

STAFFORD COUNTY PLANNING COMMISSION
WORK SESSION MINUTES
November 19, 2008

The work session of the Stafford County Planning Commission of Wednesday, November 19, 2008, was called to order at 5:35 p.m. by Chairman Peter Fields in the Board of Supervisors Chambers of the County Administrative Center.

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

Members Absent:

Staff Present: Harvey, Roberts, Stinnette, Baker, Zuraf, Stepowany, Schulte, Schultis and Hess

Declarations of Disqualification

Mr. Di Peppe stated he would recues himself for items one (1) and two (2) because he owned stock with Virginia Power.

NEW BUSINESS

None

UNFINISHED BUSINESS:

1. Adoption of the Comprehensive Plan - A proposal to adopt the Stafford County Comprehensive Plan in accordance with Section 15.2-2223 of the Code of Virginia (1950), as amended. The Comprehensive Plan serves as a framework to guide coordinated and harmonious development of the County, in accordance with present and probable future needs and resources, and best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities. The plan consists of background data; goals, objectives and policies; land use policies and map; the costs of growth and development; and data projections and subsequent needs of the County. This proposal would include adoption of a Land Use Plan map, dated September 24, 2008. The proposal would also repeal the current Land Use Plan component of the Comprehensive Plan, including the text dated February 2003, and Land Use Plan map dated February 13, 2003, last revised August 19, 2008. **(History - Deferred at October 15, 2008 Regular Meeting to November 6, 2008 Work Session) (Deferred at November 6, 2008 Work Session to November 19, 2008 Work Session)**

Mike Zuraf stated at the last meeting they received specific comments from Quantico and the Planning Commission requested representatives from Quantico attend the meeting to discuss those comments. On the staff report, Issue 1 discussed those comments from Quantico. He stated Joe Provenzano, Ken Oliver and Charles Carrington were present to discuss the comments and would give a brief presentation.

Mr. Fields welcomed the representatives from Quantico and stated he thought this was an issue that would have many opportunities to have dialogue. He stated the Commission was not engaging in discussion about the issue but he wanted to keep them moving as quickly as possible.

Ms. Kirkman stated the Commission had the opportunity to bring back the representatives from Quantico when the Commission had more time for dialogue.

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Mr. Fields asked if the Quantico representatives would be willing to participate in any dialogue from the Commission.

Joe Provenzano stated Marine Corp Base (MCB) Quantico stood ready at any time to discuss the comments and the Range Compatible Use Zones (RCUZ) in general, as implications for land use planning.

Mr. Field stated this would be the beginning of a very lengthy dialogue that the Commission would welcome.

Mr. Provenzano, Deputy Director for Base Facilities MCB Quantico, stated his boss was Chuck Rushing, Director and his boss was Colonel C. A. Dallachie, Base Commander. He stated he had with him Mr. Ken Oliver who was one of the Planners for the base and Charles Carrington who supported the base in the land use planning encroachment. He stated he would outline the comments sent to the County concerning the Comprehensive Plan. He stated the clarification had to do with the RCUZ and the recommendations for the Comprehensive Planning. He stated first they would recommend the Military Facility Impact Overlay Zone (MZ) District Map encompass the entire area within the five (5) mile radius line in the Range Compatibility Zone three (3). Second, the area within the five mile radius of the Air Munitions Impact Area and Getchy, Murphy and Charlie demolition ranges may experience high levels of peak event noise and vibration under certain atmospheric conditions. He stated noise zones two (2) and three (3) contours extend off the base within portions of the five (5) mile radius as well. He stated for this reason, MCB Quantico recommended a minimum lot size for agriculturally zoned land within the five (5) mile radius be limited to no more than one dwelling per ten (10) acres, and that the noise and range compatibility criteria be evaluated and applied according to all purposed land uses. He stated finally MCB Quantico recommended that the maximum density for agricultural zoned land outside the five (5) mile radius, but still within the footprint of Range Compatibility Zone three (3) be no greater than one (1) dwelling unit per three (3) acres. He stated he would like to go over the RCUZ study that the base completed on the ranges to see where the base came up with their recommendations. He stated the RCUZ was initiated by the Marine Corps to 1) prevent civilian encroachment from degrading the operational capability of the Marine Corps ranges; and 2) protect public health, safety and welfare. He stated the purpose was to foster compatibility among air to ground and ground to ground training ranges, land uses and air space in the vicinity of range installations. He stated the primary study objectives were to preclude public exposure to hazards associated with air to ground and ground to ground weapons delivery, encourage compatible land use development near the training range operations, protect Marine Corps Investment by safe guarding the operational capabilities of those ranges, inform the public about the RCUZ process in general and seek cooperation and minimize potential safety impacts and ordinance in aircraft related noise impacts in the vicinity of the range installations.

Mr. Mitchell arrived at 5:41 P.M.

Mr. Rhodes arrived at 5:42 P.M.

Mr. Provenzano stated the Marine Corps RCUZ study focused on the training areas, the military operating areas, the critical components were noise, safety and land use analysis, encompassed existing ground on ground and air to ground operations for calendar year 2004, encompassed projected ground to ground and air to ground operations for calendar year 2009, evaluated noise and environment,

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associated with aircraft, small arms large caliber heavy weapons, evaluated ground on ground safety impacts, documents existing propose range operations existing and propose land use and zoning for surrounding communities of Fauquier, Prince William and Stafford Counties. He stated it promoted management mitigation strategy and recommended and promote compatibility and range operations within the surrounding community now and in the future. He stated the RCUZ was just a study of everything done on Quantico with the ranges and the impact to the surrounding communities. He provided the MCB Quantico vicinity map, which showed a break down of the demolition areas and counties that were impacted. He explained the green shaded areas were MCB Quantico's boundary area and the outlines were the areas impacted by operations. He stated the RCUZ program divided noise exposure in three (3) zones: noise zone one (1), defined an area of minimal impact, referred to "A weight" day/night level value less than sixty-five (65) decibels or "C weight" (A for aircraft, C for ground) day/night level value less than sixty-two (62) decibels. He stated this was also an area where social survey showed that less than fifteen (15) percent of the population would be expected to be highly annoyed. He stated noise zone two (2) was defined as an area of moderate impact, referred to "A weight" day/night level value between less than sixty-five (65) and seventy-five (75) decibels or "C weight" day/night level value between sixty-two (62) and seventy (70) decibels. He stated this was also an area where social survey showed that between fifteen (15) and thirty-nine (39) percent of the population would be expected to be highly annoyed. He stated noise zone three (3) was an area where social survey showed that greater than thirty-nine (39) percent of the population would be expected to be highly annoyed. He showed the next slide which showed the contours of noise levels one (1), two (2) and three (3) and where they would extend outside of the base. He discussed the suggested land use compatibility in the noise zone; the study was broken into the three noise zones based upon the decibels of heavy weapons across the board or small arms and went over the land use and what would be compatible or not with the conditions for the affected areas. He stated the study was approximately 150 pages and was summarized in fifteen slides for the Commission. He discussed another slide that talked about noise contours which were developed 1997 and residential uses were not recommended in noise zone two (2); if recommended residential uses were permitted by local government federal noise guidelines recommend noise level reduction measures of twenty-five (25) to thirty (30) decibels be incorporated in construction of building. He stated the same guidelines would be applied to all the noise zones. He discussed Range Compatibility Zones and stated the RCUZ identified three (3) Range Compatibility Zones of concerns for varying levels of safety because of potential weapons impact. He stated Range Compatibility Zones (RCZ) 1 defined the maximum safety hazard and was the area described by weapon safety footprints and represented the weapons impact area including potential ricochet. He stated no land uses was considered compatible in RCZ-1 and was completely contained within MCB Quantico land. He stated RCZ-2 was defined as the armed over flight; many land uses were recommended and to be considered compatible in RCZ-2 with associated condition to achieve compatibility. He stated RCZ-2 was completely within RCZ-1. He stated RCZ-3 defined as the minimum restricted airspace for aircraft to safely maneuver on the range; some uses were recommended as conditionally compatible in RCZ-3, the minimum level of safety concern included the demo Military Operating Area (MOA) and R668, which was the airspace that extended over the land areas beyond the base boarder. He stated RCZ-1 and RCZ-2 were on the base and RCZ-3 extended outside the base into Fauquier and Stafford County. He stated the next slide showed the land use compatibility in the RCZ's; RCZ-1 and RCZ-2 were incompatible as an impact area. He stated there were several options for various types of housing in RCZ-3. He stated the off base areas under the demo Military Operating Area (MOA) was RCZ-3. He stated the RCUZ recommended a maximum residential density of one (1) to two (2) dwelling units per acres within the RCZ-3. He stated military over flight within the MOA were limited, military aircraft were not armed for weapons release and

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must maintain a minimum of five hundred (500) feet above ground level. He stated military aircrafts operate in off base areas in strict accordance with Federal Aviation Administration (FAA) regulations, construction of towers, structures, buildings or other high object under the MOA could interfere with safety of flight within the MOA itself and such proposal should be sent to the Command of MBC Quantico for review. He showed a map that showed areas with the potential to be impacted by Military Area Operations noise and vibration associated with MCB Quantico. He stated in the act of understanding the Marine Corps mission and growth pressure in the region surrounding MCB Quantico key to the implementation of an effective RCUZ, the importance of the MCB Quantico mission combined with the location and a high growth area had the potential conflicts if a situation was not proactively and openly monitored by both military personnel and local government. He stated existing land uses predominantly compatible in the areas surrounding the MCB Quantico range training areas, but was incompatible development that could not be controlled by the Marine Corps had the potential to increase in the future. He stated the RCUZ program recognized local government responsibility to protect the public health, safety and welfare through land use tools such as zoning, building codes, subdivision regulations, building permits and disclosure statements. He stated successful implementation of land use controls depended on working relationships between the Marine Corps and community leaders. He stated the counties surrounding MCB Quantico stated goals of preserving agricultural land and natural areas, which were consistent with RCUZ program and local governments could pursue resources from governmental and non-governmental organization to establish easements to preserve areas adjacent to MCB Quantico range training areas. He stated it was the responsibility of the base to inform and educate the community decision makers about the RCUZ program; it was the responsibility of community decision makers to actively inform and seek input from MCB Quantico for land use decisions that may affect operational integrity of range training areas. He stated in 2004, Virginia passed a law which provided clear intent for the state to assist in efforts to protect the military presence and mission and gave the Marine Corps a formal avenue into local planning and development processes. He stated the base was ready to have additional meeting with staff and the Planning Commission because this was important to the base and was important to the constituent who reside outside of the base the when training started, the base had taken the proper steps to help the county to make the correct decision. He stated he would be willing to have follow-up meeting to discuss the RCUZ implications in depth.

Mr. Fields thanked Mr. Provenzano for his presentation and in the effort to move forward he would resist asking any questions at this time.

Ms. Kirkman stated she thought there were some implications for the Comprehensive Planning process in the materials the Commission received and wanted to bring the Quantico representatives back as quickly as possible when the Commission had enough time to ask questions. She stated she felt a good half hour would be needed to ask questions and asked Mr. Harvey what was on the agenda for the next work session.

Mr. Harvey stated at the next work session there were a couple of Ordinances to be considered for discussion and anything carried over from this meeting.

Mr. Fields asked if there was anything the Commissioners would need from staff to help provide to be prepared to ask questions at the next work session.

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Mr. Howard asked if page 11 of the slide show could be overlaid to the existing land use map. He stated it would help the Commission visualize some of the impacts very quickly.

Mr. Fields stated if the lines on page 10 could be overlaid over the existing zoning map and new Comprehensive Plan Map that would be helpful to the Commission. He stated he would like to tentatively schedule this item for the next work session if the Commission and applicant were ready.

Ms. Kirkman stated there were additional information items that would be helpful to the Commission. She stated there was reference to the RCUZ study and asked if the Department of Planning and Zoning had a copy of the study.

Mr. Harvey stated yes and in fact, the representative from MBC Quantico came and briefed the Comprehensive Plan Steering Committee a few years earlier regarding the RCUZ study. He stated staff would make copies to provide to the Commission.

