approximately \$120,000,000. Ms. Zuravnsky further stated that she believes that figure includes the recharge and monitoring wells.

Mr. O'Connor inquired about the \$1,000,000 additional cost to locate the new facility on the 200 Ron Springs parcel.

Ms. Hansen stated that the cost comes from creating the necessary utility corridor for the water to move back and forth between the existing and new facility. Ms. Hansen further stated that even under this option the AFD would be impacted. Ms. Hansen noted that the \$1,000,000 does not factor in the cost of acquiring the 24 acre parcel.

Ms. Zuravnsky stated that the \$1,000,000 is related to construction cost alone; however, there are other greater costs associated with using the 24 acre parcel.

Ms. Leverenz noted that the cost to acquire 24 acres is likely less than the cost to acquire 76 acres.

Ms. Hansen stated the 24 acre parcel is developable whereas the 76 acre parcel is not and would, therefore, have a greater land value.

Mr. Polster noted that HRSD has been working for two years to find a suitable location on the parcel. Mr. Polster inquired why they have not yet been successful.

Ms. Hansen stated that they do not own the property. Ms. Hansen further stated that HRSD has been denied access to the property. Ms. Hansen stated that negotiations to purchase the property or acquire an easement have failed, which has led to the condemnation action.

Mr. Polster inquired about the deadline imposed by the consent decree.

Ms. Hansen stated that this is one of the major projects that HRSD must complete under the Consent Decree. Ms. Hansen further stated that HRSD filed the condemnation action as a last resort to meet those obligations.

Ms. Hansen stated that the request tonight is to consider the three criteria and determine if the proposal meets those criteria.

Mr. O'Connor inquired about the easements currently in place. Mr. O'Connor inquired about any easements at the shore line.

Ms. Zuravnsky stated that there are no easements in that location and that is part of the reason HRSD wants to acquire the entire 76 acres to protect its assets. Ms. Hansen stated that the only existing easements are over the influent force mains.

Mr. O'Connor inquired about the size of the lines needed to access the wells.

Ms. Zuravnsky stated that the wells are 24 inches and the supply lines would be approximately the same size.

Mr. Krapf inquired if there have been any adverse effects on water quality in the aquifer in other locations where the water is injected when it does not meet purity standards. Mr. Krapf further inquired if there was any evidence of land movement where water has been injected in the aquifer.

Ms. Zuravnsky stated that there is an extensometer in Suffolk which has shown subsidence and recovery when flushing the wells and recharging waste water. Ms. Zuravnsky further stated that these measurements were, however, only millimeters. Ms. Zuravnsky stated that there is some evidence that the project could impact subsidence in a positive way.

Ms. Zuravnsky stated that there is a full suite of critical control sensors monitoring the water quality in the aquifer on a continual basis. Ms. Zuravnsky stated that each sensor monitors a particular set of parameters. Ms. Zuravnsky further stated that any one of those sensors can trip and divert the water.

Mr. Polster stated that this project represents a vast public benefit, particularly to the County as it will put water back in the aquifer. Mr. Polster further stated that the ability of the aquifer to provide water for the County is critical based on the County's growth rate. Mr. Polster stated that if only a portion of the property is ultimately withdrawn from the AFD and the remainder stays in the AFD or is put in a conservation easement, the impact on the AFD is minimal and is far outweighed by the public benefit.

Ms. Zuravnsky stated that this project also represents a benefit to rate payers as an economical method of effluent management.

Mr. Polster further noted that there is a benefit also from the Total Maximum Daily Load (TMDL) credits. Mr. Polster noted that the TMDL credits can be sold and represent an economic benefit.

Mr. Schmidt noted that he did discuss the matter with Mr. Trant. Mr. Krapf, Mr. Haldeman and Ms. Leverenz stated that they also spoke with Mr. Trant. Mr. Polster stated that Mr. Trant contacted him but he did not return the call.

Mr. Schmidt noted that this is a complicated matter. Mr. Schmidt noted that the environmental benefit is there. Mr. Schmidt noted that his main concern is any impact on cultural resources in that area.

Mr. Haldeman inquired if the Commission was making a recommendation on the matter.

Mr. Holt clarified that the request was for the Commission to find whether the proposal provides service to the public in the most economical and practical manner and that it will not have an unreasonably adverse effect upon state or local policy.

Mr. Polster noted that AFDs only bind the property for a limited time and that property can be withdrawn for development during the renewal period. Mr. Polster noted that the subject property is zoned for residential development. Mr. Polster noted that the property would be better protected if it were in a conservation easement.

Ms. Leverenz noted that the majority of the parcel is not developable due to topographical constraints. Ms. Leverenz stated that if the impact is only the seven acres with the remainder preserved, then it would meet the criteria of minimal effect on the AFD.

Mr. Krapf stated that he believes the proposal meets all three criteria and that he would support the application.

Mr. Polster made a motion that the proposed action set forth in C-18-0123, HRSD Treatment Plant Expansion within Carter's Grove AFD would not have an adverse impact have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; proposed action is necessary to provide service to the public in the most economical and practical manner; there are no reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

On a roll call vote the Commission voted that the proposed action set forth in C-18-0123, HRSD Treatment Plant Expansion within Carter's Grove AFD would not have an adverse impact have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; proposed action is necessary to provide service to the public in the most economical and practical manner; there are no reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district (5-2).