

**FAIRFAX COUNTY PLANNING COMMISSION
ENVIRONMENT COMMITTEE/
ENVIRONMENTAL QUALITY ADVISORY COUNCIL MEETING
THURSDAY, JUNE 11, 2009**

COMMITTEE MEMBERS PRESENT:

Frank A. de la Fe, Hunter Mill District
Jay P. Donahue, Dranesville District
Earl L. Flanagan, Mount Vernon District
James R. Hart, Commissioner At-Large, Chairman
Kenneth A. Lawrence, Providence District
Timothy J. Sargeant, At-Large

COMMITTEE MEMBER ABSENT:

Walter L. Alcorn, At-Large

ENVIRONMENTAL QUALITY ADVISORY COUNCIL MEMBER PRESENT:

Stella Koch, At-Large, Chair

STAFF PRESENT:

Pamela G. Nee, Chief, Environment and Development Review Branch, Planning Division (PD), Department of Planning and Zoning (DPZ)
Noel H. Kaplan, Senior Environmental Planner, Environment and Development Review Branch, PD, DPZ
James W. Patteson, Director, Land Development Services (LDS), Department of Public Works and Environmental Services (DPWES)
Judith Cronauer, Code Analyst, Code Analysis Division, LDS, DPWES
S. Robin Ransom, Assistant Director, Planning Commission Office
Kara A. DeArrastia, Deputy Clerk to the Planning Commission

OTHERS PRESENT:

Michael Rolband, President, Wetland Studies and Solutions, Inc. (WSSI)
Ben Rosner, WSSI

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Chairman James R. Hart called the meeting to order at 7:03 p.m., in the Board Conference Room, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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Discussion of Environmental Quality Corridor Encroachments Review

Noel H. Kaplan, Senior Environmental Planner, Environment and Development Review Branch, Planning Division, Department of Planning and Zoning, reviewed the activities that occurred at the Committee's meeting on April 16th. He noted that following the April 16th meeting, he had incorporated additional input received from the Fairfax County Park Authority on the table

outlining potential Environmental Quality Corridor (EQC) functions and values regarding the term "biodiversity."

In response to a question raised at the April 16th Committee meeting regarding zoning applications considered in the last three years that required staff and the Planning Commission to make a value judgment on EQC encroachments and tradeoffs, Mr. Kaplan indicated that the Aerospace case generated the request for this review. He said the only other case staff had identified during this timeframe was PCA A-936-02/DPA A-936-04 by 2222 Colts Neck Road, LLC in 2007, which had sought to remove the United Christian Parish of Reston building and replace it with an independent living facility at a site located adjacent to Snakeden Branch. Mr. Kaplan noted that Wetland Studies and Solutions, Inc. (WSSI) had pursued a comprehensive restoration project of this stream, which had been recognized in Plan Amendment S07-III-UP1. He explained that the pending restoration project along with the degraded condition of the stream, the fragmentation of the corridor by two nearby road crossings, and several existing encroachments into the EQC, including a parking lot and utilities, had caused staff to take a very flexible position in considering encroachments into an area that would otherwise be recommended for preservation or restoration.

Commissioner de la Fe pointed out that PCA A-936-02/DPA A-936-04 impacted another property owned by the United Christian Parish of Reston and was not related to PRC A-502 and SE 2008-HM-024 that was scheduled for decision tonight.

Commissioner Lawrence said that in the Aerospace case, the applicant had presented three instances where the County had considered proposed mitigation and tradeoff efforts to offset EQC encroachments. Mr. Kaplan replied that there were other cases, but they had occurred more than three years ago, such as PCA 87-S-039-2 and FDPA 87-S-039-6 by Fairfax Corner Associates in 1998; CP 86-C -121-04 by Reston Land Corporation and Dayton-Hudson Corporation for the Reston Target store in 1996; and another zoning application that had been approved prior to the adoption of the Policy Plan in 1990. He noted that there was also a case cited by Aerospace involving a site adjacent to the Oakton Shopping Center but that it was unclear from the documentation he reviewed that a stream was present on that site - there was not any consideration of EQC on the property.

Michael Rolband, President of WSSI, cited the South County High School site as another example, noting that it contained an EQC and Resource Protection Area.

In response to a question from Commissioner Lawrence, Mr. Kaplan noted that the only case study that staff was aware of that had occurred within the last three years was PCA A-936-02/DPA A-936-04.

Stella Koch, At-Large, Chair of the Environmental Quality Advisory Council, said she thought that the major amount of intrusion proposed in the Aerospace case had also prompted this review. Mr. Kaplan agreed and pointed out that PCA A-936-02/DPA A-936-04 had not raised the level of concern about the EQC policy conflict as demonstrated in the Aerospace case because staff

believed there was enough flexibility in the policy to allow for consideration of the EQC encroachments that had been proposed in that case.