Ms. Kirkman stated it would be helpful for the Commission to review the Noise Ordinance to see how that threshold ordinance compared with the information received from Quantico. She stated the Commission would also like to review a copy of the Airport Impact Overlay Zone Ordinance, which provided specifics around noise and vibration attenuation that may be helpful for consideration. She stated one of the maps referencing the five (5) mile radius, the outer edge of the radius map it said the peak noise levels could exceed one hundred (100) decibels and the average noise level could be as much as eighty-five (85) decibels ninety-seven percent of the time and asked if there was mapping done beyond the five (5) mile range. She stated that her residence was well outside of the radius and had experienced high noise levels and vibrations from the activities at Quantico and asked if there was mapping outside of five (5) mile radius.

Mr. Provenzano stated there was no mapping outside of the five (5) mile radius.

Ms. Kirkman stated the county would strive to be the best neighbors possible to Quantico and any way to attenuate the impacts and minimize the conflicts between land uses on critical missions. She stated any additional information regarding impacts beyond the five (5) radiuses would be helpful.

Mr. Provenzano agreed.

Mr. Fields asked if the information presented representing Quantico as it was today and how would the BRAC influx change that dynamic if at all.

Mr. Provenzano stated the RCUZ was based upon their training footprint. He stated as far as the noise made, it had no correlation with BRAC.

Mr. Howard asked if the Commission would want to start the December 3, 2008 work session at five o'clock and allocate thirty (30) minutes to this item.

Mr. Fields stated he would leave that up to the Commission. He stated he was okay with five o'clock but some of the other Commissioners may have difficulties arriving at five o'clock.

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Mr. Mitchell stated it stressed him to get to the meeting on time and would be pushing it to attempt to arrive at five o'clock.

Mr. Fields stated the Commission would go ahead and meet at the regular meeting time.

Mr. Di Peppe asked for the record to reflect the Mr. Mitchell and Mr. Rhodes were presented the Commission had the full seven (7) members.

2. COM2800534; Comprehensive Plan Compliance Review - Dominion Virginia Power Aquia Harbour Substation - A request for review to determine compliance with the Comprehensive Plan in accordance with Section 15.2-2232 of the Code of Virginia (1950) as amended for the construction of a public service corporation facility located on Channel Cove at Aquia Drive on a portion of Assessor's Parcel 21-173 within the Aquia Election District. **(History - Deferred at November 6, 2008 Regular Meeting to November 19, 2008 Work Session)**
3. CUP2800533; Conditional Use Permit - Dominion Virginia Power Aquia Harbour Substation - A request for a Conditional Use Permit to allow an electrical terminal facility and an exemption to the maximum height requirements in an R-1, Suburban Residential Zoning District on a portion of Assessor's Parcel 21-173, consisting of 2.51 acres, located on Channel Cove at Aquia Drive within the Aquia Election District. **(History - Deferred at November 6, 2008 Regular Meeting to November 19, 2008 Work Session)**

Jon Schultis stated at the last meeting there were three issues that were outstanding. The first issue was the ownership of the parcel which was originally conveyed to staff that Dominion was indeed the owner, and they were not. Aquia Harbour was still the owner and he would like to point the Commission to an email that was given to him from Aquia Harbour's legal staff stating the transfer was in process and was close to completion. He stated with regard to the subdivision on that property, that subdivision was completed and signed off by Aquia Harbour and they had also issued an owner's consent for the property. He stated the second issue was landscaping and the adjoining properties. Some residents of Aquia Harbour expressed some concerns with the landscaping and the applicant had agreed to meet with those residents to come up with a tentative plan, which he thought had been done. The third issue was protecting the integrity of the 35 foot landscape buffer that the County had asked Dominion to provide as part of the CUP and the applicant brought information with them in that regard.

Ms. Kirkman stated she had also requested a written copy of the requirements regarding fencing and asked if he had that.

Mr. Schultis stated those regulations were copyrighted and he could not obtain a copy to pass on. He would let the applicant speak specifically to that.

Ms. Kirkman stated she had no idea what he meant by not being able to get a copy.

Mr. Schultis stated as he understood the laws were copyrighted so they could not copy them without the express consent or paid for copy of those laws.

Ms. Kirkman asked how a law could be copyrighted.

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Mr. Schultis stated he found out that in California all of their state laws were also copyrighted and the state would use that as a revenue source.

Ms. Kirkman stated the Commission was told this was a federal requirement and she was not aware of federal laws being copyrighted.

Mr. Schultis stated he would defer to the applicant.

Carla Piccard, Manager for Project Communications with Virginia Dominion Power, stated there were several people present from their project team. She introduced Gloria Frye who was their land use attorney from McGuire Woods and stated Ms. Frye would be briefly present a few images that would help illustrate their response to the questions Mr. Schultis discussed and some of the current concerns they heard directly from their conversations with the neighbors in Aquia Harbour.

Gloria Frye, McGuire Woods, stated the applicant appreciated the opportunity the Planning Commission gave them at the last meeting to meet with the neighbors that attended the public hearing. The applicant was very fortunate to actually meet with not only Mr. Brigham and his wife, but with Mr. Pitt as well as eight additional residents in that neighborhood and she thanked them and Mr. Mitchell for giving up a portion of their Sunday to meet with the applicant on the property. She showed and explained six slides which included an aerial photo, an existing condition photo, a GDP map which showed an overview of the fence, a landscape plan which showed the buffers and the different types of plants, a map of the line of site, and a photo of the control equipment building. She stated the landscape architect explained to the neighbors that the species and sizes of plantings would grow to a height that would not interfere with the overhead lines and would not have to eventually be topped.

Ms. Kirkman asked the estimated time before the plants reached maturity to achieve the desired screening effect.

Ms. Frye stated the landscape architect projected it would be six to eight years. She stated there was also a rendering of a vinyl-coated fence that could be done in conjunction with the landscaping that would help blend the background which would still give the applicant, police force and private security visibility into the site, and the applicant was willing to do that. She stated the control equipment building was the standard color gray and it was the applicant's position that the standard gray was the most effective, but there were other colors that could be considered. She showed swatches of the different colors and stated a block of color would attract attention and make it more noticeable. She stated the applicant would be open to a color change at the Commission's requested. The neighbors asked if the entire site could be lowered and the engineers determined the site could not be lowered and the buffer could not be raised because of slope and drainage issues. She stated she thought that answered all the questions except the one from Ms. Kirkman regarding the NESC (National Electrical Safety Code).

Mrs. Carlone asked if the neighbors had a preference for color.

Ms. Frye stated they did not, but asked if there was something that would be more effective in making it less noticeable or make it blend with the surroundings.

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Mr. Fields asked if it was possible to build the facade to look like a home.

Ms. Frye stated the neighbors asked if the building could look like a house, but because there would be a house in the center of a fenced compound surrounded by electrical equipment, the applicant felt it would look very odd and would draw more attention. She stated the building was very utilitarian but it fit in a utility kind of enclosure. She stated in regard to the copyright language it stated that no other party may reproduce in any form, in any electronic retrieval system or otherwise any portion of this document without the prior written permission of the publisher.

Ms. Kirkman stated she believed at the last public hearing what Ms. Frye said the applicant would build a fence that was a foot higher than required by the regulations. She asked if a foot of fence would be visible after the landscape matures.

Ms. Frye stated not when the landscaping was mature. She stated rooms and spaces in which electric supply conductors or equipment were installed shall be so arranged with fences, screens, partitions or walls to form an enclosure as to limit the likelihood of unauthorized persons or interference by them with equipment inside. She then went on to state entrances not under observation of an authorized attendant shall be kept locked. Metal fences, when used to enclose electric supply stations having energized electric conductors or equipment, shall have a height not less than seven feet overall and shall be grounded in accordance with Section 9. She stated there was another section that went to one of Ms. Kirkman's other questions about the location of the fence. Fences or walls, when installed as barriers for unauthorized personnel shall be located such that exposed live parts are outside the safety clearance zone. She stated a table was provided for the distance and the engineers stated on this site the distance would be between 14.9 and 15.4, which would put them right at fifteen feet.

Ms. Kirkman stated they required a minimum of seven feet overall and asked the overall height of the fence.

Ms. Frye stated the fence was seven feet with three strands of barbed wire, tilted outward at the top, which would make the fence at about eight feet.

Ms. Kirkman stated it was barbed wire, and did not matter which way it was tilted.

Ms. Frye stated it did matter and it helped for aesthetic purposes because it was slanted so your eye was not looking at a horizontal line. The reason it was important to be slanted was because it was flexible and would give and not support weight for someone trying to scale the fence, which was a safety feature.

Ms. Kirkman asked if the barbed wire was required.

Ms. Frye stated it was not required, however, it was a policy and standard that Virginia Power had adopted for its stations.

Ms. Kirkman asked if it was that barbed wire that would still be visible once the landscaping was fully matured.

Ms. Frye stated no, when the landscaping became fully mature the barbed wire would not be visible.

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Mr. Mitchell stated he met with a number of residents as well as three Virginia Power representatives that were kind enough to come out and answer any questions. They basically covered what they had talked about and being a twenty-one year resident of that subdivision, one of the problems they have had over the years was kids getting into things. That was one of the things why a utilitarian building, just very plain and blah looking, would be better suited, to not draw attention. He stated the residents asked some very good questions.

Mr. Fields stated if there were no more technical questions they needed to move this to the evening session.

Mr. Mitchell made a motion to move this item to the regular meeting. Mrs. Carlone seconded. The motion to move items 2 and 3 to the evening session passed 6-0 (Mr. Di Peppe abstained)

4. CUP2800469; Conditional Use Permit - Berea Market Union Bank and Trust - A request for a Conditional Use Permit to allow a drive-through facility within the Highway Corridor Overlay Zoning District for a bank, consisting of 1.55 acres, located on the north side of Warrenton Road directly across from Stafford Lakes Parkway on a portion of Assessor's Parcel 44-46A within the Hartwood Election District. **(History - Deferred at November 6, 2008 Regular Meeting to November 19, 2008 Work Session)**

Kathy Baker stated the Planning Commission held a public hearing concerning this item on November 6, 2008 and there were several issues. She stated the Commission received in their packages a handout with the issues and how they had been addresses. She stated the applicant and the engineer were present to answer any questions. The primary concern was the inter-parcel access location to the adjacent property to the west and the applicant did meet with Mrs. Carlone on Monday and discussed that concern.

Mrs. Carlone stated she met with the applicant and discussed the inter-parcel connector. She stated she did not know why the inter-parcel connector had been removed, but the applicant had agreed to put it back in the same location. Everything had been addressed but she was concerned about Fleet Road and hoped that eventually would be upgraded. She stated her major concern was the inter-parcel for the other properties as the parcel to the west would just have one access onto Fleet Road. She made a motion to move this to the evening session. Mr. Rhodes seconded. The motion passed 7-0.

Mrs. Baker stated for clarification of putting the inter-parcel back in, what they received in their package showed striking condition 5 about the inter-parcel access and that will be added back in. She stated they did have the revised GDP showing the inter-parcel access.

5. RC2800372; Reclassification - Hills of Aquia Commercial - A proposed reclassification from R-1, Suburban Residential to B-2, Urban Commercial Zoning District to allow for commercial development on Assessor's Parcel 21Y-2A-F consisting of 3.19 acres, located at the southeastern intersection of Coachman Circle with Jefferson Davis Highway within the Aquia Election District. The Comprehensive Plan recommends the property for Urban Commercial and Resource Protection Area use. The Urban Commercial designation would allow development of commercial, retail and office uses. The Resource Protection Area is intended for the preservation of natural resources. See Section 28-35 of the Zoning Ordinance for a full

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listing of permitted uses in the B-2 Zoning District. **(History – Deferred at November 6, 2008 Regular Meeting to November 19, 2008 Work Session)**

Mr. Zuraf stated this application was deferred at the November 6, 2008 Planning Commission meeting. He stated there were several issues raised by the Planning Commission and staff provided a memo that itemized those issues and listed staff response. He stated the applicant was requesting deferral at tonight's meeting and the Commission should have received the letter requesting a deferral. He stated it was discovered that the parcel in question was designation open space and was to be dedicated to the Homeowner's Association (HOA). He stated the parcel was transferred from Augustine Homes to Aquia Commercial, LLC, which was the current land owner and applicant. He stated the restrictions on the subdivision plat would need to be vacated to allow this site to be developed. The applicant was requesting deferral in an attempt to resolve that matter.

