

STAFFORD COUNTY PLANNING COMMISSION
WORK SESSION MINUTES
April 2, 2008

The work session of the Stafford County Planning Commission of Wednesday, April 2, 2008, was called to order at 5:41 p.m. by Chairman Peter Fields in the Board of Supervisors Chambers of the County Administrative Center.

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

Members Absent:

Staff Present: Hornung, Judy, Baker, Schulte, Stepowany, Zuraf, Hudson, deLamorton, Woolfenden, Schardein, Hamock and Stinnette

Declarations of Disqualification

None

UNFINISHED BUSINESS:

None

ORDINANCE COMMITTEE

1. Notice of Zoning Administrator Determinations (**Time Limit: July 1, 2008**)

Mr. Stepowany stated Resolution R08-180 was referred to the Planning Commission by the Board of Supervisors and approved on March 18, 2008. It was establishing an ordinance O08-36 requiring the Zoning Administrator to post all formal determinations on the county website and if a specific parcel was subject to a determination written notice of the determination shall be provided to the applicant and all adjoining property owners by first class mail when the determination has been made. There was no specific timeline on when this ordinance has to submit a recommendation so it was the standard 90 days from March 19 when the recommendation of the Planning Commission has to be moved forward. He stated he would be happy to answer any questions and recommends the ordinance committee make a motion to send it to public hearing.

Mrs. Carlone stated she was given some changes that, in her opinion, were very important regarding the notification process and forms and she would like to see this item deferred.

Ms. Kirkman stated she would like clarification from Mr. Judy that this was sent to them by the Board of Supervisors and cannot change the particular wording, that they can only make recommendations.

Mr. Judy stated the purpose of sending it to the Planning Commission was to have a public hearing and discuss it. If they believe that there are issues with it then they certainly have the right to discuss them and make recommendations to the Board for suggested changes. That did not mean that they have to follow them but if you have specific changes you would like to offer to the Board as means of improving what they have sent you that would be perfectly fine.

Ms. Kirkman stated what she had to suggest was so different and that what she would like the Planning Commission to consider was moving forward an ordinance at their origination which they

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can do at any time regarding notice of the Zoning Administrator's decision. She would like Mr. Judy to have the opportunity to review the language before they do anything along those lines. She was not speaking on behalf of the Board of Zoning Appeals but she was certainly speaking from her own experience on the BZA. What she has come to understand was that the determinations that are made by the Zoning Administrator can fundamentally alter the application of the zoning ordinance and currently those decisions are made entirely out of the public view with no notice of adjoining property owners. They have had some rather remarkable decisions made in the past that the BZA has had to look at including the classification of a paramilitary operation as a school and there are more ahead that are quite unusual. For that reason, she does believe that because the Zoning Administrator determinations are so important and have such an impact that this process should be as regulated and as public as every other part of the zoning changes. There was a section of the State Code that does say any locality may give, in addition to any specific notice required by law, notice by direct mail or any other means of any planning or zoning matter it deems appropriate. So in drafting this legislation she went and looked at what their procedures were for other zoning matters. They require an application, a form and a procedure, there was a tracking system and she believed all of those should apply for zoning determinations. There was usually a fee but they would need to make sure that there can be a fee charged for these types of zoning determinations. Adjoining property owners are notified prior to the action taken place which she believed should be the case here and there was a timeframe for the decision to be made and a timeframe for the elapse between the notification for the adjoining property owners and the action taken which she thought should apply there as well. Finally, there was a process for knowing what the outcome was. She was suggesting that they draft an ordinance for the Board's consideration that takes all of those things into account. She knew they could not make a decision on this tonight but she did want them to start that discussion.

Mr. Di Peppe stated he agreed with her. He has seen the nightmare that has happened in the past to the citizens where a lone person sitting in an office somewhere makes a determination and does not have to tell anybody and then what follows after that and the tens of thousands of dollars that go into court cases to try to reverse those things and still cannot. What he was wondering if they could do was, rather than work on the ordinance that the Board has sent them, ask the Board if the Planning Commission can indeed sit down and send the Board an ordinance. Maybe find out a little history of how this came about.

Ms. Kirkman stated they have the authority to initiate an ordinance.

Mr. Fields stated that was not the question. The question was of the disposition of this referral from the Board of Supervisors. He would want to know the context of this resolution before they tell the Board they would prefer not to work on the ordinance that the Board sent them but to generate their own ordinance.

Mrs. Carlone asked if they could recommend 28-295 be substituted for the O08-36 page two, Zoning Administrator. This was absolutely right and why should they be notified after the fact.

Mr. Fields stated they could recommend a substitution but they were not legislators and they could not amend or substitute.

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Mr. Di Peppe stated if the Commission did not act on the Board's ordinance within a certain time period, the Board would act.

Mrs. Carlone stated she thought there was not a time frame.

Mr. Stepowany stated there was 90 days from March 19.

Mr. Di Peppe asked Mr. Judy if he knew anything about the motivation or where this particular change in the ordinance came from and how this ordinance got written to begin with.

Mr. Judy stated he did not think they wanted him to comment on that. He was not going to offer anything up on this.

Mr. Stepowany stated back to the original question of could the Planning Commission request additional language before the public hearing, it has been done in the past but sometimes it has not been favorably accepted by the Board.

Mr. Howard arrived at 5:52.

Mr. Fields stated assuming they have a consensus or a majority opinion on the Planning Commission to do so, after Mr. Judy has had a chance to review this proposal from Ms. Kirkman, could they send this to the Board of Supervisors and say they certainly agree with the intent of what the Board was trying to do with O08-36, but this was what we feel might be more effective and ask them to consider accepting this and withdrawing their referral of O08-36. He asked if that was procedurally acceptable.

Mr. Judy stated he was having trouble with the Board's rendition because he was not sure he understood why it needed to become an ordinance and why it was not just a policy for the Zoning Administrator's office. As far as procedure for the Planning Commission, if they have reason to suggest additional or alternative language, that was what the process was about and if they wanted to bring it up as part of the public hearing he did not see any reason why it could not be.

Ms. Kirkman stated the reason why she suggested the process that they initiate this ordinance was because they could then take it on their own schedule as quickly as possible to a public hearing there and it would go to the Board of Supervisors for a public hearing there. In some ways that process would be much cleaner. If they request the Board to reconsider this then it would have to go on one of their agendas, they would have to have a vote, then it would have to come back to the Planning Commission and the whole process would be delayed. This would be a way to move the process along and her concern was if they vote on what was sent to the Planning Commission and then send that to the Board with recommendations, somehow the recommendations would get lost in the process since they would not be in the ordinance itself. She thought it was important for it to be part of the ordinance rather than a policy because by being a part of the ordinance it gives applicants and adjoining property owners some legal rights that they do not have if it was a matter of policy. Right now, if the policy were to notify adjoining property owners prior to a decision, but that did not happen, that would not give any basis for an appeal. If it was an ordinance and the notification does not happen then there would be a basis for an appeal. She does believe strongly that this needs to be

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a part of the ordinance. It also does not do anything to dilute the powers of the Zoning Administrator unless they are saying that the public scrutiny and sunshine does that which she hoped that was not what they were saying.

Mr. Fields asked how many determinations the Zoning Administrator makes a week, a month or a year.

Ms. Kirkman stated she thought there were about 20 a year.

Ms. Hudson stated it could be anywhere from 10 to 25. It varies and they can come in sometimes one or two a month.

Mr. Fields stated no more than 25 a year on average and he wanted to get a sense of what they were asking. One would assume that people would want to be notified before the determination so if they felt that they could be adversely affected by one type of determination they would want to make that known. He asked what would the process be for public input prior to a Zoning Administrator's determination and how would a Zoning Administrator receive public comment about a potential Zoning Administrator's determination.

Mr. Judy stated that was no provision in State law which requires a Zoning Administrator to receive public comment before making a determination. The purpose was to give a determination, an interpretation of what that zoning ordinance says and how it was enforced and what it means for that person who was asking for the opinion. It would be almost impossible to have a public input process to tell the Zoning Administrator how she and the County Attorney's office are suppose to interpret that ordinance. It did not make sense to him to even be attempting to look at it from this point of view. If the Zoning Administrator was incapable of properly interpreting the zoning ordinance then the only option he saw was to do away with the position instead of forcing her into a position of having to listen to the public tell her how to do her job.

Mrs. Carlone stated this was a subject that has been very raw with her. She urged them to get something done now so it would not happen again. A very poor decision was made with some of the other officers in this county and in her opinion this was a solution so that it would never happen again.

Mr. Judy stated he was not suggesting that they not require that the decisions that the Zoning Administrator makes be posted so that they would be available to the public and even mailed out to adjoining property owners like the proposed ordinance suggests. He was concerned about turning the administrative decision regarding the interpretation of a zoning ordinance into a public forum.

Ms. Kirkman stated Mr. Judy was absolutely correct, that there was no process for public input on a Zoning Administrator's decision. It was an administrative decision and the reason why she was suggesting that they require notification to adjoining property owners prior to a decision being made was for anyone who has ever been in the unfortunate position of having to hire a land use attorney to challenge a county decision within a thirty day timeframe. If you receive a notice after a decision has been made, you have less than thirty days to find an attorney, get the appeal written and filed and that would not be an adequate amount of time. There was not a way to do a public input process and

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this was not any attempt to have the public make administrative decisions. It was very much to make sure citizens and property owners are on equal footing with the people getting these determinations.

