

**STAFFORD COUNTY PLANNING COMMISSION MINUTES**  
**October 19, 2011**

The meeting of the Stafford County Planning Commission of Wednesday, October 19, 2011, was called to order at 6:33 p.m. by Chairman Gordon Howard in the Board of Supervisors Chambers of the County Administrative Center.

MEMBERS PRESENT: Howard, Rhodes, Fields, Hazard, Apicella, Kirkman and Hiron

MEMBERS ABSENT: None

STAFF PRESENT: Harvey, McClendon, Knighting, Ansong, Doolittle, Hess, Hornung, Baral, Forestier and Taylor

DECLARATIONS OF DISQUALIFICATION

Mr. Howard: Are there any declarations of disqualifications for anything that was written on this evening's agenda? Okay, hearing none before I get into the agenda there's three things; one is Mr. Fields wants to comment on the Executive Summary that was given to us on Friday. We also need to add to our agenda the nomination for Secretary, and we have a request to switch item number 6 with item number 10. Item 6 is the Stafford Sports Center and item 10 is the Westlake Preliminary Subdivision Plan, so to move that up to where item 6 was and just move item 6 to where item 10 is. So, someone can move the agenda I guess just as I described it or we can...

Mr. Apicella: So moved.

Ms. Kirkman: Mr. Chair, just... what's the reason for the switching?

Mr. Howard: It's at the request of the applicant for Westlake and the applicant for the Stafford Sports Center has agreed to that change.

Ms. Kirkman: And why do they need it moved up (inaudible)?

Mr. Howard: Why do they what?

Ms. Kirkman: Why do they need it moved up earlier?

Mr. Howard: I'm not sure what the reason was; it was just a request. It's the same representation for both of the applicants.

Ms. Kirkman: Okay, thank you.

Mr. Howard: Alright, is there a second on that motion?

Mrs. Hazard: Second.

Mr. Howard: Alright, so the agenda would be adopted and changed to include before we get to item number 1 that we would take nominations for Secretary and vote on that, and then Mr. Fields would like to comment on making a switch on the Executive Summary notes, and then item number 6 and 10 would be flipped. All those in favor of those changes signify by saying aye.

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Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed nay? The motion carries 6-0. Mr. Fields?

Mr. Fields: Yes Mr. Chairman, on the Executive Summary which, of course, are not the official record of the meeting but before the minutes are completed, if you look to item 11, Amendment to Stafford County Comp Plan, this is the Implementation Plan of the Stafford Comp Plan, and it notes that the motion was made by Mr. Apicella, seconded by Mr. Fields; passed 6-0. I did not second the motion and I voted against the motion. So it should read... I'm not sure who seconded it...

Mr. Howard: I believe it was Mr. Rhodes; we can have that verified by the tape.

Mr. Fields: Okay. And the vote I believe should read 5 to 1.

Mr. Howard: Right.

Mr. Fields: I believe I was the only dissenting vote.

Mr. Howard: That is the correct vote. The vote should be 5 to 1; Mr. Fields did vote nay on that. And, again, that's not the official minutes but...

Mr. Fields: Right.

Mr. Howard: ... that's good to correct them ahead of time on that. Appreciate you doing that.

Mr. Fields: Yep, no problem.

Mr. Howard: And then I'll take nominations for the position of Secretary on the Planning Commission.

Mrs. Hazard: Mr. Chairman?

Mr. Howard: Mrs. Hazard?

Mrs. Hazard: I would nominate Scott Hirons for the position of Secretary.

Mr. Howard: Is there a second?

Mr. Apicella: I'll second that.

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Mr. Howard: Any discussion? All those in favor of Mr. Hirons taking the position of Secretary from now until the end of the year and/or his term signify by... well, it has to be either the end of the year or if you were to leave sooner as Mr. Mitchell did... signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed nay? The motion carries 6-0. Just for housekeeping, you don't have to switch today but the next time you guys will probably be in different chairs... if that means anything to you. That brings us to item number 1 on the agenda this evening, which is the Comprehensive Plan Amendment and Zoning Ordinance Amendment, Transfer of Development Rights. And I believe that's Ms. Ansong?

UNFINISHED BUSINESS

1. Comprehensive Plan Amendment and Zoning Ordinance Amendment; Transfer of Development Rights (**Time Limit: December 5, 2011**) (**Deferred at September 21, 2011 meeting to October 5, 2011**) (**Deferred at October 5, 2011 to October 19, 2011**)

Ms. Ansong: Good evening Mr. Chairman and members of the Planning Commission. I stand before you today to address the issue of the proposed TDR Ordinance and the Comprehensive Plan amendments. At that last Planning Commission meeting which was held on October 5<sup>th</sup>, I did present the proposal and as a result of the presentation, questions were brought up. So today I stand before you to go over the questions which were brought up. In the memo you have before you I have addressed five questions... staff has actually addressed five questions and I'd like to go over that briefly if I could. There was a request for examples of TDR programs within the United States and I have provided such examples in your packets. The examples came from the American Farmland Trust and the Cascade Land Conservancy, and there are various examples of TDR programs located within the United States. Secondly, there was a question in terms of Frederick County and if their TDR program had any participants. And, to answer that question, yes they do; their TDR Ordinance was adopted in April 2010 and as of now they have had one participant in their program. And they also have a PDR program in Frederick County, Virginia. There was also a question regarding the Agricultural Commission and whether or not they had addressed TDRs, and the answer to that is no. As of now the TDR Ordinance and the Comp Plan Amendment have not been referred to the Agricultural Commission for their input. There was also a question about the School Board; there was concern that perhaps the School Board didn't know about the TDR proposal and the Planning Commissioners wanted to make sure the School Board was aware of the TDR because it may... they may need to know what's going on with the TDR in terms of planning for school enrollment. So, the School Board has been contacted and so have various school planning officials such as Mr. Horan, and we are in the process of having a meeting with him to discuss the issues some more. But he also informed us that in terms of planning for school enrollment, they look at approved building projects and then they plan accordingly, based on approved projects and

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approved development that they know will occur in those approved projects for enrollment status... enrollment status and estimates. There was also a question concerning dwelling units. There's a question concerning how many units can be built by-right in the receiving areas and there are two receiving areas, Courthouse and Brooke Station. In terms of the Courthouse UDA, in terms of units that can be built by-right, that is... the Courthouse UDA, you can build 90 units by-right in the Courthouse UDA. And in the Brooke Station, 46 units can be built by-right in the Brooke Station UDA. There was also a question concerning the total number of receiving area dwelling units that need TDRs. According to the Comprehensive Plan, it states that... it's suggested that at least 7% of the units that are in the UDA come from TDR, except for Brooke Station where it's recommended that all the units in the UDA come from the TDR. So with that being said, it's recommended that 1,386 units go to the Courthouse UDA and, if you take 7% of that, it comes out to 97 units; so 97 units are suggested in terms of being based on the TDR in the Courthouse UDA. There was also a question about the total build-out that can occur in the Brooke Station UDA and all those units have to be from the TDR. And once again it's suggested in the Comprehensive Plan that yes, those units do come from the TDR program. We also had additional questions which I believe have been passed out after you may have received your Planning Commission packets, and I'd like to address those questions as well. There's a question concerning the Commissioner of the Revenue and what his thoughts were concerning the TDR program. And staff has spoken with our Commissioner of the Revenue and he has informed us that he will be leaning with the Commissioner of the Revenue for Spotsylvania County because they, too, are in the process of initiating or looking at a proposed TDR Ordinance as well. So he will get back to us on that. And we also had questions concerning what is a TDR Bank and questions concerning the handouts that I passed out. In terms of the handouts that I passed out, there's a question dealing with whether or not some of the localities which had downzoning, whether or not the downzoning that occurred was specifically linked to their TDR programs. In terms of the few localities which did have downzoning listed on the charts, only one locality has replied and that was Collier County, Florida, and they replied that yes, their downzoning was in fact tied to their TDR program. The other counties have not replied as of now. And the second question was what is a TDR Bank? From what I've read, a TDR Bank is when the County... you have a TDR program and basically the County, they buy the rights, they buy the TDR rights. So because they buy them they are responsible for selling them. So, as a result of that, they're responsible for who they sell the rights to and the question also dealt with if you have a TDR Bank, what are the pros and cons of a TDR Bank? From what I understand, I think perhaps the pros could be that because the County is selling the development rights, they can kind of control where those rights are going to. So, in a way, they control where development will be occurring so that could be a pro or a con, it just depends on how you're looking at it. Another... in terms of a con, a con could be because they're in charge of selling the property rights, there could be maybe a conflict of interest or perhaps property owners may feel that they're being biased based on who they decide to sell the property rights to, if they sell the property rights to certain developers, it just depends; so you never know how that could go. So those are some of the pros and cons that could occur if you had a TDR Bank. There were also other questions concerning TDRs and, if possible, I'd like to ask Mr. Taves to address the other questions that arised.

Mr. Taves: Well, what I'd like to do, as the Commissioners know, I sent you a note responding to those three questions. And those, of course, would be attorney-client privileged so I would suggest that we not discuss those in public unless you wish to.

Mr. Apicella: Mr. Chairman, the first question I don't think would necessarily breach any issue within the attorney-client privilege (inaudible).

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Mr. Howard: You can ask him, Mr. Apicella, and the attorney feels it does, we can go into a closed session.

Mr. Taves: Is that the one about the purposes of TDRs?

Mr. Apicella: Right.

Mr. Taves: I think that's probably fine.

Mr. Howard: So go ahead and ask your question Mr. Apicella.

Mr. Apicella: My question was when was the TDR statute originally adopted in the Commonwealth and what is driving the state to promote TDRs at this point in time?

Mr. Taves: Well, the statute was first adopted I believe in 2006 and there have been some amendments since that time. One can't tell from reading the TDR statute itself why they adopted that statute. We've looked at the model ordinance that the Commission has had access to. That model ordinance was put together by a group of attorneys and real estate individuals and lobbyists and people of that sort who had an interest in the development community, either on the regulatory or on the development side. And so they came up with a model ordinance that had some information in it and... but that's their opinion... and it says things like you know it serves the purpose of preserving farmland, preserving open space, allowing localities to focus development in certain areas—that sort of thing. And, quite frankly, those are the types of things that TDRs can do. I know from being involved in the County Attorney's Office for a number of years that TDRs have been discussed for a long time. I think the most important thing about TDRs is that it provides flexibility so that for a locality, a locality can better preserve some areas while at the same time not taking away. There was discussion... Ms. Ansong was talking about downzoning. Without having to downzone or reduce densities in certain areas, you allow those development rights to be shifted to a different area where there may better transportation, there may be more jobs who are located closer to transportation facilities and that sort of thing.

Mr. Apicella: You mentioned the model ordinance...

Mr. Taves: Yes.

Mr. Apicella: That was developed under the auspices of VACO.

Mr. Taves: Yes.

Mr. Apicella: I think in one of the other questions you indicated that, at least to some extent, the Stafford ordinance was modeled after the VACO model ordinance, is that correct? It may not be verbatim but it does incorporate the number of the principals (inaudible), the underlying goals and objectives.

Mr. Taves: Right. I can give you a little background in terms of how the ordinance that is now before you all was developed. I think about a year ago, a little over a year ago, the Board directed staff... I believe directed the County Attorney's Office to draft an ordinance that provided for a TDR program. And it's my understanding that they used not only the model ordinance but also the only other TDR ordinance we had in the state, and that was the Frederick County ordinance. The important thing to

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recognize about that though is that the model ordinance isn't an ordinance that requires you to either have this ordinance or not have a TDR ordinance; there's a lot of flexibility. In the statute, the TDR statute, there are some items where there are obligations placed on communities if they want to have a TDR program, and they might say, for example, you shall determine the minimum acreage allowed for a TDR. But at the same time, the statute doesn't tell you what that minimum acreage is; it allows the locality to make that determination on its own. So, the County Attorney's Office took those two ordinances, if you can call them that, and used those as kind of models for its preparation for the Stafford County ordinance. Then earlier this year the TDR Committee, which was comprised of members of this Commission and the Board of Supervisors, and we assisted as staff and I was outside counsel for the Commission. We worked on developing a more specific ordinance that the people of Stafford wanted, or at least the elected representatives and the Planning Commissioners wanted. And so that's how we've gotten to the point that we're at today.

Mr. Howard: Alright, are there any additional questions? Ms. Kirkman?

Ms. Kirkman: Yes. So, I just want to make sure I understand part of the purpose and the consequences of this. If a developer purchases development rights and moves forward with an application to develop a piece of property at a higher density than one house per three acres, which is the A-1 residential density, can the County still collect cash proffers?

Mr. Taves: I'm not sure I understand your question. Is there a rezoning at hand? Is there a rezoning required?

Ms. Kirkman: Well, that's what's a little unclear about this ordinance because it says that the TDRs happen by-right. So does that mean if it's zoned A-1 and they purchase TDR... development rights, does that mean it's automatically... they can then develop at that higher density without a rezoning?

Mr. Taves: Yes. And TDRs are at the option of the property owner. So... if, however—and I would note that based on the proposal that's been established to date... most of the acreage within the receiving areas are already zoned in those categories that would allow them to be receiving properties. So, as a result, you wouldn't need a rezoning for... and Mr. Harvey can confirm that or Ms. Ansong... you know, I would say, my guess is over 90% of the properties that are in receiving areas already have the zoning designation that would be required in order to be able to qualify as a receiving property.

Mr. Howard: Mr. Harvey?

Mr. Harvey: Yes, the Brooke Urban Development Area is entirely zoned A-1, Agricultural, so that area is entirely eligible for by-right TDR under this ordinance. The Courthouse area is a smaller percentage; I don't know exactly what it is but I would estimate about 30%. An alternative, if the Commission wanted to develop an alternative plan, would be to allow potentially to apply to other zoning categories. You would, at minimum, still have to allow it for A-1 and R-1 in order to accommodate the potential sending units under the current by-right the way the statute reads but, the way I understand it, you could allow other zoning categories. So someone could potentially rezone to that other zoning category and also have TDR. So that way you could capture some potential proffers that way. They could proffer that so many units will be from TDR, and I guess the one question that's not clear to me is whether those additional TDR units could fall under proffers as well. But I'm not 100% sure on that.

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Mr. Taves: Well, I think what Mr. Harvey is describing is, to put it in other words, if you need a rezoning in order to qualify as a receiving property... in other words, to become zoned one of those categories that is an allowable category for TDRs, then you could have some proffers that would be a consequence of that rezoning. But once the rezoning is approved, TDRs are really the option of the property owner. And if the property owner wishes to, for example, purchase development rights from a sending area or development rights that have been detached from a sending property, then you could have a TDR. But that wouldn't be a part of that rezoning. It may be something that the Planning Commission or the Board would consider in terms of whether or not that rezoning or that zoning category is appropriate. But once that zoning category is placed on the property, then it's at the option of the property owner. It's really an administrative procedure that is mandated by the statute and that's what you have... that's what has been drafted.

Ms. Kirkman: So, let's take Brooke UDA since that's the clearest example since all of that is zoned A-1, which is the zoning for the receiving areas. So that means the... I think the UDA there calls for 870, is that correct?

Ms. Ansong: Yes.

Ms. Kirkman: And the by-right development, it looks like staff has calculated at 130.

Ms. Ansong: The units would be 46.

Ms. Kirkman: Forty-six units; so that means about 834 additional units could be brought in under a PDR program and there would be no ability to collect any... a single penny of cash proffers because there would be no rezoning. Is that correct?

Mr. Harvey: Yes.

Mr. Taves: That's pretty accurate. And if you didn't like that approach, one way of dealing with it... and again, it goes back to what I was saying a few minutes ago, there isn't anything in the statute, in the TDR statute that mandates what properties the Board designates as allowable receiving properties. That's the legislative determination that takes place. Now the proposal, as Mr. Harvey said, the proposal that you have before you I believe is R-1 and A-1 of the two categories. But if you wanted to, for example, require those properties to do something... in other words, to get a rezoning to qualify to become a receiving property, in the Brooke example, then one way of doing that would be by designating other zoning categories as the zoning categories required for TDRs.

Ms. Kirkman: So, in our Zoning Ordinance as it exists now, the zoning category that most closely resembles the UDAs is the P-TND Ordinance. Is there any reason we cannot say that the receiving areas must be zoned P-TND?

Mr. Rhodes arrived at 6:55 p.m.

Mr. Taves: I'm not intimately familiar with that zoning category; I'd be glad to look at it. But, like I said, that's one of those legislative choices that the Board ultimately will have to make. But I'm not aware of anything in the TDR statute that precludes the Board or the Commission from recommending designation of any particular category. It doesn't get into that detail; it allows the locality to determine what shall qualify and what shall not, because each locality is different, obviously.

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Ms. Kirkman: That's a helpful clarification. And then I know you had said in your memo... I don't think this is disclosing any privileged information... you'd prefer not to go through the tedious task of designating every line and what came from the model and what came not, but would it be possible to let us know, or to somehow color code what parts of the ordinance we have discretion on and what parts of the ordinance the language is straight out of the state statute like so we know where we have discretion?

Mr. Taves: Well, those overlap... we could certainly talk to the Commission about the... I think what might be more helpful there is to talk to the Commission about the TDR statute because there are certain sections where it's in the category of shall...

Ms. Kirkman: Right.

Mr. Taves: ... and there are others where it's in the category of may.

Ms. Kirkman: And I had requested a copy of the state statute; have we gotten that in our packets? I've looked for it.

Ms. Ansong: I'm not sure but I'll be more than happy to email it to you.

Ms. Kirkman: And what about the Frederick ordinance; have we gotten a copy of that?

Ms. Ansong: I can get that as well.

Ms. Kirkman: Okay. I think that's exactly the sort of thing I'm looking for, is where are the shalls that we don't have any discretion and where are the areas where we do have discretion, such as the land use of the receiving areas or the number of units... that sort of thing.

Mr. Taves: I think we could do that. I mean, I could talk to Mr. Harvey and we could prepare a presentation on that of some sort.

Mr. Howard: Yeah, I think that's a reasonable request; absolutely.

Ms. Kirkman: And then I do have a question for Ms. Ansong.

Mr. Howard: Yes.

Ms. Kirkman: In terms of the ordinances that you gave us, certainly Frederick County is the most applicable, but all of these... did any of the localities that have PDR programs, did they have an ag... was their lowest residential density one house per three acres?

Ms. Ansong: I have to check that.

Ms. Kirkman: That would be helpful.

Ms. Ansong: Okay.

Ms. Kirkman: Thank you.

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Mr. Howard: Are there any other zoning districts that we have that allow for higher density that are similar or...? The TDR is obviously proposing a higher density, you know, in the two receiving areas, right, so it's got one sending area, two receiving areas. And in the two receiving areas is a higher density proposed and one, in particular as Ms. Kirkman has pointed out, the entire density build-up has to be through the TDR process. So are there other zoning districts that we have in Stafford County that allow or provide higher density?

Ms. Ansong: I'm not too familiar with this ordinance. Jeff, would you know better?

Mr. Harvey: Mr. Chairman...

Ms. Kirkman: Could I ask just the Chair a clarifying question because I think the issue is... and I just want to ask for clarification purposes... the unique thing about the UDAs is not just the higher residential density but the combination of mixed use with commercial.

Mr. Howard: No, I get all that, yeah. That's my first question please, thank you.

Mr. Harvey: Yes Mr. Chairman, there's a number of zoning categories that today meet certain components of the UDA requirements. For instance, the R-3, Urban Residential-High Density zoning category today allows seven units per acre as a by-right. So that could meet the density requirements for townhomes and single-family detached units for the UDAs as it currently stands. The code could be amended to increase the density for TDR; the intent is the TDR allows more than what's permitted currently by-right as an incentive to go to that district. Another zoning district is the one that Ms. Kirkman mentioned, the P-TND Zoning District, which allows higher densities for certain transect zones but an overall density of 10 units per acre.

Mr. Howard: Which we have one of, right, and that's the Aquia Towne Center?

Mr. Harvey: That's correct.

Mr. Howard: Okay.

Mr. Harvey: And also the PD-1 zoning category allows up to seven dwelling units per acre and it allows townhomes as well as single-family homes.

Mr. Howard: So, other... you know, one of the questions we've all been asking is what are some of the unintended consequences if we were to embrace this TDR program and we're trying to you know vet that and understand all that? So, as you look at, you know, Urban Service Area is one way you can control growth, right, in the County in terms of where it could occur or could not occur just based on the fact that if you don't have services, you probably can't (inaudible).

Mr. Harvey: Correct.

Mr. Howard: You mentioned the P-TND Ordinance as another ordinance that allows for higher density. What about the cluster subdivision ordinance?

Mr. Harvey: Our cluster ordinance allows for cluster developments which are dealing with subdivisions of land; in other words, a townhouse project or single-family home project where you can have an

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increase in density. For instance, one of our cases tonight is an R-1 cluster where the minimum... the maximum density under a conventional subdivision is 1.5 units per acre. The maximum under a cluster is up to three units per acre. The trade-off there is you're getting more open space for more lots. Similarly, the R-2 and R-3 districts allow for that clustering as well, and R-2 goes from three and a half to seven and R-3 goes from seven to fifteen.

Mr. Howard: Okay, thank you. Are there any additional questions for staff?

Mrs. Hazard: If I could just ask a follow-up. When you all meet with the schools, if we could get some sense of the capacity and enrollment at the schools that would be impacted... I've been told that they're you know probably the same schools from sending and receiving. But just to get an idea of some of the comments about the unintended consequences; just if we could get that for those schools impacted. And they should be able to pull those up from based on the boundaries. I'd appreciate that, thank you.

Ms. Ansong: You're welcome.

Mr. Howard: Mr. Hirons?

Mr. Hirons: Mr. Chair... Mr. Taves, you said... I don't know if I caught it exactly the way you said there, but you said the state code requires the sending area to designate minimum acreage. Is it by lot or... because the draft describes a sending area to be at least 20 acres of contiguous parcels or designated park land.

Mr. Taves: The specific language says the minimum acreage of a sending... this is something that the ordinance shall provide for, so this is one of those shalls that we were talking about. And it says the minimum acreage of a sending property, so in other words, how much acreage do you need before you can even be a sending property.

