

STAFFORD COUNTY PLANNING COMMISSION
WORK SESSION MINUTES
September 3, 2008

The work session of the Stafford County Planning Commission of Wednesday, September 3, 2008, was called to order at 5:39 p.m. by Chairman Peter Fields in the Board of Supervisors Chambers of the County Administrative Center.

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

Members Absent: Rhodes and Howard

Staff Present: Harvey, Roberts, Knighting and Schultis

Declarations of Disqualification

None

UNFINISHED BUSINESS:

1. RC2700647; Reclassification - Celebrate Virginia/MLR Associates, LLC - A proposed reclassification from A-1, Agricultural, to B-2, Urban Commercial and M-1, Light Industrial, Zoning Districts to allow for the development of an office, retail shopping center, and communications facility on Assessor's Parcels 44-99, 44-100A, 44-101A, 44-101C and 44-101E consisting of 23.008 acres, located on the south side of Warrenton Road approximately 500 feet east of Celebrate Virginia Parkway within the Hartwood Election District. **(Time Limit: September 30, 2008) (History - Deferred at July 2, 2008 Regular Meeting to September 3, 2008 Work Session)**

2. CUP2700648; Conditional Use Permit - Celebrate Virginia/MLR Associates, LLC - A request for a Conditional Use Permit to allow six (6) drive-through facilities and one (1) carwash facility within the Highway Corridor Overlay Zoning District on Assessor's Parcels 44-99, 44-101A, 44-101C and 44-101E consisting of 22.903 acres and to allow an existing communications facility in an M-1, Light Industrial, Zoning District located on Assessor's Parcel 44-100A consisting of 0.105 acres, located on the south side of Warrenton Road approximately 500 feet east of Celebrate Virginia Parkway within the Hartwood Election District. **(Time Limit: September 30, 2008) (History - Deferred at July 2, 2008 Regular Meeting to September 3, 2008 Work Session)**

Jon Schultis stated there was a letter before the Commission requesting the deferral of items 1 and 2 to the September 17, 2008 work session. He and the applicant had met with the Commissioners on this matter and they were hoping to improve their application in order to meet the requests of the Commissioners in previous meetings.

Mr. Di Peppe stated one of the sticky points he had was with the cell phone tower in that it was currently in an A-1 zoning district and the rezoning would put it in a B-2 zoning district. They had been working diligently with all the parties involved trying to resolve this. One of the reasons for the deferral was to get back to the cell phone tower owners and to try to figure out a way they could not have this in a B-2 zoning district. He stated they had talked about some different alternatives and the applicant needed to get back with the cell phone tower owners to see if they would agree. The applicant seemed to be moving forward and he was very confident that they were moving in the right

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direction to eliminate that problem. He stated all parties seemed to be trying their best on all sides to do this.

Ms. Kirkman asked if any representatives from the Silver Company were present.

Mr. Schultis stated yes.

Ms. Kirkman stated she was concerned that this was the only item on their work session. She was concerned that it was getting cancelled at the last minute and that precluded any discussion about any potential issues with the application. She was concerned both about the process when they schedule an entire work session for one item and the applicant, at the very last minute, defers.

Mr. Di Peppe stated just to be fair they had met with the applicant a couple times in the last week or so. He met with them once on the site with staff. Because they did not have the information to move that forward, they asked if they could send in a letter asking for deferral. He did not believe it was the applicant trying to delay the process at all. From what he understood, the applicant was going to come back at the next work session. He stated he did not believe that the applicants were trying to delay on their side. What they were trying to do was work through certain concerns in good faith.

Mr. Fields asked if the deferral precluded the ability to discuss the application.

Mrs. Carlone stated she did have some questions.

Mr. Fields stated he was raising a point of order to get clarification from the County Attorney. On the parliamentary process, if the applicant requests a deferral, would that technically take the issue off the table and preclude the Planning Commission from discussing it.

Ms. Roberts stated she would have to refresh her memory on the by-laws. She asked if the by-laws automatically grant the applicants one deferral. She had not had the opportunity to review the by-laws.

Mr. Fields stated there had been a lot of changes in the County Attorney's office and Ms. Roberts was filling in for several people.

Ms. Kirkman stated she wanted to clarify, it was not about whether or not it was being delayed as she was sure the applicant was eager to get this done as quickly as possible, and there were more issues than just the cell phone tower. She did not think it was a good use of resources to do that if there was going to be a deferral.

Mrs. Carlone asked when she could bring up her issues.

Mr. Fields started to answer Ms. Kirkman's issue. He stated that if the Commission were permitted to go ahead and discuss this today even though they may be deferring definitive action, he would assume that this sways to some degree her concerns that they were there for no apparent reason whatsoever.

Ms. Kirkman stated she did not like to gather for no apparent reason.

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Mr. Mitchell stated he was reading the letter and it stated it was hand-delivered September 2, 2008, so it was not like the applicant was canceling just before the meeting. He stated this was not the first time that people had sent the Planning Commission a letter one day before the meeting. If they went back to check the records the Commission would see on a number of occasions, people had requested a deferral within one calendar day.

Mr. Di Peppe stated in all fairness, last Thursday, the applicant asked about going back to the Planning Commission and seeing about a deferral. He assumed from his own experience that the Planning Commission fairly liberally granted deferrals. He stated he looked favorably on a deferral because the applicants were trying to solve a problem that he thought was a problem. The applicants were trying to find ways to resolve the problems.

Mr. Fields asked if the Planning Commission's policy, in the past was to grant the deferrals fairly liberally or had they stuck to any timeframe policy. He knew there had been an issue a few times where an applicant would request a deferral on their own behalf for years.

Mr. Di Peppe stated he thought this was a legitimate request. The applicant was trying to work through some issues that were raised by not only himself, but Mrs. Carlone. He knew she had some other issues that she wanted to be addressed.

Ms. Roberts stated she reviewed the by-laws and did not see any restrictions regarding deferments in the by-laws.

Mr. Fields stated the Planning Commission could then say they were deferring definitive action on this and still be free to discuss the issues.

Ms. Kirkman stated as a point of order would the way to move on be to go ahead and hold the work session and air the concerns and then not move it to the regular meeting that night.

Mr. Di Peppe stated he needed to raise one more issue because he did receive a message on his answering machine informing him that Mr. Hornung could not be there tonight. Mr. Hornung understood that he needed a representative there to request a deferral but, it might not be a person that could answer their questions.

Ms. Kirkman stated while the representative for the applicant could not be in a position to answer the questions, she could carry back the concerns that were identified. She stated she thought this would not be as big of an issue. It was just not a good use of staff or other resources to gather everyone and then cancel the meeting.

Mr. Schultis stated he was fairly familiar with the issues to date and would answer questions on behalf of staff.

Ms. Kirkman stated since they were all gathered the Planning Commission should make the best use of the time.

Mr. Fields stated they also had the flexibility to move some of the business items on the agenda He thought they would fill up the time pretty well. He stated they needed to stop a little earlier for the

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dinner break as they had to get over to Colonial Forge High School for the Regular Session. They would not work past 6:30 p.m. He stated Mrs. Carlone had some issues she wanted to discuss and he would appreciate some a synopsis on where they were at with this application. What were the issues they were trying to resolve? What was the timeframe for resolving them?

Mrs. Carlone stated she wanted to give the rest of the Commissioners an update. The tower was under discussion as was the traffic impacts and density of uses.

Mr. Fields stated he would not mind being refreshed on the issue.

Mr. Schultis stated some of the outstanding issues that were brought up at the last meeting concerned VDOT and the entrances. The Generalized Development Plan (GDP) had been amended to not include the entrances that were in question and those had been eliminated altogether. Additionally, there was concern on the number of drive-throughs and the potential carwash that was included on the GDP. The carwash had been omitted in addition to several of the drive-throughs. He was not sure of the exact number, but he believed they went from 7 down to 3 or 4.