Ms. Kirkman asked if the recorded deed was to be conveyed to the HOA why that did not occur.

Mr. Harvey stated staff would need to check with the property owners.

Mrs. Roberts stated there was a meeting with the applicant.

Mr. Zuraf stated he and Mrs. Roberts met with the applicant today to discuss this issue. He stated the applicant saw this as an error when the plat was created. He stated the applicant was the initial owner of the property, they started the plat, the land was transferred to Augustine Homes and when Augustine Home completed the plat, parcel F was added in the tabulation as open space. He stated there was a note on the plat the stated open space shall be dedicated to the HOA. He stated it was the applicants understanding and the agreement was that the land would go back to the applicant. He stated the title search did not catch that note. He stated staff was looking into the correct legal method that the applicant would have to go through to remove the designation of open space on the property.

Mr. Mitchell made a motion to defer this item. Mr. Di Peppe seconded.

Ms. Kirkman made a substitute motion to move to the regular session to make a recommendation on approval or denial. Mrs. Carlone seconded.

Ms. Kirkman stated she made the motion because she spent about two and a half hours with staff going through the records on this particular parcel. She stated it was very clear from what was recorded, that this was intended to be open space. She stated it was very clearly stated on the plat that the parcel was to be conveyed to the Property Owners Association and not only that, there were recorded drainage and stormwater easements on the property which were not reflected in the GDP that was submitted to the Commission. She stated it was the applicant's responsibility to clear these things up prior to submitting an application for rezoning. She stated the applicant did not do that and she was disappointed that staff did not catch that. She stated the Commission should move ahead and not reward this behavior by providing the applicant with a deferral.

Mr. Fields stated the action of the Commission was a recommendation to the Board of Supervisors and should be based on many different things.

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Mr. Mitchell stated in looking at the application, it could have been an honest mistake on the part of the applicant and the Commission should not try to rush through the process.

Ms. Kirkman stated the applicant paid \$100 dollars according to the transfer records and had been paying \$40 a year in property taxes, it was pretty clear what the intent was for the property.

The motion to move to the evening session passed 4-3 (Mr. Mitchell, Mr. Howard and Mr. Rhodes opposed).

Mr. Fields stated this would be moved to the evening session and the Commission could recommend approval, denial or deferral.

ORDINANCE COMMITTEE

6. Reservoir Protection Overlay
7. Agricultural Districts Lot Yield
8. Propane Distribution Facilities
9. Establishment of time limits for plans
10. Eliminating the Preliminary Subdivision Plan Process
11. Rappahannock River Overlay District

Mr. Fields stated items 6 through 11 would be moved to the evening session.

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 6:56 p.m.

Peter Fields, Chairman
Planning Commission

STAFFORD COUNTY PLANNING COMMISSION MINUTES

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The regular meeting of the Stafford County Planning Commission of Thursday, November 19, 2008, was called to order at 7:33 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, Howard and Kirkman

MEMBERS ABSENT:

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

DECLARATIONS OF DISQUALIFICATIONS:

Mr. Di Peppe stated he was going to recues himself on the items regarding Dominion Virginia Power.

Mr. Rhodes stated regarding the adoption of the Comprehensive Plan and the discussion associated with Quantico Marine Corps Base, due to his position with the Department of Defense and its stance on insuring proper training and other issues, he would recues himself from that portion of the discussion.

PUBLIC PRESENTATIONS:

Patricia Kurpiel stated she wanted to say she was sorry that the Board socked it to Stafford taxpayers by refusing to implement comprehensive impact fees. She stated these were the costs that pay for infrastructure for new development and this meant that taxpayers would have to foot the bill for developers. She stated she was asking the Commission to come up with some creative ideas to include in the Comprehensive Plan which would offset the \$92,000 a unit that was so casually put on the taxpayer's backs. She stated she had one idea that she would like the Commission to consider and that was to rezone the agricultural area, all the A-1 and A-2 land from one (1) house on three (3) acres to one house on ten (10) acres and then allow rezonings back to one (1) house on three (3) with a payment of proffers. She stated this would pay for infrastructure in the Agricultural areas as some Board members expressed concern that they were going to have to pick up road maintenance in exchange for charging impacts fees. She stated there were not going to be any road maintenance fees associated with this idea. She stated this would make by right development in the agricultural area less profitable and hence less attractive. She stated when the market heated up again, this would not be the cheapest place to build. She stated 73 percent of citizens said they lived here or came here because they valued the rural atmosphere of Stafford County. She stated people would complain that their property rights were being taken away and that was not correct. She stated a paired study in Maryland showed that down zoning did not decrease property values, quite the contrary, there was either an increase in value or very little or no appreciable affect. She provided the Commission with a copy of the study and asked the Commission to read and consider this and other creative ideas. She applauded the Commission for reviewing the ordinance discussed during the work session today regarding the ten lot cut.

PUBLIC HEARINGS:

1. Amendment to Zoning Ordinance - Amendment to Section 28-25, Definitions of Specific Terms, and Section 28-122, Certain Types Prohibited in all Districts, of the Zoning Ordinance, pursuant to O08-83. The amendment modifies the definition of commercial vehicle by restricting commercial vehicles which are not owned, leased, or operated by the occupant of the property at which it is parked. The amendment stipulates that the definition of commercial vehicle did not include any vehicle operated by a public agency; farm vehicle or equipment located on property used for agricultural purposes; motor home; camping trailer; boat; boat trailer; horse trailer; or similar recreational equipment recognized as personal property and not for hire; emergency fuel oil delivery truck or sanitary sewage disposal truck which has been approved by the County;

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and/or any public or private vehicle used exclusively for the transportation of persons to and from a school, day care center, place of religious worship, community service organization, or activities related thereto.

The amendment prohibits any sign attached to, painted, or displayed on a commercial vehicle that is an arrow, or other directional symbols or language, for example, "Turn Left Here", that provides direction to a use on the lot in which the commercial vehicle is parked or to an adjacent lot, or any sign attached, painted, or displayed on a commercial vehicle that is parked twenty-five (25) feet or less from any public right-of-way, located on the same lot, or an adjacent lot, as the establishment to which the sign identifies.

Jamie Stepowany present the staff report and stated this was an amendment to the Zoning Ordinance referring to trucks as signs. He stated this ordinance would amend Stafford County Code, Section 28-25, Definitions of Specific Terms and Section 28-122, Certain Types Prohibited in all Districts. He stated a business typically parks their commercial vehicle in a parking lot in front of a business; such a vehicle may be a truck. He stated the truck may be painted with the name and information of the business that it was associated with. He stated a business may park a truck near the public street which may impede the vision of motorists entering or exiting the business and could be construed as a sign. He stated this was occurring in the neighboring City of Fredericksburg. He stated to regulate a truck from being parked near a right-of-way, the standards should be based on safety and whether it was considered a sign. He described commercial vehicles as any truck, tractor trailer, semi-trailer, garbage truck, dump truck, cement truck, or similar vehicle or equipment with any gross weight; or any vehicle with a gross weight of more than ten thousand five hundred (10,500) pounds which was not owned, leased, or operated by the occupant of the property at which it was parked. He stated by definition, a commercial vehicle not associated with the business or owner of the property could be parked in any zoning districts, which permits the parking of commercial vehicles. He stated the proposed amendment deletes "not" from the definition to require the vehicle to be owned, leased or operated by the occupant of the property at which it was parked. He stated numerous types of vehicles may exceed a gross weight of more than ten thousand five (10,500) pounds which should not be considered a "commercial vehicle". He stated the definition proposed amendment excludes the following types of vehicles from being a commercial vehicle, a vehicle operated by a public agency, Farm vehicles or equipment located on property used for agricultural purposes; motor homes, camping trailer, boat, boat trailer, horse trailer or similar recreation vehicles; any vehicle not for hire; emergency fuel oil delivery truck; sanitary sewage disposal truck which has been approved by the County. He stated it would also exclude vehicles used for the transportation of persons to and from a school, day care centers, places of worship, community service organizations or activities related thereto. He stated the ordinance determined any commercial vehicle with a sign attached to, painted or displayed on the vehicle was a sign. He stated the proposed amendment regulates the content and location of the commercial vehicle. He stated Section 28-122 as types of signs prohibited was a commercial vehicle that was an arrow, or other directional symbol or language, for example, "Turn Left Here, that provided direction to a use on the lot or to an adjacent lot; or a commercial vehicle with a sign attached, painted or displayed parked less than twenty five (25) feet from any public right-of-way. He provided pictures of signs displayed in the county. He stated the proposed amendment would regulate how a truck was classified when used as a sign and provided guidelines as to where it must be parked in order to address safety issues. He stated the proposed amendment would prohibit commercial vehicles from being parked on properties not associated with the business and excluded certain vehicles from being classified as commercial vehicles. He stated staff would request that the Planning Commission recommend approval of the proposed Ordinance O08-83. He stated he would be happy to answer any questions.

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Mr. Howard asked if the truck showed in Falmouth was within code regulations.

Mr. Stepowany stated yes, it was in code and was well beyond twenty-five (25) feet from both streets.

Mr. Howard stated the other two (2) examples given, one was not parked on the street and the other vehicle was parked on the street and asked if that was correct.

Mr. Stepowany stated yes.

Mr. Howard asked if there was ability for a business to appeal this if there was an issue with the location of the vehicle.

Mr. Stepowany stated they could go to the Board of Zoning Appeals (BZA) to request a variance.

Mr. Mitchell stated in the second paragraph on the last slide, it said the proposed amendment would prohibit commercial vehicles from being parked on properties not associated with the business and excluded certain vehicles from being classified as commercial vehicles. He asked if an electrical contractor came to do work in Stafford County at the School Board building and he parked his truck and it said his company name on it, would that be a part of what the Commission was reading.

Mr. Stepowany stated this was not intended for that type of establishment and was intended for vehicles that were parked in a certain location each day most days of the week.

Mr. Fields opened the public hearing.

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

Mr. Di Peppe made a motion to approve Ordinance O08-83.

Mrs. Carlone seconded the motion.

Mr. Fields asked if someone owned and was an independent operator of a tractor-trailer, where could that tractor be parked when you go home at night. He asked how the county Zoning Ordinance accommodated that issue.

Mr. Harvey stated the vehicle could be parked in an industrial district or an Agricultural Zoning District if they owned a rural home business or home business.

Mr. Fields stated if someone owned an A-1, Agricultural, lot and there were not covenants, it could be parked there.

Mr. Harvey stated yes.

Mr. Fields stated in a suburban residential neighborhood, there would be no way to park in that area. He asked if there were commercial businesses that would make accommodations for trucks like that.

Mr. Harvey stated he did not know.

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Mr. Fields stated it was problematic and understood the reason behind the ordinance. He stated you would not want someone creating a sign that would be outside of the dimension size, shape and color.

Mr. Di Peppe stated the vast majority of people abide by the rules and there were a few people that felt that because there was not a specific ordinance they did not have to abide by the ordinance.

Mr. Rhodes asked what the cost was to go before the BZA.

Mr. Harvey stated it was \$300 for residential and \$600 for commercial.

Mr. Rhodes asked what the base criteria would need to be to be granted a variance.

Mr. Stepowany stated he would have to refer to Mrs. Roberts or a member of the BZA to determine the standards for the variance.

Mrs. Roberts stated she did not have those standards available.

Ms. Kirkman stated generally it included items such as the hardship cannot be a result of the applicant's own doing, there needed to be something unique about that property that kept them from complying and if they did not get the variance, it would deprive them of all economic use of the property.

Mr. Rhodes asked if the all economic uses intended to be interpreted in the absolute.