Mr. Di Peppe stated the best thing they needed to do was to have a motion to table this, put this in committee, he would sit down with the ordinance staff and try to find out where this came from because obviously somebody contacted staff and said they needed to change this. He would like to know where it came from and what the motivation was and to figure out where they go from there.

Mr. Fields made a motion to keep this ordinance in committee. Mrs. Carlone seconded. The motion passed 7-0.

Mr. Di Peppe stated to Mr. Stepowany he would be in touch to set up a time to discuss this.

Ms. Kirkman stated she could clarify that this was before them because the Board of Supervisors voted to ask staff to draft the ordinance and then voted to send it to the Planning Commission. It had been discussed at least twice by the Board of Supervisors.

2. Curb, gutter and sidewalks

Mr. Stepowany stated item 2 was presented to them by the Office of Transportation. He discussed the revisions to Section 22-221. Sidewalks were always in the right-of-way and maintained by VDOT and they have their own design standards for sidewalks. This was to help with some of the inconsistencies that were received with preliminary plans and this has been requested by the Office of Transportation and reviewed by the Stormwater Management Office.

Ms. Kirkman asked if Mr. Stepowany could explain what less than full LID was.

Mr. Stepowany state he would find out what it means.

Mr. Judy stated what he thought it meant was in some instances you have an actual lot that was there for the specific purpose of providing the LID service as opposed to the other ones which were just an easement existing on each individual building lot. If it was a full LID lot then it would be set aside as part of the stormwater management system and it was probably on a common area lot.

Ms. Kirkman state she understood but that might point to a need to clarify the language. She thought they were saying the parcel would have to be full LID and Mr. Judy was referring to the actual lot.

Mr. Judy stated in the way they were doing LIDs, sometimes they were just a small easement existing on a building lot and in other instances they were part of the stormwater management process and on a separate lot or parcel that was usually a common area property that the HOA maintains. He was assuming that was what they were talking about.

Ms. Kirkman asked if they could get clarification.

Mr. Stepowany stated he would get clarification on what exactly was full LID.

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Mr. Judy stated he did not see this until two hours ago and since he has been grumpy all evening he will continue to be grumpy. In section (a) there was talk about curb and gutter being on lots and then in (c) and (d) there was talk about them being on streets. He asked if the curb and gutter was part of the public street or part of a private lot.

Mr. Stepowany stated part of the public street.

Mr. Judy asked if there was inconsistency between the first part and the second part.

Mr. Stepowany stated maybe it should be along the street that fronts all lots.

Mr. Fields stated it was the lot size of the density of the subdivision that triggers the requirement.

Mr. Judy stated he was assuming they were asking developers to put that in as part of their public improvements and maybe Mr. deLamorton could respond that hopefully VDOT was going to maintain that curb and gutter along with the sidewalks.

Mr. Stepowany stated they do maintain it and they have design standards that have to be complied with.

Mr. Judy stated he was troubled with what it said about it being on the lot and if it was on the lot then it would be on private property.

Mr. Di Peppe stated the language could be cleaned up and then brought back.

Mrs. Carlone stated she was glad to see this as it was one of those recurring problems at the TRC.

Mr. Fields asked why the change on the sidewalks from 15,000 to 30,000.

Mr. Stepowany stated to encourage sidewalks as 30,000 only needs curb and gutter.

Mr. Fields stated his concern was that you were creating more impervious surface unless the lot was LID. His understanding was that the full LID was that you do not allow people to opt out of curb and gutter unless they implement a full and comprehensive LID site design. He asked if they would only use curb and gutter if it was determined it was impractical to use LID at this point.

Mr. Stepowany stated or if the drainage from the street could be controlled by other methods besides LID and we are also getting into VDOT standards to where does not always support LID as a method of drainage from VDOT streets. Obviously if you were doing curb and gutter, you were not doing LID.

Mr. Fields asked if there was a requirement that if they do curb and gutter, then the collected stormwater was managed in the LID or could they just pipe and pond and shoot it off into the watershed. Can it be required by VDOT that it subverts the intention of the LID which was that there was no water that falls on Stafford that does not re-infiltrate to Stafford.

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Mr. Stepowany stated there were some subdivisions that will do that, that have the drainage from the road go into private properties with easements with LID. VDOT does make sure they have access to that drainage easement.

Mr. Fields asked if at a certain point drainage from VDOT roads becomes the purview of VDOT, that we cannot supersede their requirements.

Ms. Hornung stated yes and VDOT maintains the drainage in their right-of-way.

Mr. Fields stated it did not have to be a full LID where you have no curb and gutter and no sidewalks but he would hope that if it was curb and gutter then the water collected in the storm sewer was handled in the LID. He asked if that was purely at the discretion of VDOT and the developer.

Ms. Hornung stated when the drainage was within the VDOT right-of-way then they maintain it. If there was drainage that was not from the street and coming from another source then that would be whoever was the owner of the property how they would handle the drainage. They would have the different types of facilities that they could use to filter that.

Mr. Fields asked if this was creating a problem where they were forcing the developer to have to engineer two completely different stormwater systems, one for a VDOT right-of-way and another one for all of the property that was not VDOT right-of-way.

Ms. Hornung stated she would have to get that information from VDOT and that could be something that their Stormwater engineer could answer.

Mr. Fields stated maybe at the next meeting before they move this through, have someone from Stormwater here to clarify exactly how this interacts with LID.

Ms. Hornung stated she would be happy to have Rishi Baral present so he could answer some of the more technical questions.

Mr. Fields stated he needed to understand it more completely before he would be comfortable with this.

Ms. Kirkman stated the other clarification was what the intent of this was, to refer to a lot that was LID or were they talking about the entire development.

Mr. Judy stated Mr. Fields was correct in that it would have to be an engineered plan for the entire development.

Ms. Kirkman stated as part of the clarification she would like to know what the threshold for full was.

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Mr. Mitchell stated he was looking at (c) and in reading it, it looked like a stand-alone piece. If you read the first segment, he asked if that would that reference the Stafford Wayside as Route 1 was a state maintained road.

Mr. Judy stated he thought it was referring back to the previous section of where it was required it has to be on the street frontage, it did not mean it had to be done everywhere.

Mr. Mitchell stated he did not disagree but he thought that particular segment should be spelled out.

Mr. Judy stated if they clarify that curb and gutter was suppose to be in the right-of-way then they may be able to do away with that entire paragraph.

Mr. Di Peppe stated they just received a document from Kathy Baker on the definition of the family and the Board of Supervisors asked them to weigh in on the definition of family. There was a 90 day turnaround that puts it at July 4 and will discuss it at the next ordinance meeting.

Ms. Kirkman stated for the next ordinance committee, she would like staff to take a look at bringing to the Planning Commission an amendment to Section 28-205 regarding notice of adjoining property owners when there was a request for an amendment to the zoning map. She would like them to make that language regarding notification consistent with the State Code. The current ordinance was not sufficient because they were having problems with applicants not notifying adjoining property owners in a timely manner regarding rezoning applications. In order to prevent that from happening again she was suggesting that they initiate an ordinance to make that completely within the purview of the Planning and Zoning Department rather than relying upon the applicant to take that on.

COMPREHENSIVE PLAN COMMITTEE

Mike Zuraf provided a brief update. The last meeting was on Monday and they focused on land use mapping. At previous discussions there was a desire to look at a revision to the land use mapping from what was previously developed by the steering committee and subsequently reviewed by the Planning Commission. This new map would look at establishing some new parameters for the land use map which include establishing more focus to urban development areas. The UDAs are the locations that need to accommodate 10 to 20 years of projected growth and meet density requirements. Also, these UDAs would be located and sized to accommodate 10 years of growth rather than the previous version which was a UDA that was accommodating 20 years of growth. The new land use map would maximize A-1, Agricultural zoned land outside of the designated growth area and the land use designations outside of the urban development areas would reflect what was happening under current zoning. It would be more specific land use designations. The previous map versions had more mixed use designations of medium, low and high mixed use that covered larger areas. Now the mixed use areas would be more focused in the urban development areas and outside of that you would have different variations of residential, commercial or industrial, then rural residential. Based on those parameters, staff worked specifically with Ms. Kirkman on these maps and, as a result, came to the last Comprehensive Plan meeting with two separate maps that were presented for consideration. One was a map that Ms. Kirkman drew up and the other was a staff recommendation map. Those were presented to the committee and the people who attended the meeting and both maps had more focused urban development areas and had reductions to the growth

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areas. There was good exchange of questions and comments and received good input. At the meeting it was decided that the discussion on these maps would continue and there was no decision on any one map over the other and that discussion on the land use mapping was planned to continue at the next Comp plan meeting scheduled for April 14. In addition to looking at the land use mapping, they will start talking about Levels of Service which was another level of the Comprehensive Plan which staff was working on at this time. Since the land use map was continuing, staff brought up the issue of timing to the committee and reminded the committee of the timeline that the Board of Supervisors was hoping to have the plan by. If the land use mapping discussion was going to continue over several meetings, that may affect other products that would be produced for the Comprehensive Plan, one being the Transportation Model because they will need a chosen and decided upon land use map to insert that and apply it to the Transportation Model. On a related issue, staff was requesting at a future Planning Commission work session a chance if there would be time on the schedule for Transportation staff to make a brief presentation as a primer on the Transportation Model which would include a background discussion as to what the Transportation Model was, what the inputs and outputs are and a lot of the basics.