Mrs. Carlone stated it was down to 4 now.

Mr. Schultis stated other issues that were brought forward included the issue of the cell phone tower and that was the issue that was going to delay them today. That issue was that staff had proposed including an M-1 zoned parcel to contain the cell phone tower. This was because staff could not recommend a nonconforming use in the B-2 zoning district. The applicant was looking toward either having that cell phone tower moved in the next five years or including it with another parcel that they were seeking to obtain which was zoned A-1. He stated it was in those details that they were not ready to come forward, that the applicants were still trying to work out some of the specifics.

Mr. Di Peppe stated one of the things that was proposed on Thursday, was that zoning allows a cell tower in A-1 zoning district, which required a 3 acre parcel of ground. There was another adjoining piece of property the applicant wanted to buy that was zoned A-1. If they bought that piece of property it would have become part of the cell tower property. The cell tower had already been leased for 10 years and the people that owned the cell tower did not think they had to do anything. The applicant had stated they wanted to proffer that when the cell tower lease was up they would not renew it. He stated one of the interesting things about the way the property was set to be developed was that part of the piece of property that had the cell tower was going to be one of the last pieces developed. They may not even get to it to start develop that area of the property for four years. Mr. Di Peppe thought that if the tower was on a three acre lot and was zoned A-1, it was no problem. The church had said that their new location was about a half mile away. It was twenty-three acres and they would be happy to allow them to relocate the tower there. He stated all the parties were really attempting to honestly make this better and that was why he supported the deferral.

Mr. Schultis stated the parcel in question, was zoned A-1. The owners would execute a boundary line adjustment, slip that cell phone tower into that parcel which was already zoned A-1 and it would not be a non-conformity because a cell tower was allowed on A-1 zoned property.

Mr. Di Peppe stated the other thing was to either put the tower in an A-2 zoning district or put it on a little postage stamp parcel in M-1 zoning. There was also some question about moving it to the water

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tower but the problem with that would have been that the water tower was still in B-2 and one of the things they were trying not to do was have that.

Mr. Fields asked when the tower was built.

Mr. Schultis stated 1998.

Mr. Di Peppe asked if it was originally a 20 year lease renegotiated every 5 years.

Julius George of Cornerstone Baptist Church stated the original lease was made in 1998. It did have a five year increment. Every five years it would automatically renew. There was not a kick out on this lease so the lease just continued on. He stated everybody was trying to get this issue done and over with because the church would like to move forward with their building and they cannot until the applications were approved.

Mr. Fields asked if the cell tower was currently on the church property and if the original lease was with the church.

Mr. George stated yes.

Mr. Fields stated he assumed there was a CUP that they had to get for the cell tower.

Mr. George stated yes. Every time they do something to the cell tower they have to go through new paperwork with the County so every time somebody would put up a new radio antenna it would have to go back to the County.

Mr. Fields asked Mr. George if he felt that the tower had been a good tenant.

Mr. George stated the cell tower folks had been good tenants. The church had a need to grow. The applications were a two year process for both the church and the applicants. The applicant had gone out of their way to make sure all of the church's demands had been met. He stated the church was in a position to say if that cell tower needed to move there was enough property at the new church provided the County would allow that.

Mr. Fields asked if the cell tower would require a CUP, he was concerned that if they have a plan that might have a potential future for migration of a cell tower without all of the verification of whether that would be appropriate according to the CUP process. His concern with cell towers was that a 250 foot tall tower had an impact zone particularly from a view shed point far beyond what you would call the typical land use issue of adjoining property. His concern would be ultimately to have a deal that assumes the possibility of relocating a cell tower without the actual legal verification that it was appropriate and everybody in good faith could say the church was happy to have this on their new site and it would not bother anybody.

Mr. Di Peppe stated he told them he could not promise the Planning Commission was going to grant them a CUP.

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Mr. Fields asked where that left the Church if this agreement assumed that the cell tower could be relocated and then, for some reason, it could not be relocated.

Mr. Di Peppe stated the Church would be on an agricultural lot where towers were allowed. It was not the best of all possible solutions but it did not violate the rules. The fallback position was since towers were allowed in the A-1 zoning district and since there would be a three acre lot, it would hurt the applicant because they were going to have a three acre lot that they had hoped to have business zoning.

Mr. George stated that he thought everyone would agree that they would like to eventually see that cell tower go away. The church was saying if you needed to put the cell tower some place, you could put the cell tower on the twenty-three acre parcel. The reason the church was using the cell tower now was because it was a very small church and the church was using the income from that cell tower as revenue for the church. They were maxed out in the building they were in now and the twenty-three acre parcel would give them room to grow. A bigger building would give them a far greater outreach so at that point they would not need the cell tower as revenue. The cell tower moving to the church's property was literally just to help the situation along, it was not something that the church thought they needed.

Ms. Kirkman stated she had some questions. She thought the Planning Commission may need the County Attorney to provide some guidance. The solution that they received in their packets was that the property owner, which presumably wants this transaction complete, would not renew the lease for the towers when that lease was up in 10 years. She asked if that meant they could write into the rezoning application a voluntary proffer that the property owner would not renew leases on the tower and would dismantle the tower once the current lease was up. She asked if they could ask the applicant to proffer, as part of the rezoning application and as part of the CUP, that no more leases would be renewed or added to the cell tower. She stated that the current lease would not be renewed and that there would not be any additional leases made for the tower.

Ms. Roberts stated it was her initial legal opinion, that no the applicant could not make such a proffer. A CUP was supposed to mitigate the impacts of the area and it should not be tied to ownership.

Ms. Kirkman stated it was mitigating the impact by saying the impact would only last for ten years. She asked why that would not be acceptable.

Ms. Roberts stated she would look further into it, however she still felt that the applicant could not limit it to a number of years. It would not be appropriate for a condition on a CUP. She would do further research.

Ms. Kirkman stated her concern that they could not write any kind of binding agreement about not renewing the leases which meant the leases could be renewed and the cell tower would continue indefinitely. Secondly, if they approve it based on the thinking that it would be relocated in the future, there was no guarantee that it could be relocated. She wondered if the applicant could write that into either the rezoning proffers or the CUP conditions. She stated she appreciated all the work that was being done to reach a solution but she was concerned about technical aspects. It seemed like the Planning Commission would have to vote on this the way it was.

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Ms. Roberts stated she believed the whole discussion began with the applicant requesting a deferral. If the application was deferred to the next meeting, she could get a definitive answer for the Planning Commission by the next meeting.

Ms. Kirkman stated she wanted her request to be carried back to the applicant.

Mr. Fields stated those were important points and in a desire to work through a problem they did not want to end up with a solution that they either had to stretch the fabric of the law too far or would not allow them to force an agreement no matter how well intentioned. The incentive, as Mr. Di Peppe pointed out, to migrate the cell tower was that the applicant would lose three acres of B-2 zoned land.

Mr. Di Peppe stated the applicant had a real reason to make that tower go away. Also, they were going to have to re-apply for that piece of land again after they had already done it once before. He stated he thought in a rezoning that if it was appropriate to accept a voluntary proffer. He asked what if two years down the road the applicant decided to sell this parcel. It was his understanding that the proffer would run with the land. If somebody bought it they too could not renew the lease.

Ms. Roberts stated she was inclined more to think it would be appropriate in a proffer but she still thought it was not appropriate in the CUP. She would still like to do additional research to be sure.

Mr. Fields stated he was concerned about the notion that they could include lease arrangements between individuals as proffers on a rezoning. It would seem to be drifting outside of the scope on what proffers in general were intended to be.

Ms. Roberts stated she was not viewing it so much as lease arrangements. She was looking at it more a tower could be relocated in ten years, not considering ownership or lease agreements. She agreed it should not be tied to private transactions.