Ms. Kirkman stated she could not comment on that and she could say that the Supreme Court made an important ruling several years ago and said if there was a surviving economic benefit for the property then it did not constitute a hardship as defined in the regulations.

Mr. Howard asked if we conferred with Fire and Safety because he was trying to understand why the county would want to put a truck in front of a strip center where the length of the sidewalk may be five (5) feet and there would be a huge vehicle impeding the ability for people to get out of a store in a hurry. He stated he thought there were regulations if the fire department had to get into that facility and would be concerned of how they would access a business if a truck would be blocking the entrance. He asked if the Commission would be willing to put into the ordinance the spirit of this because he agreed this was needed and should not allow people taking advantage of this in the county. He asked if the Commission would be willing to say what the true reason for the ordinance was and that if it were to come before the BZA, they could have documentation of the true reason for the ordinance.

Mr. Di Peppe stated one of the things that he and Jamie looked for while touring the county was if there were any areas that would have an undue hardship because of this Ordinance. He stated there was not a single instance where a vehicle could be placed somewhere else on the property that would not have been in the way or would not have blocked sidewalks. He stated he really did not believe that it would cause a hardship because the vast majority of people do not do this. He stated sometimes the county would need to write ordinances for three (3) to five (5) percent of the population.

Mr. Fields stated when the ordinance was presented it said that any sign attached, painted or displayed parked less than twenty five (25) feet from any public right-of-way and the actual right-of-way could be a variable from what was the apparent edge of the road. He asked how that property owner would know exactly where the right-of-way was, particularly property owners that were dedicated right-of-way for future expansion as part of a Conditional Use Permit (CUP) or a proffer on a major thorough fair. He

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stated the property owner may have dedicated fifty (50) extra feet knowing that at some point down the line, the road would be six (6) lanes. He asked if that was taken into account.

Mr. Harvey stated in most cases the developer or the property as it was developed did not have parking areas within the right-of-way and the right-of-way was usually two (2) or three (3) feet beyond the edge of the side walk or beyond the edge a curve. He stated typically the standard parking space was nine (9) by twenty (20) and if someone was not parking in the front row of the parking lot, closest to the road, more than likely they would be okay.

The motion passed 6-0-1 (Mr. Mitchell abstained).

Mr. Mitchell stated he would abstain from the vote because on the trip that Mr. Di Peppe was referring to, there was a vehicle used and presented to the Commission was the company that employed him and would abstain from the vote.

2. Amendment to Zoning Ordinance – Amendment to Section 28-25, Definitions of Specific Terms; Section 28-245, When Required; Section 28-252, Approval and Disapproval Generally; and Section 28-256, Required Standards and Improvements Generally; of the Zoning Ordinance, pursuant to O08-84. The amendment modifies the above listed sections as follows:
 - Modifies the definition of major development as any nonresidential development involving construction and/or land disturbance greater than or equal to two thousand five hundred (2,500) square feet. Any residential development not subject to Chapter 22 of the Subdivision Ordinance.
 - Modifies the definition of minor development as any nonresidential development involving construction or land disturbance totaling a minimum of one thousand (1,000) square feet and less than two thousand five hundred (2,500) square feet; any change of use where additional parking is required; or any enlargement to an existing building or structure where there is no change in the construction footprint.
 - The amendment clarifies a preliminary site plan shall be submitted for all major developments when proposing two (2) or more detached buildings within the same contiguous development plan. The purpose of a preliminary site plan is to provide a concept of the proposed use of the subject property. Upon written request, the requirement for the submittal of the preliminary site plan may be waived by the agent provided the site has an approved General Development Plan (GDP) and the proposed development is in general conformance with the GDP.
 - The amendment clarifies a minor grading plan may be submitted for the purpose of:
 1. Clearing more than 2,500 square feet but less than 21,780 square feet (1/2 acre) and does not involve any structures or buildings;
 2. Adding fill with no structures or buildings;
 3. Stockpiling;
 4. Drainage project; or
 5. Other projects approved by the Erosion and Sediment Control/Stormwater Management Administrator.
 - The amendment clarifies a major grading plan may be submitted for the purpose of clearing, grading or stockpiling an area two thousand five hundred (2,500) square feet or more that does not involve any structures, buildings or public facilities.
 - The amendment clarifies an infrastructure plan may be submitted for the approval of pump stations and linear projects such as, but not limited to roads, sidewalks, trails and stormwater management facilities.

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- The amendment no longer requires the posting of securities prior to the approval of a major site plan and requires the posting of securities prior to the issuance of a land disturbance permit.

Andrea Hornung presented the staff report. She reviewed the changes to the ordinance.

Mr. Rhodes stated he would like to clarify to the presented. He stated what was currently sub-paragraph (e) would become (d) and what was currently sub-paragraph (d) would become (e).

Mrs. Hornung stated yes.

Mr. Rhodes stated sub-paragraph (f) would go away and (g) would become (f) and would be changes to stated that “a major grading plan may be submitted for the purpose of clearing, grading or stockpiling in area greater than 21,780 square feet (1/2 acre) or more that did not involve any structures, buildings or public facilities”.

Mrs. Hornung stated that was correct.

Ms. Kirkman asked staff to describe the difference of what was required for a minor versus a major grading plan.

Mrs. Hornung stated the area of disturbance was the difference between a major and minor grading plan.

Ms. Kirkman stated when grading plans were submitted there were differences in the requirements for a minor plan and a major plan and asked what the differences were of what was in the plan.

Mrs. Hornung stated the requirements for what would be on the plan would be the same but the only difference was the area of disturbance would determine whether a major or minor grading plan was required.

Ms. Kirkman asked Mr. Harvey for clarification because the Commission was distinguishing between major and minor plans and yet had staff stating there was no difference in the requirements.

Mr. Harvey stated Mrs. Hornung was correct from the ordinance perspective, the erosion and sediment control ordinance applied uniformly for all types of development. He stated the issued typically faced with larger projects was that there were different types of controls that were complex, usually with a small area of 2,500 square feet to ½ an acre may just require a silt fence; in larger projects there may be diversion dikes or sediment traps and would typically be a more involved review. He stated the differentiation between a minor and major was more for an administrative process then for an ordinance compliance process.

Ms. Kirkman confirmed that there was absolutely no difference in the plans for a minor and a major.

Mr. Harvey stated that was correct, the erosion and sediment control ordinance followed state code for what was required for review of any land disturbance activity. He stated the main consideration was the extent and nature activity for any project.

Ms. Kirkman asked if there was no difference in what was required for the plans, why was the cost major grading plans so much more expensive.

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Mr. Harvey stated in a major grading plan there were more things to look at in a larger scale. He stated there were more drainage divides and more issues with runoff.

Ms. Kirkman stated in current sections F, G and H the word “may” was used and asked staff if the word “shall” should be used instead.

Mrs. Hornung stated that could be revised if that was the pleasure of the Commission.

Ms. Kirkman stated staff brought the ordinance to the Commission and asked if the intent was to require that the plans be submitted or that they might be required.

Mrs. Hornung stated the intent was to clarify the types plans submitted according to the ordinance. She stated depending on the type of development would determine the type of plan to be submitted. She stated if the project was defined as a major development then it would require a major site and if there was a minor development then a minor site plan application would be required. She stated staff discussed the different types of plans that may be required.

Mr. Mitchell stated in the Comprehensive Plan language, the commission discussed the use of the word “shall” or “may” and it was his understanding that either one would be appropriate.

Mr. Fields asked if “may be required” would be the correct term for the ordinance.

Mrs. Hornung stated yes.

Mr. Fields stated there was discretion that applied to the conformance of different codes for the public interest.

Mrs. Hornung stated the word required would be better language applied to the ordinance.

Mr. Rhodes clarified that in paragraphs E, F, and G the word “may” would be replaced with “required”.

Mrs. Hornung stated yes.

Mr. Fields asked if in the current paragraph H the wording would be corrected with the word “required”.

Mrs. Hornung stated that would be corrected.

Mr. Di Peppe asked if these were changes to help deal with day to day problems and to be more efficient while reviewing plans.

Mrs. Hornung stated yes, they were applications for applicants to submit. She stated while staff was addressing the major and minor development and site plan issues, staff wanted to add the plans in the Ordinance because they all the issues were related.

Mr. Fields asked if the Commission needed to vote on the changes before opening the public hearing.

MS. Roberts stated no, the changes should be made after the public hearing.

Mr. Fields opened the public hearing.

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

Mr. Di Peppe made a motion to approve the Ordinance O08-84 with the proposed changes. Mrs. Carlone seconded the motion.

Mr. Fields stated the changes. He stated for what would become paragraph E, “minor grading plan may be required for the purpose of” and goes on to define why it may be required. He stated paragraph D before that, was “a preliminary site plan shall be submitted” and was not changing the language. He stated paragraph F was stricken and paragraph G now becomes a major grading plan and may be required for the purpose of clearing, grading or stockpiling an area greater than or equal to one half acre. He asked the Commission if they concurred with the changes.

Mr. Rhodes said it was stated was “greater than 21,780 square feet (one half acre)”. He stated paragraph H now became paragraph G, may be required also.

Mr. Fields agreed.

The motion to approve the ordinance O08-84 with the proposed changes passed 7-0.

UNFINISHED BUSINESS:

3. SUB220849; Arkendale Estates - Preliminary Subdivision Plan - A preliminary subdivision plan for 132 single-family residential lots on public water and sewer, zoned A-1, Agricultural and B-2, Urban Commercial, consisting of 569.04 acres located at the intersection of Arkendale Road and Brent Point Road on Assessor’s Parcels 31-50, 31-95 and 31-97 within the Griffis-Widewater Election District. **(Time Limit: December 24, 2008) (History - Deferred at October 1, 2008 Regular Meeting to November 6, 2008 Work Session) (Deferred at November 6, 2008 Work Session to December 17, 2008 Work Session)**

Mr. Fields stated item 3 would be deferred to the December 17, 2008 work session.

4. SUB2700206; Sycamore Hills - Preliminary Subdivision Plan - A preliminary subdivision plan for 30 single family residential lots zoned A-2, Rural Residential, consisting of 186.41 acres located on the north side of Raven Road approximately 4,500 feet south-east of Brooke Road on Assessor's Parcels 48-1 and 49-27 within the Aquia Election District. **(Time Limit: December 24, 2008) (History - Deferred at October 1, 2008 Regular Meeting to November 6, 2008 Work Session) (Deferred at November 6, 2008 Work Session to December 17, 2008 Work Session)**

Mr. Fields stated item 4 would be deferred to the December 17, 2008 work session.

5. Adoption of the Comprehensive Plan – A proposal to adopt the Stafford County Comprehensive Plan in accordance with Section 15.2-2223 of the Code of Virginia (1950), as amended. The Comprehensive Plan serves as a framework to guide coordinated and harmonious development of the County, in accordance with present and probable future needs and resources, and best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities. The plan consists of background data; goals, objectives and policies; land use policies and map; the costs of growth and development; and data projections and subsequent needs of the County. This proposal would

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include adoption of a Land Use Plan map, dated September 24, 2008. The proposal would also repeal the current Land Use Plan component of the Comprehensive Plan, including the text dated February 2003, and Land Use Plan map dated February 13, 2003, last revised August 19, 2008. **(History – Deferred at October 15, 2008 Regular Meeting to November 6, 2008 Work Session) (Deferred at November 6, 2008 Work Session to November 19, 2008 Work Session)**

Mr. Fields asked if there was anything on the Comp Plan that anyone needed to say or do before they move on. He stated it was clear on what they were waiting on so they would move to the Dominion Virginia Power issue.