Mr. Hirons: Correct.

Mr. Taves: And the minimum reduction in density of the sending property that may be conveyed in severance or transfer of development rights. And I think what that's talking about is let's say you have five and a half acres and you wanted to cut off, you know, a quarter acre or something like that, and it was like so small and probably so insignificant, the locality may want to say well, we're not going to allow you to transfer a development right based on that if you can collect up little pieces here and there. Because it won't... I suppose one of the rationales could be it wouldn't have any significant impact and it wouldn't therefore serve the purposes that we're talking about with TDRs. So that's just one of the examples. And I think we started out with two acres when we were talking, Jeff? It was two or three acres and then I think it ended up at 20 but we have certain properties based on plan designations that can be smaller.

Mr. Harvey: That's correct.

Mr. Hirons: So, with the way our draft is written then, anything that's designated park could be a sending area regardless of the size of it.

Mr. Harvey: That's correct.

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Mr. Hirons: Does that meet the state code requirement?

Mr. Taves: Well again, the state code says what I just read and it doesn't say... let me give you an example. Under the state code, the Board could say one square inch could be a sending area, because the state code doesn't designate, doesn't require any particular amount. It gives that leeway to the locality.

(Inaudible.)

Mr. Taves: Sure.

Mr. Hirons: It has to be... the way I'm hearing it though it has to be defined in the ordinance what the minimum is.

Mr. Taves: Sure.

Mr. Hirons: And I don't see that we're doing that with this designation, possible designation of park land. It could be any size; we're not saying it has to be at least two acres under the park land designation.

Mr. Taves: Theoretically you could say the minimum acreage would be zero. The language...

Ms. Kirkman: But isn't there... I mean, isn't there also some construct in law that you have to reasonably construe the law and to say zero would not be a reasonable construction?

Mr. Taves: Well, I mean, it's one of those arguments. Do you want me to read the... I'll read the language for you again. Again, it's a shall... shall provide for the minimum acreage of a sending property and the minimum reduction in density of the sending property that may be conveyed in severance or transfer of development rights. So, in other words, what's the smallest amount that could be transferred?

Mr. Hirons: And we don't define that is my problem and so then my next question is going to be what was the... how was this sent to us again? Can we make edits or...?

Mr. Taves: I think the way the Board set it up was, and Mr. Harvey can correct me if I'm wrong, there's a specific proposal that's been presented to the Commission and the Board wants the Commission to conduct a public hearing on that. But at the same time, the Commission has the ability under that transmittal from the Board to consider other options, other amendments that it may wish to consider.

Mr. Hirons: And we would have to advertise our alternatives and...

Mr. Taves: Right.

Mr. Hirons: ... and additionally it'd come out of our budget for the advertising. Okay.

Mr. Howard: Well, they both would Mr. Hirons... for advertising both.

Mr. Hirons: Oh, yeah...

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Mr. Howard: We're required to advertise the Board's version and then if the Commission so desires, they can create a second version and advertise that.

Mr. Hiron: I'm just really concerned that we don't meet the state code there.

Ms. Kirkman: I also agree with my colleague about... that it's problematic that a park of any size because it has not designated the size of the park. And also I question whether or not saying contiguous parcels that are appraised of at least 20 acres meets the requirement that the minimum... or that the size of the sending parcel has been defined, because it hasn't. It is defined in aggregate of parcels but not the individual parcels.

Mr. Taves: Well, I don't know that the statute requires the individual parcels. I mean, it says it has to be a parcel or contiguous parcels, so you have to have some size there.

Ms. Kirkman: I think that's where it would be helpful for us to get a copy of the state statute (inaudible).

Mr. Taves: Sure, okay.

Mr. Howard: Any additional questions? Mr. Apicella?

Mr. Apicella: Mr. Chairman, Mr. Taves indicated that there was a TDR Committee that included both individuals from the Board of Supervisors and individuals from the Planning Commission. Who were those folks?—members from the Planning Commission.

Mr. Taves: I believe Mr. Hiron and Mrs. Hazard and Mr. Mitchell from the Commission.

Mr. Apicella: Would it be useful or appropriate to establish a subcommittee to take another shot at, at least, preparing a list of potential modifications to the proposed ordinance that could be...

Mr. Howard: We have until December 5<sup>th</sup> on this. It absolutely... it's never a bad idea to send two or three people off to try and craft some wording and do it, you know, in a way that they can come back to the group as a whole and say here's what we came up with. I'm not opposed to that at all if that's the will of this Commission where a group would want to get together and sort of wordsmith the Planning Commission's version if you will. But just keep in mind we have a short timeframe and we need to have a public hearing and our time limit is December 5<sup>th</sup> on this.

Ms. Kirkman: So when does that mean we would have to advertise it?

Mr. Howard: Mr. Harvey, would that be the... it probably would be the second meeting in November would have to have the public hearing I would think. Or have the public hearing on the 5<sup>th</sup>.

Mr. Harvey: The Commission would need to vote to advertise the hearing probably at your first... your next meeting... the meeting in November, first meeting in November.

Ms. Kirkman: We meet on December 7<sup>th</sup>, is that correct? Our meeting schedule...

Mr. Howard: Yeah, I believe it's November 2<sup>nd</sup>.

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Ms. Kirkman: No, I'm looking at... we December 7<sup>th</sup> and if the deadline is December 5<sup>th</sup>...

Mr. Howard: Oh, the 7<sup>th</sup>; yeah, gotcha. I was assuming that was the Wednesday.

Mr. Apicella: Mr. Chairman, would it be possible to establish this subcommittee and go back to the Board and ask for more time?

Ms. Kirkman: We don't need a subcommittee to ask for more time.

Mr. Apicella: No, I understand; two separate things... establish a subcommittee and ask for more time.

Mr. Howard: We can do that but if they say no, we have to move ahead. Ideally what we'd like to do is have a Planning Commission version, you know, quickly and have that advertised at the same time we advertise the Board's version.

Ms. Kirkman: If we have something for the next meeting, does that give us adequate time to advertise for the second meeting in November?

Mr. Harvey: No, it does not.

Ms. Kirkman: Should we consider shifting our December 7<sup>th</sup> meeting to December 5<sup>th</sup> so that we can meet that deadline?

Mr. Howard: That would be a Monday...

Mr. Harvey: Yes.

Mr. Howard: ... and I don't think the chambers are typically in use then.

Mr. Apicella: For the new kid on the block, does everything that comes to this Commission have to be adjudicated within 90 days?

Mr. Howard: Depending on what it is, there's always a timeframe. Some are 90, I think there's also some that are 60 days.

Mr. Apicella: So did the Board establish a 90 day requirement on this one?

Mr. Howard: Yes.

Mr. Taves: Yes.

Mrs. Hazard: Yes, they did. This has come up several times that many times we missed the deadline by a day or two. We've been (inaudible).

Mr. Howard: But we can be flexible and change the... if we change the meeting to December 5<sup>th</sup>, there's certainly ample time to do that in terms of notification of the meeting. Does that give us time to have a small group get together and wordsmith the Planning Commission version and then at least we can put forth both at the same public hearing?

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Ms. Kirkman: It means we'd have to have the version by our next meeting.

Mr. Howard: Correct.

Ms. Kirkman: Yeah. But that would give you ample time to advertise, right Mr. Harvey?

Mr. Harvey: Yes.

Mr. Howard: Alright, so is there an appetite to do that? Sounds like there is.

Mr. Apicella: I think it's worth trying.

Mr. Howard: Okay. Alright, we would need a motion then to... the first motion would be to move our December 7<sup>th</sup> meeting to December 5<sup>th</sup> and take the appropriate steps in terms of public notification.

Ms. Kirkman: I move that.

Mr. Howard: Is there a second?

Mrs. Hazard: I'll second.

Mr. Howard: Second by Mrs. Hazard; any discussion? And that would be the entire Planning Commission meeting so everybody realizes we'd be meeting on a Monday, not the Wednesday. Everything comes on that day. Alright, all those in favor of moving our December 7<sup>th</sup> meeting to December 5<sup>th</sup> signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed nay? The motion carries 7-0. Alright, and then is there a group that would like to break off together and... it sounded like three of you had very strong thoughts on some of the language.

Mr. Hirons: Mr. Chairman, if I could ask... what is the purpose of the subcommittee exactly? Is it to develop our own or to...?

Mr. Apicella: My recommendation is I heard some issues that folks thought had not been addressed in the current version, that the subcommittee could get together and find out where there's areas that might need to be fixed and/or where there are areas of concern. So those would be the two objectives to again

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propose as required at the December 5<sup>th</sup> meeting or have a public hearing on the one that was given to us by the Board of Supervisors, but also a modified version that incorporates the changes that the Planning Commission thinks are necessary and appropriate.

Mr. Howard: Yeah, and solicit input from other Commissioners, if there are other thoughts or ideas... sure. Mr. Hirons, I think it's all the above.

Mr. Hirons: Okay.

Mr. Howard: Your thoughts?

Mr. Hirons: Well, I've served on a couple committees now that have at least talked about TDRs and specifically the one that was mentioned that was jointly with the Board. And neither of those committees... what was produced was what my expectation was of any (inaudible) ordinance so I'm really not interested in serving on another committee.

Mr. Howard: At all ever?

Mr. Hirons: No, for TDRs.

Mr. Howard: Okay. Just checking. Any other thoughts?

Mr. Apicella: I'd be happy to serve on such a subcommittee. Not by myself though.

Mr. Howard: Right, no of course. Any other Commissioners? Alright, I will volunteer myself with Mr. Apicella and the two of us will get together at some point and report back to the group. Expect some emails and if there's any input or comments you want to add we would be more than happy to add those. Are there any other questions, comments?

Ms. Kirkman: Well, just in terms of feedback, I would like to hear from my colleague about what were some of the concerns he had about what ultimately got sent to us.

Mr. Hirons: The one specific is, it was my recollection but however I did miss at least one meeting, perhaps two, of the committee jointly with the board, and it was this... the designation of the minimum size. I thought during discussion of the committee we had discussed... I believe it was the contiguous language but it was like 30 acres. It was much larger. And there wasn't this additional line of or designated as park land; I just don't get that. That becomes the smallest plot of land, which may or may not be useful, can now apply and sell development rights, which may or may not be a good thing... I don't want to make a judgment on that... but it's not exactly what (inaudible).

Mr. Howard: Well, Mr. Hirons, what was it that you recall specifically about the size? What was your recommendation to the committee?

Mr. Hirons: I believe it was, at one point and Mr. Taves made mention of this, the size limits kind of went up and down throughout the discussion, but I thought it was just, again, just my recollection and I may have missed a meeting where it was further discussed or changed. I believe it was 30 acres contiguous area; it could have been made up of multiple lots.

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Ms. Kirkman: I have a question regarding that and why it's being allowed to move forward as these small little lots that are aggregated up, because isn't there a process where a property owner or a group of property owners that have multiple lots can vacate the lines in order to create one large lot?

Mr. Harvey: Yes, they can do a boundary line adjustment to combine multiple lots into one.

Ms. Kirkman: So, can anybody explain the thinking of why this continuous... contiguous is included rather than just simply saying the sending property has to be at least 30, 20, 50, whatever the acreage is? What's the thinking around there being multiple contiguous?

Mr. Howard: I would ask Mr. Hirons and Mrs. Hazard; they're on the committee, so I'm not sure.

Mrs. Hazard: I would assume it was based on that there are multiple owners in order to accommodate that. But, as Mr. Hirons said, getting to those few meeting that there were was difficult so some of this was done at different meetings; things changed very quickly. So I don't believe I was at that meeting where those were changed. I do know that there was a desire for it to be larger tracts, but then there was this contiguous small units language that is actually fairly new.

Mr. Harvey: Yes, Mr. Chairman, that was something that did not come out of the committee. That was something that was discussed at the Board level and put into the ordinance after the committee (inaudible).

Mr. Howard: Okay, well that explains why they don't remember that. Okay. They weren't there for that.

Ms. Kirkman: And do we... Ms. Ansong, on the materials that we were given, does it say what the... I don't remember seeing in here... for the places that have this type of program in place, what the minimum acreage is of the sending areas?

Ms. Ansong: I'm not sure if they have that on the charts, like the American Farmland Trust Charts.

Ms. Kirkman: Yeah... could we get that information?

Ms. Ansong: In terms of the acreage for the sending areas?

Ms. Kirkman: Like the minimum sending area sizes for some of these ordinances.

Ms. Ansong: Sure, I'll email them.

Mr. Howard: And this is for that other county that she's going to...

Ms. Kirkman: Well, there's Frederick County which has it established, but since there's only one in Virginia, maybe you'll need... so we can have multiple examples look outside of the...

Mr. Howard: That would be good to know that, sure.

Ms. Ansong: I can email around the country and see what they reply with.

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Ms. Kirkman: Yeah.

Ms. Ansong: Okay.

Mr. Howard: Also, the question that went to the Commissioner of Revenue, Ms. Ansong, you mentioned earlier?

Ms. Ansong: Yes.

Mr. Howard: What was the question?

Ms. Ansong: I believe the question was whether... I think the question was how were they going to deal with TDRs in terms of when the process begins. Was it a question of taxes basically, is that correct Mrs. Hazard? That's what I...

Mrs. Hazard: I can clarify that. I just did ask an inquiry of whether... the Commissioner of Revenue actually sat on that committee with us or was an invited member and, since he was an invited member, I felt that I wanted to make sure that his opinions were also sent... were obtained on the new ordinance we were examining as we were just told some of the changes were made outside of that committee. And I felt that the Commissioner of Revenue should be aware of any changes that were made and see if that changes any of the comments he made during that committee time.

Mr. Howard: Do you recall the Commissioner of Revenue having any concerns or comments or...? I'm curious because if we're going to sit, Mr. Apicella and I, it'd be interesting to know that if there were you know opinions expressed from a revenue perspective, from the County tax collection perspective.

Mr. Taves: Mr. Chairman, my recollection was, and I don't know whether he was at one or two of the meetings but definitely one, maybe two... my recollection of his concerns were to make sure that the County was able to collect the taxes for properties that were detached, the development rights that were detached. So his interest was in making sure that the County wasn't losing tax revenue by virtue of TDRs.

Mr. Howard: Right. And is that the case?

Mr. Taves: I think he was... I can't remember whether he drew any specific conclusions, but he didn't seem to be strongly opposed to where the ordinance was at that time. But I would note one thing, and there was some discussion about the minimum size. It's important for the Commission to understand that this entire ordinance was kind of an evolving process, and I think the size of the parcels started out at two acres. Some of the members of the Commission... er, of the committee wanted to have larger parcels, a requirement for larger parcels. And where they ended up was generally speaking 20 acres and then you have the additional language about the park land. I would also note that the original proposal, and I don't remember the numbers but there were literally thousands and thousands of acres that could qualify or were designated as sending properties. And then ultimately what happened was the decision was made to constrict that. So the sending properties are much smaller now.

Mrs. Hazard: I can clarify a little bit of that. There was a thought at one point of looking at properties that were in some of the noise impacted areas, that they were to be receiving. And then when we saw some of the maps of how far some of those noise impacted properties were, at least on my part there was

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a feeling that we needed to restrict that back. There was... the Commissioner of Revenue was involved in discussions, which you may want to raise to him, about the size of the parcel and how big of a size of a parcel should you get a development right out of because that's something that Planning staff will have to be determining when that comes before them. So that was a source of discussion with the Commissioner of Revenue.

Mr. Howard: That's fair. Ms. Kirkman?

Ms. Kirkman: Yes... I also want to express a concern. I'm looking at sort of how the calculation is done on the development rights of the sending property and I want to make sure I'm understanding this correctly. Is it correct that there's no requirement for soils testing to be done on the sending property prior to the calculation of development rights?

Mr. Harvey: That is correct. We'd rely on mapping resources regarding hydric soils.

Ms. Kirkman: So, in theory, you could have land that...

Mr. Howard: Could never be built on.

Ms. Kirkman: ... could never be built on because it doesn't perk, and because soil testing is not required you wouldn't know that. And they would be getting a development right out of it even though it could never be developed.

Mr. Harvey: Correct. This ordinance, the way it's structured, specifies that anyone who has a lot that qualifies, they get automatically one development right. So if they're going to get more than one development right from their parcel, they have to go through the calculation process to show...

Ms. Kirkman: But the calculation only takes into account what's on a map in terms of steep slopes and hydric soils, is that correct?

Mr. Harvey: That's correct.

Ms. Kirkman: So if it's... and it's A-1 and A-2 we just typically not serve by sewer and water. So to be developed it has to be... you have to be able to do some... you have to be able to install an onsite sewage disposal system. And that's not taken into consideration at all in any part of this ordinance?

Mr. Harvey: Not the way this ordinance is written.

Ms. Kirkman: I would encourage the subcommittee to look at that issue.

Mr. Howard: I think it's a worthwhile question. I would remind everyone that when Mr. Taves spoke earlier, he indicated that it's his belief, based on the way the state wrote the statute, that you know it's sort of a land preservation, you know, I guess tactic if you will. So I understand what you're saying and it's a good point to think through.

Ms. Kirkman: Sorry, I'm not following what you're trying to say, Mr. Chair.

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Mr. Howard: So, in other words, instead of having somebody cut up 20 acres into something that could be built and developed because portions of the 20 acres could be built on, in my opinion it sounds like the state said what if we adopted this TDR Ordinance and you preserve all 20 acres in lieu of just having somebody build on 10 and then there are open space portions of that development that can't be built on because of slopes or other issues that they couldn't get through those hurdles. So, I think it's just a land preservation again tactic by the state to say what if we could preserve all of that and transfer development into an area where you want to see more density anyway, and give credit for that.

Ms. Kirkman: Sure, and I think we agree on what the intent of the state statute is, but what I'm... my concern is that property owners will get development rights for land that cannot be developed period because you can't put an onsite sewage disposal system on it. And we've seen that; quite frankly, where we've seen that is in a lot of the subdivision plans that have come into us in A-1 and A-2. Rarely do we end up with just two acre lots in A-2 and three acre lots in A-1; we often end up with much larger lots and fewer development rights because of the onsite sewage disposal issue.

Mr. Howard: Right, which again I think the TDR Ordinance is being designed or is implemented to allow to preserve all of that property or land. Any other questions or comments? No? Okay. So we will come back to the next meeting with some recommended language changes, and if there's additional questions or comments, I'd encourage you to send them to Ms. Ansong and then she can help get some answers. Thank you.

Ms. Ansong: Thank you.

Mr. Howard: That brings us...

Ms. Kirkman: Could I just...? To the extent that we could get the information that was requested tonight prior to the Friday before the meeting given that we're on such a tight timeframe on this I think that would be helpful.

Mr. Howard: Right, so anything that was asked for tonight, if that could be sent this week would be wonderful. Thank you. That brings us to item number 2 which is the Zoning ordinance Amendment, Farmers Market.

**2. Zoning Ordinance Amendment; Farmers Market (Time Limit: January 19, 2012) (In joint Committee with Agricultural/PDR Committee and Planning Commission)**

Mr. Harvey: Mr. Chairman, the Agricultural/PDR Committee is meeting next Monday for them to determine who will be on the joint committee.

Mr. Howard: Right, so we don't have any...

Mr. Harvey: We don't have any direct support.

Mr. Howard: ... direction on that this evening; okay.

Mr. Harvey: I am scheduled to be on the... make a presentation at the next Economic Development Authority meeting to discuss the Commission's desire for input and/or assistance from them.

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Mr. Howard: Do you need any information, additional information from us as a group Mr. Harvey?

Mr. Harvey: I believe I understand what the Commission was asking so I think I'm in good shape there.

Mr. Howard: Okay, great. And item number 3 and 4 are deferred to November 2<sup>nd</sup>. And that brings us to item number 5 which is the Brentsmill Preliminary Subdivision Plan; Mrs. Hornung? Ms. Kirkman?

Ms. Kirkman: We need to stop for public hearing...