Mr. Fields stated saying what type of uses were allowed was different than talking about one specific contract.

Ms. Kirkman stated that was why she raised the question. She wanted to make sure they were not making a decision based on something that would later be found to be unenforceable.

Mr. Fields asked if they needed to rethink how and where cell towers were located in terms of their zoning districts.

Mr. Di Peppe stated maybe so because other localities allow towers in commercial zoning districts. One question that had come up was there must be a reason the County prohibits it. He had to deal with the existing rules. He stated the one thing he did not think they should lose sight of was they were still dealing with real people and their lives.

Mrs. Carlone stated there were some issues brought up at the previous meetings regarding the type of businesses allowed. She was not sure if they completely covered that or not. Something that had not been addressed at that meeting was the location of the businesses and offices. They did not have the locations defined. The second thing she asked for was a new update on the traffic count because one of the banks was removed and the parcel now had a multi-tenant building. She stated the applicant did

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not discuss the facades and they should have these consistent with the logo being the identifier of the businesses on the side of the building. It was still rather extreme for the density. She was concerned about the three restaurants on the eastern side of Banks Ford Parkway and they decided to identify the office part. They did not discuss the building height and she knew the HCOD did define certain heights of buildings. She mentioned during previous meetings about the problem further up the road with the other parcel the applicant had designed and sold. There was a problem with access to the businesses on the GDP. On parcels 37 through 41, when coming in off of Warrenton Road, you were unable to make a left turn or cross over the portion of Banks Ford Parkway. It had been a problem for the tenants in the previous strip mall. She did not know what could be done with that. She stated they do have the inter-parcel connector but it still was very difficult to get in to. There was no exit off of Warrenton Road as that would slow the traffic but it might be contingent on that property being sold at a later date. There might be a possibility at a later date to have another access into this center. She stated she would like to see, if possible, the number of drive-throughs, reduced to four. She thought there were too many projects with drive-throughs in the application. The concept plan was outdated also.

Mr. Fields asked if she had expressed those concerns to the applicants. He asked what they envisioned as the process for her to resolve these issues before the applicants bring the application back to the Planning Commission.

Mr. Schultis stated he believed the proffers listed that the buildings would be consistent with the surrounding Celebrate Virginia facades.

Mrs. Carlone stated Celebrate Virginia was 300 feet away. She asked Mr. Schultis if he was talking about consistent with the Lowe's store that was coming. There was nothing built yet.

Mr. Schultis stated his understanding was the architectural standards would be true to the common design that was already developed around Celebrate Virginia.

Mr. Di Peppe asked if the storyboards showed what they envisioned the look of the complex to be.

Mr. Schultis stated the storyboards were there to show what the buildings would look like but the applicant had not proffered them or the GDP.

Jenny Baltzelle, speaking for the applicant, stated she took down all of Mrs. Carlone's concerns, questions and thoughts and would meet with Chris Hornung and John Riley tomorrow to try to get answers.

Mrs. Carlone asked if she could communicate that with them and come back with some of their thoughts either about reduction of density for the drive-throughs and also about the facades having the brick and the logo on it. She also wanted a traffic count.

Ms. Kirkman stated when they obtained the original rezoning on this there was some discussion about some office uses and asked where on the GDP that they had were the offices located. The CUP discusses the commercial uses.

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Mr. Schultis stated from what he understood the original rezoning for Celebrate Virginia included offices. This parcel was being rezoned for the very first time. He did not believe they were proposing any offices in the CUP on the Payne/Cornerstone property.

Ms. Kirkman stated maybe she was mixing up the CUP and the rezoning and in one of them there was a discussion about one of the access points not meeting VDOT's standards. She asked if that was the CUP or the rezoning.

Mr. Schultis stated the two share a GDP.

Ms. Kirkman stated they both had the GDP and asked if on the GDP for both the rezoning and the CUP there was no designated office use.

Mr. Schultis stated as far as he knew what they were proposing retail.

Mr. Di Peppe asked if the office discussion was connected with the bank building, since there was going to be a bank there would be offices also.

Ms. Kirkman stated she just wanted to clarify there was no designated office use in the shared GDP for the rezoning and the CUP.

Mr. Schultis stated as far as he knew there was no proposed office space and the discussions had been for retail. They may have been referring to office space in order to procure parking counts because a bank use did not come with a specific amount of parking spaces and may be classified as office.

Ms. Kirkman stated VDOT said there was some proposed access points that may not have met standards and the solution was to remove the access points. She asked if the traffic impact analysis, particularly like the internal flow and the counts leaving the remaining accesses, had that been redone to take into account that there would no longer be those access points.

Mr. Schultis stated yes and no. There was a little bit of a gray area. The way traffic analysis was put together, drive-through uses create the largest traffic impact. They had taken out several drive-through uses and replaced them with retail uses and the retail uses have less of a traffic impact. He stated the traffic impact analysis that was approved along with the Banks Ford Parkway extension parkway infrastructure plan accounted for all of these uses as they were shown in the original proposal. They had through amending this proposal reduced the amount of traffic impact that would be proposed by the development. They had not necessarily recalculated their traffic count or done a new traffic analysis. What was designed was designed for a larger traffic impact than what they were proposing.

Ms. Kirkman stated the answer was no, they had not done a new TIA. The Planning Commission did not know what impact it would have on volumes on the remaining access points because there had been access points removed. It did not matter whether they lowered the overall traffic count if more traffic goes through a single or two points. She stated this came in right before VDOT started doing 527 reviews. She asked if staff looked at this to see that the traffic impact analysis was done in a way that was consistent with the requirements of 527.

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Mr. Schultis stated yes, the traffic impact analysis was not only submitted to VDOT but also through the County's Office of Transportation through which they had done a review and submitted comments.

Ms. Kirkman stated doing reviews was different than what she asked. She asked was the traffic impact analysis done in a way that would be in accordance with the requirements of 527 which had very specific requirements about the methodology.

Mr. Schultis stated that question would best be addressed by the County transportation planner.

Mr. Fields asked on the subject property or on the adjacent commercial parts of Celebrate Virginia, if there was a design standards manual to dictate how the buildings were to be built.

Ms. Baltzelle stated not that she was aware of but would find out.

Mr. Fields made a reference to a small scale rezoning at White Oak Plaza. He liked how it was structured. His concern was the application would result in a classic low-density sprawl automobile driven type of development whether it was architecturally beautiful or not. Stand-alone buildings surrounded by a sea of asphalt was just not something he believed was a meaningful effort and a sustainable future for the County. Whereas, a development like White Oak Plaza which accommodated any potential valid commercial use of that property did so in a way that was both architecturally and, he thought from a resource sustainability point of view, much far superior on its type of design. He stated he would like to reference them to that because he thought it was a successful convergence of the interest of the person applying for the rezoning who agreed to these conditions and the County who would need to see that the future of the citizens of that part of the County were protected in terms of future impact. He offered that as an example of a completely different way of looking at how you control the outcome without ending up spiraling downward in a sea of conditions and proffers and things that may or may not apply two years down the road let alone 20 years down the road. He stated the applicant had a request for a deferral and asked if the Planning Commission needed a motion to defer.

Ms. Kirkman stated she thought they were just retaining it and hearing it again at the next work session. As she understood the process they would hear applications in a work session and then make a motion to move it to the regular meeting. She thought just as long as they did not make the motion to move it to the regular meeting they were okay procedure-wise. She asked if that was correct.

Ms. Roberts stated since the applicant was not at the meeting, she would recommend that the Planning Commission make a motion to defer.

Mrs. Carlone made a motion to defer to the next work session.

Mr. Di Peppe seconded.

