

STAFFORD COUNTY PLANNING COMMISSION
WORK SESSION MINUTES
January 7, 2009

The work session of the Stafford County Planning Commission of Wednesday, January 7, 2009, was called to order at 5:38 p.m. by Chairman Peter Fields in the Board of Supervisors Chambers of the County Administrative Center.

Members Present: Fields, Di Peppe, Rhodes, Mitchell, Howard, Carlone and Kirkman

Members Absent:

Staff Present: Harvey, Roberts, Stinnette, Stepowany, Hornung, Schulte, Schultis, Ennis, Doolittle and Hudson

Declarations of Disqualification

None

NEW BUSINESS

None

UNFINISHED BUSINESS:

1. SUB2600305; Southgate, Section 2 - Preliminary Subdivision Plan - A preliminary subdivision plan with 24 duplex units on 12 lots, zoned R-1, Suburban Residential, pursuant to the previously approved Cluster Concept Plan, consisting of 10.81 acres located on the west side of Cambridge Street approximately 1,500 feet south of Edward E. Drew Middle School on Assessor's Parcels 45-163 and 45-163A within the Hartwood Election District. **(Time Limit: March 4, 2009) (History - Deferred to December 3, 2008 Regular Meeting at Applicant's Request) (Deferred at December 3, 2008 Work Session to January 7, 2009 Work Session)**

Mrs. Carlone stated they had a meeting Monday and she was not happy with it. They did not have a representative present who owned the property. She stated she would like to defer this until they could have someone of authority who could discuss it and either agree or not agree from an official standpoint of ownership. She recommended deferral. Mr. Di Peppe seconded.

Mr. Fields asked if she would like it deferred to the next work session.

Mrs. Carlone stated she would like to try for the next one.

Mr. Harvey stated the date for the next work session would be January 21.

Mr. Fields stated there was a motion to defer to January 21 and seconded by Mr. Di Peppe and asked if there was any discussion.

Ms. Kirkman stated after they vote on the motion she had some questions she would like to ask of staff.

Mr. Fields stated once they vote to defer they moved it off the table. He stated if it was okay with Mrs. Carlone.

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Mrs. Carlone stated yes.

Ms. Kirkman stated Ms. Hudson was there to speak on the memo she wrote and she had some questions for her.

Mr. Fields stated the motion was on the table and would just hold it there. They would have the discussion and then dispose of it. He stated once they vote to defer it they had moved it technically off the agenda.

Ms. Kirkman stated regarding Ms. Hudson's memo which she had originally raised to staff in the review of this plan, because the Subdivision Ordinance stated that pipestem lots were only allowed where specified in the Zoning Ordinance. She wrote in her memo that pipestem lots were permitted by reference in Section 28-74 however when she looked at that section she could not find the word pipestem in it. She asked if Ms. Hudson could please explain her memo.

Rachel Hudson, Zoning Administrator, stated she wrote the memo stating that both pipestem lot and cluster development were defined in the Zoning Ordinance. Pipestem lots were permitted in the residential cluster developments by reference in the Zoning Ordinance, Article 5 Residential Cluster Provisions and then Section 28-74 in the Zoning Ordinance stated that "a cluster development shall be subject to all the applicable standards of this chapter and all other requirements of Stafford County". She did note that in the Subdivision Ordinance, even though she did not interpret this Subdivision Ordinance, for many years Stafford County had allowed pipestem lots in their cluster development.

Ms. Kirkman stated Stafford County had done a lot of things that were not necessarily in compliance with the law. She asked Ms. Hudson to show her in the Zoning Ordinance where it specified that pipestem lots were allowed in this particular land use because Section 28-74 did not mention pipestems at all.

Ms. Hudson stated in the definitions of the Stafford County Code of the Zoning Ordinance it did say what a pipestem lot was.

Ms. Kirkman stated it said what a pipestem lot was but it did not state that they were allowed in this land use. She asked where in the Zoning Ordinance did it say that pipestem lots were allowed with this particular land use.

Ms. Hudson stated as she said previously pipestem lots were an option in a cluster.

Ms. Kirkman asked her where it said pipestem lots were an option in a cluster.

Ms. Hudson stated in the Subdivision Ordinance.

Ms. Kirkman stated she could not find that in the Subdivision Ordinance.

LeAnn Ennis stated she was referring back to Section 22-270 where it said provisions for the pipestem lots, when permitted.

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Ms. Kirkman stated when permitted in the Zoning Ordinance and asked where it was permitted in the Zoning Ordinance.

Ms. Ennis stated it was permitted because it fell under Section 22-266 which was the cluster subdivision ordinance.

Ms. Kirkman stated but that was the Subdivision Ordinance. It said where it was permitted in the Zoning Ordinance they were allowed and that was all she was asking any staff person to say where in the Zoning Ordinance this was permitted. That was what the Subdivision Ordinance did, it referenced back to the Zoning Ordinance and it said "where permitted" in the Zoning Ordinance. She asked them to please show her where in the Zoning Ordinance it said pipestem lots were allowed in cluster or in this particular land use.

Ms. Ennis stated Mr. Harvey explained it to them earlier because they asked him the same and asked Mr. Harvey to explain.

Mr. Harvey stated it ended up being one of those situations more so what was not written in the ordinance than what was. The Zoning Ordinance did not specify in any zoning category what type of lots you have to have. It specified the type of dwellings, the setbacks and minimum size of the lots but did not speak to the lot shape configuration. He stated the Zoning Ordinance did define what a pipestem lot was and also had standards for cluster provisions. The Subdivision Ordinance also had standards for cluster provisions and it talked about the purposes to create areas of open space and unique lot configuration in order to allow more efficient use of the land. In that instance there was no specific Zoning Ordinance requirement that said there shall be pipestem lots and they shall be only in these zones. The Ordinance said in the case of cluster developments that was an option.

Ms. Kirkman asked if it said that in the Zoning Ordinance and if it did she asked to be shown where it was an option in the Zoning Ordinance.

Mr. Harvey stated he was referring to cluster subdivisions as being an option, not necessarily a pipestem lot as being an option.

Ms. Kirkman stated the Subdivision Ordinance very clearly stated where permitted in the Zoning Ordinance. She asked if there was anywhere in the Zoning Ordinance that said pipestem lots were permitted either in cluster subdivisions or in this particular land use.

Mr. Harvey stated as he said earlier the Zoning Ordinance did not specify where pipestem lots were permitted in any zoning category. It did not specify where a regular lot would be located in any zoning category. It just defined what a lot was and what a pipestem lot was.

Ms. Kirkman stated they had a Subdivision Ordinance that stated pipestems were only allowed where specified in the Zoning Ordinance and their Zoning Ordinance did not anywhere specify that pipestem lots were allowed and asked if that was correct.

Mr. Harvey stated specifically there was no reference and Ms. Hudson, in looking at the ordinance, felt that by cross-referencing the ordinance that was how pipestem lots would be permitted.

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Ms. Kirkman asked where it cross-referenced that. It was circular reasoning in that it said in the Subdivision Ordinance if it was allowed in the Zoning Ordinance.

Ms. Hudson stated the Zoning Ordinance stated in Section 28-74 that a cluster development shall be subject to all applicable standards. It did not say just in the Zoning Ordinance, it said “and all other requirements of Stafford County” so she assumed they were referring to the requirements in the Subdivision Ordinance.

Ms. Kirkman stated they all agreed that nowhere in the Zoning Ordinance did it specify specifically that pipestem lots were allowed in either cluster subdivisions or in this particular land use.

Ms. Hudson stated she would not find that in the tables.

Ms. Kirkman thanked them and said that was what she wanted to know.

Mr. Howard asked as a point of clarification where in the Zoning Ordinance did it specifically state that you could not have a pipestem in a cluster subdivision.

Ms. Hudson stated she had not ever seen it in an ordinance and that it was not in there.

Ms. Ennis stated it was a provision allowed in the Subdivision Ordinance it gave all the directions of how to put one together. It had the dimensions, the links, the number and that was why it was in the Subdivision Ordinance.

Ms. Kirkman stated this was titled Southgate Section 2 and asked Ms. Ennis to explain the sectioning of this.

Ms. Ennis stated it was requested because they had to go through Southgate and there was no other entrance into this subdivision. They had the same developer that was building it and it was called Southgate Extension which did not make sense to her so she had them change the name to Section 2. In her mind it was no different than how they had done a lot of other subdivisions in Stafford. There was no other way to get to it except through Southgate.

Ms. Kirkman stated usually sections refer to either a rezoning where the GDP laid out various sections or a preliminary subdivision plan where there were various sections. She asked if there was either a rezoning application that included both this and Section 1 or some other preliminary plan that included both this and Section 1.

Ms. Ennis stated no. There were two separate preliminary plans, one for the original Southgate that had a portion of it rezoned, which was already approved, and this came through as a separate parcel which they can do. There was not one preliminary plan that combined them.

Ms. Kirkman stated there was not one preliminary rezoning that covered both of these.

Ms. Ennis stated no and this was not a rezoning, it was a by-right.

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Ms. Kirkman stated she understood that but it was rezoned at some point and she wanted to make sure it was not part of a rezoning with the original Southgate. She stated to clarify this was a completely separate subdivision application.

Ms. Ennis stated yes.

Ms. Kirkman stated it had been evaluated in terms of meeting all the requirements as a completely separate subdivision.

Ms. Ennis stated yes and it could stand on its own once the road was built. They could not build this until the road was built to come into the subdivision. With Stormwater Management and all that it did stand on its own.

Mr. Fields asked when this was originally rezoned.

Ms. Ennis stated it had not been rezoned as far as she knew.

Mr. Harvey stated they would have to verify but his estimation would be in 1978 when they had a comprehensive rezoning of the county.

Ms. Ennis stated the applicant was present if Mrs. Carlone would like to ask questions.

Mrs. Carlone stated she had spoken with the engineer. She looked back at some references and asked if the actual owner was there.

Gary Dempsey stated he was with Meridian Land Corporation and Meridian Construction, three or four different companies.

Mrs. Carlone stated she was looking at the land purchases and it was under an LLC.

Mr. Dempsey stated that was one of their subsidiaries.

Mrs. Carlone stated she was looking at the ratio of useable open space and there were several issues. She stated she would like to talk with the applicant directly because Monday was not satisfactory and that was why she was asking for the deferral. The useable open space was a concern with the ratio for a cluster development it stated for a community park, etc. They assured her that lot 3 had been changed because of the RPA. She stated there were other issues, some minor and some that really should be looked at. The point she tried to make was that this was a separate project. At the original presentation this was an offsite tot lot. She would like to set up a meeting between now and the next Planning Commission meeting with the applicant and staff.

Mr. Dempsey stated he had no problem with that. He would have come to the last meeting had he known he needed to be there.

Mrs. Carlone stated this was the first time there was no representative of the owner that she had been to and she did not like to do the one-on-one out of the public eye but she was willing to go back, if he was, to have a meeting.

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Mr. Dempsey stated that was fine. He would do everything he could to help but their position with losing a lot was not going to change. He would be happy to meet with her and help her in any way he could.