Commissioner de la Fe pointed out that in PCA A-936-02/DPA A-936-04, the original intrusion into the EQC had occurred before the establishment of the policy. Mr. Kaplan agreed and noted that another difference between the two was that on the Aerospace site, the stream channels were degraded but the EQC had not been encroached upon except for a water line and sewer easement.

Replying to a question from Commissioner Sargeant, Mr. Kaplan explained that the Aerospace case was unprecedented because it raised certain questions about mitigation and tradeoff efforts that were not anticipated in the EQC policy. He said, however, that this would probably not be a common issue. Mr. Rolband agreed and noted that over the last 24 years in Fairfax County, there have only been eight cases that involved EQC encroachments and tradeoffs. He asked if it made sense for the Committee and staff to perform such extensive work and hold stakeholder meetings to develop a policy on such a rare issue.

Chairman Hart said that he thought the main issue raised in the Aerospace case was the lack of a County policy that would allow the consideration of encroachment into the EQC or the tradeoffs proposed by the applicant. He commented that there were many County policies and Zoning Ordinance provisions that addressed issues that rarely occurred, but the County was prepared if any of them did. Chairman Hart said he had struggled with the Aerospace case due to the lack of criteria to measure it against except for the EQC policy which recommended against encroachments into the EQC. He noted that the intent of this effort was to improve how the Planning Commission would handle similar cases in the future.

Ms. Koch commented that clear guidance was needed in the EQC policy to address this issue. Commissioner Lawrence concurred and said the EQC policy needed to address the possibility of proposed mitigation of encroachments.

Chairman Hart said that the Aerospace case had many merits but allowing encroachments into EQC areas without clearly identified criteria and expectations for tradeoffs might trigger poor applications.

Commissioner Sargeant explained that the EQC policy was a standard by which the Commission measured whether to make an exception when it was appropriate. He noted that the Aerospace case presented mitigation as a new benchmark by which to measure exceptions.

Ms. Koch pointed out that the approval of the Aerospace case allowed for the much-needed restoration of the on-site stream. She suggested that language be added to the EQC policy that supported the restoration or preservation of the impacted stream. Commissioner Sargeant asked if this additional language would weaken the overall policy. Mr. Kaplan said that the EQC had more functions than stream protection and cautioned against a perspective based solely on stream benefits and impacts.

Chairman Hart said consideration of EQC tradeoffs should be limited to extraordinary situations, noting that the challenge was identifying those circumstances while keeping this exception very narrow.

Mr. Kaplan reviewed the revised timeline, a copy of which is in the date file.

In response to a question from Commissioner de la Fe, Mr. Kaplan said he expected to complete the draft strawman policy document by the end of August.

Responding to a question from Commissioner Flanagan, Mr. Kaplan noted that his research on immediate neighboring jurisdictions had not involved consultation with the Virginia Department of Conservation and Recreation (VDCR). He said he would investigate whether VDCR could provide any pertinent information.

Without objection, it was the general consensus of the Committee that the draft timeline was appropriate.

Mr. Kaplan presented the stakeholder/notification list, noting that it had not changed since the April 16th meeting. (A copy of this list is in the date file.) He asked that Committee members provide him with the names of stakeholders who might have been missed or inform him if they believed that the list was too extensive.

In reply to a question from Commissioner Sargeant, Mr. Kaplan said the League of Women Voters was on the list because this group had a long history of involvement in environmental issues.

Mr. Kaplan presented a draft document summarizing the stream and buffer area protection regulations and encroachment policies and practices enforced by the following jurisdictions: Loudon County, Virginia; Prince William County, Virginia; Montgomery County, Maryland; and Prince George's County, Maryland. (A copy of this document is in the date file.) He explained that he had obtained the information from the localities' Web sites and staff. Mr. Kaplan pointed out that staff from only two of the four localities had reviewed and approved this document so there might be some inaccuracies. He said he would present findings from his research on the City of Alexandria and Arlington County at the next Committee meeting.

Replying to a question from Commissioner de la Fe, Mr. Kaplan said there were more similarities than differences among the four jurisdictions in how they dealt with encroachments.

Ms. Koch suggested that the Committee identify useful practices from each jurisdiction that could be incorporated into a new policy.

Mr. Kaplan highlighted some of the encroachment policies and practices of each jurisdiction. He explained that the jurisdictions all judged encroachments into sensitive areas based, effectively, on a three-tiered approach: 1) avoidance, 2) minimization, and 3) compensation, and made a subjective determination on a case-by-case basis without the use of a quantitative system.

In response to questions from Commissioner Flanagan, Mr. Kaplan said he could not determine whether the mitigation measures proposed in the Aerospace case would have been supported in any of the studied jurisdictions.

Mr. Rolband and Mr. Kaplan briefly discussed differences among the policies and practices of Fairfax, Prince William, and Loudoun Counties.