Mr. Harvey stated the next available work session was September 17, 2008. He noted that the time limit for review of this application expired on September 30, 2008. Unless the applicant would grant an extension of the time limit, the Planning Commission would have to take action on September 17, 2008.

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Ms. Kirkman asked Mr. Harvey about some scheduling issues. She wanted to make sure that would leave the Planning Commission enough time to discuss the application. She asked if the September 17, 2008 work session was when they would have their first discussion of the Comprehensive Plan.

Mr. Harvey stated that was correct.

Ms. Kirkman asked if they would have enough time in the work session to do both.

Mr. Harvey stated that it may be problematic.

Ms. Kirkman stated she thought they were on a really tight schedule on the Comp Plan. She asked if that was correct.

Mr. Harvey stated there might be some leeway for a meeting or two.

Mrs. Carlone asked if they could ask the applicant if they would agree to an extension

Ms. Baltzelle stated if that was what they had to do then they would.

Mr. Harvey stated it would need to be in writing.

Ms. Baltzelle asked when the next work session would be held.

Mr. Harvey stated October 1, 2008.

Mr. Fields stated they had a motion and seconded but thought the Planning Commission was deferring to the October 1, 2008 work session. He stated they probably could not move because they did not have an official request for extension from the applicant at that point.

Mr. Di Peppe asked if they could just defer the application and hold them in committee.

Mr. Fields stated he thought, along with Ms. Kirkman, that no action was applicable at that point. They were concerned they could not accommodate the application on September 17, 2008. They did not want to defer them officially to September 17, 2008. The Planning Commission could not defer it to October 1, 2008 until they had an official letter requesting the extension. At that point he thought it was going to stay where it was.

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 6:39 p.m.

Peter Fields, Chairman
Planning Commission

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The regular meeting of the Stafford County Planning Commission of Wednesday, September 3, 2008, was called to order at 7:30 p.m. by Chairman Peter Fields in the Auditorium at Colonial Forge High School.

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

MEMBERS ABSENT:

STAFF PRESENT: Harvey, Roberts, Stinnette, Stepowany, Hornung, Schulte, Baker Knighting and Hamock

DECLARATIONS OF DISQUALIFICATIONS:

None

PUBLIC PRESENTATIONS:

None

G. Discussion Concerning November and December Meeting Dates

PUBLIC HEARINGS:

1. Amendment to Zoning Ordinance - Amendment to Section 28-35, Table of Uses and Standards; and Table 3.1, District Uses and Standards, of the Zoning Ordinance, pursuant to O08-68. The amendment establishes density requirements for the A-1, Agricultural and A-2, Rural Residential zoning districts in the same manner that density requirements are to be determined for all other residential districts. The allocated density for the A-1 zoning district would be set at 0.33 dwelling unit per one (1) acre and the allocated density for the A-2 zoning district would be set at 1.0 dwelling unit per one (1) acre. To calculate the 'maximum net density' for a particular parcel, the land owner/developer would be required to apply the formula provided for in Stafford County Code Section 28-39(h) which provides: Subtract the areas of all wetlands, floodplains and slopes greater than thirty-five (35) percent from the gross area of the site to obtain the net area. Multiply the net area of the site by the allocated density to obtain the maximum number of lots permitted for the site. Application of this ordinance could potentially reduce the number of developable residential lots for new developments in the A-1 and A-2 zoning districts where parcels contain significant areas of wetlands, floodplains and/or slopes greater than thirty-five (35) percent grade.

Jeff Harvey stated he would like to advise the public the process for speaking. He stated when the Chairman called the public forward to speak they would be asked to come to the podium. After they spoke staff requested they fill out a speaker card with their name and address for public record. He recognized Andrea Hornung for the presentation.

Andrea Hornung presented the staff report and stated this ordinance would amend the Zoning Ordinance and would be referred to as Allocated Density Ordinance. She explained which sections of the Zoning Ordinance would be affected and what those effects would be. She gave a PowerPoint presentation showing how the parcels could be affected and explained the calculation process and various items that could affect the lot yield. She stated staff had researched information on approximately thirty previously approved plans and showed the difference in density yield with the

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proposed Ordinance calculations. She stated staff recommends approval and stated she would be happy to answer any questions.

Ms. Kirkman asked for clarification, that staff went back over a four year period and looked at preliminary and final subdivisions of ten acres or more and performed the calculations on the properties and found for all properties, they met the net density allocation requirements.

Mrs. Hornung stated they looked at an average. She stated the approximate infrastructure average was removed and looking at the lots predicted, by taking the total average we came up with numbers that do not appear they would not be less than the .33 by looking at the average it was .25 dwelling units per acres.

Ms. Kirkman stated if you look back for the past four or five years, the plans already, by virtue of other constraints, meeting the density requirements.

Mrs. Hornung, stated yes.

Ms. Kirkman asked about the drainfield requirements.

Mrs. Hornung stated the drainfield requirements could have an impact how the density would be allocated. She stated while you would have to subtract out for the proposed allocated density ordinance, the environmental features could be located within the lot.

Mr. Di Peppe stated he understood the example of five per cent for roads, but asked how staff determined the five percent for wetlands. He asked in looking back over the past five years, was the normal amount for wetlands five percent.

Mrs. Hornung stated staff used the five percent as a constant calculation to show how the calculation worked. She stated it did not mean the average overall for wetlands was five percent, as some would have more and others less. She stated looking at the subdivisions, some of the information was not depicted specifically on the plans because the applicant was not asked to put the percentage on the plan. Because the floodplain, wetlands and steep slopes could be variable over the property, it was not calculated specifically taking those items into account.

Mr. Di Peppe stated the lot yield could change from one house every three acres, to one house in every four acres. He asked if it was correct that sometimes requiring a larger lot was due to the drainfield ordinance.

Mrs. Hornung stated yes.

Mr. Mitchell stated when he looked at the examples on A-1 and A-2, everything worked out perfect and if everything works out perfect, he did not understand why the Commission was there. He stated in his opinion everything looks good on paper but in reality this would require taking out more area because of the floodplain and steep slopes.

Mrs. Hornung stated currently we do not use the floodplain and thirty five percent slopes in the calculations, we use the road dedication. She stated for the purpose of showing how the calculations would work, staff showed an estimate of five percent of the total of what was considered wetlands, floodplain and steep slopes that were greater than thirty five percent. She stated the calculations would

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have to be made on every subdivision to see what was on that property, some would be smaller and some would be larger, depending on drainfield requirements, wetlands, floodplain and steep slopes. She stated those items can be incorporated into the lot, which staff has found was sometimes a larger lot than the three acre minimum lot. She stated those variables, when calculated, could be different and the calculations for the examples took into consideration if the plan had five percent of those environmental features compared to the current five percent road dedications, which was how the calculation would work.

Mr. Mitchell stated his question was if the current and proposed were the same, why was there a suggested change. He stated, in his opinion, more regulation does not mean good regulation.

Mrs. Hornung stated this ordinance was initiated by the Planning Commission and the calculations were for examples. She stated currently only road dedication was taken out, not the wetlands, floodplains or steep slopes greater than thirty five percent. She stated the proposed ordinance would change the calculations and incorporate the amount of wetlands, floodplains and steep slopes greater than thirty five percent.

Mr. Howard asked Mrs. Hornung, when staff went through the thirty subdivisions and did the analysis, did staff encounter any of those subdivisions that would actually needed to take the five percent for roads.

Mrs. Hornung stated yes, there were some.

Mr. Howard asked how that was factored into the calculation.

Mrs. Hornung stated when looking at the total subdivisions the calculations were four to seven percent, so staff took an average.

Mr. Howard asked if this proposal was approved, if staff were to remove the five percent for the road dedication as illustrated in the tables for examples, and changed the table to be something different, how would the county acquiring roads or was that listed in the proposal.

