

STAFFORD COUNTY PLANNING COMMISSION

June 17, 2009

The work session of the Stafford County Planning Commission of Wednesday, June 17, 2009, was called to order at 5:42 p.m. by Chairman Peter Fields in the Board of Supervisors Chambers of the County Administrative Center.

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

MEMBERS ABSENT: Howard

STAFF PRESENT: Harvey, Nugent, Stinnette, Zuraf, Stepowany, Schultis, Hess and Hudson

DECLARATIONS OF DISQUALIFICATION

None

REVIEW OF PROPOSED ORDINANCES

1. Elimination of the Preliminary Subdivision Plan Process (**Deferred to June 17, 2009 Work Session**)

Mr. Fields: We will move on to Review of Proposed Ordinances. We have the Elimination of the Preliminary Subdivision Plan Process.

Jonathon Schultis: Good evening Mr. Chairman, members of the Commission. I come before you again here to talk about the elimination of the preliminary subdivision process. The last time we were together to talk about this a couple facets were mentioned. First of all, I brought to your attention the State Code limitations that we have to work with this and the fact that we would be the only locality in the State to do this, so those State Code provisions make things difficult when trying to put this policy together. However, I was asked to continue to move forward with it. So, before you this evening, in your packet, you have a copy with a lot of lines struck through words which is kind of what the Subdivision Ordinance would look like. I also included the Utilities Ordinance with the minor changes that would go along with that. And lastly, a new Ordinance, well not a new Ordinance just kind of an old take on a new Ordinance for a residential site plan application, which is what I would envision this new application to be. The residential site plan would take the components of the preliminary subdivision plan that are already required in the Code and it would take the provisions that are already required in the construction plan. It would include the Planning Commission's final review for approval and put it all together in one section. I want to caution you guys not to get too excited because this is not a final draft; we are still trying to work it out. But overall, this is the direction that at least in preliminary talks with the County Attorney's office, the direction that this would have to go in order to facilitate this request. Still on the table is speaking with the Stormwater staff in greater detail on the changes that would need to be made on the stormwater manual and the Stormwater E&S Ordinance. With that, it concludes my presentation and I am available for questioning.

Mr. Fields: Are there any questions for staff? Ms. Kirkman?

Ms. Kirkman: Well, the manual is an administrative process, correct? So that does not require legislative action to maintain.

Mr. Schultis: I believe the changes to the manual need to go to the Board of Supervisors.

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Mr. Harvey: It is adopted by reference in the Ordinance and the Board usually passes a resolution including it in their policies for regulation. So, usually if we do have an amendment to the manual, we will send that forward to the Board.

Ms. Kirkman: Okay. So, that means all of our manuals and policies that go through the Board have the force of law, is that correct?

Mr. Harvey: There are a number of code provisions that say the policies that we have do essentially have the force of law. Most of them are passed by resolution or referred by ordinance.

Ms. Kirkman: That is good, thank you. And what are the types of changes that would need to be made other than substituting the word residential site plan for preliminary or whatever?

Mr. Schultis: I am not sure. That is the analyzation that would go behind that. It could be substituting words. Certainly it could be re-arranging sections that would mention stormwater concept and to include residential site plan. A lot of it could just be administrative and not necessarily substantial. But we have to look into that a little bit closer.

Ms. Kirkman: Okay.

Mr. Schultis: And we want to make sure that throughout the whole manual every instance is taken care of so you do not fall into a situation that is left undone. One other item that I did forget to mention is I am also working with the County Attorney's office to see what code provisions that we would need to keep in tact for existing preliminary subdivision plans that would be around after this was enacted. So that is another issue that we are looking into and how to address that.

Mrs. Carlone: Jon, do you have an idea how far along Stormwater Management was? You mentioned they were still working on it.

Mr. Schultis: Yes, actually, researching this ordinance is not the only thing I do, so I have not really had a chance to get around... I feel very sincerely that this change is going to require a very close look at everything. And it is going to require a lot of time in order to do it correctly. So, I want to be able to have the time to really dedicate to that stormwater manual and have it come out looking good.

Mrs. Carlone: Okay.

Ms. Kirkman: So, we have been working on this for, I don't know, eight or nine months now. When do you think we will get to the next...

Mr. Schultis: Well, for the last eight or nine months I have been answering the requests of the Commission and the different directions as far as the research and what it should look like. And I think now that we have a template in so far as what it will look like is just a matter of managing everybody's schedule in order to put it together and to make it work. There are a couple aspects to this that are outside the purview of the Planning Commission and we will have to work in concert, changes to the Utilities Code and the E&S Code and whatnot and all of that will have to be brought together. As far as timelines are concerned, I cannot necessarily say it will be done in a couple months. It needs to be done correctly and I will probably have to get back to you at a later date on an exact time when we could have it done the way it needs to be.

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Mr. Fields: Alright, any more questions?

Mr. Rhodes: Mr. Chairman, not a question, just a comment and it is a repeat of a comment before. Notwithstanding the desire to blaze a trail and see where this can lead as the first County in the State, I just have strong reservations that even with all the great efforts of Jonathon, you have been working very hard on this trying to dig through all the possibilities, and even with I know the great staff work you will do to take this forward, I still have grave reservations that the second and third order effects may have things that will come back to haunt us a little bit. And I have reservations against this initiative. Thank you Mr. Chairman.

Mr. Fields: Alright. I understand, Mr. Rhodes, it is a complicated issue. Believe me, I understand. Okay, any other comments, questions? Alright, thank you, Jonathon, we look forward to the next installment. Thank you for all the good work that you are doing.

Mr. Schultis: Thank you, sir.

2. Rappahannock River Overlay District (Deferred to subcommittee - Peter Fields, Ruth Carlone, Friends of the Rappahannock and Rappahannock River Basin Commission) (Request sent to Board of Supervisors for indefinite postponement)

Mr. Fields: Let us see where we are. Number 2 is an indefinite postponement which probably means quite a while.

3. Clustering in Agricultural Zoning Districts (Referred to Planning Commission by Board of Supervisors) (**Time Limit: August 3, 2009**) (**Deferred to June 17, 2009 Work Session**) (Request sent to Board of Supervisors for additional time)

Mr. Fields: Number 3, the clustering in the ag zoning. The Board received a request yesterday for an extension and, did they act on that?

Mr. Harvey: It is my understanding they are going to have it on their July 7 agenda.

Ms. Kirkman: Mr. Harvey, I have a question about that. It was pretty clear that we needed a... and I said that in my email to you that we needed a response because we will not be meeting again until after their July 7 meeting. Was that explained to the Board when they deliberated?

Mr. Harvey: I was not present when there was any discussion at the Board level on that. I do not know, I can find out what the deliberation was.

Ms. Kirkman: So, there may have been a lack of communication?

Mr. Harvey: I do not know what communication was had with the Board. I know that the information was provided in the packet of information at their desks but I do not know what discussion ensued.

Mr. Fields: Because our time limit is August 3 without an extension.

Ms. Kirkman: Well, Mr. Chair, maybe you can confer with the Chair of the Board.

Mr. Fields: Okay, I will see what we have got.

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Mrs. Carlone: Jamie, just while you guys will be working on this, there was just a couple of changes, very minor, just in words. On page 3 of the attachment, these are very minor but I think it is attachment 3, page 3, first paragraph, third line down, just a change there perhaps, “preservation of agricultural and forestal land”. And it says “and activity” but that does not make sense; if that can be taken out.

Mr. Stepowany: Under the definition of Lot, preservation?

Mrs. Carlone: Yes.

Mr. Stepowany: You do not think “and activity” should be included?

Mrs. Carlone: Well, if you read it... There was another one but it was so minor I will not even bring it up. Just that one really kind of stands out. Thank you.

Mr. Fields: Well, I think the intent though, “activity” grammatically reads strange but there does need to be something to get at the intent that you are preserving both the land and the act of farming and the act of silviculture. Somehow you really do want to articulate that we are preserving both the land and the activities that occur on that land.

Mrs. Carlone: (Inaudible). I was just saying by itself it does not...

Mr. Fields: I know, the way it sits there it is very odd.

Mrs. Carlone: (Inaudible).

Mr. Fields: Because that is what you are getting at right? I assume by that phrase.

Mr. Stepowany: Correct.

Mr. Fields: Okay, that is a good point. Did you have a presentation on this?

Mr. Stepowany: Yes, Mr. Chairman. Just to bring the Planning Commission up-to-date. There were a couple requests made by the Planning Commission at the last meeting and in the very first part of the memo we did include the provisions for the various transitional buffer yards. When Ms. Kirkman pointed that out in the Transitional Buffer Matrix, depending on what the adjoining use it, it is either A, B or C. And she wanted to know what A, B and C meant, so that is provided. And then we had a grammatical error for the Section 110.2. Before I get to the third part, Mr. Harvey also volunteered that we would provide examples of what we have been using in the past with the Board and other subcommittee meetings on how clustering in the agricultural zone would look. These examples are not specifically to diss ordinances that have been used in the past for other proposed clustering in the agricultural ordinances. If I could have the computer please, I will go over those real quickly. Again, this was prepared by our GIS office as a hypothetical property. This was a 70 acre parcel with some more environmental features to the left with the RPA. This was that parcel divided into 3 acre lots and they would have gotten 16 lots with the road area 3.55. This was a basic example of a clustering where they just had the open space and the forestal and again they got 22 lots. They do not really tell you what the minimum lot size is but since it is 41.17 acres in lots and there are 22 lots then it is a little less than 2 acres a lot under this condition. This is another example where again they have 22 smaller lots and they have more open space. This is a 1 acre lot with the maximum open space. And then this was an example that was drawn up where the open space would actually be a lot and what this ordinance encourages is

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called a preservation lot. So, even though these were prepared six or seven years ago, this was a case where they actually created a preservation lot which was something that this ordinance does. This was an example of this ordinance. It is modeled after Hanover County and this is an actual subdivision in Hanover County that was sent to us. It is hard to tell but this whole big area back here with this long driveway and all these houses is your preservation lot. There are 10 small lots along here and they have common open space here and common open space here. So this is an actual subdivision that was established under the guidelines of this ordinance that was modeled. The difference is that Hanover County does not have a minimum lot size. And all these lots have drainfields within their limits of their lots also.

Ms. Kirkman: Excuse me. And how does Hanover County derive the number of lots allowed?

Mr. Stepowany: I would have to look and see what their density requirements are.

Ms. Kirkman: Could you follow-up on that for us please?

Mr. Stepowany: Sure. I do know they were more strict in density bonuses, that the more open space you provide the more densities you get. And they also have percentages of open space. So, I can look to see what their density requirements are.

Mr. Fields: Their underlying zoning is 1 per 10 acres, right? In Hanover?

Mr. Stepowany: I would have to look that up.

Mr. Fields: Or greater. I am pretty sure that is correct.

Mr. Di Peppe: Do they have reserve drainfields too?

Mr. Stepowany: I would have to look that up.

Mr. Di Peppe: I was just wondering.

Mr. Stepowany: We just asked for an example to use for the discussion purposes but I can look that up if they have the reserve drainfields. We do not know if these meet the drainfield requirements that we have. The second part of this presentation is small lots with drainfields within Stafford County and those were sent to you. This is Williams Estates, which is an approved subdivision. These 3 lots at the end of the cul-de-sac are exactly 1 acre in size and some of the other lots are 1, 1½ acres. These are all current drainfields that meet today's requirements. This is on water but it does require drainfields. And then I was given a plat and three different sheets for Ellison Estates. Again, they are all 1.something acres and there are three sheets. Again, they have the current drainfield requirements. From all the research that we could do for A-2 lots, which are the only lots that are allowed to be less than 3 acres with drainfields, these are the only two that we could come up with that had drainfields and they were 1 acre or larger. Again, they may have a couple lots that are 2 acres and a couple that are 3 acres but the request was provide subdivisions that are 1 acre or larger lots with drainfields and these are the two that we came up with. And that ends my presentation.

Mr. Fields: So this is 2 out of what sort of potential universe of A-2 zoning that is not on public sewer? Or just an order of magnitude, I do not expect you to...

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Mr. Stepowany: I know when we were...

Mr. Fields: In other words, are we saying this is a rare exception to be able to get drainfields with the reserve on 1 acre or something that, if tried, would commonly be relatively easy to do?

Mr. Stepowany: I think that the common part of A-2 is a lot of them have water and sewer, that they do not need drainfields. There are some that... these are the only two at this time that are down to 1 acre lots that are on well and drainfields.

Ms. Kirkman: Mr. Chair? I do not understand the thinking about allowing 1 acre lots with drainfields because isn't that why the Board decided to extend the Urban Service Area out to the Roses because those are all one acre lots on septic that are now failing and so we have to take care of those 1 acre lots. What is the reasoning behind allowing...

Mr. Stepowany: The proposed ordinance has a minimum lot size in A-1 of 2 acres.

Ms. Kirkman: But for A-2?

Mr. Stepowany: Two acre. Two acres minimums is the lot size in the A-1. In the A-2, it is 20,000 square feet but they have to be on public water and sewer.

Ms. Kirkman: Can you do A-2 as a cluster when it is not on water and sewer?

Mr. Stepowany: There is no advantage to do it because the densities are the same and you have to provide open space. You have 1 acre lots, you have one unit per...

Ms. Kirkman: That is not what I asked.

Mr. Stepowany: No. Can you? Yes, but is it feasible? I cannot say.

Ms. Kirkman: So, conceivably somebody could come forward with an A-1 plan...

Mr. Stepowany: Right, on 1 acre lots with drainfields.

Ms. Kirkman: On 1 acre lots with drainfields.

Mr. Stepowany: Correct. And provide the required open spaces.

Ms. Kirkman: And by being a cluster, they would not have to meet the same A-2 requirements without lot width.

Mr. Stepowany: The Table 5.1 has the standards for lot size and lot width for A-2.

Ms. Kirkman: But they are different under a cluster than under...

Mr. Stepowany: Correct.

Ms. Kirkman: So there is some advantage to coming in that way.

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Mr. Stepowany: Correct.

Ms. Kirkman: Okay, thank you.

Mr. Fields: These two examples you gave us, these are plans but have either one of these been built yet?

Mr. Stepowany: I believe Ellison Estates has been built. Right now Williams Estates is still under the review for the final plat.

Mr. Fields: Williams is the one on Enon Road?

Mr. Stepowany: Yes. That was just recently approved by the Planning Commission.

Mr. Fields: Yes, I remember seeing that one. It had some controversy to it as I recall too about being sustainable with those 1 acre lots. I was just wondering how in practice how well these have worked.

Ms. Kirkman: Well, we know that they have not over in the Roses.

Mr. Fields: Over time it is tough. That is the problem with septic over time, none of it works. Any other questions? That is the end of your presentation you said?

Mr. Stepowany: Yes.

Mr. Fields: Okay. Are there any other questions on the clustering? Okay, waiting of course to see if the Board will give us a little more time to work through this. I appreciate that Jamie, it was very helpful. There was a question to look into Hanover?

Mr. Stepowany: Hanover, the densities and drainfield requirements and reserve drainfields.

Mr. Fields: Okay.

Ms. Kirkman: I think it is helpful, since you said this ordinance is based in part on Hanover, to understand things like what their underlying zoning is.

Mr. Stepowany: I do not have a problem with that. I understand. Thank you.

Mr. Fields: It is always both discouraging and instructive to study Hanover County's land use trajectory over the last twenty years because they have done such an excellent job.

4. Fences, Walls and Hedges (Referred to Planning Commission by Board of Supervisors) (**Time Limit: August 17, 2009**) (**Deferred to June 17, 2009 Work Session**)

Mr. Fields: Alright, number 4, Fences, walls and hedges.

Rachel Hudson: Good evening Mr. Chair, members of the Planning Commission.

Mr. Fields: Good evening. Thank you for being here Rachel.

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Ms. Hudson: You are welcome. Mr. Harvey asked me to prepare an A-1 corner lot; apparently there were some questions a couple of weeks ago. I am going to show you a typical A-1 corner lot. The definition of the front yard on a corner lot is the shortest street facing side. That becomes the front yard which is, in the A-1, 50 feet. The requirement for fence height in the front yard is 5 feet. And you can see the 5 foot line across here. The other street side is called street facing side yard which is either 25 feet or the front setback, whichever is less. So this has a 25 foot yard. And the fence height on this street facing side yard is 5 feet which goes the entire length of the street. And of course your rear yard is opposite the front yard, and that is a 35 foot yard. The maximum fence height is 8 feet which would go from here all the way over to there. And then the other side is a 20 foot yard and the fence height is 8 feet. I am not sure what the questions were that came up at your last meeting but if there are, I will try to answer them.

Ms. Kirkman: Yes, my concern was we did not have a definition of yard at that time and I was concerned that this would prohibit putting anything higher than a 5 foot fence anywhere between the building and the front property line. You are saying that that is not correct.

Ms. Hudson: Yes, that is what I am saying.

Ms. Kirkman: And right now you can put fences within the yard?

Ms. Hudson: At that height.

Ms. Kirkman: So, if you could go back to that chart. So, right now you can put an 8 foot fence in that first 50 feet of the front yard?

Ms. Hudson: The front yard, the fence height limit is 5 feet within this yard here.

Ms. Kirkman: Currently or under the proposed ordinance?

Ms. Hudson: Currently, for A-1. Once you go beyond that yard you can go as high as you want with a fence.

Ms. Kirkman: And what is this ordinance going to change? Which of these lines?

Ms. Hudson: It is not going to change anything. What the BZA was recommending that we do is to include the language "street facing side yard" in the special regulations for fences, walls and hedges. I believe you have the proposed ordinance in your packet?

Ms. Kirkman: And what came up at the BZA that led them to request that?

Ms. Hudson: We had a violation of a fence height on a corner lot and the owner of the property, when he read the special regulations for fences, walls and hedges, did not understand there was a different height for a street facing side yard because it is not included in these regulations. It only addresses the front, the side and the rear, and he assumed that that other street was a side and the BZA said the special regulations need to be clearer.

Mr. Fields: Does that answer your question?

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Ms. Kirkman: I am still a little concerned about you do lose a fair amount of space if you cannot put an 8 foot fence there, so I am still a bit concerned about that. But it answers the question.

Mr. Fields: Okay. Arch?

Mr. Di Peppe: This might have been, I am trying to remember, it might have been Mr. Mitchell's question. But there was some concern on these corner lots that the side having an 8 foot fence would create a safety issue with traffic seeing and I believe that was one of the questions of how this ordinance would affect if we allow that 8 foot fence along that street side facing yard. With the 8 feet on the side are we creating a problem for sight distance?

Mr. Fields: What if it is a wooded lot?

Ms. Kirkman: So, I think that... it seems to me that the issue here... well, right, trees you cannot mandate it be clear so this is not going to fix the sight problem. But we have a lot of A-1 lots that have technically street facing side yards but those side yards are not adjacent to a street and if you pick up a zoning map you will see technically it may not be adjacent but if you project out, eventually it faces a street. Do you know what I mean?

Ms. Hudson: No, I am not sure because if the property line goes to the street it would be a corner lot.

Ms. Kirkman: But you are saying street facing, you are not saying adjacent to a street and there is a difference because if street facing, you have a street here and a lot here and a lot here, is it still street facing even though it is not adjacent?

Ms. Hudson: That is what it is called in the Zoning Ordinance under the definition of corner lot.

Ms. Kirkman: So the intent here is side yards with road frontage. That is the intent.

Mr. Fields: Street facing terminology only applies to a lot line that is fronting on a public street.

Ms. Hudson: That is correct. That is how the ordinance reads.

Mr. Fields: Or a PAE as well? A public street or a private access easement as well?

Ms. Hudson: Yes.

Mr. Fields: Any cleared right-of-way for transportation.

Ms. Kirkman: But private access easements, that would create real problems in agricultural areas.

Mr. Fields: Yes, if you restricted... if you called any lot line along a private access easement a street facing side yard it would seem to be overly restrictive.

Ms. Kirkman: We have private access easements through lots of A-1 lots.

Mr. Fields: All over the place. But I do not know if this is getting at the issue. This is getting at the issue of what happens if you have a type of A-1 subdivision that is a large lot version of a typical suburban subdivision with relatively cleared lawns or landscaped areas, opener areas, and VDOT maintained and

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built to reg streets, you are talking about *that* kind of corner lot in the A-1. You are not really talking about some of the other possible types of corner that exist in a real agricultural or real rural type of area. Is that what you are getting at partly, Ms. Kirkman?

Ms. Kirkman: That is exactly it.

Mr. Fields: Because I am starting to see the problem with that. You are getting into the real rural areas and technically you might get into an issue where a street facing side yard is really... it would be almost absurd to try to regulate it like this because it is simply facing a private access easement or country road.

Ms. Hudson: It makes no difference in the way the ordinance reads.

Mr. Fields: I know, that is my concern.

Ms. Kirkman: That is the problem.

Ms. Hudson: Well, maybe that is something that needs to be addressed.

Mr. Fields: Right now you are saying it makes no difference what type of road it is.

Ms. Hudson: That is correct. A public or a private road.

Mr. Fields: It seems to me there is a large qualitative difference between a large lot suburban subdivision and a rural subdivision. Even though they are treated... our problem, we could do a whole day on the problem with why we have both under the same zoning district but this is the problem with A-1 subdivisions. You have two or three different things masquerading as the same thing. Well, what are the wishes of the Commission here? I am certainly concerned that we have something that is still, I hate to say it, still not... I am not happy with it.

Ms. Kirkman: I think we need to fix the language to make it clear what type of lots this is trying to address.

Mr. Fields: You guys have any thoughts, Jeff or Sam, on how to make those distinctions in something like that? Do you understand the distinction that we are trying to make?

Ms. Kirkman: Could we say... the one thing, Mr. Chair, if I may interject, that comes to mind is something like instead of saying all street facing sides we say something along the lines of side lines with frontage on VDOT maintained roads.

Mr. Nugent: How about side yards adjacent to public streets, highways or roads?

Ms. Kirkman: Maybe staff can work on this between now and the next...

Mr. Nugent: Yes, it needs another look and it needs to be comprehensive in terms of something other than a band-aid because there may be unintended consequences otherwise.

Ms. Kirkman: But we have a time limit on this.

Mr. Fields: August 17.

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Ms. Kirkman: But our next meeting is July 1 and after that we are not meeting until August 19. Is that correct, Mr. Harvey?

Mr. Harvey: I have to check the calendar, give me a minute please.

Mr. Fields: Should we ask for an extension on this one as well?

Ms. Kirkman: Well, this seems like a fairly easy fix, no?

Mr. Fields: It seems like it.

Mr. Nugent: The safest course would be to operate under the extension. If we try to hurry things it will sometimes make things worse.

Mr. Fields: Okay. What we are doing is, I know from past experiences, it is one of those real disconnects between, I do not want to make this sound like to my colleagues in the legal profession here, but there is a difference between what seems rather obvious in conversation and being able to make an airtight right line distinction. What you are taking is one...you are separating within a class, you are trying to create gradations within one class of thing and it is very difficult to do that without running afoul with some problems. So, I guess, once again, if staff will help me, I will draft a letter to the Board saying that we are trying to work through this. I know, certainly in the George Washington District, a lot of properties on private access easements or very rural roads that would hate to have to operate under a restrictive ordinance that is designed for a more suburban type of environment. Is that clear what we are trying to get at? Any other questions for staff on this one? Okay, that takes us through ordinances.

REVIEW OF PENDING REZONING/CONDITIONAL USE PERMITS

5. CUP2800697; Conditional Use Permit - Stafford SPCA - A request for a Conditional Use Permit to allow a use not listed within an A-1, Agricultural, Zoning District, specifically an animal shelter, consisting of 10.15 acres, located on the west side of Andrew Chapel Road approximately 2,800 feet south of Courthouse Road on Assessor's Parcel 39-102B within the Aquia Election District. **(Time Limit: June 30, 2009) (History - Deferred at April 1, 2009 Regular Meeting to June 3, 2009 Work Session) (Deferred at June 3, 2009 Regular Meeting to June 17, 2009 Work Session)**

Mr. Fields: Moving on to the Conditional Use Permit, SPCA.