3. COM1100171; Comprehensive Plan Compliance Review - Telecom Tower, Telemedia Broadcasting Tower - A request for review to determine compliance with the Comprehensive Plan in accordance with Virginia Code Section 15.2-2232, for a telecommunications facility, specifically for a radio broadcasting and wireless communications tower, located on the north side of Hollywood Farm Road, approximately 350 feet east of Fisher Lane on Assessor's Parcel 60-7A within the George Washington Election District. **(Time Limit: November 20, 2011) (Deferred at September 21, 2011 meeting to October 5, 2011) (Deferred at October 5, 2011 to November 2, 2011)**
4. CUP1100167; Conditional Use Permit - Telecom Tower, Telemedia Broadcasting Tower - A request for a Conditional Use Permit to allow a telecommunications facility, specifically for radio broadcasting, in an A-1, Agricultural Zoning District on Assessor's Parcel 60-7A, consisting of 8.09 acres. The property is located on the north side of Hollywood Farm Road approximately 350 feet east of Fisher Lane within the George Washington Election District. The Applicant requests a permit to build a 480 foot-tall tower to accommodate a minimum of three (3) wireless communication service providers, broadcasting for a radio station, and future public safety communication equipment. **(Time Limit: December 20, 2011) (Deferred at September 21, 2011 meeting to October 5, 2011) (Deferred at October 5, 2011 to November 2, 2011)**
5. SUB1100059; Brentsmill, Section 3, Preliminary Subdivision Plan - A preliminary cluster subdivision plan for 28 single family dwellings, zoned R-1, Suburban Residential Zoning District, on Assessor's Parcel 21-148, consisting of 15.95 acres, located at the intersection of Naples Road and Bismark Drive in the Brentsmill Subdivision, within the Griffis-Widewater Election District. **(Time Limit: December 20, 2011) (Deferred at September 21, 2011 meeting to October 5, 2011) (Deferred at October 5, 2011 to October 19, 2011)**

*Discussed after Public Presentations.*

6. RC1100077; Reclassification - Stafford Sports Center - A proposed reclassification from A-1, Agricultural Zoning District to B-2, Urban Commercial Zoning District to allow retail, office, and indoor recreational enterprise uses on Assessor's Parcel 20-12, consisting of 23.79 acres. The property is located on the south side of Garrisonville Road approximately 250 feet west of Parkway Boulevard within the Garrisonville Election District. **(Time Limit: December 20, 2011) (Deferred at September 21, 2011 meeting to October 5, 2011) (Deferred at October 5, 2011 to October 19, 2011)**

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7. Zoning Ordinance Amendment; Recycling Definition (**Time Limit: January 19, 2012**) (**Deferred at September 7, 2011 meeting to October 5, 2011**) (**Deferred at October 5, 2011 to November 2, 2011**)

*Discussed after Public Presentations.*

8. Zoning Ordinance Amendment; Exempt Subdivision (**Time Limit: December 7, 2011**) (**Scheduled for October 5, 2011**) (**Deferred at October 5, 2011 to October 19, 2011**)

*Discussed after Public Presentations.*

9. Zoning Ordinance Amendment; Rappahannock River Overlay District and Potomac River Overlay District (Referred back by Board of Supervisors) (**Time Limit: October 6, 2010**) (**History - Deferred at June 16, 2010 Meeting to August 18, 2010**) (**Deferred at July 21, 2010 Meeting to September 1, 2010**) (**Deferred at September 1, 2010 Meeting to October 6, 2010 Meeting**) (**Deferred - Requesting additional time from Board of Supervisors**)

10. SUB2800773; Westlake, Preliminary Subdivision Plan - A preliminary subdivision plan for 701 single family detached units, zoned R-1 and R-2, consisting of 446.46 acres located on the south side of Warrenton Road between Richards Ferry Road and Cedar Grove Road along Horsepen Run on Assessor's Parcels 35-20, 20A and 21 within the Hartwood Election District. (**Time Limit: December 28, 2011**) (**Deferred at October 5, 2011 to October 19, 2011**)

*Discussed after Public Presentations.*

NEW BUSINESS

None

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**7:30 P.M.**

PUBLIC PRESENTATIONS

Mr. Howard: Oh, public comments. We are at that magic time. Thank you Ms. Kirkman. Actually, at this time we will pause for a moment and open up the Planning Commission meeting... we do not have any public hearings this evening, as amazing as that may sound to some. But we do allow the public to address the Planning Commission on any topic that they would like to, and this evening you can address any item you wish. So anyone wishing to address the Planning Commission can do so by stepping forward to the podium and all that we ask you to do is state your name and address. And after you do that, the little green light will go on on the podium and you will have three minutes to address the Planning Commission. When the yellow light goes on, that means there's about a minute left and then when the red light starts to flash, that would indicate your time has ended and we would ask that you allow the next speaker to address the Planning Commission. So anyone wishing to address the Planning Commission on any topic you may do so by stepping forward to the podium now.

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Ms. McMann: Good evening, my name is Mary McMann and I am the President of the HOA for The Gates Community in Park Ridge. And you may be familiar; I've written all of you letters. We're concerned about particularly the inter-parcel access road behind our community that would be going through the Coldwell Banker property. We're concerned about the traffic that would come off of that that can only turn right onto Parkway, and having them come immediately into our small community that it has just a cul-de-sac in it. And it's a privately maintained road; there are only 16 homes there and it's the only way that they can get back out to make a legal left turn on Parkway to get up to 610 if they come out of that inter-parcel drive. So, we would really appreciate your consideration on that. We're concerned also about parking, people parking there and then walking over through that road to whatever is built immediately after our little area, which could be a restaurant or it could be a sit-down restaurant, a CVS or some kind of pharmacy or something along that line. We're also concerned about stormwater. We have a culvert on one side of the community and a creek on the other, and we're concerned about the runoff that might come from that development. I appreciate your consideration. We're a very small community but we love where we live, and we would really like the impact to be considered. Thank you very much.

Mr. Howard: Thank you. Anyone else wishing to address the Planning Commission during our public comment period may do so by stepping forward to the podium. We just ask that you state your name and your address and then you have three minutes to address the Planning Commission on any topic that you would like to discuss. We don't give you responses back; it's not two-way, but we certainly would like to hear your comments. I now there was a group that walked in so if you would... you're more than welcome to step forward and address the Planning Commission on any topic that you'd like to. Okay, there are no public hearings this evening so, at this point, I don't see anyone else advancing towards the podium so I will close the comment portion of the Planning Commission and bring it back to the Planning Commissioners and staff. We were on item number 5 which is the Brentsmill Preliminary Subdivision Plan. Mrs. Hornung?

5. *SUB1100059; Brentsmill, Section 3, Preliminary Subdivision Plan - A preliminary cluster subdivision plan for 28 single family dwellings, zoned R-1, Suburban Residential Zoning District, on Assessor's Parcel 21-148, consisting of 15.95 acres, located at the intersection of Naples Road and Bismark Drive in the Brentsmill Subdivision, within the Griffis-Widewater Election District. (Time Limit: December 20, 2011) (Deferred at September 21, 2011 meeting to October 5, 2011) (Deferred at October 5, 2011 to October 19, 2011)*

Mrs. Hornung: Thank you Mr. Chairman, members of the Commission. At the last Planning Commission meeting, the Planning Commission had requested a letter for clarification from the schools on the acceptance of the parcel D which was designated on the preliminary that you received at the last meeting and their intent to utilize a stormwater pond provided that the School Board would need that. So that letter is included in your packet and, if there are any other questions...

Mr. Howard: Mrs. Hornung, do you have... can you read the proffer statement as it relates to the property that this developer would provide to the Stafford County Schools?

Mrs. Hornung: I'm sorry, proffer statement?

Mr. Howard: Yeah, isn't there an agreement or they're proffering some of the open space?

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Mrs. Hornung: It wouldn't be a proffer, it would be a designation of the are titled parcel D which is on Telegraph, and also the use of the stormwater pond that would be able to be utilized by the School Board should they need it.

Mr. Howard: Does it state for what specific use? Obviously the stormwater pond would be very specific, but the other open space?

Mrs. Hornung: No, it just... in order to satisfy the open space requirements, the number... one of the items in the open space regulation... states...

Mr. Howard: Well, let me... one of the concerns we had at the last meeting was they thought about using it for a program that they have. And obviously that's probably not applicable in this case, so they understand that I know you've had conversations. But my concern was that's not in writing anywhere that that's what the intended use would be. It's just the intended use is whatever the school system would want to use it for.

Mrs. Hornung: Exactly. The way the cluster regulations read and the way that staff has been, through Mr. Harvey, interpreting the regulations is that for a cluster subdivision, the requirement is to offer by the developer some land to the School Board or to the Parks and Rec Department of the County. And in this case the School Board said that yes, they would like to utilize a portion of that open space and also be able to have the opportunity to utilize the stormwater pond should they need it for the expansion of Shirley Heim Middle School. Now, of course, in between this Brentsmill Section 3 and Shirley Heim school, there is a parcel owned by somebody else. So the school would have to acquire that first in order for them to expand that school further to be able to utilize the stormwater pond. Now, with that in mind, the developer and meeting with the School Board representative came to an agreement that the area abutting Telegraph would be ideal for the school and also utilizing the pond. Once the land is dedicated to the School Board, then they're able to utilize it as they need to. Now also, in... that may help clarify I think what everybody might be thinking is that if the land, if the Planning Commission which is 22-271, Review and Approval of Cluster Subdivision Plans, number 2 states that the Board of Supervisors and School Board will have the approval of the dedicated open space. So if the Planning Commission so decides to approve this preliminary as it is with the open space parcels as they are designated—A through D, A and B being for the benefit of the lots in the subdivision, C being the stormwater pond and the additional open space, and then D being dedicated to the School Board—this would have to go through a public hearing not only with the School Board but with the Board in order to accept the dedicated open space because it's not listed in the Comp Plan for this particular site. We do have information in the Comprehensive Plan stating what acreage is needed for elementary, middle and high school, but there is no specific designation of this area in the Comp Plan for this subdivision. So still there would have to be a review by the Board... both Boards, the School Board and the Board of Supervisors... that they would accept that dedication. And then once it's accepted by both, then the School Board would utilize it for their needs. And what they needs would be are at a future date and are not necessarily part of the approval of this subdivision.

Mr. Howard: Okay, and also on the I think it's the GDP here, it says the cluster concept plan was also reviewed by the Stafford County School Board in accordance with Section 22-268(1). The School Board has stated a desire to obtain the stormwater management easement over parcel C, in its entirety. The Board also has a desire to obtain ownership of parcel D, in its entirety. The developer will deed the parcel and easement to the school with the final subdivision plat. What I wanted to make sure is that there was no discussion what that would be used for and that the Planning Commission wasn't, you

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know, blessing the intended use of that open space in terms of what the School Board wanted to secure that property for.

Mrs. Hornung: No, the Planning...

Mr. Howard: We've answered that. So, I'm good with that. That was a concern some Commissioners addressed at the last meeting. Ms. Kirkman?

Ms. Kirkman: Yes, I actually was not present at the last meeting but I did see the letter from the... from Mr. Horan who's speaking on behalf of the schools but my understanding is this has not been before the School Board yet, correct?

Mrs. Hornung: That is correct. He is a representative and knows or has an idea of what their intentions are when they're looking for land and would say this would be ideal. But, of course, it's still subject to the School Board approval of whether they're going to accept it and then what they're going to do with it in the future.

Ms. Kirkman: So, I guess the question I have... and I did ask Mr. Harvey in advance to have some correspondence with the School Board because they state very clearly they want parcel C for stormwater management, but we still have not seen anything from them affirming that they understand that open space cannot be used... I mean, very specifically it states in the ordinance it cannot be used for buildings. Have we gotten confirmation from the school that they understand that?

Mr. Harvey: We've contacted Mr. Horan but have not connected with him on that.

Mr. Howard: That was my point, Ms. Kirkman, for making sure that what we're looking at has no... there's nothing in writing from the Planning Commission perspective that says the intended use was for the BOOTS Program, which was one of the concerns that was voiced at the last meeting and it's nowhere to be found. So, whatever they decide to do with the open space, in terms of for the developer, if he wants to give it to the school and the school wants to accept it... certainly they cannot build a house on that property.

Ms. Kirkman: Well, I do think it'd be helpful to just get confirmation that the School Board, or the school understands it can't be used for that purpose because I am wondering if, and maybe the applicant can speak to why parcel C is divided off from parcel D because that creates a parcel of 1.29 acres and I just don't know what the School Board is going to use 1.29 acres for and how that's usable for the School Board. I also have concerns does that create, in essence, since this lot could be transferred and that's the discussion that it would be transferred, that it creates a nonconforming lot.

Mrs. Hornung: As far as the size, the size of the parcel D is in excess of what the minimum lot size is for a cluster subdivision. Now, when we were looking at this and discussing with the school representative what part of the open space would be best for them to utilize, they requested this part along Telegraph Road and then accessing the stormwater pond should they need it. And so for an easy way to cut it off was to just make it an even, like an extended K shape, and just cut it off at that point then have like a pipe stem open space lot. And so that's how (inaudible)...

Ms. Kirkman: So all the discussions with the School Board were around using this lot to build a home for the BOOTS Program.

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Mrs. Hornung: That was what they thought might be a suitable site for this program.

Ms. Kirkman: So, my question is either for Mr. Harvey or for our attorney... is it possible if this... I have seen the Board in the past remove open space designations from lots. Would they be able to remove the open space designation from this lot in the future?

Mr. Harvey: If this was to be removed as an open space designation, you'd have potentially one issue is if it's developed as a subdivision it would violate our Subdivision Ordinance and also potentially also our Zoning Ordinance because the Zoning Ordinance requires 50% open space. If it's used for school purposes... again our Subdivision Ordinance allows that to continue as open space and perform at its function as meeting the requirement for the 50%... it's implied that if schools acquire it, it's going to be part of a school so there may be some impervious surfaces so it won't necessarily all be green area. But if there was any attempt to divide off a lot out of that residue open space, it would have to comply with all of our zoning requirements. So, if there's any additional open space beyond the 50% that's required, which it says there's .54 which implies that there's a little bit extra, in theory the developer could create another lot under today's standards and make that fit. But that would remain to be seen if that's something the School Board is even interested in.

Ms. Kirkman: But our ordinance says that open space shall not include roads, driveways, parking lots, or other vehicular surfaces, or any areas occupied by a dwelling. So what other impervious surface area would go on there?

Mr. Harvey: The only other impervious surface I could see going on there would be access drive to the pond for maintenance purposes.

Ms. Kirkman: But that would be a driveway which is prohibited.

Mr. Harvey: Well, those features are typically found in open space where you have an existing pond. In fact, I believe that's what the applicant was proposing for their access to the pond because that the real practical access based on the way the property is laid out in proposed lots.

Ms. Kirkman: Right, but that's prohibited under the ordinance. It says "shall not include roads, driveways, parking lots, or other vehicular surfaces".

Mrs. Hornung: I think that is...

Mr. Harvey: I know that community centers and those types of recreational amenities like tennis courts are also in open space.

Mr. Howard: Well, in terms of the Cluster Subdivision Ordinance that we're evaluating tonight for the particular applicant, the open space requirement is met. The question is, if they deed the property to the school is why we're having these questions, which is why I read from the GDP that the intent for the developer is to solely just deed that to the school and at some future point the school has to figure out what to do. Now, I know there's been discussion but Mr. Horan really spoke... put the cart before the horse in some aspects because you can't build a dwelling unit on that parcel because of the way the Cluster Subdivision Ordinance reads. And in order to be in compliance they would not be able to do that. So, from my perspective, that's all I cared about was it wasn't anywhere in writing that I can see if we were to approve or make a recommendation of approval or whatever we do tonight, it's not in

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writing that that's the intended use for the open space. All that's written is that the open space, two open space parcels, D and C, would be deeded to the schools in, if in fact the schools accept it into their system or however they do it. It still has to be voted on by the School Board and also the Stafford County Board of Supervisors. Is that right?

Mrs. Hornung: Right. But see, it would not be totally deeded to the school...

Mr. Howard: Because of the stormwater management.

Mrs. Hornung: ... because the stormwater pond that would serve the subdivision, they wanted to have... they wanted to secure an easement to it should they need it. And, of course, if it...

Mr. Howard: I'm sorry, I said deed; it would be an easement, right?

Mrs. Hornung: That's correct.

Mr. Howard: Access to the pond.

Mrs. Hornung: Right, there is... I mean, it was just in discussions that oh, that might be suitable for this use or that use if the property was deeded to the School Board.

Mr. Howard: If they were to acquire... there's also that other property owner (inaudible).

Mrs. Hornung: And also there is the decision of the School Board and the Board of Supervisors accepting that dedicated property and what the use... they could use it for.

Mr. Howard: Yeah, they could very well say no thanks.

Mrs. Hornung: Absolutely.

Ms. Kirkman: So, I'm looking at the plan... so the easement... what's the access to the stormwater management facility at this point?

Mrs. Hornung: There is on one of the sheets there was shown an access from Telegraph which would be the emergency access and inspection to access the pond. Now, if the school were to access the stormwater pond for future development... or the School Board... for the future development of Shirley Heim School, it would have to come through the adjacent property that is actually in between the proposed Brentsmill and the existing Shirley Heim School.

Ms. Kirkman: Which sheet is that on? Because I'm looking at sheet...

Mrs. Hornung: Seven... sheet 7.

Ms. Kirkman: Because the earlier sheet does not show that.

Mr. Harvey: Mr. Chairman, the applicant and his engineer are here if there's any questions that need their response.

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Mr. Howard: Why don't we bring the applicant up with his engineer... with their engineer I should say, to answer any additional questions. Ms. Kirkman, did you have a question on the GDP, on the plan? Good evening, you just need to state your name again.

Mr. Furnival: Sure. Ladies and gentlemen, Rick Furnival, Sullivan, Donahoe and Ingalls, representing my client Tricord.

Ms. Kirkman: Sure. So sheet 3 did not show a road, and you're saying it's on sheet 7.

Mr. Furnival: I think it's on sheet 7. Hang on just a second and I'll take a look.

Ms. Kirkman: And why is that road going through the open... so...

Mr. Furnival: Yes ma'am, it's on sheet 7.

Ms. Kirkman: So it says 12 foot gravel access road and we've got an ordinance that says no roads in open space.

Mr. Furnival: Well, that's an emergency road to the stormwater pond.

Ms. Kirkman: Well it doesn't say except for emergency roads.

Mr. Furnival: I think that's a paved road; that's my understanding.

Ms. Kirkman: Well, it specifically excludes other vehicular surfaces.

Mr. Harvey: Mr. Chairman, Ms. Kirkman... I believe that was intended so some developer couldn't the streets as part of their open space, because the intent is that the open space would be primarily green area. But there's some features you're going to have in an open space parcel such as walkways, pathways, recreational amenities; those are things you normally see in open space.

Ms. Kirkman: Yes, and it specifically allows walkways, that is specified in the ordinance. One of my concerns was access to the open space for the residents. The ordinance says that, you know, it shall be available for entry and use by residents and, as of now, the only access point for the residents is, or at least at the last plan, was through parcel B... which would, for them to get over to the usable area, would require them to go down a steep slope, through a stormwater management facility and through wetlands. Has anything been done to correct that?

Mr. Furnival: Yes ma'am. The usable open space is actually parcel A and parcel B and the area over there is the area that is identified as the open space with no dimension less than 50 feet...

Ms. Kirkman: Okay.

Mr. Furnival: ... which meets the ordinance requirement.

Ms. Kirkman: Sure, but the section of the ordinance that requires access is applicable to all open space, not just usable open space. So has anything been done to improve the access to parcel C and D back where...?

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Mr. Furnival: Well, it's our understanding that the School Board wants to be in control of those two parcels. So we're considering parcels A and B as the usable open space for the development and these other areas are meeting the open space requirement under the ordinance, but also being conveyed to the School Board.

Ms. Kirkman: So, you're saying... so your position is that you don't have to meet the access requirement because it's going to go to the... what's now designated as open space is going to go to the School Board?

Mr. Furnival: Well, we think the access requirement is for the usable areas which we have provided access to.

Ms. Kirkman: Sure, but the ordinance says open space, not just to usable open space.

Mr. Furnival: Okay.

Ms. Kirkman: So is your position that you're not required to have access to the rest of the open space because that's going to go over to the School Board?

Mr. Furnival: Well, we do have access to it but we're not providing roads or anything like that; no ma'am. But they're accessible.

Ms. Kirkman: But the only way the residents can get to it is to go down a steep slope, through a stormwater management facility, through wetlands, or go outside of the development and down Telegraph Road. Those are the two choices for residents to get back to, for instance, parcel D.

Mr. Furnival: But what are they accessing ma'am? That's what I don't (inaudible).

Ms. Kirkman: The open space, parcel D... how are they going to access that?

Mr. Furnival: They can just walk to it through parcel B. It's all undeveloped natural area and it's fully accessible.

Ms. Kirkman: Right, and from... between parcel B and parcel D is steep slopes, a stormwater management facility...

Mr. Furnival: There are very little...

Ms. Kirkman: ... and wetlands.

Mr. Furnival: Ma'am, excuse me, there's very little in the way of steep slopes. The steep slope area is the unhatched white areas within that exhibit and it's very small amounts of steep slopes.

Ms. Kirkman: Is there a stormwater management facility there?

Mr. Furnival: Yes.

Ms. Kirkman: Is there wetlands there?

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Mr. Furnival: Within the stream channel, yes.

Ms. Kirkman: Thank you. I have no further questions.

Mr. Howard: Okay. Mr. Apicella?

Mr. Apicella: I might be confused about the issue you're raising. I'm looking at the package that was provided by staff for the last meeting; it speaks to open space requirements. It says Section 22-268(5) of the Subdivision Ordinance states that "in subdivisions approved for cluster development, there shall be provided at least one area of open space consisting of lands outside the floodplain being at least one acre in size and having no dimension less than 50 feet". The discussion during the meeting was focused on the issue of the required one acre being usable open space; however, this one acre is only required to be open space as distinguished from usable open space. This is significant because the definition of open space in the ordinance states that it may include undisturbed areas. Some of the confusion was created by the fact that the one acre was identified as one acre usable open space per the code of the Subdivision Ordinance on a cluster plan. It has been revised correctly; identify the area as one acre open space, since the required one acre lot is not usable open space, no access is required.

Mr. Furnival: Yes sir, that's what we were told.

Ms. Kirkman: Could we have staff back up to address what they wrote in the staff report?

Mr. Howard: Sure. Mrs. Hornung?

Ms. Kirkman: So Mrs. Hornung, is it staff's position that Section 22-267, which states open space shall be available for entry and use by the residents, that that does not apply to this subdivision application?

Mr. Rhodes: Where'd it say that? Where did anyone say that?

Mrs. Hornung: No, that was not stated that the open space was not accessible to the development. There is the gravel road that is shown (inaudible) to parcel D and then the parcel designated as A and B for open space are easily accessible from the subdivision roads. And then there is areas that back up to the lots in the subdivision.

Ms. Kirkman: So, residents can get from their homes and the entry point is parcel B. The residents can get from parcel B back to parcel D on a gravel road?

Mr. Rhodes: No.

Mrs. Hornung: No.

Ms. Kirkman: Okay, so what's the access point for residents for parcel D?

Mrs. Hornung: All of the open space are contiguous. Normally, the open space would be one designation. But for the purposes of this subdivision, to show what the areas are of "usable" and the areas that might be dedicated to the School Board, they were split up and designated as A, B, C and D. This is all still one piece of open space unit... one parcel of open space.

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Ms. Kirkman: We have three parcels... or four parcels of open space. We have parcels A, B, C and D.

Mrs. Hornung: That is correct. But they're all contiguous so that anybody can access any portion of that open space, either from Telegraph Road or from the A and B parcels that are on Naples... Naples Road.

Ms. Kirkman: So if they go through parcel A and B, do they then have to go through the stormwater management facility to get to parcel D?

Mr. Rhodes: Or around. Or beside.

Mrs. Hornung: They could go around or access it from Telegraph Road... the other end.

Ms. Kirkman: So they'd have to leave the development is the other.

Mr. Rhodes: Or around.

Mrs. Hornung: They could or go around.

Ms. Kirkman: Okay.

Mr. Rhodes: Or beside.