Mrs. Hornung stated in proposed Ordinance O08-68, it uses the environmental features for calculating the density the road dedication would still be taken out and lots would not be included in that area.

Mr. Howard stated this proposal would actually increase by five percent the potential loss for the use of the property.

Mrs. Hornung stated that was possible.

Mr. Harvey stated he would like to clarify, there were two types of calculations to determine the lot yield. Presently staff uses roads taken away from total acreage to get the net acreage and determine how many lots and under the second calculation with the allocated density, roads would not be a factor when looking at the total number of lots to be yielded. He stated from a practical purpose when the subdivision was designed, roads would be required as well as the minimum three acres per lot outside of the roads.

Mr. Howard asked when staff went back and looked at the thirty subdivisions, and included property that was currently roads, going forward the property to be a road could be included.

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Mr. Harvey stated the acreage that the road right-of way would take up could be credited towards the total density.

Ms. Kirkman asked Mr. Harvey if there would be two calculations, one for the roads and one for the purpose of density which would subtract out environmental features.

Mr. Harvey stated correct.

Mr. Fields stated the Commission was talking about the number of allocated buildable lots, but all of the land could be included in a lot of record.

Mr. Harvey stated correct, except what would be needed for public streets.

Mr. Fields gave a brief history explaining this started in 2000 when the county went to a net density calculation. The Board was looking at changes of land use then and passed an ordinance changing the density of the Residential areas which were calculated in R-1, R-2 and R-3. At the same time the Board was considering similar changes in the A-1 and A-2 districts, but no action was taken at that time. He stated the Agricultural areas have minimum lot size, not net density calculations. At that time both he and Mr. Mitchell were on the Board, and the vote was 4-3, in which he was on the majority side.

Mr. Mitchell stated he was on the minority side, and did not feel this was a good change. He stated he firmly believes more regulation was not good regulation. He stated he felt sometimes you could get more tied up in trying to fix something. It was not broken in 2000 and was still not broken.

Mr. Fields opened the public hearing and explained if you were speaking as an individual you would have three minutes and five minutes if you were representing a group. He explained how the light system works and asked that each speaker identify themselves and after speaking please fill out the speaker card to the right.

Michael Anderson stated he was not a resident but he owned property and paid taxes. What he would like the Planning Commission to think about was to use a medical axiom, first to do no harm. He stated in his opinion the Commission would do harm if they were to approved this proposal. He stated if they did not approve this they would not have one more or one less lot than they had last year. They would not have lost or gained any environmental protection to wetlands, to floodplains or to slopes. If they wanted to build on a thirty five percent slope, require people to do a global slope analysis and do all of the engineering necessary to do that. He stated if they did not do this he did not see the harm. If they did do this he saw harm in two places. He stated in his opinion this was a pure density cut since this would not improved the environmental situation, and you have not told people they could not build on certain areas, or they would have to build slower or faster, the Commission would be cutting density. He stated density cuts were related to value cuts. His property would lose value and the county would lose tax revenue. This was the biggest real estate depression since the Great Depression and the Commission would be decreasing property value. There would be no average lot and some people who would not be affected and others would lose half their density. He stated, in his opinion, it was unfair activity if the county was not getting any environmental benefit, not slowing the building process, not telling people what they could or could not build in certain areas. He stated if landowners were to loose five percent of their real estate value on the vacant ground, the county would take a tax revenue hit. He stated the Planning Commission should be doing just the opposite of what they were suggesting and the timing was terrible. He asked the Commission to take the view, first do no harm.

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Marianne Crampton-Humphreys stated her property had steep hills and did not feel what the Commission was doing was correct. She stated at other meetings the county increased the Chesapeake Bay Act area around her property and took another twenty five feet away. They live on forty five acres which we love deeply and stated she would not subdivide her property today. She stated she was getting mad and to the point where she would subdivide because she was getting tired of people telling her what she could and could not do with her property. She stated in her opinion the Commission should look at the people that really love their property and see what was being done to them.

Stanley Zack asked for clarification how soon this would take effect and would this have a retro-active impact on the lots that had already been developed. He stated he thought the formula used by staff was missing just a little bit, because a home could not be built on a three acre lot even if it was a perfect lot. Stated based on the formula of .33 per acre, you would only get .99 usable out of the three acres. He stated if this formula were going to be used, it should be divided by three. He stated the letter stated referenced Section 28-39(h), and in looking that section up, 28-39(h) was Performance Standards for a Golf Course and Driving Range and asked if perhaps a mistake was made.

Jerry Moore stated he was not a resident but he owned property in the county. He stated he felt staff had all good intentions with the examples they showed but was not realistic at all. He had been in the real estate development business for about thirty years and he could not follow the example at all. He stated you would have to ask what was the purpose or the gain other than reducing density because in his opinion, that was what was being done. He stated if there was a positive outcome such as lower nitrates, lower impact on ground water and quality, that would be good. He stated what the Commission was doing with this ordinance was taking more and more, which was fine, but at least be honest with what they were doing and tell the people what they were facing. He stated a lot of people probably did not understand what the Commission was doing by taking this land away from them.

Gary Sitzman stated when he opened the notice he thought it was an error. They had met at Brooke Point High School auditorium to put this proposal to rest. He was sure the Commission recalled the large attendance at that meeting and knew the results as well as he did. He asked what part of "no" did the Commission not understand. He stated if this was a courtroom, this Commission would be on trial for attempting to steal the rights and equity of A-1 and A-2 landowners. Make no mistake about it, the rights and equity of Stafford landowners were under attack and had been for the last 20 years. He stated he was against this proposal because it whittled away at landowner values until there was no value, no retirement fund and no estate for the heirs. He stated a twenty acre tract could lose not five percent but up to thirty to fifty percent of its usefulness, if this proposal was accepted. He was sure that the numbers that were used in the examples provided were accurate in their context but everyone knows that data can be manipulated. He stated landowners stay on guard because this was not the first nor would it be the last attempt to take their equity.

Otha Combest stated he was definitely against this proposal and it was just not right for the landowners of Stafford County. He stated houses were a market-driven product, builders were not going to build any more or any less houses than they could sell. He stated anyone could look back at the data over the last several years they had gone through a great growth period and there were not any houses built that people were not buying. He stated residential houses were not like commercial buildings. Commercial buildings people build and sit on them for a while and wait until somebody comes in and rent them or buys them. In housing, people build as required. He agreed with Mr. Mitchell, when you try to regulate something that you were not going to regulate. History had shown them that when you try to put everything in the growth area and you put proffers on that all the builders went out to the hinterlands. He stated by passing this, the Commission would be downsizing the number of houses

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that a builder could build on a particular piece of property. He stated if a builder needed thirty houses, and if this were to pass, could only build twenty houses on this property he would go down the road and buy another piece to build the other ten or whatever he would need at that time. The Commission would not stop the building, but creating sprawl because the builder would build whatever he could on a particular lot. He stated in his opinion, this ordinance would devalue his property, because a builder would only pay what the value was to him to build and asked how this would not create sprawl.

Paul Miller stated he appreciated the opportunity to speak out against the proposed amendment. He stated he agreed with many of the reasons already given and would like to add a few more questions and comments for the Commission to consider and hopefully disapprove this change. Through the presentation he did not see or understand anything address the driving need to make this change. He stated he was trying to see why this change was needed and he could not find it in the presentation. One of the immediate things that came to mind and he wondered why this proposal would need to apply to agriculture, was the term residential or calculation of density for residential areas. He stated, in his opinion, they were speaking about agricultural land, land that should remain rural and it seemed like when developers come in with requests for development the first thing that should be looked at was on the Comprehensive Plan that the zoning was rural and agricultural, which would say what could be done with the land. So trying to make a calculation on density based on the residential rules just did not seem to fit. Sometimes you have to look at can this be twisted to a developer's advantage or if you were trying to limit development it appeared that this might open a loophole for high density development like what happened across Onville Road from Bald Eagle Hills, that was disapproved, and in his opinion, was based on what appeared to be the same reason the developer wanted to build all of the houses on a very small portion of the property which was a totally different type of development. He stated he thought that type of development should not be allowed in agricultural or rural areas and the current zoning regulates for highly desired type of construction sites. He thought there was high demand for open space around single family dwelling units and he did not think there was anything wrong with rezoning and give that open space by only allowing one house per acre. He stated also requiring a professional engineering survey would add an extra burden and would cost more for family landowners who were intending to develop their land for children or relatives and this was just one more restriction placed upon them.