Mrs. Carlone stated she did not feel reassured on some of these issues. She wanted to set a meeting with Ms. Ennis before January 21.

Mr. Dempsey stated he would make himself available.

Mrs. Carlone stated she was recommending deferral.

Mr. Fields stated that motion was on the table and asked if there were any further questions or discussions on the issue.

The motion passed 6-0 (Mr. Mitchell was absent).

Mr. Fields stated he had a request on the Ordinance Committee there were several items. There were representatives from the electronics sign industry and from the Sheriff's Office. They would proceed if it was okay with the rest of the Commission to move item 4 up first, the Electronic Signs which was referred back to the Planning Commission by the Board of Supervisors.

ORDINANCE COMMITTEE

4. Electronic Signs

Jamie Stepowany stated this was deferred back to the Planning Commission for discussion. He stated Ken Peskin was present and he represented an electronic sign company and Deputy James Hamilton of the Stafford County Sheriff's Office and with Crime Prevention Through Environmental Design (CPTED) and a member of the TRC team.

Ms. Kirkman asked Mr. Stepowany to explain what crime prevention had to do with electronic signs.

Mr. Stepowany stated it was a concept in the land use for safety and security. Deputy Hamilton was also very well-knowledgeable in foot candles and driving safety.

Ken Peskin stated he was not actually with a sign company but with the International Sign Association out of Old Town Alexandria representing about 2,600 manufacturers of signage, the vast majority which actually did not make or sell electronic or digital signage. Some personal background was his family had been in the sign business for about 90 years so he was very well-versed with the technology. He provided a hand-out. The first document was Traffic Safety Evaluation of Video Advertising Signs and was a paper that was published in the Transportation Research Record which was an academic journal of the National Academy of Sciences. He stated it was completely academic and not funded by any outside industry. What it discussed was video advertising signs, which was a specific condition, lead to driver distraction. The other condition in which signs were distracting was improper lighting levels. Outside of that the signs themselves were not distracting. There were other conditions such as flashing, blinking and strobing which generally had been illegal for several decades

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in most municipalities and counties in the United States. The signs themselves were not dangerous from a safety perspective. He stated the three main points he wanted to talk about was when he looked at the language with regard to the lighting standard he did not think it was the appropriate standard. It was a one-size-fits-all standard and there was a better approach that had been developed. The second concern was the particular language of the definitions. There were two terms that were going to be defined in the ordinance, for LED signs and for Electronic Bulletin Boards. The third concern was the restriction on color, the one color permitted on a dark background and why he felt it did not work entirely right. The brightness was the first thing he wanted to talk about. A paper published called Light Trespass Research Results and Recommendations was written by the Illuminating Engineering Society of America which was an academic professional society and was not industry at all. About 8 years ago this paper created a concept of lighting zones. If you were to measure ambient light in various levels with different levels of development and that was how you could determine essentially what other light levels you would light a new or additional fixture, or in this case, a sign in those areas. One of the members of the committee was a professor who later had done work for the sign industry that converted these recommendations in the lighting zones as appropriate for what they called Electronic Message Center Signs which were a combination of LED signs and Electronic Bulletin Boards. The concept the professor brought out was in the one page table where essentially there were four different lighting zones. Lighting zone one was a very sparsely populated not well lit area and the appropriate brightness for that would be .1 foot candles above the ambient light level. Lighting zone two was more of a residential area and the appropriate brightness for that would be .3 foot candles above the ambient light level. The standard the county had in the previous proposal was .5 foot candles for all areas. In a commercial district, which was lighting zone three, the appropriate level was higher at .8 foot candles over ambient. Lighting zone four he was not recommending because it was not appropriate for this county. He stated essentially, in a commercial area, .8 over ambient and the other areas .1 or .3.

Mr. Fields stated he was using the word appropriate and he needed to get a handle on what Mr. Peskin's standard for defining appropriate was.

Mr. Peskin stated a lot of that discussion was in the report that was still being peer reviewed and could not be released. It needed to compete with other levels of light sources and the appropriateness dealt with issues of the ability to recognize it from the intended viewing distance and things of that sort. He stated there were separate signs and other papers he did not bring with him dealing with visibility issues and how that impacted on safety. If the sign could not be seen until you were too close to the target the problem you would have was the driver may try to correct at the last minute and cause some kind of dangerous maneuver. If the sign was visible from too far away you would have a nuisance or glare issue depending on the type of signage. The other thing with regard to the brightness, the standard that was written in the previous proposal, as he read it, applied to all signs. That was problematic for several other reasons, the first of which they had scientific data and recommendations dealing with electronic signs. Other conventionally internally illuminated signs, typical electric signs all up and down a commercial corridor, they did not know yet what the appropriate levels were for those. Part of the question in that was an electronic sign could be dimmed and were dimmed regularly. The brightness level at 2:00 in the afternoon was different than the brightness level at 9:00 in the evening. If they were not dimmed they would be so bright as to be glaring. A sign that may appear too bright to one person's eyes was probably at 5% of its maximum brightness at night even if it was too bright. A conventionally internally illuminated sign could not really be dimmed. The particular electronic components within it were either on or off and dimming it would cause things to fail

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catastrophically inside often. He stated you could not have a properly dimmed sign with a lot of the existing technologies in the signs that were in the county and he believed it would be shortsighted to apply the brightness standard to all signs when all the signs could not necessarily be dimmed and that would create a whole series of other problems.

Ms. Kirkman asked if they could dim them by changing the technology.

Mr. Peskin stated some yes and some no. It would depend on the particular source of illumination from within the sign.

Ms. Kirkman asked if they could change the source of the illumination.

Mr. Peskin stated sometimes they would be talking about upwards of a five figure investment.

Ms. Kirkman stated it was really about money, not about whether or not it could be done.

Mr. Peskin stated there were signs they would probably have to have a complete replacement of and then there was also the issue of if a sign was legally non-conforming and larger than currently allowed. Then it would be unable to be replaced and put up the same sign at the same size. There were a series of issues, the point being that most other sources of illumination could not be dimmed on the same way that an LED could. He stated the other issue with regard to the brightness was where the sign was measured the brightness. The standard that was written which was appropriate for a conventionally internally illuminated sign was at the property line. An internally illuminated sign typically sends light out in all directions. An LED sign would be much more focused. The greatest source of light, Appendix A explained some of the technology, was directly out perpendicular from the sign face. For that reason, you would want to measure the sign at a distance of 100' directly in line with the sign at eye level. That was the way the sign would be viewed. If measured off to the side perhaps there would be an acceptable light reading but if the sign, if looked at straight on, would be too bright. The other reason it would be measured at a distance of 100' was that was a more appropriate depth based on where a driver would see it.

Ms. Kirkman asked what if the 100' extended onto someone else's property.

Mr. Peskin stated they suggested the 100' be the fact of standard for the viewing distance.

Ms. Kirkman stated what she was asking was what if the 100' extended onto the adjacent property. Was he still saying the standard was okay, that the light would intrude into the property and that the standard should always be 100' regardless of where the property line was.

Mr. Peskin stated he was saying that the recommendation of illuminating engineer who created the report was that the distance be at 100'.

Ms. Kirkman asked even if it extended onto someone else's property.

Mr. Peskin stated that was what his recommendation was.

Mr. Fields asked if the recommendation was independent of property lines.

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Mr. Peskin stated yes and it was a technological recommendation. It was not a political consideration. Getting past the brightness discussion, the language as it dealt with the definitions of LED and Electronic Billboard or Bulletin Board, again he represented on premise signs and not billboards. He understood the initial impetus for these regulations were billboard issues. As he read it, the understanding of the particular technology, the regulation was not worded to capture the existing technology that was there and some of the technologies that they knew were coming down the road. As LED signs were defined, it spoke about the creation of single points of primary colors and that was how LED would create colors. If every LED sign, even showing just a single color, was red or green or blue or amber, you might have a single point but generally if you wanted purple or brown or yellow, the way that an individual pixel was created was sort of three points of light of red and green and blue and it was a combination through software that a particular color would be created. He believed that the definition of the particular technology should encompass all of these particular types of signs. He stated there was a specific exemption for Electronic Bulletin Boards under 6' square in area. A question he had was there were existing applications of LCD screens which were not generally used in outdoor signage and were generally dealt with as a separate industry. Of screens less than 6' in area that displayed full video and were used as rental advertising, often seen mounted on a gas station pump, those signs which could display full video were exempted and a simple two or three lines of text of a couple of colors would not be allowed. He thought it should be fine-tuned to understand what products currently existed, what products were likely to exist and work on the definition language. The third and last thing he wanted to talk about was the restriction on the one color on the dark background. He stated he had a power point presentation but he was not able to access it on his computer. He understood in reading the discussions of the past meeting there was over bright signs and he thought having brightness regulations would address the appropriate brightness concerns. Issues of tasteful, issues of aesthetic and issues of good-looking signs were not about one color or two colors, it was about design. He had seen many bank signs and many church signs which were not overly complex and not distracting but may have yellow text on a dark blue background. Sometimes they may have had clouds or an American flag in the back and were elegant and restrained and they were not in-your-face and offensive. That being said, a single color sign, if blinking or flashing or strobing, was generally considered pretty hideous by many viewers. The restriction down to one color was very problematic and another point he had made in discussions with the Board of Supervisors was because most of the existing technologies and the technologies that were evolving in the future were capable of creating by computer software millions of colors. By restricting signs that display only one color what that would create in addition to essentially all signs in the county that were red or amber, they would all look the same and there would be less variations. When everything looked the same it kind of looked worse. In addition it would steer the businesses of the county that would choose to have those types of signs to the lowest cost technology which was likely to not be the most attractive and most functional technology. By restricting down to one color, they would take away any of the opportunities for a business that would want to invest in a higher quality and higher cost piece of technology, there would be no reason for them to do that because they would only be able to display that one color.

Mr. Fields stated he would like to hear from Deputy Hamilton and then they would ask questions later.

Mr. Harvey stated they also had another member from the sign community present.

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Jerod Bolten, representing Daktronics, one of the manufacturers of LED signs, stated he was basically there to support Ken Peskin and answer any technical questions like how the sign would operate, how they were dimmed, how the software worked and any of those types of questions. He stated he would be more than happy to answer any questions.

Deputy James Hamilton stated from the law enforcement perspective, as far as these signs were concerned, the main things were the distraction and the glare. Getting down to the lighting recommendation near the signs or how much those signs projected onto the roadway. He was trying to relate it to some other aspects of the recommendations he would make for lighting in residential areas or commercial areas. He equated the lighting standard he would usually recommend for residential streets which was .5 at the center line of the roadway. In discussing with Mr. Stepowany the change in that ordinance the Planning Commission made, they said .5 at the right-of-way and they were real close. He did agree with Mr. Peskin that depending on the area it might be bigger and there might be more businesses which might require more lighting in the roadway. He would also require more lighting in an intersection than would be required between intersections. He stated he was not sure it could be balanced and made between an area that would have a smaller amount of businesses along the roadway to a bigger and go from that standard of .5 from the center line for this amount of use and maybe to a 1 foot candle for the larger use. There were so many variables that would need to be looked at as far as where the sign would be placed, where it was focused, the use of the roadway, the curvage of the roadway, and a lot of different things. He stated this was a really tough call and the only thing he could do was equate it back to the lighting standards that he would recommend for a specific type of use like residential or commercial. If the lights were not focused directly in the eyes as a driver was going down the road, he would hate to admit it but there were people who could not drive and chew gum at the same time, it would make it more difficult when there were more distractions along the roadway. He did not get a chance to do a lot of research but he did some reading on the information Mr. Stepowany gave him on the Federal Highway Administration. There were a lot of different focuses they wanted and different states and different areas that the signs were placed in and he thought the figures ranged from in the 10% range to the 30% range as far as how much of an affect they had on accident rates in those areas. He did not consider that excessive but it still was higher. He stated as far as the lighting standard that was the only ballpark figure he could give, usually for a residential area it would be .5 in the center line and for more of a business use area it would be 1 foot candle in the center line. He asked if that helped.