Mrs. Hornung: Because this open space parcel fronts on Telegraph Road, so if they want to access that portion of the open space, you could either go through the other parcel or access it more directly from Telegraph Road.

Ms. Kirkman: So, in your report, were you... you know, it's a little unclear; it seems to say that the access requirement doesn't apply because...

Mr. Rhodes: They're not saying that.

Mr. Howard: Hold on a minute.

Ms. Kirkman: Excuse me, Mr. Chair... could you explain in your own words what you... Mr. Chair, I'll wait until my colleague's through making...

Mr. Rhodes: (Inaudible).

Ms. Kirkman: Mr. Chair, my colleague is out of order.

Mr. Rhodes: I'm just giving you how, because you couldn't see it.

Ms. Kirkman: Mr. Chair, a point of order; I believe Mr. Rhodes is out of order.

Mr. Howard: You still have the floor Ms. Kirkman.

Ms. Kirkman: Thank you. Would you please pass this back to Mr. Rhodes?

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Mr. Apicella: Sure.

Ms. Kirkman: Mrs. Hornung, could you explain what you were trying to convey in your staff report, because there seems to be some confusion that, you know, it seemed to have been read as if the access requirement does not apply because we're not calling parcel D usable space. Was that your intent to convey that?

Mrs. Hornung: No. The parcels A and B are the usable...

Ms. Kirkman: Right. I think what got confusing is that you've talked about the access requirement in terms of the usable open space when in fact the ordinance seems to apply to all open... the access requirement seems to apply to all open space. So could you clarify that please?

Mrs. Hornung: In... let's see... in the one section of the ordinance on 268, I believe it's...

Ms. Kirkman: Right... Mrs. Hornung, but I'm referencing Section 22-267 that speaks to the access requirements. And I think that's where it's getting confusing because you keep referencing something that's specific just to the usable open space. And what I'm referencing is a part of the ordinance that appears to apply to all open space. And perhaps... I don't know if it'd be helpful for Mr. Harvey or the attorney to clarify.

Mrs. Hornung: Alright, you want specific... for the open space usable as it's defined? Or open space as it's defined in general?

Ms. Kirkman: In general.

Mrs. Hornung: In general it says "open space shall in general be available for entry and use by the residents or occupants of the development, but may include a limited proportion of space so located and treated as to enhance the amenity of the development by providing landscaping features, screening for the benefit of the occupants of those in the neighboring areas, or general appearance of openness". And then it details what that could include. And open space is the main designation of open space, because then further defined from that you have these other items of common open space, landscape, dedicated and usable. That just says that it shall, in general, be available for entry. Open space, it is, in general, available for entry through parcel... well, parcel A is not contiguous to B, C and D, but they're available for entry whether through parcel B, behind the lots, or through the area designated parcel D from Telegraph.

Ms. Kirkman: So, can you get from parcel B to parcel D without going through the wetlands?

Mr. Harvey: Ms. Kirkman, the way we've construed this ordinance in the past is that this is intended so that open space parcels can be accessible to the residents of the neighborhood. In other words, when they design the neighborhood, they're not putting an open space parcel behind other peoples' lots so the community cannot gain access to them. As this is configured, the community can gain access to all the open space parcels, all of which would be potentially accessible from Naples Road; whereas they may have to walk across the wetlands to get to the other side of the open space parcel or parcel D, however, it is accessible by foot and it is accessible to the community. The ordinance doesn't speak to whether we have to have a trail or what mechanism of how you get to the various parts of the open space parcel. So,

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staff has liberally construed it that it has to be an area that has some sort of connection to a public street to where the neighborhood can access that entire area.

Ms. Kirkman: So could we have the applicant forward... step forward? So, is there any reason why you can't somehow design an access point from the cul-de-sac at the end of Naples Road... well, that's still... you've still got the wetlands issue.

Mr. Furnival: Well, let me clarify that... those are not wetlands ma'am, those are waters of the United States. That's a stream channel, not a wetland.

Ms. Kirkman: Is there a stream there?

Mr. Furnival: Yes ma'am. It's a small stream, yes ma'am.

Ms. Kirkman: So was it determined to not be perennial?

Mr. Furnival: It is not perennial. It was determined not to be perennial.

Ms. Kirkman: So... it's intermittent?

Mr. Furnival: Yes ma'am.

Ms. Kirkman: So we're not just talking about going through wetlands; we're talking about certain times of the year they would have to go through water?

Mr. Furnival: Walk across a stream, yes ma'am. It's a creek; it's a very, very small natural creek. A kind of thing my 10 year old would love to play in.

Ms. Kirkman: Thank you.

Mr. Howard: Any other questions for the applicant while they're here? Okay. Thank you. Any other questions for staff?

Ms. Kirkman: I just want... Mr. Harvey, you tried to reach Mr. Horan and were un... I mean, what was the status of that?

Mrs. Hornung: I called and left messages and have not heard back from Mr. Horan. He was in the office today but in meetings.

Ms. Kirkman: Okay. And, um, would the... just to reiterate, I want to make sure I understood what you were saying Mr. Harvey. Can the Board lift, given that this open space requirement is a requirement for the cluster subdivision... maybe it's more for the attorney... um, because the open space acreage, the amount of the acreage is required for the subdivision... to be able to do this cluster subdivision, can the Board in the future lift the open space designation?

Mr. Howard: Mr. Harvey, are you aware of anytime that we've done that in the County in your 20 plus years in planning?

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Mr. Harvey: No, Mr. Chairman. In fact, it's fairly rare that we have a subdivision with land that either the Parks or the schools are interested in.

Ms. Kirkman: Mr. Harvey, I thought the Board just, I believe it was last year, lifted an open space designation on a parcel off of Jeff Davis Highway as part of that commercial development by Hills of Aquia?

Mr. Harvey: There was a parcel that they vacated the plat to relieve an open space designation on plat. The owner had indicated that there was an error made when the plat was recorded. It was not a requirement of the County code that that parcel be open space.

Ms. Kirkman: (Inaudible – microphone not on.)

Mr. Harvey: Yes, it allowed that designation to be deleted from the plat.

Mr. Howard: So, it was open space as part of the residential development at some point?

Mr. Harvey: It was recorded as such; the applicant in the preliminary plan had shown that as being used for other purposes. When the plat was recorded, it showed it as open space on the tabulation.

Mr. Howard: By vacating that open space, did that in effect give them a variance on the open space requirement for that development?

Mr. Harvey: No sir, because that was not a cluster subdivision that required that for open space.

Ms. Kirkman: And that's specifically the question I have for the attorney.

Mr. Howard: Right. Yeah, my question was whether have we ever done that in the past? I don't know. I think Ms. McClendon is looking that up.

Ms. Kirkman: Do we want to give her time to look at that and maybe table this and move onto the next item?

Mr. Apicella: I have a couple questions.

Mr. Howard: Go ahead Mr. Apicella.

Mr. Apicella: Thank you. I think you answered the question, Mr. Chairman, but I'm going to ask it again. This is a 16 acre cluster subdivision, right?

Mrs. Hornung: Yes sir.

Mr. Apicella: And, in order to meet the cluster requirements, they would need to provide about half... an amount equal to half of the 16 acres. So they would need to provide eight acres of open space.

Mrs. Hornung: Approximately, from the 15.95 it's about 7.97 acres; that is correct.

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Mr. Apicella: Okay. So, based on what they proposed, they have met that requirement and maybe exceeded that requirement.

Mrs. Hornung: Yes sir, they've exceeded that requirement.

Mr. Apicella: Okay, so whether the School Board chose to use the parcels that were identified for potential School Board use, they have met that minimum requirement.

Mrs. Hornung: That is correct. In the ordinance it states that once they... if they were to dedicate the land to Parks and Rec or to the School Board, that would be consistent that they've met their requirement.

Mr. Apicella: So, again, if the School Board said, no thanks, we don't want it, they still have met the requirement.

Mrs. Hornung: Yes sir.

Mr. Apicella: Okay. If the School Board did want some of the property that was recommended, the way I read it and again I'm not a lawyer, but Sections 22-268(2) basically says if the School Board wants a parcel of land that the applicant has offered, then they have fully met the requirement, no matter what the size of that parcel is.

Mrs. Hornung: That is correct.

Mr. Apicella: So, either way they will have met the requirement for open space; either the eight acres or if the School Board wants some piece of the parcel, they will have met the requirement for open space.

Mrs. Hornung: Yes sir, that's correct.

Mr. Apicella: Okay, thank you.

Mr. Howard: Alright, any other...? Ms. McClendon?

Ms. McClendon: Ms. Kirkman, could I get clarification of your question please?

Ms. Kirkman: Sure. My question is they are using this open space area to meet the requirements in order to qualify for a cluster subdivision. Without the designation of open space, they could not qualify for a cluster subdivision and would have to develop the land separately... in a different manner. So, my question is, given that that open space requirement is needed to qualify to do this cluster subdivision, can the Board remove that open space designation in the future?

Ms. McClendon: Do you mean if the applicant just applies for the open space to be removed?

Ms. Kirkman: There are certain circumstances under which the... which property owners can apply to the Board of Supervisors to remove deed restrictions such as a designation of open space. So, could a future property owner apply to have the open space designation removed, given that this open space is being used to qualify for the cluster subdivision?

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Ms. McClendon: I have to do some more research on that; I'm not exactly clear on the answer to your question at this time.

Ms. Kirkman: Okay, thank you.

Mr. Apicella: Wouldn't that be true in any cluster situation?

Ms. Kirkman: No.

Mr. Apicella: Why not? You're just saying that if the applicant... whoever has the parcel goes to the Board and says we want to take that out of open space. So open space is part of the requirement of being in a cluster subdivision, so it would apply...

Ms. Kirkman: But only under this specific... only in this specific land use.

Mr. Apicella: I'm not following you.

Mr. Howard: So your question is, could the Board of Supervisors at some point waive the open space requirement and allow the School Board to do something different with this property?

Ms. Kirkman: Are you asking Mr. Apicella or me?

Mr. Howard: I'm asking Ms. Kirkman.

Ms. Kirkman: Not waive, but I think technically what they would do is lift the deed restriction, because this will be... this plat would go forward and get recorded as open space. And the Board has, in the past, lifted deed restrictions of open space. My question to the attorney was would they be able to do that given that this open space was needed to qualify to develop the land as a cluster subdivision.

Mr. Howard: But it was my understanding, based on the staffs' report, that this parcel that we're talking about, in terms of the open space that could go to the school, isn't really needed to meet the cluster subdivision ordinance in terms of what they're proposing. That acreage... is that correct Mrs. Hornung? So that's why I'm not understanding the question.

Ms. Kirkman: The... well, let's hear from the applicant.

Mr. Furnival: Mr. Chairman, if I may... the parcel D that is identified, I think it's 1.2 and some acres, is part of the open space for the project. It's used to meet the ordinance. But our, as the staff report says and we agree, that we meet the open space with our plan by providing this area. The School Board comes in, they say they would like it; they can do with that parcel of land however they wish. If it meets the bulk regulations for the underlying zone...

Mr. Howard: Well, let me... in the Zoning Ordinance, and Mr. Apicella stated, it's 22-268 and it's item number 2 and states specifically, "in cases where a given area within a tract is needed by the county for a school site or other public use as determined and approved by the school board, such land shall be deeded to the county at no cost for such purpose. Such sites shall be given full credit in satisfying the open space regulations of the given district."

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Mr. Furnival: Yes sir, and the deed and the subdivision plat will not create an open space parcel; it's going to create a parcel that will be conveyed to the School Board. So that parcel... it satisfies the ordinance but when we create the final plat, that parcel will go to the School Board. This preliminary does not do that. This isn't pertinent to the preliminary. The preliminary just has to show compliance with the ordinance and our compliance, as far as it stands, to the School Board is they've asked for it and we said we will give it to them.

Mr. Apicella: But, Mr. Chairman, if I understand the sequence in that particular section, basically the County and the School Board essentially get right of first refusal; so you have to offer it to them and they have to say whether they want it or not.

Mr. Furnival: I believe it's a shall statement as was discussed earlier.

Mr. Apicella: Right. So, again, in the event that they choose not to take advantage or if the School Board decides contrary to its staff that they don't really want it, again, at the end of the day, you still meet the open space requirement irrespective of the School Board not taking that property.

Mr. Furnival: And it would go to the HOA as an open space parcel. And at that time after that if somebody wanted to change it, it would have to go through the process Ms. Kirkman speaks to.

Ms. Kirkman: So, let me understand this correctly. You're submitting us a subdivision... a preliminary subdivision plan that has lots designated as open space which you are thinking will not be designated as open space if the school decides to accept them in the future.

Mr. Furnival: That's exactly right. And that's what the ordinance says; it says if the School Board or the Parks or the County decides they want it, we'll be given full credit for that open space parcel, but it goes to them.

Ms. Kirkman: Right. Well then I guess I have an additional question for the attorney because my understanding of the Zoning Ordinance is if there are conflicting provisions, the more restrictive provision applies. And the definition of open space clearly states that there will be no areas occupied by a dwelling. So...

Mr. Howard: There is no dwelling proposed here Ms. Kirkman. We're evaluating the proper use of (inaudible).

Ms. Kirkman: Right; so... we are, and we've heard from the applicant and from the schools that they would like to use that property for some other purpose (inaudible).

Mr. Howard: We actually haven't... we haven't heard that from the schools. We heard there was a conversation...

Ms. Kirkman: Okay. Well then I think we do need to hear exactly from the school what their interest in parcel D is. They were very clear in stating what their interest in parcel C was and I would be a lot more comfortable if the school were to state clearly that they do not intend to place a dwelling on parcel D.

Mr. Furnival: Mr. Chairman, respectfully, we do not believe that that is an issue that has any bearing on the preliminary plan.

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Mr. Apicella: They couldn't. I mean, they couldn't put a... they would be in violation of our requirements to try and put a dwelling on the property, even if they wanted to do it; right?

Ms. Kirkman: We don't know...

Mr. Furnival: I'm not sure of that, because according to the ordinance it ceases to be open space tied to the cluster subdivision...

Mr. Howard: Well, in a letter dated October 12<sup>th</sup> to Mr. Harvey, the School Board... not the School Board, the representative of the Stafford County Schools, did indicate they request an easement for future access to the stormwater management pond, identified in parcel C. And then they go on to say they also request a deed to parcel D identified in 2-18-11 cluster preliminary plan developed by SDI. So they're not indicating at all that they're building a dwelling unit on that property.

Mr. Furnival: They just want the property.

Ms. Kirkman: But that's... Mr. Chair, that's precisely what they indicated in earlier correspondence and I think it would be disingenuous to approve a preliminary subdivision plan that designates areas open space in order to meet the open space requirements when, in fact, there has been discussion about putting a dwelling on that open space parcel. And until we get confirmation from the School Board that they... or the school representative that they do not intend to do that, I do not think that we can act in good faith in accepting it as open space.

Mr. Apicella: Mr. Chairman, I see nowhere in the documentation any discussion from the school system about putting a dwelling on this property.

Mr. Howard: Right; it was verbalized by staff.

Mr. Apicella: And subsequent to that, I assume that these other letters have precedence because they're in writing. So, for them to say verbally that they might want to use it for the BOOTS Program is one thing, but they've actually sent us two letters saying something completely different about what their intent is in terms of use of this parcel... or these parcels.

Mrs. Hornung: Yes sir, you're correct. There have been just preliminary conversations on would the school be interested in the parcels to satisfy the open space and also to satisfy the requirement to give the right of refusal first to the County and to the School Board. And at this point there has been no... nothing in writing from the School Board themselves; it was basically staff from the County and staff representative from the School Board discussing would you be interested in this piece of property, what it could be used for for school purposes. And, at this point, there is nothing in writing or nothing definite at what the future will hold of that because it still has to be approved by the School Board and the Board of Supervisors.

Mr. Apicella: And even if Ms. Kirkman is correct, the School Board has a right to use that property for whatever purpose it wanted to, including a dwelling. So, absent any other provision related to open space, again, they get the right of first refusal. If they choose to put a dwelling on it, that property, that parcel has been provided by the applicant, they have met the requirement; right?

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Mrs. Hornung: That is correct. And when... at the final plat I think what was maybe a little confusing, it was implied that that parcel would be shown as an open space parcel on the final plat. If it were to be dedicated to the School Board, it would be given another designation, not an open space designation, and then it would be dedicated obviously to the School Board and would be a public facility parcel and then the School Board would make their decision on how they'd like to utilize that property.

Ms. Kirkman: Mr. Chair?

Mr. Howard: Ms. Kirkman?

Ms. Kirkman: We're waiting to hear from the attorney because, in fact, we have not gotten confirmation from her that the school can use this to any purpose that they so choose, because it does appear that there are conflicting provisions in the ordinance.

Mr. Howard: Well... Ms. McClendon, do you have an opinion on that question?

Ms. McClendon: In looking at the parts of the ordinance, it can be read together. Basically, what it's saying is that the open space provisions are for the applicant. If they dedicate the land to the schools, then they have met their open space provisions; but that's not putting a restriction on the schools to continue to use it as an open space.

Ms. Kirkman: So, the whole... so I just want to make sure I understand how the interpretation of this ordinance is. We have an ordinance which is designed to encourage open space by allowing clustered subdivisions, at increased densities, because the developer will put aside land and open space. That land could then be transferred to school or to the county and then developed with buildings and no longer be open space. Is that correct?

Mr. Harvey: I believe the intent of the ordinance is that if a large enough project came along and there was ample area for a school site, that that could be dedicated and there could be a school constructed on that property.

Ms. Kirkman: Is 1.29 acres ample for a school site?

Mr. Howard: No; no one's suggesting that. I think, Ms. Kirkman... I think in the spirit of what you're asking, you're probably correct. But at the end of the day, we don't know that a building would be erected on that property. We do know that the School Board would have to go through the same process or the Stafford County Schools, whoever becomes the applicant, would have to go through the various same process in order to get that dwelling unit approved I would think. Is that correct Mr. Harvey?

Mr. Harvey: They'd have to go through the normal subdivision process...

Mr. Howard: Right.

Mr. Harvey: ... and it's still a matter of question as to whether you could get another lot there or not.

Mr. Howard: So I think that's down the road but I'm not sure that... I'm not sure I understand how that impacts the current applicant.

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Ms. Kirkman: Mr. Harvey, could you explain why they would need to go through the subdivision process, because if they've got a 1.29 acre lot, why would they have to further subdivide that?

Mr. Harvey: I see your point. I guess...

Ms. Kirkman: They wouldn't.

Mr. Harvey: ... yeah, that possibly they wouldn't.

Mr. Howard: yeah, my perspective is... go ahead Mrs. Hazard.

Mrs. Hazard: I was just trying to think... if you're going to deed a property, you're going to have to create a new tax map number for it. So it is going to have to be created in some kind of lot or designation; correct?

Ms. Kirkman: I think we heard from the applicant that they intend to do that in the final plat... that they're going to create parcel D but in the final plat. Instead of designating it as open space, that's exactly what would happen; that's the point at which it would get the tax map number.

Mrs. Hazard: If I could clarify... so once... I guess we're all just trying to ask the same question... once it becomes property of the School Board, the Board of Supervisors and the School Board need to do what?

Mr. Howard: I'm not sure... you know, I'll be candid. I think what's before us is to determine whether or not this applicant has met the requirements of the cluster subdivision ordinance, where we're trying to, you know, speak for the School Board and Stafford County Schools, I don't think we can. I don't know what they're going to do with the property. And one item was indicated; I don't believe they could achieve that to be honest with you, and I don't know that that's still a desire, I don't know that it isn't still a desire... I'm not sure. I understand everyone's points and concerns that this could ultimately be a separate parcel on the tax map and then the owner of that parcel can then decide to do what they want to do with it. While that, in fact, is true and in the cluster subdivision ordinance it provides for that in this case because it's the schools'. So, I think that's where we're at. So, we're back to the Planning Commission.

Mr. Apicella: It's your intention, though, for the other parcels to be open space, right? Okay.

Mr. Howard: The applicant answered yes, for the record.

Mr. Hirons: Mr. Chair?

Mr. Howard: Mr. Hirons?

Mr. Hirons: Do we have any ability at this point to apply some sort of language or something that says no matter who the ultimate owner of that lot is it must remain open space?

Mr. Howard: I don't know. We can ask Ms. McClendon. As I read the subdivision ordinance and that section, it is a shall and, you know, we can read it again for everyone who wants to hear it again.

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Mr. Hirons: You know, I tend to agree; I understand where Ms. Kirkman's coming from here. We're using the cluster subdivision ordinance to allow the applicant to go ahead and build here and that's great but, well, once it's passed it really doesn't matter. And we're the government so we can do what we want. The schools (inaudible).

Mr. Howard: Well, Mr. Hirons, I resent that comment and I think that it's not really appropriate. We have a Zoning Ordinance and we're following the ordinance. If the ordinance is wrong, we as the Planning Commission can make a decision to change that.

Mr. Hirons: But I think that's the ultimate intent. In my opinion, the ultimate intent of a cluster ordinance is to have open space forever.

Mr. Howard: I believe that's the intent in the spirit and I believe it's our responsibility to follow the subdivision... cluster subdivision rules.

Mr. Hirons: And I understand that and I do appreciate that.

Mr. Apicella: I agree; I don't think we can recreate the subdivision ordinance on the fly. I agree also that the intent should be for open space, but we're dealing with the ordinance as it exists today. And I personally think that, again as I've said before, in either circumstance, they will have met the requirement either through the eight acres that they're offering up for open space or... and/or by providing a site for schools to use as they want. So in either event, my personal view is they've met the requirement for a cluster subdivision.

Mr. Rhodes: Mr. Chairman?

Mr. Howard: Mr. Rhodes?

Mr. Rhodes: I think we can go through a lot of hypothetical thoughts as to what may or may not happen. We do have an ordinance, we have an application, we have an application that has complied with our requirements; I think it's really time to end discussion. I would move that we end discussion on this and move on the action.

Mr. Apicella: I'll second.

Mr. Howard: So Mr. Rhodes has made a motion that we end discussion on item number 5 and take action... some action... and it's been seconded by Mr. Apicella. Any discussion on the matter?

Ms. Kirkman: Well Mr. Chair, I'm going to oppose the motion. I'm always opposing to shutting off debate and free speech.