Mike Ranberger stated there were many valid statements made and all he could do was reiterate them. He asked why the urgency, they had been there before, He would ask that before the Commission came to a final decision that they look hard at the prior comments as this was not representatives of the uproar that had taken place in the past as there were people wanting to get in to speak. He asked if this was an attempt to wear the citizens down. He stated he was in Family Practice medicine in the Shenandoah Valley and drove there and back everyday because he wanted to be here and wanted his children to be in Stafford. H stated he owned seventy acres of land and wanted the freedom to do what he wanted with that land. He was under the impression that this issue had been put to bed and that the County was going to do no harm, which was a term in medicine. He stated if there was any uncertainty at all, you do not do anything and if this was an agenda to slow growth, we were in the largest childbirth boom ever, since the baby boom people. He stated the fact that a timer set up was because there was an expectation of a large number of people. He asked the Commission to please go back and read the prior comments, those were the reality of what the people wanted not what the Commission wanted. He stated the Commission was to serve the will of the people, not their own will or agenda.

Alaric MacGregor, III, stated his family has owned property in Stafford since 1859 and he was getting tired of coming up here and saying no. He stated there were already restrictions, his grandmother

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owned thirty acres of marsh that they could not do anything with except maybe shoot a duck, but she liked to keep the ducks. He stated these numbers looked nice and he was sure a lot of work and effort went into them, but they were averages and that was all they were. As another gentleman said averages will enable some people to build many more lots on their property and will enable others to build many less or maybe nothing. He stated his family property was on Aquia Creek which was very hilly, had lots of wetlands and had lots of floodplains and they were already very restricted and it just seemed like it was constantly something else coming up to restrict it more. His father attempted to give his younger brother a piece of property to build on but if some of these ordinances pass that the Commission was proposing, that would not happen. He stated, in his opinion, since they had been paying taxes on the property since 1859, they might have some sort of say so concerning the property but it did not look like they did. He stated he did not like coming down there and getting up in front of people to talk but he had to do it, he had to stand up for what he believed were his rights. He stated he liked Stafford County the way it was when he grew up and stated growth would not stop, it was going to happen one way or the other unless you shut everything down and take all the property away. He stated in his opinion this proposal would certainly devalue the property values and he did not want taxes as he was currently paying if he could not do anything with his property. He stated if the County was going to take away what he could do with his property then he thought the taxes would need to be lowered.

Rick Scriver stated the Bill of Rights and the Constitution of the United States entitles all of the citizens to own property. He stated the Commission needed to let them do what they want with their property and by talking about A-1, this was another attack on the farmers. He stated, in his opinion, the County was already taxing them to force them to sell their land and now was reaching in their pockets and taking money that they could get for their land. He stated the County should give the farmers a tax shelter and that would automatically keep more green space which was what the Planning Commission said this proposal would do. He suggested the Commission look in the mirror and then ask themselves if they felt they were doing the right thing. He asked the Commission if they felt this action would stand up in court and stated if they felt it would they were fooling themselves. He stated in his opinion this would be found to be illegal. He stated in his opinion, one of the many cornerstones in the legal findings that Stafford County would lose was the fact that people bought land with a certain zoning and now the Commission was changing the rules after the game had started. He stated you cannot prove that this was in the public good. He asked where was the big picture, like Crow's Nest show showing erosion, and showing the harm that was happening to the citizens because his house was on a thirty five percent slope. He stated he was not killing anything or hurting anything and he was next to a stream which goes into Abel Reservoir. He stated, he knew there was at least one of the Commission members that owns eleven acres on which their house would not be allowed to be built if this proposed legislation passed. He stated currently there were seventeen lawsuits against Stafford County because of drainfields and he felt the Commission was trying to choke out the drainfield issue. He suggested if the Commission wanted to do something to help the water quality, make those green above ground drainfields illegal. He stated he felt this would be illegal and would overturned and the Commission would embarrass the county just like the embarrassed itself by losing the Crucible debacle. He stated the Crucible was not building there now because the public did not want them there. He stated in his opinion, the only ones who benefited from the Crucible and this proposal would be the lawyers. He stated the Commission could not change the rules after the game had started and could not go against the American Constitution unless you plan to secede from the Union. He stated in his opinion, this was just an attempt to stop growth.

Bettina McWhirt stated her family was lifelong farmers and landowners in the county and they had always been avid supporters of protecting the environment in the county. However, the proposed

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ordinance unfairly burdens the lifelong county landowners with most of the impacts and cost of this strategy. She stated there were already federal, state and local regulations that were in place to protect the water, wetlands, soils and the environment and asked, why should the County adopt another regulation that exceeds the states requirement. She stated the Citizens did not need another regulation, but they do need the existing regulations to be followed. Over the last several years numerous proposed changes to the zoning ordinances, critical resource overlay districts and slopes have had a negative impact on the county because it prompted the landowner to sell some large tracts of land earlier then expected, which she felt was the very same thing the Commission was trying to avoid. She stated in her opinion, this proposed ordinance would also backfire and create another wave of land selling and premature development. She asked the Commission to not make a mistake or wastefully spend county money by having to defend against lawsuits that this inappropriate ordinance would bring on if approved. She stated, in her opinion, this ordinance was in violation of personal property rights and would unfairly take away more land from the owner without compensation. The landowners have paid property taxes based on prime developmental protection for years and this ordinance would do nothing to compensate the landowners for greatly diminished value of the land. She stated, in her opinion, if the landowner in the land use program had to pay back five years of real estate taxes when the land was sold, the same should hold true for the county if this ordinance was adopted. The county should have to compensate the landowner for the diminished land value. She stated she did not hear staff mention that they had coordinated the effects of the diminished land value with the Commissioner of Revenue's office nor did she hear how the Commissioner of Revenue's office would require the assessment to be greatly lower for the land that would be effected by this ordinance. She stated the county could not have it both ways, they could not approve this ordinance and still place a high real estate assessment on the property. She stated, in her opinion, the adoption of this ordinance would causes something very serious, the erosion of the American landowner's property rights, the victims would be ordinary hardworking citizens. The Planning Commission and Board of Supervisors should target all county residents for slow growth and environment protection measures. She asked that the Commission not approve this ordinance.

Marjorie Gerhardt stated, in her opinion, the proposed ordinance discriminates against A-1 and A-2 landowners. She stated all county residents should be targeted for slow growth measures and environment protection and this proposed ordinance was violating the property rights as it unfairly takes away more land from the owner without compensation. She stated it would also cause a serious negative impact to the financial security of the landowners and asked the Commission to not approve this ordinance.

George McWhirt stated he was not going to say to much, just ask the Commission to not vote for the proposed ordinance.