6. COM2800534; Comprehensive Plan Compliance Review - Dominion Virginia Power Aquia Harbour Substation - A request for review to determine compliance with the Comprehensive Plan in accordance with Section 15.2-2232 of the Code of Virginia (1950) as amended for the construction of a public service corporation facility located on Channel Cove at Aquia Drive on a portion of Assessor's Parcel 21-173 within the Aquia Election District. **(History - Deferred at November 6, 2008 Regular Meeting to November 19, 2008 Work Session)**
7. CUP2800533; Conditional Use Permit - Dominion Virginia Power Aquia Harbour Substation - A request for a Conditional Use Permit to allow an electrical terminal facility and an exemption to the maximum height requirements in an R-1, Suburban Residential Zoning District on a portion of Assessor's Parcel 21-173, consisting of 2.51 acres, located on Channel Cove at Aquia Drive within the Aquia Election District. **(History - Deferred at November 6, 2008 Regular Meeting to November 19, 2008 Work Session) (Deferred at November 6, 2008 Regular Meeting to November 19, 2008 Work Session)**

Mr. Fields stated they were ready to deal with the issue in one form or another. He asked if everyone was clear with what Dominion had before them and what was agreed to, and what the best understanding of the citizens was and if their needs were being met.

Mr. Harvey stated he wanted to draw to the Commissions attention the proposed Resolution, R08-510. Condition 3 talked about the 35' transitional buffer "B" as defined by the County's Design Standards Manual and that the plant shall exceed the requirement for said buffer by 10 percent. He stated in the discussion tonight a landscaping plan was handed out and he was not sure if the Commission had intended for that landscaping plan to be part of the conditions for the permit.

Mr. Fields stated he did not know if they discussed that but it sounded like a good idea.

Mr. Howard stated they should include it.

Ms. Kirkman stated she did want to suggest, in terms of the conditions related to the screening, that in addition to submitting the landscaping plan that they specify that as part of that landscaping plan that within 6 years of the completion of construction the landscaping buffers shall be of sufficient height and density to fully screen the fence structure.

Mr. Mitchell stated he was not sure they could guarantee the growth of trees.

Ms. Kirkman stated there had been an enforcement issue on some of these landscaping buffers where the original landscaping was put in and neglected and died and if they did not specify what they were looking for then the County would not have a basis for going in and enforcing it.

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Mr. Mitchell stated they were dealing with Dominion Power, not a small-time construction company and they had done a number of buffers across Virginia and in Stafford. He stated he did not believe in any way, form or fashion that they would not come back and do additional plantings. He stated in the meeting Ms. Frye specifically said if a plant died out they would come out and replant it. That was part of the discussion that the people heard.

Mr. Rhodes stated he would suggest that with however the Commission would adopt the landscaping plan for the CUP, it would not be just for the implementation, but also for the maintenance.

Mr. Schultis stated in Section 28-89 of the Stafford County Zoning Ordinance, Maintenance for landscape areas, buffer yards and screenings, stated trees, shrubs and other elements (such as fences, walls and berms) shown on the approved plan and installed to be in compliance with the Design and Construction Standards Landscaping (DCSL) shall remain in the same good health or condition after it was approved by the county. Trees and shrubs shall remain sound, healthy, vigorous, well-rounded, and free of disease and insect infestation. It shall be the responsibility of the property owner to repair or replace the fence, wall or berm to its original condition at the time of approval. He stated the Zoning Ordinance already covered the maintenance.

Mr. Rhodes stated he thought that satisfied both the concerns that were well thought out and articulated here because, as they all know, a tree may die at a period of time later on and the thing that they would want them to do was to make sure to replace it and not just to ignore it after that point.

Mrs. Carlone stated on Plantation Drive on Route 17, anyone could see where the ordinance had not been enforced or any proposals to replace had not been done, so she understood the concern here. If it was understood then she did not doubt the integrity there but they had seen it time and time again. She stated that needed to be addressed and she saw why there was concern that they might not be replaced.

Mr. Schultis stated he just wanted to mention the provision in the Zoning Ordinance.

Ms. Kirkman stated she did think of the applicants offering these things in good faith and there should not be any problems with putting them in writing. The second suggestion would be that they had offered to use the special vinyl-coated fence and so that be stipulated as well.

Mr. Fields asked if the applicant agreed to that condition and to submit the landscaping plan as part of the condition that required them to conform with the landscaping plan as submitted.

Ms. Lamm stated it was a conceptual landscape plan but as long as they were held to conform.

Mr. Schultis stated as long as they were in general conformance or they met the requirements stated in the DCSM or were substantially in conformance.

Mr. Harvey stated condition 2 stated the site shall be in substantial conformance with the GDP so they could add on to that sentence or have a second sentence that the site shall also be in substantial conformance with the landscape plan

Mr. Howard stated as submitted for recommendation of approval with the CUP.

Mr. Fields stated there were 2 amendments to the conditions, substantial conformance with the landscape plan presented to the Planning Commission dated 11/12 and 11/14, and that the chain link

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fence would be vinyl-coated. With no disrespect to Dominion, he stated Mrs. Carlone was correct in that he has also seen a lack of compliance with landscaping requirements. They could not be in the proactive enforcement business and if they seem to want to be obsessive about this it was their only protection. He asked if there was any type of wording that the Planning Commission could get to that would lock down the conformity, that there would be some sort of downside to them not conforming with the landscape plan or with what they had.

Ms. Kirkman stated as she looked at the landscaping plan dated 11/14/08 she felt a little more comfortable not including the language about sufficient density and height because it did show the line of sites which they usually did not see in a landscaping plan. It clearly depicted there would be a barrier in the line of site between the road and the compound. She stated looking at the second page she felt comfortable with them agreeing to be in substantial conformance with that.

Mr. Fields stated his problem with the height was that drought could derail a plan. He asked if there was a motion to recommend this. He stated there were two things, a Comprehensive Plan Compliance Review.

Mr. Mitchell made a motion to recommend approval of COM2800534. Mr. Rhodes seconded. The motion passed 6-0 (Mr. Di Peppe abstained).

Mr. Mitchell made a motion to recommend approval of CUP2800533 as amended. Mrs. Carlone seconded.

Mr. Fields stated the amendments had not affected in a substantial way what was advertised for the public hearing.

Mr. Howard stated for the purposes of Dominion and the people listening at home he asked if they were aware of a situation where Dominion Power had not done what they said they were going to do with anything they had done in the County.

Mr. Fields stated to his knowledge there were no issues with Dominion. He stated even very well intentioned agreements go awry or were forgotten if they were not fairly tightly codified.

Mr. Howard stated it seemed like Mr. Schultis articulated a good ordinance that was in place to protect them against that.

Mr. Fields stated if it was enforced.

Mr. Mitchell stated he assured them there were enough people who drive down Channel Cove that would call.

The motion passed 6-0 (Mr. Di Peppe abstained).

8. CUP2800469; Conditional Use Permit - Berea Market Union Bank and Trust - A request for a Conditional Use Permit to allow a drive-through facility within the Highway Corridor Overlay Zoning District for a bank, consisting of 1.55 acres, located on the north side of Warrenton Road directly across from Stafford Lakes Parkway on a portion of Assessor's Parcel 44-46A within the Hartwood Election District. **(History - Deferred at November 6, 2008 Regular Meeting to November 19, 2008 Work Session)**

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Mr. Fields asked if there were any more comments or questions.

Mrs. Carlone stated they had resolved the issues through the meeting the other day and the work session and she thought they were set. That was to put back the area for the inter-parcel connector and she made a motion to approve. Mr. Di Peppe seconded.

Mr. Howard asked if this was for the entire 1½ acre parcel because that was what it said in the CUP. He asked if they were talking about just the parcel or the portion of the parcel where the bank was going.

Mrs. Carlone stated the parcel for the bank.

Mr. Howard stated they were approving for the entire 1½ acres but because of the way it was written they would want the second user to come in for a CUP as well.

Mr. Rhodes stated there was a discussion last time that it was still a CUP for the one facility with the one drive-through.

Mrs. Baker stated they revised the conditions to specify the .76 acre portion which was attached in the mail-out. She stated the agenda was not revised and they did amend the GDP after it was advertised.

Mr. Harvey stated to make clear there was a revised GDP reference which he believed did not have the inter-parcel connector and asked if that was correct.

Mrs. Carlone stated the agreement they discussed at the meeting was to go ahead and put back in the space for the inter-parcel connector.

Mrs. Baker stated the applicant brought copies of that showing it the exact same way it was before they took it out.

Ms. Kirkman stated the motion did need to take that into account and it would need to add back what was formerly condition 5.

Mrs. Carlone stated it was taken out of the amended one and then per agreement they were putting it back in again.

Mrs. Baker stated that was correct, that the one that was mailed out to them, R08-508, they did an overstrike for number 5 that stated an inter-parcel access easement shall be provided to the adjacent property to the west at the time of site plan approval. They would now leave that in and it would not be removed. The GDP they brought this evening had it added back in as a result of their conversation.

Mrs. Carlone stated she thought she expressed concern at the last meeting about the inter-parcel connector, to make sure there was room for that to go through the isle. She made a motion that it would include the inter-parcel connector illustrated on the GDP.

Mr. Harvey stated they needed to verify the date of the GDP.

Mrs. Baker stated on the one that was resubmitted tonight they did not change the date, they left it as November 13.

Mrs. Carlone made a motion to recommend approval of the CUP as amended. Ms. Kirkman seconded.

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Mr. Fields stated he respected the work everybody had done on this for the same reasons that he did on the other development on 17. Since they were making recommendations, his was that the County stop thinking about automobile oriented sprawl development and rethink its whole concept of how they build. He was convinced that no matter how they power the future and no matter how they live that drive-through facilities sprawled out across the landscape were not the future and he could not bring himself to say yes on this.

Ms. Kirkman stated he convinced her and asked if she was allowed to withdraw her second.

Mr. Fields stated she could second just to put it on the table.

Mr. Howard stated he respectfully disagreed with that observation. If you were a handicapped person or elderly person or a person with small children, you could not live without the opportunity to have a drive-through to meet your needs and services. While he respected Mr. Fields' comment, he would have to say there were a number of people out there in the world that rely heavily on drive-through services.

The motion passed 5-2 (Mr. Fields and Ms. Kirkman opposed).

9. RC2800372; Reclassification - Hills of Aquia Commercial - A proposed reclassification from R-1, Suburban Residential to B-2, Urban Commercial Zoning District to allow for commercial development on Assessor's Parcel 21Y-2A-F consisting of 3.19 acres, located at the southeastern intersection of Coachman Circle with Jefferson Davis Highway within the Aquia Election District. The Comprehensive Plan recommends the property for Urban Commercial and Resource Protection Area use. The Urban Commercial designation would allow development of commercial, retail and office uses. The Resource Protection Area is intended for the preservation of natural resources. See Section 28-35 of the Zoning Ordinance for a full listing of permitted uses in the B-2 Zoning District. **(History – Deferred at November 6, 2008 Regular Meeting to November 19, 2008 Work Session)**

Mr. Fields stated this item would just be a recommendation to the Board of supervisors to approve or deny the reclassification. He stated the applicant requested a deferral.

Ms. Kirkman clarified that the GDP did show the recorded easement.

Mr. Rhodes stated he needed further discussion and was struck by the Commissions effort in the work session. He stated the county tended to be a fairly accommodating county and try to work through issues. He made a motion to ask the Commission to vote to defer this item. He stated he would like to move it back to work session to allow the applicant some time to work through he issues then re-address the Commission and discuss it again at a later date.

Mr. Fields asked if that was a motion.

Mr. Rhodes stated yes.

Ms. Howard seconded the motion.

Mr. Mitchell made a motion for deferral and stated all the information needed to be brought forward. He stated that many times when someone requests a deferral, most times the Commission would grant that request. Mr. Howard seconded the motion.

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Mr. Howard asked Mrs. Roberts if to her knowledge, was there any type of agreement with the owner of the property, which he believed was Augustine LLC at the time, with the applicant that was before the Commission prior to the plat approval.

Mrs. Roberts stated yes.

Mr. Howard asked her to explain that.

Mrs. Roberts stated she had not read the documents that she received at the meeting today where she received the deed and the agreement. She stated it was her understanding it was approximately two years prior to the plat being submitted in 2007. She stated she believed the agreements to sell the property or to have a long term lease for 99 years, which also restricted the owner of the property from interfering with that use for the 99 years. She stated from the meeting today, staff did not have a chance to further check out the facts. She stated she understood that the engineer mistakenly labeled it open space on the parcel in question. She stated staff would like more time to investigate it.