Mr. Fields stated somewhat and asked if there was comprehensive data on relating to traffic incidents, accidents, etc. along corridors with different types of signage to help distinguish between the impact of electronic signs versus internally lit signs versus signs that were not lit.

Deputy Hamilton stated there was some of that in this one study and it did go over the different types of signs, even some of the older signs. In fact, some of the studies were started back in the 1960's, actually seeing how much of an impact a billboard off the side of the road had an impact on accident rates.

Mr. Di Peppe stated in one of the northern states there was a study that showed a pretty significant problem with the large television screen billboards along the interstates. They were not against businesses advertising and the original intention was not to restrict those except with too much light. The whole idea behind advertising was to get somebody's attention and from a safety aspect, anything to get somebody's attention while they were driving down the road would distract them from what they

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were suppose to be doing which was paying attention to what was going on on the road. That was their original concern about these large electronic television screen signs that they felt they were somewhat distracting and could be a safety problem.

Deputy Hamilton stated he thought it was Wisconsin.

Mr. Di Peppe stated there was some significant data about causing accidents because when they were doing the original research this came up.

Mr. Stepowany stated for clarification this did start out with the billboard industry but there were other provisions of this ordinance that would prevent billboards to have such a sign. The concern raised by staff and the Planning Commission was what if this would become everyday business-types of signs. That was what basically this ordinance was based on, if typical businesses start using free-standing signs next to the highway with this type of technology. The actual electronic sign portion of the ordinance would not affect the billboards, it would affect general businesses. He showed an example of an electronic billboard and stated when going from one screen to another that was what caused the distraction by changing the type of illumination and it also created the sense of motion. Even though the sign itself did not have any moving parts, by changing the text on the screen it would create the sense of motion and that was the concern with distractions. The only reason why LED signs and EBB signs deal with the number of colors was when they start getting a lot of white on the background that would tend to be the more severe brightness. He stated the Board of Supervisors did not have a problem with the red on the black background. The way the ordinance was written was it was one primary color generally on a dark background. The problem arose when there were multiple colors on multiple copies every five seconds, how would they control it.

Mrs. Carlone asked what the eye illumination was by the auto repair.

Mr. Stepowany stated they would have to get a light meter and measure it.

Mrs. Carlone stated the other one by the garage where they stored vehicles faced the east direction on 17 and the illumination would go across the highway and she asked if he could measure that illumination also.

Mr. Stepowany stated he would get help from Deputy Hamilton with measuring the illumination.

Mr. Howard asked if the standards that were referenced by the sign person, Mr. Peskin, were in place in other counties' zoning ordinances.

Mr. Stepowany stated he would have to check to see if any other jurisdictions used foot candles for controlling signs.

Mr. Howard stated he knew they looked at a few other counties but he did not recall what the standards were and he cited those standards were sort of gospel. He was not sure if they were or were not.

Mr. Stepowany stated he would have to verify with others but they went with the .5 because that was recommended for a separate zoning district.

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Mr. Howard asked on the signs they had throughout the county where it was just the black with orange or red text, had the county's Sheriff's Department ever thought about leveraging the businesses for the Amber Alert. VDOT did that throughout the highway system.

Deputy Hamilton stated that was an option he could look into.

Mr. Howard stated he should.

Mr. Dempsey stated in speaking to the technology on the smaller signs with the red, the technology was not there yet to get an Amber Alert to those signs because those were more than not controlled from that local location and not part of the network. With Amber Alerts and missing persons and the FBI's most wanted list, those were part of the billboard applications because those were usually controlled from a central location. He stated with Walgreens and CVS it may be a possibility.

Mr. Howard stated even the stand alone stores that had the control in their own building versus over the telephone line or cable connection. The Sheriff could still leverage those businesses through a text alert to them to ask them to put it on the board so it was not like it could not be done. He stated he was more asking the Sheriff's Department.

Mr. Dempsey stated to let them know on the billboards, if that Amber Alert came through and was approved by the National Amber Alert Headquarters it would be on that billboard in a matter of seconds.

Mr. Howard stated he understood that, just like it was with VDOT.

Mr. Stepowany stated an owner of one of the signs questioned him as to why he was taking a picture of his sign. The owner of that sign told him if he was requested to put up an emergency text he could change it and would do it if needed.

Mr. Di Peppe stated this original discussion started with a TND ordinance and what the development community said was to just give them something they could measure. There was some discussion on the level of the Board of Supervisors and they were asked if they talked with anybody in the industry. He stated he told them yes, back with the TND ordinance and that was how they came up with .5 candle power. If he understood them correctly, the only difference right now was where would they measure, from the middle of the road or from the edge of the road and whether it was .5 or .8.

Mr. Peskin stated when they showed the digital billboards, the outdoor advertising industry and he did not know if it represented the owners of all the billboards in the country, but the billboards industry set their signs no more than .3. Part of that, in the technical discussion of the Appendix A document he handed out, the way a sign was viewed was partly how big the sign was and since most billboards were 672 square feet it was a lot easier to see them. He stated .3 worked for a really big sign. The other thing, when they showed the gas station reader board, a lot of gas stations that sell diesel would display the diesel in green as opposed to red and that would be a non-compliance sign

Mr. Di Peppe asked if they had to do it in green.

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Mr. Peskin stated with many of the existing signs that was the way they were. The green could not be switched to red or they would have to order a new sign.

Mr. Di Peppe stated their contention was not to regulate people that were not causing problems. He understood the problem of unintended consequences also. He stated he did appreciate their presence to say they needed to consider a couple of things and what they were trying to accomplish and what they were accomplishing were two different things.

Mr. Peskin stated he was talking 100' and directly out from the sign face. When they were talking about on premise signs large by the highway, he did not know what VDOT regulations were but in most states electronic signs in an on premise setting generally adjacent to an interstate were under the control and conditions of VDOT. Those signs next to an interstate generally were mandated by state regulations. He stated that was standard in 40 plus states across the country, so there could not be a moving sign next to a highway or it would be in violation of the rules.

Mr. Di Peppe stated he wished he could see a demonstration of the difference in the .8 versus .5

Deputy Hamilton stated it was not that much. It would actually increase the safety standpoint on the roadway but if it was part of the glare, he was measuring it different than Mr. Peskin.

Mr. Di Peppe stated the whole idea behind that was safety.

Mr. Peskin stated it mattered where you measure.

Ms. Kirkman stated on the zones E3 was commercial and asked what E1 and E2 were.

Mr. Peskin stated it was listed on the back page of Appendix A. Zone 1 was parkland or sparsely lit residential or rural areas. Zone 2 was residential and lighting zone 4 was basically dense urban which essentially was a downtown area. He stated the industry was not pushing for lighting zone 4 because they realized that could be problematic. They were only asking for up to lighting zone 3 in those areas. One other point with regard to the safety aspect, something that was often included in ordinances was a requirement that the signs have a self-dimming capability which was a photocell. If the sun went behind a cloud or it was a rainy day, the sign would automatically deal with that by dimming the sign as there were less levels of ambient light. That was an option available to the county from a safety perspective.

Mr. Mitchell arrived at 6:38 p.m.

Mr. Fields asked if there were any more questions for Mr. Peskin or Deputy Hamilton. He stated he appreciated their time and being there. He asked Deputy Hamilton if in the next few months he would be willing to come in and do a whole workshop on CPTED with the Planning Commission so they could get up to speed what the state of the art was and how they could use that as one of their proactive tools.

Mr. Di Peppe stated before they let those people get away because they were trying to get this back to the Board he asked if there was any way they could set up a subcommittee to meet with the industry and the CPTED and Mr. Stepowany to try to work out a couple details and come back with a

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recommendation. They had been working on this sign ordinance for a long time. He asked Mrs. Carlone to also join. He stated he would like to meet before the next meeting and would make himself available.

Deputy Hamilton stated he was on the Safe By Design Coalition in the state also and he put a call in to anybody that had any information regarding another jurisdiction that had lighting recommendations that approached the sign problems.

Mr. Di Peppe stated he thought it was important because it had been going on a long time and before they would get more signs they did not want he would like to move this along.

Mrs. Carlone asked how long it would take to check the candle power on Route 17.

Deputy Hamilton stated he knew the two she was referring to. He would try to get to them the following week and try to get her information on where the measurements were made so it would at least give an idea as to how much light they project towards the roadway. Usually what he liked to do was start at the sign and move away from it towards the roadway and take down the distances and measurements as he moved closer to the roadway.

Ms. Kirkman stated it was interesting to consider a requirement for the self-dimming element. She had a concern about the graduated scaling of the foot candles and, in particular, increasing the limit to 0.8 because it was stated clearly the reason was it could compete with other signs. She had a vision of light wars in commercial districts as everybody would try to get brighter and brighter up to the limit in order to compete so she did have concerns about raising the limit there. She did not know if they needed, and they did not have the ordinance with their packet, the graduated foot candles because she thought they had basically eliminated those things in the residential districts. If there were any residential districts where this could occur, the notion of dimming it down in the residential would make a lot of sense. She stated they did want to make sure it was measured properly, however, she did want to point out there was a very real problem with the 100' distance requirement and property lines as they would need property owner permission to go onto other properties to do the measurements which had been an issue in other kinds of things. There were a couple ways to handle that and one would be to say the sign face would have to be located 100' from any property line. However, that might create some problems on smaller sized parcels. She stated they could also consider measuring it from the sign feet at either 100' or the property line, whichever would come first. Somehow that would need to be addressed because they could not do a straight 100' as they would always have to get permission from adjacent property owners if the 100' requirement occurred on a separate property and that would create a lot of enforcement issues. She stated those were her suggestions for the committee to consider.

Mr. Rhodes asked if it was at all possible when they were doing the gradations of measurement to do one that was 100' directly from the sign.

Deputy Hamilton stated he would move from the sign out 100' and then 100' out to the roadway.

Mr. Fields thanked the people from the sign industry for coming and Deputy Hamilton for being there.

2. Establishment of time limits for plans

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Mr. Fields stated he noticed this already had some of that language in it stating the amended section 28-251 of the Zoning Ordinance previously submitted to the Planning Commission for discussion has been omitted from the proposed changes because of the Board of Supervisors' action. What they had there before them was where they were at the December 3 meeting.