Joey Hess: Thank you, Mr. Chairman. Once again, there were several handouts that were provided to you this afternoon. The first handout you might come across in front of you is a memo from Mrs. Lorraine Gardner which focuses on issues regarding the private road and bridge. The second handout is a copy of the draft conditions, the proposed conditions, that were originally in your April 1st packet. Staff would like to focus...

Ms. Kirkman: Which handout are you...

Mr. Hess: There should be a copy of the draft conditions.

Mr. Fields: In our packet or a handout?

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Mr. Hess: It is a handout, sorry.

Ms. Kirkman: No, we did not get the handout.

Mr. Hess: Okay. It should say R09-157 at the top and it says proposed...

Ms. Kirkman: Nope.

Mr. Fields: No. I do not think we have that.

Ms. Kirkman: Don't have it.

Mr. Di Peppe: Can you hold yours up?

Ms. Kirkman: Nope.

Mr. Di Peppe: No.

Mr. Harvey: It is in the middle of the paper-clipped group of handouts.

Mr. Fields: All the stuff with little numeral fives on them.

Mr. Hess: And as I was saying, staff would like to focus some attention on the conditions because we have not talked about them since the first meeting. We talked about them a little bit at the last meeting. The third handout is a letter from Tommy Thompson with Virginia Department of Health and it is an overview of the information he has seen so far on the SPCA proposal. And then finally there are two binders that Mrs. Gardner provided staff this afternoon. The first binder is a guideline of a dog park that is in Chesapeake County, Chesapeake Parks and Rec County, and then the second one is pictures that were taken along the private roadway going back to the SPCA property. And then finally Capt. Null from Animal Control is here, as well as Tommy Thompson of the Virginia Department of Health. Mr. John East with the Office of Drinking Water could not make it today because of a scheduling conflict.

Ms. Kirkman: That is somewhat problematic because this is the last day for us to act on this.

Mr. Hess: I understand and I talked to him on the phone and one thing that he discussed with me is that the way the process would work is that the local health department would contact them if this fell under their purview, if this fell under their jurisdiction. So, that might be something that Mr. Thompson can elaborate into but that is the information I got from Mr. East is that it is jumping steps ahead for them to be involved because they are not sure right now if they are going to be involved or not. He really has to see how the proposal plays out.

Ms. Kirkman: So, Mr. Thompson is the person responsible for determining whether it goes up to Drinking Water?

Mr. Hess: I believe that is how the correlation works between the two departments. He would have to elaborate on that one. But that is my understanding.

Ms. Kirkman: So, he will be able to give us the criteria for making that decision?

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Mr. Hess: I do not know if he has seen all the criteria or not.

Mr. Fields: That is a big yes.

Ms. Kirkman: Great.

Mr. Hess: There you go. So, if there are any questions, I am here to answer.

Mr. Fields: Maybe we would start out, since we have Capt. Null and Mr. Thompson who have taken time from their busy schedules to be here I would certainly like to allow them to help us out and let them be on their way. I appreciate them taking their time. Capt. Null, would you like to... thank you so much for taking this time.

Ms. Kirkman: Joey, I am still looking for the letter from Tommy Thompson.

Mr. Fields: It is right here. It is the last one.

Mr. Di Peppe: June 9th at the top.

Mr. Fields: You are looking at it right there.

Ms. Kirkman: This has questions on it.

Mr. Fields: It is just comments.

Ms. Kirkman: Okay.

Mr. Fields: Capt. Null, how are you sir?

Capt. Mike Null: Good evening Mr. Chairman, members of the Commission.

Mr. Fields: Thank you very much for taking the time to be here. We really appreciate you doing that.

Capt. Null: Not a problem.

Mr. Fields: Okay. I think in general we are sort of... we do not want to put you in a bind or in an uncomfortable position. We are just sort of asking, from Animal Control standpoint, how your feelings in general about your current capacity to meet the demand that you have and how you would envision the SPCA interacting or interfacing with Animal Control. Is that a fair assessment of our questions?

Ms. Kirkman: And perhaps some additional...

Mr. Fields: But is that a good place to start maybe?

Ms. Kirkman: Sure.

Mr. Fields: Okay. Thank you.

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Capt. Null: Well most certainly. We had proposed a new facility in the Capital Improvement Projects for our animal shelter. The main reason being it is undersized and it is outdated and we need a new facility, we need a modern facility, an animal shelter so to speak. So, in regards to the first part of your question, we need more space to do a better job at what we do. In regards to the potential SPCA, they have pledged to us to help in any way they can and I know that they would. I do not know at what capacity that would be, I really do not. That would have to be if their building was up and running then we would know, but I really could not say without that being operational to say how much they would help us.

Mr. Fields: Do you have any insight into the current sort of balance of interaction in the City of Fredericksburg? Is there a separate animal control facility in the SPCA facility? Are there two facilities there that interact or in Spotsylvania or any place else in the region that you know of?

Capt. Null: The Greater Fredericksburg SPCA, which is now in Spotsylvania County, they assist according to them all of the immediate localities. Spotsylvania, Fredericksburg, Stafford, I believe even into King George and Caroline, and we have met with them and they have as well pledged to help whenever they can. And I believe they opened in May and they have taken four animals from us, four dogs.

Mr. Fields: So you have actually interacted with that SPCA at this point?

Capt. Null: Correct.

Mr. Fields: What type of situations were they, the four dogs that they took, what were the circumstances that made that a benefit to both parties?

Capt. Null: When we met with them our agreement was when we have adoptable animals that have ran their course of stay with us and that are not going out, not necessarily that we were going to euthanize them at that point, but they felt that they could go ahead and take them from us and maybe two-fold maybe get some more exposure through their volunteers, through their programs, to help them get adopted and to free us up with some space, and that was our agreement. And it was for both cats and dogs but right now cats are overwhelming all of us so the dogs seem to be where they could help us out at the current time.

Mr. Fields: Okay. Ms. Kirkman?

Ms. Kirkman: So, under that arrangement, it sounds... so you said these are animals that you all feel are adoptable. You all think they are adoptable? Does the Greater Fredericksburg SPCA come in? How does that determination get made?

Capt. Null: They ask us we want to come down today and what do you have. We say these four right here we feel adoptable, and then they will come in and do some testing with them to make sure that they meet their standards and then they will take them. Once we have had them there for that long, if we feel they are okay not only do they take our word for it but they still do put them through some temperamental tests.

Ms. Kirkman: And do they come in on a regular basis to do that?

Capt. Null: That is the first time they have been in since they opened.

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Ms. Kirkman: Oh, okay.

Capt. Null: But they have only been open since May and they are trying to, my understanding, help all of us. The City of Fredericksburg does not have their own shelter. So I think they maybe have some help from the City in regards to that, citizens to bring their own animals, but they are going to Spotsylvania, Caroline and I believe King George as well.

Ms. Kirkman: If they are serving that large of an area, have they given you any indication that they do not have the capacity to continue serving Stafford County in that way?

Capt. Null: No. Deborah Joseph approached us and requested that we meet and she wanted to know how they could help us. And when we met we said you tell us what your limitations are because ours are unlimited. However many animals you want to take, you let us know and we will accommodate you.

Ms. Kirkman: Oh, they did? So they said they had the capacity to basically accommodate whatever animals.

Capt. Null: She told us at that point that when the time comes and we can assist you, if I can take two I will take two, if I can take five I will take five. So, currently it has been four since May.

Ms. Kirkman: And those adoptable animals who have reached the end of their stay, what proportion are they of the animals that you, or what would you guess about what proportion of all your animals those are? Is that most of them, particularly the ones you end up having to euthanize? How many adoptable animals do you feel like you end up having to euthanize right now?

Capt. Null: Okay, last year it was approximately, because of space, it was 21 dogs. And it was, because of space, 70 cats. Now, there were a total of 417 animals euthanized, so 21 of them was specifically because of space.

Ms. Kirkman: And that was before the Regional Fredericksburg Area SPCA, open up their new shelter. Is that correct?

Capt. Null: That is correct. This was for January 1 through December 31, 2008. There were a number of animals that were transferred out to other rescues and releasing agencies in 2008, which would have been only 10 dogs and 20 cats. I do not that consisted of the SPCA last year but I could be wrong.

Ms. Kirkman: So, what is the capacity for dogs and cats right now at your facility?

Capt. Null: We have 44 pens which equates actually to 22. They are double-sided and we really, for cleaning standards, we do not use both sides of the pen to house animals. So really it is 22. In an emergency situation, we could take in 44 but you would have to remove the animals, find somewhere to hold them while you clean out. Right now we just switch them back and forth in the sides.

Ms. Kirkman: So you typically have about 22 pens full at a time.

Capt. Null: We do not run at capacity. We try to stay under capacity because if you get in a situation with that, everything you bring in something would have to go. And during the course of the night when animal control officers are working, it is hard to say what they may have to bring in. So I think today, we

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did have some dogs adopted today as a matter of fact, but I know today we were in the neighborhood of around 16 dogs when I was there.

Ms. Kirkman: And a rough average, what is your water usage per day?

Capt. Null: I would have to estimate that because I do not receive the water bills. They go straight into finance. But if I had to break that down I would say it would have to be in the neighborhood of, on days that especially we are open, in the neighborhood of 200 gallons a day. I would have to guess at that.

Ms. Kirkman: For roughly 20 pens?

Capt. Null: Well, I broke it down to public restrooms. We average about 6 visitors per hour at the animal shelter. That is just visitors, that is not staff, 12 people, using the restrooms, washing their hands. That does not include people turning in dogs or coming in and redeeming animals, that is just visitors. So, with the amount of flow of people, I would only guesstimate that the restrooms are using say around 60 gallons with the toilet flushes, washing hands with a 3 gallon tank. I would say that 60 gallons is a safe estimate. Again, with the number of staff and the hours we are open I would say that we use probably in the neighborhood of 100 gallons a day cleaning the kennels because we have to spray everything and flush the drain tubes every day. As far as watering the dogs, maybe 30 to 40 gallons a day, dogs and cats. Cleaning the water buckets out. Washing machines somewhere in the neighborhood of about 10 gallons; we wash our cleaning supplies, we do not use mops anymore.

Ms. Kirkman: I want to find your washer, that is pretty good.

Capt. Null: And again, that is a guesstimate. I would say a conservative estimate on some of these. And cleaning the vehicles; the officers have to clean their vehicles, spray their boxes out after bringing every animal in so I only allowed 10 gallons for that. So I would say a conservative estimate would be somewhere in the ballpark of 200 gallons a day.

Ms. Kirkman: Mr. Harvey, did we get any concrete information on that?

Mr. Harvey: I believe the only information we have is from their AOSE.

Ms. Kirkman: No, I meant regarding the County Animal Shelter.

Mr. Harvey: Well, Capt. Null is here to answer those types of questions.

Ms. Kirkman: Okay, but he does not have the actual usage. These are your estimates.

Capt. Null: I do not receive the water bills for that building, or the telephone bills; they go directly into finance so I have never seen one. I pay all the rest of them but not those.

Ms. Kirkman: Okay, thanks.

Mrs. Carlone: Thank you so much for coming out. I had a question. The facility that they withdrew the money for, did that have a spay/neuter section in it within the design? I read it someplace or talked with someone that there was a section in that new building that was proposed.

Capt. Null: Correct.

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Mrs. Carlone: There was space?

Capt. Null: There was a spay/neuter clinic drawn into the original plan.

Mrs. Carlone: Okay. So, for a vet to come in that would come out, you would pay separately for vet to come in and do the spay/neutering?

Capt. Null: I do not think we had gotten that far along to figure out how the County could actually... if they could contract with a vet or with the Fredericksburg Regional Veterinary Association to let them be involved in it to have a vet on staff. We had not gotten that far.

Mrs. Carlone: I was thinking maybe so many (inaudible).

Capt. Null: There were a lot of ideas.

Mrs. Carlone: But the design did cover the space for spay/neutering?

Capt. Null: Yes it did.

Mrs. Carlone: Okay, thank you.

Mr. Fields: Are there any other questions for Capt. Null? Mr. Mitchell.

Mr. Mitchell: The number I heard you quote was, I think, 417 were euthanized?

Capt. Null: Four hundred seventeen dogs.

Mr. Mitchell: Dogs. And how many cats?

Capt. Null: This is for 2008; 791.

Mr. Mitchell: I am sorry, will you say it one more time?

Capt. Null: Seven hundred ninety-one.

Mr. Mitchell: Seven ninety-one and then 417.

Capt. Null: Yes sir.

Mr. Mitchell: Now, let me just touch base with the dogs right now. Of the 417 dogs, would you say that 10 percent, 25 percent, 30 percent, could have been adoptable had they had the right exposure? Just your guesstimation; I am not trying to hold you to a number.

Capt. Null: I have the numbers here. I can answer that for that year.

Ms. Kirkman: Is that the 21 number we got earlier?

Capt. Null: Yes ma'am, it is. I think that equates to 5 percent to space. It was 5 percent to space that were euthanized shearly because we did not have any other option at that point. We needed the space and

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we did not have anywhere else to go and they had been there for quite some time. That year, 2008, the space number equated to 5 percent.

Mr. Mitchell: And the 5 percent is the 417 of the 791.

Capt. Null: Four seventeen is 5 percent of the dogs. For the cats it was higher, about 9 percent.

Mr. Mitchell: And the 9 percent was the 791.

Capt. Null: Yes sir. Seven ninety-one on the cats.

Ms. Kirkman: Seven ninety-one is the total number of cats but the number that you had to euthanize due to space was 70.

Capt. Null: Yes ma'am. Approximately 70.

Mrs. Carlone: Prior to the new facility, though you already stated that, these euthanized animals were prior to the new facility in Spotsylvania? Is that correct?

Capt. Null: Yes ma'am.

Mrs. Carlone: Okay, thanks.

Mr. Di Peppe: Since the new SPCA has opened in Spotsylvania, the new Regional SPCA, have you had to euthanize any dogs because of space or do you just call them up and they take them?

Capt. Null: We have only had one encounter with them since they opened and according to them they are going to try to help everyone equally. When they came to our shelter it was our turn. Next may be Spotsylvania's turn. If we get in that situation, I am sure if we call them... I really cannot think of anything specifically.

Mr. Di Peppe: So, since May have you had, I know it is the last month, the last six weeks, have you had to euthanize any dogs because of space problems?

Capt. Null: I cannot answer that question. I do not think we have but the shelter manager would have more statistical information on that. I was back there today and I noticed that we have empty pens and there were several dogs that had been in since April. So, we have had them for two months.

Mr. Di Peppe: Is there a set amount of time that you would keep an adoptable animal?

Capt. Null: It varies. The Humane Society of the United States recommends that we do not keep them in there for long periods of time. They do not feel it humane for the animals to live in the animal shelters. It is incarceration. I will tell you, we keep them as long as we possibly can and that boils down to space. It may be at the end of this month, 4 weeks is a long time to keep one. Again, I have one or two that have been in since April so we are looking at 8 weeks. We have some different programs now where we have dog walkers that come in and exercise them and rotate them out pretty much every day or every other day so they are getting outside more and more. So we feel we can hold them as long as we possibly can. There is not a set day, the only set dates are what the State requires us for a holding period for strays or owned dogs which equates to 6 days or 10 days.

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Mr. Di Peppe: And, you may not be able to give me an exact answer to this next question, but is there an average number of dogs you might take in in a weeks' time and that might vary from season to season? Is there any kind that your control officer's might bring in?

Capt. Null: It does vary. We are busier certain times of the year than others and this year it might be May, next year it might be June. During the course of a week, they come in and go out. We have a lot of redemptions, in other words the owners are there to pick them up.

Mr. Di Peppe: That was my next question. What percentage of the animals you pick up are picked up by owners?

Capt. Null: It can vary anywhere from 10 to 20 dogs a week.

Mr. Di Peppe: That you actually bring in.

Capt. Null: Bring in.

Mr. Di Peppe: And can you give me an idea about how many of those are redeemed by owners?

Capt. Null: Last year, out of 1,371 dogs coming into the shelter, total, 485 of those were redeemed.

Mr. Di Peppe: A little less than half?

Capt. Null: Yes sir. Out of those, that was what was picked up.

Mr. Di Peppe: And do you have any idea of how many animals come in because of maybe getting hit by a car or being very sick when you get them? What percentage you have to put down that are not adoptable because they are in such poor health, what that number might be?

Capt. Null: Yes sir. Under medical, for reasons of medical it was about 9 percent. And there is two categories in the print-out, one being physical condition and that could have absorbed some of that additional, but about 9 percent, 10 percent on average for medical.

Mr. Di Peppe: Thank you.

Mr. Mitchell: Mr. Chairman?

Mr. Fields: Yes sir? We are trying to move to Mr. Thompson though. We have our break coming up at 7:00. I do not want to leave any stone unturned but I just want to remind us we are trying to get through that; I do not want to try to have to bring those people back after dinner if we do not have to.

Mr. Mitchell: Quick question. With the downturn in the economy, and I know a number of people have received layoffs or whatever, what do you see as far as in the past calendar year versus the previous years as far as people coming into your unit and surrendering a dog or a cat?

Capt. Null: We are seeing it. We are seeing more of what the officer's are dealing with are people leaving and abandoning them and we are going to foreclosed houses, abandoned houses, and getting more animals. In a comparison, when the Gulf War started, we had so many military in the area and when they were sent overseas, we got a lot of animals then. And now that that has balanced out, with what we are

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doing now are numbers are not changing a great deal. The economy is not affecting us compared to other things that go on in our world on a regular basis. Again, we were taking in a fair amount of animals. We saw an increase, a slight increase in the animals when we were deploying troops and that balanced out. We were not seeing that and then what we are seeing now with the economy is probably even keel. Our overall numbers seem to be going down slightly year after year and they should with aggressive spay/neuter programs. Your numbers should always start to drop a bit with incoming animals. So, we are still slightly going down from the last two years.

Mr. Mitchell: Thank you sir.

Mr. Fields: We need to wrap this up. Any more questions for Officer Null? Alright, I thank you very much. It has been very helpful. I appreciate you taking the time.

Capt. Null: Thank you.

Mr. Fields: Mr. Thompson. Thank you sir for taking the time.

Tommy Thompson: Tommy Thompson with the Stafford Health Department. I will probably follow the format with the comments on the proposed SPCA which you guys have and I will be adding to that because I have some further information on questions that are asked in here.

Mr. Fields: Okay. Great.

Mr. Thompson: As I say again, there is no application that has been submitted for either a new well or an upgrade to the sewage system. So, it is kind of hard to make specific comments and you will probably understand why when I get through. I have had several conversations with Mr. Hoyt. I have had several conversations with Mr. Glen McClenny who is the soil consultant for the project. We even had a meeting scheduled out there when he had some of the sewage disposal system uncovered and I was scheduled to go out, I think it was a Monday, and we had snow. It was very unusual so we cancelled the appointment. So, I have never been to the property. In searching the Health Department files, the records are very, very difficult to find. Getting to the water system and the Division of Drinking Water in Culpeper, the reason that nobody knows yet as to who has authority over (a) the existing well there or (b) the permitting of a new well, I saw that in the proposal that there may be a second well put on the property, the definition of a non-community water supply or a public water supply is a water supply that serves 25 or more people for 60 days or more out of the year. So, right now, with no firm proposal for how many employees we will have there, we know it is going to be for 60 days or more out of the year. Another caveat there that says or the well serves the public. And over the years, I have been with the Health Department a long time, that has been subject to a little bit of interpretation. If there is a water fountain there my current interpretation of that is yes it serves the public if you have a water fountain. So that would come under the purview or the jurisdiction of the Division of Drinking Water in Culpeper. That is another branch of the Health Department that serves these larger water supplies. The existing water that was there served the Brooke Nursing Home. I am aware of numerous problems that the water supply had either coliform in the well or the lack of notification of people when there was a bad sample. So there are some records, and I found some of those today, in the old file and I took them out of the old file because we destroy some old files for the food people and I found those records of the water supply in there. But that is just past history. But as far as the septic system, we have not been able to find any of those records. Now I am going to go back to the...

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Ms. Kirkman: Before you do, I seem to recall that most often you do not have records because a septic system was installed prior to the 1970's, which was when the Health Department really began tracking that more closely. Is that probably the issue here, when it was installed?

Mr. Thompson: Well, the way that the Health Department records for septic systems are filed and the last of the person who appeared on the permit, and that was up until, and we have got records in Stafford County that go back in the 1940's, these little one page drawings of the house, the septic tank and the well with no measurements to anything, very basic drawings, they were all filed by the name of the person whose name appeared on the permit up until the early to mid 70's. At that time, all the offices in the Rappahannock Area Health District went to tax maps. So, if it was put in after 74 or 75 we can usually find it by tax map. So, we do not know how many people this water supply is going to serve. We do not know if it is going to have a public water fountain. So the question cannot be answered yet as to who has jurisdiction over the well that is there and over potentially issuing a permit for a new well. Is it the local Health Department? We are in charge of private wells. The Division of Drinking Water in Culpeper does public wells and non-community wells. Does that clear up that issue?

Mr. Fields: Yes. Well, it clears up the regulatory framework.

Ms. Kirkman: Could I ask a question about the definition of public? Is it solely whether or not it has a drinking fountain? Because this application before us has a number of ways in which it will serve the public and that the public will be coming in to visit animals, to walk dogs, to volunteer. Would that put this under the purview of public use?

Mr. Thompson: That question has come up before and I think the determination that was made is that if you had a bathroom, if you do not provide cups or you do not provide a drinking fountain, then that water supply does not serve the public.

Ms. Kirkman: But if you provide any type of food that requires...

Mr. Thompson: Another issue.

Ms. Kirkman: Okay.

Mr. Thompson: That is true. But in my comments that I have made, I have referred Mr. Hoyt to Frances Whitney because there was talk about maybe a commercial kitchen on the property or whatever so I got him in contact with her and I said if you have any plans for the building you need to run your plans through our Food Health Specialist, Frances Whitney. So, yes, if they are serving food there, it would have to have a non-community water supply. It could not be from a private well if it is serving food to the public.

Mr. Fields: So, it essentially seems to hinge around the consumption of the water, directly or indirectly, by people other than the owners of the property pretty much.

Mr. Thompson: And it is also on the efforts of the owner. If he puts in a drinking water fountain, that is a conscious effort to serve water to the public. If he has a commercial kitchen there, that is public water.

Mr. Fields: Right.

Ms. Kirkman: Are employees considered the public?

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Mr. Thompson: Twenty-five or more, there is the key.

Ms. Kirkman: Twenty-five or more.

Mr. Thompson: For 60 days or more out of the year.

Ms. Kirkman: And would volunteers be considered the public?

Mr. Thompson: Well, if they are the same people...

Ms. Kirkman: Well, if they are doing the same functions but not getting paid for it, would they be considered the public?

Mr. Thompson: I would think it would be the total number of people there.

Ms. Kirkman: The total number of people.

Mr. Thompson: Yes ma'am.

Ms. Kirkman: Okay, so if it is more than 25 it would probably fall under public.

Mr. Thompson: Probably.

Ms. Kirkman: Okay. Thank you.

Mr. Mitchell: A distinction between a water fountain; I want to understand the meaning of water fountain. Are you talking about one hooked up with copper piping tied into a water system from below the ground or are you talking one where you would call this company, they come give you five gallon bottles of water?

Mr. Thompson: A not B.

Mr. Mitchell: Okay.