Mr. Di Peppe stated they had a very good wide ranging discussion on land use and there were a number of citizens and a number of different groups represented. They allowed everyone at the meeting to make comments and ask questions and it generated a lot of good discussion. It was the first time in the whole time they had been working on the Comprehensive Plan that since the meeting he had received emails and phone calls from both sides saying they liked it and really appreciated what happened. The reason they did not bring a map tonight was there were some legal questions that needed to be answered and they allowed Ms. Kirkman to ask Mr. Judy. They are on a hard deadline from the Board of Supervisors that they may not be able to do everything they want and he would like to remind them that they still have not received the transportation numbers that they have been promised for two years and he could not see how in good conscience or faith that they could offer up a Comprehensive Plan with the current numbers, especially since those numbers have been paid for by the citizens of Stafford County. The committee felt good about what they had been doing in subcommittee and how they had been moving along. Also, staff had been very good about keeping them up to date on what else needed to be done and when so that they can get this in and not be too long past the deadline. They are trying to produce a quality product which was more important than the hard date.

Mr. Fields asked if they actually have to adopt the land use map before they can generate the numbers or if they were based on the current use map.

Mr. Di Peppe stated they have to decide on a land use map before they can run the Transportation Model. They were trying to bring back to the Planning Commission the land use map but they could not do it at this particular meeting. Staff stated they could not run the Transportation Model until they have the map and if they do not get to vote on the map today, it pushes their timeline back. In the end the whole idea was to have a quality product that was a living document, not a shelf document.

Mr. Fields stated he agreed and he appreciated everyone working so hard on the Comprehensive Plan.

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PLANNING DIRECTOR'S REPORT

Ms. Hornung stated she had the report from yesterday's Board meeting. They had already discussed the definition of family in the ordinance committee that was sent to the Planning Commission. Also, the Planning, Zoning and Utilities amending the Subdivision Ordinance in the Code O08-07 pertaining to onsite sewage disposal systems which was deferred at the Board's March 18 meeting was approved. The request to waive the mandatory sewer connection for the Williams Subdivision that they had appealed and brought back to the Board of Supervisors was approved so that preliminary will be coming back to the Planning Commission in May. In the evening, the amendment for the street addressing ordinance to rename portions of Primmer House Road, Forbes Court and Cambridge Street, O08-31 was deferred to May 20 Board meeting, O08-32 renaming Cambridge Street was approved, and the rezoning for 372.5 acres from A1 to R-1, Suburban Residential, also known as Brentsmill, was deferred to May 20 as well. There were five appeals of the vesting determinations for Jeff Harvey, Department of Planning and Zoning Director. The Glens and The Hills of Aquia were deferred to August 19 pending the Attorney General's opinion of the new HB1177 Bill which referred to the recording of final plats extending the five years from each section so that will come into play on July 1 and was signed by the Governor and it was requested that the County Attorney's office check with the A.G. staff to get a formal opinion of how that will effect existing approved preliminary plans and how they would be recording their sections. The Kings Leigh Estates was deferred to May 6, Bridle Lake Estates was deferred to May 6 and Colonial Forge was deferred indefinitely by Mr. Brito.

Mr. Fields asked what the original date of submission of the Brentsmill Subdivision rezoning.

Mr. Zuraf stated it was in 2003.

Mr. Fields stated he had a discussion with the Chairman of the Board of Supervisors and asked if they need to look into setting time limits that were, at a certain point, insurmountable. He asked if there was anything in the process that the Planning Commission could initiate or if it was strictly from the Board of Supervisors. He also asked if it was a policy or code decision that could be implemented that would limit the number of deferrals or the length of time the application for rezoning could actually be in process.

Mr. Judy stated he did not know if there was any need for it because the request for a deferral was a voluntary act of the applicant and the Board does not have to grant it. He did not know what the reasons were why an application for rezoning started five years ago was still before the Board and that did seem strange but in each circumstance the Board granted the deferral.

Ms. Kirkman stated unfortunately in each circumstance the Board did not grant the deferral and often the process has been that the applicant has simply said they want a deferral, staff has agreed and then not advertised it. This has been an abuse of the system. There have been adjoining property owners that for five years have been dragged out to public hearings that get cancelled at the last minute and have yet to get a resolution to this matter. If there was any way, if the Planning Commission has any authority at all, to introduce some maximum timeframe in which these get resolved she would like to explore that option.

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Mrs. Carlone stated Bill Cook had written a letter to Williams about getting on the stick and getting that in. She never saw a copy of the letter but it did go out. She thought they would have authority to give them a deadline.

Mr. Judy stated it was set to come back on May 21.

Mr. Fields stated he was just throwing it out there and he did not have a specific request. He asked staff to come back with a recommendation.

Mr. Judy stated the Board of Supervisors indicated last night the change in their by-laws that they want to be the ones who decide whether or not you get a deferral. Apparently it had been policy in the past and Ms. Kirkman was correct that authority was given to the Planning Department. You would send a letter to the Planning Department, the administration in the Planning Department would recognize that the request for the deferral was made so they would remove it from the agenda. The Board recognized there was a problem with that and they have corrected it through their by-laws.

Mr. Fields stated if it was done as a matter of process for logical reasons and it was not abused, it would be fine to do it that way.

Ms. Kirkman asked if there was not going to be action taken on an ordinance, do they need to incorporate in the Planning Commission's by-laws something regarding the handling of deferrals.

Mr. Judy stated as far as he knew it had always been the decision of the Planning Commission itself whether to grant a deferral.

Ms. Kirkman stated it seemed like in the short time she had been on the Planning Commission that they have received several notices that things had been deferred.

Mr. Di Peppe stated it had been his experience in the last two years that most of the time the deferral was to the next meeting or maybe two meetings at the most and they were usually granted.

Ms. Kirkman suggested that they look at once something has been advertised, at that point the applicant does need to come before the Planning Commission and request a deferral.

Mr. Di Peppe stated he thought that was a good idea.

Mr. Fields stated once notice goes out and property owners have been notified and a date has been set for public hearing, he thought it was reasonable to have to make your case before the Planning Commission and have the Commission vote in public about why it needs to be deferred.

COUNTY ATTORNEY'S REPORT

Mr. Judy stated the only thing he was going to comment on was the five appeals and Ms. Hornung had already mentioned them. We will be, as she said, trying to obtain a legal opinion from the

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Attorney General's office. What she was referring to was there has been an amendment to Section 15.2260 which was the preliminary plan section of the State Code. He discussed that in detail. The subdivision ordinance had been changed to require a minimum of 10 lots and, in the past, you were allowed to submit a one lot final plat. They need to interpret whether this code section still applies to all plats or whether there still has to be an approved multi-phase development in the preliminary plan before it applies. He will try to get an answer to that question.

Mr. Fields stated that was very significant. Vesting, if used properly, was a valid protection who was vested in reclassification of their property but the stale zoning has been the crux of a number of chronic problems in Stafford's land use plan.

SECRETARY'S REPORT

None

STANDING COMMITTEE REPORTS

Ms. Kirkman stated the first item was the Transportation Committee was now meeting at least monthly on the 4th Wednesday of the month at 6:00 p.m. The Planning Commission received in their packet a copy of the Residential Traffic Management Program that was approved by the Board of Supervisors. The committee wanted to make sure the full Commission had this material and was aware of it in case there were any constituent inquiries regarding particular kinds of road improvement projects. The second item was that the Planning Commission also received some information regarding the Revenue Sharing Program and the reason this was pertinent was that the criteria for prioritizing revenue sharing projects has been changed by legislation just this year. She discussed the change briefly. The third item was a very important component of the Comprehensive Plan would be the transportation plan component. It was decided they do need to focus on more than just traffic congestion and traffic flow in that plan. She discussed the plan briefly. The fourth item decided at the committee meeting was, with the assistance of staff, they were in the process of developing an annual calendar of transportation planning activities as well as some of the activities that they will be engaging in that will be unique this year. She discussed the transportation bond briefly.

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 6:58 p.m.

Peter Fields, Chairman
Planning Commission

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The regular meeting of the Stafford County Planning Commission of Wednesday, April 2, 2008, was called to order at 7:31 p.m. by Chairman Peter Fields in the Board of Supervisors Chambers of the Stafford County Administration Center.

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

MEMBERS ABSENT:

STAFF PRESENT: Hornung, Judy, Baker, Schulte, Stepowany, Schultis, Hudson and Stinnette

DECLARATIONS OF DISQUALIFICATIONS:

None

PUBLIC PRESENTATIONS:

None

PUBLIC HEARINGS:

1. Amendment to Zoning Ordinance - Proposed amendments to Article II, Definitions and Construction, and Article IV, Planned Development and Overlay District Regulations, of the Stafford County Code by amending Section 28-25, Definitions and creating Section 28-67, Potomac River Resource Protection Overlay District, of the Stafford County Zoning Ordinance, pursuant to O08-27.