John Snyder stated he had been a resident of Stafford County since 1970 and as he viewed the ordinance, as stated by several of the previous speakers, it would effect his by-right uses. He stated one of the previous speakers mentioned the Crucible, which happened to be in his back yard. He stated as he looked at the ordinance, A-1 and A-2 was a base zoning and was a by-right, R-1, R-2 and R-3, were all rezonings of he base A-1 and A-2 zoning. He stated, as such the wetlands, floodplains and steep slopes of thirty five percent or more can be included because those areas would be a higher density, but as an A-1 landowner he was perfectly content with what he had and to include this in the ordinance was merely a way of downsizing his property. He stated the ground in Hartwood did not perk well, and with his forty five acres based on the three acre minimum he would have fifteen lots. He stated he would doubt that he had two additional perc sites. He stated, in his opinion, the ordinance was a bad idea and stated A-1 was by-right and should remain that way.

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Gary Snellings stated he was actually attending tonight on behalf of his mother who owns twenty five acres in Hartwood. She asked him to come up and get some more information other than the letter she received. He stated, with all due respect to staff, he was a little disappointed, instead of receiving a two hour staff presentation, the citizens attending received a two page staff presentation and the second page said nothing but we recommend approval. He stated he heard the term tonight arbitrary quite a bit and that term always scared him, because it meant they did not have the facts, it meant they think this was what it was going to be. He stated Mr. Mitchell made an excellent point that based on staff recommendation there would be no change to density, if you were still going to get thirty one lots out of one hundred acres why were they there. He stated, in his opinion, it did not make a lot of good common sense. The other thing he did not see, that one other speaker alluded to, was a financial impact statement and if there was anyone in the room that did not believe or think this would not change the density in Stafford County, they better think again. He stated he would urge the Planning Commission to defer this ordinance until they receive more information, not only a financial impact statement, but make sure the Commission understands how much land was going to be affected in the community. He stated he thought it would be a lot more than the Commission thinks it would be.

Jo Knight stated she had talked to many people that did not think there was any point in coming tonight, because they felt the Planning Commissions' minds were made up. She thought for the record they should appear, but they did not feel it was worthwhile. She stated, in her opinion, this had nothing to do with the Chesapeake Bay Act as it did not help protect our Bay, or rivers or creeks in any way. She stated when good development was done today, by the standards that were in place, the stormwater management ponds help protect siltation in our waterways. She stated she believed that most of the people making the decisions have come into the county within the past ten years and those of us who were natives and have been here forever have watched the growth and the different philosophies as time goes by. She stated now the citizens have to watch another group come in a take over and decide what was best for everybody including the issues with the septic tanks, which someone else brought up tonight. She stated she knew that everyone had their own opinions and there were certainly counter-opinions to all. She stated she used to be able to quote the code, but there were so many changes now that she had to call the Planning office and they have to look everything up She stated she was asking the Commission to reconsider the proposed ordinance, because she did not believe it was in the best interest of the county. She asked the Commission that before they would even consider something like this, they would think of ways that they could protect the people, their investments, their land and their farms. She stated she knew those that were making the decision did not have farms and she asked the Commission to reconsider.

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

Mr. Harvey stated the first question had listed was if this ordinance would be retroactive. He stated the answer was no, this would only apply to lots being subdivided once the ordinance went into effect. He stated the ordinance did not have an effective date, as that would be decided by the Board of Supervisors to determine how they would want this ordinance to be implemented. He stated he did not have a chance to check the Code Section that was sighted, that was referenced in the staff report and stated Mrs. Hornung would have more background.

Mrs. Hornung stated she did had the ordinance and stated it should be Section 28-38(h), which was listed.

Ms. Kirkman asked Mrs. Hornung if there was a typo in the notification that was sent.

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Mr. Harvey stated no, he was referring to the section in the staff report, not the ordinance. He stated there was a general questions as to if this ordinance would create additional sprawl. He stated there could not be a clear answer on that, ultimately the minimum lot size was staying the same in those districts. He stated there was a question as to the ordinance being coordinated with the Commissioner of Revenue's office and the potential effects on the tax base. He stated staff did not work specifically with the Commissioner of Revenue's office concerning this ordinance. He stated his experience with past proposals, the Commissioner of Revenue's office would have to see how the market would change in reaction to the ordinance. He stated if the Commission desired, staff could certainly coordinate with the Commissioner of Revenue's office.

Mr. Fields stated that sometime people feel the assessments that come out of the Commissioner of Revenue's office were based on policy decisions. He stated the Code of Virginia states all land use assessments were based on the fair market value.

Mr. Howard asked, if the Commission could ask staff one more time for a copy of the memo that was mailed to the homeowners or affected property owners, so the Commission could understand if the correct information was sent out or if in fact there was a typographical error.

Mr. Rhodes asked how much land in the A-1 and A-2 districts would be impacted.

Mrs. Hornung stated staff did not run that calculation, but could.

Mr. Rhodes asked Mrs. Hornung if she could clarify from the earlier presentation, the information concerning the thirty subdivisions that were zoned A-1 and A-2 over the last four years, was that all the subdivisions over the last four years or just a random selection.

Mrs. Hornung stated it was a random selection based on properties between ten and one hundred acres.

Mr. Rhodes asked if they were submitted.

Mrs. Hornung stated submitted and approved.

Mrs. Carlone stated she heard quite often about the decrease of property value and asked Mrs. Hornung if she had any information concerning the change and if it would affect a fifty percent decrease.

Mrs. Hornung stated she did not have that information.

Mrs. Carlone stated that statement did come up fairly frequently and suggested staff look it up to confirm validity.

Mr. Rhodes asked how staff arrived at .33, was it based on a third. He stated one gentleman stated that made .99 on three acres.

Mr. Harvey stated it was an attempt to equate a three acre lot, and the questions was, how far do you carry the decimal point, so staff rounded to one hundredths of an acre.

Mr. Howard asked if staff had time to evaluate the notification and asked if the correct information.

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Mrs. Roberts stated the Code Section was a typo, it was listed as 28-39(h) instead of 28-38(h), however the notice did specify the text of the correct section. She stated, in her opinion, the typo of the number was fatal to the notification since the text was correct.

Ms. Kirkman asked if she was positive

Mrs. Roberts stated she would be glad to do further research and report back to the Commission.

Mr. Di Peppe stated when a notification was sent out countywide, it had to be correct and based on that he would like to make a motion to defer Ordinance O08-68.

Mr. Mitchell seconded.

Mrs. Kirkman stated she would like to make a substitute motion to direct staff to re-advertise and make sure there were no mistakes in the letter.

There was no second to the substitute motion.

After some discussion by the Commission concerning re-advertisement, Mrs. Carlone asked Mr. Fields, since these citizens have taken the time to attend the public hearing, was there anyway they would not have to attend again.

Mr. Mitchell stated in his opinion there were too many unanswered questions. He stated the big questions was how much A-1 and A-2 land could be effected and another question was how would this effect peoples value of their property. He stated everyone that spoke tonight was against the ordinance, he did not here one person speak on the positive side.

Mr. Howard suggested in answer Mrs. Carlone's questions to include the comments from tonight's session into the next public hearing, if one of the residents did not come or chose not to come their comments would still be included.

Mr. Fields stated that he thought the idea was to give staff a couple of weeks to work out the options and answer the question of the technical flaw in the notification.

Mr. Rhodes stated, if deferred back to work session, it could be decided at that time if there was a need to go back to public hearing after the legal review. He stated we have a staff report which states that over four years that every subdivision that has come up in the A-1 and A-2 had a .25 density. He stated he was not exactly sure what the Commission was addressing, because the projects were under the density at a relatively busy time in the county and this would be adding additional burden on the citizens. He stated it would be helpful to know what the Commissioner of Revenue may say, if anything and it would be helpful to know the amount of land affected in the A-1 and A-2.

Ms. Kirkman asked Mr. Di Peppe if it was his intent when making his motion, that staff would re-advertise.

Mr. Di Peppe stated he felt very uncomfortable if there was any kink of breech in process. He stated it was not intentional but it happened, so as a fairness factor the notification has to be correct. He stated he was certainly leaning towards having to re-advertise, he stated he was sorry it was expensive, but

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felt the Commission would be leaving themselves open if the notification was incorrect, either side could challenge it.