Mr. Thompson: If you have bottled water in a container, that is not under the jurisdiction of the Health Department. Does that make sense? Okay, so that is the water supply issue that nobody knows yet. Getting into the septic system. In my consulting with Glen McClenny with M & M Soil Consultants, he has told me that there were two drainfields that he has found on the property. One is not usable. The other one that is usable is of pretty substantial size. He says there are nineteen 90 foot trenches which is a pretty good size drainfield. I have kind of made him aware, I have made him a copy of this too because I wanted him to be fully aware of what the Health Department is looking at here. What is our responsibility and I did not want to blindside him with anything. So I said Glen, we are going to need some facts and figures on that existing system, how wide are the trenches, what is the fall on the pipe. He has done some examinations so far. I think he said he has camera'd the system. That is where they can insert a camera into the distribution box and go out and check the drainfield lines. And one important thing that he did tell me is that the pipe leading to this large drainfield was crushed and that that drainfield had never received any sewage. And it was put in in the mid 70's I think he said. So, I want some details from him to prove to us that they can utilize that drainfield. Since this project for SPCA is different than a nursing home, it is a change of use, and our regulations we can require the owner to show that the soils in that

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existing drainfield meet the current regulations, the July 2000 regulations, that the Health Department is now operating under. That means the separation distance to the water table and addressing even the County Ordinances of Stafford. The existing drainfield has to meet the State regulations and they have to meet the current regulations that we have with the County. We will be issuing a permit if this project ever gets approved. The fact that the Health Department has to issue a permit it must meet the new Codes that were passed last year. They will have to provide 100 percent reserve drainfield that meets today's regulations. And we have not gotten any soil work yet but hopefully that will be forthcoming.

Mr. Fields: Excuse me. Yes sir, Mr. Di Peppe?

Mr. Di Peppe: There was some disagreement about whether this entire drainfield is on the property. Does your requirements say that the entire drainfield... let's suppose these are 90 feet and, I have no idea, let's suppose the last 5 feet were on someone else's property. How would that affect? And that is just a for instance, I have no idea. But there seems to be some discussion between an adjoining landowner that says part of that drainfield is not on Mr. Hoyt's property. How would that affect the Health Department's determination? Is there a certain number of feet that need to be on to qualify?

Mr. Thompson: Two things come to my mind. First, we could get somebody with a transponder to identify the end point of the line. Then you would get the property line marked and then you will know. The second thing that comes to my mind over the years if we have had this situation before and I have been in a court of law and sat there and listened to the judge and the judge... at least a couple of the rulings were if that drainfield has been there for it was either 10 or 20 years then it is allowed to remain there. There is a legal term... adverse possession.

Ms. Kirkman: Mr. Thompson, what are the implications of being a mass drainfield?

Mr. Thompson: A mass drainfield is where you have more than 1,200 gallons per day on any acre of land. And the implications there, they will have to have an engineer with this project to show us the wastewater characterization, to show us the strength of the sewage, to help with the design of the system an engineer will need to be involved and this engineer will need to work with our state engineer. If they had a mass drainfield of 1,200 gallons a day or more, they have to address a couple of issues. Nitrate loading of the effluent into the soil and the second thing is water mounding. Is there potential for water mounding? Do they have to do deeper soil studies and to prove that there will not be water mounding in the drainfield area.

Ms. Kirkman: Okay, and besides picking a number that is just under the criteria to make this drainfield a mass drainfield, in other words they found a number that does *not* require those additional things, have you been provided with any documentation to support how the AOSE came up with the 1,025 gallons per day?

Mr. Thompson: No ma'am. And that is something that we will definitely need and should involve an engineer to give us a detailed description of (a) how many employees; if you are having meetings, how many people are attending the meetings. A lot of details. I think I said employees. The number of visitors to the property daily, number of dogs.

Ms. Kirkman: And if you get mounding of water in the drainfield that way, what kind of impacts can that have?

Mr. Thompson: Well, the impact of the effluent coming back up on the ground surface.

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Ms. Kirkman: Okay.

Mr. Fields: Alright, are there other points that you wanted to raise?

Mr. Thompson: Yes. I am about down to here on the first page.

Mr. Fields: Okay, good.

Mr. Thompson: Glen McClinty states that the plumbing already exists and it is all plumbed together. So I contacted our state engineer, John Scoffield of Blacksburg, and asked him that specific question, because I had a question in my mind about it too. Can the Health Department issue a permit for a drainfield system when there is a combination of animal waste and human waste and the answer was yes. So it is the Health Department's permit to issue or deny or whatever. Down at the bottom, we would like an as-built of what is there to know exactly where things are. That would be a detailed sketch from the AOSE showing us where the meets and bounds of the drainfields are. We will eventually need to issue an operation permit. We would like their PE to get in touch with our engineer in Blacksburg and have a preliminary engineering conference so we can be on the same page. I have talked about the number of visitors and them justifying their figure of 1,025 gallons per day. There is a proposed second story addition to the building and my question is will there be any increase in the number of bedrooms in the structure for humans living there. That is 75 gallons a person a day and that jumps up pretty quick if you start adding people living there. Another concern that the Health Department has, we do not have any chart or figure that tells you how many gallons a day a dog would consume or utilize in the taking care of that dog. We have a Table 5.1 is a chart and what we do when we get a proposal is we look for associated uses and try to come up with some figures and that is why we have an engineer. We want to make sure that what they are proposing there that the existing drainfield will handle it. Knowing that the existing drainfield is there, we need the soil report from the AOSE, the soil consultant, to tell us what is the estimated percolation rate of the soil where that drainfield is. Once we have that information then we can get pretty specific to yes this is designed adequately or it is not designed adequately. A concern that I have with a kennel is the wash down of the runs. That can use a lot of water and what we want to do is to keep the rainfall and the surface runoff away from the wash down. If you do not take that into consideration in the design of the system, then you do not want to take care of rainwater and the wash down. That is a pet peeve I have had with other kennels I have looked at. Separate the rainwater, keep it away from the wash down for the dog runs, the dog kennels.

Ms. Kirkman: So, you have designed some septic fields or you have reviewed septic fields for some kennels?

Mr. Thompson: I have looked down in King George. I have some figures from another AOSE that made some proposals and they are looking at some other things and they come up with the proposes and then the Health Department runs it by their engineers and we say is this adequate. We put our heads together and try to come up with a reasonable figure and make sure that the figure that they propose to us is reasonable.

Ms. Kirkman: Now, is that just a straight-up kennel with no other functions associated? Like this particular project has all kinds of other things added on.

Mr. Thompson: That needs to be taken into consideration, all the uses of that property, all the people that visit there, the meetings that are separate, if there is a kitchen. It is all going into this same drainfield so it has all got to be accounted for.

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Ms. Kirkman: And the gallon per day of wastewater for the other kennels you have looked at, how does that look in comparison with this figure?

Mr. Thompson: It looked fairly reasonable as far as the number of gallons that were utilized that were figured out with washing down and how many dogs. Our state engineer said Mr. Thompson, I would say that 3 to 5 dogs equates to one human. As far as gallons per day, just looking at a rough figure...

Ms. Kirkman: So, 150 dogs would equate to about 30 people?

Mr. Thompson: Well, it depends. There are two regulations that when you are talking about human consumption. It is either the commercial side, 15 to 35 gallons per person per day or on the residential side it is 75 gallons per person per day. On the 15 to 35 I did some, I think my math is right, you all can check me on this, 3 to 5 dogs, let's say 3 dogs at 15 to 35 gallons we have 234 dogs allowed, at 5 dogs per human it goes up to 340. If we get down to 75 gallons per person per day, it ends up being 39 dogs up to 65 dogs, depending upon which figure you use. And I am not sure which figure the engineer was referencing there, whether it was 75 gallons per person per day per human or was it 15 to 35 gallons per day.

Ms. Kirkman: And those other kennels that you looked at, do you remember roughly how many dog kennels they were... how many runs they were using?

Mr. Thompson: I do not have that figure.

Ms. Kirkman: But those applications are on file in your office?

Mr. Thompson: The one kennel that comes to mind is down in King George.

Ms. Kirkman: Would that be handled with this office here?

Mr. Thompson: No.

Ms. Kirkman: Okay.

Mr. Thompson: I supervise King George also so if you need something from there I can get it for you. I just want to make sure I have covered everything. Any other questions?

Mr. Fields: Are there any other questions for Mr. Thompson?

Ms. Kirkman: Oh, so you said no soil work was... and Joey, the last time the property owner said he had done core samples and had soil work and said he would provide that, did we get that?

Mr. Hess: We did not receive that, no.

Ms. Kirkman: Okay, and you have not received it?

Mr. Thompson: Glen McClinty with M & M has advised me that they have enough soil work on the existing drainfield to be certain that that system does meet the current regulations.

Ms. Kirkman: What about for the reserve?

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Mr. Thompson: I have not been provided that information yet.

Ms. Kirkman: Okay, thank you.

Mr. Fields: Alright, are there any other questions? Mr. Thompson, I appreciate it and certainly we respect your remark. We know this is difficult when there is no technical application that we are asking you to be somewhat speculative and I appreciate your willingness to do that. It is a lot of complex factors and so we are just trying to get as informed and up to speed as we can be. So, thank you.

Mr. Thompson: Sure. Thank you folks.

Mr. Fields: Keep up the good work. Alright, at this point we are going to take a recess for dinner. We will come back and just take up where we left off.

6. RC2900127; Reclassification - Stafford Nursing Home and Retirement Community Proffer Amendment - A proposed amendment to proffered conditions to establish phasing of the development, site access, and other planned improvements and allow flexibility in unit types for a retirement community, zoned LC, Life Care/Retirement Community Zoning District, on Assessor's Parcel 44-119M consisting of 22.69 acres, located on the east side of Berea Church Road south of Falls Run within the Falmouth Election District. The Comprehensive Plan recommends the property for Urban Residential, Light Industrial, and Resource Protection land use. The Life Care Zoning would allow development of transitional housing for the elderly, including independent living units, assisted living facilities, and nursing homes. See Section 28-35 of the Zoning Ordinance for a full listing of permitted uses in the LC Zoning District. **(Time Limit: September 1, 2009) (History - Deferred at June 3, 2009 Regular Meeting to July 1, 2009 Work Session)**

REVIEW OF PENDING SUBDIVISION PLANS

None

REVIEW OF PROPOSED COMPREHENSIVE PLAN AMENDMENTS

None

OTHER UNFINISHED BUSINESS

None

APPROVAL OF MINUTES

None

ADJOURNMENT

The meeting was adjourned at 7:02 p.m.

End of Work Session Agenda

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7:30 P.M. REGULAR MEETING

The regular meeting of the Stafford County Planning Commission of Wednesday, June 17, 2009, was called to order at 7:33 p.m. by Chairman Peter Fields in the Board of Supervisors Chambers of the County Administrative Center.

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

MEMBERS ABSENT: Howard

STAFF PRESENT: Harvey, Nugent, Stinnette, Zuraf, Stepowany, Schultis, Hess and Doolittle

DECLARATIONS OF DISQUALIFICATION

None

PUBLIC PRESENTATIONS

Mr. Fields: Alright. We do not have any public hearings tonight, but we will before we resume the discussion on the SPCA Conditional Use Permit, because we advertised this as occurring at 7:30.

Mr. Mitchell: Do we have to do roll call?

Mr. Fields: Yes we do. We will have a call to order and roll call Mr. Secretary. Since we have no public hearings, I do not have to qualify that statement. At this point any member of the public has three minutes to come forward and speak to the Planning Commission on any topic of concern. Just in general, some people have been here and know the drill but if you have not, you do have to address the Commission, you cannot address the audience in the room, you need to state your name and address for the record, the lights up there are there to help you time-out your statements. The green light goes on when your three minutes begins, when the yellow light comes on you have one minute left, when the red light comes on you are out of time and we request, of course, everybody's cooperation that when your time is up that you wrap up within a sentence or so that we can be fair to everybody. That being said, is there anybody that wishes to make a comment or make a presentation to the Planning Commission please step forward and do so right now.

Richard Wilson: Before I start, I gave two handouts if you could find them. One of them says Bankruptcy Court for the Eastern District of Virginia and the other one is an Addendum, made this 19th day of July, 1979.

Mr. Fields: We have those sir, thank you.

Mr. Wilson: I have been here several times now. My concerns are still the same. I have the same concerns as the groups around me in Meadowbrook about the contamination of water and so forth. In this process, we keep talking about a septic field that has never been used, we keep talking about an old septic field that is no good. No one, to my knowledge, has established that those are the only two septic fields. This Addendum to the roadway and the property sale was written because I witnessed the construction of a septic field over on our other property which was other than this 10.-whatever acres. And because of it, I wrote the original Addendum, turned it over to an attorney and he wrote it. It was then notarized and

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taken to the Courthouse and what happened to it after that seems to be a mystery. I was told that maybe some \$6.00 an hour person may have misplaced it. I was told that this piece of trash means nothing to me and that was Mr. Hoyt. In going through some paperwork this last week, the United States Bankruptcy Court for the State of Virginia, if you go to page two there, my parents, Mr. and Mrs. Earle Wilson, owned the property and sold it to Bagley and Quigley who agreed to this Addendum originally. And in it it says right there that the purchaser, because my folks were holding the mortgage, could not buy it from Bagley and Quigley unless the seller, being Bagley and Quigley, could repair the road or the purchaser from him/them would agree to do it or both parties. It goes down to a footnote that the original purchasers, Bagley and Quigley, agreed to maintain the road and the bridge at their sole expense pursuant to a contract addendum dated July 18, 1979. The Wilsons have filed a claim in these proceedings which included repairs to the bridge not performed by the Debtor. And in plain English and that is filed in the Courthouse so it is a filed record. On page three it says here again "the proposed purchaser will provide financial information and an estoppel certificate in the form and substance satisfactory to them and (d) that the road and bridge leading to the property be permanently repaired and maintained" by the purchasers. You know, back some years ago called World War II, one person tried to change everybody and that was Hitler. One person here is trying to change everybody's home in our area and I do not think one person should control everybody. That is one reason I think the Stafford Board of Supervisors and the Planning Commission ought to think about this seriously and make a conscious effort to look at everything. Like I say, there is more than one septic field, they found two, I have never heard anyone address it any farther. And I did watch them put it in. Thank you.

Mr. Fields: Thank you sir. Is there anybody else that wishes to speak?

Dimitri Gardner: I walk on the private road everyday to catch the bus. I walk my dogs on the road. I watch the bird from the road. I might get hit by a car going to the SPCA. I am going to have trouble sleeping because dogs will bark 24/7. What happens if a dog runs loose into my property? Please vote to deny the CUP. Thank you.

Lorraine Gardner: One of the binders I gave you just does not have the dog park guidelines, it has articles about dogs barking and other things that I referenced in memos I sent you, so I just wanted to substantiate my references. I want to thank the Planning office for patiently educating me on CUPs and zoning laws and ordinances and such. I want to thank all the public Commission members for asking so many great questions and closely scrutinizing this CUP. And, as in the prayer, you have all demonstrated, and I think, great wisdom, compassion, honesty and diligence. I made my thoughts known to you in memos and emails and you have been really gracious in taking all of them into consideration. I ask you recommend denial of the CUP because we are going to have noise from barking dogs in the kennels and the dog park. It will be a nuisance every day from 9 a.m. to 9 p.m. The traffic increase will create risks to public safety and to me and my son and my neighbors on both Andrew Chapel Road and the private road, which will be essentially opened up to use by the entire population in Stafford County. The biosolid animal waste, ammonia from urine, bleach and ammonia from cleaning supplies is all going to leak into the soil and contaminate our underground water which is our only source of water. We do not have County water. Traffic noise is going to increase. So please consider your recommendation to deny. I have one more request. There has been much discussion about widening the private road and that it is a site plan requirement. I have many nice discussions with Mr. Harvey and Mr. Hess and what I am getting a sense from these discussions is that most people think if it is a site plan requirement that that requirement is imposed it will be over the entire road. But I spoke with Mr. Faroughi, which is Mr. Hoyt's engineer, who suggested that at the site plan stage the County could only impose requirements on the site which would not include most of the private roads because Mr. Hoyt's site property is only a few hundred feet. And the correct interpretation can only come from the County Attorneys and it can only be

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asked by the Planning Commission or the Board because I cannot ask if they represent the County. So I would request that you ask the County Attorney, and I spoke with Mr. Nugent earlier, because public safety concerns extend to the entire private road, not just the few hundred feet. And I think you need to know this answer. It might need to be a condition if it is not a site plan requirement. Anyway, thank you again so much for taking all of our concerns, all the neighbors' concerns and considerations. There are many people that could not be here tonight for various reasons but the community is still very united in this. And I did say I would volunteer to establish a support group for dog parks if the County owns and operates them and I am committed to doing that and I know I can get a group to do that. So, thank you.

Mr. Fields: Thank you ma'am. Is there anybody else that wishes to speak?

Donna Dawkins: Once again, I am sure you realize I have been here three or four times now. I live 300 yards from where Mr. Hoyt wants to put his animal center. I have so many concerns, between the well, the water, the septic, the noise. I just put a lot of money and time into my backyard and the house I bought five years ago when this was a nursing home. I do not know if I will be able to sit in my backyard and not be disturbed. I do not think anybody, not even Mr. Hoyt lives as close as I do. He lives 2.5... what is it, 2 and a quarter miles away. So he is not going to be hearing the dogs all day long. I don't know. What have we got... Hartwood, Garrisonville, maybe Mr. Mitchell you might live the closest? Nobody else is going to be affected as greatly as the people in Meadowbrook and the three of the hundred names we have and that road and the traffic and just the health issues. Like Ms. Gardner said, we only have well water. And Mr. Fields, you just said before when you were discussing the lot sizes that septic is not over time going to work. So what are we going to do in five or six years when his septic tanks crap out because he has got 120 dogs up there and 400 cats? And that is all going into our drinking water. It just seems like it is a large expense to even take this on. Anyway, thank you.

Mr. Fields: You are welcome. Anybody else wish to speak?

Frank Withrow: I would like for you to consider the long term, what is going to be there in 2015, 2020, 2025. I probably will not be around, I am going to be 100 years old in 2025. But I would like for my neighbors to have a good place. Because of the energy crisis, the Brook VRE Station is probably one of the most viable things that is in Stafford County for the development of good residential property. I think you need to think seriously would this SPCA be an important thing 10 years from now, 20 years from now, in terms of Stafford County residential development. I am sure we all would like to see our community grow and grow in a positive way. And as you make your deliberations, think of the future, think of the people that you serve.

Mr. Fields: Thank you sir. Is there anyone else that wishes to speak?

Bob Dawkins: My wife was just up here. She has been here a few times, I have been here twice. And as a veteran I appreciate the invocation and I take seriously what you are saying, we have to trust our public officials. When I spoke here before I try to focus on the objective concerns. One thing that my wife left out when she addressed you is we have a rescue dog. She used to volunteer time in San Diego with another friend of ours that was a vet tech that went around giving shots to homeless animals. So for us, this is not about not being an animal lover, this is about moving around eight different times in the military. Every time I moved and we had a house, we knew about the different we lived in. We knew when we were five miles from a correctional facility, five miles from the International Border in Tijuana and we knew when we moved here five years ago that there was a nursing home basically in our backyard. And the concern is, under this conditional use piece, what happens next. And in the information I have been given, my understanding is that part of the funding for this is going to be under donations.

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Well, my company that has been very successful in this area, we also have a Wounded Warrior Foundation and under this Foundation we are not getting the donations we used to get. It is all over the news, donations are not coming in so we are going to have a conditional use change, we are going to change the area, so that other businesses, other things, can come in, this facility for animals and if something happens with this facility, what is next? What is going to be another conditional use? And my understanding of these conditional uses is that it is supposed to be more stringent, not more flexible, so if you go from a nursing home it is supposed to be a more stringent use if it is changed, not a less stringent use. And I know a little something about mammals and animals; I worked with them in the military for five years. And we had doctors come in and test them and we took very good care of the animals. So I know a little something about that as well. And I do have some concerns and at the end of the day, if I would have known about this when we came in or knew that this was a possibility, we might not have bought the house there. And at the end of the day it is about our elected representatives and when I spoke before, I would have just appreciated some heads-up and maybe come around our neighborhood and asking all the people around there did they have an issue. I also spoke early months ago about a concern of nothing but well water just so we could get a line down to the volunteer firefighter unit right down there and that has not happened. And we heard concerns about residential growth and expansion and that was a reason against running those water lines. Now what I hear is we are kind of flipping that and we are going to make a conditional use provision to let a facility in that was not the original intent of that area and I would really appreciate you all to consider that and take our considerations in as well and maybe look for an alternate site that we would support. Thank you.

Mr. Fields: Thank you sir. Is there anyone else that wishes to speak? Alright, if that is the end of the public presentations we will close the public presentations.

PUBLIC HEARINGS:

None

UNFINISHED BUSINESS:

6. CUP2800697; Conditional Use Permit - Stafford SPCA - A request for a Conditional Use Permit to allow a use not listed within an A-1, Agricultural, Zoning District, specifically an animal shelter, consisting of 10.15 acres, located on the west side of Andrew Chapel Road approximately 2,800 feet south of Courthouse Road on Assessor's Parcel 39-102B within the Aquia Election District. **(Time Limit: June 30, 2009) (History - Deferred at April 1, 2009 Regular Meeting to June 3, 2009 Work Session) (Deferred at June 3, 2009 Regular Meeting to June 17, 2009 Work Session)**

Mr. Fields: So that means at this point we resume our discussion where we were at the end of the work session. We had presentations from the animal control officer, Capt. Null, and Mr. Thompson from the Department of Health. So, at this point, I am going to go to the Commission before we speak with the property owner and his representation. Just quickly, are there any other questions for staff that the Commission has at this point? Or would like to see as raising or needs to see addressed?

Ms. Kirkman: Yes Mr. Chair. Mr. Harvey, I had emailed you and we had some correspondence back and forth. You had made a statement in our previous meeting that a change in use requires a major site plan. You did send me a reference but when I read that reference it really had to do with the amount of land disturbing activities and not a change in use. I am wondering if you have had a chance to look at that further and can show me where in the Code it says that a change in use leads to a... requires a major site

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plan.

Mr. Harvey: Thank you. The change in use...or changing the property from a nursing home to this proposed animal shelter, as proposed by the owner with the multiple buildings would require a major site plan because of the amount of extensive construction as proposed with the new buildings and the facility. The ordinance as defined with minor development specifies that minor development can be required where there is a change of use but where there is an increase in parking. So, the one question we would have is if the applicant, when he came in for initial occupancy permit, if they are proposing the change of use that would not require any additional parking beyond what is already out there then they would not meet the requirement for having to have a site plan. That would be one issue that staff would raise because we do not have a site plan on file for this property. So, if the Commission felt it was important to have a site plan for future review that could be a condition that could be added.

Ms. Kirkman: So, just to back up, so there is nothing that states change in use it is around the land disturbing activities. So you pointed to Section 28-245 and you pointed to me the language regarding major site development plans and that seems to be when there is... is that activity when there is greater than 2,500 square feet? How does that work?

Mr. Harvey: Yes, if there is land disturbance or construction, i.e. buildings, new buildings equal to or greater than 2,500 square feet, that hits the requirement for a major site plan.

Ms. Kirkman: And the position of your department in the past has been that incremental construction does not require that kind of site plan that if somebody does 2,500 or less now and later does another 2,500 and later does another 2,500, they never exceed the limit therefore do not have to do a major site plan. Has that position changed?

Mr. Harvey: It is always a tough question to deal with if the time period in between those events of doing that construction is relatively short, because we do have a requirement for larger than that square footage for permits. So, if they are doing any active grading and the site is not stabilized, then they would be exceeding the 2,500 square feet and they would be required to get a major plan submitted.