Mr. Harvey stated yes and Ms. Schulte would give them a brief on it.

Brenda Schulte stated the last time they discussed this was at the December 3 meeting. Staff was requested to amend various sections mainly what constituted a revision as well as the word "denied" that was previously in as a consequence to the proposed preliminary plan application revision. All of the changes in the package in the memo were bold and italicized. She stated those were the recommended changes, some were recommended by the Planning Commission and because of the Board initiated change in the policy, the section for the Zoning Ordinance had been omitted and that was 28-251. The second page of the memo under number 2 there was a bold italicized addition and there were two number 6's shown, one of which was proposed by a Planning Commission member and the other was from staff for their consideration.

Mr. Di Peppe asked if under the new guideline was she able to make recommendations because they were not able to.

Ms. Kirkman stated actually they were. They had already affirmed with their County Attorney that they had the authority to initiate zoning ordinances. The Board had not attempted to squash their ability to move forward with subdivision ordinance changes.

Mr. Di Peppe asked why the section was left out.

Mr. Fields stated because the amended section was the Zoning Ordinance.

Mr. Di Peppe stated it did not seem to make sense not to do it proper.

Ms. Kirkman stated they were two separate and asked to move forward tonight with what they could. She asked Ms. Schulte if anyone in the County Attorney's Office had reviewed the proposed legislation.

Ms. Schulte stated yes.

Ms. Kirkman stated under (a) Ms. Schulte added "the technical review committee shall forward a report for the Planning Commission's review and action". They never once received a report from the technical review committee and her understanding was there were many changes that would occur between the time of the TRC and the plan actually getting to them and the report they received was from the planner, not from the TRC. She asked why that line was in there.

Ms. Schulte stated that was currently in the ordinance.

Ms. Kirkman stated maybe they should fix it since they never received reports from the TRC by taking it out entirely. She asked if they ever received reports from the TRC.

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Ms. Schulte stated they would get notification of TRC and then they would have a member of the Planning Commission at TRC.

Ms. Kirkman stated this said "shall forward a report". They had never received a report from the TRC and asked if that was correct.

Ms. Schulte stated not just from the TRC but there was a reference in staff reports of what happened at the technical review committee and they would bring it forward to the Commission.

Ms. Kirkman stated but the report was from the planner.

Mr. Harvey stated the report was from the department and explained the technical review committee's review and how the plan would comply with the ordinances. It did not give the specific review comments that took place during the meeting.

Ms. Kirkman asked if it was a report from the TRC.

Mr. Harvey stated it was a report of the TRC's recommendations.

Ms. Kirkman stated the report was from the Planning Department and asked if that was correct.

Mr. Harvey stated correct.

Ms. Kirkman stated they should not be saying a report would be coming from the TRC because they were not getting a report from the TRC.

Mr. Fields asked if it was a report of activities from the TRC. They were getting information from the technical review committee. He understood her point but it was not completely inaccurate to say that they were getting information forwarded from the TRC. The TRC was a collective body, it was not like the Board of Supervisors.

Ms. Kirkman stated it actually was specified in the ordinance

Mr. Fields stated he understood but he was just saying how the process worked. He asked if they needed to eliminate that or just clarify that the information coming from the technical review committee comes to the Planning Commission.

Mrs. Carlone stated she appreciated getting the TRC ahead of time but it was the actual recommended changes and then the action taken that would be helpful.

Mr. Harvey stated they could include in the staff reports to the Commission all the TRC comments that were made throughout the plan review if that was what the Commission would like to see.

Mr. Fields stated they could institute a process where they implement the actual letter of this language of the TRC. He asked or should they say the planning staff shall forward all comments of the TRC to the Planning Commission.

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Mr. Harvey stated certainly.

Mrs. Carlone stated it would depend on the type, if it was a construction plan or whatever, but each staff member like environmental and utilities would all have comments. Some of them she did not feel they needed to get into like the size of the pipes. She stated there were some very constructive comments that would be good for the ones that did not attend.

Ms. Schulte stated they did at one time include some of the TRC comments as part of the package for preliminary plans when they would come forward and they could do that again.

Mr. Fields stated that would be a lot of information but if everyone thought it would be valuable then they could do that.

Mrs. Carlone stated that would help but a condensed version.

Ms. Kirkman asked if they really needed to write it into ordinance that the planning report would include the TRC comments.

Mr. Fields stated the intent here was that the Planning Commission have available all the comments from the technical review committee before it would begin deliberation on a set of plans and asked if he was getting it right. Language to that effect would certainly seem appropriate. It did not have to be this language and asked how about "comments of the technical review committee shall be made available to the Planning Commission for their review".

Ms. Kirkman stated that worked for her. She wanted to remind everybody that they had this thing in their Subdivision Ordinance that said they could go before the Planning Commission and get a waiver of any provision of the Subdivision Ordinance. If, for some reason, the applicant would have an unusual circumstance that would require him to have an extension, they could come before the Planning Commission and request a waiver and asked if that was correct.

Mr. Harvey stated correct.

Ms. Kirkman stated she thought there were two circumstances in which they should clearly allow the administrative decision to go beyond the usual number of extensions and she did not think it should include the entire list. First of all, 3 and 4 said virtually the same thing which was number 3 was approval required from the state and/or federal agency prior to County approval and number 4 said the inability of an applicant to obtain a decision from a state and/or federal agency and those were virtually the same thing. She thought they could condense those into one and if there was some hang up with an outside agency she stated it was a reasonable thing to go through administrative approval of an extension request. The same thing with number 5 and she thought they should remove "of which the applicant was not aware". It was the applicant's responsibility to know what they were required to comply with, however, there were times when revisions would occur while an application was in process and sometimes they would have to make substantial changes. The second condition she would suggest as appropriate for administrative approval of an additional extension was "revisions in state/federal regulations which are effective immediately and require a change in the plan". She suggested they strike all the others because they were too big. Other specific reasons that were not within the applicant's control were just about anything. She stated the issue about problems or

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difficulties with off-site easements and right-of-way acquisitions were something the applicant would need to get straightened out before they submit the application. That should not become a problem throughout the application process. She would suggest they, under the list, retain a condensed version of 3 and 4 and they retain 5 striking “of which the applicant was not aware” and instead substituting “which require a change in the plan”. If there were some other extenuating circumstance that would occur, the applicant could ask the Planning Commission for a waiver of the requirement.

Mr. Fields stated he understood what she was saying but sometimes right-of-way things could be extremely complicated. He was just thinking out loud, thinking through circumstances so as to not throw out the baby with the bath water. He obviously was not interested in giving anybody a free ride but he did not want to be unnecessarily punitive given how complicated stuff could be in the real world.

Ms. Kirkman stated the reason why she raised this was the applicant should really have those things sorted out before they submit a plan that would be dependent on those. She understood they could be very complicated negotiations and that was precisely why they should have them resolved prior to submitting a plan. Because they were asking staff to review a plan that may be dependent upon an easement or right-of-way they may never be able to obtain. She really did think it should be incumbent upon the applicant to sort those things out prior to submitting the application.

Mr. Fields stated he did not disagree in general, he was just thinking it through.

Ms. Kirkman stated if there were some extenuating circumstance, some completely new requirement that would come up that would mean they would have to get a right-of-way that they never anticipated, then they could come before the Planning Commission for a waiver.

Mr. Fields asked about combining 3 and 4 as it appeared to be exactly the same thing. Number 4 said “the inability of an applicant to obtain a decision (not a submission review)” and asked if number 3 essentially referred to being required to have a submission review and number 4 to be a decision from an agency where they were not technically required to submit the plan for review. He stated the way he was reading that he agreed it seemed essentially the same thing.

Mr. Harvey stated in the context of 3 they were saying getting an approval from a stated or federal agency and in the context of 4 sometimes there may be a decision that would have to be made whether a permit was required or a future approval was required and sometimes they may not know that.

Mr. Fields stated it was not necessarily the decision of approval or disapproval, it was the decision of permitting and/or applicability of that agency to review the plan.

Mr. Harvey stated yes and it could be in the case of a wetlands impact what type of permit the applicant was required to get. The Corps of Engineers had different types of categories of permits. The type of permit may affect the level of study, whether they would have to do endangered species reports which were only done in certain times of the year and that may have an affect to their timing also.

Mr. Fields stated they could combine those into one but certainly there did seem to be a slight shading of meaning.

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Ms. Kirkman stated if it was important to keep those distinctions it was fine with her. The one question she would have with staff was why project construction was in this section when this was about preliminary subdivision plans. It stated "which is necessary for plan approval/project construction" and she did not know why they were referencing project construction in a preliminary subdivision review.

Ms. Schulte stated they could probably take that out of the one but keep it in for 22-77 which would be for construction plans.

Ms. Kirkman agreed.

Mr. Fields asked if the Planning Commission wanted to adjourn and take this back up later on and everyone agreed.

3. Elimination of the Preliminary Subdivision Plan Process

Discussed in the regular meeting.

5. Propane Distribution Facilities

6. Agricultural Districts Lot Yield

7. Reservoir Protection Overlay (Deferred to subcommittee - Archer Di Peppe, Ruth Carlone and Gail Roberts)

8. Rappahannock River Overlay District (Deferred to subcommittee - Peter Fields, Ruth Carlone, Friends of the Rappahannock and Rappahannock River Basin Commission)

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 7:04 p.m.

Peter Fields, Chairman
Planning Commission

STAFFORD COUNTY PLANNING COMMISSION MINUTES

January 7, 2009

The regular meeting of the Stafford County Planning Commission of Wednesday, January 7, 2009, was called to order at 7:35 p.m. by Chairman Peter Fields in the Board of Supervisors Chambers of the Stafford County Administration Center.

MEMBERS PRESENT: Fields, Di Peppe, Mitchell, Rhodes, Howard, Carlone, and Kirkman

MEMBERS ABSENT:

STAFF PRESENT: Harvey, Roberts, Stinnette, Stepowany, Hornung, Schulte, Schultis and Doolittle

ELECTION OF OFFICERS:

1. Election of Chairman

Mr. Di Peppe nominated Pete Fields. Seconded by Mr. Mitchell. Mr. Mitchell made a motion to close nominations for Chairman. Seconded by Mr. Di Peppe. The motion to close passed 7-0. The nomination for Chairman passed 7-0.

2. Election of Vice-Chairman

Ms. Kirkman nominated Arch Di Peppe. Seconded by Mrs. Carlone. Mr. Mitchell made a motion to close nominations for Vice-Chairman. Seconded by Mr. Rhodes. The motion to close passed 7-0. The nomination for Vice-Chairman passed 7-0.

3. Election of Secretary

Mr. Di Peppe nominated Ken Mitchell. Seconded by Mr. Howard. Mr. Rhodes made a motion to close nominations for Secretary. Seconded by Mrs. Carlone. The motion to close passed 7-0. The nomination for Secretary passed 7-0.

DECLARATIONS OF DISQUALIFICATIONS:

None

PUBLIC PRESENTATIONS:

None

PUBLIC HEARINGS:

1. Amendment to Zoning Ordinance - Amendment to Section 28-35, Table of uses and standards, of the Zoning Ordinance, pursuant to O09-04. The amendment will permit clubs/lodges/fraternal organizations as uses by-right in the B-1, Convenience Commercial, Zoning District.