Mr. Howard: I don't think that was the intent; I think there does come a time when you have to end a discussion when you're continuing to say the same thing back and forth. I don't believe that was the spirit of the motion. But I understand your opinion. Any other discussion? Alright, I'll call for the vote. All those in favor of Mr. Rhodes' motion signify by saying aye.

Mrs. Hazard: Aye.

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Mr. Rhodes: Aye.

Mr. Apicella: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed nay?

Mr. Fields: Nay.

Ms. Kirkman: Nay.

Mr. Howard: The motion carried 5 to 2, I believe? Alright, so someone has to take action on item number 5.

Ms. Kirkman: Mr. Chair, this is in my district and I cannot in good conscience make a motion to approve this given that the applicant has stated a clear possibility that they're meeting the open space requirements solely for the purposes of the preliminary subdivision plan and that lot D could be deeded, in the final subdivision plan, the final plat, could be deeded to the school and no longer open space. So, with that in mind, plus the fact that I do not believe the applicant has adequately met the provisions of Section 22-267 regarding appropriate entry and access for residents to the open space, I'm going to make a motion to deny.

Mr. Howard: Okay, is there a second?

Mr. Fields: Second.

Mr. Rhodes: Mr. Chairman?

Mr. Howard: Discussion... hold on, we're in discussion; Ms. Kirkman has the floor.

Ms. Kirkman: Yes, Mr. Chair, as I stated, I do think the Planning Commission has some obligation to go a little bit beyond the letter of the law as construed by staff that we need to take a position of good conscience. And this ordinance was intended to create open space in the County, not future lots for development. Secondly, we've had numerous discussions about the access issues. I think there's some simple solutions so that elderly people and older homeowners can get back to the usable... the rest of the lots; just a walking path with a bridge over the creek—it's pretty simple. And given that those kinds of access things weren't provided, that's why I made the motion to deny.

Mr. Howard: Thank you. Mr. Fields, you seconded; you have the second.

Mr. Fields: Yes. I... a couple things. Primarily I believe if you look at our ordinance, listening to all of the discussion from the Commissioners, all of the discussion from staff and all of the discussion from the applicant, I think whether you like it or not there's a reasonably debatable point about how usable an accessible open space is through the intent of the ordinance. And I just don't feel that this, in the final analysis, meets it. I think, having watched through the years how this came about where, when I first got into this in 2000, you know, these ordinances were nowhere near as well thought out. And one of the main reasons the cluster ordinance has evolved over the years is the idea that we had a cluster

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ordinance many years ago that was not so defined and restrictive and people, of course, got their open space through all kinds of machinations simply to get the added density, and still had communities where, like this, like just being completely anecdotal about it, my subdivision was built in the 80's, started in the 80's so this is way before any of these... most of the modern subdivision ordinances. It's third acre, half acre, some even larger lots, all on cul-de-sac streets, with absolutely no common open space whatsoever. Every square inch was developed or platted into an individual lot. So, I mean, here you have this really nice you know Stafford County subdivision where the kids are playing in the street, you know, three year olds riding their bikes, playing in the street, basketball... you know, everybody treats the cul-de-sac if it was a public playground and you know, in the final analysis, this looks to be the same thing; that open space is not going to be a robust area for community activity that I believe every community needs to have to develop any kind of sense of place and community. And so, you know, while I respect the applicant's arguments, I don't believe in the final analysis that this complies with the true intent and spirit of the code of Stafford regarding open space. Thank you.

Mr. Rhodes: Mr. Chairman?

Mr. Howard: Mr. Rhodes.

Mr. Rhodes: Given that this does meet the requirements of the ordinance, given that this... we can have all kinds of suppositions as to what the future holds in any endeavor, I don't think we can apply our thoughts and fears to these applications. I think that's an inappropriate type of action. If they built all kinds of pathways and bridges to that open space then we would have challenged them for disturbing the open space area. For those reasons really I'll make a substitute motion, Mr. Chairman, for approval of Brentsmill, Section 3, Preliminary Cluster Subdivision Plan SUB1100059.

Mr. Apicella: I'll second that motion.

Mr. Howard: Discussion?

Mr. Rhodes: None further, thank you Mr. Chairman.

Mr. Howard: Mr. Apicella, you have the second part of the discussion.

Mr. Apicella: Again, as I've indicated earlier, I think they've met the minimum requirements in either event, whether the school system takes its first right of refusal and builds what it may be allowed to build on that parcel, or if they continue to dedicate the other eight acres for open space use. We can debate whether the cluster ordinance, as currently written, meets the full objectives; I personally think it doesn't. And I think down the road we ought to ask the Board of Supervisors if we can take another shot at it and make it tighter but, under its current establishment, I think the applicant has met all the requirements. Therefore, I think we should approve this preliminary subdivision plan.

Mr. Howard: Any other discussion?

Ms. Kirkman: Sure Mr. Chair.

Mr. Howard: Ms. Kirkman?

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Ms. Kirkman: I am going to oppose the motion. Setting aside for a moment whether or not the applicant is labeling things on the preliminary subdivision plan as open space when, in fact, there's been clear discussions that it will not be used as open space in the future... setting aside that issue I do not believe the applicant has met the subdivision requirement in 22-267 to provide access to the open space.

Mr. Howard: Thank you. Any other discussion?

Mr. Fields: Mr. Chairman?

Mr. Howard: Mr. Fields.

Mr. Fields: I'll oppose the substitute motion, partly on procedural grounds. I respect the arguments of my colleagues to proceed forward with this and... I've noticed again another trend over the years that I just feel is not necessarily constructive. You know, I generally... even if you disagree with the Supervisor, or Planning Commissioner depending on which body you're on, from a specific district, I've always felt that even if I disagreed with their judgment on something, I would never personally move to override the desires of the District Commissioner or Supervisor because I believe we can't know this whole County in its entirety. All you can really barely have time for is a citizen, either on either body, is to understand a little chunk of the County that we've been assigned and I think there's always a certain deference to that judgment. Even... and I've supported people on both bodies in their district even if I had conceptual problems and even some serious heartache with it. But I respected that collegiality. Thank you.

Mr. Howard: Mrs. Hazard, you were reaching for the microphone?

Mrs. Hazard: Yes, Mr. Chairman. I have to say this has been a difficult one to come before us from a certain standpoint but, at the end of the day, unfortunately I think what we are presented with does meet the requirements although we are unhappy with them. I think that the School Board certain... or the School Board representative, excuse me, certainly muddied the waters as we moved forward with this. I am troubled by how this went down but I believe that the applicant has met the requirements. I really feel strongly about either sending a letter or something to the School Board or the Board of Supervisors about that use because it appears that we have not been able to reach the School Board representative to communicate those concerns, that I would in some way prefer that they be written that these concerns were raised by this body.

Mr. Howard: Mr. Hirons, did you want to have a comment?

Mr. Hirons: The only comment I'll make is I will support the motion that's before us, the substitute motion. I understand Ms. Kirkman's opposition in the first part of her motion; I agree to it to a certain extent. But I have to take a leap of faith here because the speakers before me are correct; what we were presented does meet the ordinance as it is. And so it is with that I'll support the motion.

Mr. Howard: Thank you. My comments are as follows; Section 22-267, which has been referenced, clearly states the following... and my version is dated January 3, 2011. And this is 22-267, this is the first paragraph, it is the second sentence, "open space shall, in general, be available for entry and use by the residents or occupants of the development, but may include a limited proportion of space so located and treated as to enhance the amenity of the development by providing landscaping features, screening for the benefit of the occupants of those in neighboring areas, or a general appearance of openness".

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Then when you go to 22-268 which is the following section, paragraph 2, it does clearly state “in cases where a given area within a tract is needed by the county for a school site or other public use as determined and approved by the school board, such land shall be deeded to the county at no cost for such purpose. Such sites shall be given full credit in satisfying the open space regulations of the given district.” And nowhere in that ordinance does it say access; it does not use that term just for the record. So, I’ll be supporting the motion as well. All those in favor of the motion before us signify by saying aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Apicella: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed nay?

Mr. Fields: Nay.

Ms. Kirkman: Nay.

Mr. Howard: The motion carries 5 to 2. Thank you. That brings us to the new item 6 which is the Westlake Preliminary Subdivision Plan. We had a change of the agenda based on an applicant’s request, for those of you who came in at around eight o’clock, and we moved item... what was normally item 6 and we flip-flopped it with item 10. It’s the same representation, so we agreed to do that. So we’re not on item which is the Westlake Preliminary Subdivision Plan, a preliminary subdivision plan for 701 single-family detached units.

~~10.6.~~ *SUB2800773; Westlake, Preliminary Subdivision Plan - A preliminary subdivision plan for 701 single family detached units, zoned R-1 and R-2, consisting of 446.46 acres located on the south side of Warrenton Road between Richards Ferry Road and Cedar Grove Road along Horsepen Run on Assessor's Parcels 35-20, 20A and 21 within the Hartwood Election District. (Time Limit: December 28, 2011) (Deferred at October 5, 2011 to October 19, 2011)*

Mr. Harvey: Mr. Chairman, Natalie Doolittle will be giving a recap of where we are with this application. Also, we have staff from various departments to answer any questions that the Commission may have.

Mr. Howard: Thank you.

Mrs. Doolittle: Good evening Mr. Chairman and members of the Commission, this item is a continuation of the discussion from the October 5<sup>th</sup> meeting for the Westlake preliminary plan application. The plan proposes 701 single-family residential lots on 492 acres zoned R-1, Suburban Residential, and R-2, Urban Residential, on public water and sewer and is located on the south side of Warrenton Road between Richards Ferry Road and Cedar Grove Road along Horsepen Run. The Commission inquired if the County intended to use the 65 acre school site and, if so, as what use. The proffers state that the site can be utilized for a public park... or public school, park, office, library, civic

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center or public meeting, and/or other public use consistent with the foregoing uses. A representative from the school division stated they intend to utilize the 65 acre site for a future high school. However, one of the main issues that they have had a concern about is the mixing of student traffic and commercial traffic from the planned Vulcan Quarry. The Commission also inquired about the inter-parcel connections and the parcels they are connecting to. Computer please? And here is an overall of the preliminary plan that more clearly labels the locations of the inter-parcel connections. Connection 1 is with the proposed realigned Vulcan Quarry easement. Connection 2 is with Assessor's Parcel 35-15B, which is zoned A-1 and currently has no plans in for development. Connection number 3 is with Charlie Coakley Lane, which is currently a private road. Connection number 4 is with Jack Ellington Road, State Route 748, and serves as a secondary emergency access. Connections 5 and 6 are with Assessor's Parcel 35-22, zoned M-1, and according to County staff, there is a training facility on the parcel. Connections number 7 and number 8 are with Assessor's Parcel 35-23, zoned M-1, and the parcel is currently owned by the University of Mary Washington Foundation and, at this time, no plans have been submitted to the County for development of the parcel.

Mr. Fields: Mr. Chairman?

Mr. Howard: Mr. Fields?

Mr. Fields: What is the training facility on that parcel, where it says it's on parcel 35-22?

Mrs. Doolittle: I believe it's a government training facility. Mr. Harvey might know more about exactly what's on there.

Mr. Harvey: Yes, it is a training facility; it's been there for a number of decades. They do various types of training to include a small arms range.

Mr. Howard: The facility is operating today...

Mr. Harvey: Correct.

Mr. Howard: ... is what I hear you're saying?

Mr. Harvey: Yes.

Mr. Fields: Thank you. So, basically all of these inter-parcel connections except for one don't go anyplace functionally... or won't for quite some time... in terms of providing integrative access to all of those residences through a network of transportation. I mean, is that a fair assessment of that, Mrs. Doolittle or Mr. Harvey or whoever staff is?

Mrs. Doolittle: On the vacant parcels there don't appear to be any plans in for those so I can't say how long it may be before they're developed.

Mr. Fields: So it's not really... right now it's not leading to any... it's kind of they're all leading to vacant land or industrial places other than the (inaudible) entrances. So, from a transportation impact, is it reasonable to assume that when you look at this that essentially every piece of traffic from the subdivision flows in and out of that one point? And will for quite some time? I'm just asking.

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Mr. Harvey: Yes, Mr. Fields, with the exception of Jack Ellington Lane, currently all traffic would need to go out the main road to Route 17.

Mr. Fields: Mm-hmm... 701 units times 10 trips a day; that's 7,000 trips a day—something like that?

Mr. Harvey: Yes.

Mr. Fields: Okay. What do we have? I guess the gate at Aquia Harbour does probably more than that, right?

Mr. Harvey: Yes.

Mr. Howard: Considerably more than that.

Mr. Fields: Considerably more than that. What would be an equivalent point?

Mr. Howard: I would tell you Austin Ridge was prior to Austin Ridge Drive being completed, which probably took eight to nine years that that development stood with those 800 homes.

Mr. Fields: Right.

Mr. Howard: And you had to go down Mine Road. You actually had to go through Hampton Oaks, so you went through another thousand, you know, subdivision; that comes to mind for me. I don't know, Mr. Harvey, if you know of any other...?

Mr. Harvey: That was the example I was going to use.

Mr. Fields: How did that work?

Mr. Howard: Pretty well.

Mr. Fields: Did it?

Mr. Howard: Yeah.

Mr. Fields: It handled 8,000 cars in and out that one thing a day okay?

Mr. Howard: It did extremely well. Even with the 25 mile per hour speed limit.

Mr. Fields: Wow. Okay.

Mr. Howard: So go figure that. It's very similar, in fact; it's all cul-de-sacs. You know, inner-street connection with many, many cul-de-sacs and then you go out on Austin Ridge Drive which turned into Mine Road and now you can get out... you can still only get in and out two ways. You have to down to Courthouse or you can go down Mine Road to 610.

Mr. Fields: That was my question.

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Mr. Howard: Any other questions for Mrs. Doolittle? Were you finished or did you have more...

Mrs. Doolittle: No, I'm done.

Mr. Howard: ... you had more to go through, right?

Mrs. Doolittle: No, I'm done. That's it.

Mr. Howard: Okay. Any other questions for Mrs. Doolittle? No? Mrs. Hazard?

Mrs. Hazard: The memo indicates that the contact was made with the School Division. Has there been any formal discussion with either the Board of Supervisors or the School Board about whether this is in their plan, whether this is going forward? Because upon speaking with several of the members that are involved in that, they said they had no idea. So, that does somewhat trouble me. I'm not saying you didn't make the right call, I'm just saying at the Board level it didn't seem like there was much knowledge about this particular project. So, I just put that out there that I would... I'm still trying to make sure that we have at the Board level a commitment to this project as well.

Mrs. Doolittle: I was just told by the school representative that there were no specific plans in process at this time.

Mrs. Hazard: But that it was under... it was his belief that they wanted the site for a high school.

Mrs. Doolittle: Correct.

Mrs. Hazard: Okay.

Mr. Harvey: Mr. Chairman, we have representatives from the Utilities Department here, as well as stormwater management and other environmental issues, the Chesapeake Bay Act and historic resources if you (inaudible).

Mr. Howard: I know there were a lot of questions that came up at the last meeting, many of which I think were answered. I know the stormwater management was quite a discussion and Mr. Fields had asked pretty good questions, but the applicant answered many of them in terms of how the stormwater management hookups would occur and where the pumps would go. I'm not sure if there's any additional questions. Mrs. Hazard?

Mrs. Hazard: No, I believe that there was some discussion about the timing of the Rocky Pen Reservoir which I believe that the Board of Supervisors went on some site visit last night, so there may be an update on that. But I could be incorrect because I believe something came up about that and I believe...

Mr. Howard: That was one of the questions asked, correct... and pointed out by the applicant when that reservoir came on (inaudible).

Mr. Harvey: Yes, Mr. Chairman, Mr. Allen from the Utilities Department is here and he may be able to answer that question.

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Mr. Howard: Great. Mr. Allen? The question is, when do you anticipate the new reservoir coming online and how, if at all, would it impact this project?

Mr. Allen: Yes. Mr. Chairman, members of the Commission, Dale Allen, Assistant Director for Engineering Department, Utilities. Right now our present schedule for Rocky Pen is in the summer of 2014.

Mr. Howard: And how do you anticipate this development impacting that, or vice-versa? Would that reservoir coming online have any impact at all with this development?

Mr. Allen: Well, obviously, the more connections we have before 2014, the more risks we have if there's a significant drought. However, if the weather is in a normal weather pattern, then we don't expect any adverse impact by this subdivision.

Mr. Howard: How long has that reservoir been in the planning stages?

Mr. Allen: I think we're in at least 20 years at this point; so it's been a long process.

Mr. Howard: And are you... how sure are you that 2014 is a solid date for that?

Mr. Allen: That's our best estimate at this time, and we feel fairly comfortable with it. There's always the possibility something would slip and it would go into 2015, but we're not anticipating this. We feel very confident it'll be online in the summer of 2014.

Mr. Howard: Okay, are there any other questions?

Mr. Fields: Mr. Chair? And I'm assuming, Mr. Allen, you mean...

Mr. Howard: Mr. Fields then Mr. Apicella.

Mr. Fields: I'm assuming, Mr. Allen, you mean by summer 2014 the reservoir and the treatment plant are built literally the time when the turnkey point, right, where...

Mr. Allen: Yes we expect the project to be online...

Mr. Fields: ... you open the faucet and water starts flowing out of... drinkable water starts flowing out of it.

Mr. Allen: Yes sir, that's correct.

Mr. Fields: How many... at a point, right before the housing, at the accelerated peak of the housing bubble, right before it collapsed when I was on the Board, I know it... right around 2006/2007 we were already approaching a fairly small number of available taps left until Rocky Pen comes online. Where are we with that right now? I mean, is there a current estimate as to how many available residential taps are... could be created with just the current supply?

Mr. Allen: We're in the thousands of additional EDU's that can be connected to the system based upon the current capacities, the treatment plants at Abel Lake and Smith Lake.

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Mr. Fields: Has that been upgraded since that time, since 2006?

Mr. Allen: No they have not.

Mr. Fields: I just wondered how that number changed, because in 2006 it was really questionable; it was more like in the 1,500/2,000 range is my recollection.

Mr. Allen: I think everyone is concerned about what would happen during the drought year.

Mr. Fields: Mm-hmm.

Mr. Allen: And actually, the water demands have decreased on a per EDU basis since that time.

Mr. Fields: We're actually using less water per household?

Mr. Allen: Yes we are.

Mr. Fields: Oh, that's good news. Is that because of efficiency measures and also because of the tiered pricing?

Mr. Allen: I can only speculate what the reason is.

Mr. Fields: I did some landscaping last year and it cost me a fortune to keep it from dying. So I think you're doing a good job.

Mr. Allen: We need more customers like you.

Mr. Fields: You're welcome. Thank you.

Mr. Howard: Alright, Mr. Apicella.

Mr. Apicella: This project's been on the horizon for a long time. You guys have a long term plan? Has it been incorporated into that plan?

Mr. Allen: A long term...? I'm sorry.

Mr. Apicella: The plan. Isn't there a plan that you guys presented to the Board of Supervisors a couple of months ago that talked about the future of Stafford County, the water and sewer needs for Stafford County, based on projections of how many housing there would be over a certain period of time?

Mr. Allen: We do have a capital improvement program and a master plan for water and sewer that lists the improvements necessary to meet the build-out conditions of the County, yes.

Mr. Apicella: Right. And so would this project have been factored into that equation?

Mr. Allen: Oh, absolutely, yes.

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Mr. Apicella: Okay. Would you say that this project would help pay off... well, help support both the debt service and the operating cost associated with Rocky Pen Run?

Mr. Allen: Yes it would, yes.

Mr. Apicella: Okay, that's it. Thanks.

Ms. Kirkman: Could... Mr. Allen...

Mr. Howard: Ms. Kirkman?

Ms. Kirkman: ... could you explain that last statement, because my understanding is the costs are divided up amongst everyone. So any... I mean, anybody that participates in the public water and sewer system pays off the cost. Isn't that how it works?

Mr. Allen: That's correct, including this project.

Ms. Kirkman: Okay. And, um, it seems to me in some of the discussions we had a couple of years ago about the Comprehensive Plan that there were some issues about the... was it the sewer sheds out that way?

Mr. Allen: Well, our concern is the capacity of the Falls Run interceptor. We have sufficient capacity at the treatment plants. We have a somewhat limited capacity in the Falls Run interceptor which would serve this project. We have a project underway to replace that interceptor between the pumping station and Falmouth and Interstate 95, and at some point we will need to replace the interceptor upstream of 95.

Ms. Kirkman: And does this project contribute to the... do they have any proffers that will help address those needs?

Mr. Allen: I'm not aware of the proffers that would help address those needs...

Ms. Kirkman: Okay.

Mr. Allen: ... but they would need to participate in the pro rata program that would help to replace that interceptor.

Ms. Kirkman: Both, or just the Falls Run but not the upstream one?

Mr. Allen: Well, both.

Ms. Kirkman: Both... okay. And what frequency have we had droughts recently?

Mr. Allen: Oh gosh... since I've been here I think we've gone through two drought periods.

Ms. Kirkman: So, like, in the last five years?

Mr. Allen: In the last 10 years I think we've been through two drought periods, yes.

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Ms. Kirkman: Okay, thank you.

Mr. Howard: Mr. Apicella?

Mr. Apicella: Just kind of refresh our memories... the reservoir is paid for by rate payers, not by taxpayers?

Mr. Allen: That's correct.

Mr. Apicella: So the more people who are rate payers helps to lessen the cost associated with the utility rates that have typically gone up every year. So, the more people you add to the utility fund, the more you can even out or even lower the utility rate that those payers have to pay over time associated with the reservoir project.

Mr. Allen: Yes, that's correct.

Mr. Apicella: Thank you.

Mr. Howard: That's because they're also paying their own consumption typically.

Mr. Allen: Yeah, they're paying consumption; they're paying availability fees also.

Mr. Howard: Right. Any other questions for staff? Thank you very much Mr. Allen.

Mr. Allen: You're welcome.

Ms. Kirkman: Some questions for staff but not for Mr. Allen.

Mr. Howard: Okay. Mrs. Doolittle? Or is it someone else like Rishi or...?