Ms. Kirkman: But if the applicant has proposed to do these in phases, would it be possible to build this project in small enough phases that no major site plan would be required?

Mr. Harvey: I seriously doubt it because of the size of some of the buildings they are proposing and also the ultimate expansion of the parking lots that would be necessary. Twenty-five hundred square feet is going to, if you were looking at extending a parking lot, would equate to probably 5 or 6 parking spaces which is a relatively small area. So, you would probably end up with a major site plan if any significant development was to occur on the property.

Ms. Kirkman: And I do see there are some waivers for non-profit organizations?

Mr. Harvey: I was looking in the Code and I did not notice that. I know it was in a previous version of the Code but last year we changed the requirements for site plans and I do not believe that is in there any more. However, there is a provision where the Director can grant a waiver of the minor site plan requirements for some developments under 2,500 square feet. That is a pretty rare occurrence. When someone has asked for a waiver I do not recall doing one in the last two years, but seeing as though we do not have an application or a copy of the site plan on file, if a request was made to me I would not grant the waiver request.

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Ms. Kirkman: How many request for waivers of the GDP have you had in the last couple of years?

Mr. Harvey: For the General Development Plan it was probably four or five.

Ms. Kirkman: And what about the issue of requiring off-site improvements to a private road? I know that sometimes you negotiate that with in looking at plans to meet VDOT standards but, in this instance, we are talking about a private road.

Mr. Harvey: Our Zoning Ordinance the required standards and improvements specify what would have to be provided. That is the section I have been referring to when talking to people about what is required for development of this property. Specifically...

Ms. Kirkman: What section are you looking at?

Mr. Harvey: 28-256. And specifically, you have Section (c)(3) that talks about private vehicular travel lanes or driveways designed to permit vehicular travel on the site and to and from adjacent property and parking areas shall be constructed not less than twenty (20) feet in width. And it goes into more specific requirements.

Ms. Kirkman: You are on 22-257...

Mr. Harvey: 28-256(c)(3). And, also from another aspect too when we have dealt with site plans throughout the years, the Fire Marshall's office typically has a standard; the minimum width of a driveway that they will accept for fire access is 18 feet.

Ms. Kirkman: But those are about the widths of the road. In this instance we have a supposedly structurally deficient bridge. How would these requirements address that?

Mr. Harvey: It is my understanding that the bridge is less than 20 feet in width so it would have to have modifications to make it at least the minimum 20 feet. If the Commission is concerned that there would be an issue with the construction standards, you could consider that as a condition of the permit.

Ms. Kirkman: Okay, thank you.

Mr. Fields: Mr. Di Peppe.

Mr. Di Peppe: This is for legal. I believe it was the second speaker asked that the Planning Commission member ask the legal question. Mr. Nugent, would you address that please? You may want to restate the question and give them the answer.

Mr. Nugent: I believe the concern was, I think it was Ms. Gardner, if in fact the site plan could not affect any aspect of the road beyond the border of Mr. Hoyt's property, could the Commission include some requirements within the CUP to address the issue beyond his property line as it relates to the road. And the answer clearly is yes. In order to ensure the safety of pedestrians and vehicle operators, you could attach a condition to require that there be no initial occupancy and no continued operation following initial occupancy unless the private road or access driveway or travel lane, as Mr. Harvey has referred to it, including the bridge leading to and from the facility, conforms and continues to conform to all currently applicable Federal, State, County road, driveway, travel lane and bridge standards.

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Ms. Kirkman: Mr. Nugent, can we also require that the property owner be responsible for bearing the costs of those improvements?

Mr. Nugent: I do not believe you can.

Ms. Kirkman: Even though this is an impact directly related to the proposed project?

Mr. Nugent: It would not be necessary if the requirement to have the road up to standards before occupancy or operation is imposed. The issue then would be between the property owners or among the property owners as to who is going to pay the cost. There are some legal obligations that exist currently I assume because of either easements or grants that have been given in the past with regard to these properties as it relates to the responsibilities relating to the roadway. But we could not impose that requirement upon any particular individual.

Ms. Kirkman: And why is that?

Mr. Nugent: Because it is an issue between the property owners.

Ms. Kirkman: But it has only become an issue as a result of this application.

Mr. Nugent: It is an issue that runs with the land. It is an issue between the property owners.

Ms. Kirkman: Alright. So, the potential, although we could require that the private access easement meet certain requirements, the current property owner could then still create a lot of grief for the neighbors by dragging them into court around this and we have no way of preventing that.

Mr. Nugent: Potentially yes.

Ms. Kirkman: Okay, thank you.

Mr. Fields: Are there any other questions for staff? Alright, at this point then, Mr. Hoyt and anybody else that is with you, representing you, helping you, etcetera, etcetera. A lot of questions and information raised during the afternoon session and the evening session and certainly in an interest of fairness I want to give you as much time as you need to address those issues. We are under a time limit; we have to make a decision tonight, so this is where we kind of have to get everything resolved. Members of the Commission, make sure you take notes or reserve your questions because at this point we will have to move on.

Ms. Kirkman: Mr. Chair, I just wanted to clarify one thing. I am a little confused. The applicant is the County. Why don't we have the applicant before us?

Mr. Fields: Well, that is an interesting question. It has been sort of one of the interesting questions of this process, when the County acts on behalf of an individual. I assume there is nobody here actually representing the County on this matter, right? Or are we that. I mean, we are not. This is the Board of Supervisors that acted this way and so does that, by defacto, mean the Board of Supervisors and the County Administrator are the applicant? Do we know? I do not mean to be facetious, it is a little bit nebulous.

Mr. Harvey: Since the Administrator signed the application at the Board's request, staff is prepared to

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report in the application pursuant to available information that we have, so we are acting on behalf of the Board in that regard. If there are specific questions for the applicant then staff will try to answer your questions as best we can.

Ms. Kirkman: Well, all of our questions are for the applicant.

Mr. Harvey: Certainly there may be some questions that specifically deal with issues that the landowner may be more familiar with than the County.

Ms. Kirkman: So, has the County provided the landowner with authorization to represent the County in these proceedings? That is typically what you do when you have someone represent you in the application process.

Mr. Harvey: I would have to have Mr. Nugent answer some of the specifics, but I do not think that the owner has indicated that he is representing the County at any point in time. There have been some questions to the owner about specifics of the property.

Ms. Kirkman: But, our questions are for the applicant, because we are looking at the application. If Mr. Hoyt is here answering questions about the application, he is doing so on behalf of the applicant. I am trying to understand... I mean, that is typically how it works in most of these proceedings.

Mr. Rhodes: It seems the last couple weeks he was not answering on behalf of the applicant, he was answering to help inform the Commission and our questions which we asked to Mr. Hoyt the last couple times we have met on this. I never perceived in any of that that he was representing the County. I thought he was acting as the landowner with information as we were probing for additional information in order to be able to make an informed decision.

Ms. Kirkman: So, Mr. Harvey, are you representing the County in this matter?

Mr. Harvey: The staff will be, yes.

Ms. Kirkman: The staff...

Mr. Fields: Collectively they are.

Ms. Kirkman: Okay, whatever staff person is doing that.

Mr. Harvey: Mr. Hess will try to answer your question.

Mr. Rhodes: So, we no longer want the information that we asked Mr. Hoyt to come back and talk about today?

Mr. Fields: Mr. Hoyt will have plenty of time to answer questions.

Ms. Kirkman: No, I have questions.

Mr. Rhodes: I thought we did not want to hear from him because he was not representing the County and he did not have legal definition...

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Mr. Fields: That is certainly Ms. Kirkman's opinion or is expressing something or asking a question.

Ms. Kirkman: I am just trying to sort out who is playing what role here.

Mr. Rhodes: It seems a little different than it has the last two times.

Ms. Kirkman: Mr. Chair, I do have some questions for the applicant which I think we have figured out Mr. Hess is now...

Mr. Fields: Okay.

Ms. Kirkman: Mr. Hess, I am particularly concerned about the onsite sewage disposal and I had asked earlier about soil work that has been done in that regard. Where does the applicant stand on that?

Mr. Hess: As staff, we have not received that information.

Ms. Kirkman: Okay. So without that information how can the applicant guarantee that there will be adequate onsite sewage disposal?

Mr. Hess: I imagine the regulating bodies that will be involved in the process such as the Virginia Department of Health would be better suited to address those issues when they come to them at site plan level.

Ms. Kirkman: So, right now the applicant has no information to guarantee this other than to say it will be regulated sometime in the future in some way.

Mr. Hess: I imagine when the specific details are released to the appropriate regulating bodies it will be addressed.

Ms. Kirkman: Okay. And do you, as the applicant's representative, agree with the assessment of the County Attorney that we have no ability to make sure that the neighbors do not end up in a legal fight over having to pay for the cost of the bridge repairs?

Mr. Hess: I do not imagine I am the person to answer that question. I would have no idea.

Ms. Kirkman: Okay, thank you.

Mr. Hess: You are welcome.

Mr. Fields: Alright, Mr. Hoyt and Ms. Healy, collectively. By Mr. Hoyt I mean Mr. Hoyt and all of the people representing Mr. Hoyt.

Patricia Healy: And Mr. Chairman, we are not representing the County in this matter.

Mr. Fields: You need to understand though without beleaguering a point, it is a slightly complex arrangement because the applicant in terms of making guarantees and understanding that, so I appreciate your tolerance when I was trying to unravel that. Thank you.

Ms. Healy: Mr. Thompson answered some questions today I think about the water and sewer situation.

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We did receive today from M & M Consultants some documentation. The engineer is out of town today and could not come. The office manager was kind enough to send a sketch and some notes from his file on that and it is our understanding that, based on the notes of the engineer, that the figures are very close to what Mr. Thompson gave you for the projected use of the number of gallons of water. And that there is more than adequate septic capacity in the existing drainfield and that there is an area that is sketched in here that says approximate area of soils suitable for 100 percent reserve. So, this is where they have sketched it in.

Ms. Kirkman: Ms. Healy, at the last meeting on this, I had asked if soil samples had been done and told they had been and we would be provided with that soils information. Do you have that information for us?

Ms. Healy: No I do not.

Ms. Kirkman: Has it been done?

Ms. Healy: I am going to let Mr. Hoyt respond to that.

Bill Hoyt: Ms. Kirkman, they came out and they did a lot of soil tests. The engineer specifically assigned to this particular project is in Ohio. He was unavailable to come meet with you this evening. The project superintendent, Glen, the one who was talking with the gentleman from the Health Department, supervised his staff in all kinds of soil samples, they took all kinds of notes and they identified this area on the chart as being a place suitable for 100 percent reserve and, of course you do not believe any of this anyway so I am kind of belaboring the point, but the figures that the engineer used to come up with the calculations are on that third page. And it shows that again they estimate about 5 gallons a day per dog, about a gallon a day per usage, about 3 gallons a day for cleaning and a gallon a day for incidentals, for laundry, the whole nine yards, cats are relatively dry cleaning setup, they figure in for staff and for volunteers and they come up with roughly 625 gallons a day. Mike Null when he was here talking earlier, and maybe you all trust him more than you trust us, he put the usage for the Stafford County Animal Control facility which is just shy of our existing nursing home at 200 gallons a day. So, at 625 gallons a day that is roughly three times their total usage and based on the numbers that we got from the initial report from M & M Soils that was presented to you all last time, we have a capacity in the existing septic system of 1,800 gallons a day. So it is not just enough capacity to handle the initial kennel at 70 dogs, which is before you right now, not 140 dogs, but just the initial kennel, the initial kennel, staff, spay/neuter clinic, volunteers, guests coming in, 625 gallons a day. There is triple the amount of septic required already there and you have a complete hundred percent reserve for that as a set aside. That is basically six times the amount of usage that we are asking the Planning Commission to recommend. Septic systems fail, I agree with you. You managed to knock down the Urban Service Area. We do not have any water/sewer coming through, but I am guessing that since we have six septic fields to handle our capacity that if each one lasts 20 years that is 120 years. I will be dead and buried 80 years before we will use up our septic field. Hopefully that is enough.

Ms. Kirkman: Mr. Hoyt, at the last meeting you said you would get us the soil work. Do you have tonight the soil work that shows the evidence of the cores that says at 15 inches we found this kind of soil and at 30 inches deep...

Mr. Hoyt: That was not the kind of detail you asked for Ms. Kirkman.

Ms. Kirkman: I asked for the soil work. That is what soil work means. So, you mean that kind of

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detailed soil work has not been done?

Mr. Hoyt: Since you enjoy pigeon-holing, if you want specifics...

Ms. Kirkman: Mr. Chair...

Mr. Fields: Okay guys.

Mr. Hoyt: If you want specifics, tell me exactly what you want. You asked for soil work, I gave you soil work.

Ms. Kirkman: So this is the only soil work you have, is that correct?

Mr. Hoyt: This is the only thing that this Commission is getting this evening, yes ma'am.

Ms. Kirkman: Okay.

Mr. Fields: Alright, Ms. Healy.

Ms. Healy: Mr. Chairman, perhaps it would be best if we answer questions that the Commission may have for the property owner?

Mr. Fields: Well, mainly and I am not trying to make you make a speech, I just wanted to give you the opportunity, first off we had several questions from Capt. Null and Mr. Thompson so, if anything, I just wanted to make sure that you had an opportunity if any comments or information had occurred during the course of the discussion this evening did you want to respond to that in any way before specific questions are asked. I am not putting you on the spot just giving you an opportunity.

Ms. Healy: I believe that the issues that have been raised have been addressed in the earlier work sessions and hearings before the board.

Mr. Fields: Okay, so you are comfortable that the information, none of us have an encyclopedic memory for any of this. To the best of your ability that the issues that have been on the table and the discussions we have had so far, the information that you have provided us and the information that has been provided to us from other sources is all out there, valid and part of the dialogue.

Ms. Healy: Well, I could not say it is valid because there is...

Mr. Fields: I am not saying you have to actually validate opposing arguments, I just mean that you are comfortable where you are at.

Ms. Healy: There are things that were mentioned tonight that have been presented to the Commission this evening which we have not had an opportunity to review. So, certainly I cannot comment on the binders, the memorandum, things that were provided you tonight. I have not seen the bankruptcy court order that one of the persons in the public comment period referenced, so I cannot respond to items that I have not had an opportunity to review and assess. But the other issues, the issues about the water, the issues about the traffic, the noise, the septic, I think we have addressed that and we have made our position clear. We think those issues can all be addressed through the conditions or through the site plan phase that there are ways to deal with those. We are working with them; we have had information provided to you. Certainly

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there will be much more detail information that will have to be made available. There will have to be much more detailed studies as this project progresses and certainly at the site plan phase. Mr. Thompson made it very clear that either his department or the Culpeper water people will have responsibility for water. There is going to be people responsible for septic. The County staff is going to have a very strong role in reviewing these items with a site plan and as it goes forward. So I think that they will all be addressed. I cannot respond to the new issues that have come up or materials that perhaps you may have that we have not had an opportunity to review and they certainly were not provided to us. Thank you.

Mr. Hoyt: I appreciated Capt. Null coming down here today to talk about the SPCA. Animal control facilities and humane societies or SPCAs is kind of like Dallas versus the Redskins, that they are typically in an oppositional relationship in most situations. SPCAs and humane societies typically spring up in communities when the public perception is that the animal control facilities are insufficient, that they are antiquated, that they are too small, that they do not service the community well, that you have high euthanasia rates, the whole nine yards. I would never want to have Mike Null's job. He has the unpalatable, unpleasant responsibility of having to put down animals whose only job is that they got lost, they got loose, or had irresponsible owners. No one likes to kill an animal; if you do you are in the wrong kind of business. No one also likes to be attacked on the front and when people go after animal control facilities the very first thing they do is they get into numbers. How many animals did you kill this year? How many animals did you kill last year? Why did you kill them? Were they sick? Were they injured? Were they aggressive or what was it? And it has to get underneath their skin, it has to be very painful to go through because people are quick to throw stones. I will throw a couple numbers past you because this was being drummed in early on. Mike said that last year 21 animals were killed because of space, that space and/or resources were the only reason those animals were killed. That is a tragedy. One dog is too many; 21 is bad. He says about 10 percent, according to his stats, were euthanized because of health issues. They were sick, they were diseased, they were injured. I would proffer that using basic math, that leaves 356 animals, and these are dogs, that also died and I will put to you they did not die of boredom. They died for a number of other reasons. They were euthanized for a number of reasons. They will tell you that maybe 60, 70, 80 animals are brought in and they are put to sleep because they have a terminal condition, they are suffering from cancer, their organs are failing, they cannot afford to take them to a vet. Great, we will take another 80 off the top which puts us at about 260-280. These animals, and if he was still here you could ask him, they get categorized for a number of reasons. If you are a dog, if you are scared, if you are injured, if you are away from your family in a kennel environment with strangers, you are going to react and not always well and sometimes it gets categorized as being aggressive even though they are not, they are just scared to death. You have animals that get put down because of management makes an executive decision to use the blue solution and it does not fall into a particular category so it goes under management decision. And they have lots of little pigeon holes for reasons why animals get put down. But if all you did was back out the 10 percent for health and the 21 dogs for space, that leaves you with 356 animals, back out the ones which were put down as a consideration, as a convenience for the resident, and you still have a large number of animals. The next most telling thing is an issue of percentages. Mike said that the number of animals euthanized last year was 5 percent of the total animals that came in. I would recommend that you all look at the animal control plan that was part of the CIP. There was a 25,000 square foot, \$12 million facility. Now that is three times, almost four times, the size of their existing facility and that is a pretty big bump up for a 5 percent euthanasia rate based on capacity. Okay, so do the math. Five percent of animals were killed because of space but we need to quadruple the size of our facility because that is how bad the situation is. SPCAs and humane societies take in the animals because most of them are designed as a no-kill facility. Anybody with a heart would want to take an animal to a place where they have a chance to be adopted, where they have a good website, where they can do offsite adoptions, where they have a decent outreach, where they get good exposure, those were Mike's words, good exposure. They will take animals to a no-kill facility before they will take them to a

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kill facility. No one says that we have any desire to get into the bailment duties that Stafford County Animal Control provides and that is never going to stop and that will always be the duty to get the stray dogs, the dogs running loose, the dogs that are fighting, the dogs which are abandoned. People, if they are given an opportunity, will take a dog to a place where it is not going to be put to death simply because it is inconvenient or they run out of room. So, there is crossover between the animal control facility and the SPCA but we also service separate communities. When we designed our original kennel at 7,000 square feet, that is 100 square feet per dog at 70 animals, it was done based on the ASPCA guidelines for how much space would we have to have to take every medically adoptable, and that was the phrase, medically adoptable, animal out of Stafford County Animal Control's hands and give it a chance to go into a no-kill facility. And the answer was 6,300 to 6,400 square feet; fudge it and let's call it 7,000 square feet. Our desire, once we have our main kennel open, would be if they put the dogs down on Saturday then call us on Friday. If the dog is medically adoptable we will go down there, we will pick it up and we will take it out of their facility. It reduces the burden to them and we cannot save them all but it reduces the burden on animal control enormously and it gives us a chance to give the animals a new home. I spend a lot of time at animal control. They have two volunteers. Their volunteer system is broken. I have 280 as of last night in my volunteer database. The difference is we invite volunteers to participate. When you walk into an animal control facility when you are a volunteer, you are viewed with a certain amount of suspicion because, again, they get criticized very easily. People who go into an animal control facility, if it is overwhelmed, if it is kitten and puppy season, if they have staff out sick, people are on vacation, things break down, it is very easy to criticize and so they do not encourage volunteers so dogs do not get walked as often, they do not get the exposure, they do not get the adoptions, they do not get the donations, it is kind of a bit of a vicious circle. So, again, I applaud them for the job they are doing. They work really, really hard in a situation I would never want to put myself in but to say that well gosh, 21 dogs got put down and the Fredericksburg SPCA just grabbed four so who needs a Stafford County SPCA. Guys, you can have one on 610 and one on 17 and one heading out towards King George and still not have solved the problem. The Fredericksburg SPCA just opened up their new facility. They have been around for almost 60 years and they finally moved into a place today which is still smaller than what we had actually proposed and, like a brand new hotel, they have got bed vacancies so they have reached out to the other shelters in the area and said hey, we got room, give us a couple animals and God Bless them for doing it. But please understand that for the past 60 odd years the Fredericksburg SPCA has happily taken the donations from Stafford County residents but not their animals. They would take the animals from Fredericksburg SPCA, bring them up to Stafford County to have them euthanized so that way they could maintain their no-kill status. So guys, you really cannot have it both ways. You cannot claim to be a no-kill if all you are doing is moving them out the backdoor to somewhere else and having them do the dirty deed for you. When I was volunteering down there, the waiting period to get a dog into the Fredericksburg SPCA was over 90 days. We have plenty of military here in the room. If Uncle Sam says you are gone, it is in 30 days or 60 days. And one of your biggest offenders for animals being surrendered is the military because when Uncle Sam wants you gone you are gone. They do not care that you have 2 dogs and 3 cats. If you cannot take them with you then you are kind of stuck. Not everyone has family in Pennsylvania that can take a dog out there on the farm. So understand that what was down there in Fredericksburg did not meet the needs of the City of Fredericksburg, much less Spotsylvania or any place else. I was working there, I was volunteering there, I saw the need, I recognized that Stafford County needed one 40 years ago and that is why I thought it was worthwhile to move it forward. When you talk about numbers, look at all the numbers, not just the 4 that were picked up by the SPCA in Fredericksburg, not just the 21 that were euthanized, but look at the totality of the numbers to understand. The volunteers that are here, the people who have come out in support of this thing, they understand the bigger picture. So, please, keep that in consideration.

Mr. Rhodes: Mr. Chairman, I have some questions for the landowner.

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Mr. Fields: Absolutely.

Mr. Rhodes: Thank you. Mr. Hoyt, your concept is a large and comprehensive concept and looking at it, it can be intimidating to many people. If you have an animal in every space that could have an animal that could be overwhelming depending on the way it turns out to some folks and I can understand their concerns. At the same time there has been some discussion and some commentary about doing this in phases, in chunks, and so I am interested but I am going to put it in context. I am interested in your business plan or your model, if you will, of your projections as to what, in addition, to the main building do you think you would be doing initially and on what timelines once the funds are raised and available and you are able to do it. And I will tell you my predisposition to help with this. I am inclined towards looking at this. Earlier on I was inclined towards the concept that if we approve the CUP, it would be scoped towards a much smaller concept. Quite frankly, I do not know that the acreage is there for horses as much as we might want to do things for larger animals and horses. I think the dog park, maybe after a proven concept of everything else, we could prove it is not impactful. Maybe at a later phase or another CUP application you might consider that. But initially, I see that as just bringing more traffic up there and I understand your concept you presented before. I do not think that is really what we would need to focus on. I would think if we approved one it would be on something that is really focused on the core need. But I wanted to get an understanding from your business model what you thought the timelines of your phases might be if the CUP might be only to address that first phase. What would that be?