Mr. Howard asked Mrs. Roberts to her knowledge, was the property ever legally conveyed to the Homeowners Association (HOA) that currently exists within that development.

Mrs. Roberts stated no.

Ms. Kirkman asked Mrs. Roberts what the recorded plat says it should be conveyed.

Mrs. Roberts stated it was open space to be conveyed to the HOA.

Ms. Kirkman stated she was opposed to deferring this matter, primarily because the applicant paid \$100 for the parcel, the applicant had been paying \$40 a year in property taxes, on the plat it was clearly designated as open space, it was the responsibility to use the property in the way in which it was intended according to the plat recorded. She stated the issue should have been cleared up before the applicant submitted a rezoning application. She stated she opposed the motion to defer.

Mr. Mitchell stated what someone paid for land taxes was not relevant to the situation.

Ms. Kirkman stated it was quite relevant because the land was as staff presented it was unbuildable and intended for open space.

Mr. Di Peppe stated he had a lot of problem with this particular development and was not convinced this was a good idea. He stated as long as he had been on the board and worked through these types of requests, in almost every instance when the applicant came forward and requested a deferral, there was not any instance in which the Commission did not request a deferral. He stated he intended to vote for deferral and did not mean that he was happy with the project but in all fairness to the applicant when they come before the Commission in this process to work through some issues. He stated the Commission should allow for a deferral and base their decision on the final information presented to the Commission.

Mrs. Carlone stated she agreed with Mr. Di Peppe, she questioned some of the issues. She stated the Commission needed to get some questions answered and would vote for deferral.

Mr. Howard asked Mrs. Roberts if there was any way legally possible that the property could have been conveyed to the HOA.

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Mrs. Roberts stated that was an issue between Augustine and the HOA; the applicant had there legal interest in the land recorded in the courthouse prior to the plat being recorded and would win any litigation rising out of it, in her opinion.

Mr. Howard stated the way the property existed today, after hearing from the Commissioner of Revenue, that was the value of that property and the applicant was proposing to spend almost \$1 million making the property more usable in Stafford County. He stated it did not feel good chastising someone for taking advantage of an opportunity. He stated it was not the job of the Planning Commission to criticize about the taxes paid on a piece of property.

Ms. Kirkman stated the tax records were clear that the reason why this property had the assessment it did was because it was designated as open space.

Mr. Di Peppe stated he would encourage every member of the Planning Commission before this item came up again to go out and visit the property. He stated there was nothing like visiting a site.

Mr. Fields stated the application would be deferred to the second meeting in December.

The motion to defer to the second work session in December passed 5-2 (Mr. Fields and Ms. Kirkman opposed).

ORDINANCE COMMITTEE

Mr. Fields stated there were several items to be discussed from the Ordinance Committee and would turn it over to Mr. Di Peppe.

6. Reservoir Protection Overlay

Mr. Stepowany stated he would be discussing the Reservoir Protection Overlay and Patricia Kurpiel was present to provide technical assistance not just for the Ordinance but also for Ordinance O07-22, that would amend Article 17, which was under the privy of the Utilities Department under the Utilities Commission.

Mr. Fields stated Ms. Kurpiel was a member of the Utilities Commission.

Mr. Stepowany stated Ms. Kurpiel was also on the subcommittee established on the formation of these two (2) Ordinances along with Mr. Di Peppe, Mrs. Carlone, Dale Allen of the Utilities Department, Supervisor Joe Brito and Steve Judy. He stated he would answer any questions from the Commission.

Mrs. Carlone stated in one of the sheets provided, there were a number of houses that were non-conforming, particularly in Rocky Pen Reservoir, there were some that would be under water and asked if those non-conforming structures were added in.

Mr. Stepowany stated that GIS had shaded the areas gray that were owned by the County and any houses within that area were not counted. He stated the areas outside of the slash marks on the maps were the areas counted.

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Mr. Fields asked how it would affect a third acre lot or a half acre lot with a non-conformity. He asked if this would create situations where homeowners would not be able to put sheds, porches or decks on their property.

Mr. Stepowany stated there was a provision in the Zoning Ordinance that the owner of a property could put on an addition by requesting a Special Exception with the Board of Zoning Appeals (BZA). He stated there were multiple ordinances within the last two (2) years that dealt with non-conformities and dealt with residential use. He stated the Board of Supervisors asked staff to provide direction and relief for residential houses that would become non-conforming and to allow them the ability to expand as long as they were not increasing the non-conformity. He stated the building of sheds, porches or decks would not increase the non-conformity and could request a Special Exception through the BZA.

Mr. Fields stated if someone wanted to build a shed on their property in Stafford Lakes, they would be required to go before the BZA.

Mr. Stepowany stated that was correct.

Ms. Kirkman stated to clarify it would depend on the size of the shed and whether it would require a building permit to build it.

Mr. Fields stated a permit would be required even for a very small shed.

Mr. Stepowany stated if a structure was less than 150 square feet it would not require a building permit.

Mr. Fields stated a permit would be needed to comply with setbacks. He stated a zoning permit would be required.

Mr. Harvey stated there were permitted encroachments for accessory structures into required setbacks and would need to maintain certain distance off of the property line. He stated there could be a situation where a person could not put in a shed based upon the setback based upon a zoning district tier as far as the additional 200 foot buffer and or if there was an RPA setback that extended further depending on where the RPA was. He stated more than likely the RPA would not affect these places because of the 200 foot buffer along the shoreline along the reservoir.

Mr. Fields stated that any change to the structure itself would require an application be submitted to the BZA.

Mr. Stepowany stated any enlargement or addition, including a deck, would require a Special Exception.

Mr. Fields stated he was all for the ordinance but had a hard time sending a medium to small lot suburban homeowner to the BZA to put a deck on their house.

Mrs. Carlone asked for clarification from staff. She stated after a certain size than a resident would be required to get a permit for a deck.

Mr. Stepowany stated he was not aware of that and almost any addition to a house would require a permit.

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Ms. Kirkman stated the issue was that the creation of the overlay district in each of the reservoir districts would create legally non-conforming lots and because they were legally non-conforming, if the landowner wanted to expand their structure in any way, they could not do so without getting a Special Exception form the BZA. She stated that was the question and it was a policy decision about weighing that against the interest of protecting the water quality in the reservoir.

Mr. Mitchell stated it was his understanding that hunting, trapping and the issuance of a duck blind permit after one was built was under the purveyance of the Department of Game and Inland Fisheries and asked if this was correct.

Mr. Stepowany stated he would have to refer to Mrs. Roberts because it was not in the Zoning Ordinance.

Mr. Mitchell stated under the prohibited items, on page 3 (c) of O07-22, which was the prohibited items and looking at item seven (7) and ten (10), frogging and catching of turtles, hunting, trapping and duck blinds, it was his understanding that all of these items were under the purveyance of the Department of Game and Inland Fisheries. He stated duck blinds, specifically, need to have a permit issued from the Commonwealth of Virginia. He asked if that was correct. He stated he was not sure how the county was regulating duck blinds, catching of turtles and frogging. He stated item fourteen (14) said all pets would be on a leash and thought that was specifically said cats and dogs. He asked if the county now regulated a cat leash law, which no other county in Virginia had.

Mrs. Roberts stated she would need to double check that information and believed that Mr. Mitchell was correct regarding cats not being leashed.

Mr. Mitchell stated the duck blind was very important and asked who could issue the permit and who could deny the right to put a duck blind in any waters.

Ms. Kirkman stated there was a difference between permitting activities and regulating land use. She stated this was about regulating land use and the county had the ability to regulate land use.

Mr. Mitchell stated he disagreed but would leave that to the attorney.

Ms. Kurpiel stated if the Commission would look at the definition of a terminal reservoir, they may find that helpful. She stated the County was not controlling pets or the land of the people living around the reservoir, but was talking about water, which was the impoundment, and the land that the County owned and maintained at the foot of the bridge across the reservoir where boats were launched.

Mrs. Roberts stated she would like to read the regulatory language regarding that but it sounded like she had a handle on that.

Mr. Di Peppe stated he would like to mention that when staff and the Commission sat down to write the ordinance, there was a tremendous amount of research across the world and they felt was needed in order to protect their reservoirs. He stated there was a tremendous variety, in Australia fences were built around the reservoirs and people were not allowed near them. He stated in the research the two (2) most important things to control with a reservoir was fecal contamination and virus contamination from individuals swimming in the reservoir. He stated he would prohibit any pets at the reservoir and there was not reason to bring a dog or cat to the reservoir in response to the fact the fecal contamination was one of the two biggest problems that reservoirs across the world had. He stated people could fish, boat

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and enjoy the water without bringing a pet. He stated he would recommend prohibiting pets and did not think that was an undue burden because there would not be hunting on the reservoir, firing of guns on the reservoir, not getting in the water catching frogs because that was not what the reservoir was for. He stated in some of the studies asked why boating in a canoe would be allowed and the research showed that since fecal contamination was a problem, that passive boating kept wild animals away from the shore line and had a positive affect on reducing fecal contamination. He stated this was probably one of the most important ordinances that the Commission would ever work on because it was about the quality of the drinking water for over 100,000 people in the County. He stated in comparison of the current and proposed ordinance, there was not much difference but the committee reviewed the ordinance and discussed the things that could contaminate the drinking water. He stated he thought as stewards of the County it was important to address those issues and allow where the county could in a passive use and realize the main purpose of the reservoir was to have safe drinking water.

Ms. Kurpiel stated she found the comments from Mr. Judy in regard to the question.

Ms. Kirkman stated she thought it would be imprudent to discuss any legal counsel given the number of potential lawsuits that could result from this. She stated if the Commission needed to address legal counsel regarding this issue, she would suggest that the Commission go into closed session.

Mr. Di Peppe stated he thought Mrs. Kurpiel was answering a question from the Commission. He stated he did not have any problem with Mrs. Kurpiel answering a specific question from a Commission member.

Ms. Kurpiel stated that Mr. Mitchell asked the exact same question the last time this came before the Commission and Mr. Judy, who was legal counsel for the Commission at that time, answered his concerns in writing and she had those answers if the Commission would like to hear them.

Mr. Di Peppe stated he saw no reason why the Commission should not hear the answer, because that was requested of the attorney at that time.

Mr. Mitchell stated he would like to hear the answers.

Mr. Fields stated Ms. Kirkman's point was well taken and needed to rethink a more circumspect approach to the discussion of legal matters. He stated if the Commission members were going to be litigants in cases, the Commission could not be discussing their legal analysis and strategy in the public. He stated this had to do with protecting the interest of the Planning Commission and in extension protecting the interest of the citizens.

Ms. Kurpiel stated this was in the public record and was sent to some ten (10) people.

Mr. Di Peppe stated the Commission asked their attorney legal questions on television all the time.

Mr. Fields stated the Commission may want to rethink that strategy also.

Ms. Kurpiel stated Mr. Mitchell sent a specific question to members of the Commission and Mr. Harvey. She stated Mr. Judy answered the questions right under the question Mr. Mitchell asked. She stated the question from Mr. Mitchell was: "Hunting, trapping or duck blinds, it was my understanding that duck blinds were state regulated and not county regulated, years ago he ran into this issue on Marlboro Point where citizens did not want duck blinds in their back yards". Mr. Mitchell asked if the county had

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enabling legislation to enforce this. She stated Mr. Judy response was: "Duck blinds were state regulated with paid permits issued by the state on each duck blind, and the difference was who controlled the water. Marlboro Point was on the Potomac and was controlled by the State of Maryland. The reservoirs were county controlled waters, the county had every authority to prohibit the types of activities occurring on it's reservoir from a health and safety perspective per Section 15.2-1200 in the State Code". She stated this was a four (4) page memo which answered a number of issues that Mr. Mitchell raised and she would be glad to provide the memo to Mrs. Roberts to share with the Commission.