Ms. Kirkman: Well, one may be for... yep, and the other I'm not sure who to address to.

Mr. Howard: Alright.

Ms. Kirkman: So, I'll address it to Mr. Harvey, he's the general catch-all.

Mr. Howard: He is the head guru.

Ms. Kirkman: So, I'm reading the October 5<sup>th</sup> staff report—and I apologize if you all covered this at that meeting—but I just wanted to understand what the status was. Given the 2006 proffer, are there any perennial streams as defined now that will not have a hundred foot buffer around them?

Mrs. Forestier: Yes ma'am, one.

Ms. Kirkman: And what's the length of that stream?

Mrs. Forestier: I'm not sure of the exact length. It's the stream that goes up to the parcel, the triangular parcel at the top, that's owned by Mr. Kimbowa. I'm not sure of the length of it exactly.

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Ms. Kirkman: And do you know why... I'm sure you discussed that with the applicant. What reason did they give for not providing the buffer there?

Mrs. Forestier: Technically, they're actually... they were exempted from the 2003 requirements for perennial flow study. But when they changed their proffers in 2006, they put something in there that they would do it to the greatest extent feasible. They are going to buffer it with a conservation area, but it doesn't have to be a hundred feet and I've spoken to DCR about that. We can't require it.

Ms. Kirkman: And what is the width of the buffer?

Mrs. Forestier: I think the smallest width on that one was about... I'm trying to remember... on this it's not exact, as well, as this doesn't show the grading. I think the closest was about 50 feet that we looked at.

Ms. Kirkman: Okay. Are there other areas where there are buffers that are less than a hundred feet besides on this stream?

Mrs. Forestier: On the perennial portions?

Ms. Kirkman: Mm-hmm.

Mrs. Forestier: No. The other streams are all intermittent and the one, the main Horsepen Run has a buffer on it; a hundred foot.

Ms. Kirkman: Okay, thank you. And then my next question I'll address to Mr. Harvey. If there's somebody else I'm sure you'll (inaudible). I wasn't sure what staff meant in the report under Fire and Rescue when they stated "after much debate, the hydrant issue was resolved by County Administration/Planning". I just wanted to find out what the role of County Administration was in this planning process.

Mr. Harvey: Yes. The debate that was occurring with the Fire Marshall's office was dealing with bringing water to the project. One view of the Fire Code is that if you have water running down a street and it's a divided highway, you must provide water on both sides of the highway. Ultimately, it ended up being a discussion with the County Administrator's Office, staff from the Planning Department, and the Fire Marshall. And the Fire Marshall ruled that their code was not clear enough to specifically require it on both sides of the street. They do have hydrants on the south side of Route 17, but they are not extending a waterline and providing hydrants on the north side of Route 17 as well.

Ms. Kirkman: So, does that mean if they need to access on the north side fire hydrants, they would essentially have to shut down 17 to go over to the hydrants on the south side?

Mr. Harvey: It could be, if that's where they have to get their source of water from, if they're responding to a structure fire.

Ms. Kirkman: And County Administration was involved in this? That's the piece I'm trying to... why...?

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Mr. Harvey: Yes. It was trying to resolve a number of questions and issues about it, because there was a policy and what's required versus what's desired. And it ultimately was determined that what's required is for them to provide hydrants on the south side of Route 17 where they're extending the waterline. It's not required for them to extend water across Route 17 to the other side and put hydrants in. That was the request that was originally made.

Ms. Kirkman: Thank you.

Mr. Howard: Thank you Ms. Kirkman. Any other questions from the Planning Commission? Mrs. Hazard?

Mrs. Hazard: I guess going back to... this is probably more for the applicant, just in general... on the 1.1 on the 65 acre site, about how that's going to... about the impact with the Vulcan easement. I know that it says that the deed will be executed and presented to the County, but there is a provided that the easement crossing the site has to be relocated at, of course, no expense to the County. I guess I'm trying to understand in real terms how we attack that? In terms of how the Board or the County, how they... if they request it and you say well, we need 60 days, I'm just trying to understand because I was commenting to some of the Board members and I guess both sets of Board members meeting tonight about this property. And just trying to get some clarity for there or how you believe that that should go forward if, indeed, it is requested... the 65 acre site.

Mr. Leming: Well, what the proffer guarantees is that there's going to be a school site. The conditions that affect the 65 acre site as opposed to the originally designated school site is the relocation of the Vulcan easement. There is an agreement between Vulcan and Westlake that addresses that issue and essentially when the main road is built, the Vulcan easement gets relocated. But that main road would have to be built in order for the County to utilize the 65 acre school site anyway. So, it really comes down to when the development gets started, the construction of the entrance road, which is a sizeable road Mr. Fields, and at that point then the contractual obligation is satisfied. And if the County desires the property, they can request it once that relocation has occurred and within 60 days it needs to be deeded over. Now, if none of that happens, then the County still has the 55 acre site that is originally indicated by the proffers and what was proffered back in 1989. But I think that's pretty well spelled out in these proffers. The County doesn't have to do anything right now. There's no time limit on the proffer. If they hit a bump and none of this happens for 10 years, the proffer stays in place unless the Board changes it. So, those are the things that have to happen; relocation of the Vulcan haul road... a soon as that is taken care of which can happen when the main road is built, then the County, at any point, can request the 65 acre site.

Mrs. Hazard: Okay. I mean, without having access to that agreement, too, it's hard for some of us late in the game to come in, or at least for me it is. But so it's very much dependent upon the main road being built that then the Vulcan easement can be much more easily moved to another location.

Mr. Leming: Well, they can be. I mean, there's no... it's dependent on the main road being (inaudible).

Mrs. Hazard: Okay. I'm just clarifying for the record what we need to do. Can you also speak to that 1.3 in the proffers about the VDOT standards that I believe would be applicable to any construction around the school site? If you could just talk a little bit about that and what the intent of that was, in your opinion, or if staff can go to that.

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Mr. Leming: Well, during the proffer amendment in say 2006, keep in mind most of these proffers go all the way back to 1989. This was an addition that was made at 1.3. And there was considerable debate and discussion at that time about the access road and the multiple uses that would be made of the access road; the access to the subdivision, the possibility of Vulcan trucks, and possibly the school site if, indeed, that were the case. So, what the proffer says is that the County has the option of directing the applicant to do certain things to that particular road that could help offset the impact of those conflicting traffic movements. And I'll relate one other sort of interesting thing to you that came up; we had proposed initially, as part of the proffer amendment, that there be another point... actual point of access in the development. What was the road off to the... it would be the north side of the property. One of the already established was (inaudible) Road and there was so much opposition from the residents along that road that the then Supervisor for the Hartwood District asked that that proffer be changed and that there not be direct access to that point. So, the main road is the main road, and it's a substantial road. If you want some details on it, Mr. Reese is here; he can tell you something about the dimensions of it and the lanes and how much traffic something like that can handle. It's considerably more than what you had at Austin Ridge. But the proffer that you asked about specifically indicates that the County has the authority to direct the applicant to take certain measures (inaudible)... established measures we're talking about. Roundabouts is something that is specifically mentioned here, extended turn lanes... If there are other established measures that are consistent with VDOT regulations that can be used to direct the different kinds of traffic along the main road, then the County has the ability to direct the applicant to put those in place.

Mrs. Hazard: Now that's helpful because that is of concern to me... I mean many of the Commissioners have also, you know, discussed it's a lot of people going on those roads.

Mr. Howard: Did you want to hear from the engineer on how it's constructed?

Mrs. Hazard: I don't... I mean, unless someone else would like to... I do know it is a main road. It's just, you know, we are presented initially with how many access points we have and it's still basically out one road which I know everybody can prove that it's just from a visual standpoint seeing all people going all through one (inaudible).

Mr. Leming: It was a major subject of debate during the 2006 proffer amendment.

Mrs. Hazard: If anyone else has any other ones... I did have one, but that will be probably back for environmental. I just wanted a clarification, but that wouldn't be for... so if anyone else has one.

Mr. Howard: Any other questions for the applicant while they're up? If not, Mrs. Hazard has a question on an environmental issue.

Mrs. Hazard: Mrs. Forestier, I think I asked you this in the hallway but I wanted to... on the second or it's called page 4 of the staff report, it talks about how the Horsepen Run floodplain, the approval of a special exception for that...

Mrs. Forestier: For the road crossing?

Mrs. Hazard: Yes, for the road crossing.

Mrs. Forestier: Rishi would be the one to answer.

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Mrs. Hazard: Oh, sorry.

Mrs. Forestier: It's okay; it's environmental. He just specializes.

Mrs. Hazard: If you could just explain to me what is... why it is required, for those who are very basic to this, of what is required and what type of requirements the applicant will have to go through to get this special exception.

Mr. Baral: For the floodplain?

Mrs. Hazard: Yes. It's called special exception for the road crossing of a floodway will be necessary prior to approval of... it will require the submission and approval of a major water quality impact assessment. I just want to understand how that...

Mr. Baral: Let me address the floodplain issue first and the water quality issue, Amber will discuss later. Floodplain issue, FEMA has designated a floodplain on that area. Every time there is encroachment to the floodplain our County Ordinance requires that to go through a special exception. That is what it is. And it is a FEMA designated floodplain and the applicant has a floodplain study already done. And in order for the plan to be approved, the special exception needs to be approved. And what that special exception does is authorizes the developer to encroach the floodplain.

Mrs. Hazard: And that is approved by FEMA?

Mr. Baral: That has not been approved yet.

Mrs. Hazard: No, but that is the entity that is the approving entity.

Mr. Baral: A special exception is approved by the Board of Zoning Appeals, but that is not enough; FEMA will also have to approve for the plan to be approved.

Mrs. Hazard: Okay.

Mr. Howard: So the BZA will have to have a look at this and then it will go before FEMA?

Mr. Baral: That's correct. If the BZA approves it before, there will be a condition that FEMA will approve it.

Mr. Howard: Thank you.

Mrs. Hazard: Thank you.

Mr. Howard: Any additional questions? Hearing none... okay.

Mrs. Hazard: Overall it appears that this Westlake Preliminary Subdivision Plan does meet the requirements; however, I would like to ask for deferral to the next meeting after the conversations I had with the Commissioners... I mean with the Board members who are meeting with the School Board tonight to clarify their use of this site. Because it does say school site but it does actually authorize other uses which can have some impacts. There was concern among some of the members that they weren't

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quite sure what use was going to be used there and I want to make sure that all, because this does not go to the Board of Supervisors in its current form, that there is an agreement going forward of where we're going. But I would ask for a deferral to the next meeting till I have that clarified with the Board members that I spoke with.

Mr. Howard: So is your motion to defer? Okay. Is there a second?

Mr. Fields: Second.

Mr. Howard: Second by Mr. Fields; further discussion? Hearing none... okay, it's not clear to me on what would you expect to see at the next meeting in order for you to recommend either way?

Mrs. Hazard: It was really just information for the Board of Supervisors that this was before us because it does not come to them. And there is some triggers for the Board of Supervisors and the School Board to tell us what use they really do want with this property, that they are engaged enough to know going forward somewhat like we were talking before to approve. I believe that we are very much in conformance but a lot of these proffers are concerning what use is determined on that 65 acre property. If it is not deeded, then the 55 acre property in the back becomes... so I just want to make sure that the Board is engaged and if they say we are aware and we are going forward, we understand that this is coming before us, I am willing to, if it meets all the requirements—which as of right now it appears to—to be able to move forward.

Mr. Howard: Okay, so what would happen then... is there a to do for the applicant or for staff at this point?

Mrs. Hazard: No.

Mr. Howard: Okay. So how will we know that that's satisfied at the next meeting? What would we...?

Mrs. Hazard: I will certainly report what I learn from the Board of Supervisors that they are well aware that this project is going forward. Based on the emails that I had today there was a no, this really isn't. So I just want to make sure that there is true clarity that this is going forward and what they want to do about it.

Mr. Howard: Okay. Any other comments/questions/discussion? No? I'll now call for the vote; all those in favor of Mrs. Hazard's motion by deferring to the next meeting which is... when, Mr. Harvey? November 2<sup>nd</sup>... signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye.

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Mr. Hiron: Aye.

Mr. Howard: Aye. Opposed nay? The motion carries 7-0. Thank you. That brings us to the recycling definition, item number 7.

7. ***Zoning Ordinance Amendment; Recycling Definition (Time Limit: January 19, 2012) (Deferred at September 7, 2011 meeting to October 5, 2011) (Deferred at October 5, 2011 to November 2, 2011)***

Mr. Harvey: Mr. Chairman, that's scheduled for your November 2<sup>nd</sup> meeting.

Mr. Howard: Great. So that brings... thank you, I could've read that. So now we're on the exempt subdivision ordinance which was deferred to this meeting from the last one, which is item number 8. Mrs. Hornung?

8. ***Zoning Ordinance Amendment; Exempt Subdivision (Time Limit: December 7, 2011) (Scheduled for October 5, 2011) (Deferred at October 5, 2011 to October 19, 2011)***

Mrs. Hornung: Hello Mr. Chairman, members of the Commission. At the October 5<sup>th</sup> Planning Commission meeting I believe the Planning Commission asked what the difference was between a minor subdivision plat and what would happen if you were to develop an exempt subdivision plat. And the chart that you have shows requirements within the Subdivision Ordinance is what staff follows when they review a subdivision... I'm sorry, I meant to say family, not minor. Family is considered a type of a minor subdivision. And so the requirements in the left-hand part of the chart signifies what is required on all family subdivision plats. And then if you were to create an exempt subdivision, this would be the items that you could possibly not require the plat to follow. The plat would still come before the Planning Department to review before it is signed off by the subdivision agent to be recorded in the courthouse. So the items, if you want me to go through them individually, I can. If you have any questions, maybe I'll wait for your questions. How would you like me to go over this chart?

Mr. Howard: Can you remind everyone just quickly on the reason for this... I know we asked the last time but...

Mrs. Hornung: Yes, no problem.

Mr. Howard: Okay.

Mrs. Hornung: The request came from the Board of Supervisors for the Planning Commission to look at creating an exempt subdivision. And at the last meeting, you had a chart from different counties locally that have what they signify as an exempt subdivision. In Spotsylvania County, their exempt subdivisions include family, they have an annual subdivision where throughout the county it's capped at 100, a parcel could only be subdivided six times... that's in the agricultural zonings... to allow the families or heirs or some people who have hardship to be able to create an extra lot separate from the family subdivision ordinance that they could sell. Some other localities have one lot for every four years. And then of course every locality has a family subdivision ordinance in which the way they look at a subdivision ordinance basically comes from the state code which says that the property has to remain... has to have been in the family for five years prior to subdividing and has to remain in the family name five years later. Stafford does have an exemption or a process in which that family

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subdivision that was created could go to the Board of Supervisors to show that they had a hardship so that they could have a reprieve that they could have that lot removed from the family subdivision restriction and then they could sell it out of the family if they so needed to. There are no subdivisions that were found from my research in which somebody could subdivide their land and go straight to the courthouse. Everybody did have to go through their Planning Department for review and approval, and follow the state code.

Mr. Howard: And in this case you've laid out the family and the exempt side by side which we asked you to do, thank you.

Mrs. Hornung: And that's within Stafford County alone.

Mr. Howard: Right, and you're also indicating though that the family would still have to come before some approval process.

Mrs. Hornung: That is correct.

Mr. Howard: And what is that process?

Mrs. Hornung: They would submit the plats to the Planning Department. The family subdivision would be required to be in the family name for five years prior to subdividing, then it would have to remain five years after subdividing. There's an affidavit, there's an agreement, there's... oh, I did write on here that the grantee must be a minimum of 18 years old but I believe that no minor under 18 can be deeded land unless it's in addition to a guardian or a trustee. So that would be for everybody, not only family subdivisions. But there's certain requirements in our ordinance for a family subdivision to follow. Now these requirements are not as extensive as what would be on a minor subdivision plat or even a final plat that, let's say, Westlake or Brentsmill would follow when they come in for their final platting. So the family is exempted in a sense from certain requirements, but they're still subject to the one section of the Subdivision Ordinance for lot shape, size; they still have to follow the zoning district that they're subdividing under. They do not have to build a public road—that is one thing that's separate from the final platting of a minor or a major site... major subdivision. So they don't have to do right-of-way dedication.

Ms. Kirkman: Mrs. Hornung?

Mr. Howard: Ms. Kirkman.

Mrs. Hornung: Yes ma'am.

Ms. Kirkman: I just want to clarify... you said that the family subdivision process, there is some Planning Department review. But I want to clarify, under the exempt process would there be any Planning Department review?

Mrs. Hornung: Well, there would... there should be. If there was no Planning Department review then that could imply that anybody could come in under exempt subdivision. There would have to be requirements put in place and then that property could be subdivided and go straight to the courthouse. But that means the subdivision agent wouldn't sign off on it. But right now, in the Subdivision Ordinance, it's explicit that any subdivision of land, which is a creation of more than two lots, has to

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come before the County, specifically the Department of Planning and Zoning, to be reviewed and approved by the subdivision agent who will sign off.

Ms. Kirkman: But that's the creation of more than two lots. If they're only creating one additional lot, then that wouldn't... that part of the subdivision...

Mrs. Hornung: Well, the definition of subdivision is the creation of more than one lot. And the way we look at it is if you have a parent parcel and you're going to subdivide off one lot, you are still essentially creating two lots. You cannot subdivide and only result in one lot. You still are resulting in two lots, the parent parcel and then the new lot. So the total number of parcels or lots that you create will still be two or more... because you start with one piece and then you take a piece out of that; you still end up with two.

Ms. Kirkman: Well how is it that the staff interprets that part of the Subdivision Ordinance that way but when we had a subdivision plan in front of us I believe it was earlier this year, a minor plan which I think says five lots, you did not include the parent lot in counting the lots.

Mrs. Hornung: When... for cost purposes and the new lots that are created, we're looking at the new lots can't be more than five. You get credit for the first one... for the parent parcel, I'm sorry. So when you're creating a minor subdivision, you cannot create more than five lots from the parent. So you could have six but the parent is...

Ms. Kirkman: I'm just trying to figure out how you decide when you count the parent and when you don't.

Mrs. Hornung: You count...

Ms. Kirkman: Because there does seem to be some inconsistency. But I will, in the meantime, go back and look at the code. So, under this a lot could be created and given to anyone; it wouldn't have to go to a family member.

Mrs. Hornung: That is correct.

Ms. Kirkman: And what would the Planning Department review be? To ensure that it meets the subdivision requirements?

Mrs. Hornung: That is correct.

Ms. Kirkman: No, what would it be? Under the exempt?

Mrs. Hornung: Well, if you choose to utilize any of these items that the exempt could be subject to 22-5 or it could be subject to the other sections of the Subdivision Ordinance. Also, in the family subdivision requirements, you have a requirement for the size of the easement or the ingress/egress or the access, however you'd like to designate it. For less than five acres, it has to be a minimum of 20 feet. Greater than five acres it's 50 feet. Now you could say that an exempt subdivision, no matter what size parcel or how many, the easement has to be a minimum of 20 feet to be consistent with all the other minimum size easements for access not only for the homeowner but for Fire and Rescue.

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Ms. Kirkman: Right.

Mr. Harvey: I believe that right now, the way this has been sent to the Commission, there's a lot of latitude on how the Commission may want to write the ordinance. On its face it was recommended that through an exemption, they wouldn't have to go through any regulatory process with the County, that if someone was for the purposes of settling a family estate could go and record a plat at the courthouse and not be required to have a County official sign it. But, if that's not the desire, there could be other ways in which you could do it where there's a certification from the County that it meets the minimum zoning requirement for size and other factors, and still not have to comply with the Subdivision Ordinance in its full form. I believe the intent was for certain types of splits of land that they would not have to go through the County regulatory process.

Ms. Kirkman: Mr. Harvey, if I could just clarify... I'm looking at the memo dated September 7<sup>th</sup> and I don't see in here that we were directed to prepare an ordinance. I think we were directed to prepare recommendations.

Mr. Harvey: That's correct.

Ms. Kirkman: So one of our recommendations could be like this... really that having no regulatory review is so, I mean, could lead to so many problems that we don't recommend... I mean, that under this we don't have to prepare an ordinance. We could make a recommendation that this is not needed, that the family subdivision ordinance is simple... I mean, we have some choices here, right?

Mr. Harvey: Correct. The Commission could say we don't like the idea, the Commission could say exempt them completely or have some limited exemption, and the Board would take that advice and potentially send down a proposed ordinance or direct the Commission to draft a proposed ordinance with certain parameters.

Mr. Howard: Mr. Apicella?

Mr. Apicella: Mr. Chairman, I'm trying to understand the context here. The Board obviously felt this was important enough to send it to us to take a look at. Was there a specific situation, set of circumstances; is there an issue or problem that this is trying to solve?

Mrs. Hornung: That is possible, yes.

Mr. Apicella: So does anybody have a sense of what was the catalyst for...?

Mrs. Hornung: Well, in general, sometimes when there are lots created through a will, they are created in the courthouse and they're, for lack of a... they're subdivided on paper in the courthouse because each heir is giving a portion of the property. And then what happens is the Commissioner of Revenue assigns a tax map number to those for taxing purposes. But there's also a note in there that it has not gone through the regulatory process, it's not a legal subdivision. There have been situations in which... and the only reason why we caught it was because there was already a house on the property, on the parent parcel, that somebody saw that there was a tax map number associated with this piece, they came in for a building permit. They could not proceed until they submitted a plat. That was not the impetus for this coming to the Planning Commission, but there's also been issues with family subdivisions that when they come to the County they have to follow a certain process following the family subdivision

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process and sometimes they don't want the restriction of the five years. They want to be able to sell it in five years if they need to or if they're giving it to a child that is of age thinking that maybe that child... they'll decide in a couple years that maybe they do need to sell it for monetary reasons. So, in that respect, sometimes a family subdivision isn't the preferred way because of the five year restriction. Everything else is not a major issue; so, sometimes the time limit. The minor subdivision wouldn't work sometimes because the people would have to... or the applicant/owner would have to build a public road if it's more than three lots. And a private access easement is only allowed, or what we knew as a private access easement at one time that we call ingress/egress, is only allowed on one lot... to serve one lot. So you don't have all these private drives serving multiple lots. And of course, more than three lots that are created would have to have a public road which would be dedicated to the County and maintained by VDOT. And VDOT will not accept a road unless there are at least three dwellings on that road.