Mr. Hoyt: Okay. I was warned not to negotiate when we had a Commission that reasonably was going to be voting to deny regardless of the negotiation. But we covered some of these questions the last time I was here. The dog park would be the quickest and fastest thing to do. It is \$100,000 to \$125,000 to do and it would take a couple of months. It is mostly outdoor. Again, what I have been told, what I have read, as a recreational and as a passive recreational use, it should be allowed by-right anyway. But does it bring additional traffic in? Sure, it absolutely does. And again, that was kind of the hope, that it would bring people up to the SPCA who might otherwise not have come, give them a chance to get exposure to the SPCA, go in, take a look at the dogs, meet some of the staff out there walking the dogs and give us the chance to get more dogs placed into their homes. The immediate goal was to renovate the existing building to be able to house 12 to 15 dogs. It is a relatively small number of dogs unless you all understand the concept of fostering. Fostering gives us the ability as an SPCA to bring an animal in, have it tested for temperament, have it looked at by a vet, and if you have 40, 50, 60 people who are volunteers with the organization who are willing to take in an animal or 2 animals or puppies or kittens, it basically is a clearing house. You bring in, you check them out, you test them out, you find a fostering home and then you can move the animal out of the shelter, into a home environment, put them up on the website, take them to your offsite adoptions, take them to your PetSmart, your PetCo, your adoption days, but you end up having what is called a shelter outside of a shelter. So, even though we only have custodial room for 12 to 15 dogs, the kind of impact that you can have almost immediately on the community is pretty huge. Obviously, we would like to be able to have more dogs in one location. It is the same thing with Walmart. They like to have everything all in one place so that way when you come looking for a dog, chances are we have one that would fit the bill. But if our primary goal is to stop the unnecessary euthanasia of animals and to stop the abandoning of animals, then we can scale back our approach a little bit and still be able to accomplish our mission. It is not about my ego; it is not about me wanting to have this big huge massive SPCA Taj Mahal. I would love to see it, but as people have pointed out repeatedly, there is a big difference between Stafford County as the applicant and me as the property owner, and there is one more dimension and that is the SPCA. As a non-profit, once we get our final blessing from the IRS, I am simply 1 of what will be 9 members on the Board. I will be 11½ percent of a vote. At the end of the day, the SPCA has to make the best decision it can for itself. And if what we proposed and the conditions be place by the Planning Commission are so egregious, whether it be road or bridge repairs,

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fire suppression systems, fencings, plantings, septic, well, whatever the issues are, if it becomes so burdensome that that piece of property, no matter how beautiful it is, is no longer workable, that is a decision the Board is going to make and it is going to suck for me because I have worked pretty hard to get this thing done. But that is a decision that the SPCA has to make. The SPCA is coming to Stafford County whether it goes on my piece of property or not. We are getting one. It is coming to Stafford County after 60 odd years of being needed. But, yeah, I would like to see all these things happen. I am Bill Hoyt, I am not Bill Gates, I can only fund a certain amount and I have put a fair amount of money into the project to kind of prime the pump. Just like Joe Wilson down in Fredericksburg, it took someone to donate a million bucks for the property. It took someone to die and leave them a million dollar trust to be able to make that change, to get up to that next level. And I recognized that I did not want to be another backyard rescue, that I wanted to buy a facility and I wanted to build an organization around it and not the other way around. So, in terms of timeframe, facing the main building is the most important thing. It means we have 12 to 15 dogs. It means that we put in the good sound proof windows, we do some outdoor runs, it is a very small number of animals. It is not nearly the 70 or 140 dogs that we are talking about but it certainly gives us the ability to do our mission. If the dog park is a deal killer, I think it is a shame. I am not here to negotiate; I want all the things we have certainly asked for. But at the end of the day, not only does the SPCA have to make a decision but fundraising has to come in. People here spoke tonight and said listen, it is tight out there for everybody. But in good times and bad people are making money. People have got money no matter how high oil is or how low oil is. Animals are a very broad spectrum appeal. It is Republicans, it is Democrats, it is the rich, it is the poor, it is the active, it is the inactive. We have more people who have animals in their homes than people have children in their homes. So it has a broad base appeal to have a Stafford County SPCA, one that the community can kind of get behind. I think there is going to be some funding there. Not nearly what it would have been 5 years ago when the stock market was hitting 14,000 rather than floating with 8,500. I know I had more money back then too. So, I have no delusions about how much we are likely to get. I have no delusions about it is going to take us longer; we cannot do as much as far as fast. But since this will be a brand new non-profit organization we cannot get any loans. You cannot go out and finance a pizza until you have got 2 years of track record as a non-profit. It all has to be cash and carry. So renovations on the building, you do them as you can afford them. The dog park, it gets built as you can afford it. The kennel, it gets built as you can afford them. And it is going to take us a little bit longer and it will be a little bit tougher but hard work has never scared me away.

Mr. Fields: Any other questions?

Ms. Kirkman: I have a couple more. So, was that yes or a no about scaling back the project?

Mr. Hoyt: Ah, I love it. Ms. Kirkman, within reason, if it will help us accomplish our mission, I am willing to make all kinds of adjustments as necessary. I put forth, based on legal counsel's advice, on our initial proposal to the planning staff and then, of course, the Planning Commission, everything. It was the full enchilada. I was told you show them everything right now so that way they cannot come back 5 or 10 years from now and say you did not tell us about this and now you are in violation. Remember, it is a conditional use permit. We violate and you all can yank it. So we want to make sure that we are being thorough. If we needed to scale back in order to get our CUP either from this Planning Commission or from the Board of Supervisors, at the end of the day we are willing to do what we need to do. I will be unhappy about it but it is not about me being unhappy. It is about satisfying our mission.

Ms. Kirkman: And where are you in terms of incorporating? Have the papers been filed with the State Corporation Commission?

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Mr. Hoyt: Yes Ma'am, and I have brought it with me. We have filed for a Virginia non-stock and I have copies of all that. We have got our IRS EIN number and I have copies of all that. We filed our registration with the Department of Consumer Affairs for a charitable organization. We have been obtaining By-Laws and budgets from a variety of SPCAs and Humane Societies around the State of Virginia so that we can, probably the end of this month, submit what is called our IRS 1023, our proper IRS application for a 501(c)3.

Ms. Kirkman: I am sorry, I thought you had to file your By-Laws when you filed with the Department of Agriculture?

Mr. Hoyt: You do. Your initial By-Laws are filed with the Department of Agriculture. They got a copy of our initial By-Laws. Now, our initial By-Laws are pretty much boilerplate. We go out and we solicit By-Laws from a number of established seasoned SPCA and Humane Societies so that way we can learn from their experience. We can amend our By-Laws so that when we submit it to the IRS we have one that is pretty solid.

Ms. Kirkman: And are all of those documents now part of the Planning Department file?

Mr. Hoyt: Number one, it is none of the Planning Department's business. That is separate; one more step from the applicant from the property. But I brought it with me in case anyone here wants to review it.

Ms. Kirkman: Well, I think it is an important part of the application because we have been asked to consider a CUP for the operation of this project by a non-profit and all of those things are related to the non-profit.

Mr. Hoyt: The Board of Supervisors made a requirement for final approval that we have an established 501(c)3 operate, not for the Planning Commission to dictate the timeframe. Now, again, I brought everything with me and I am more than happy to show it. I am even happy to make copies if you like for the file and one for you, no issues.

Ms. Kirkman: That would be great, thanks.

Mr. Fields: Alright. At this point we have still got a lot of things to do tonight, so we need to draw this to a conclusion. Mr. Di Peppe?

Mr. Di Peppe: Are you anticipating in the future providing any services to the County by which you would be paid out of County monies or leasing any services or any facilities in the future or providing these kinds of services that would require County monies?

Mr. Hoyt: It is an interesting question. When you start taking tax dollars, whether it be from State, local or Federal, your ability to be FOIA'd or be papered to death or the ability for local regulators in oversight to really kind of get into your business and muck around is pretty high. It is our desire... it is *my* desire, I cannot speak for the entire organization, but it is my desire that if we get a spay/neuter clinic, that we be able to provide those services, maybe at a contract rate, with Stafford County Animal Control. The State mandates that any animal adopted out of an animal control facility must be spayed or neutered. It is supposed to be 100 percent compliance and they do not follow up on it, they have no way of monitoring to see how effective their programs are. All they offer is a coupon discount. Like we talked before, if you buy a \$40 dog and it is \$400 to be spayed and money is a little bit tight, maybe it does not get done or maybe they do not follow up with animal control, but guess what? Animal control does not follow up

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with them either. So, it would be awful nice to be able to once a week on a Thursday morning have animal control bring over all the dogs which are set to be adopted and we do the spay/neuter surgery on Thursday afternoon, the dogs recover Friday, Saturday, Sunday, and they go home on Monday. That would be great! Now how that works, whether we provide those services to Stafford County as a freebie and a gimme because we got money from a grant or we get money from a donor or if we do it where somebody comes in from our fundraising, some comes from the County coffers. We are talking about price points and programs and services for a facility which is not even built yet on land that has not been approved for a CUP. But I would like to see that happen. I think that is about the only way that you can try to minimize the unwanted litters for both dogs and cats in the area and eventually try to reduce the number of animals that come into the shelter in the first place. So, I would love to see it. What form it eventually takes has yet to be determined.

Mr. Di Peppe: One more, just a quick question.

Mr. Fields: Okay, very quick.

Mr. Di Peppe: Have you looked into the possible difficulty of having a per fee basis of having a dog park being a non-profit? Have you checked that out as being able to charge fees and still retain a non-profit status?

Mr. Hoyt: Arch, you bring out the best in me. I think it is wonderful.

Mr. Di Peppe: That is my job.

Mr. Hoyt: I sent out a couple emails. If I talk to one more person who claims to be a 501(c)3 expert I am going to puke. The IRS makes it interesting. Incomes not related to your primary purpose, you have to pay taxes on. If it is too far outside your primary purpose you can get your 501(c)3 exemption yanked altogether. Income derived from operations and programs that are closely related to your primary function, in this case I think a dog park and dog training, dog socialization, dog education, I do not think it is too far out of the realm. I do not think it is going to be taxed. There are several other dog parks in Virginia, as Ms. Gardner pointed out most of them are run by municipal facilities but there are a number in the U.S. which are run either by a not for profit or non-profit organizations and even some foundations. I will have to get a little more details from them. The plan, the whole concept behind the dog park and the fee basis, was about \$25 as an annual registration. It accomplished two things; you got a picture in the computer, you got a tag for the collar and, unlike all municipal facilities, every dog that would be coming into your dog park would have its shots. So, distemper, rabies, bordatello, parvo, you go to any other municipal facility and this includes the one there in Aquia Harbor, there is no one there keeping the healthy dogs from the unhealthy dogs. As Ms. Gardner pointed out, you can have an unhealthy dog and, whether it be parvo or any other disease, most of those diseases are spread by the saliva, deep bites or fecal, if you have one sick dog he can make a whole bunch of other dogs sick. So the only way we know how to keep the fence up and to keep the unhealthy animals out is to have a registration process, have a proof of vaccination, to get a photo ID to go with the dog so that the attendant out there working at the facility with her little tablet PC, the dog comes in and gets scanned, there are the dog's shots and things are current, a picture of the dog and the owner, the tag is good and then they go. Three bucks a day, we did some rough calculations, would just about cover the maintenance of your dog park. So, do I think it is going to make any money? Flip a coin. Do I think it will cover its costs? I think it will come pretty close. But again, it was designed to be a draw. It is a loss leader to bring people into the facility. Again, you want to address neighbor concerns. You want to make sure that any animals that are coming up have a bite history, that they have been vaccinated and that the dog that is being brought in is the dog that is

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supposed to be brought in by that particular person. You put limits on how many dogs can come in, how old the people have to be with the dogs. Dogs cannot come in there that are in heat. It is a one strike and you are out rule with bites. And there are all kinds of rules that you can put in place. So, at the end of the day do I think we are going to lose our 501(c)3 over it? No. Do I think we will end up paying any taxes because it is too far out of the ballpark for operations? No. Is it an unusual thing to have a non-municipal facility run a dog park? You betcha. Is it unheard of? Not a chance.

Mr. Di Peppe: Do you have any idea how many dogs you are expecting in this dog park?

Mr. Hoyt: Again, I visited a lot of different dog parks and I am looking forward to reading Ms. Gardner's treatise on the dog parks because her research is just top notch. But, based on the size of the dog park we have got set aside, you can get 40, 60, 80 dogs there as a max. Most of the dog parks that I saw up in Arlington which were of a comparable size would have 20 to 50 dogs in during their peak times, I figure 2 dogs per person, that is 10 to 15 people coming in. Northern Virginia has a lot more of what we call cave dwellers, so that is going to be your apartments, your condos, your townhouses, your cluster units that do not have back yards. We have a lot of 3 acre properties and larger properties down here so we have a lot less pent of demand that we have to go down to a dog park. You can open up the back door and the dog can go out and use your own backyard. So, the more rural you go the less intense your dog park use gets to be. Up north, they have their get-togethers for their Bichon Frise clubs, their basset hound clubs, their yorkie clubs, and all of a sudden you have got 60 yorkies walking in the door at one time and your population doubles. Again, it is there for a special event, it is there for a fundraiser, it is there for a get-together. We do not have those population densities, we do not have those dog densities and we are not going to have quite that kind of a dog impact. I wish we could but we are not going to; the numbers are not there.

Mr. Di Peppe: Thank you.

Mr. Fields: Okay, we really need to bring this to a conclusion now.

Ms. Kirkman: Mr. Chair, I have two quick questions.

Mr. Fields: Very, very, very, very, very quick please.

Ms. Kirkman: I cannot speak to the length of the answers. My first question is, at the last meeting you spoke of reserve drainfields and a pond being part of this plan and you had said you would get to us a revised drawing that included those features. Do we have that?

Mr. Hoyt: I ran out of time to put the little blue dot.

Ms. Kirkman: Okay, so the answer is no, we do not have that.

Mr. Hoyt: No, Ms. Kirkman, I did not get you the blue dot in the middle of the picnic area.

Ms. Kirkman: And then my second question is that at the last meeting you said, you know, getting back to something that one of my colleagues raised is that is there a way to scale back the plan and you said that the barn was not a huge part of the business part. Is getting rid of the barn and the housing of horses, is that something that could be removed from this CUP and you still be able to accomplish your core mission?

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Mr. Hoyt: Yes Ma'am. And that may be a decision for the Board of Supervisors to make.

Ms. Kirkman: Okay, thank you.

Mr. Hoyt: I would like to see it though.

Mr. Mitchell: Mr. Chairman?

Mr. Fields: Mr. Mitchell.

Mr. Mitchell: One final comment. It is the Aquia District so I am stuck with it.

Mr. Fields: We are doing questions, we certainly do not have a motion on the floor.

Mr. Mitchell: I do have a question.

Mr. Fields: Do you have a question before the motion?

Mr. Mitchell: I do have a question. Mr. Hoyt, my question and I do not mean to lead you into any statement, I just want to phrase this... if it sounds misleading I apologize. At the end of the day, do you feel comfortable that you will be able to conform to the site plan requirements, the detailed studies required, the water issues, the sewer issues, and any issue facing and any items that were brought up in the past several weeks. Then, if and when it gets to the Board of Supervisors, you will suffer additional public hearings, additional information, additional questioning, and you will probably be answering all these questions all over again. Do you feel comfortable that you will be able to sustain the information and data and conform to what is required if the CUP were passed?

Mr. Hoyt: The easiest question of the night. Yes sir.

Mr. Mitchell: Okay.

Mr. Fields: Alright. At this point I am going to earnestly request that we get a motion to act, either recommend approval or recommend denial. For all the people that have spent a lot of time on this, the people that are watching, the people that have attended, I will very briefly... I do want to make sure sometimes people do grant us in their minds a great deal more authority than we actually have. Remember, the Planning Commission's job is to look at this from the standpoint primarily of land use and long range planning of the County and to make a recommendation to the Board of Supervisors for approval or denial of things like rezonings and conditional use permits. We do not grant CUPs nor do we grant rezonings. So please understand the deliberations tonight; this is not a definitive or the end of the story. This is our recommendation. And I always say, we have the luxury of looking at things from the land use and long range planning perspective that is not always the whole picture. The Board of Supervisors, when I served and Mr. Mitchell served, there were many issues that the Planning Commission recommended an approval on that I denied and there were issues that the Planning Commission recommended denial that I approved. The Board of Supervisors takes into consideration many other factors. So, as we go through this tonight, I would ask you to remember, this is just part of the process and we make a recommendation based on a certain perspective which is not the entire perspective. So, Mr. Mitchell, do you want to make a motion? The Aquia District?

Mr. Mitchell: Mr. Chairman, with everything that has been said, I make a motion for approval of

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CUP2800697.

Mr. Fields: Is there a second?

Mr. Rhodes: I need to get a clarification. Mr. Attorney, I want to second the motion to get the discussion going but I have some modifications to the conditions in the CUP that I would want to suggest. So then, can I second this motion knowing that this is not the CUP that I would not necessarily approve? I am trying to get the right way of going forward.

Mr. Nugent: Honestly, I think wouldn't an amendment be most appropriate?

Mr. Rhodes: A friendly amendment?

Mr. Nugent: Yes.

Mr. Rhodes: Okay. Thank you.

Ms. Kirkman: Yeah, you cannot amend until after you have seconded.

Mr. Rhodes: That is what I thought. So I am trying to figure out how I can get it there so I can ask for a friendly amendment.

Ms. Kirkman: You need to second it.

Mr. Rhodes: And then I can ask for the amendment?

Ms. Kirkman: And then you can either do a friendly amendment or you can make a motion to amend.

Mr. Rhodes: Thank you very much. I appreciate it. I second.

Mr. Fields: Alright. Motion is made by Mr. Mitchell, second by Mr. Rhodes. The motioner certainly has the privilege of making the first comment though. Mr. Rhodes does have some amendments...

Mr. Mitchell: I am going to open the floor to you sir.

Mr. Fields: Alright.

Mr. Rhodes: I would like to suggest consideration of a few friendly amendments, Mr. Mitchell. Actually there are three. The first one would be to the first condition that is there which just talks about the fact that this Conditional Use Permit is to allow an animal shelter. I think it should be modified to scope or constrain it to be the renovation of an existing building and the potential building of one additional kennel. There are two on the plan that currently exists, one additional kennel and a washer/store room. If you will note on the initial concept or plan there are two kennels and in between them is a wash and store room. So I think that that would be useful to it but I think that the first condition should be modified to scope it to be the renovation of the existing building and one additional kennel plus a washer/store room to support that. Secondly would be the elimination of condition 4 which is the reference to the dog park. I think for this initial phase, if you will, this initial CUP, that just brings more traffic which is an additional challenge. And while it may be complimentary I do not know that it is not the core mission of what we are trying to satisfy here. And then the third, the last, would be a new condition consistent with

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the discussion we had tonight that there would be no occupancy until or unless the bridge met all the codes, requirements, etcetera, appropriately worded. Those are my points, thank you for consideration.

Mr. Fields: Bridge and roadway, or simply bridge?

Mr. Rhodes: Mine was on the bridge and maybe I am missing clarification.

Mr. Mitchell: Mr. Chairman, I would accept that as a friendly motion.

Mr. Fields: Alright, those amendments are accepted. Mr. Mitchell, do you wish to speak to the motion now as amended?

Mr. Mitchell: Yes sir, as amended by Mr. Rhodes' statements that were I think items 1, 2 and 3 specifically.

Mr. Fields: Do you wish to speak to the amendment? You do not have to.

Mr. Mitchell: No, like I say...

Mr. Fields: Okay. We are big on process here. Well, the motion is made and seconded. Is there any further discussion?

Ms. Kirkman: Mr. Chair? Even as amended, I am going to oppose the motion to recommend approval. That is primarily for several reasons related to the evaluation criteria set forth in the Code. The first is, I believe that the proposed use does change the character and established pattern of development which, in that area right now, is residential. The second is that I believe that the proposed use is not in harmony with the uses permitted under the A-1 Agricultural zoning and, specifically, we received in our packets a list of the 6 veterinary clinics in the County. All of those are located on commercially zoned land in areas that are designated in the Comprehensive Plan as commercial and industrial areas. If you look at what zoning districts have, the various component parts of the listed use as by-right use such as veterinary clinics, pet shops, kennels, those are all located in commercial and industrial areas in the Comprehensive Plan and in the zoning districts. So, I do not believe that they are in harmony with the uses. The third is I do not think that the applicant has sufficiently established that this project will not have a deleterious impact on property values of the adjacent homes. The fourth reason why I am going to oppose the motion is that I am very concerned that the applicant has failed to provide sufficient documentation to demonstrate that there will be adequate on-site sewage disposal and that, in and of itself, presents a health hazard. Additionally, the applicant has not demonstrated that there is a sufficient financial commitment to addressing the structural deficiencies of the bridge that presents a hazard, both for transportation and for fire and rescue equipment that may need to use the road.

Mr. Mitchell: Mr. Chairman?

Ms. Kirkman: Excuse me, Mr. Chairman, I have the floor right now.

Mr. Fields: She does have the floor.

Mr. Mitchell: Okay. I do not know that this is a statement or this is a ...

Ms. Kirkman: No, I am stating my...

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Mr. Fields: She is stating her reasons for opposing the motion.

Mr. Mitchell: Okay.

Ms. Kirkman: So, I am going to continue now. Fifthly, again related, the fifth criteria is that the use shall not be detrimental to the public welfare and again, because of the bridge and on-site sewage disposal issues, I do not believe the application, as presented before the Planning Commission, meets those criteria. And lastly, I do not believe that the proposed use is consistent with the use outlined in the Comprehensive Plan for this area, which is for Rural Residential, and again, that has to do with where our Comprehensive Plan designates appropriate uses that are commercial and industrial. So those are my reasons for opposing this.

Mr. Fields: Any other discussion?

Mrs. Carlone: Yes. You cannot find more of an animal lover than I and my husband sitting out there and he knows that I have never said no to any stray dog or cat. We have ducks, we have chickens, we have dogs, we have cats. So, I am right there as far as caring about animals. But I think that we have missed the basic of this whole issue is does this unlisted use meet the criteria for a CUP? That is it. We live a quarter of a mile from a dog area that is back in the woods, a quarter of a mile, and we hear them quite a bit. But we have gotten used to them. But they can be heard that far away in a treed area, so I am concerned about the individuals that have made the biggest purchase of their life that live around that area. What I would like to see is to have the Board reinstate, and this does not have too much to do with this, but reinstate the dollars for a shelter that would include, which was already included, a spay/neuter but also to see about sharing the property with the CUP, perhaps one building for the SPCA to perform their functions and to have their volunteers. I just cannot because this does not meet the criteria. I do not care how much I love animals and I cry easily, I just lost a kitten this afternoon, but I am not against animals and I do not want to hear anyone say that I am not voting for it because I do not care for animals. Thank you.

Mr. Fields: Any other discussion? Mr. Di Peppe.

Mr. Di Peppe: I will not be supporting the motion because I do not believe this is about whether or not we love animals or whether or not we would like to see an SPCA in Stafford County. When you have a Conditional Use Permit, it is all about compatibility. And first and foremost, you must think about the people who already live there. And if I cannot, in good conscience, vote to put a large kennel in my own neighborhood, I cannot in good conscience vote to put it in someone else's. And that is why I will not be supporting this motion. Thank you.

Mr. Fields: Alright, is there any other discussion?

Mr. Rhodes: Yes, Mr. Chairman. Given that the proposed use is not inconsistent with A-1, given that we have conditions on the modified and amended CUP that require that the bridge will be repaired to a condition that meet all the standards that exist, given that we have a condition in there that the proposed structures which we have scaled down to two in here shall not exceed the care and capacity of the septic waste and disposal system as viewed from the Virginia Department of Health, I will be supporting the amended proposal of the CUP. Thank you.

Mr. Fields: Alright, is there any other discussion? Alright, the motion has been made, seconded and discussed. All those in favor of the motion as amended signify by saying aye.

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Mr. Rhodes: Aye.

Mr. Mitchell: Aye.

Mr. Fields: Opposed?

Mrs. Carlone: No.

Mr. Di Peppe: No.

Ms. Kirkman: No.

Mr. Fields: No. The motion fails 2 to 4. So the motion to approve has failed. Does someone want to make an alternative motion? Do we need to make a motion for denial or is that defecto a motion?

Mr. Nugent: It certainly would not hurt; it would be like chicken soup for a cold.

Mr. Fields: Certainly. Does someone wish to make a motion to deny the proposed CUP?