Kathy Baker presented the staff report. She stated the purpose of this ordinance was to recognize and protect sensitive water resources within the Potomac River watershed. She stated the Environmental Protection Agency (EPA) has identified segments of Aquia Creek, Accokeek Creek and the Potomac Creek as category 5 impaired waters. She stated this was from a 2006 study and was the latest study which was done every two years. She stated a category 5 was a high impairment category and basically means that aquatic life, wildlife, fish and shellfish consumption and recreational uses are threatened or impaired due to poor water quality. She stated this proposed ordinance may enhance protection of water quality through additional buffering. She stated this ordinance would affect new development within the proposed district boundaries and applications for subdivisions, site plans, rezonings and Conditional Use Permits (CUP) would need to follow the new criteria. She stated no existing lots of record would be impacted unless there were any proposed changes to those property lines. She stated the requirements that would come under this ordinance would be if a new development plan was submitted then you would also be required to submit an existing conditions plan. She stated this would show forest cover, floodplain, Critical Resource Protection Areas (CRPA), intermittent streams and slopes 15% or greater. She stated once these conditions were identified, certain development criteria would need to be met based on these conditions. She stated the two primary criteria, the CRPA would need to be extended to include intermittent streams on the site and the CRPA would also be extended to slopes 15% or greater or adjacent to perennial and intermittent streams and tidal water bodies. She stated these extended buffers would fall under the same regulations as the CRPA presently in the Chesapeake Bay Ordinance. She showed examples of the creeks and boundary. She stated stream buffers do help maintain and improve water quality of streams and rivers that flow into the Bay and they help

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remove sediments, nutrients and other pollutants from ground water as well as surface water. She stated forested buffers help regulate temperature and dissolved oxygen levels in streams. She stated the Potomac River, Aquia Creek, Accokeek Creek and Potomac Creek were all designated perennial waterways which mean they do have a requirement for 100 foot CRPA buffers now under the CRPA Chesapeake Bay Preservation Act in the Stafford County ordinance. She stated perennial waterways contain water year-round during a normal rainfall year and they exhibit typical biological, hydrological and physical characteristics that are associated with continuous water flow. She stated the Chesapeake Bay Local Assistance (CBLA) division of the Department of Conservation and Recreation indicated that additional buffers on some smaller scale streams, such as intermittent streams, may help enhance the water quality. She stated intermittent waterways were natural or engineered channels with flow during certain times of the year which means that they may not have water flowing during dry periods. She stated there were stream studies that are required to determine whether a stream was perennial or intermittent. She showed examples. She stated they were creating a definition for intermittent stream and a definition for toe of slope and top of slope. She stated staff was recommending adoption of this ordinance as they feel it sets standards of development near environmentally sensitive areas as recommended in the comprehensive plan.

Mr. Rhodes asked if there was an indication as to what amount of area would have the intermittent stream classification.

Mrs. Baker stated staff has looked at it but in order to actually identify it as an intermittent stream, a study would have to be conducted on site. She stated they may have an idea where intermittent streams lie but until an actual study was done they would not know specifically.

Mr. Rhodes asked if the same would apply to the amount of land with the slope classification.

Mrs. Baker stated they could look at slopes on a site-by-site basis but doing an area-wide assessment would be difficult based on the resources that the county has to do this.

Mr. Rhodes stated there was not a general estimation as to what amount of land would be impacted by this.

Mrs. Baker stated no.

Mr. Fields opened the public hearing.

Bruce Miller stated he owned approximately 18 acres and he has two small intermittent streams on his property and one small area with a slope about 15% or greater. He stated he thought the proposed overlay district was a good idea and that it may accomplish part of the desired goal although, in his opinion, he thought the county needed to take a greater comprehensive look at the water quality including the over-fertilization of residential lawns by homeowners and the over-fertilization of recreational fields like golf courses and Parks and Rec services. He stated his only concern was the 15% slope rule. He stated he thought with modern engineering and best management practices, they could accomplish similar results without taking all of that land or real estate out of development. He stated the other issue he would like to address was as a property owner, they were going to be shouldering a great deal of burden when they go to sell. He stated

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they would be losing some of the value of real estate which they are right now paying a very high rate of tax on and they will be subtracting a certain amount of buildable area out of what they are paying high rates of tax on with compensation. He stated if this amendment was passed, he would ask that the Planning Commission and the Board look at not compensating the land owners with cash but maybe crediting them or giving them a reduced tax rule now and at the time they do decide to develop. He stated if they could not do it through a tax credit he would ask that they get a density credit so that they are not losing any buildable area, that they are just transferring that buildable area to a better part of the property.

Patricia Kurpiel on behalf of Friends of Stafford Creeks which was a 501C3 organization dedicated to clean water. She showed examples of how her neighborhood deals with some of the erosion, with bulldozers. She stated their wetlands are being destroyed and they are being used as silt ponds. She stated she has actually gone into the wetlands and measured how deep the silt was and it was 12 inches deep. She stated on the tidal side of the creek the water plants are covered with mud. She showed an example of what the water looked like close up and an aerial of what the creeks looked like after a rain. She showed examples of steep slopes. She showed other examples of already developed areas with erosion. She asked the Commission to please vote yes on the ordinance so that those critters that are important will still be around. She stated the comprehensive plan was specific in recommending that this kind of protection be put in place. She stated some species will become extinct if they do not take care of them. She stated fish do not breathe very well when there was mud so thick in their water that their gills become clogged. She stated if you have talked with Code Administration after one of the rain events that you would find out that they said there was nothing else they could do and that they had employed sedimentation and erosion control measures to the full extent of the law. She stated the next step has to be an ordinance such as this. She stated she went back to the 1988 comprehensive plan, which she read from, and the concerns expressed there were even more grave than the ones expressed in the current plan. She stated since 1988 in Stafford County they have not taken any action to protect these resources.

Robert Berner stated he did not want to go into a lot of the issues in the ordinance, however, there was one item he did want to point out. He stated the EPA assessment done in 2006 that talks about Aquia Creek, Accokeek Creek and Potomac Creek and does mention them impaired at category 5. He stated the reason they were impaired was not silt, nutrients, phosphorous or fertilizer. He stated it was e coli bacteria. He stated in every case, Aquia was rated at a 5A e coli bacteria, Accokeek Creek was rated at a 5A e coli bacteria and Potomac Creek was 5A and 5C e coli bacteria. He stated increasing the buffer area would increase the habitat for the warm-blooded creatures that have e coli bacteria. He stated 100% of the warm-blooded animals on the planet have e coli bacteria and increasing the buffer would not remove that. He stated the second item was has the county looked at the area to be impacted. He stated if the development community or a builder came forth with a rezoning conditional use permit with anything close to these impacts, they would have to present environmental studies and economic studies. He stated the Commission would do an injustice to the citizens of Stafford County by trying to create an ordinance without explaining the impacts to them.

Pamela Haynes stated she welcomed the new changes to the Stafford County zoning ordinance but she wondered if they could go one step further and consider further changes to new building sites, both home and businesses, by the incorporation of energy efficient buildings and the reduction in the use of oil reliant energy.

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Carlos Ferran stated the biggest problem he has with this ordinance that no one understands the grade that was being discussed. He presented examples of the different grades. He showed the 15% grade and stated the 15% grade was going to be the land that was now increasing the buffer off of the rivers and off of intermittent streams which are loosely interpreted, but they could be just a swale that runs through your property so that anyone who owns property was going to be asked to have anything that was a 15% grade to be extended as part of an RPA which was deeded by this ordinance and then becomes part of county accessible property. He showed the 33% grade and stated was the county's maximum without any special stabilization. He showed 2-to-1 50% grade which VDOT was allowed to grade when they build a road through RPA's or wherever they decide to build. He stated if Stafford County wants to build, this was also the grade they could use. He showed a .83 slope which was the handicap standard. He stated he did not have any land being taken by this. He stated someone needed to ask how many acres they are including in this new RPA and at what cost. He stated anybody that has land that it adjacent to an intermittent stream was going to have a huge buffer, which was land that they do not have control over anymore. He stated this did not even mirror the Potomac River watershed and asked where the boundaries for this come from.

Nan Rollison, a resident of the Widewater Beach subdivision on Aquia Creek, she stated she supported the passage of this ordinance because she believed it was critically necessary to protect the health of Aquia Creek, the Potomac River and the Chesapeake Bay. She stated those who live near creeks understand the responsibility to ensure their private actions do not spoil these public resources. She stated slope protection near water bodies was vitally important for water quality. She stated the Chesapeake Bay Foundation, in their most recent State of the Bay Report, indicated that soil erosion from poor land disturbance practices was among the top if not the top reason for the sediment load in tributaries in our region in the Bay, and that starts upstream in our communities with county ordinances that protect these public resources. She stated in the past three years they have had at least three well publicized examples of where clear-cut steeply forested slopes have led to massive soil erosion in our public water resources and in one case onto an adjacent owner's property. She stated this required taxpayer funds to have state staff come and assess the damage and try and design a retro-fix, taxpayer funded. She stated public resources that are used by many cannot be sacrificed for the private gain of the few. She stated the surrounding counties of Fairfax, Prince William and Fauquier all have some measure of protection for slopes adjacent to water bodies and in most cases they are much stronger than the one being proposed tonight. She asked the Commission to please pass the ordinance.