Ms. Kirkman stated it that was Mr. Di Peppe's intention, would he consider a friendly amendment to direct staff to re-advertise.

Mr. Di Peppe stated he would like to hear from the other Commission members. He stated if the friendly amendment was to re-advertise, he would accept.

Mr. Fields asked if the person who seconded would agree.

Mr. Mitchell stated no. He stated, in his opinion, the information would need to come back first before re-advertisement.

Mrs. Carlone stated she felt if there was an error, the Commission owed it to the citizens to re-advertise, but include the comments for those who appeared tonight.

Mr. Fields stated there was not argument to do the right thing. He stated his point was to wait for a two week period to allow staff to come back with a legal analysis of the implications of moving in any of the directions seems prudent. He stated, in reality, the budgetary fact of having to re-advertise would be something the Commission would have to consider.

Mr. Di Peppe stated he would like to withdraw his first motion and make another motion. He stated he would like to defer until the next meeting, to give legal staff an opportunity to answer the question and give the planning staff time to answer the questions that the public has asked. He stated at that time the decision to re-advertise can be made in two weeks once the information was received.

Mr. Howard stated Mr. Di Peppe would have to rescind his motion.

Mr. Di Peppe stated he would rescind his first motion.

Ms. Kirkman seconded.

The motion to rescind Mr. Di Peppe's first motion passed 7-0.

Mr. Di Peppe stated he would like to make a motion to defer this item for two weeks to give County legal staff time to research the topic and give Planning staff an opportunity to answer the questions that were brought up tonight, and in two weeks we can come back and make a decision and hear from staff about the financial part of the process.

Mr. Mitchell seconded.

The motion to defer for two weeks passed 7-0.

Mr. Di Peppe asked if staff could put the answers on the website.

Mr. Harvey stated staff could put answers to the questions on the website.

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Mr. Fields stated the Commission would move to item G on the addenda, November and December meeting dates.

Mr. Harvey stated the Board of Supervisors had moved their meeting scheduled for Tuesday, November 4, 2008 to Wednesday, November 5, 2008 which was the regular scheduled meeting date for the Planning Commission. He stated the questions would be, did the Commission want to continue to have their public hearing on November 5, 2008 at a different location other than the Board of Supervisors chambers or prefer to reschedule the meeting.

Mr. Di Peppe asked about November 6, 2008

Mr. Harvey stated the Board Chambers were available Thursday, November 6, 2008.

Mr. Fields stated that was agreeable with the Commission.

Mr. Harvey stated to clarify, that would be the work session at 5:30 and the regular meeting at 7:30 pm.

Mr. Fields asked if there was a need to discuss December.

Mr. Harvey stated that would be up to the Commission if they would want to discuss December. He stated sometimes in the past the Commission has taken one meeting off. He stated currently, the meetings were scheduled for December 3, 2008 and December 17, 2008.

Mr. Fields stated the Commission wait and see. He stated the Commission would move on to the planning Directors report.

UNFINISHED BUSINESS:

2. **RC2700647; Reclassification - Celebrate Virginia/MLR Associates, LLC** - A proposed reclassification from A-1, Agricultural, to B-2, Urban Commercial and M-1, Light Industrial, Zoning Districts to allow for the development of an office, retail shopping center, and communications facility on Assessor's Parcels 44-99, 44-100A, 44-101A, 44-101C and 44-101E consisting of 23.008 acres, located on the south side of Warrenton Road approximately 500 feet east of Celebrate Virginia Parkway within the Hartwood Election District. **(Time Limit: September 30, 2008) (History - Deferred at July 2, 2008 Regular Meeting to September 3, 2008 Work Session)**
3. **CUP2700648; Conditional Use Permit - Celebrate Virginia/MLR Associates, LLC** - A request for a Conditional Use Permit to allow six (6) drive-through facilities and one (1) carwash facility within the Highway Corridor Overlay Zoning District on Assessor's Parcels 44-99, 44-101A, 44-101C and 44-101E consisting of 22.903 acres and to allow an existing communications facility in an M-1, Light Industrial, Zoning District located on Assessor's Parcel 44-100A consisting of 0.105 acres, located on the south side of Warrenton Road approximately 500 feet east of Celebrate Virginia Parkway within the Hartwood Election District. **(Time Limit: September 30, 2008) (History - Deferred at July 2, 2008 Regular Meeting to September 3, 2008 Work Session)**

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NEW BUSINESS

None

MINUTES

None

PLANNING DIRECTOR'S REPORT

Mr. Harvey stated the Commission received, at their desk tonight, a copy of the Attorney General's opinion regarding subdivision vesting. He stated that was provided to the Commission for information purposes that deals with the life of a preliminary plan and how long the developer can continue to plat lots once the preliminary plan has been approved. He stated if the Commission had any questions regarding how that would be administered, staff would be happy to answer any questions. He stated the Board of Supervisors held two meeting since the Commission's last meeting. He stated on August 19, 2008 the Board referred electronic signs back to the Commission for considerations. He stated the Commission held a public hearing approximately a year ago on that matter. He stated the Board approved the rezoning on Hoyt Street and repealed the Widewater Plan and forwarded the Master Sewer and Water Plan amendments to the Utilities Commission for Widewater. He stated at the meeting held September 2, 2008, the Board approved the two Conditional Use Permits for mulch sales, they a approved the amendments for Curb, Gutter and Sidewalk, they approved the Zoning Administrator determination amendment, approved the Ordinance regarding Commercial Apartments and also requested the Planning Commission proceed with an impact fee chapter of the Comprehensive Plan and recommend the Commission complete that work by October 15, 2008. He stated as a point of interest there was a preliminary subdivision plan, Sycamore Hills, which would most likely be scheduled for the next Commission meeting. He stated that property was previously part of the Crow's Nest tract. He stated that concludes his report.

COUNTY ATTORNEY'S REPORT

Mrs. Roberts stated she was pleased to be back with the Commission again.

SECRETARY'S REPORT

No Report.

STANDING COMMITTEE REPORTS

Mr. Di Peppe stated the Comp Plan subcommittee had a meeting scheduled for Monday, September 8, 2008 at 6 o'clock and September 10, 2008 at 7 o'clock. He stated generally the meetings have been held in the Activity Room, but he was not sure at this time.

Ms. Kirkman asked Mr. Harvey if he had any idea how the work was going on Chapter 4.

Mr. Harvey stated staff had planned on mailing it out tomorrow or first thing Friday to the Committee.

Mr. Di Peppe state the Ordinance Committee would be seeing ordinances coming back. He stated the issue of the large television screens would be coming back as well as the ordinance on using trucks as

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signs. He state the Reservoir Protection Ordinance would be coming back also. He stated the next Ordinance Committee meeting would be at the next Commission meeting.

Ms. Kirkman asked if staff could bring information concerning the ten lot cap in Spotsylvania and what an ordinance for Stafford might look like.

Mr. Fields stated Ms. Kirkman had to resign from the Transportation Committee, but he and Mr. Rhodes met. He stated unless someone would like to join the Committee, he and Mr. Rhodes would carry on.

Mr. Howard stated he would like to join.

Mr. Fields state the Transportation Committee will consist of Mr. Howard, Mr. Rhodes and Mr. Fields and the next meeting was scheduled for September 8, 2008.

SPECIAL COMMITTEE REPORTS

No Report

CHAIRMAN'S REPORT

Mr. Fields thanked the Commission for all their hard work and contributions.

Mr. Rhodes stated he would like to thank staff for the extra effort of setting up the Commission meting here at the School.

ADJOURNMENT

With no further business the meeting was adjourned at 9:15 p.m.

Peter Fields, Chairman
Planning Commission