Mr. Apicella: So what happens in the sort of case that you mentioned where somebody is willed a piece of property, a large piece of property say, and ultimately they have to pay taxes on that property at the whatever highest use is for that property, right, so...

Mrs. Hornung: Well, it would be vacant. It would be a vacant property at that zoning designation.

Mr. Apicella: I understand but don't they still pay taxes? I mean, it wouldn't necessarily be in land use, for example, if it didn't meet the parameters of land use.

Mrs. Hornung: I'm not that familiar with how the properties are taxed based on their acreage and the size and what the use would be. But I think we could presume that the property is taxed based on not only maybe the size but the zoning designation of that property, not necessarily the use if it's vacant.

Mr. Apicella: So, if somebody gets willed a piece of property, they have to hold onto it for five years and then they can only give it to...

Ms. Kirkman: No.

Mr. Apicella: No.

Mrs. Hornung: No... excuse me, no. That's only if it's been subdivided under the family subdivision guidelines will you have to retain that in the family name for five years. But not if it's been willed to you. If it's been willed to you...

Mr. Howard: And wasn't previously subdivided under the family subdivision.

Mrs. Hornung: If it was not previously subdivided, that's correct. But if it was willed to you, that doesn't automatically consider it a subdivided piece of property either, unless it has followed the process that we have in place under the Subdivision Ordinance to create that lot.

Mr. Apicella: Okay...

Ms. Kirkman: Mr. Chair?

Mr. Howard: Ms. Kirkman?

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Ms. Kirkman: So, I can think of one instance in the five years I was on the BZA and now the four years here on the Planning Commission where the issue that came up, and it was actually brought... it was in relationship to a discussion of another plan... where a family... surviving members of a family had been willed property and like 10 acres went to one member and five acres went to another and 10 acres to another. And they were concerned about having to go through the subdivision process. It wasn't as though there weren't any options; they were just concerned about going through the subdivision process.

Mr. Howard: From an expense perspective.

Ms. Kirkman: Yes.

Mr. Howard: It was only a few months ago that that occurred, right?

Ms. Kirkman: Right. But my understanding, that's the only instance of... that I'm aware of. Can we... this is a... like this creates the potential for some extraordinary consequences and to do that, I'd like to know we're doing it for more than one or two instances. Is there any way we can get additional information about the frequency of how often this is a problem?

Mrs. Hornung: I could poll the staff. In my five years here, you know, the applications that have come in for a family subdivision, for the people who aren't familiar with the requirements, there was a concern at one time for the 15 year designation. We did have that where the family had to not only have it in the family name for 15 years prior to subdividing, but 15 years after.

Ms. Kirkman: But that's been addressed.

Mrs. Hornung: That's been addressed because that appeared to be a hardship, especially with the economy. So I think that's one reason why the Board and the Planning Commission accepted to change that to the five year requirement.

Mr. Howard: Well, that's a good question. If there's a way...

Mrs. Hornung: It's not something that happens every day that we hear that (inaudible).

Mr. Howard: Well, perhaps you can poll staff...

Ms. Kirkman: I'm not even hearing that you hear it once a month or...

Mr. Howard: ... yeah, at the next meeting and maybe...

Mrs. Hornung: We don't have that many family applications. I think the last time when we went through the exercise for the five years and 15 years, there were maybe one family subdivision a month. And that was at a time when we were receiving more. I don't know what those numbers are right now; I mean, I can go through again and pull it...

Mr. Howard: Yeah, even if some of its anecdotal, at least we know there's a range of a number. At least we have a little more comfort on that.

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Mrs. Hornung: I can look for maybe 2009 to the present and give you a list or a tally of how many subdivision plats came in under the family subdivision, under the minor...

Ms. Kirkman: But that doesn't address what was (inaudible)...

Mrs. Hornung: Well, in addition to...

Ms. Kirkman: ... forward is the need for this and that's what I'm interested in is how often do these rare instances of family being willed property and like how often does that happen; that's the piece I'm interested in.

Mrs. Hornung: How often the property's being willed?

Ms. Kirkman: So... no... so my understanding of the context for this, at least as part of what we heard here, was that family... surviving family members are deeded property with different members getting different portions of the property, and... but without their... and that's in a will which is different than a subdivision process.

Mrs. Hornung: That is correct.

Ms. Kirkman: And then in some instances... in the one instance that we know about, the family was concerned about the expense of the subdivision process, to divide it amongst the three or four family members.

Mr. Howard: Which they were required to do under the will, but they had to come before us to get the approval for them.

Ms. Kirkman: Right.

Mrs. Hornung: That is correct.

Ms. Kirkman: So, that... I'm interested in those examples and how often that happens, not the family and the minor because this is not related to family and minor. It's about those instances... or at least that's my understanding of the context for this is those kind of situations.

Mrs. Hornung: Probably in the five years that I've been here there've maybe only been about three or four that I know that had actively stated that it was an issue to even go through any type of process to subdivide. I mean, there is the choice; family or minor. They do have that choice but there isn't anything that we have in place that would be cheaper. And a lot of times, when they're willed, we don't know or they don't know that they cannot just automatically build on it until they try to and then we find out that it's not been subdivided.

Mr. Howard: Right. Well, and I think the point is we don't want to create unintended consequences where people can really take advantage of the County, if this were to be adopted. But, at the same time, we don't want to cause hardship to families who may fit, you know, within the scope of what we're trying to accomplish. So I think that's a good question in terms of going back and understanding, you know, from 2009 forward, if there's a way to get that information I think that would be very, very helpful.

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Mr. Apicella: May I ask how was a family defined under the ordinance?

Mrs. Hornung: I will get you the exact...

Mr. Howard: There is a (inaudible).

Ms. Kirkman: It's really broad...

Mrs. Hornung: It's mother, father, brother... mother, father, siblings of the mother and the father or children, and legally adopted or guardian children. So it's vertical, not horizontal lineage. No aunts, no uncles, no nieces, no nephews, no cousins.

Mr. Apicella: Is there a reason why those were excluded?

Mrs. Hornung: I don't know what the reason was; that was what was adopted at the time. There's... in the state code there's a provision that if you do the family, you have to do that lineage first. You can opt to add the others. There is the opportunity in the state code that allows you to add aunts, uncles, cousins, but...

Mr. Apicella: So basically extended family would not be included on the ordinance. And another problem would be if someone deeded property to both family and non-family members, say friends, you could have a situation where they're also not able to be able to take advantage of the family ordinance basically.

Mrs. Hornung: Right. The other thing I did forget... the state code was revised I believe last year because the interpretations of some localities were different that if the property was deeded to the child, then the spouse of that child was included because some localities interpreted that that you could not transfer it to the spouse of the child; because sometimes there'd been instances where the child may have not been appropriate to receive a property. In Stafford County that wasn't the case. If the property was deeded primarily to the child or to the individual, the spouse was included and able to be on the deed and they didn't have to separate themselves from the deed during the subdivision and then add the spouse later.

Mrs. Hazard: Just a closing comment from my perspective. I guess my overall concern is that if we are looking at the will and how it deeds property to people, I don't want to un... or facilitate actually more confusion among the people receiving the property because if they believe that they are exempt or family or something like that, then exactly what you're talking about happens. It happens all the time. People come in, they've got a piece of property... oh, well we've divided it. People want to get a bank loan on it. I can tell you several banks that have loans on property that doesn't exist in this County... technically. I'm more worried that if people think they're exempt, the word exempt breeds the thought of well, I don't have to comply. And I am just concerned we may make it worse by exempting. I do believe there needs to be some administrative process, perhaps lessened or lessened fees; something like that maybe to get to what the real issue is. But the word exempt to me sort of sends off signals because I believe a lot of people own property that... well, I can just say from a banking perspective, I don't want to muddy the waters more than they are muddied now in that area.

Ms. Kirkman: Is there... is there a process whereby the Board can waive application fees in hardship cases? Or is the only way for that to happen is for the Board to be the applicant?

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Mr. Harvey: That's correct. The fees are adopted by ordinance and the way the ordinance is written that they cannot be waived... I believe that's state code. The Board of Supervisors for zoning cases is become the applicant; I'm not sure if they can become the applicant in a subdivision. That's an interesting question.

Mr. Howard: Can the fees, according to the state ordinance, be changed in terms of the...?

Mr. Harvey: Sure. The state law says that the locality may charge fees and the fees that we charge have to be in reasonable relation to the services provided. It doesn't say what that reasonable relationship is. The Board of Supervisors can choose to charge 10 cents for all applications if they wanted to.

Mr. Howard: But there is leeway in terms of Mrs. Hazard's comment whether or not we maybe just create a different fee structure and maybe not use the word exempt but some other, you know, family division or... I don't know what the term would be.

Ms. Kirkman: Mr. Chair... so for the fee structure, that's actually I don't think we can do that but I think we can make a recommendation...

Mr. Howard: Yes.

Ms. Kirkman: ... to the to Board...

Mr. Howard: To change the ordinance, yeah... or amend it.

Ms. Kirkman: ... that the best solution... we believe the best solution is for the Board to create a mechanism in the fee structure to address these rare instances where there's been a will to various family members.

Mr. Howard: Correct.

Ms. Kirkman: And there's a hardship regarding the subdivision fees.

Mr. Howard: Mr. Apicella.

Mr. Apicella: I guess my question is, can we ask the staff... that may be one solution... can we ask the staff to explore whether there are other possible solutions to address this particular issue?

Mr. Howard: You may ask staff anything. They don't have to do it but you can ask.

Mr. Apicella: Well, again, I'd like to... it could be a problem. It may be infrequent but there may be a range of options that would be worth considering and taking a looking at what those range of options might be before we settle on which is the best one to recommend to the Board of Supervisors to solve this particular set of circumstances.

Mr. Howard: Yeah, I know, it's a good point. So, I think what you're asking is does staff have a recommendation in terms of what wording would they include in this type of an ordinance; is that correct?

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Mr. Apicella: What mechanism or mechanisms would they recommend to solve this particular problem?

Mr. Howard: Okay.

Mrs. Hazard: Which may or may not be an ordinance; it may be a...

Mr. Howard: Procedural.

Mrs. Hazard: ... procedural. I think that's what...

Mrs. Hornung: You could...

Mr. Apicella: I'm not asking you to do it right now.

Mrs. Hornung: Oh, okay. That's why I was waiting; I was pausing.

Mr. Howard: No, if you can come back to the next meeting with some of those thoughts. (Inaudible).

Mrs. Hornung: Would you like me to take like the other localities in the previous chart, they had different types of subdivision that were...

Mr. Howard: Well, we know that. Like King George had one...

Mrs. Hornung: Okay.

Mr. Howard: ... you brought us King George, Orange, Prince William and Spotsylvania.

Mrs. Hornung: But if I see something specifically for Stafford, we could address that issue.

Mr. Howard: No, I think what Mr. Apicella is asking is take ordinance off of your mind for a moment. Is there another way that the Planning Department could accomplish this goal by not causing undue hardship to someone who was just willed property or a group of someones that are family versus opening up what could be Pandora's Box and creating an exempt, you know, portion of the subdivision... family subdivision ordinance.

Ms. Kirkman: There's been one legislative solution the Board has asked us to consider. We have suggested that there might be a procedural one through the fee structure. Are there other options that staff can think of that we might want to consider?

Mr. Howard: That's what he's asking. And we don't need the answer right now; that's for the next meeting.

Ms. Kirkman: And the sort of pros and cons of those.

Mr. Howard: Mr. Harvey, any further comment on you from that?

Mr. Harvey: No sir; I understand what the Commission's asking and we'll work on that.

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Mr. Howard: Alright, is there a motion to defer this item to the next meeting?

Mrs. Hazard: So moved.

Mr. Fields: Second.

Mr. Howard: Second by Mr. Fields. Any further discussion? Any other comments from any of the members? Hearing none I'll now call for the vote which is to defer the zoning ordinance amendment, exempt subdivision, to the November 2<sup>nd</sup> meeting. All those in favor signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed nay? The motion carries 7-0. Thank you. That brings us to the reclassification of Stafford Sports Center. Thank you all for waiting; appreciate that. And we'll hear from Mr. Hess.

*6.10. RC1100077; Reclassification - Stafford Sports Center - A proposed reclassification from A-1, Agricultural Zoning District to B-2, Urban Commercial Zoning District to allow retail, office, and indoor recreational enterprise uses on Assessor's Parcel 20-12, consisting of 23.79 acres. The property is located on the south side of Garrisonville Road approximately 250 feet west of Parkway Boulevard within the Garrisonville Election District. (Time Limit: December 20, 2011) (Deferred at September 21, 2011 meeting to October 5, 2011) (Deferred at October 5, 2011 to October 19, 2011)*

Mr. Hess: Thank you Mr. Chairman. Staff brings back to you tonight Reclassification RC1100077; this is the Stafford Sports Center. You all conducted a public hearing on September 21<sup>st</sup>. You deferred the action... rather the case to October 5<sup>th</sup> and you once again deferred it to October 19<sup>th</sup>, today, tonight, with request for information from staff. So, I'd like to point out there are about three attachments that you have in front of you. The first attachment is a letter from the applicant's attorney which identifies the specific revisions made to the proffer statement which is your attachment number 2, and also to the revised Generalized Development Plan which is attachment number 3. In addition to that letter, the attorney attached the portion of the School Board's agenda pertaining to the draft lease agreement between the applicant and the School Board. The agenda item highlights the key points to the lease agreement. With that there were some questions... well, questions asked of staff. The first was when would the School Board be receiving the draft lease agreement. And staff was able to contact the School Administration Office and find out that they received the draft lease agreement on October 11<sup>th</sup> and it is to go to their October 25<sup>th</sup> meeting for action. And then the other question dealt with was money... was County money appropriated to the Rappahannock Area YMCA for construction of a new

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YMCA facility at Mountain View Road. And the answer to that was no money was appropriated. There was a request for funding from the YMCA in the amount of \$2.5 million towards construction of a potential new facility. And in 2007 the Board decided to provide the YMCA with approximately \$218,000 per year for 20 years for this construction; however, it was in the form of a more obligation and there were no appropriations... no appropriations were ever approved by the Board since 2007. To draw your attention really quick to the proffer statement, just so you can see what the revisions were; that's going to be again attachment number 2. The first one is a simple date revision change for the GDP; it was September 26, it's been revised to October 4<sup>th</sup>. As you'll see, that has a strikethrough and underline. Under number 3 under buffers, 3.b. rather, the fence that the applicant's proposing, which is an eight foot board on board or opaque fence between the property and the Park Ridge community, they basically said that they're going to build the fence in such a manner so that it is... there's landscaping between the fence and the Park Ridge community. And then the last proffer, it's an additional proffer, it's proffer number 14; this pertains to the selling of alcohol on the premises. And it says basically at no point in time shall overflow parking on school sites be allowed. And again, the school sites being the high school and elementary school, be allowed for special events that are held on the property that include the sale of beer, wine or other alcoholic beverages. So again, in the case of, you know, whether there's overflow parking for special events, they will not sell alcohol. And that's all I have.

Ms. Kirkman: So, just to clarify... that (inaudible – microphone not on) beer and alcohol?

Mr. Hess: That is correct.

Mr. Rhodes: Mr. Chairman?

Mr. Howard: Mr. Rhodes?

Mr. Rhodes: There were a few questions that were posed near the end of last week and I just wanted to clarify a couple points; make sure I understood correctly.

Mr. Hess: Okay.

Mr. Rhodes: So, where they've modified the proffer to have the landscaping on the alternate side of the fence from what would traditionally be the case, if the landscaping starts to degrade, a tree starts to die, something like that, or the fence starts to degrade, the maintenance of that is a... the continued maintenance of that is a continuing requirement associated with the proffer, correct?

Mr. Harvey: Mr. Rhodes, that is a continuing requirement associated with the approval of the site plan and the zoning of the property. So, staff would pursue that as a zoning violation. Typically those types of violations are called in as a complaint, that's how they start, and then we investigate. If the plant material does not meet the ordinance requirements then the applicant would be required to replace it... or I should say the owner would be required to replace it. If that's not done then a zoning violation would be pursued.

Mr. Rhodes: Okay. So, nothing else is further needed in the proffer to ensure that enforcement. If neighboring homeowners or others see that it's starting to degrade, they can just call in with a complaint that would initiate the process, we'd go out and verify it, and then proceed with how you stated the process would work.

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Mr. Harvey: Correct. They can just call the Planning and Zoning Department or send us an email, and we'll investigate.

Mr. Rhodes: A second point was there was... as I understand for stormwater and runoff, the design has to be such that it mitigates any additional stormwater runoff. The plans have to be designed such that it would not increase the runoff to the neighboring areas, and hopefully it mitigates it and reduces it in some fashion. There's a creek and a culvert that adjoins one of the neighboring development... neighborhoods and they have concerns about increases of runoff affecting that culvert and that creek. Are we comfortable with the plans as they currently lie or the procedures that are in place to ensure that it doesn't increase the runoff into that area, especially in the creek area which would cause some flooding?

Mr. Harvey: Yes Mr. Rhodes. Our stormwater ordinance requires that the post-development runoff, after the site's been built out, shall not exceed the pre-development runoff. In this case, the pre-development condition is fairly wooded; there is some clear open space with one dwelling on it. So, they would have to detain water on their site through stormwater management mechanisms to ensure that the flow coming out off the property does not exceed the current condition. That's the ordinance standard today.

Mr. Rhodes: Okay. And then, one other area that was raised was there are multiple homeowner associations in the Park Ridge area and they... some of them... multiple designs that combine into some of the retention ponds there. As this flows off into one of the main retention ponds that's behind the pool and recreation area that's now closed down, is there any requirement for this development to help with the cost of maintaining that retention pond?

Mr. Harvey: Mr. Rhodes, currently there's no mechanism in place for that maintenance type of arrangement.

Mr. Rhodes: Okay. And then the last point I have, Mr. Chairman, to confirm... the way it's designed, to facilitate westbound movement off 610—that's what the inter-parcel connector for Wolverine Way is... it could be eastbound travel but it facilitates very directly the westbound turn movements for 610—the main route straight onto 610 from the property would really only facilitate eastbound movements, I think. But it's a predominant one; as I recall, the Transportation Plan for the eastbound movement and the inter-parcel connector there for the Coldwell Banker on the Parkway was... the Transportation Plan primarily had that structured for all the travel that's going back to the residential developments back towards Hampton Oaks, towards all the developments that are back that way. Isn't that the way that was modeled on the transportation...

Mr. Howard: So there's a right-in and right-out on 610, right, so that's the eastbound direction. The westbound opportunity is on Wolverine Way, which is what Mr. Rhodes is indicating, then there's the inter-parcel connection that goes through Coldwell Banker that primarily would send people... I think that would be south towards Park Ridge. Is that correct? Is that what you're saying?

Mr. Hess: (Inaudible) through Garrisonville Road.

Mr. Rhodes: Yeah, that's the way I recall the vehicle traffic counts associated with each of those turn movements, right?

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Mr. Hess: Right. And there's a second left-hand turn at Parkway off of Garrisonville. You're talking... you said one was to... left off of Garrisonville Road onto Parkway... Wolverine Way and then also off of Parkway Boulevard. There's two ways to get off.

Mr. Howard: How would you get... then... I think your question was the traffic study included all that, right?

Mr. Rhodes: You're talking about the other improvements that are off Garrisonville Road to go in to help with the left-hand turn into Parkway...

Mr. Hess: Right; there's two ways to get into the site off of Garrisonville.

Mr. Rhodes: Yeah, into Wolverine. I was talking about getting off the site but, I gotcha... yeah, yeah. Okay. That's all I had Mr. Chairman. Thank you.

Mr. Howard: Any other questions for staff? Ms. Kirkman?

Ms. Kirkman: Yes. Were you... did you hear there was a public comment, a concern raised about turn movement coming off of the inter-parcel connection and then, to get going in the opposite direction, going into a cul-de-sac and then turning around? Did you hear that comment?

Mr. Hess: I remember the comment was if you're coming...

Ms. Kirkman: This was this evening, brought up by a homeowner...

Mr. Howard: During the public presentation portion. Her concern was if you come through the Coldwell inter-parcel connection, your only option is to make a right...

Mr. Hess: Correct.

Mr. Howard: ... on Parkway.

Mr. Hess: Onto Parkway going south, away from Garrisonville Road.

Mr. Howard: Her fear is that after you make the right on Parkway, they're going to go into the cul-de-sac which is the immediate next right and turn around, come out, make the left onto Parkway, and then make your left onto 610.

Mr. Hess: Mm-hmm.

Mr. Howard: So, that was a major concern that she had voiced being a resident of that particular portion of Park Ridge.

Mr. Hess: Right. The concern I remember most hearing about was coming... turning right out of that inter-parcel connection onto Parkway Boulevard and then where the median, the existing median ends is doing a U-turn right there instead of going into that cul-de-sac. So I think they would go around the median first. I know there was some discussion about... talking with VDOT about putting up signage to do a No U-turn sign at that intersection to address that.

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Mr. Howard: Well, could we... would we... we should address VDOT with that and also even another sign for that cul-de-sac, no through traffic.

Mr. Hess: Certainly.

Mr. Howard: You know, and then if it becomes an issue, at least if it's posted a deputy could do something about that.

Mr. Hess: Correct.

Ms. Kirkman: Because if they put the No U-turn sign on, that's going to increase the incentive to...

Mr. Hess: To do the cul-de-sac.

Ms. Kirkman: ... to do the cul-...

Mr. Howard: I would just go to Wolverine Way if I'm heading out of there. That's where I would have to go; I wouldn't bother with that. That's too many movements for me to make, personally. But I recognize there might be some people who would try that.

Mr. Hess: Right. I'm not quite sure if the applicant's attorney has talked to VDOT or not. I know that was something that was discussed after our previous meeting, so I'll defer that...

Mr. Howard: Okay.

Mr. Hess: ... if there's been any conversations with VDOT. But we've not had conversations with VDOT about it.