Mr. Stepowany stated for verification purposes O07-22 was Article 17 and would forward any recommendation to the County Attorney and Mrs. Kurpiel. He stated it was not in the Zoning Ordinance and did not have any authority to make any changes to this. He stated he understood the concerns of the Commission and asked for this to be considered. He stated he provided a copy of an email he received from the environmental planner and it referenced the concerns of the words "mean high water line" and when it was referenced, the establishment of the different zones was based on the mean high water line, which referred to bodies of water that were tidal and reservoirs were not tidal. He stated there were two (2) recommendations to use normal pool elevation line or maximum pool elevation and ordinary high water line. He stated staff needed to go back to the Utilities Department because he was not sure if all three (3) of the reservoirs had maximum pool elevations. He stated if the line established were established on the normal pool, ordinary high water mark or maximum pool and there would need to be change to the reference in the ordinance. He stated currently staff did not know what definition to use.

Mr. Di Peppe stated there was still work that needed to be completed on this ordinance and would ask all the Commission members to take a good look at this and if there were any questions they would like answered before making a final decision. He would hope that the Commission would review this thoroughly and discuss all the questions before making a decision.

Mr. Howard stated he had four (4) issues that he would like to put on the table. He asked what contaminates currently impact Stafford County reservoirs and how often did the County test the water. He stated he would like answers to those questions at the next meeting and asked if the County knew the number of businesses that would be impacted.

Mr. Stepowany stated he did not believe there were any non-residential uses in that district.

Mr. Howard asked once the overlay was approved, how would the property or landowner be impacted in terms of resale of the property. He asked if it was an existing home, would it be grandfathered as a legal non-conforming use. He stated did not want the answer right now but at the next meeting.

Ms. Kirkman stated she could answer that question.

Mr. Howard stated he was speaking to Mr. Stepowany. He stated the fourth thing was along the lines of the comment Mr. Fields made about undue hardship on a homeowner. He asked if staff had looked at reducing the size of the proposed overlay to minimize those types of impacts. He stated there were other ways to do this and absolutely protect the drinking water.

Ms. Kirkman stated she was a little too eager to correct ignorance on land use and would refrain from answering the question, and if the attorney wants to comment she could.

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Mr. Di Peppe stated that was not the intent.

Mr. Howard asked Ms. Kirkman to whom she was referring as the ignorant one. He asked if she wanted to mixed accusations towards businesses or homeowners...

Mr. Di Peppe asked the Commission to keep this civil. He stated the Commission did a disservice to the public when they fight amongst themselves. He stated he would appreciate, Ms. Kirkman, if we did not make those comments.

Mr. Fields stated he would like the Commission to think about ways of working through... The problem was that the County in the past created, through what he would consider ill advised decisions, some very bad and stupid situations and one of those would be the rezoning of all the property for Stafford Lakes with full knowledge that there would be a reservoir there. He stated it was one thing to have five (5) acres in proximity to a reservoir and within five (5) acres you could buffer residential impacts. He stated the terrain would buffer a great deal of the environmental impacts and the idea that the County would knowingly divide high/medium density suburban residential neighbors... He stated there were issues with the stormwater design as well. He stated that an individual homeowner could not be expected to buy a home in a neighborhood and be expected to review the hydrology surrounding it and have any concept of whether they were doing the right thing. He stated he hope there could be some middle ground found because sending everyone to the BZA was not fair. He stated the County needed to find some way to protect the water and find a reasonable program or a way to get the Special Exception without the hardship or effort of going to the BZA for something as simple as a deck.

Mr. Di Peppe stated that was the challenge of good government.

Mr. Harvey stated as a follow up to what Mr. Fields was saying, looking at the map for Rocky Pen Reservoir he noticed there were a number of vacant lots in the buffer zone, and currently under the buffer zone prohibited uses included any structures or buildings. He stated there was a potential situation where someone would not be able to build on their vacant lot. He stated in speaking to Mrs. Roberts, staff would need to come up with some wording to try to deal with that situation. He stated if the County prohibited someone from building on a residential lot the county would have some problems.

Mrs. Carlone stated in Hartwood there were a lot of large properties that were abandoned homes that were purchased for speculation. She asked if any of the properties were designated abandoned.

Mr. Stepowany stated staff did the data search using the aerial photograph and if there was an address assigned to a lot that meant there was a home on the property. He stated he did not know if there was a way to determine if a property was abandoned and could check with Commissioner of Revenue.

Ms. Kirkman stated since one of the concerns seemed to be about the several hundred lots and what kind of burden that would impose, she would suggest staff get information from Code Administration for the properties affected by this, how many of those properties applies residential change permits in the last couple of years. She stated this would give the Commission the magnitude of the burden, it could three to one hundred homes per year but the Commission would not know until the data was received from Code Administration.

Mr. Fields stated that was an excellent point and if it was three to five homes a year than the county may be able to sponsor a program to help these people without it being burdensome.

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Mr. Di Peppe stated unintended consequences, we were all trying to do a good job and make sure that the decision did not make more problems than it solved. He stated this would be one of the most important decisions this Planning Commission would make. He stated it would be a good idea to meet with Mr. Stepowany, Mrs. Roberts and Ms. Kurpiel to discuss the issues before the next meeting.

7. Agricultural Districts Lot Yield

Mr. Stepowany stated this was requested upon staff to present to the Commission in the Ordinance Committee. He stated there was a very similar regulation in Spotsylvania County Zoning Ordinance, which regulates the residential lot yield in the agricultural zoning districts. He stated staff provided the specific language from Spotsylvania County ordinance and it was requested to show how that would appear in the Stafford County Zoning Ordinance. He provided a copy of the ordinance with strike throughs and underlines. He stated on the second page staff would like to define what lot yield means, the maximum number of residential lots subdivided from a parcel lots shall comply with the minimum lot size requirements. He stated in Table 3.1, for the A-1 Zoning District under requirements, intensity, lot yield ten (10) lots from the parent parcel existing as of a certain day of a certain year the Board would determine the effective date of should an amendment to the ordinance. He stated this ordinance would work by whatever the parent parcel was of that date, regardless of the total acreage of that parcel, they could only divide the parcel into ten (10) lots. He stated he had a printout showing 517 parcels zoned A-1, Agricultural, in the county that were thirty (30) acres or larger.

Mr. Di Peppe asked how difficult it would be to refine that to find out how many of those parcels were open space or schools, so the Commission would know the effect of what the Commission would be doing. He asked if that would be very time consuming for staff.

Mr. Stepowany stated he would defer to Mr. Harvey.

Mr. Harvey stated it would be easy to determine if it was a governmental entity that owned it and could do that level of review very quickly. He stated properties with other restrictions would be more labor intensive to sort through the parcels. He stated the Commissioner of the Revenue may have information that staff could extrapolate on land values to see if there was an easement, if it was in land use or some other type of thing. He stated he believed staff could get the information to the Commission by the second December meeting.

Mr. Fields stated in Stafford there was one problem in the A-1 zoning was that so much of the A-1 land was in the small to medium parcels and if your were given people ten divisions, you would give people what the county has now with three (3) acre lots with good drain fields and better performance standards that the county was working on. He stated Spotsylvania County did this because they still have people that own 4,000 acre parcels of land. He stated in 2000 there were on 70 parcels with over 100 acres in Stafford County and if you go down that list now there were a few that were speculatively owned. He stated this was a great idea but did not know in looking at the parcels on the ground. He stated this would create a substantial difference in the overall build out of the A-1 zones and he was not sure that in Stafford it would make as much of a difference.

Mr. Stepowany stated he took segments of the Spotsylvania County Comprehensive Plan. In the Comprehensive Plan this was a recommendation within the Agricultural Development District. He stated that was one of Spotsylvania's recommended land use policies.

Mr. Fields stated he like that idea but wondered if it would make a difference in Stafford County.

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Ms. Kirkman asked if the same number could be provided for A-2 land as well. She stated she believed there were a number of fairly large parcels left.

Mr. Stepowany stated he went with A-1 because in Spotsylvania, because their A-1 zoning district was three (3) acres, A-2 was five (5) acres and A-3 was ten (10) acres. He stated the five (5) and ten (10) acres were added as part of the Comprehensive Plan. He stated he could add A-2 to the request.

Mr. Fields asked if staff could provide the number of one hundred (100) acres parcels.

Mr. Stepowany stated yes.

8. Propane Distribution Facilities

Mr. Stepowany stated this was a request for a propane heating and distribution facility from the Commission. He stated the original request was for a Propane Distribution Facility, Conditional Use Permit (CUP) for M-1 and M-2 and there was some discussion whether it was a public utility or public facility. He stated he tried to include what the Zoning Ordinance defined as a public facility and gave the definition and read State Code 56.265.1 and provided the definition for public utilities. He stated the wording added to every zoning district was public facilities/utilities but not including propane and heating fuel distribution facilities or generating facilities, sub stations, switching stations and waster water treatment facilities which were permitted as CUP. He stated that would mean any kind of public facility/utility but those types of public facilities/utilities would be permitted in every zoning district. He stated in the M-1 and M-2, the County kept the same use permitted and would be added to CUP. He stated in the M-1 and M-2 if it was propane and heating fuel distribution facilities it would require a CUP. He stated the staff modified the existing use table to include this as a public utility. He stated he spoke with Fire Marshalls Office and asked what kind of concerns would the County have with propane and heating fuel distribution facilities that justify a concern that the County should have a CUP for public input. He stated Fire Marshalls Office said there would need to be a consideration of what the surrounding properties would be in case of an emergency. He stated staff would support the recommendation of having a CUP in the M-1 and M-2 and believed that was the recommendation from the Commission.

Mrs. Carlone asked Mr. Stepowany if he recalled when there was a proposal for a propane distribution on Wyche Road

Mr. Harvey stated it was a request for a CUP for a use not listed and was denied by the Board because of concerns of if there was an accident there and the ramifications to the facility and surrounding interstate traffic.

Mrs. Carlone stated she was happy to see this being proposed and within the request from the Fire Department or State Code, she asked if there was anything concerns regarding setbacks.

Mr. Stepowany stated requiring it to go through the CUP would give staff the latitude to review and evaluate the criteria as part of the CUP application and that was why staff supported the recommendation for a CUP in the M-1 and M-2 districts.

Mr. Howard asked how this would impact businesses like Home Depot or Lowes that sold propane in portable containers that were removed from there premise and returned empty.

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Mr. Stepowany stated those were not considered public utilities as listed in the definition. He stated this would apply to trucks that deliver home heating fuel.

Mr. Howard stated there were garden centers that had larger propane tanks of the property where they would sell propane in a variety of ways. He stated it would be sold to people who came to the property or they load commercial trucks and asked how that would be impacted.

Mr. Stepowany stated, in his opinion, if there was a large tank that dispensed propane or heating fuel from a larger tank, that would be a distribution facility and would be subjected to this requirement.

Mr. Howard asked if staff was suggesting that the garden center would have to register as a utility.

Mr. Stepowany stated he did not say they would have to register as a facility but they may be considered a facility under that provision.

Mrs. Roberts stated when this was first discussed it was staffs intention that sales such as what Mr. Howard was referring to would be retail sales and not the transportation and distribution of trucks. She stated she could review the Ordinance again with staff.

Ms. Kirkman stated they way to solve the confusion would be for staff to come with a definition for heating fuel distribution facility.

Mr. Stepowany stated staff thought about that, but because it was considered a public utility it would be expanded within the definition of public utility.

Ms. Kirkman stated because there were so many variations of propane distribution in particular, it would be helpful to have a separate definition. She stated that Mrs. Roberts was familiar with the Ordinance and she could work with staff to come up with a definition. She asked if staff would be able to discuss the Ordinance at the next meeting.

Mr. Stepowany stated yes.