Bob Burr stated he had concerns with the definitions, one being the intermittent stream definition. He stated the intermittent stream definition said it was the natural swale or engineered swale and an engineered swale could basically be a ditch on the side of the road. He stated in that case an intermittent stream of ditch on the side of the road that conveys water only a portion of the time of the year would require a 100 foot buffer. He stated to the extent that the road has a 15% slope, that buffer would extend to the top of the slope and the top of the slope, based on the definitions of this ordinance, was where it greatly changes slope. He stated that, in turn with the fact that the county has not done a comprehensive study to understand the impact of this overlay district, in conjunction with their study on the benefits of this overlay district, it says "may help". He stated there was no definite study to understand how it benefits or detracts from the area and he thought that needed to be done prior to any passage of any ordinance of this magnitude.

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Becky Reed stated if you ride around the county you will see subdivisions that are built on steep slopes and you will see evidence of erosion and run-off from these slopes. She stated requirements are needed that will lead to better building practices and that steep slopes and buffers need to be left off individual building lots. She stated the county was already struggling with how to correct stormwater damage problems in poorly planned subdivisions. She stated these measures can help protect Stafford's waterways and improve the water quality. She stated not building on steep slopes and requiring wide buffers will mean less sediment and less erosion to flow into the creeks. She stated they need these standards to clean up Stafford's creeks, rivers and the Chesapeake Bay. She stated the EPA and DEQ have no standards for sediment and if they did, all Stafford's streams would be impaired. She stated they need to end practices that destroy the streams and land and, therefore, destroy the cultural heritage. She asked the Commission to please pass the ordinance and make it effective immediately.

Mr. Fields closed the public hearing.

Mr. Rhodes asked on the 15% slope could Mrs. Baker describe percent, if it was degrees or percent.

Mrs. Baker stated the percent slope was based on rise over run.

Mr. Rhodes stated basically 15% was a 1 foot drop for every 6+ feet run.

Mrs. Baker stated she could provide that information.

Mr. Mitchell asked if there was any approximation as to how much land would be affected because the boundary lines are drawn on the magisterial districts rather than the water itself.

Mrs. Baker stated she did not have a ballpark figure tonight and that there were many factors that they would have to take into consideration. She stated if you are looking at pure acreage, what would be an intermittent stream and what would not be. She stated they may have some over-estimation or some under-estimation and that they are basing it on their GIS system, that they did not have the means to go out and do an on-ground study of this area.

Mr. Rhodes asked what it would take to do that and how long would it take to get some estimation.

Mrs. Baker stated they could do that before the next meeting. She stated there would be some issues with the data they have and some assumptions they would have to make, so it would not be totally accurate. She stated going out and doing a ground-truthing study would take months.

Mr. Howard asked on the definition impaired, did it define exactly what the impairments were that created the category 5.

Mrs. Baker stated she has information in her folder that talks about some segments that are showing different pollutants within those various segments, that they have monitoring stations along different segments of the waterways. She stated she did not recall if e coli was the only pollutant identified but they do have that study available.

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Mr. Di Peppe stated Stafford County was currently under an EPA mandate to do something about the water quality by 2010.

Mrs. Baker stated part of that goes with they have until 2010 to clean up the Bay, that a lot of those efforts are not being met. She stated she will get clarification on that. She stated there were certain Total Maximum Daily Loads (TMDL) that they were looking towards a reduction for that and that she will have to look on the language as far as what was actually mandated there. She stated she believed there were additional mandates that would come along if certain standards were not met regarding the TMDLs. She stated she would provide additional information.

Mr. Fields stated there was a 2010 deadline and that the TMDLs are regarded as a resort that the EPA was trying not to impose. He stated TMDLs can be very restrictive because they refer to the total maximum daily load of nitrogen phosphorous and other nutrients.

Ms. Kirkman stated she wanted to clarify one thing that since several people have raised the types of questions regarding impairments, the original draft of this ordinance did list every single type of impairment which was much more and much farther than e coli and the request was to remove that so they could shorten the resolution by about half a page.

Ms. Kirkman made a motion to recommend to the Board of Supervisors that they adopt Ordinance O08-27 the Potomac River Resource Protection Overlay District. Mr. Di Peppe seconded.

Mr. Rhodes stated it would be beneficial to the Board of Supervisors to provide some degree of an estimation as to the implications of this. He stated he thought there was a lot of goodness in this ordinance and a lot of benefit but he wanted to make sure they were applying it properly. He stated it would be beneficial and informed to have some indication as to the impact and the area that would be affected by this. He stated even where the overlay was, there was no definitive reason why the boundary went as far north or west as it went, and he thought that for an overlay district they ought to be a little more informed as to how they are laying it in there. He stated he thought the general intent was good but that they should have that information before they go forward.

Mr. Mitchell stated he had some concerns and one of the items that bothered him greatly was based on a district, not based on a need or a specific creek or river. He stated the map they have in their presentation tonight shows lines that go out into the water and he was not sure how those would be marked. He stated being drawn on a district rather than need he thought was a problem and he did believe that they would do better if they had more of the parameters of how many acres and how much was being affected and how much this would affect people in two major areas.

Mr. Di Peppe stated there are impacts and it would affect peoples land but the problem was in Stafford County like many other localities that most of the level easily developed land was long gone and they are now out into the highly sensitive land that has steep slopes and water resources and they have seen for years the abuses. He stated these ordinances come about not because people sit in back rooms and go how can we affect your land use, they come because they have seen for years that when there are no rules, the affects on the land. He stated the worse thing you could do was do nothing because once the land was developed and one the land was graded and once the buffers were gone the science was obvious what happens to the streams and the water. He stated the only way you could stop that was by having meaningful ordinances that protect not only the

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land but the community and make steps towards having a very safe and clean environment. He stated he will be supporting this ordinance.

Mrs. Carlone stated this was overdue by so many years. She stated she did not think the total acreage was important as much as for proposed development. She stated these were streams that people rely on and that they have seen too much erosion because of the disregard for the sensitive areas and she felt very strongly on this and will certainly support it.

Mr. Howard stated he thought the county needed to do something and he thought directionally that this was the right thing. He stated the reason he would not vote for this was that he did not think they had done enough research in understanding the economic impact and also the environmental impact of what they are proposing and he wondered if they were solving for the right issue. He stated on the surface it would appear that way but that there was science out there that would help them understand whether or not these actions would get them to clean up the conditions that they have created, for lack of a better way of saying it. He stated he did not think the EPA was not being truthful in telling them it was a category 5 and the water was contaminated and it needed to be cleaned up, but he wondered if these actions, as defined in this ordinance, actually do what they claim it would do. He stated as a Commissioner he was not sitting there with enough information to make a decision tonight and he found that to be disappointing and he stated they had ample time to do some homework and he did not find any recollection of removing a definition, that he would like that definition put back in so that the Board of Supervisors would know they were voting to solve those issues that were identified by the EPA as defined in this document. He stated he would like to keep it here and allow staff to do some additional homework on it and then move it forward.

Mr. Judy asked Mr. Howard if that was intended as a substitute motion.

Mr. Howard stated he was debating that.

Ms. Kirkman stated she made the motion to recommend the approval for several reasons. She stated she believed this was good planning but they have already heard from their soil and erosion sediment control department that there was not much else they could do in terms of erosion and sediment control problems. She stated they have said point blank that the only way they would have an impact was to change some of the land use patterns. She stated there was science behind the various parameters in this and some of that science had been cited in the ordinance. She stated she wanted everyone to understand that not only does this have environmental impacts, when mud gets in the creek it has impacts on the wallets of taxpayers. She stated several years ago the county contributed \$80,000 to dredge mud that had accumulated in Aquia Creek and just this past year the county paid nearly \$50,000 to study the dumping of mud in the creek from the hills of Aquia construction site and now there are people advocating that the county contribute up to \$250,000 to again dredge the mud out of Aquia Creek. She stated not only does mud in the creeks have impacts to the environment, it has impacts on the wallets of taxpayers and those are some of the reasons that she made the motion to recommend approval of this ordinance.

Mr. Mitchell stated he has always believed in protecting rivers but he had problem with this one because today in this environment he did not see the homebuilders beating their doors down with subdivision plats saying they want to put them up in these wide open areas. He stated they have a proposed state park in the Widewater area and Crow's Nest in the Aquia area, but he does not see a

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tremendous amount of efforts out there to jump in front of them and beat them to the punch. He stated he could not support it because he did not believe they have all the information that would make it a supportable issue. He stated he would make a substitute motion and ask for a second to put this into committee until they have some more information from staff as far as how much land would be affected by the overlay district. Seconded by Mr. Howard.