Mr. Howard: Okay, you can ask the applicant. Thank you.

Mr. Hess: Okay; you're welcome.

Mr. Howard: We'll now hear from the applicant.

Ms. Karnes: Good evening Mr. Chairman, Commission members and staff. My name is Debrarae Karnes, here representing the applicant. I'm just going to concentrate on the two major issues that were raised just now, and then I'll be happy to answer any other questions. And we have the applicant and the consultants here as well if you have questions. The first question that came up I believe originally at the public meeting and then at our last meeting here and during citizens' time tonight was stormwater management. First of all, we are convinced that our stormwater plan will not adversely affect the neighborhood and, in fact, the applicant, Rob Williams, actually visited the site after the public meeting to make sure. The improvements that we will make concerning that inter-parcel access on Parkway Boulevard will, in fact, result in some improvements to the stormwater management, to that adjacent area—I guess it's the Gables HOA properties—to the extent that we can venture to say that there's going to be a 10% reduction from pre-development on the run-off. So that's the first point.

Mr. Howard: Okay.

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Ms. Karnes: And we'd even go so far, if you wanted to entertain a... still another revision in the proffers to proffer that. Second point... transportation and the inter-parcel connection at Parkway. We had our transportation expert take a look at that issue when it was first brought up. We were convinced that people... there are three different access points to the project. We are convinced that people patronizing the site will learn very quickly that to go west they're going to use Wolverine Way and that Parkway will be more for local traffic. We did not approach VDOT on the signage issue because of the difficulty of putting signs in the public right-of-way. We, however, have discussed internally with Mr. Hess the possibility of putting signage... offering to pay for signage on that intersection in dispute that's brought this up basically indicating that that is a private access with no outlet to discourage traffic movement in that direction.

Mr. Howard: You would proffer that, Ms. Karnes?

Ms. Karnes: Yes.

Mr. Howard: Alright.

Mr. Rhodes: Mr. Chairman?

Mr. Howard: Mr. Rhodes, sorry.

Mr. Rhodes: If I might... in addition to that, if VDOT were to be able to identify what might be an effective sign right there at that median, if there is something that they would identify as being useful or productive, would you proffer to do that as well if it were to be identified by VDOT in subsequent discussion?

Ms. Karnes: Yes.

Mr. Rhodes: Okay, thank you.

Mr. Howard: Okay, any other questions for the applicant? Mrs. Hazard?

Mrs. Hazard: Just one final one... for me at least. I know that we had spoken about the sale of alcohol and there was a comment about that there was the desire, but it is not, as I understand it, a slam dunk to get any ABC license; that there are certain requirements for the applicant. This is not... we certainly don't grant it and even if we speak about it here, there still is another process with the liquor control board. If you have any insight into, you know, what the next... what the requirements are moving forward and that there is still additional public input on that.

Ms. Karnes: Well certainly the applicant does not have a right to sell alcohol without an ABC permit. We spent a little bit of time today looking at those requirements and I think it's fair to say that it's harder to get an ABC license than a conditional use permit from the Planning Commission. And maybe that should be, but there will be, first of all, a background and criminal investigation required of the applicant, there will be a requirement for two newspaper sign... two newspaper ads, the applicant must post the desire to apply. At that point, if there are any complaints from the neighbors, there will be a public hearing and one of the factors that the ABC folks will use to evaluate will be whether there is adverse impact on neighboring residential developments, neighboring schools, or neighboring churches.

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Mrs. Hazard: Thanks for saying that.

Mr. Howard: Very well stated Ms. Karnes, having gone through it several times.

Mr. Hirons: Mr. Chair?

Mr. Howard: Yes Mr. Hirons?

Mr. Hirons: Somewhat on that note, you added proffer 14.

Ms. Karnes: Yes.

Mr. Hirons: The last sentence, “at no time shall overflow parking on school sites be allowed for special events when there is beer and alcohol sold”... how is that enforceable and do they envision it as they’ll know the events that are going to be... that they’re going to need overflow parking and just won’t have beer and alcohol sales that day or during that event? Or the event grows and grows and grows throughout the event and then suddenly we’re parking in the neighborhood and we’re going to shut off beer sales.

Ms. Karnes: There will be no special events held with alcohol when overflow parking needs to be utilized. Now, the decision to utilize overflow parking is not a casual one; that decision has to be made in advance and the schools need to be given at least one week’s written notice. And so they will be able to plan to make sure that any special events that do require parking at the schools will not have the alcohol served.

Mr. Hirons: Okay, so anytime you’re going to use the school parking lots for overflow parking, you have to have that agreement in place before the event starts.

Ms. Karnes: The written notice, yes.

Mr. Howard: A week before, and vice-versa.

Mr. Hirons: What happens... where do people park on events that just grow? You know, I’ve been to swim meets; swim meets are typically scheduled by events and, you know, sometimes it’s by age groups, sometimes it’s by regions or teams, and there could be overlap. And parking at certain points can be much larger than anticipated to begin with because, well, our schedule says there should only be 200 swimmers at this point in time but half the swimmers from the next group showed up early and well suddenly our parking lot’s full. Where are those people going to park?

Ms. Karnes: Anytime there are... there’s any kind of special event that would lead to the suspicion of overflow parking, there will not be liquor sold.

Mr. Howard: They’re not selling liquor in the pool facility anyway.

Ms. Karnes: That’s correct.

Mr. Hirons: But you can go to the sports complex connected to the swim facility and buy a beer. I mean, that’s... you know...

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Ms. Karnes: Well, and you're right.

Mr. Hiron: I understand the (inaudible).

Mr. Howard: Well, is the pool... that may not be right... is the pool connected to... what's the connection? Because typically ABC requires you to have a designated area for the consumption of alcohol so that might not be a true statement.

Ms. Karnes: Certainly someone can walk from the pool to the sports... we'll call it the field house for lack of a better term. But they will have to designate and limit the areas being where alcohol is being served, and we are envisioning special events... the area for special events being pre-designated and attendance to those events limited.

Mr. Hiron: Okay. I think I understand... and your intent is right. I'm a little worried about what the reality is going to be and I opened up a little can of worms in my own mind now of overflow parking issues.

Ms. Karnes: I think the ABC board's desire to designate areas of sale to make sure that minors don't inadvertently...

Mr. Howard: Yeah, trust me, you'll have to because of the type of clientele you're attracting to the facility. You'll have roped off sections and areas.

Mr. Hiron: Thank you.

Ms. Kirkman: Is there any... in the proposed agreement between the School Board and the applicant, is there any mechanism to sever the agreement if, in practice, it causes problems? The agreement for shared parking. Or is it that once the School Board accepts it, that shared parking exists forever regardless of whatever problems it may create?

Ms. Karnes: There is no sever mechanism; however, each request for overflow parking is separately submitted and considered for approval. There is language that says either side, either party, cannot unreasonably withhold consent. But if there is good cause, I believe that under that agreement there would be justification to withhold consent.

Ms. Kirkman: And what would constitute good cause?

Ms. Karnes: I think anything that unreasonably affects the health or safety of the parties, or their clientele or their students, would constitute good cause.

Ms. Kirkman: Thank you.

Mr. Howard: Thank you. Any additional questions of the applicant? Thank you Ms. Karnes. Mr. Rhodes, this is in Garrisonville.

Mr. Rhodes: Mr. Chairman, thank you very much. I certainly appreciate the efforts of staff and the efforts of the applicant and the neighbors to have a good discourse in dialogue to be able to work to improve this, I think, quite significantly this proposal. And with the understanding of the two specific

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items we discussed tonight to be added to the proffer, one dealing with that the applicant will provide for the provision of a reasonable sign for the neighborhood should they choose one to help identify that it is a private drive and a private area, and then violators be towed and all that kind of good stuff. And then another one with the understanding that the applicant would pay for a sign should it be identified in subsequent discussion with VDOT as one appropriate to help preclude the potential for a little bit of a funny right turn/left turn deal to get around the island there. I will make a motion to recommend approval of the reclassification of Stafford Sports Center, RC1100077.

Mrs. Hazard: Second.

Mr. Howard: Second by Mrs. Hazard; discussion? Mr. Rhodes, you have the first.

Ms. Kirkman: Mr. Chair?

Mr. Rhodes: None further Mr. Chairman, thank you.

Ms. Kirkman: Just a point of order. I think we need to get the additional proffers in writing and the Planning Commission has to go through some process of accepting them tonight. Jeff, doesn't...?

Mr. Howard: We can have Ms. McClendon check that.

Ms. Kirkman: Or I think Mr. Harvey is aware of what I'm...

Mr. Harvey: I believe the by-laws stipulate if there are any new proffers submitted within seven days of the Planning Commission's meeting that those proffers have to be agreed to by the Commission...

Mr. Howard: As a whole.

Mr. Harvey: Yes.

Mr. Howard: Okay, so we have to vote on the proffer amendment first, right? So...

Mr. Rhodes: Mr. Chairman...

Mr. Howard: Will you withdraw your motion and then restate your motion?

Mr. Rhodes: Yes, Mr. Chairman, I withdraw my motion.

Mr. Howard: Does the seconder agree to that?

Mrs. Hazard: I do.

Mr. Howard: Okay.

Mr. Rhodes: Mr. Chairman, just to confirm, so new proffers submitted, even if they are recommended by the Planning Commission, or only those that are submitted duly by an applicant?

Mr. Howard: Anything within seven days. So, this would fall (inaudible).

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Mr. Rhodes: For either side?

Mr. Howard: Yeah.

Mr. Rhodes: I thought the action of bringing them and proposing them before the dais would have satisfied, that's why I (inaudible).

Mr. Howard: We've done that in the past, but it is in the by-laws so you could argue that in order to make this clean going through the process we would probably err on making a separate motion to approve the proffers as amended and then you would include the amended proffers in your motion to recommend approval or denial.

Mr. Rhodes: Mr. Chairman, do we have to stand at rest to have them be in a written form?

Mr. Howard: I would recommend that.

Mr. Rhodes: Okay.

Mr. Howard: Is the applicant willing to come before the podium and hand-write the proffer and submit it to the Planning Commission, and then we can make the motion based off of the handwritten change?

Ms. Karnes: Mr. Chairman, I already have the stormwater management proffer...

Mr. Howard: You do?

Ms. Karnes: ... actually in a written document.

Mr. Howard: And would you just add on the bottom of that the two other...

Mr. Rhodes: Signage.

Mr. Howard: ... agreements that you just made?

Ms. Karnes: Yes.

Mr. Howard: Okay, if you do that quickly we would be able to move forward.

Ms. Kirkman: Mr. Rhodes, was your suggestion around solving this U-turn/cul-de-sac problem limited solely to signage, or was it for whatever VDOT might recommend?

Mr. Rhodes: My particular suggestion was dealing with any signage that VDOT might identify that would help to enhance the situation there.

Ms. Kirkman: And if they recommended something other than signage?

Mr. Rhodes: I don't know how to scope that ma'am.

Ms. Kirkman: Okay.

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Mr. Howard: The only good news is there's nothing else after this other than Mr. Harvey has some updates for us, and there may be a County Attorney's report, I'm not sure. Mr. Rhodes, in your absence, Mr. Hirons was elected Secretary.

Mr. Rhodes: I would have voted against.

Ms. Karnes: Okay. Let me read you what I've written. First of all, we had, before we arrived here tonight, prepared a new proffer 15 that states, "stormwater management: the applicant shall design and construct the property in a manner that provides a 10% reduction in surface runoff before the pre-development rate for the drainage swale located between the parcel identified as tax map 20S-22A and the parcels served by Southampton Court." And then there will be a separate new proffer number 16 that says, "signage: the applicant, at the request of the Gables HOA, shall pay the reasonable cost of a sign"...

Mr. Rhodes: Ma'am? The Gates, correct? The Gates, g-a-t-e-s.

Ms. Karnes: I apologize.

Mr. Rhodes: No, thank you.

Ms. Karnes: The Gates... "shall pay the reasonable cost of a sign at Southampton Court warning that there is no through access and is a private drive." And then that would be (a) and (b) would be "the applicant"...

Mr. Rhodes: I'm sorry to interrupt...

Mr. Howard: No, that's okay... we want to get it right.

Mr. Rhodes: Or other such language as might be mutually agreed to.

Ms. Karnes: Or other such language...

Mr. Rhodes: As mutually agreed to. Just they might want to finesse a few of the words.

Ms. Karnes: Mutually... how about mutually agreed upon?

Mr. Rhodes: Thank you.

Ms. Karnes: B. The applicant, if authorized by VDOT, shall fund a sign at the intersection/inter-parcel access of Park Ridge Boulevard and the property stating No U-turns and based upon your previous suggestion, or other appropriate language...

Mr. Rhodes: Other language as requested by VDOT... or something. I think that'd be appropriate, thank you.

Mr. Howard: Why don't we... Ms. Karnes, would you hand that over to Ms. Knighting and then we can...

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Ms. Karnes: Would you like me to have my applicant, since he's here, initial it first?

Mr. Howard: That'd be great! I was going to ask you to sign it actually, as the attorney representing the applicant. Thank you. And Ms. Knighting, if we could have that just passed over to Mr. Rhodes so he can read it from his motion and then it will go back to you as the recording...

Mr. Rhodes: We'll just keep handing (inaudible).

Ms. Karnes: I apologize for my handwriting.

Mr. Rhodes: Mr. Chairman, I make a motion that we adopt some modified... additional proffers as we requested which I will read, and that is 15, stormwater management; the applicant shall design and construct the property in a manner that provides a 10% reduction in surface runoff below the pre-development rate for the drainage swale located between the parcel identified as tax map 20S-22A and the parcels served by Southampton Court. 16, signage; (a) the applicant, at the request of the Gates HOA, shall pay the reasonable cost of a sign at Southampton Court warning that there is no through access and that it is a private drive, or other such language as mutually agreed upon, and (b) the applicant, if authorized by VDOT, shall fund a sign at the intersection of the inter-parcel access of Park Ridge Boulevard and the property stating No U-turns or other language as requested by VDOT.

Mr. Howard: Is there a second?

Mrs. Hazard: Second.

Mr. Howard: Thank you. So the motion on the table is to accept the amended proffer as just verbalized and also written and signed by the applicant, second by Mrs. Hazard; is there any additional discussion? Hearing none I will now call for the vote. All those in favor of accepting the amended proffer as amended this evening and read by Mr. Rhodes and also signed by the applicant signify by saying aye.

Mr. Fields: Aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Apicella: Aye.

Ms. Kirkman: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed nay? The motion carries 7-0.

Mr. Rhodes: Mr. Chairman, once again I just want to thank everybody involved and I certainly want to thank the applicants, some Stafford residents who really want to do something good in this County. And I appreciate their willingness to make this work for all parties concerned in the best possible manner. And, therefore, I make a motion to recommend approval of Reclassification of Stafford Sports Center, RC1100077.

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Mrs. Hazard: Second.

Mr. Howard: Second by Mrs. Hazard; discussion?

Mr. Rhodes: None Mr. Chairman.

Mr. Howard: Mrs. Hazard?

Mrs. Hazard: Yes. I too was very impressed with not only the emails we received but the people who came and spoke, as well as the applicant. The preparedness of all those that came before us; it was actually very impressive and it was very helpful that people... that we got to listen to it and that the applicant and others got to listen to the dialogue which, I think, shows a great way that we can make this work. So, therefore, for those reasons and seeing that a new corporate citizen in our County and the willingness to listen to the public and their needs is exciting for me, especially the need that will be filled in this County. So I will be supporting the motion.

Mr. Howard: Any other comments?

Ms. Kirkman: Mr. Chair?

Mr. Howard: Ms. Kirkman?

Ms. Kirkman: I'm going to be opposing the motion to approve. I do appreciate the applicant's willingness to make some changes in response to some of the comments from the HOAs, but I remain concerned about the impact that this project will have on the neighboring residential areas. I also think it's something of a misnomer, and I've said this from the beginning, to call this the Stafford Sports Center. This is really a commercial endeavor and I think we've got enough problems with congestion on 610 now from the commercial that's up there; so, I... this is a good project. I don't think this is really the best place for it. I think it'd be much better located in one of our proposed UDAs so I think it's a good project, wrong place. And I also think it's premature, particularly out on Garrisonville Road.

Mr. Howard: Mr. Hirons?

Mr. Hirons: Mr. Chair, I'm going to be supporting the motion as well, and I do appreciate all the applicant's time and effort that's gone into this, and their willingness in working with the neighbors. I just want to say I hope... I encourage you to continue to be a good neighbor to those folks. And although you got through this process or you're working your way through this process, don't see an end of working with the neighbors at the end of this process; continue to be a good neighbor and address their concerns as we see what happens in reality. Thank you.

Mr. Howard: Any other comments? Mr. Fields?

Mr. Fields: Yes sir. Once again, sort of echoing Ms. Kirkman's comments, I do respect all the work that's been done. I feel it's a great idea, I'm just concerned it is not the right place. And though I respect everybody's efforts to try to make this work, I don't think it can. There's so many places in this County where this would be phenomenally effective and so much less potential impact to everybody around in the area. So... again, I respect the work but I can't support the concept in that location.

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Mr. Howard: My comments... do you have any comments Mr. Apicella? My comments would be I really do appreciate... I mean, the residents who came out from Park Ridge were very thoughtful in their comments and very, very professional because I've seen situations where neighbors aren't exactly thrilled with what may happen. And the applicant has done I think a very, very good job in compromising and trying to meet the needs of the surrounding neighborhood. Personally, I don't know where you could find a better location for a sports facility than next to one of our high schools. You can argue that 610 is congested, and it is; that's a fact. And it will become more congested as time evolves. We know that there's a lot more property abutting 610 that eventually will convert to some type of retail business or other type of complex involving mixed use no doubt. So, I think this is a good use in that corridor of Stafford County. It's a well-needed resource in terms of some of the sports facilities that you'll be providing, and to be able to assist the North Stafford High School in certain endeavors in terms of sports I think is a huge positive; and kudos for North Stafford High School for having that as a neighbor. I will also obviously be supporting the motion. All those in favor of the motion signify by saying aye.

Mrs. Hazard: Aye.

Mr. Rhodes: Aye.

Mr. Apicella: Aye.

Mr. Hirons: Aye.

Mr. Howard: Aye. Opposed nay?

Mr. Fields: Nay.

Ms. Kirkman: Nay.

Mr. Howard: The motion carries 5 to 2. Thank you. Good luck. That now brings us to the Planning Director's Report.

PUBLIC HEARINGS

None

PLANNING DIRECTOR'S REPORT

Mr. Harvey: Thank you Mr. Chairman. There's a number of items to report on from last night's Board meeting. The Board approved the Quantico Corporate Center rezoning to B-2 zoning classification for a proposed Marriott Hotel. They also adopted the Telecommunications Plan in its current form and repealed the previous 2002 plan. The Courthouse Tracts rezoning, which was a medical office building across Route 1 from the hospital, was also approved. And the Board referred back to the Planning Commission the issue of wetlands mitigation banks; they took into consideration the Commission's comments and felt that again... they've reconsidered their thoughts and they feel that now it's important that the Commission consider that ordinance and take it forward to public hearing. Also, I wanted to bring to the Commission's attention, staff has provided you with information that was discussed at yesterday's Board meeting dealing with the Courthouse Small Area Plan. The Courthouse Small Area

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Plan is a planning effort that's been ongoing pursuant to the Urban Development Areas and our grant that we have with VDOT. The Small Area Plan has had a number of public input sessions, as well as discussions with the Board. It's intended that the Small Area Plan, as well as the accompanying Form Based Code, would be adopted as part of the Comprehensive Plan and the Zoning Ordinance. The Board's referral on this matter gives the Planning Commission till the end of the year to conduct a public hearing and make a recommendation. Looking forward to your schedule, right now you only have one meeting date in December. So, under that timeline, you would be required to authorize your public hearing at your next meeting.

Mr. Howard: So, we need to authorize a public hearing for the UDA, the Stafford County Courthouse UDA, in order to not have to pay the grant back basically.

Mr. Harvey: Yes. There's a time limit...

Mr. Howard: It means we have to get this to the Board of Supervisors so they can work with it and approve it, is that correct?

Mr. Harvey: Correct.

Mr. Howard: We have to adopt the UDA... okay.

Mr. Harvey: Yes. The grant is good through the end of February. We got an extension from the State but that is the stick, so to speak, with the carrot of the money is that we have to complete the public hearing process in order for the County to not have to repay the grant.

Mr. Howard: So what we would need to do is get this on our agenda for the next meeting, which is November 2<sup>nd</sup>...

Mr. Harvey: Yes sir.

Mr. Howard: ... and then at the November 2<sup>nd</sup> meeting it sounds like you're saying we would have to create a version and approve it at the Planning Commission level for a public hearing.

Mr. Harvey: Yes.

Mr. Howard: Okay.

Mr. Harvey: And in the Board's referral, there's latitude to make adjustments and we'll have the consultant here at the next meeting.

Mr. Howard: Alright. So you have a consultant and somebody from staff will make the presentation?

Mr. Harvey: Yes sir.

Mr. Howard: We have the presentation in front of us so we can...

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Mr. Harvey: Yes, you have the document and the PowerPoint from last night. We encourage any comments or suggestions for modifications, please send it forward to us and we'll incorporate those into our discussion and be able to have appropriate change to the document ready.

Mr. Howard: Great. Any questions for Mr. Harvey?

Ms. Kirkman: Yes. Mr. Harvey, my understanding is that the... that by adopting a small area plan there are certain consequences of that. So could staff, in their report on this next also talk about what the consequences are in terms of what that means for applications that come forward?

Mr. Harvey: Certainly.

Ms. Kirkman: Thank you.

Mr. Howard: Any other questions or comments? Hearing none, is there a County Attorney's Report?

COUNTY ATTORNEY'S REPORT

Ms. McClendon: No Mr. Chairman, no report at this time.

Mr. Howard: Thank you very much. There's no Chairman's Report. That concludes our meeting; the meeting is adjourned. Thank you.

COMMITTEE REPORTS

CHAIRMAN'S REPORT

OTHER BUSINESS

APPROVAL OF MINUTES

None

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 10:26 p.m.