Natalie Doolittle presented the staff report. She stated clubs, lodges and fraternal organizations were by-right uses in the A-1, Agricultural, B-2, Urban Commercial, and RBC, Recreational Business Campus, Zoning Districts. Conditional use permits were currently required in A-2, Rural Residential, PD-1, Planned Development 1, and PD-2, Planned Development 2, zoning districts. Clubs, lodges and fraternal organizations were currently not permitted within the B-1, Convenience Commercial, Zoning

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District. The proposed amendment, O09-04, was referred by the Board of Supervisors by Resolution R08-550 at its November 5, 2008 meeting. She stated the amendment proposed clubs, lodges and fraternal organizations to be permitted by-right in the B-1 zoning district. Clubs, lodges and fraternal organizations were typically community-based groups and their membership was usually comprised of citizens from the nearby communities. The purpose of the B-1 zoning district was to provide retail and personal services to serve adjacent residential areas. Staff recommended approval of the proposed ordinance and believed that the community-based nature of clubs, lodges and fraternal organizations was compatible with the purpose of the B-1 zoning district.

Ms. Kirkman asked about the date by which this needed to be acted on. She counted the 90 days and got February 6, not February 4. She asked if staff could double-check the date and get back to them during this public hearing.

Mr. Fields opened the public hearing.

With no one coming forward, the public hearing was closed.

Mr. Mitchell made a motion to recommend approval to the Board of Supervisors. Seconded by Mr. Howard.

Ms. Kirkman made a substitute motion to defer this to their February 6 meeting. They would have to confirm the date and if it was not the February 6 meeting, their last meeting in January. At the same time advertise and hold a public hearing on the original CUP they had done. Seconded by Mr. Di Peppe.

Mr. Fields asked if there was any discussion.

Ms. Kirkman stated they did confirm with their County Attorney that they did have the ability to independently raise funds for the actions of the Planning Commission. She had raised the money that was necessary to advertise this so they would not need to get public funds or Board approval for the advertisement.

Mr. Fields stated they had been put in a very unfortunate position with this issue. They all felt they had a reasonable dialogue on the issue and a reasonable set of propositions to move two ordinances forward that had two different views of the issue. He stated he felt their dialogue on it and their movement of two was respectful of the process and respectful of the intent and wishes of the Board but also was respectful of what they felt to be the public interest. He found it extraordinarily distressing that a duly advertised public hearing of the Planning Commission could be simply thwarted by an administrative act. He stated they did have the ability to raise their own funds and he was going to support this. This was strangely uncharted territory for a Planning Commission to go down but he thought they had been put in a position where they did not really have any choice. He thought the integrity of the process as envisioned in the Code of Virginia that enabled the Planning Commission was at stake. He stated to vote to recommend denial or approval of this was to miss the picture. The big part of the Planning Commission's decision was that they were saying maybe not by-right but they were not prohibiting lodges from that district. The majority just thought that a CUP would be more appropriate and that was a valid statement to make.

Mrs. Carlone stated she was glad they would not have to do a bake sale.

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Mr. Fields asked if the cost of advertisement was about \$400.

Mr. Harvey stated correct.

Mrs. Carlone stated she did agree they should have been allowed to go ahead with the public hearing.

Mr. Fields asked if they had time to have the public hearing on the 21st if it was authorized tonight.

Mr. Harvey stated no and their normal protocol with the paper was that it would have to run two consecutive weeks prior to the meeting and the paper would require some lead time in advance to set up the type.

Ms. Kirkman stated they had already determined it was possible given the paper's advertising requirements to put the ad in tomorrow and to have it advertised in time for the next Commission hearing. They had done that and the Board had done that on various public notices.

Mr. Fields asked if they could get it to the paper tomorrow and they would run it in time for the 21st and if it would be up to them to get it to the paper.

Mr. Harvey stated one potential issue was that, the instructions he had been given, there was to be no staff work on the issue so it raised the process concerns about preparing reports and forwarding any documents. If the Commission drew up an ad staff would send it to the newspaper at the Chairman's request. As far as a staff report based on the information he had been given they could not prepare one. The Commission could prepare its own report and staff would post it on the web with the agenda.

Mr. Howard asked, for a point of clarification, where the \$400 was coming from.

Ms. Kirkman stated it was raised.

Mr. Howard stated he would like to know the sources, where it was raised from. As a Planning Commission member he would like to know who was donating money to the Planning Commission so he could be sure there was no conflict.

Ms. Kirkman stated she was.

Mr. Howard asked how the money was going to be recorded in terms of payment. Was this something that was required to be paid in advance of the advertisement and he had not seen anything that would describe the process.

Mr. Fields stated like he said they were in uncharted territory.

Ms. Kirkman stated she did bring her checkbook tonight if that was required.

Mr. Howard asked if it would be prudent to at least make a recommendation to the Board of a process from the Planning Commission.

Mr. Fields stated that was certainly reasonable and agreed if they were going to need to have their own funds, which was permitted in the Code, then they would need some way of accounting for them and

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disbursing them and some way of being accountable for them and where they would come from which was a valid concern.

Ms. Kirkman stated they may want to come up with a procedure but this really was none of the Boards' business, they could not regulate them on this.

Mr. Fields stated the idea being ultimately they wanted to resolve this so they were not at this impasse.

Mr. Harvey apologized when he said previously staff would forward these to the newspaper but he was reminded that posting things on the web and all was not allowed.

Mr. Fields stated they understood. They were not shooting the messenger and knew Mr. Harvey was just doing what was required of him and they respected that.

Mr. Harvey stated to clarify the first meeting in February was February 4 according to the calendar.

Mr. Di Peppe asked if they were not allowed to put it on the website would that be a problem with advertising or if it just had to be advertised in the paper. He understood that Ms. Kirkman could go down to the newspaper with an ad, write a check and they would take the check. If there was no requirement and it was unfortunate that it was not going to be on the website because it was obviously county business and should be on the website. It just goes to show how this all breaks down was that the Commission could not even propose an ordinance that costs \$400 to advertise, that was how hamstrung the Planning Commission was and that people were trying to control them so much they would say it was a money issue. But this was an issue that was \$400 and he would like to go on record that it was not a money issue, it was a control issue.

Mr. Fields stated he supported this and believed, particularly in this case, was something that prior to this policy was acted on in good faith by the Planning Commission. He highly questioned the ability of any entity to arbitrarily withdraw an advertisement for public hearing they had acted on in accordance to the Code. Since they did not have staff, they did not have counsel to review the ad to see that it was accurate and technically compliant with the Code so they would have to take their chances.

Ms. Kirkman stated the reason she proposed this was she remained hopeful that the broader issue of zoning ordinances could be resolved. Unfortunately they had a time limit here and she thought the last discussion regarding this issue really was that as a by-right it would be very problematic to have these clubs and lodges allowed as a by-right use particularly since some of them served alcohol, had late hours and that it was only through the CUP process that they could put conditions on that. If it were not for the time limit they could hold off on this and hopefully work towards some different resolution of the larger issue but, unfortunately, they did have the time limit in front of them. She stated they really did need to protect the citizens' interest and that was why they were up there.

Mr. Fields stated if they had different views of it that was fine but all views needed to have the right to be part of a debate.

Mr. Di Peppe stated he would like to donate \$100 to the cause.

Mrs. Carlone stated she would too.

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Mr. Fields stated they would all chip in.

Ms. Kirkman asked if they had received a resolution on the date issue from staff because that was important as it would give them a little more time around the advertising.

Mrs. Doolittle stated they still came up with February 4.

Ms. Kirkman asked if they had to act on this by February 4.

Mr. Harvey stated February 4 was the next scheduled meeting.

Ms. Kirkman asked Ms. Roberts if they deferred this to the 4th would they be in compliance with the requirement that they act on this in 90 days.

Ms. Roberts stated if the 90 days was the 4th, yes.

Mr. Fields stated the motion was to defer to February 4 and to forward an advertisement for the alternative version of O09-04 which was identical in all respects except to substitute CUP for by-right.

Mr. Rhodes asked if they were attempting to do the advertisement for the 21st or for the 4th.

Ms. Kirkman stated she literally wanted to see it on a calendar to see if February 4 was the correct date.

Mr. Harvey stated in looking at the calendar the newspaper typically required them to put an ad in Thursday and it would run the next two consecutive weeks so that would take them past the 21st. That may be something they could work out with the newspaper as far as the timing. Since they were a government entity and they do it in bulk maybe the newspaper would have different restrictions than they would have for private groups but he was not certain.

Ms. Kirkman asked if anyone had a 2008 calendar.

Mr. Rhodes stated it appeared the 90th day was the 4th.

Ms. Kirkman stated it would be advertising for the 4th. She would like to amend it to say the advertisement would be under the name of Mr. Fields as the name of the Chair for the Planning Commission and that he would review it before it would go out.

Mr. Howard asked if this was the item O09-04 which a public hearing was scheduled for this evening.

Mr. Fields stated correct and that it had been held and they were in the process of disposing of it and deciding how to act. The public had a chance to speak.

Mr. Howard asked if they wanted to post the same notice or was there something unique about the way they were going to go after the next notice.

Mr. Fields stated they just had to advertise the alternative ordinance in the same way the one tonight was advertised. The advertisement was ready to go for the alternative ordinance but it was pulled at the last minute at the direction of the Board of Supervisors.

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Mr. Howard asked where the language was for the alternative ordinance.

Mr. Di Peppe stated it was identical to this except it substitutes CUP for by-right. They could use the exact same advertisement except substitute CUP.

Ms. Kirkman stated they did see the language with CUP instead of by-right in the ordinance and this Planning Commission did already vote for that to go to public hearing so really the motion was to advertise what they already voted to go to public hearing.

Mr. Di Peppe stated since it was a money issue they solved that.

Mr. Howard asked if it was a withdrawal of the original motion.

Mr. Fields stated the substitute motion entails the mechanism whereby they were proceeding with the advertisement on their own initiative.

Mr. Howard asked if they would be changing one or two words.

Mr. Fields stated when they voted to send this to public hearing they voted to send two ordinances parallel to public hearing, this one and the one that essentially mirrored it except substituted CUP for by-right. They voted as a body to send both of these forward and voted as a body to send both of these to be advertised for public hearing. The actual advertisement was never submitted to the paper on the order of the Board of Supervisors for the alternative advertisement. He stated what they were doing was deferring action on this which had duly received its public hearing this evening and then voting on their own initiative to advertise the alternative which they had already voted to send to public hearing. They were simply voting to advertise it using their own funds which was a mechanism permitted under the Code of Virginia.

Mr. Howard stated he was not challenging what was right and what was wrong, what he was challenging was should they, after this was disposed of by vote to a deferral, was that really what they wanted to do or did somebody want to propose the change in language because this hearing had already occurred.

Mr. Fields stated the change to the other language was proposed, already voted on and sent to public hearing by this body about three meetings ago. They had already reviewed, debated, discussed and voted on the other language. This was sent to them by the Board so they did not have the right to change the ordinance.