Mr. Di Peppe: So moved.

Mr. Fields: Moved by Mr. Di Peppe.

Mrs. Carlone: Second.

Mr. Fields: Second by Mrs. Carlone. Alright, I think we have had thorough discussion unless someone absolutely just cannot contain themselves.

Mr. Rhodes: Is it denial of the one that was printed by staff or the one that we had amended?

Mr. Fields: Well, that is an interesting question. Mr. Di Peppe, you made the motion.

Mr. Di Peppe: I believe it was of the one that was amended.

Mr. Rhodes: Okay, thank you.

Mr. Fields: Okay, so we are including the amendments in the recommendation.

Mr. Di Peppe: Yes.

Mr. Fields: Just briefly, I think the SPCA is a wonderful idea. Again, our charge as Planning Commissioner is to look at compatibility of use and those kind of long term impacts. I hope that we can work diligently together all in this County to create a better location for a worth cause such as an SPCA. I do not think at this time, with the information presented to me, that I can endorse this CUP at this time. It is not to say that there are other conditions and other eventualities down the road that would make me support an SPCA. It is doubtful that this location has a compatibility factor with the surrounding use and that is unfortunate for everybody, really. But that is kind of how it seems to be. Alright, all those in favor of the motion for denial signify by saying aye.

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Mrs. Carlone: Aye.

Mr. Di Peppe: Aye.

Ms. Kirkman: Aye.

Mr. Fields: Aye. Opposed?

Mr. Rhodes: No.

Mr. Mitchell: No.

Mr. Fields: The motion passes 4 to 2. Alright, we will take a 5 minute recess then we will pick up with the South Campus project.

The meeting resumed at 9:08 p.m.

7. RC2800486; Reclassification - South Campus - A proposed reclassification from A-1, Agricultural Zoning District to B-2, Urban Commercial Zoning District to allow for commercial development on Assessor's Parcels 39-16A and 39-71A consisting of 53.9 acres, located on the south side of Peake Lane approximately 600 feet east of Jefferson Davis Highway and the east side of Old Potomac Church Road approximately 500 feet south of Stafford Hospital Boulevard within the Aquia Election District. The Comprehensive Plan recommends the property for Urban Commercial and Rural Residential uses. The Urban Commercial land use designation would allow development of Commercial Retail and Office uses. The Rural Residential land use designation permits single family residential development at a density of one (1) dwelling unit per three (3) acres. See Section 28-35 of the Zoning Ordinance for a full listing of permitted uses in the B-2 Urban Commercial Zoning District. **(Time Limit: July 14, 2009) (History - Deferred at April 15, 2009 Regular Meeting to May 20, 2009 Work Session) (Deferred at May 20, 2009 Regular Meeting to June 17, 2009 Regular Meeting)**

Mr. Fields: Does staff have a presentation to get us going?

Jon Schultis: Good evening Mr. Chairman, members of the Commission. Briefly, just to update you on South Campus and where they are with this meeting, certainly you received the details in your packet but they have added a proffer for lighting as was requested last time. They have beefed up their economic analysis as asked for. They have changed the wording on proffer 5 C with regard to the setbacks from the RPA. They have included a proffer that addresses porous pavement and, in addition to that, also includes some beefed up LID standards. They have addressed the proffer of affordable office space. They have included within your packet a couple of extra pages for the Phase I which spoke specifically to the issues that arose last time with some of the historic roads going through the property. And, lastly, they are working with the adjacent property owners to work out private agreements with regards to the water connection and wells. Also with your packet was a hydro-geologic study that the applicant provided, an updated proffer statement. Additionally, last time you all requested that Brad Johnson talk to the redevelopment plan and how this fits. Brad Johnson is in the audience today. And finally, the applicant has prepared a presentation and would like to present it if you are so inclined to do so. And with that, that concludes my presentation and I am available for questions.

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Mr. Fields: Alright, are there any questions for staff? Alright, do we want to hear the presentation from the applicant?

Ms. Kirkman: I would like to hear what new information it contains, if there is new information. If it is just a reiteration of what we have seen I am not inclined to...

Mr. Fields: Do you have some new information?

Mr. Schultis: I will let the applicant speak to that.

Mr. Fields: Okay. Bring us up to date if you would.

Patrick Sherman: Good evening Mr. Chairman and members of the Board. It is a pleasure to be here again. This is our third evening with you; our fourth actual agenda item. So, we have presented to you on four occasions and as Ms. Kirkman pointed out we have given you a lot of information to date. At our last meeting you requested some additional information and what I wanted to do in this presentation is to give you just a little bit more information as to the context of what we have provided and I will be brief. We have our entire consulting team here with us for any more specific information that you need and they will be proud to tell you what they have done to further analyze the proposal. We have the Economic Impact Analysis and I actually have a few slides. I just wanted for the benefit of the audience who may not have been here previously to orient people. This is the South Campus location, this is Hospital Center Boulevard and the site is south of the new hospital center, and this is Route 1. As I was saying, the Commission had asked for an Impact Analysis to give you more detail on how the valuation of the property under this proposed zoning would be advantageous to the County, and that analysis has been provided. We have an annual tax revenue benefit to the County of \$1.3 million upon completion. Another question that was raised had to do with the value of right-of-way dedications...

Mr. Fields: If you do not mind, I do want to interject. With all due respect, I have no doubt that there is an enormous tax benefit to the County. I believe last time though the numbers you were throwing around was simply assessing, sort of looking at the value of the property as the value of construction, the value of the property times the real estate tax rate and my understanding, at least from the Commissioner of the Revenue, is the valuation of commercial property is somewhat different that something like residential property where it is the market value of the land or market value of the improvements that the potential revenue stream, etcetera, of the property over time is part of what values the property. So, I think the real estate tax, the tax yield from that, has some slight more complexities to it.

Mr. Patrick: It does absolutely.

Mr. Fields: And, like I say, with all due respect I just think to use that number based on simply applying our tax rate to the physical value of the land is not really accurate. I have no doubt there is a large tax yield but that number is not exactly I do not think usually how it is done.

Mr. Patrick: And I think that if it is conservative in any direction, it is far less than what would be the actual revenue. We did not include BPOL or any of those kinds of things. The value of the right-of-way dedication is \$1 million. We did include valuations for the RPA area that are less than for the other developable portions of the property in response to comments from Ms. Kirkman. We provided a hydro-geological survey and I wanted to explain that a little bit because I know that from the public record there has been a question by one of the surrounding property owners about the potential impact on wells. We did the hydro-geological study in order to determine what the probability of some sort of negative impact

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on wells on the surrounding properties might be and the conclusion of that, and I have an expert here who can talk on that in more detail, but the conclusion was it was unlikely there would be any impact on wells. Notwithstanding that, we have offered private agreements with the surrounding property owners to mitigate any impact if something should occur that would be negative with respect to the quality or quantity of their wells. I have two of those agreements back. We submitted those three to four weeks ago to the other owners and two have responded. I have the executed agreements here and I want to give those to the clerk for the record if that is alright.

Mr. Fields: Okay.

Mr. Patrick: Now one of the reasons we went with private agreements instead of putting it into the proffers as originally suggested is because if you put it in as a proffered condition, you make it the burden of the County and, specifically, the Zoning Administrator to try to enforce those. It is far better for the property owner to have a specific agreement directly with the developer of the property. So that is why we have taken this approach. Other items that were raised just today having to do with the application were buffering adjacent to the southern boundary along the southern boundary of parcel 71A. I want to clarify that there is a screening fence that is 6 feet in height that was requested by the property owners that has been added in the form of a proffer. But in addition to that there is a 50 foot wide buffer and that 50 foot wide buffer by County ordinance would include trees, existing mature trees, and revegetated trees that would be 30 to 40 feet in height upon maturity. And this project is not going to build out suddenly, it is going to evolve over time. And, as you know from our earlier presentations on transportation, we expect it to begin at the northern side of the property and work its way toward the south. And the southern edges of this site would probably be the last to develop. So there would be time for that vegetation to mature and a lot of things are going to change. Mr. Johnson is here and able to talk to you about the redevelopment area and the Comprehensive Plan for this area. The fact is, this area is planned for office development already in the Comprehensive Plan and it is proposed for possibly more intense development as a result of the redevelopment area once that is adopted. Also, I want to point out that the road that is of concern to one of the property owners, and I know this is confusing if you are not used to redevelopment plans, is 400 to 600 feet away from the property line. And so we think with the distance of 400 to 600 feet from the property line there is going to be little road noise that would result from this. And in addition, the road that is contemplated, and I am speaking about South Campus Boulevard, is not going to be a high operating speed road. It is going to be a road that is 25 to 35 mph, it is a business access road. It is not likely to generate noise the way you might imagine otherwise if you thought it was a bypass or something of that nature. A question was raised about condemnations and I understand that the property owner thought a reference to condemnation in the proffered conditions might have something to do with taking the property for economic development purposes. That is not the case. That condemnation provision is there so that the applicant is committed to bear the costs if any condemnation is necessary for these Comprehensive Plan roads that are shown in these drawings. There has to be a public purpose, as you all know, in order for the Board to exercise any authority of that nature and, if you look at the condemnation provisions, what they do is they obligate the applicant to engineer the road design showing precisely what road improvements might be needed. And, of course, they have to show that there is a public purpose. They require a third party appraisal that the applicant pays for. They require documentation of efforts to purchase property without having to go through any sort of condemnation, but the County, in this scenario where condemnation would apply, we would actually be trying to purchase property that the County is already wanting as a part of your Comprehensive Plan or else it would not be that public purpose. There is also in these proffers a guarantee to pay all costs associated with the right-of-way. So that would be cost to the County as well. All of that is to say that there is some misunderstanding regarding some of these proffered conditions. We think that there is minimal or no impact of the type that has been raised in the past day, but we are happy to sit down with

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the neighbors, with their attorneys, and have further discussions and explain the proffers. But we are hoping this evening, this being our fourth appearance before you, that we will get a favorable recommendation. And with that I will stop talking.

Mr. Fields: Thank you for the update. Are there any questions?

Ms. Kirkman: Yes, Mr. Chair. Well, let my colleague from Falmouth go first.

Mr. Di Peppe: Thank you. Just very briefly, I want you to look at the very last, number 7, under miscellaneous archaeology, to make sure because we had some negotiations and I want to make sure that they are spelled out. I want to make sure that the actual record of what went on in that property is clearly delineated in the archaeological report. We found some deficiencies there.

Mr. Fields: On page 17?

Mr. Di Peppe: Yes, 17. Because you say you would provide for a Phase II archaeological study. I went out with D.P. Newton and he pointed out to your people some specific things that happened on that land and we even said we do not expect you just to stop any of this development but we wanted that accurately portrayed in the document. For example, on the large piece of land, there is the military road and where the Phase II archaeological study is going, I believe that is down where the Native American site is and there was some promise of some signage down there for that site. And then also up on the small piece of property there is some significant information about the camp that is no longer there but we would like that information for the camp in the document. As D.P. Newton always points out, these archaeological surveys become the record and they need to be correct. So that is my worries about this because it is not spelled out about the signage for the Native American site which is I believe also down in an area where you cannot develop anyway because of RPAs, so we were looking for some signage there. Also, just so that the actual record represents the human activities that did go on there so that for future research that that is all correct. You can talk to your archaeological people because they were there for the discussion and Mr. Brown was there.

Mr. Patrick: I just want to ask a point of clarification. With respect to the Native American site, first let me just say that the other campsite will have a Phase II study. I just wanted to be sure that was clear.

Mr. Di Peppe: But also that extra information about who actually was there, what regimens, things like that, in the report. You can get that from D.P. Newton, he can spell it out for you. I just wanted that in the official record.

Mr. Patrick: That will absolutely be in there.

Mr. Di Peppe: And the same thing for the military road because that was a significant road during the war. But I am sorry, go ahead.

Mr. Patrick: Well, with respect to the posting of the Native American site, the signage, as you correctly noted it is in an undisturbed area of the property right now and there would not be a trail as we understand it now that would go to that location. So, I am just wondering what you had in mind in terms of a marker?

Mr. Di Peppe: Just when we were discussing that that would be done, there would be a sign there talking about the historic significance. I certainly do not want it in the undisturbed area, but I am sure there will

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be a little buffer there. I am not looking for a \$10,000 sign but just some recognition of what was found in that area. I think it will enhance your development. We are a very historic area and we are certainly not looking for trails or people to go down in that area, just that it be recognized that it was a part of history of Stafford County and what activity was there.

Mr. Patrick: I understand. I do not think that is an issue.

Mr. Di Peppe: Thank you.

Mr. Fields: Alright, questions? Ms. Kirkman.

Ms. Kirkman: Yes. If we could go to the Economic Impact Analysis, my first question is regarding preparation of the report. Under contents it says independent accountant's report, the first page says independent accountant's report and the last line of that report says we are not independent with respect to Old Potomac Church.

Mr. Patrick: Mr. Chairman, I will have to defer to our certified public accountant to respond to that. Mr. Bishop is here and if you would like him to come forward I am sure he can explain that better than myself.

Mr. Bishop: I prepared the report, I am the managing partner of Bowling, Franklin and Company, CPAs, in town and I happen to be a member of the LLC as well. So, I am not independent of the LLC.

Ms. Kirkman: Okay, thank you. And then, for the applicant's representative, I noticed that you are valuing RPA at \$1 a square foot. So, is it the position of Old Potomac Church LLC and its members such as Mr. Brown who sat on many a Comprehensive Plan committee meeting, is it the position of Old Potomac LLC that RPA is worth \$1 a square foot?

Mr. Patrick: Yes ma'am. That is the indication of the report.

Ms. Kirkman: Okay. And is it also the position of Old Potomac Church LLC and its members that each single family home generates \$92,002 of capital costs?

Mr. Patrick: Mr. Chairman, if you read the assumptions in the report, we have relied upon a report that was issued by the County and we are not substantiating that number, we are simply using the best available information to us and trying to put that in a framework that the County has already acknowledged.

Ms. Kirkman: Well, does your accountant think that is a good or a not good number?

Mr. Bishop: It is a number that came from the Comprehensive Plan.

Ms. Kirkman: I know the number. So does Mr. Brown.

Mr. Bishop: So yes, we referenced it from County materials.

Ms. Kirkman: So, you think it is a good enough number to use in your economic impact analysis?

Mr. Bishop: Yes.

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Ms. Kirkman: Okay, thank you. And then regarding the agreements, have all the adjacent property owners returned those agreements to you?

Mr. Patrick: No ma'am, they have not. We have given out five and two have been returned to us executed. And those are the two that I handed...

Ms. Kirkman: So there are three that are still outstanding?

Mr. Patrick: Yes.

Ms. Kirkman: And then while there may be some advantages to you all to have private agreements, one of the disadvantages of course is that the property owners would have to go to the expense of litigation should there be any disagreements about enforcement of those agreements. Are you also willing to proffer or create a condition around, again I had asked about some kind of performance bond or something to that effect should there be problems with water quality or water amount.

Mr. Patrick: We believe that it is better for the County and for the private property owners involved, both the applicant and the adjoining property owners, to have a private agreement that is contractual and clearly enforceable. We think that involving the County as a third party and having the Zoning Administrator having to go out and putting some burden on the Planning office to complete or enforce a commitment like this would be problematic for everyone involved.

Ms. Kirkman: Well, a proffer is contractual and enforceable and I am asking you if you all are willing to proffer some assurances regarding water quality and quantity in the wells on the adjacent properties.

Mr. Patrick: At this point, no, we are not.

Ms. Kirkman: Then, regarding your light proffer. I would like you all to take another look at that because that only addresses lighting on poles. There are many other types of lighting and I think there are much better standards out there that are put out by organizations that have model standards regarding these things, so I would like you all to come up with a little better language on that. Regarding your proffer on the RPAs, I am concerned that 10 feet may not be adequate for construction vehicles. Maybe you have some information about the turning radius of some of these heavy duty machines that are used to dig up for the foundations and retaining walls and that sort of thing. Maybe you could come back with some kind of evidence that shows us how 10 feet is adequate for the construction area for the retaining wall. On the proffer regarding the use of porous pavement, you say efforts will be made to maximize the ground water recharge area and you talk about the infiltration LID measures. I think those are already required. I am just wondering if you could make a firmer commitment rather than efforts will be made around the use of porous pavement. Finally, regarding the affordable office space, first off there is no commitment here about how much affordable office space you will provide. All you say is you will make a diligent effort to coordinate with MediCorp. Secondly, you limit it to providing reduced lease rates to out of area doctors and medical professionals and I think we were really looking, since this is not going to be solely medical offices, I think and Mr. Fields you might add onto this, that we were looking for something a little broader than reduced rates to medical professionals. So, if you could think about taking a look at that proffer, both how to put some hard number on that and also expanding it to include professionals other than medical professionals or even other uses such as artists or what have you. I say all of these things because I think we are pretty close but we do need to firm up a couple of these things.

Mr. Fields: Alright, are there any other questions for the applicant?

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Mr. Patrick: Mr. Chairman, if those are questions I would like to respond to them.

Mr. Fields: Absolutely.

Mr. Patrick: Let me take first the question of affordable office space. It is the vision of this project to provide a medical office campus of the caliber and similar to the one at Mary Washington Hospital. So, the goal of this development is to create medical services for the people within Stafford County as well as create jobs in Stafford County. We thought that this proffer that has been offered to attract out of area doctors in conjunction with MediCorp was completely consistent the vision and goal of the proposal to compliment what they are doing there at the hospital. So that is the reason why we have focused on medical practitioners. With respect to the porous pavement, those are low impact development standards and there are a variety that are available that, in addition to porous pavement, can accomplish the groundwater recharge goals, I believe it was of Mr. Di Peppe and of yourself, when you spoke about porous pavement. So, we did not want to limit to one item on the menu that would accomplish the goal that you had articulated. We were trying to involve everything that would make it clear that we were going to attempt to create the best groundwater recharge possible and we believe that proffer to be completely binding. We do not think that there is anything vague about it. With respect to the 10 foot setback on the construction for the RPA, that was a standard that was submitted to us first by staff and then has not been raised as an issue previously. What we are looking for here is not to suggest that there be a retaining wall that would run parallel to the RPA for 10 feet. What we talking about are those areas along the RPA and along the existing topography where you might have a retaining wall that is tapering down and going perpendicularly or going on an angle towards the RPA. So that is what this proffer is getting to; it is not trying to suggest that we are going to have a wall that has to be driven along parallel in terms of construction. We are just looking at the wing wall if you will, if you know what that is in engineering terms. It is the wing wall and we want to make sure we have stability at the ends of the retaining wall. With respect to the lighting, we thought that we had that covered. We are proposing that in addition to building code standards for outdoor lighting and zoning requirements we are going to direct the light downward and that this light will be shielded so that it will not spill over onto adjoining properties. This is an area that is planned for future office development and until adjoining properties are redeveloped they will be heavily buffered, as I suggested, with a 50 foot buffer, existing vegetation and with additional supplemental vegetation at Mrs. Carlone's suggestion to change to make 50 percent evergreen so that we do have a way of containing the light. We just do not think that spillover is going to be an issue. And then, back to the issue of the well agreement. I think that we believe that the best approach, and we thought that the Planning Commission would agree, to assuring the adjoining property owners that they would have no impact from this development was through the private agreement. If, for some reason, you have language that you think would improve the proffer that would give them greater assurance that the County is willing to take on, frankly, I thought the County Attorney would tell us that they did not want to be in the middle of that sort of arrangement, I have run into that before, but if you have language that you want to suggest in that regard then we can look at it. I may be able to give you an answer this evening as to whether we think it can work.

Ms. Kirkman: Thank you. That is language that would have to be carefully crafted but I am glad to hear your willingness to look at that because we are passing around now the agreements with the property owners. I have not had a chance to read this thoroughly but even through reading it I have some concerns about just how enforceable it is for the property owners even if they have the resources to litigate this. One is there is not consideration recited in the contract and it is all done at the discretion of the developer. It is if the developer decides. What if the property owner and the developer disagree? I am not an attorney but I have some real concerns about this and I do think these residents do need the protection of

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the County in this. And so, I am glad to hear that you are willing to consider that and maybe Mr. Nugent, you could think about what the appropriate language could be. That would be great.

Mr. Fields: Alright, are there any other questions? Mr. Di Peppe.

Mr. Di Peppe: Just one more thing about the signage. I did not know if we needed to put a specific dollar amount like \$2,500 for a historic signage upon recommendation and the Historic Commission could come up with the wording or something like that in the proffer to get the signage for the Native American site. Could we be more specific about a dollar amount and that we include their recommendation on the wording? Does that sound like a terrible number to you? And I am including that \$2,500 is the sign and installation, that is why I am going for that number.

Mr. Patrick: In other things that I have been involved with I believe that the cast iron historic markers like you see along the highways cost \$800

Mr. Di Peppe: I think they are...

Mr. Patrick: You think they are more than that?

Mr. Di Peppe: Yes, I cannot say with all certainty but I was having this discussion the other day and it was more than twice that. I think it is closer to \$2,000 without even the installation. I was trying to put it at a cap so that you were not open-ended. But I was wondering if I say to a maximum of \$2,500 to include installation and put some wording in there that upon recommendation... get the Historic Commission involved with their recommendations for the sign and the wording.

Ms. Kirkman: Again, I just wanted to say we appreciate the applicant's willingness to work with us and I would really encourage you to take into consideration what we have raised tonight and figure out what is the best you can do on these things.

Mr. Fields: I do have a question. Last time I asked about the possibility of securing right-of-way on the eastern access point that would secure right-of-way over the SRSL property to the right of the County property. Do you have any movement on that? Anything to report on that?

Mr. Patrick: Extending off of parcel 71A?

Mr. Fields: Yes.

Mr. Patrick: It just was not feasible. There is a million dollar contribution in right-of-way already and the costs are significant. There will be substantial road improvements also as a part of this proposal.

Mr. Fields: So, did you have a dialogue with the SRSL about this, the property owner? Did you ask him how much for the right-of-way?

Mr. Patrick: No sir, we did not ask him if we could purchase right-of-way.

Mr. Fields: That is really all I wanted you to do is just ask him. I know you have dedicated a very generous amount. I am still concerned about the big picture of having all of those elements to it, particularly the transportation network. You have done an excellent job and I really appreciate the way

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you have presented all the phasing issues and all of that. That is very logical and very systematic. We are all concerned about having all the potential possibilities available to us.

Mr. Patrick: We understand, but one of the complicating factors to trying to approach a property owner to try to purchase something that we do not know the alignment of precisely yet is that we do not know the alignment precisely yet. The County is going to need to further its planning on these road alignments. The redevelopment area plan is under consideration and VDOT has made it very clear that it will have to be fully engineered before the roads are set in. If you go to approach someone to purchase property then they want to know what property you are offering to buy and they want to know the alignment, they have to prepare plats, and it just really requires a level of detail and certainty that we just do not have at this point in time. The right-of-way dedications that are assured in this proffered rezoning because Old Potomac Church LLC owns it can shift as is needed or as is directed by VDOT and by the County. It is harder to do that when you involve a third party and so it just makes it impractical for us to try to do that right now. It might happen sometime in the future.

Mr. Fields: I guess the level of detail I was not so concerned about as was the agreement in principal that you engage in dialogue with the owners of that property, that in principal at some future date they would at least be willing to look at the possibility of providing right-of-way and you would be looking at the possibility of purchasing it. Now, if you are uncomfortable even talking about it until you have plats, numbers and engineering, I guess that is just the way it is. I had hoped that you would have had just the dialogue. Like I said, I did not think it was really a hard thing to do, you just go to the SRSL who has a piece of property that they have been trying to make work for a long time and is having a hard time making work.

Ms. Kirkman: Are you suggesting they might be willing to just give up the whole thing?