Mr. Rhodes stated he would submit that if they had an indication of the areas impacted and they were better able to articulate the criteria as to how they would set the boundaries, then they would know if there was going to be anything for non-conforming implications. He stated there were a lot of homes and he thought that information was useful when the Board members were making their decisions. He stated he was generally supportive of the ordinance but he thought that information was important to have.

Mr. Howard asked if they would want to put a time frame and that he thought they would all agree directionally that this was a good thing to do for the county and that it made a lot of sense to protect the waterways for a variety of reasons. He stated they were looking for more information and asked if they would want to put a maximum of four weeks.

Mr. Mitchell stated he would amend his motion to include a four week timeframe.

Mr. Rhodes agreed to that.

Ms. Kirkman stated she would oppose the substitute motion. She stated this has already been in committee for a number of months and this type of ordinance was decades overdue. She stated every day they delay doing something was another day that more mud gets dumped into the creeks. She stated since their only role was recommendation and not adoption of the ordinance there will be time for staff to prepared additional information. She stated for that reason she was going to oppose the motion to put this back into committee.

Mr. Di Peppe stated they needed to make this clear that this was only for new development. He stated to say this was going to affect thousands of homes and that the soil police were going to come knocking on your door was not true. He stated what they were trying to do, as development moves out towards more sensitive areas with steeper slopes and the number of both types of streams that they were saying from now on as they get into these sensitive areas they are going to protect those sensitive areas. He stated they were really looking at new development and he would also oppose putting it back into committee because he thought anything with new development they were long overdue in some requirements to protect the environment.

Mr. Howard stated an additional four weeks was not going to delay or harm anything that exists today because it gives them more time to put definition of what they are solving for in the ordinance.

The substitute motion to defer for four weeks failed 4-3 (Mrs. Carlone, Mr. Di Peppe, Mr. Fields and Ms. Kirkman voted no).

Mr. Fields stated the original motion was back on the floor and asked if there were any further comments. He stated he would like to add that two things had led him to see that the time has long

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been overdue. He stated the need has been apparent and the clock was ticking for 2010. He stated it was every community's responsibility to clean up the Chesapeake Bay was becoming progressively accountable and they were a long way from achieving that goal. He stated the goal of the nutrient loads that were set by the Federal government goals for 2010 were going to be met. He stated the best possible effort would include adopting every possible ordinance that protects the waters that feed into the Chesapeake Bay. He stated while many factors were involved in the decline of that, there was no question that the single salient difference between the Chesapeake Bay 20 years ago and the Chesapeake Bay now was changes in land use and the changes in land use are due to residential changing of agricultural and forestal land to residential. He stated it had always been his understanding that the Commissioner of the Revenue assesses property on 100% of the fair market value and he believed that the tax liability floats in direct proportion to the fair market value of the property. He stated if there was a reduction of the value of your land, there would be a reduction in your tax liability.

The motion for the ordinance as proposed passed 4-3 (Mr. Rhodes, Mr. Mitchell and Mr. Howard opposed).

Mr. Fields stated as this was a recommendation to the Board of Supervisors he would ask that all the comments and questions raised at the public hearing by the citizens and all the comments raised by the Commissioners be forwarded to the Board of Supervisors for their consideration.

2. CUP2800060; Conditional Use – Holiday Inn Express Hotel and Suites – A request for a Conditional Use Permit to allow for an increase in the floor area ratio up to 0.73 for a hotel on part of Assessor's Parcel 45-18, consisting of 2.13 acres, located on the east side of McLane Drive approximately 100 feet north of Warrenton Road within the Falmouth Election District. **(Time Limit: July 1, 2008)**

Jon Schultis presented the staff report. He stated the existing zoning and land use plan. He stated the applicant was advised upon site plan submission there would need to be a Conditional Use Permit (CUP) needed to allow for an increase from the limit of 0.4 to 0.73 in the Floor Area Ratio (FAR). He stated the Generalized Development Plan (GDP) proposes a 5 story 114 room hotel occupying 69,950 square feet and would exist on its own newly created parcel. He stated the primary access would be through an extension of Jones Lane from Warrenton Road and parking would be obtained through a creation of new spaces, and a shared parking agreement with the existing Holiday Inn. He stated a Perennial Stream exists on back end of this site and the GDP does not propose any new development within the 100 foot Resource Protection Area (RPA) boundary. He stated the proposal meets standards for a Conditional Use Permit and staff recommends approval.

Mrs. Carlone stated she did not know the hotel would be razed.

Mr. Schultis stated part of the current hotel would be razed; currently the hotel was a combination of several buildings and one of the buildings would be eliminated.

Mrs. Carlone asked if 11,755.88 square feet building would be the building razed.

Mr. Schultis stated would defer the question to the applicant. He stated a shared parking agreement provision exists within the Stafford County Zoning Ordinance and there must be enough parking spaces to accommodate the shared parking agreement.

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Mr. Di Peppe asked for clarification regarding the intermittent stream and the new additional setback could impact of the property.

Mr. Schultis stated the new ordinance stated there would be an additional 35 foot setback attached to the 100 foot RPA buffer. He stated the Holiday Inn came close to the RPA buffer and would require the applicant to move the building out of the setback.

Mr. Di Peppe stated the additional 35 feet setback would allow the property owner to build and was not sure how the property would encroach.

Mr. Schultis stated the site would need to be reengineered in order to move the building out of the setback.

Ms. Kirkman asked Mr. Schultis where the Holiday Inn was located on the aerial photo.

Mr. Schultis stated the Holiday Inn was a combination of several buildings and showed which building would be razed.

Ms. Kirkman asked why the building was being subdivided.

Mr. Schultis stated there were several reasons and would defer to the applicant on most of the reasons but it would be for ownership of the property and the existing Holiday Inn switched ownership there would be a parcel that would be included which could cause problems.

Ms. Kirkman asked what problems would be caused.

Mr. Schultis deferred to the applicant.

Mr. Kirkman asked if it was all one hotel.

Mr. Schultis stated the proposal was for a different hotel on the parcel. He stated there would be two (2) hotels with different brands. He stated there would be a Holiday Inn and Holiday Inn Express which were two separate entities.

Mr. Kirkman asked if that would be on two (2) parcels of land.

Mr. Schultis stated yes.

Ms. Kirkman asked what the current parking requirements for the hotel.

Mr. Schultis stated 149 spaces were required for the existing hotel after it was razed and 144 spaces were required for the proposed Holiday Inn Express. He stated 47 spaces would be shared.

Ms. Kirkman stated she wanted to know how the shared parking would work.

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Mr. Schultis stated when the existing Holiday Inn structure razes the structure would create surplus parking spaces for the Holiday Inn Express. He stated after the site plan was approved the new Holiday Inn Express would exist on a separate parcel and new parking spaces to accommodate the new structure. He stated the shared parking agreement would borrow existing lots from existing hotel and would only be borrowed from the surplus parking spaces.

Ms. Kirkman asked for the ratio of rooms to parking spaces and what the surplus would be.

Mr. Schultis deferred to the applicant.

Mrs. Carlone stated there was a night club Yak-A-Doo's and asked if the existing parking requirement taken into consideration.

Mr. Schultis stated the applicant was aware the parking requirements would be to standard to the entire property.

Mrs. Carlone asked what the agreement on Jones Lane and if there was a timeframe.

Mr. Schultis stated he would allow the applicant to elaborate and there would be a proposed commercial development next to the hotel. He stated the applicant was working something out with commercial property to build Jones Lane.

Ms. Kirkman asked if the dark lines on the GDP were the new proposed lots.

Mr. Schultis stated yes.

Ms. Kirkman asked where the front of the proposed hotel.

Mr. Schultis stated the entrance would be facing west.

Ms. Kirkman asked if the front of the hotel would be the Warren Street side.

Mr. Schultis stated the Zoning stated the front of the building would be the side of the building that faces the road frontage.

Ms. Kirkman stated the front setback would not be met of 40 feet. She stated the setback was marked at 22 feet.

Mr. Schultis stated the driveway was marked at 22 feet. He showed Ms. Kirkman on the map the front setback.

Mr. Fields asked if this was a separate CUP from the original and the applicant was required to pay \$10,000 again.

Mr. Schultis stated yes.

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Clark Leming, Leming and Healy, P.C., stated the two applications could have been handled at one time and at the original application there was a requirement that each hotel be on separate parcels. He stated the applicant tried several variations of the application and there was a consensus of having the most uniformed rectangular lot possible. He provided some background for the CUP and the FAR had been frequently an issue for most hotels. He stated in 1999 the Board of Supervisors adopted an amendment to the Zoning Ordinance to permit on Hotels to increase the FAR and would be the only institution to do that. He stated since 1999 there had been 3 hotels in North Stafford to request a CUP to increase FAR and had all been approved. He stated the increase in FAR solely permits the implementation of the plan for the hotel which was 114 rooms. He stated staff indicated the criteria for the CUP had been met and hotels bring tax advantage to the county. He stated the location was already populated by hotels and close to Interstate 95.

Mark King, Greenhorn & O'Mara, stated to the east of the property there was a project called Carters Crossing which abuts the Holiday Inn property. He stated the Carter Crossing project was almost completed and showed on the site plan by Silver Company the Jones Lane shared road. He stated the road should be there before the plan was approved and would be a condition in the plans.