Mr. Howard asked if after this somebody would have to bring up another motion.

Ms. Kirkman stated, to clarify, her substitute motion was to defer action on this to February 4 and to advertise for February 4 the CUP ordinance that they already approved to go to public hearing. That was her motion and it was duly seconded.

Ms. Roberts stated that should actually be two separate motions, one to defer and one to advertise the CUP.

Mr. Howard stated that was his point that they were not voting on the same issue.

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Ms. Kirkman asked Ms. Roberts to please point out to her in Roberts Rules of Orders where it said they could not have a two part motion.

Ms. Roberts stated a motion should be one topic. She did not know if it was in Roberts Rules. She thought the cleaner should be two separate motions.

Mr. Di Peppe asked if on the substitute motion they were still going to use O09-04.

Ms. Kirkman stated it had a separate ordinance number.

Mr. Di Peppe asked what the ordinance number was.

Ms. Kirkman stated she would have to go back and look.

Mr. Howard stated he commended what they were trying to do on the private side but he thought they had muddied this and it would come back and haunt them.

Mr. Harvey stated Mr. Stepowany was indicating it was O09-05.

Mr. Rhodes asked if it would be problematic to modify the substitute motion to just address how they would dispose of this particular ordinance and then later do another motion that would address the separate issue.

Ms. Kirkman stated the correct way to go about doing that under Roberts Rules of Order was for someone to make a motion to divide the question and she repeated it was not necessary under Roberts Rules of Order but somebody could make that motion.

Mr. Rhodes stated it was not stated that it was necessary, it was stated that, upon the advice of legal counsel, it might be a cleaner way in the long run to do it.

Mr. Howard stated the question was they wanted to advertise different wording for this zoning ordinance. The motion as he understood it was to defer this to February 4 to give them time to put out a second notice of public hearing on this ordinance. That was what he understood to have taken place. If it was not what took place he would like some clarity on it.

Ms. Roberts stated what she understood the motion to be and why she thought it would be cleaner with two was she thought the motion deferred the one that was before them tonight and then also authorized a second ordinance that allowed this with a CUP. They were dealing with one motion with two different ordinances which was why she did not think it was very clean.

Mr. Di Peppe stated he thought she was correct. He thought they should defer one and then do the other because they were two separate issues.

Ms. Kirkman stated if somebody wanted to make a motion to divide the question they could but again she wanted to clarify that the second part of the motion was not to authorize a new ordinance, it was to advertise the ordinance that this Planning Commission already voted to approve to send to public hearing.

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Mr. Howard stated in Roberts Rules if they divided the question it actually would separate the question into two separate motions and both motions would have to be stand alone motions. In this case that was exactly what would occur should somebody divide the question.

Ms. Kirkman made a motion to divide the question. Seconded by Mr. Di Peppe. The motion passed 7-0.

Mr. Fields stated he would entertain a motion to defer action on Ordinance O09-04 to February 4.

Ms. Kirkman stated that motion had already been made. Under Roberts Rules of Order what they just did was divide the motion so the motion had already been made. The proper procedure at that point was to vote on the first part and then to vote on the second part.

Mr. Rhodes stated Mr. Fields was duly corrected.

Mr. Fields stated the first part, substitute motion part A was to defer action on this ordinance O09-04 to February 4. The motion passed 6-1 (Mr. Mitchell opposed).

Mr. Fields stated now part 2, to authorize the advertisement of Ordinance O09-05. The motion passed 5-2 (Mr. Howard and Mr. Mitchell opposed).

Mr. Fields stated the language they would submit, he would review it and he was semi-deputizing Ms. Kirkman to be the Treasurer for this. They would submit all solicitations for the costs were welcome from not only members of the Planning Commission but from the general public as well. He thought it was incumbent upon his responsibility as Chairman that he be there as well as Ms. Kirkman when they submit the ad to the paper.

UNFINISHED BUSINESS:

2. SUB2600305; Southgate, Section 2 - Preliminary Subdivision Plan - A preliminary subdivision plan with 24 duplex units on 12 lots, zoned R-1, Suburban Residential, pursuant to the previously approved Cluster Concept Plan, consisting of 10.81 acres located on the west side of Cambridge Street approximately 1,500 feet south of Edward E. Drew Middle School on Assessor's Parcels 45-163 and 45-163A within the Hartwood Election District. **(Time Limit: March 4, 2009) (History - Deferred to December 3, 2008 Regular Meeting at Applicant's Request) (Deferred at December 3, 2008 Work Session to January 7, 2009 Work Session)**

Mr. Fields stated this item was deferred to the January 21, 2009 work session.

NEW BUSINESS

Ms. Kirkman stated she had an item she would like to bring up under New Business regarding the minutes. Their By-Laws stated that they needed to approve the minutes within thirty days. They have not had any minutes since the May 5 meeting and were substantially behind in the minutes. That was a problem because one of the things that happened was when something they do would go before the Board they were getting draft minutes that the Planning Commission had not yet reviewed. She thought they needed a discussion about how they could address the delays in getting minutes.

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Mr. Fields asked Mr. Harvey if there was a process they could do to help out staff and if it was a question of workload.

Mr. Harvey stated yes and staff intended on having a whole slew of minutes for the next meeting. He stated staff had an issue throughout the year with manpower and a key person was out of the office and that had an impact about their overall workflow because the people who did minutes also did Planning Commission mail-outs, Board of Supervisors reports, etc., but staff was closing the gap. They should see a substantial number of minutes to flow in beginning the next meeting and then continuing on. He stated staff hoped to be caught up in the next month or so.

Mr. Fields stated that sounded good and he agreed they wanted their minutes as up-to-date as possible.

ORDINANCE COMMITTEE

Mr. Fields stated they would move back to the Ordinance Committee and number 2, Establishment of time limits for plans. Where they left it he thought they were in the section 22-61 on page 2 subparagraph (a) numbers 1 through 6.

Ms. Kirkman stated that was where she recalled they were in the discussion. They were specifically discussing whether or not they needed to leave something in about easements or if that could be adequately addressed in the exceptional circumstances through an application for a waiver to the Planning Commission.

Mr. Fields asked what was involved in getting a waiver from the Planning Commission and what the process was.

Mr. Harvey stated there was an application form that someone would have to fill out and they would track it as part of the application review. There was also a fairly substantial fee involved because it was essentially creating a new staff report and new case before the Commission.

Mr. Fields stated he understood the concept and agreed with Ms. Kirkman's assessment that number 6 was impossibly broad and there was no reason to list something that was impossibly broad if there was a waiver process. He did not want to keep deferring but he would like to get a handle on a walk-through if somebody did really want to get a waiver because coming to this body and asking for a waiver was superior anyway as it would get them face to face and to the meat of the thing. He stated he fully wanted to be able to respond to truly individualized cases of hardship or unique circumstances. He asked if by the next meeting they could get a hypothetical walk-through.

Ms. Schulte stated yes.

Ms. Kirkman stated the other thing that would be helpful was to get concrete examples of what the right-of-way issue was and how often in the last year that had delayed plans. She also had two additional suggestions for an (e) and an (f) which spoke to why they would need to defer this so people could see this in writing. She wanted to talk about why they needed to get this in place. One of the legal issues they were running into was the application of ordinances to applications that were in process and that was wrapped up in several of the lawsuits against them now. She stated one of the ways they could make that whole process of implementing ordinances much cleaner was to tighten up how long their applications were in process. She reviewed a number of other localities' ordinances and there were a number of localities that had restrictions in some form or fashion about how long

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applications could remain in process. At the last meeting they had an application that was in process for six years. Clearly they would need to do something to tighten up the process. That would go a long way and they had heard many complaints about how long the application process took so it would address that complaint. It would also make implementation of new ordinances much cleaner. She stated with that in mind there were two additional changes she would like to suggest, both of these came from other localities' ordinances. The next change would be "(e) The applicant is entitled to three reviews by the agent and appropriate review agencies. If plans are not in a form that can be approved at the end of the third review, the plan shall be rejected. A new application and fee for plan approval shall then be required for approval." And "(f) Preliminary plan applications that do not meet the requirements for official submission within one year of the date of the application shall be rejected. A new application and fee for plan approval shall then be required for approval." She stated basically this was saying there were two parameters on how long applications could stay in process. One was they would get three reviews to get it right and the other would say from the date of submission of the application they would have a year to meet all the requirements for an official submission. She knew her colleagues would want to see this in writing and asked staff to put it in writing and get legal review on it before the next meeting. She would like to suggest they consider those two additions to this section regarding preliminary subdivision plans.

Mr. Rhodes asked if any of the limitations, either the three or the one year, envision changes that the county imposed on them in the process. If they make a change at the 50th week and the applicant could not get it done by the 52nd week, there was a dynamic there and he did not know if she envisioned that being included in there.

Ms. Kirkman stated honestly her thought was if they could tighten up the preliminary subdivision plan process they could move to where they would not have to apply ordinances to applications that were in process so that they would not have that problem. She stated the problem they had now was they had preliminary plan applications that were sitting around for years and that were operating under ordinances that technologically they had moved far beyond. If they could tighten up how long they sit then she was hopeful they would be in a position where they would not have to apply ordinances to applications that were in process.

Mr. Fields stated he thought it was fair all the way around if they would get the process streamlined and effective.

Mr. Howard asked if they could learn the counties that had those two specific or similar type of wording.

Ms. Kirkman stated she did not carry it with her but she would be glad to email it to the Commission members.

Mr. Fields asked if there were other changes and he knew they were deferring it for at least another couple of weeks to get clarification on the waiver process. He asked staff if it was clear to them about the hypothetical waiver, to show them step by step and costs. He asked them to write up the changes suggested by Ms. Kirkman and if there were any other things to ask of staff.

Ms. Kirkman stated she had also asked staff if they could concrete examples of the right-of-way issue and how often that would actually come up leading to a substantial delay that could not be addressed within the timeframes laid out.

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Ms. Schulte asked how they would want her to proceed to amend or change the other section they were talking about in the work session with the six items under subsection a.

Mr. Fields stated they were still discussing the right-of-way easement issue and were looking for examples of how they wanted to handle that. Depending on what the waiver process was would they want to articulate a right-of-way easement a reason for extension or allow that to fall under the blanket ability to get a waiver. They would not know the answer to either question until they examine (a) how often and complicated easement issues were and (b) how complicated and expensive the waiver issue was.

Ms. Schulte asked if they wanted to merge 3 and 4.

Mr. Fields stated he did not think they needed to. He understood the similarity.

Mr. Di Peppe stated Mr. Rhodes raised an issue he thought was important and what he would like staff to come back and tell them about. He asked what would happen in this process if they gave them a year and on the 50th week they would come up with another process. In their experience, he asked if that could happen and what would they do. If they gave somebody a year and on the 50th week, he thought only to be fair they needed to have some way to address that, that they might get a month extension but he was not saying they give them another year. He thought Mr. Rhodes raised a very valid point in fairness to people who had done due diligence all the way along and then something would come up at the last minute. He would like staff to address that and make a recommendation.