Mr. Fields: Well, I do not know what they would be willing to do and I am not trying to imply that. Maybe they would not be willing to dedicate any right-of-way. I guess that is all I was hoping that you would do is have the conversation with them that at some future day, is there a possibility to talk about this. I know you guys are doing a great job; it is a wonderful project. We love the project, it is a great asset to Stafford County. You will just have to forgive us; we only get one chance to negotiate these things. Once it goes past our hands, that is the last the Planning Commission ever has a chance to work on this, just like the Board has one chance. And so, just like you, we are involved in a guessing game for the future that is not always easy. So, when I look at the big picture of the transportation network and the redevelopment area, that is one little piece of the puzzle that seems to me to be a relatively simple thing to resolve. But, I guess I ...I am not in the land development business obviously.

Mr. Patrick: It is very difficult to approach people and tell them you want to buy some property when you are not sure where it is. I think that there are going to be additional opportunities for the Planning Commission to influence and to implement the goals of the redevelopment area and also of the Comprehensive Plan as these other properties come in for rezoning. We are only a few properties within a much larger area and so you will be getting Conditional Use Permits and rezonings from other property owners and perhaps even from Old Potomac Church LLC as they are able to acquire properties. So, I do not agree that this is your one shot to get the plan implemented and I do not agree that this is the one applicant that can implement all the goals of the plan.

Mr. Fields: I am not trying to make you responsible for the whole thing. But we also know that a great deal of the properties, including many properties that you own, have all been rezoned. So the ability to

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negotiate proffers on a great deal of the redevelopment area was taken away from us by the Board of Supervisors when they comprehensively rezoned all that area.

Mr. Patrick: Mr. Chairman, you have done very well. You have got a half million dollar in right-of-way contribution on property that was already zoned.

Ms. Kirkman: Mr. Chair, if I could just follow-up on that. I think what we have struggled with more broadly and tried to work with the applicant is that in many ways it does feel as if this project is premature given that we do not know what is happening with both the VDOT and Courthouse interchange alignment and the other properties which the applicant owns. So we have tried to work with all of those uncertainties and come up with something that we can all live with given that you rightfully raised some issues about what are you offering to negotiate with SRS. I think it would be perfectly acceptable to say you would be willing to put up a certain amount of cash should the County need to go to acquire right-of-way through that property. That might be the best way to address some of the uncertainty.

Mr. Fields: Okay. Any other questions?

Mrs. Carlone: Yes. In the RPA, what is the length that your property parallels or is close to the RPA? What we do in our Ordinances is ask for signs if it is a fairly long section then we ask for a sign every so often, it is in our Ordinance now, not to disturb beyond a certain point at the RPA line. Where the RPA is, that 100 foot, we request according to our Ordinance that a sign be placed, or signs depending on the length of the property adjacent to the RPA. Some of these other comments I have not had a chance to look at but they are just small size standard wordage. And then as far as a retaining wall, we just went through the ARB on a trail where we do have the wing come down on the wall but to get to that wall you have to do some type, where the wing comes down, you have to do a certain amount of clearing. So, I was looking at this retaining walls adjacent to the RPA shall be set back a minimum instead of just parallel. When you do that wing where it comes down and touches I think it is going to be right on the RPA.

Mr. Patrick: The wing would not touch the RPA. It would be set back 10 feet.

Mrs. Carlone: Okay, so the point I am trying to make here is that there would be a certain amount of land disturbance to be able to put in that wing coming down. So the 10 feet should apply at the end of that wing. You said it is a wing but it does not make any difference; it is still going to be a certain amount of land disturbance to build that and to clear the area. Am I making sense here?

Mr. Patrick: I think you are. The practical limitations of grading is that if you are bringing the wing wall down to that end point on the wall then that means that you have a very small grade difference. You are blending it back into existing grade so the amount of earth disturbance between the RPA and the end of the retaining wall is not going to be substantial or significant.

Mrs. Carlone: I beg to differ with you on that.

Mr. Patrick: You are bringing it back in so that is why you are able to taper it down.

Mrs. Carlone: Okay, that is all.

Mr. Patrick: Mr. Chairman, we are willing to continue the dialogue and attempt to address all of your concerns to the best of our ability to do so. But I do have to tell you that we have been in this process for

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a very long time. This is our fourth meeting with you, the case has been in for over a year, we have obligations, legal obligations in terms of contracts and loan commitments and we really need to press ahead. So, we are asking for your favorable recommendation this evening.

Mr. Fields: Alright. We have a couple of outstanding resolved issues. What about this contractual arrangement with the neighbors. That is apparently up in the air. We did not really have...your sense is that is better handled between you and the neighbors. Ms. Kirkman has expressed an opinion that is somewhat different from that. We have not actually discussed it as a Commission, so I think I do need to resolve...I feel responsible as Chairman to see where we stand collectively on that issue.

Ms. Kirkman: Mr. Chair, what I would suggest, where I think we are in the process, there were actually a number of fine tuning around the things that we have discussed before and what I would like to really see is the applicant bring to us, at our next meeting, sort of what in labor negotiations we call the last and best final offer. So you layout on the table what you think is the best you can do around all the concerns that were raised around the details of these proffers. That is where I think we are, but that is...

Mr. Fields: Anybody else? I am just looking for a consensus.

Mr. Di Peppe: I agree with Ms. Kirkman, because we have...the date goes out to July 14th so we certainly can go two more weeks out to get the final wording.

Mr. Patrick: Mr. Chairman.

Mr. Fields: Just a second please. What was that?

Mr. Di Peppe: I was just saying I agree with Ms. Kirkman, we need let them do this final wording correct and deal with the issues that brought up tonight and bring it back to the next meeting.

Mr. Fields: There was nothing major, but there were several points raised. Mr. Rhodes.

Mr. Rhodes: Well I feel just a little differently. I feel like this applicant has been very responsive in trying to address everything to a best and final position to the best that quite frankly that we articulated. I think they have done a pretty fair job and just to...I think we are somewhat arbitrarily just delaying them further. If we have some refinements we want to do here, lets identify it. I would not say that if this was the first time we were setting down with them, or maybe the second. We had them back to the Transportation Committee at one point to talk and refine the presentation that came back here for the second presentation, where we gave them some points in the paragraph on the parking lot lighting and some other areas. I think they came back with their best effort to try and represent what we said. If it did not quite represent it, lets highlight what that is and maybe we can address it now. When we get to this third and fourth time, as long as it is not just complete stonewalling on the part of the applicant, I would like to try and go ahead and get it resolved and moved on.

Mr. Fields: Mr. Nugent, on this issue of...What is your sense on this issue of the relationship between the adjacent property owners and the applicant. I am sort of asking for your guidance on the issue that has been well articulated from several points of view, by Ms. Kirkman and by the applicant, is that something that you feel comfortable with including as part of the proffers. Do you feel that is something that could be crafted as a logical and enforceable part of the proffers.

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Mr. Nugent: Well, as long as the language could be agreed upon, then, much of the language already appears in this agreement, but Ms. Kirkman has raised some significant concerns on behalf of the property owners. For instance, the option, and Mr. Patrick you correct me if I say anything that is incorrect based on your understanding of this agreement, please. It appears that the digression with regard to the selection of remedies lies entirely with the developer. I am assuming that was intentional, but that may be something to protect the property owner, there might be the digression transferred to the property owner and have the property owner select his preferred remedy. And she brought up the subject of consideration, I just read this agreement and looked for it and I see no consideration outlined in the agreement and that is a fundamental principle in the enforceability in the law of contracts. Mr. Patrick, I am sure you and your firm know that. I just do not understand why it is not here, why there is not any consideration recited. I can at least as a theoretical proposition see if push came to shove down the road and the property owner wanted to pursue this, one of the first affirmative defenses raised by some law firm acting on behalf of the developer is it is unenforceable because there was no consideration.

Mr. Patrick: Mr. Chairman, in response to that, two points. One is the reason the remedy is held to the developer is because that it may be that someone would allege that their well is impacted when we are working on the other end of the property and public water has not been extended to that side of the property yet. So, just as a practical matter, the best solution would be to install a new well rather than extend public water all the way to the property line. The County ordinances already require that we extend water to the property line as we develop the property. So, it will get there. It will end up being available to them whether the immediate remedy is redrilling the well or providing a better well or not. With respect to the other issue that has been raised, we can continue to work on that between now and the Board of Supervisors, but we really are hard-pressed in terms of timing. I think everyone recognizes that these are very difficult economic times, financing can be very challenging and things like this, time can cause projects to have a great deal of difficulty to hold together.

Ms. Kirkman: And Mr. Nugent, am I correct that should there be a disagreement between the developer and the property owners, the property owners would have to have the resources to litigate?

Mr. Nugent: Well, if in fact the developer and the property owner cannot come to a resolution, then you have to seek relief in court and that costs money.

Ms. Kirkman: So, is there a way to take the language you have got there and tighten it up a bit so that the County would have something enforceable so that the County would carry that?

Mr. Nugent: Not with regard to this agreement, only with regard to a proffer...

Ms. Kirkman: No, but I mean in terms of a proffer around protection of water quantity and quality in the wells.

Mr. Nugent: Certainly, that is a possibility but there are two options here. We could rework the language in the agreement, tighten it up, and we could provide for the eventualities that Mr. Patrick discussed. I mean, he said that if the lines are not there you have to go to a well but that contingency is not in here. It does not say if the lines are not there. It pretty much says these are the three options and it leaves the discretion to the developer. So, it can be tightened up a little bit and if it is tightened up to the satisfaction of the property owner and the property owner understands that if they cannot work it out they are going to have to seek court relief, then if that is acceptable to them then fine.

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Ms. Kirkman: And I do want to address the issue about reworking the language on here, for instance, the light language. You had the opportunity and resources to find out what the regulations are, suggested model, types and ways of minimizing light pollution. You only addressed the street lights; you did not address other types of lighting. You had the ability to put hard numbers on some of these things such as the amount of porous pavement, a hard number on how much affordable office space you would provide, so what we are doing here is, and our experience has been developers are great at saying “we will try” and then when you try and hold them accountable to “we will try” they say well we said we will try we just could not do it when we tried. So, I think that is why we really need to see some hard numbers in these proffers rather than we will maximize, we will try and those kinds of things. And our attorney has already reminded us once tonight of the need to not rush hastily into these things.

Mr. Mitchell: Mr. Chairman, I have sat and listened to a whole bunch tonight but my issue here is these people have negotiated with us in good faith. I have been on this board three and a half years, they have give us a lot more than many people have. They have worked with the County, they have worked with County staff, they did proffer that there would be affordable office space, they did proffer that if something did happen to the wells that something would be done, they did proffer pavement. They did not go into specifics but they did proffer pavement LID, setbacks and much more than many, many people ever think about doing. This is their fourth appearance here. They have a whole staff of people, many of these people are paid people and rightfully so because of their expertise, and I understand that. But if you have ever built a house and you have a construction loan and you were delayed thirty days or sixty days, it affected your construction loan. And to defer this thing back another meeting or two, we do not meet anymore this month, this is the 17th, this is the second meeting, we are not going to meet anymore this month, it would be at least another thirty days.

Mr. Fields: Fifteen days.

Mr. Mitchell: This to me is a travesty when the people have worked with us in good faith, the people have attempted...

Ms. Kirkman: Mr. Chair, is that a question?

Mr. Fields: He has the floor.

Mr. Mitchell: Point of order, ma'am, point of order. I think it can be worked out between their attorney and our attorney. It could be worked out with the proviso that they would come up with an agreeable, between the two gentlemen, an agreeable proffer statement.

Ms. Kirkman: Mr. Chair, I would suggest as a point of order that we are in the part of our process where we are asking the applicant questions and, before we discuss the merits of future action, we do need to allow the applicant to...

Mr. Fields: Yes, just trying to make sure everybody has their issues, their questions aired. Yes, we do need to move. Mostly I was trying to get a sense of how people felt about different issues which is a little bit different than discussing the motion, I agree, it is a little bit of a gray area but I was just trying to get a sense from the Commission where different people were thinking about how to proceed and what their concerns were. So that is why we are going where we are going. At this point, we either need a motion to recommend approval of the reclassification request or a motion to recommend deferral to the next meeting to tighten up and revise the language.

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Mr. Mitchell: Mr. Chairman, I make a motion for approval of RC2800486, Reclassification, South Campus, with the proviso also that the developer attorney and the County attorney would work out the proffer amendment that would be appropriate that we feel would be much tighter.

Mr. Fields: Is there a second?

Mr. Rhodes: Second.

Mr. Fields: Second by Mr. Rhodes. Discussion on the motion.

Ms. Kirkman: Mr. Chair, I am going to make a substitute motion. My substitute motion is to defer this matter to our next meeting which is July 1 so that the applicant may address the proffer regarding lighting, the proffer regarding the RPA either expanding the buffer area between the retaining wall and the RPA or provide evidence that 10 feet is sufficient, address the proffer regarding use of porous pavement and specifically submit to certain percentages there, address the proffer regarding affordable office space and look at both providing affordable office space to other than out-of-area doctors and medical professionals and that that not be contingent upon Medicorp, and to add a proffer regarding protection of water quantity and quality of wells of parcels in proximity, and finally I think the other two that we heard tonight were adding a cash amount for the sign for the archaeological feature and in lieu of approaching the owners regarding acquisition of right-of-way, that the applicant look at what kind of cash payment they could offer should there ever be acquisition of that right-of-way.

Mr. Fields: That sums it up quite well.

Ms. Kirkman: So, that is my motion.

Mr. Fields: Is there a second?

Mr. Di Peppe: Second.

Mr. Fields: Second by Mr. Di Peppe. Discussion?

Mr. Rhodes: Mr. Chairman?

Mr. Fields: Ms. Kirkman made the motion first so she has the privilege...

Ms. Kirkman: I think I laid it out.

Mr. Fields: Okay, that was a fairly discussive motion but it was necessary...

Ms. Kirkman: I wanted to be very specific because the applicant... I am discussing it. I wanted to be specific so that the applicant knows that these are the final points that we need to negotiate and I think he can take the next two weeks to do it.

Mr. Fields: Mr. Mitchell?

Mr. Mitchell: Mr. Chairman, if we are truly worried about water, I think those wells should be tested for capacity. Each of the five properties should be tested for capacity right now. So, if six weeks from now,

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six months from now, six years from now they say there is an issue, then we would have documentation whether there was an issue with the water or not.

Ms. Kirkman: Excuse me. Mr. Chair? I am having a hard time hearing my colleagues that have the floor because of other conversations that are going on.

Mr. Fields: Okay. Mr. Mitchell is requesting... I think that is a point well taken Mr. Mitchell. Establishing a baseline is good.

Mr. Nugent: Mr. Chair, excuse me. In response to what Mr. Mitchell said, in this agreement there is an obligation to find a baseline condition for the existing wells whenever the land disturbance activity or site grading activities operate within 200 feet from the boundary line of the property on which the private well sits. So that contingency is already considered; the applicant has already taken that into consideration.

Mr. Fields: Alright, any further discussion on the substitute motion?

Mr. Rhodes: Yes, Mr. Chairman. Can I get clarification from staff. How many meetings does the Board of Supervisors have in the month of July? Do we know their schedule?

Mr. Harvey: Mr. Rhodes and Mr. Chairman, the Board's schedule is like the Planning Commission's, you have one meeting in July and one meeting in August.

Mr. Rhodes: So, they only have the 7th to execute; five, six days in there. Otherwise, it goes to the end of August.

Ms. Kirkman: No it does not; they meet in the middle of August.

Mr. Rhodes: The second meeting in August. That is about the 17th then, something like that.

Ms. Kirkman: You know, I do not see what bearing this has. What we are doing here is trying to wrap this thing up and get the best agreement that meets the spirit of supporting appropriate development in the redevelopment area and protecting the adjacent property owners. Two weeks out of a large rezoning like this is not going to make a difference.

Mr. Rhodes: (Inaudible) two weeks ago would have been better.

Mr. Di Peppe: We represent the people as a whole. It is like a restaurant, we represent the whole restaurant, not just one table in the restaurant, and I think it is better to take an extra two weeks, just as the Planning Commission attorney advised, if we really want to protect the adjoining landowners, there are some specific wording that can do that, and of the other issues that were raised, there are some specific wording and I believe it is worth two weeks because we represent all the people. We owe them that.

Mr. Mitchell: Mr. Chairman, I would submit that... I will be voting against Ms. Kirkman's motion. I think dragging any company down here five times... there are signs on our County that say business friendly but we are not being business friendly. The issue here is if you want the commercial development, we are not talking residential development we are talking commercial development, which provides tax base and provides jobs, it seems like we are doing our best to delay it as much as possible. And some people are doing a fair job of it.

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Mr. Fields: Alright, all those in favor of the substitute motion signify by saying aye.

Mrs. Carlone: Aye.

Mr. Di Peppe: Aye.

Ms. Kirkman: Aye.

Mr. Fields: Aye. Opposed?

Mr. Rhodes: No.

Mr. Mitchell: No.

Mr. Fields: Motion carries 4 to 2. So, July 1st we will conclude this and send this on its way. Alright the next item is new business, Lexington Farms, preliminary subdivision plan.

8. RC2900127; Reclassification - Stafford Nursing Home and Retirement Community Proffer Amendment - A proposed amendment to proffered conditions to establish phasing of the development, site access, and other planned improvements and allow flexibility in unit types for a retirement community, zoned LC, Life Care/Retirement Community Zoning District, on Assessor's Parcel 44-119M consisting of 22.69 acres, located on the east side of Berea Church Road south of Falls Run within the Falmouth Election District. The Comprehensive Plan recommends the property for Urban Residential, Light Industrial, and Resource Protection land use. The Life Care Zoning would allow development of transitional housing for the elderly, including independent living units, assisted living facilities, and nursing homes. See Section 28-35 of the Zoning Ordinance for a full listing of permitted uses in the LC Zoning District. **(Time Limit: September 1, 2009) (History – Deferred at June 3, 2009 Regular Meeting to July 1, 2009 Work Session)**

NEW BUSINESS

9. SUB2800594; Lexington Farms - Preliminary Subdivision Plan - A preliminary subdivision plan for 11 single-family residential lots, zoned A-1, Agricultural, consisting of 50.8 acres located on the north side of Mountain View Road approximately 400 feet west of Rock Hill Church Road on Assessor's Parcel 17-54 within the Hartwood Election District. **(Time Limit: September 9, 2009)**

Mr. Fields: Moving ahead. Lexington Farms, preliminary subdivision plan. I did not say we were taking a break. No we can't, it is 10:05. We have got to move. Forging ahead.

Natalie Doolittle: Good evening Mr. Chairman and members of the Commission. Item number 9 is Lexington Farms, a preliminary subdivision plan. The applicant is Rob Shircliff. It was submitted August 21, 2008, and went to TRC September 24, 2008. The engineer is Victor Amole with Vitech Engineering. The site is Assessor's Parcel 17J-1 located on the north side of Mountain View Road west of Rock Hill Church Road. The parcel is approximately 51 acres, zoned A-1 Agricultural. The project is proposing 11 lots and it is in the Hartwood District. Here is the location outlined in blue and here is the aerial. The area highlighted in green is the proposed subdivision that was reviewed on this preliminary and the area outlined in yellow was the minor subdivision plat that was recorded previously and is included on the preliminary because it was part of the parent parcel. All lots will have on-site sewage

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disposal systems and wells, and stormwater management will be contained through 11 bio-filters and 2 bio-retention basins. There is RPA and it is located across the rear of lots 2 and 3 and a portion of lot 1. And staff recommends approval of this preliminary subdivision plan. And I can answer questions and the applicant, Rob Shircliff, is also here to answer questions.

Mr. Fields: Any questions for the staff at this point?

Mrs. Carlone: I did not receive your reply till today on this property and I was trying to see the process. I had asked for a copy of the original, how on this lot 2 you answered that there was not a problem with them having an entrance. Lot 2 is in the middle of I guess that was originally Section 1, is that correct?

Mrs. Doolittle: Yes, lot 2 was part of the minor subdivision that was part of the parent parcel.

Mrs. Carlone: Yes, if you look at where the entrance is, this is very hard to read, this smaller map. I was wondering about the site distance between where the entrance comes out for Lexington and then where that dirt road is for, the gravel road for 2 of the original Section 1. Is that adequate? Did VDOT base their letter from Clyde based on the site distance between the 2 locations out onto Mountain View?

Mrs. Doolittle: They did not provide an approval letter, but at TRC and one of their earlier comment letters on this plan, they did recommend that the existing house have a driveway off the proposed Shircliff Road but it was not a requirement.

Mrs. Carlone: Okay, because I would like to see that done because of the distance between the two. And then also it is very difficult to see where the site... do you have a presentation to look at where the site distances are along Mountain View?

Mrs. Doolittle: I do not have anything other than what was included in the powerpoint.

Mrs. Carlone: Okay. I was concerned about the site distance and has it also been worked out... there are several curves within the subdivision itself that looks like the site distance is off a bit or might be a concern. And then, this is for the applicant, also there is the double street lots here to address. I am sorry I did not get a response sooner on this.

Mrs. Doolittle: I apologize. I was in a meeting yesterday afternoon.

Mrs. Carlone: That is okay, everybody is busy. I had addressed several issues and I will talk to the applicant about what might be a way of addressing some of this lot 2.

Mr. Fields: Any other questions for staff?

Ms. Kirkman: Yes. So, we have this plat and the reason why there are two lot 2's is because there was a, I just want to make sure I am understanding this correct, there was a parent parcel and a minor subdivision was done.

Mrs. Doolittle: Correct.

Ms. Kirkman: With a big chunk left over and now that big chunk is being further subdivided, is that correct?

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Mrs. Doolittle: Correct.

Ms. Kirkman: So that is why it looks like it is.

Mrs. Doolittle: Yes.

Ms. Kirkman: What I will need before... well in advance, not 2 days or 3 days before the next meeting, is a copy of that minor subdivision because we cannot look at this without that. The second thing, this is impossible to read for compliance with the subdivision code. We have to have the big sheets, so gotta have that in our packets, not the little sheets; too small to read. And so I do not have anymore questions because I cannot read this.

Mr. Fields: Any other questions for staff? Alright. Applicant?

Debrarae Karnes: Mr. Chairman, Commission members and staff. My name is Debrarae Karnes. I am going to talk for no more than 2 minutes and I am going to get the applicant up here to tell you about this plan. And I wish I could have the audio of horses playing right now. Okay, my name is Debrarae Karnes for the record representing the applicant. I want to point out 3 real simple things. Number 1, this plan meets all minimum standards and more. And staff has recommended approval. This provides density of, by my calculations, 4.6 acres per house, higher than the Code average. It provides LID; 11 bio-filters and 2 bio-retention systems. And finally, it meets the ordinance standards the Planning Commission desired. The 10,000 square foot building requirement even though apparently that is no longer the code. But more over, Mr. Chairman, in 8 years of running around here talking about Planning Commission Stafford County building minimum requirements and goals, a lot of Planning Commissioner's have always said fine, it meets the minimum standards, but is it desirable development? And Mr. Shircliff is going to get up here and, first of all, describe his vision of this development because I think you need to hear it. And then he will very specifically answer the questions of Mrs. Kirkman and Mrs. Carlone and others. And, by the way, we will get you those big sheets.

Ms. Kirkman: And either you or staff the soils work. As you know, that is something that I always look on these. But I need the copies.

Ms. Karnes: We will get the soil work and the AOSE.

Mr. Fields: Alright, Mr. Shircliff.