Mr. Leming stated there would be a written agreement that would exceed the ownership of the existing Holiday Inn and if it was sold the agreement and shared parking would survive.

Ms. Kirkman asked what the boundaries of Jones Lanes that would be dedicated to VDOT as a public street and how far back would that extend.

Mr. King stated the Right Of Way (ROW) dedication would be limited to the front of the road and there would be an approximately 30 foot joint ingress/egress easement that would go back from the ROW. He stated there would be a shared access agreement between Carters Crossing, Holiday Inn Express and the old Holiday Inn which would become a Clarion Hotel.

Ms. Kirkman asked how many units were in the four buildings that was to become the Clarion.

Mr. King stated 109 units.

Ms. Kirkman asked how many units the new hotel would have.

Mr. King stated there would 114 units.

Ms. Kirkman asked how large the lounge located within the hotel was.

Mr. King stated approximately 2,000 square feet and could accommodate up to 70 people.

Ms. Kirkman asked how many parking spaces were in the GDP for both sites.

Mr. King stated 270 parking spaces.

Mr. Di Peppe asked if the new 35 foot setback was approved how the building would be affected.

Mr. Leming stated the building would be adjusted accordingly.

Mr. King stated was an issued recently brought up with staff.

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Ms. Kirkman asked if the entrance to the Clarion would front Route 17.

Mr. Leming stated there were two entrances and one would be closed.

Mr. Fields opened the public hearing for public comment.

Carlos Ferran stated he heard someone state the Holiday Inn was within 100 foot of a creek and was surprised the standards do not apply to this creek. He stated he would like to know how the runoff from the parking lot would be handled with respect to the creek at the back of the property.

With no one else coming forward, Mr. Fields closed the public hearing for public comment.

Mr. Leming stated the applicant would have to comply with the Stormwater Ordinance and provisions.

Mr. Fields stated this would be primarily low impact development.

Mr. Leming stated it had to be as stated in the Ordinance.

Mr. Fields stated the low impact development prevents water from going into the stream and would re-infiltrate the water before it reached the stream.

Mr. Di Peppe made a motion to recommend approval of CUP2800060. Mr. Rhodes seconded.

Ms. Kirkman asked if there could be a friendly amendment stating no further expansion of the lounge area.

Mr. Rhodes stated was a different parcel.

Mr. Di Peppe stated parcel was not the parcel under consideration.

Mr. Kirkman stated since there was shared parking the all the parking would need to be considered.

Mr. Schultis stated if there was a site plan to expand the night club, the applicant would need to make the necessary adjustments to the parking.

Mr. Judy stated the Commission was dealing with the CUP of where the new hotel would be located. He stated if there was an expansion of the lounge area they would need to apply for a building permit which would then raise the questions of whether there would be sufficient parking.

The motion passed 7-0.

3. CUP2700776; Conditional Use Permit – Oakley Farms Floodway - A request for a Conditional Use Permit to allow a street crossing within a Flood Hazard (FH) Overlay District, specifically to provide two access roads across Long Branch to the Oakley Farms Subdivision on part of Assessor's Parcel 26-36 consisting of 10.53 acres, located on

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proposed McPherson Drive which is on the northwestern corner of Poplar Road and Shackelford Well Road within the Hartwood Election District.

4. Amendment to Zoning and Subdivision Ordinances - Amendment to Section 28-24, Measurements; and Section 28-25, Definitions of Specific Terms of the Zoning Ordinance, and Section 22-4, Definitions; Section 22-143, Shape; and Section 22-146, Side Lot Lines, of the Subdivision Ordinance, pursuant to O08-38. The amendment establishes definitions in the Zoning and Subdivision Ordinances for lot line, front lot line, rear lot line, and side lot line. The amendment modifies Section 28-24, Measurement of the Zoning Ordinance and Section 22-146, Side Lot Lines, of the Subdivision Ordinance by replacing property line with lot line where mentioned.

Jamie Stepowany presented the staff report. He stated this amendment establishes a minimum buildable area, regulations dealing with irregular shaped lots and defines lot lines, side lot lines, front lot lines and rear lot lines. He stated section 22-143 states that the arrangement, design and shape of lots shall provide efficient and appropriate sites for buildings. He stated the subdivision ordinance states the length of a lot cannot exceed 5 times its width, however, that does not prevent peculiar shaped lots and, as a result, creative designed lots are established by surveyors and engineers to accommodate such things as drainfields. He stated those lots may have some slopes, CRPA and drainfields thus leaving little area for a house and a yard. He stated the irregular shaped lots may cause confusion with the property owners as to where their actual property boundaries are located. He stated as a result, Ordinance O08-38 establishes a definition for lot lines, front lot lines, side lot lines and rear lot lines, the same definition as the zoning and subdivision ordinances. He stated all single family detached lots equal to or greater than 1 acre must have a minimum contiguous building area equal to 10,000 square feet and has to be exclusive of any and all identifiable flood plains, wetlands, slopes equal or greater to 15%, any CRPA buffers, setbacks and all drainfields, primary and reserved. He stated it also amends the shape of a lot to include methods of measuring a lot width and length ratio, the 5-to-1 ratio, which was copied from the measurement section of the zoning ordinance. He stated it establishes provisions dealing with irregular shaped lots and they shall not contain peculiar shaped, elongated or numerous side lots which are primarily incorporated on the lot for purposes of establishing lot area, buildable lot or to incorporate a noncontiguous site for drainfields. He showed examples of irregular shaped lots from an actual recorded plat. He stated one of the terms used was "bumps and fingers". He stated in the past week they had been discussing this ordinance in greater detail with how it relates to other sections of the zoning ordinance because they do have some new definitions. He stated they have asked Rachel Hudson, the Zoning Administrator, to address some of the concerns that have been brought about that they were not able to discuss at the work session.

Rachel Hudson, Zoning Administrator, stated she did have concerns about interpreting the definition of front lot line. She stated she was wondering if the definition of front lot line would conflict with the definition that they currently have for front yard and how they make interpretations regarding double frontage lots and many frontage lots. She stated she would like to have the opportunity to have more time to look at the definition to make sure it was clear. She stated she noticed the same definition was going into the subdivision ordinance and she did realize what the purpose of this proposed ordinance was and that was to create buildable lots. She stated she did not want to have confusion in the definitions.

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Mr. Judy stated he was not sure he had complete suggestions but that he had comments. He stated after they read the definition of front lot line, they were particularly concerned about the word street, he was not sure if they intended that to mean a public right-of-way or not, but then it went on to say 'or in the case where the lot lines does not abut a street' but other than by its ... this was part of the problem she mentioned that in the definition in the subdivision ordinance it talks about abutting a street other than by its driveway but then the definition in the zoning ordinance said something completely different, 'or in the case where the lot does not abut a street other than by an ingress/egress easement' and he was not sure why there was a difference there, he was hoping that that was just an oversight. He stated Ms. Hudson also pointed out that in the zoning ordinance they have definitions for front yard and front lot line that need to be clarified as they did in 28-24 where they saw the word property they crossed that out and wrote in the word lot, he thought they needed to do the same thing on those definitions for front yard and frontage. He stated those still say property line and in order to avoid confusion they would need to those to the list of what they were doing and he apologized that this was done today instead of at an earlier point in time but unfortunately there were so many definitions that they are discovering have some involvement. He stated this was something that started out as a very simple exercise and was turning into something extremely complicated.

Mr. Stepowany stated the definitions came out of Fairfax and the definition in 22-4, Fairfax said 'driveway' and when he re-did the definition for the zoning ordinance he changed it from driveway to ingress/egress or private access easement and when he got to the definition for 22-4 he forgot to change it so that was just a clerical mistake, that they were suppose to be identical definitions. He stated the reason for this was he came up with a whole separate issue that dealt with commercial property that was completely surrounded by streets and there were certain provisions where you cannot have certain activities or uses in your front yard and then they started looking at all the definitions for frontage, front lot line, street line and then Ms. Hudson brought up the concerns about signage and regulations and this was all in just the last couple days.

Ms. Kirkman asked if the concerns have to do with Section 28-25, Definitions of Specific Terms and Section 22-4, Definitions, and if they were the only concerns

Mr. Stepowany stated yes and that they were making some additional definitions and minor modifications to front lot line for the subdivision Section 22-4.

Mr. Judy stated there was one other issue in 22-143, the definition of shape. He stated it may just be the way the sentence was written but it was not very clear. He stated the sentence was "b. the shape of the lot shall not exceed five times its width; the horizontal distance between the side lot lines measured at the front building".

Ms. Kirkman stated she thought it should be a comma and not a semi-colon at which point the sentence ought to make some sense.

Mr. Judy stated he did not think that would help.

Mr. Stepowany stated as explained at the work session, that was taken out of the measurement section of the zoning ordinance.

Mr. Judy stated if what they were trying to say was the depth of a lot ...

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Ms. Kirkman stated she thought staff decided was to add a definition of width.

Mr. Stepowany stated how to measure the width of the lot.

Mr. Judy stated “the depth of the lot shall not exceed five times its width, the width being the horizontal distance”.

Mr. Mitchell stated with the discussion he was hearing he thought they should take a step back and take another look and get a better definition.