Mr. Howard stated he thought subsection (a) 6 covered that and that would hopefully be what the agent would list as one of the reasons. He was hoping there would be a variety of examples that occurred that were not anything to do with the applicant.

Mr. Fields stated the problem in Mr. Rhodes' suggestion was some of it was the difference between theory and practice. He stated in reality most major ordinance changes were being talked about and discussed for a considerable amount of time and many people utilized that period of time when they hear about the possibility of an ordinance and the actual effective enactment date of the ordinance to put plans in ahead of that knowing full well they were going to run into a conflict and they were going to want to use the idea that they were already in the pipeline as an excuse not to comply with the new ordinance. The ability to draw a distinction between those scenarios was critical in his mind to figuring out how to give people protection for legitimate cases of hardship but not grandfather people who were gaining in the system so to speak to their advantage. He stated most ordinances did not come out of the blue. The people trying to beat the clock on diligence was a little bit of an issue.

Ms. Kirkman stated she felt strongly enough in opposition to number 6 being included in this ordinance at all because it really was so big that they could drive a truck through it. For that reason at this time she made a motion that they remove number 6 from both Sections 22-61 and 22-77. Seconded by Mr. Di Peppe.

Mr. Di Peppe stated he thought it was a little bit broad also.

Mr. Fields stated he did not like the wording but to say that nothing like 6 should be in there was not something he could personally make a decision on at this point.

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Ms. Kirkman stated what she was hearing it was premature to remove this language from the draft and with that in mind she withdrew the motion.

Mr. Di Peppe stated he would withdraw the second.

Ms. Kirkman stated they had discussed under Section 22-61, because it applied only to preliminary subdivision plans, on number 4 removing “project construction” from that and under number 5 striking “of which the applicant was not aware” and instead substituting “which require a change in the plan”.

Mr. Fields asked if they had to move this to the next ordinance committee by a vote. He thought they could just consider it moved on. He stated in their reorganization they had a separate Ordinance Committee with a separate Ordinance Chairman and Mr. Di Peppe did not want to continue as Chairman. It seemed as they had been functioning as a committee as a whole on every ordinance issue and it seemed totally appropriate that, at least for the time being, unless they see a compelling necessity that they for now not have an Ordinance Chairman and would simply work on them in session just like they do everything else. He wanted to bring up how they organize their work but they would get through Ordinance Committee first. He stated they would move on to number 3, Elimination of the Subdivision Plan Process.

Jon Schultis stated the last time they were talking about the elimination of the preliminary plan he brought to their attention some concerns he had with the concept plans and how they would put that together. He stated he was instructed to clarify the table presented to them at the last meeting and the information provided this time hopefully met the needs they were looking for.

Ms. Kirkman asked if he had discussed with the County Attorney’s Office how they could structure the subdivision ordinance and eliminate the preliminary plan.

Mr. Schultis stated yes.

Ms. Kirkman asked if they had started talking about possible language for that.

Mr. Schultis stated the last time they were together he brought forward the report and was looking for their thoughts and feelings on what he discussed with the County Attorney’s Office and he would be happy to reiterate some of that. In speaking with several members of the County Attorney’s Office they were looking for a way to incorporate research and preliminary plans with other departments need for a concept plan of sorts. He stated the big question was how they would provide a concept plan providing minimum information that would not constitute a preliminary plan. The major justification behind that was the State Code of Virginia did not provide any minimum requirements for what was required of a preliminary plan. If they were to put together a concept plan with some basic facets that other county departments had indicated that they would need, it would be hard to say this was not a preliminary plan, this was a concept plan, it did not count, they were not vested to what was included in the State Code for vesting of the preliminary plan. Their thoughts in meeting with the County Attorney’s Office was they could pool together the standards that they would request in a concept plan and compare them with what was already required on the preliminary plan and have a chart that would compare and contrast the two so they would know what they were looking for this concept plan. He stated another important point that came from that meeting was there were preliminary plans throughout Virginia and various small counties that did not require very many things to be on there and a reasonable argument could be made that their concept plan would constitute a preliminary. Being that this was very unfamiliar water for all of them and would be very much so for the state, it would

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boil down to how they would do a concept plan that would not be a preliminary plan. His thought was that it might be something that would have to be determined in court and he was not necessarily thinking that.

Ms. Kirkman asked why did there need to be a concept plan separate from the final.

Mr. Schultis stated the Utilities Department was the first department he met with and they indicated to him in order to be assured that they would have the amount of water that would be needed to support the subdivision they would need to see something conceptual ahead of time. Additionally, they would need to see a hydraulic analysis.

Ms. Kirkman asked why that could not be part of the final plan.

Mr. Schultis stated they did not want to be in a situation where the final plan would come about and it had been turned in, the engineering work had been done and it had been submitted and the ball started rolling and midway through review they found out that the water was not there and that the sewer capabilities were not there. Essentially it was finding that out in the middle of the review as opposed to doing it ahead of time.

Ms. Kirkman stated she did not understand why that was a problem. That would be up to the applicant to make some initial determination ahead of time.

Mr. Schultis stated she was right, that it would ultimately be up to the applicant to provide that. These were concerns expressed to him by the Utilities Department and that they would like to see these things up front theoretically in order to do this. If they went down this road, it could be a likely situation that they would get to the point they were talking to and speaking to. For that matter, that was why the Utilities Department would like to see some initial work done in order to provide them an idea of what was coming as opposed to getting the entire gamut at once with the possibility of not being able to provide for that area.

Ms. Kirkman stated it was helpful to take these concrete examples and wanted to follow the Utilities example more closely. They had a Master Water and Sewer Plan down to specifying sizes of mains, etc. The application would have all that information available to him prior to making the application. The applicant would have the ability to hire engineers to make some initial determination of whether or not there was adequate sewer and water in the area and asked if that was correct.

Mr. Schultis stated yes.

Ms. Kirkman stated she did not understand the Utilities' concern because all they would have to do was review the plan, compare it up to the Master Water and Sewer Plan and say yes there was the capability or no there was not.

Mr. Schultis stated he would love to enlighten her on their thoughts and feelings on this. This was a meeting he had with them and these were thoughts and concerns expressed to him in his effort to give the Planning Commission the information they needed. He stated next time they convened he could ask that some of the Utility folks be present.

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Ms. Kirkman stated she understood they wanted to know for planning purposes what was coming but that was different than the decision of whether or not there was existing facilities or adequate planned facilities.

Mr. Schultis stated he did not necessarily disagree with her.

Ms. Kirkman stated if they did not have to have a conceptual plan that would eliminate the whole problem of conceptual plans. She asked what other departments said they would meet.

Mr. Schultis stated the Stormwater Management folks and they admittedly said that they could go full throttle into a construction plan, however, like Utilities they did like to have an idea of something that was coming down the road and having looked at the site and have a concept so they could work out some of the issues ahead of time. That being said, if they were to go about eliminating that concept plan, if they were to eliminate a concept plan for a preliminary plan that would require extensive changes to the E & S and Stormwater Manual and it would require changes to the E & S and Stormwater ordinance. Also, with regard to Utilities, that would require ordinance changes that would have to be approved by the Utilities Commission ultimately in order to see that come to fruition because the Utilities ordinance did mention preliminary plans.

Ms. Kirkman stated Stormwater Management wanted to know what was coming.

Mr. Schultis stated they said they could live without it but they were very much in favor of having a preliminary concept plan of sorts.

Ms. Kirkman stated in terms of getting some of this information she had seen many localities require, and she thought they did something similar at some stages, a conference prior to submission of an application. She asked if it would be an opportunity to start having discussions of what was coming without submitting a concept plan.

Mr. Schultis stated in his research of this and putting it together, that was his initial thought. He thought definitely with a project of the magnitude of something without a preliminary all coming in at once, a pre-application meeting was a bit more than prudent. Whether or not that would satisfy all of the concerns by the departments he could go back and find out.

Ms. Kirkman stated it sounded what might be helpful was to have representatives from each of the departments that have said they would want a conceptual plan and have them come before them so they could better understand that.

Mr. Fields stated he thought that would be very constructive. As the new Comprehensive Plan was fairly well thought out about where they wanted the growth and where they wanted the water and sewer, they had gone over that with a fine tooth comb and it should not be a surprise to anybody where the capacity was or was not. That being said, he knew that people from Utilities were in some ways extremely conscientious about their responsibility for water and sewer partly because the lead time in making a change for them was decades. It would take 20 years to acquire the land and build it and unlike a lot of their infrastructures it would have a 50 year time horizon. He stated he thought it would be great to have them and have a dialogue on what they would see. He asked the County Attorney if they did not have a preliminary plan but somebody actually went through the act of filing a concept plan with Utilities would that become a significant governmental action of the type that would trigger a vesting determination.

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Ms. Roberts stated yes.

Mr. Fields stated he thought it was important because if the concept plans would still be in place he did not think they had achieved a lot of what the intent was. He asked if there were any other thoughts or questions for staff before they moved on.

Ms. Kirkman stated besides Utilities there was Stormwater and asked who else said they would want a concept plan.

Mr. Schultis stated those were the two departments he met with and when they got together to speak about this again he was sent in the direction of it sounded like they needed concept plans and what could they do to work within the concept plan. He spoke with the Fire Department and they said they would not need anything ahead of time and those were the three he was the most nervous about because they had ordinances attached to that. He stated he could run something by the Office of Transportation to get their thoughts and if they would have an opinion he would ask them to attend.

Mr. Fields stated that would be a good idea.

Ms. Kirkman asked, in the broad direction the Commission was headed, did they want to do away with the concept plan problem and just move straight to a final plan if there was a way to go about doing that.

Mr. Schultis stated that was the force he would use to put it together.

Mr. Fields asked if there were any other comments or questions to staff. He stated they would move on to number 5, Propane Distribution Facilities. He had a letter but that was all he had.

Ms. Kirkman stated they did not get copies of items for numbers 5 or 6.

Mr. Harvey stated one of the questions was since they were zoning ordinance amendments how were they going to deal with that. Also, he passed out a letter from Mr. Mark Anderson of Anderson Propane. He stated Mr. Anderson called him because he was aware of the Commissions' work on the propane storage tank issue and he offered up his expertise if the Commission wanted to have somebody from the propane industry involved in any discussion on it.

Ms. Kirkman stated she thought they should defer these items for one more meeting while they see what they could get done about the broader zoning issue.

Mr. Fields stated in reference to that he was having a meeting with Mr. Brito and Mr. Crisp next week to discuss this.

Mr. Di Peppe stated this was another example of how they could not move on with county business. The Propane Distribution was something they should be able to address but their hands had been tied.

Ms. Kirkman stated this actually came out through discussions with representatives of the county because of issues they had encountered on the Board of Zoning Appeals and concerns by county staff about what would happen if they did not get this enacted.