9. Establishment of time limits for plans

Mrs. Schulte stated at the November 6, 2008 Planning Commission meeting staff was directed to research additional jurisdictions for time limits imposed on application resubmissions. She stated staff contacted Hanover County and was suggested by the Commission that they had similar Ordinance requirements for time limits. She stated after speaking with a couple Hanover County Planning staff members, it was discovered that they did not have a time limit requirement for resubmission on plans. She stated staff found out other time limits that Hanover County had for their proffers but none on the general resubmission for applications. She stated staff then started to research other localities by calling them rather than the traditional web search and discovered that Prince William County did have an actual policy manual that outlined a time line for resubmission to their plans. She stated some of the ideas from their policy manual were added as an example to the draft memo provided to the Commission tonight. She stated it was located in Section 28-251 of the Zoning Ordinance 22-61 and 22-77 of the Subdivision Ordinance. She stated another item that the Commission requested additional information on was providing some kind of provisions to justify what would qualify as an extension, staff also added some of those also after researching the policy that Prince William County was using or what would constitute qualifying an extension of a plan. She stated staff would like to consider using

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what Spotsylvania County used in their Code, which was providing the sixty (60) days with an additional thirty (30) day extension. Prince William County, in their manual had four (4) extensions that were provided to the application for each review, which were sixty (60) days, sixty (60) days, sixty (60) days and forty-five (45) days. She stated this was something for the Commission to consider.

Mr. Howard stated in the scenario on the front page and asked if the Army Corps of Engineers (ACOE) were to get involved a review could take up to six (6) months or 180 days.

Mrs. Schulte stated most of the time the issues come out long before an application would be submitted but there were rare occasion where it would pop up and become a situation where extensions were required.

Mr. Howard asked if an extension could be granted in those rare occasions even with the time limits.

Mrs. Schulte stated yes.

Ms. Kirkman stated when staff and the Commission last discussed the Ordinance, she stated the Commission asked that there be specifications added if the Commission was not able to meet the time frames. She stated she did not see that addition and in particular it gets to closing out the applications that were three (3) and five (5) years old and stated it needed under each section to specify if the applicant did not submit within the required timeframe, the application shall be deemed withdrawn.

Mr. Fields asked if there was anything in the State Code that would contravene the Commissions ability to have a submitted plan deemed approval on and if the Commission had the authority under the State Code.

Mrs. Roberts stated she did not know specific state enabling legislation that would fall under the authority to set up reasonable administration processes to process the plan.

Mr. Fields stated he agreed with Ms. Kirkman, if there was no penalty there would be no purpose.

Mr. Di Peppe asked if something could be written into the Ordinance in case of the ACOE, that the clock would stop until that was taken care of so applicants were not unduly penalized by that.

Ms. Kirkman stated there was a list of nine (9) reasons why extensions could be granted, including other specific reasons deemed valid by the Director of Planning and Zoning. She stated that was a second concern that she had, the list of nine (9) reasons was so broad and could not think of any reason why any extension would not be granted. She asked if staff could take a look at that and think about how that could be tighten up a little bit in terms of figuring out the critical times to make an extension rather than having it read that basically every request for an extension would be granted.

Mrs. Roberts stated she was uncomfortable with the wording “withdrawn” and was something the applicant would do. She stated since the Planning Commission had the authority to approve or deny, she would recommend if it was not completed within that time it would constitute a denial of the plan.

10. Eliminating the Preliminary Subdivision Plan Process

Mr. Schultis stated there were three (3) major facets to embark on. He stated the first question was “can we do this” and the answer was yes. He stated Section 15.2.2260 of the State Code did not mandate that

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localities had to have a preliminary subdivision process. He stated the next question was what would it look like and it was customary to bring a template to these sessions but his research had not yielded a jurisdiction in Virginia that had eliminated the preliminary plan and was unable to have a template. He stated finally if we embark on this endeavor, what would it look like and how would it affect what we had currently. He stated he would propose that it would be a major change in the Subdivision Ordinance to the extent that it may be have to be broken down and rebuilt. He stated the template that he did provide struck out everything that had to do with the preliminary plan within the Subdivision Ordinance. He stated that did not include changes that staff may have to make in the Zoning Ordinance, Storm Water Ordinance or what the School Board would do to project student numbers.

Mrs. Carlone stated her major question was that there was no other jurisdiction in Virginia that has done this. She asked if that was correct.

Mr. Schultis stated not that he found, he looked at seventy-five (75) counties, so far and twenty-five (25) of the counties had ordinances that were not easily available to get and had already requested copies of them. He stated he felt the most conclusive part of the research was in Stafford County there was a population of 120,000 according to Weldon Cooper; take all of the counties that were around 90,000 and up and the significant facts were they all used the same method as Stafford County. He stated Highland County, which was Virginia's least populated county with 2,800 people, also had a preliminary plan process and if he was to find a county that did not have this and did not know if it would be similar enough to Stafford County to assimilate their structure of elimination into our procedure.

Mrs. Carlone stated if no other counties had that process, was there any reasons why they did not have it. She asked if staff asked if the other counties would be considered or have they considered it.

Mr. Schultis stated he did not call each jurisdiction but he went through their Subdivision Ordinance to see if there was a provision for that. He stated he had spoken with a few jurisdictions and Caroline County had not enacted the appropriate Ordinance, but wanted to follow suite with the process that Stafford County currently has.

Ms. Kirkman thanked staff for the work completed on this item. She stated there were three (3) reasons why she raised the issue and felt like a discussion needed to be had to discuss the merits of not considering this approach. She stated first was because of the way vesting works, we often end up with subdivisions that in essence had stale zoning and subdivision and other kinds of laws applied to them because of the changes that occur over time. She stated the second was that it would decrease the burden of the process instead of going through the process for three (3) separate set of plans, there would only be two, which would be the construction plan and the final plat. She stated lastly, it seemed that it would remove the source of the litigation against the County. She stated at last count a majority of the thirty (30) some lawsuits against the County dealt with some aspect of the preliminary subdivision plan and that was consuming an enormous amount of resources. She stated for those three (3) reasons, she thought it was worth having the discussion about whether the County should pursue this and look at how it may be done under the context of what we need to accomplish under good planning.

Mr. Fields stated there were a couple of pros to it and it was not business as usual. He stated the vesting issue was huge and the example that he used and understood that vesting was some sort of protection of property rights and supported the intent in that if a person makes a substantial investment in a property. He stated it would apply more to higher density residential under mixed development and commercial and makes a significant investment in rezoning a property and ready to undergo a major rezoning and review and develop and invest money in it, they would have a reasonable expectation that the County

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would not arbitrarily and capriciously change the rules on them. He stated that the only thing the preliminary subdivision plan had accomplished in his tenure on the Planning Commission, it had forced the Commission to approve abysmal subdivisions and had not seen a single subdivision plan that he felt had any business being approved as a piece of land use in the long term best interest of the County. He stated the real authority in the preliminary subdivision plan was not like the Board of Supervisors and was not a broad sweeping authority to act in the public interest; it was a tight ministerial authority that forced the Commission to watch the agricultural areas of Stafford County be destroyed. He stated watching that land become vested in three (3) acre lots, which was an unsustainable scenario, for the next fifty years was a waste of the time of the Commission and the public.

Mr. Schultis stated there were a lot of State Code provisions that tie preliminary plans to certain vesting statutes, however, if the County was to go to a Construction Plan policy where the Construction Plan became the first document, those were considered site plans by State Code 15.2-2261 and those two (2) were vested for five (5) years.

Ms. Kirkman stated to prepare a preliminary subdivision plan versus the amount of effort to go into preparing a construction plan were quite different.

Mr. Fields stated in regards to a construction plan, someone would need to be more serious about building it out. He stated the idea that someone could put a place mark in millions of dollars of profit for the long term without having to pay tax liability besides the rollback for five (5) or six (6) years, that was one of the aspects of vesting that was very unfair. He stated he supported the agricultural land use even though someone could take advantage of it. He stated that was not something he would want to eliminate because that was one of the reasons why people hold onto land.

Mr. Di Peppe stated the Ordinances were designed to protect the people of Stafford County and if the preliminary plan was being used to hold people exempt for taxes then it was wrong and if it was a cheap way to vest your property, that was wrong. He stated the plan should be people who were serious about development and moving forward to develop in Stafford. He stated so many times in the past there were situations where applicants were approved for preliminary plans and used that to hold a place and to be exempt from any rules that come up. He stated there was no template and the County was breaking new ground and asked for suggestion form the Commission.

Ms. Kirkman stated she would suggest an outline of what the process could look like with the Planning Commission playing a role in approving the construction plan. She stated not an Ordinance but thinking logistically through what was included in the preliminary and the argument she heard was that preliminary gives an overall picture and was not clear why that could not be received with the construction plan. She asked if staff could answer that.

Mr. Harvey stated that could be something considered in discussion. He stated he had a discussion with a staff member from the Utilities Department and they stated they would need to change their process to require an overview plan of the potential build out on the construction plan so the pipes could be sized accordingly to what the need was. He stated there would still be a need for the same information from a preliminary plan on a construction plan to make it viable in the case on water and sewer. He stated he did not have an opportunity to speak with VDOT yet to see if it would make any difference for them. He stated VDOT had similar processes with the reviews.

Ms. Kirkman asked if staff could bring back a draft outline with the steps that would address those kinds of issues and show what the steps would look like.

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Mr. Schultis stated he could do that.

Mr. Di Peppe stated this was a very interesting concept and glad that the Commission was looking at it.

11. Rappahannock River Overlay District

Mr. Harvey stated this was an issue discussed at the Planning Commissions previously. He stated the Board had sent direction, when they started their review for the Potomac River Overlay, for the Commission to consider a measure for the Rappahannock River drainage basin and have included in the Commission packages a copy of the Rappahannock watershed within Stafford County and also the Potomac River Overlay ordinance. He stated staff would await direction from the Commission on this matter.

Mr. Fields stated, having served on the Rappahannock River Basin Commission when he was on the Board of Supervisors, he would suggest the he and Mrs. Carlone, who both represent districts that board the Rappahannock River meet with the Friends of the Rappahannock representatives from the Rappahannock River Basin Commission to start to suggest from the extensive work that had been done on the Rappahannock tributary strategy for the Chesapeake Bay Act and the extension work establishing base line measurements of water quality and stream quality. He asked if Mrs. Carlone was agreeable to that and if the Commission was agreeable as well.

Mr. Di Peppe asked if the Commission had any problem with that. He stated that was the end of the Ordinance Committee.

NEW BUSINESS

10. SUB2600305; Southgate, Section 2 - A preliminary subdivision plan with 22 duplex units on 11 lots, zoned R-1, Suburban Residential, pursuant to the previously approved Cluster Concept Plan, consisting of 10.81 acres located on the west side of Jefferson Davis Highway approximately 1,500 feet south of Edward E. Drew Middle School on Assessor's Parcels 45-163 and 45-163A within the Hartwood Election District. **(Time Limit: March 4, 2009) (History - Deferred to December 3, 2008 Regular Meeting at Applicant's Request)**

Mr. Fields stated this item was deferred until the December 3, 2008 meeting.

MINUTES

February 20, 2008 Regular Meeting, As Amended

Mr. Mitchell made a motion for approval.

Mr. Di Peppe seconded the motion.

Mrs. Roberts stated she believed these were the minutes that the Commission had already adopted and upon listening to the tape, a section was left off and added. She stated now the Commission would need to amend something previously adopted.

Mr. Mitchell amended his motion to approve of the amended minutes.

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Mr. Di Peppe seconded the amendment to the motion.

The motion passed 7-0.

PLANNING DIRECTOR'S REPORT

No report

COUNTY ATTORNEY'S REPORT

No report

SECRETARY'S REPORT

No report

STANDING COMMITTEE REPORTS

Mrs. Carlone stated that the ARB finally reviewed the new alignment for the Heritage Trail Phase Three and was approved.

SPECIAL COMMITTEE REPORTS

No Report

CHAIRMAN'S REPORT

Mr. Fields stated that Mr. Di Peppe requested that Chairman appoint him a liaison to the Historical Committee. He stated he would use his authority as Chairman to do that, he had worked on a lot of issues with his attempts at county wide historic preservation.

ADJOURNMENT

With no further business the meeting was adjourned at 10:38 p.m.

Peter Fields, Chairman
Planning Commission