There was a brief discussion among Chairman Hart, Ms. Koch, Mr. Kaplan, and Mr. Rolband regarding Loudoun County's River and Stream Corridor Overlay District policy.

Commissioner Lawrence recommended that a strategy framework be established that contained the following elements: 1) avoid any intrusion in the EQC; 2) if the intrusion could not be avoided because it was triggered by an extraordinary circumstance, the intrusion must be minimized to the extent possible; and 3) compensation or mitigation must be provided for the intrusion.

Commissioner Lawrence noted that the reason there had been only a few cases in the last several years might be attributed to the fact that the County policy on protecting EQC was well known and respected.

Responding to questions from Commissioner Lawrence, Mr. Kaplan noted that the EQC policy recognized that some encroachments for infrastructure might be necessary, but that it did not suggest an ability to consider encroachments beyond those that were determined to be necessary. He said the policy language could be revised to incorporate additional flexibility.

Commissioner de la Fe commented that minimization and compensation should be considered at the same time. Mr. Kaplan discussed the issue of minimization that had been raised in the Aerospace case.

Ms. Koch suggested that the framework proposed by Commissioner Lawrence also indicate that avoidance, minimization, and compensation must be performed on-site. She also suggested that the policy include language that would recommend against a net loss of stream value or EQC value.

Mr. Rolband pointed out that the Clean Water Act required measures to avoid, minimize, or compensate for potential environmental impacts. He said the purpose and need for the project under consideration should first be defined and if consensus was achieved, then the steps in the framework should commence. Addressing Ms. Koch's suggestion for policy language regulating on-site mitigation, Mr. Rolband explained that off-site mitigation was beneficial when addressing stream restoration.

Chairman Hart spoke in support of evaluating other jurisdictions because they might provide excellent suggestions.

Commissioner Flanagan asked that Mr. Kaplan determine whether other jurisdictions would have denied the Aerospace case because he believed that the Board of Supervisors would request this information. Mr. Kaplan replied that he could not speculate about this.

Mr. Kaplan reviewed his working draft document outlining a potential framework for development of a policy or standard approach for the Committee's consideration. (A copy of this document is in the date file.)

In response to a question from Ms. Koch, Mr. Kaplan noted that the quality of the impacted stream would be a factor for consideration in answering the questions listed in his document. Ms. Koch said this factor should be more strongly stated.

Mr. Kaplan asked if the premise of this policy/practice should be that avoidable impacts should only be supported where there was a clear net long-term benefit to most, if not all, of the five EQC value categories identified in Table 1. (A copy of this table is in the date file.) He explained that all of these values would be evaluated comprehensively in each case to determine what was present or absent and if the proposed tradeoffs would positively affect most, if not all, of these categories.

Commissioner Sargeant expressed concern that the table would provide a checklist of items that an applicant could violate quite extensively. Mr. Kaplan explained that perhaps if the categories were framed in a broader and flexible manner, there would be less possibility for an applicant to negate this approach; however, this would present the issue of subjectivity.

Replying to a question from Commissioner Sargeant, Mr. Kaplan said the table should not be used as a checklist where each item was analyzed individually, although he pointed out that the values could be categorized differently. He explained that the intent of the table was to recognize the breadth of the broad benefits and examine them from a holistic approach to judge the positive impacts of the proposed tradeoffs on habitat, hydrology, stream quality, and water quality.

Commissioner Lawrence said this table should be considered only when determining whether the tradeoffs proposed by the applicant would sufficiently compensate or mitigate the EQC values and if not, negotiations should take place between staff and the applicant. He commented that it was more advantageous for the categories to be broad than objective.

In response to a question from Commissioner Flanagan, Mr. Kaplan said the Committee could decide if this issue should be addressed in a policy amendment, memorandum, or another format. He noted that, in referencing a "standard approach" to this issue, his intent was not to suggest a regulatory approach but instead to recognize that resolution of this issue might not necessarily be in the form of a Plan amendment; it could instead take some other form - the key would be that, whatever form this took, it would set the stage for a consistent approach to addressing the issue.

Ms. Koch said she thought that under no circumstances should this policy be an invitation for applicants to consider intruding into an EQC area as long as they proposed substantial mitigation in another EQC area.

Future Meeting Date

Chairman Hart announced that the Committee would continue discussion of this topic at the next meeting on Thursday, July 30, 2009, at 7 p.m., in the Board Conference Room. Mr. Kaplan noted that he would present findings from his research on City of Alexandria and Arlington County; coordinate with Stormwater Planning Division, Department of Public Works and Environmental Services, regarding stormwater management facilities; and consider the additional input in formulating ideas about the potential framework.

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The meeting was adjourned at 8:12 p.m.
James R. Hart, Chairman

An audio recording of this meeting is available in the Planning Commission Office, 12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Kara A. DeArrastia

Approved: July 30, 2009

Linda B. Rodeffer, Clerk
Fairfax County Planning Commission