Ms. Kirkman stated the reason she was asking what the concerns were was just to remind people that how this ordinance originated was just from discussion for net buildable area and staff came to us and said while we are doing that let’s define these front and side and rear lot lines and given that that was an addition later, rather than hold up the process in getting the buildable area because that was again something we have needed for a while, what she would suggest was that they just not include those definitions in this ordinance at this time and they can just follow after staff has figured this all out in a timely manner.

Mr. Fields stated they were suppose to be going to a public hearing and asked the County Attorney to advise where they stand on the viability of a public hearing or how much they can change, omit or modify and still be in compliance.

Mr. Judy stated all of these were basically clarifications and they have not changed anything as far as what they were trying to define, they were just trying to make it more clear before it finds its way actually into the ordinance book. He stated obviously they want to make those changes and it is possible to go forward and separate these ordinances as they go forward.

Ms. Kirkman stated she would recommend they do not delay in making a recommendation on 28-24, Measurements, and making a recommendation on 22-143, the buildable area, and 22-146, side lot lines.

Mr. Howard asked if they were to amend the language would it impact the public hearing at this point.

Mr. Judy stated he did not think so. He stated they were suppose to be looking at this and hearing what the public has to say about it and making sure before it makes its way to the Board, whether it would be approved or denied, that they have looked at it and worked through some of the bugs. He stated it would not affect them moving forward because all they were doing at this point was making some language corrections to clarify what they wanted to say.

Ms. Kirkman clarified if they might recommend approval of this ordinance and then changes would be made after tonight before it goes to the Board.

Mr. Judy stated as long as they indicate as part of their recommendation that these changes be made.

Mr. Di Peppe stated they would put it as part of their recommendation.

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Mr. Fields opened the public hearing.

Carlos Ferran stated he understood the reason that this ordinance was brought forth but he was concerned with the buildable area. He stated the lot lines and those adjustments and hashing out how that should be done was fine and a good idea but 10,000 square feet at less than 15 percent grade in his opinion was very stringent. He stated if a lot meets all the requirements and has all the setbacks and the new RPA that they have put forth to go to the Board of Supervisors, it would have protection but he was not quite sure what the reason was for the 10,000 square feet that only have no more than 15 percent grade which was not very steep. He stated a typical house would need more than a 15 percent grade just to get a walk-out basement situation and you would create more than a 15 percent grade in building the house. He stated he would ask they bring the grade to 25 percent or 20 percent, but not 15.

Tom Cropp stated one concern of his was lot lines. He stated the ordinance states you could not have numerous lot lines and asked if numerous was more than 4 or less than 10. He stated they had an ordinance similar to this 15 to 20 years ago in Stafford and it said you could not have irregular shaped lots except if the parent track was irregularly shaped. He stated he owns a piece of property that has a creek as a boundary line and it has thumbs in it and if you were to break off a lot in property in that area it would have numerous sides. He stated buildable area, he went over to the farm Sunday afternoon and looked and as the gentleman before him said 15 percent was not much. He stated in the Piedmont there are rolling hills and he has a lot of land that was rural. So he thought, where do you get the buildable area and he looked... it's in the low spot, not in the floodplain, not in the RPA, but in a low area. Supposedly the purpose of this ordinance is to make it so the future homeowner can improve the value of his property. If you are going to have the buildable area below the slopes, the water is going to running to it, the drainfields are going to be in low areas and do I have to pump up a hill so he did not think the homeowner would have an advantage in the long run. He thought a prime example was Belmont but what would it look like if it was sitting down in the flat area along Washington Avenue. He really thought they need to give this some more thought.

Bob Burr stated he was also concerned with the buildable area. He stated typically on the walk-out lot it was already 15 percent or greater. He stated you do not take a flat lot and make a walk-out house, you take a lot that has a slope and you build it so the basement is exposed and you build it 8 feet or higher. He stated a house which was 36 feet deep, which was a standard house, you go from the front grade in the front yard to the back and it would be greater than 15 percent. He stated also the area of 10,000 square feet, he was curious where it came out of and what exactly it was. He stated he believed the intent was to get rid of the fingers and thumbs and the irregular shaped lots, but not necessarily to restrict buildable area and the 15 percent would make it almost impossible to build on quite a few lots. He stated the minimum grading requirements were 3 to 1 which was quite a bit steeper than 15 percent. He stated he would recommend that staff meet with professional engineers in the building industry to try to craft a better ordinance that meets the intent to create conforming lots that do not create confusion for the future homeowners of those lots but not infringe on the buildable area at such an extent.

Henry Cropp stated a walk-out basement takes 23 percent and the slope on a new site plan on a house, in 10 feet you have to drop a half a foot and that was a lot more than 15 percent. He stated if they pass this ordinance he was sure the Commissioners would not be able to build the house they currently live in under these restrictions.

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With no one else coming forward, Mr. Fields closed the public hearing for public comment.

Ms. Kirkman stated she had two questions for Mr. Judy. She asked if this ordinance only applies to newly approved lots.

Mr. Judy stated since it was in the subdivision ordinance he would assume it would have to be and it would not apply to already existing lots.

Ms. Kirkman stated because it was in the subdivision ordinance there was a process that should there be some sort of challenging terrain or special conditions, there was a waiver process where they could come and ask for a waiver if that was the only way to build.

Mr. Judy asked if she was assuming that everyone who has 15 percent or greater slopes would come in and ask for a waiver.

Ms. Kirkman stated no she was not, she was asking if there was a provision in the subdivision ordinance for waivers if there was something unusual about the property.

Mr. Judy stated correct, there was a waiver process.

Mr. Rhodes asked staff when they were crafting this he thought he recalled in an earlier conversation that they pulled some text from other local area ordinances and part of that was where they got the 10,000 square feet and you said there were some other areas that had that.

Mr. Stepowany stated the primary source for this ordinance was from Spotsylvania's regulation of 10,000 square feet.

Mr. Rhodes asked did their 10,000 square feet have the 15 percent restriction associated with it.

Mr. Stepowany stated he believed it was 25 percent.

Mr. Howard asked where the 15 percent came from.

Mr. Stepowany stated it came from a recommendation from Ms. Kirkman.

Ms. Kirkman stated which came from existing ordinances in other localities and she provided those to staff.

Mr. Di Peppe stated in light of the comments tonight, he would like to move to retain this in committee one more meeting and talk a little about this. He made a motion to retain this ordinance. Mr. Howard seconded.

Ms. Kirkman stated she would like to get a clarification. She stated they were not retaining it in committee at this point. She stated they could defer action on this rather than retain it in committee.

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Mr. Di Peppe amended his motion to defer action on this to the next meeting. Mr. Howard seconded.

Mr. Mitchell stated in his opinion it was wrapped around the 15 percent and had nothing to do with the shape of the lots.

Mr. Di Peppe stated he disagreed. He stated this ordinance grew out of past abuses. He stated the original intent was to stop very peculiar lot lines and peoples attempt to get higher lot yields at the detriment to the person buying the lot.

Ms. Kirkman stated she also took offense. She stated this very Planning Commission was looking at plans where on lots larger than 3 acres between the RPA, the steep slopes, the setbacks and the drainfields, there was just barely enough room to hang a house off of a steep slope and it was clear the property owner was not going to be able to mow the lawn much less do anything else with the rest of the acreage. She stated this really was about protecting future homeowners who look at a lot so that they know when they are getting a house they will actually be able to do something once they get outside of their house.

Mr. Howard asked if staff could provide the examples that were provided to them from the other ordinances.

Mr. Fields stated he was trying to be lenient but the motion was for deferral so the debate was whether or not to defer this motion, not on the merits of the ordinance. The motion passed 7-0.

UNFINISHED BUSINESS:

5. SUB2600625; Williams Subdivision, Preliminary Subdivision Plan - A preliminary subdivision plan for 13 single family residential lots, zoned A-2, Rural Residential, consisting of 14.55 acres located on the north side of Enon Road approximately 1,500 feet west of Wyatt Lane on Assessor's Parcels 45-125 and 45-125B within the Hartwood Election District. **(Time Limit: May 21, 2008) (Deferred to May 21, 2008 Regular Meeting at the applicant's request)**
6. SUB2600045; Beck Ridge, Preliminary Subdivision Plan - A preliminary subdivision plan for 12 single family residential lots, zoned A-1, Agricultural, consisting of 39.39 acres located on the east side of Richards Ferry Road approximately 4,000 feet southwest of Warrenton Road on Assessor's Parcel 35-16 within the Hartwood Election District. **(Time Limit: May 6, 2008) (Deferred to April 16, 2008 Work Session)**

MINUTES

None

PLANNING DIRECTOR'S REPORT

Discussed at Work Session.

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COUNTY ATTORNEY'S REPORT

Discussed at Work Session.

SECRETARY'S REPORT

Discussed at Work Session.

STANDING COMMITTEE REPORTS

Discussed at Work Session.

SPECIAL COMMITTEE REPORTS

None

CHAIRMAN'S REPORT

None

ADJOURNMENT

With no further business the meeting was adjourned at 10:08 p.m.

Peter Fields, Chairman
Planning Commission