Rob Shircliff: I would like to address Ruth real quickly. First of all, I am sorry Ruth. I should have met with you beforehand and I should have brought you all a full-size sheet. I was under the impression that you all got a full-size sheet already. Have you been to the property Ruth? Okay, the homesite, lot 2 in the original minor subdivision, is the third house that has been built on that hill. It is framed by 2 gigantic oak trees on each corner and there is a beautiful colony of trees as you enter the house. To enter it from a different location would be a travesty. It would destroy the ambience. Believe me, if there were no characteristics on lot 2 I would have included it in the major plan. But it is such a beautiful stand-alone property that I wanted to build the development around it and to build off of it. We recently built new board fences around it and there is a barn... I did an archaeological study to determine that the barn was originally built in 1890. It was in disrepair. It actually has a full basement, a root cellar, under one portion of it. I had a stonemason come out and rebuild the foundation, carpenters work on it for 4 to 5 weeks, at a tremendous expense. I am a horse lover myself, as you may have gathered from my email that I sent you all, and it was important to me to maintain the character of the property and build around that

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house. Also, if you will notice in the major plan, both lot 1 and lot 10 are quite large. If you had the full-size sheet you would have all the information that you requested or that you would require in the minor. There are only 2 lots on Rock Hill Church Road, both of which are quite large, both of which will be I am sure for horse lovers. I did not want to cross the creek for many reasons, not the least of which is expense, but anytime you disturb a perennial stream it wreaks havoc on the environment. The particular stream is an intermittent stream for a large portion. I could have crossed in that section but I saw no reason and your current statutes allowed me to do this and that is why I wanted to exclude the minor on the one side and make the lots very large. Rule view shed is very important to me. If it were up to me, I would reduce the density in a primary settlement district and always rule on the side of view shed. Setbacks; I do not like blight and I do not like congestion and, of course, this is not up to me. You understand my point of view. Mother Nature will produce for you a lot. Developers try to force the issue often and create inferior lots in the process. If you have been in this business as long as I have and you love property as much as I do, and this property really is beautiful and you all owe it to yourself to go look at it because we have completely restored the primary residence and took great care with the barn and it is really quite a beautiful place. And the reason why I included in the email the black-eyed susies in the ditch line is because this property is full of them. The 10,000 square foot requirement for building site I fully support. I think it is ridiculous to try to create a lot where you have a drainfield and road frontage and no place to build a house. The 10,000 square foot area that you see represented on this plan does not represent the only buildable area that we have on those lots. Virtually we can move that anywhere we want to and it still complies. Except if we were to intrude on the RPA which, of course, we won't. Any questions?

Mr. Fields: I know, of course, that this is not a rezoning but I know that you and I have shared dialogue over the years and I know that you are very committed to doing a lot better job than most people and I respect that. Do you have any plans, as you develop this out in building it, to put since you have such an architecturally significant cornerstone, to have a sort of design standards concept on how the houses are built out so that the architecture of the built part of this is really consistent with the topography and the history as opposed to... I mean, I have seen some beautiful pieces of land with just horrible vinyl-sided pieces of junk on them.

Mr. Shircliff: So have I.

Mr. Fields: I know, and I hope you have not built any of them. I have know you enough... we have had enough conversation, I know that is not where you are coming from and I do not know whether it is appropriate at this time, I just sort of would like you... if there is a way for you to address that, it would be of a great benefit I think to try to turn the corner on how this stuff is done in the County.

Mr. Shircliff: I wish that the house that we restored was represented in the architecture that I love. This is the third house; it was built in the '50's. It has 6-12 pitch roofs which I... I always built a minimum of 8-12 and often 12-12 pitches, so there is nothing significant in the architecture of that house. If you are on the road, you really cannot see the house that well. I mean, you can see it but there are so many other things to look at that detract you from looking at it that it still comes off as very beautiful. I have my own idea of what should be built on this property. I confess, I have sold this. This preliminary plan is a condition that survived settlement. I discussed what I believe should be built there with the current owner. He is compatible with my views. We build boxes; 5-4over a door, they are quite plain, and, if you can imagine, being a builder I have gotten so bored with the work that I do because not very often do I find a customer who really shares the same love of architecture that I do. And also there is a cost associated with producing fine Colonial architecture, whether it be federal or Georgian or whatever. My vision for the property would be to encourage breezeways, detached garages, hardy plank siding, concrete

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siding. You know the product; it looks like wood but it is much, much better. You can reproduce now the look that you want and make it totally maintenance free. It is amazing the products that are available to us today. Certainly all brick foundations would be a requirement. Different lots for me would dictate a different house. Lot 11 fronts and sits on top of a hill. I would build something that was more Georgian with columns. I do not think the houses need to be that big; I think we have all gotten a little crazy with big. It is how nice they are and how nicely sided they are. If you notice, as you enter in on Shircliff Road, and I apologize for the name of that road, I did not name that road and we are going to change the name of that road; I do not know why my engineer did that and I should have changed that before now and I apologize for that because that is not going to stand, but if you will notice the 10,000 square foot building areas that I have located along that road, they share about the same setback. What is really important when you build on well and septic lots is to create symmetry as you enter, and on every street. It is difficult to do that often because so often a drainfield has to be in the front on one lot and has to be in the back on another. We are very flexible here with our soils so we have the opportunity to do a lot and that is very fortunate for us. So, that is part of what makes a beautiful project. The other part is in the covenants and we supplied some covenants that are a requirement, but I confess that when it comes to the lots that will support horses, those lots are not complete because you have to be very careful with horse people. They tend to overgraze and so your covenants have to be very specific to prevent them from creating an eyesore. If you are not careful they will be watering out of a bathtub and it is not very sightly. I have a lot of things that I would like to do, I will be quite frank with you, and some of the things I want to do are not provided for in your code. I so often feel like every good deed shall go unpunished if I suggest it and I do not like to do stuff if it creates complications. I would like very much to provide deeded restrictions on where the houses can be built, specifically on lots 1 and 10. I would like to make lot 2 a preservation area, the entire thing, so that nobody can change anything or add a building to detract from the beauty that you enjoy now from the road. But those are things that I can do legally without you, all of which I would like to do. One thing that was important to me was to do LID. I have done some... we all progress as we grow older and our tastes change. So do our visions, often our wisdom, and as a consequence of being in this business a long time I have seen a lot of things I do not like. I hate retention ponds because so often they are dry and they are ugly and especially when we had the requirement that we had to fence around them. On lot 1 it is a large bio-retention basin and there are some expenses associated with it I want you to know too, but it provides us the opportunity to landscape and create a natural buffer between lot 1 and lot 2 and further enhance privacy. I would like to record a 35 foot buffer around the entire thing and make it a... you can call it whatever you want, but the bottom line is it precludes anybody from building anything in it including a fence so that 20 years from when somebody has developed another piece of property that is adjacent to mine, some poor man does not have a Chihuahua chasing his German Shepherd up and down the fence line. Protecting and respecting adjacent personal property is important to me. It certainly is reflected in the last development I did called Glen Haven which is in Spotsylvania which, to this day, I believe is the most progressive development that has ever been proposed in this State. I have not gotten any notoriety for it but they are using it now in a lot of workshops/work sessions amongst different parts of the State as a model which is what I intended it to be.

Mr. Fields: Mrs. Carlone has some questions I think.

Mrs. Carlone: Are you going to be the builder for this or is it going to be sold to individual builders?

Mr. Shircliff: That is not for sure yet. I would like to be, honestly. I also have some other loves. One of my loves is deep sea fishing; I recently got my captains license. I always wanted to be a charter captain. I do not know if I can cut it everyday but right now is not the time to be a builder. I have not lost my desire to be a builder. I would love to be the builder but there is nothing written in stone when it comes to that.

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Mrs. Carlone: You said you had not worked out the total verbiage on the covenants.

Mr. Shircliff: Well, I should not have said that I know, but when I read it a second time I realized that I have got to narrow down what the lots which will allow horses can do. How many horses they can own, number one; the requirements for the pasture, number two; the location of an outbuilding, all those things to be worked out.

Mrs. Carlone: So you could have some influence on what might happen.

Mr. Shircliff: Oh sure, I could do that.

Mrs. Carlone: Okay, that is all.

Ms. Kirkman: And then I just wanted to make sure... so this was part of a parent parcel, you did a minor subdivision which created how many lots?

Mr. Shircliff: Three.

Ms. Kirkman: Three plus this lot or three including this lot?

Mr. Shircliff: When you say this lot, you mean the...

Ms. Kirkman: The one that is now being subdivided.

Mr. Shircliff: The house? Oh no, no.

Ms. Kirkman: I am trying to understand the history.

Mr. Shircliff: Four.

Ms. Kirkman: Okay.

Mr. Shircliff: The parent parcel and 3 lots. Is that what you mean?

Ms. Kirkman: And one of those 3 lots is what is now being subdivided?

Mr. Shircliff: No, one of the 4.

Mr. Fields: You had a parent parcel, you took 3 small building lots out of it and left a large lot.

Mr. Shircliff: We created 3 large building lots and then left a large one.

Mr. Fields: A big chunk, and the big chunk is what is being subdivided.

Mr. Shircliff: That is correct.

Ms. Kirkman: And those 3 large building lots, have they been subdivided?

Mr. Shircliff: Oh yeah. They are recorded.

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Ms. Kirkman: No, have they been further subdivided?

Mr. Shircliff: No!

Ms. Kirkman: Okay, I am just trying... because we only got this, we did not get the other piece.

Mr. Shircliff: I am sorry.

Ms. Kirkman: Okay. And, just out of curiosity, you mentioned board fence. You aren't the same guy that does that miles and miles of black board fence off of Brooke Road, are you?

Mr. Shircliff: No. But I have built miles and miles of black board fence in my life.

Ms. Kirkman: It is quite a sight, isn't it? I was just curious.

Mr. Fields: Three board fence or four board fence?

Mr. Shircliff: Well, actually on my farm in Culpeper it was four board fence.

Mr. Fields: That is impressive when you have miles of four board fence.

Mr. Shircliff: It is just a waste of money; I am now on three board fences.

Mr. Fields: You are through impressing the neighbors with four board fence.

Mr. Shircliff: It did not do any good how high I built my fences on that first farm because my daughter and her horse would jump them no matter where they were or how high they were.

Mr. Fields: Okay, so Mrs. Carlone, do you want a couple weeks to work on this to get it where you need it?

Mrs. Carlone: I do have a question and that is I think when you initially started you wanted to have this grandiose entrance lined with trees and such on the gravel... now wait a minute, I am not through yet... because I was going to say whether whoever purchased it; is there someone owning that and living in it right now?

Mr. Shircliff: The house is rented to a marine.

Mrs. Carlone: Oh, it is rented, okay. Because there really is opportunity, there are 3 possible roads to be connected to it because VDOT was kind of iffy on that. So, you are going to stay with that, as you said, gravel road.

Mr. Shircliff: Are you talking about on lot 2?

Mrs. Carlone: Excuse me, I should clarify that. Yes, lot 2.

Mr. Shircliff: It is an existing road, it has been there for hundreds of years. The trees that line it are quite large and very beautiful.

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Mrs. Carlone: Okay. I was just thinking about connecting to one of those other two...

Mr. Shircliff: I do not think that the person that ever owns lot 2 would want to and I think you would detract from the natural beauty. And I think you will see, if you can go look at it I would be happy to meet you there. You would look at it and I know you would immediately agree, it would be a travesty to do away with that driveway.

Mrs. Carlone: I was just thinking in terms of VDOT's requirements but...

Mr. Shircliff: Actually it was not really a requirement. I have known Clyde for forever and whenever he can restrict access he will, but when he understood why we were he immediately capitulated and said I understand.

Mrs. Carlone: If you have already met with Clyde then I will just be quiet. Oh, I would like to see this come back to the next work session.

Mr. Shircliff: Okay.

Mrs. Carlone: (Inaudible).

Mr. Shircliff: Would all of you like to have copies of the ASOE report for the soils?

Ms. Kirkman: I am usually the only one that wants that.

Mr. Shircliff: You are the one that wants it, okay. Cecelia.

Ms. Kirkman: Unless my colleagues are eager to plow through four samples...

Mr. Fields: In many cases I would; I think in general we are looking at... I would like to thank you for actually picking a developable piece of a property to develop as opposed to picking an undevelopable piece of property to attempt to develop and forcing us to be in a confrontational position.

Mr. Shircliff: I understand. I built in Aquia Harbour and I went by a house and a guy was backfilling it and I told him you can't do this and your house is going to collapse, and he said no, I know what I am doing and I said okay. So I drove to the first section and when I came back around the corner there was a big open space and the house had collapsed and was down in a ravine and he was sitting on a 5 gallon bucket and he was crying. Now, 3 years later, I saw the same thing again. I do not believe in disturbing ground that you cannot restore, and certainly some of the topo in this County is too extreme to build anything on. But it is beautiful to enjoy from the edge.

Mr. Fields: Beautiful to enjoy, yes. Okay, I think we are good. We are not trying to dismiss you but we have a long night. We have a couple more things to do. Thanks for waiting

Mr. Shircliff: I will call you, Ruth, and I would love to have the opportunity to meet you out there.

Mrs. Carlone: Okay. We were just trying to set up the date.

Mr. Harvey: Mr. Chairman, Mrs. Carlone was asking me what would be scheduled for the July 1st work session and that would be the continuation discussing of the cluster regulations, we would also have the

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Stafford Nursing Home and the South Campus case, plus this preliminary plan, all we will try to deal with in work session. We have a heavy public hearing schedule.

Mr. Fields: We do have a heavy public hearing schedule?

Mr. Harvey: Yes.

Mr. Fields: Well, it is up to you. It seems to be...

Ms. Kirkman: We also have a time limit. Our next meeting after that is August 19th, which I do not know how that fits in the time limits.

Mr. Fields: The time limit is September 9th.

Ms. Kirkman: Oh, okay.

Mr. Fields: I just do not really have... finally we have a fairly decent plan, I do not want to delay more than we need to.

Mrs. Carlone: In August I know we only have one meeting.

Ms. Kirkman: Our next meeting is August 19th after July 1st.

Mr. Fields: Let's just try for the 1st.

Mrs. Carlone: Yeah.

Ms. Kirkman: Let's see what we can get done.

Mr. Fields: The other things are things that I think we are this close probably to dealing with so lets just work hard and with all of your cooperation we will keep it very focused and productive.

Ms. Karnes: Mr. Chairman, I think I heard that Mrs. Kirkman wants the soil report, you all want big plans, and also copies of the minor subdivision.

Mr. Fields: Yes.

Ms. Karnes: Did I miss anything?

Mr. Fields: I do not think so.

Ms. Karnes: Thank you.

Mr. Fields: Thank you. Thank you Mr. Shircliff, we will see you in a couple weeks. Alrighty, that takes us through New Business. Planning Director's report.

PLANNING DIRECTOR'S REPORT

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Mr. Harvey: Thank you Mr. Chairman. As you may recall from your last meeting, staff had requested the Commission's consideration for participation in the joint public hearing. There was no affirmative vote on that. Staff would request the Commission consider that issue again.

Mr. Fields: Speaking of that issue, we will take that up right now. My understanding, looking at the Code and discussing this with some other Commissioners, when I read the Code, when the Board which has disapproved the Comp Plan, a section of the Code says that we then subsequently have sixty days to review and comment and send back our comments back to the Board. It does not say anything about conducting another public hearing. So, my recommendation to the Planning Commission is that we take our sixty days starting June 3rd, review the Comp Plan and send it back to the Board. Send our comments back to the Board. June 3rd is the start date of our sixty days.

Mr. Di Peppe: But then that would be August 3rd and we do not meet until the...

Mr. Fields: Well, we could resolve it by the last meeting in August or we could hold a special meeting if we have to. My understanding of the Code, this is Section 15.2225 through 28, when the Board disapproves a plan the process is pretty clear that the Planning Commission then has sixty days to comment and send those back to the Board. That is the process. So that is my personal opinion. I know we should have a motion or a resolution to do that.

Ms. Kirkman: We only need a motion to affirm... the only request was a motion to affirm the joint public hearing.

Mr. Fields: Correct.

Ms. Kirkman: I do not think we need a motion to do what the law tells us to do.

Mr. Fields: Well, unless there is dissent among the Commissioners in which case we need to certainly resolve that in a democratic way. Is there anybody that dissents from that process?

Mr. Di Peppe: Can we at least get legal to weigh... Samuel, can we at least get you to weigh in on that because we seem to have a difference in what procedure is from what the Board is trying to do and what we see as the law that we are supposed to do. If they are trying to get a joint public meeting in July and we are saying no, we are entitled to sixty days to make comments, is that a... where do we go from there?

Mr. Nugent: I can weigh in on that but I cannot do it at the moment. I am going to have to check into it.

Ms. Kirkman: That is fair enough.

Mr. Fields: Okay. That is fair enough. Alright then, next item.

Ms. Kirkman: Mr. Chair, did the Planning Director have anything else to report?

Mr. Fields: That is what I am asking now.

Mr. Harvey: Pardon me.

Mr. Fields: I am asking you the next thing on your report.

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Mr. Harvey: Yes, thank you. This is the report from the actions of the Board yesterday. They referred the Reservoir Overlay back to the Planning Commission for public hearing. There was a question that Mr. Brito raised because the Ordinance was not very clear with regard to where vehicle fuel sales may or may not be allowed in different zones so we may need to take a revisit how we list what is permitted and prohibited in the various different zones within the Overlay District. So, that may be some additional work the Commission may want to look at. They authorized public hearing on the terminal reservoir ordinance. They approved the Micah Conditional Use Permit; also the Virginia Paving CUP Amendment. They approved the amendment to the Code regarding propane sales requiring a Conditional Use Permit. They also referred the number of PAE's in minor subdivisions to the Planning Commission for public hearing. I would note that for your July paychecks, they will be late because they are not written until after the new fiscal year, July 1st, so there may be a little delay in that.

Mr. Fields: Like about a year? What you are trying to say, once the new fiscal year starts actually nobody will be getting a paycheck in Stafford County. You are just trying to break it to us gently.

Ms. Kirkman: Is that true? Nobody is getting their paychecks?

Mr. Fields: They are just late.

Mr. Harvey: Everybody is getting paychecks, it is just that they are not in their normal cycle because of the new fiscal year.

Mr. Di Peppe: We are going to a bartering system.

Mr. Harvey: So they may be a few days later then you normally receive them.

Mr. Di Peppe: That happened last year.

Mrs. Carlone: (Inaudible).

Mr. Harvey: Mr. Chairman, Mrs. Carlone asked for more clarification about the Reservoir Overlay Ordinance and Mr. Brito's question. He had asked if the ordinance prohibited vehicle fuel sales from one of the proposed districts within the Overlay. The ordinance is not very clear. It says no hazardous materials and when we started looking into what the EPA requirements for hazardous materials were we could not readily define it. So, if staff cannot come up with a complete answer, and we are the ones that are supposed to be administering the ordinance, we probably need to make it clear so we can understand it and the public as well.

Ms. Kirkman: So, Jeff, will all these that have been sent to us for public hearing be on our only meeting in August? Is that when we will be hearing them?

Mr. Harvey: Well, we will put them on your agenda for your next meeting and it will be up to the Commission to determine whenever you want to schedule them for discussion.

Ms. Kirkman: You mean for public hearing?

Mr. Fields: For public hearing will be July 1, right?

Mr. Harvey: No. They will not be for July 1; there is not enough time to advertise them.

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Ms. Kirkman: But several of these are things that we had already written and were only sending to the Board to refer back to us for public hearing. We do not need to schedule those. When we have already said we want a public hearing on this, we are sending this to the Board, why are we bringing... I do not understand why we are not automatically just scheduling those items for public hearing.

Mr. Harvey: We can if the Commission wants to give the staff just a blanket of authority just to go ahead and schedule them automatically. We can go ahead and proceed.

Mr. Fields: How do you all feel about that? I think it is a good point. If we have approved them for public hearing and sent them to the Board simply because of the process for the referral, I do not see that we need to just stall.

Ms. Kirkman: Right.

Mr. Fields: Does anybody have a problem with that?

Mrs. Carlone: (Inaudible).

Ms. Kirkman: We are talking about generally, Ruth. And I think it makes sense only on those we have done that and I think they should be scheduled for the next meeting for public hearing, I mean depending on schedule of course.

Mr. Harvey: Mr. Chairman, I would note that the ordinance dealing with the number of PAE's in a minor subdivision, that is pretty straightforward and could be advertised pretty readily for your August meeting. I guess the question would be does the Commission want to have any discussion with regard to the Reservoir ordinance?

Mr. Fields: Sounds like we have a little tweaking needed on that, right? Yet again. It is a complicated ordinance.

Ms. Kirkman: Only if it means that we can deal with that on our July 1 meeting so that this can go to public hearing mid-August.

Mr. Fields: That is what I am thinking. Okay.

Mr. Harvey: Again, I know your schedule is going to be very packed for July 1st.

Ms. Kirkman: Well, staff, if you could just bring us a fix for the hazardous material issue.

Mr. Harvey: We will work on it.

Ms. Kirkman: So we won't have to have a lot of discussion.

Mr. Fields: Okay. Other matters?

Mr. Harvey: That concludes my report. Mr. County Attorney?

COUNTY ATTORNEY'S REPORT

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Mr. Nugent: Nothing other than what has already been discussed, thank you.

Mr. Fields: Okay.

Ms. Kirkman: How about some of the lawsuits against us? What are the status of those?

Mr. Nugent: I am knee deep in trying to deal with them.

Ms. Kirkman: Do you want to report to the Commission the Potomac River Resource?

Mr. Nugent: Oh, I am sorry.

Ms. Kirkman: That was a hint.

Mr. Fields: You were leading him as hard as you could. Use cue cards.

Mr. Nugent: We did receive a favorable ruling from Judge Bass on the first of the PRRP lawsuits, that is the lawsuit challenging the validity of that ordinance, the first one that was argued. We are happy with the ruling. We think the ruling is the right ruling for the right reasons, but this is just part of the battle, part of the puzzle. There is one other hearing on another challenge to the PRRP Ordinance scheduled for August 17th.

Mr. Di Peppe: What time is that?

Mr. Nugent: Three p.m. And before Judge Bass, and we still have battles to fight. But so far we are happy with the results up to this point.

Mr. Fields: Keep up the good work.

Mr. Nugent: Thank you.

Mr. Fields: Alright, Mr. Secretary?

SECRETARY'S REPORT

Mr. Mitchell: No sir.

COMMITTEE REPORTS

Mr. Fields: Committee reports? Arch?

Mr. Di Peppe: This is really not a committee report but I do not know where else to put it. Unfortunately, Jonathan Schultis has already left the arena and it is his last night before us and I just want to put on the record how much I appreciate his professional and diligent service. There was not a single time that I ever dealt with him that he did not give yeoman service to the County and answer all of my questions and had a very good sense of humor, which is a very essential quality of a planner, dealing with us. But I am going to miss him and I think he is very professional and I just wanted to put that on the record to thank him for his service to the County.

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Mr. Fields: We all do; we all thank Jonathan.

Mrs. Carlone: I think a letter would be nice

Mr. Fields: Yes, I think we can do a letter.

Mrs. Carlone: Can we do a letter please?

Mr. Fields: Sure we can. Alright, I do not have anything.

CHAIRMAN'S REPORT

No report.

OTHER BUSINESS

No report.

APPROVAL OF MINUTES

April 1, 2009 Regular Meeting

Mr. Fields: We have minutes. Approval April 1 regular meeting. Is there a motion for approval?

Ms. Kirkman: Arch, are you the one that had some issues with that?

Mr. Di Peppe: I did not see them in my package; I looked for them. I did not realize it was being sent to me in an email, I am sorry.

Ms. Kirkman: Let's defer to next time.

Mr. Di Peppe: I apologize. Can you send me that again? I am sorry I missed that.

Mr. Fields: Alright. Any other business? Very good.

ADJOURNMENT

With no further business, the meeting was adjourned at 10:47 p.m.

Peter Fields, Chairman
Planning Commission