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Mr. Fields stated he would suggest they could always ask their respective appointing Supervisors to bring this up at the Board meeting but that was a rather cumbersome way to do things. He stated for 5 and 6, the Reservoir Protection Overlay was in a subcommittee and Rappahannock River Overlay was in a subcommittee. Moving on to another item of new business or basically how they were doing their work there, Mr. Harvey had a constructive suggestion. If they were talking about trying to achieve some efficiencies in terms of costs if that was truly a concern, but it also might just be one of process for them, they talked about some other organization structures last year and they did not make any substantial changes but it was always worth bringing up how they go about doing their work. He stated they could save some costs in terms of holding one public hearing a month for the evening session instead of two because there were certain repetitions in the advertisements that cost every time they were run. Unless they were absolutely overwhelmed they could go to one public hearing a month and then in the second meeting simply do work session type items and/or business items. He was happy to put that on the floor for discussion if anyone had any thoughts on it.

Mrs. Carlone stated the only thought that came to her mind immediately was when they would get some very controversial long discussions. She was not adverse to having it once a month.

Mr. Fields stated assuming they go once a month and if they needed to do a second one they could always have that discussion. He was not pro or con, he was just putting it out there as a constructive suggestion.

Ms. Kirkman stated she had the same concern they may end up, even with two a month they sometimes have gotten out of the meeting quite late so that was one concern she had as well. Secondly, they were often in a position where the Board would send them things with timelines on them and that would really constrain their ability. She appreciated the sentiment and asked if they had to have the County logo on the advertisement because that added a whole column inch to the ad. She would encourage staff to look at what was pro-forma versus what the legal requirement was and that might be some way to cut down on the costs.

Mr. Howard stated there was no compelling reason not to try it. If they directed staff to try and move the public hearings to once a month and they were still allocated the 24 public hearings, two a month, if they could get it down to 16 or 18 at some point over the course of the year versus the however many they have had, it did not seem like it would make sense not to try it. He understood what Mrs. Carlone and Ms. Kirkman were indicating.

Mr. Fields stated he would like to suggest it if possible to try to consolidate to one a month. If there were compelling circumstances to add a second one then add one and if they did not have to change their By-Laws to be rigid on it. He asked Ms. Kirkman if she would be willing to give it a try.

Ms. Kirkman stated she had no objection to it so long as they found it was not disruptive to their process and they would still have the flexibility they would need.

Mr. Fields stated he thought they could accomplish that and that would give them the ability to schedule either still starting at 5:30 or if they had a light session they could dispense with the 5:30 session on the one that did not have a public hearing and just go straight into their work in the evening. He stated they had a chance to look ahead as Mr. Rhodes had suggested they have a session devoted to what they would want to accomplish this year. They moved the Comprehensive Plan forward so that very large task was off their plate now. He stated it was a good opportunity to look ahead at the year and see what sort of things they would like to put as priorities and long range goals. He hoped they

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could really dig in to some significant issues rather than just spend their time at each meeting having something thrown on their plate and disposed of and move on. He stated from a personal perspective that the work he was looking forward to starting on with the Transportation Commission on the Transportation Corridor work could mushroom into something that the Commission as a whole could really embrace on a very large scale as they would identify the transportation transit corridors in the county and then ultimately that could also be a springboard for identifying regional and localized issues regarding land use and performance standards and all kinds of things. He asked what their next meeting looked like.

Mr. Harvey stated presently there were no public hearings scheduled. They just had the work session items that were carried over. He asked if they would like to schedule the work session items for the 7:30 portion of the meeting.

Mr. Fields stated yes if they could he would like to meet at 5:30 and spend an hour and a half discussing what they wanted to do in 2009. Maybe staff could come up with some compelling things on the horizon maybe arising from the Comp Plan but things that would not be controversial. Things they would see that had already been put in motion and if each Commission would come in with some things to discuss to make this a much more productive year in general.

Ms. Kirkman suggested now that they had done away with the Ordinance Committee that they might consider asking staff to return to, with the exception of next work session, the order for the work session that was in the By-Laws and prepare the materials in accordance with that.

Mr. Fields stated okay.

Mr. Howard asked if there was an example of what was missing.

Ms. Kirkman stated their By-Laws specified that the work session should proceed as follows and listed the items in order. She stated this gave staff the structure on how to order the items for the agenda since they no longer had the Ordinance Committee which was basically how they were splitting the agenda.

Mr. Fields stated they were talking about the same things just back to the original order.

MINUTES

None

PLANNING DIRECTOR'S REPORT

Mr. Harvey passed out the 2009 calendar. He stated the day before the Board adopted a modified calendar which included only one meeting in July, one meeting in August, as well as one meeting in November. He was just letting the Commission know if they wanted to modify the calendar they would need to consider that for a vote because their By-Laws specify they would meet on the first and third Wednesdays. The Board also took action on the hospital proffer amendment and conditional use permit and approved that application. They also approved the Dominion terminal station at Aquia Harbour, the conditional use permit. They also approved the Union Bank & Trust conditional use permit.

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Ms. Kirkman stated when they reviewed the proffer amendment and the change in conditions for the hospital CUP, there was an agreement entered into between the Planning Commission and the property owner regarding payment of fees to the county. That was an agreement between the Planning Commission and the property owner and asked if that agreement had been executed.

Ms. Roberts stated it was her understanding that it had not and that they agreed to enter an agreement. She was not sure if the Planning Commission had the authority to enter into an agreement for the county.

Ms. Kirkman stated they asked the applicant if they would pay and she made her vote based on the representation that the property owner made to them that they would pay the fees and asked if they paid the fees to the county.

Ms. Roberts stated she did not know the answer.

Mr. Harvey stated the answer was no.

Ms. Kirkman stated they had not paid the fees and so they made a commitment to the Planning Commission that they would pay the fees and they had not paid the fees and asked if that was correct.

Mr. Harvey stated correct.

Mr. Fields asked if they decided to structure that payment some other way by a scholarship fund or something.

Mr. Harvey stated the Board had a number of items that were discussed and he thought ultimately the vote was just to approve both applications.

Mr. Howard asked without charging the fee.

Mr. Harvey stated yes. It got a little confusing because there were a lot of discussions and he may have had it wrong but he knew there was ultimately there was a vote to pass both amendments.

Ms. Roberts stated she thought Mr. Fields might be correct about the \$20,000 donation to the nursing school or for scholarships. She was not sure if that passed.

Ms. Kirkman stated to clarify what the Planning Commission asked the property owner was would they pay the fees and they said to the Planning Commission yes they would and they would put it in writing. She made her vote based on the property owner's representation that they would do that and they did not put it into the conditions and they did not put it into the proffer amendment based on the applicant's good word that they would pay those and they had not paid those and they were not going to pay those. She stated they had all learned a lesson about what it meant when a property owner would make a representation to the Planning Commission.

Mr. Fields stated he agreed but his perspective might be a little different. He believed Ms. Roberts was right in that the Planning Commission had the authority to request any kind of a financial arrangement from an applicant on behalf of the county. He did adamantly believe they had the authority to generate their ordinances and he adamantly believed they could send them to public hearing with their own money. He was not sure if they could actually negotiate those arrangements on behalf of the county

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with the applicant. Though he agreed that the applicant agreed to pay the fee and not paying the fee or putting the scholarship was something different than that.

Mr. Howard asked Mr. Harvey if he was present for the Board of Supervisors meeting.

Mr. Harvey stated yes.

Mr. Howard asked if they indicated they would pay the CUP fee.

Mr. Harvey stated he did not recall a direct question to the property owner at that point in time to the Board. There was just discussion on the Board level.

Mr. Howard stated the applicant did not necessarily get up and speak before the Board.

Mr. Harvey stated they spoke before the Board but on the application itself.

Mr. Howard asked if they knew factually because Ms. Kirkman made a statement that he wanted to make sure was accurate. If it was not accurate he thought they should have it withdrawn from the notes until they were sure it was accurate that they had indicated that they were not going to pay the agreed upon amount. She made a statement that it was a conclusion that they were not going to pay and asked if they knew if that was factual.

Mr. Fields asked if by next meeting they could get a transcript of exactly what happened. No matter how they stood on the issue, the Planning Commission spent a lot of time talking about that issue and did have a reasonable good faith representation on behalf of the applicant on what was going to transpire and he thought they deserved to know what the outcome was.

Mr. Howard stated he agreed wholeheartedly and he also believed the applicant was sincere and he believed this applicant would come through some way somehow for the county with that funding because they had that reputation.

Mr. Di Peppe stated scholarships for nurses was not what they said. They said they would pay the fees and if they were going to do what they said, they would pay the fees.

Ms. Kirkman stated she believed her integrity was questioned and she wanted to be clear and to just restate the facts. The applicant did make a commitment to the Planning Commission to pay the fees and, as of today, has not yet paid the fees.

Mr. Rhodes stated and the statement was made that they were not going to and that was the point Mr. Howard was clarifying. He did not know that they were declaring they were not willing to pay those fees. There were a lot of interesting discussions that went along with the Board of Supervisors that could direct people in many different directions and he thought that was the point.

Mr. Fields stated if they were not going to pay the fees then shame on them. If they were making another arrangement that was not what they said they would, that was kind of splitting the difference that maybe it was not satisfactory. If they were not paying the fees then they were not. They were going to find out absolutely exactly what the dialogue transpired and what MediCorp said, not what they said they were going to do now that they have had this discussion but what MediCorp said during

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the whole course of the conversation on Tuesday and then they would resolve this. He stated they were done with this and they were moving on.

COUNTY ATTORNEY'S REPORT

None

SECRETARY'S REPORT

None

Ms. Kirkman stated there was another item on the Planning Director's Report which was regarding their meeting schedule and she did have a question. She stated January 21 the Board bumped their meeting from the 20th because that was a federal holiday and asked if the Board was scheduled to meet on a night other than the 21st. She just wanted to make sure there was not a room conflict for the 21st.

Mr. Harvey stated the Board moved their meeting to Thursday the 22nd.

Ms. Kirkman asked if they were going to make any decision now about their July, August and November meetings or were they going to hold on that.

Mr. Fields asked if they needed to, by statute, make those decisions now or did they have some flexibility. He wanted to just let the calendar stand and if they could eliminate some in the summertime great and if they were really busy and were rolling and they wanted to meet then they could meet.

Ms. Kirkman stated they would need to make that decision by about May so that they could plan summer schedules that would be helpful both for Commission members and staff.

Mr. Fields stated absolutely and by May they would try to resolve the summer so people could try to make vacation plans accordingly.

Mr. Di Peppe stated last summer they did good by eliminating the second meeting of one and the first meeting of another.

STANDING COMMITTEE REPORTS

None

SPECIAL COMMITTEE REPORTS

Mr. Fields stated Mr. Di Peppe requested to be appointed to the Civil War Task Force to look at the civil war park at the landfill.

Mrs. Carlone asked the new appointee if he would like to attend one of the ARB meetings as they were also working on some of the civil war.

Mr. Di Peppe stated he would be happy to and she could let him know when a meeting was.

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Ms. Kirkman stated since the honored representative from the Falmouth District had so much time perhaps he might also consider serving on the Historical Commission.

Mr. Di Peppe stated he was the liaison and they already had someone from Falmouth. He stated he had been talking to the Supervisors about a couple empty slots that needed to be filled.

CHAIRMAN'S REPORT

None

ADJOURNMENT

With no further business the meeting was adjourned at 9:06 p.m.

Peter Fields, Chairman
Planning Commission