

**FAIRFAX COUNTY PLANNING COMMISSION
ENVIRONMENT COMMITTEE
THURSDAY, OCTOBER 4, 2007**

COMMITTEE MEMBERS PRESENT:

Walter L. Alcorn, At-Large
Frank A. de la Fe, Hunter Mill District
James R. Hart, Commissioner At-large
Timothy J. Sargeant, At-Large

COMMITTEE MEMBERS ABSENT:

Nancy Hopkins, Dranesville District
Kenneth A. Lawrence, Providence District
Rodney L. Lusk, Lee District

OTHER PLANNING COMMISSIONER PRESENT:

Earl L. Flanagan, Mount Vernon District

PLANNING COMMISSION STAFF PRESENT:

Barbara J. Lippa, Executive Director, Planning Commission Office
Linda B. Rodeffer, Clerk to the Planning Commission

ENVIRONMENTAL QUALITY ADVISORY COUNCIL (EQAC) MEMBER PRESENT:

Stella Koch, Chairman, At-Large

COUNTY STAFF PRESENT:

Pamela Nee, Chief, Environment and Development Review Branch, Planning Division
(PD), Department of Planning and Zoning (DPZ)
Noel Kaplan, Senior Environmental Planner, PD, DPZ
James Patteson, Director, Land Development Services, Department of Public Works and
Environmental Services (DPWES)
Carey Needham, Planning and Design Division, DPWES
Zack Fields, Chairman of the Board of Supervisors' Office
Meaghan Kiefer, Sully District Supervisor's Office

OTHERS PRESENT:

Linda Broyhill, Reed Smith, LLP
Lisa Chiblow, McGuire Woods, LLP
Brian Gault, Peterson Companies
Tom Lee, Samaha Associates, PC
Lloyd Ntuk, PHR&A
Peter Rosen, JPI
Lou Sagatov, Sagatov Associates
Pamela Vosburg, Virginia Sustainable Building Network
Rob Walker, W. H. Gordon Associates

Chairman James R. Hart called the meeting to order at 7:30 p.m. in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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Commissioner Sargeant MOVED THAT THE ENVIRONMENT COMMITTEE MINUTES OF SEPTEMBER 19, 2007 BE APPROVED.

The motion was seconded and carried unanimously.

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Noel Kaplan, Senior Environmental Planner, Planning Division (PD), Department of Planning and Zoning (DPZ), presented a summary of the testimony received at the workshop held on September 6, 2007 to discuss the strawman document entitled "Encouraging Green Building Practices through the Comprehensive Plan."

Mr. Kaplan explained that discussion had focused on both the strawman document on application of Comprehensive Plan guidance to support green building and on non-related Plan incentives such as expedited plan reviews, tax incentives, and the ability of inspection staff to recognize green building approaches. He said a comment had also been expressed about restrictions placed on the use of solar panels by homeowners' association. He noted that Peter Rosen, JPI, had written a letter to Board of Supervisors' Chairman Gerry Connolly recommending that a rebate for permitting fees be tied to the attainment of Leadership in Energy and Environmental Design (LEED) certification. In addition, he said David Hawn, whose wife, Carol, had testified at the workshop, sent in comments recommending a performance-based incentive approach as opposed to upfront LEED or Energy Star commitments. He stated that the Environment Committee had expressed support for considering these matters on separate tracks at their September 19, 2007 meeting; the first track being what should be focused on at the present time for the Policy Plan amendment and the second, if the Planning Commission wanted to make broader recommendations to the Board of Supervisors pertaining to incentives that were not related to the Comprehensive Plan. He noted that Chairman Connolly had written a response to Mr. Rosen's comments and expressed his support for incentives to encourage green building practices across the County and not just in mixed-use centers; requested staff to consider the suggestion for rebates tied to LEED attainment as well as other incentive ideas that might fall outside the scope of the zoning process; and asked that those ideas be presented to the Planning Commission's Environment Committee and to the Board of Supervisors. He noted that Chairman Connolly was interested in broader issues not associated with the Comprehensive Plan. (Copies of the letters from Peter Rosen, David Hawn, and Chairman Connolly are in the date file.)

Mr. Kaplan said his summary would focus on aspects of comments received related to the Plan amendment, after which the broader scope of issues could be discussed. He said James Patteson, Director, Land Development Services, Department of Public Works and Environmental Services

(DPWES), would also address a number of the broader incentive ideas that had been raised. He said the advertisement for the November 8, 2007 public hearing had to be ready for publication by Wednesday, October 10, 2007. Mr. Kaplan noted that with the concurrence of the committee, the staff report had been crafted consistent with the strawman, except for enforcement issues, and was now being reviewed by the DPZ management team and by staff in selected County agencies.

Mr. Kaplan said the following categories of comments had been raised:

- Overall Goals
- Reference to green building rating systems in the Plan Amendment and linkage to the Plan
- Geographic scope of the policy
- Application of residential rating systems
- Experiences of other jurisdictions related to flexibility of green building rating systems and funds
- Special exception/special permit uses
- Consideration of bonus density and intensity ideas in Area Plans
- How effective and appropriate various green building practices were
- Is this a one time commitment or ongoing compliance through proffer process
- Relationship between green building concepts and other plan policies.

Overall Goals

Mr. Kaplan explained that this category included the question of whether the focus should be on energy conservation only or on the overall environmental benefits of building design and construction as well as site design. He stated staff's view was that the focus was definitely broader than energy conservation and that the green building concept covered a full range of environmental implications of building construction and design, including energy use, water use, building materials, site design, and interior building environments. He said while there was some overlap between green building concepts and the existing Plan policy, the Plan did not focus on broad environmental impacts of building construction but that green building rating systems did. He said it was not anticipated that an attempt would be made to quantify a precise environmental benefit of any one green building project during the zoning process, but rather each developer would tailor his or her green building components to his or her needs and desires. He pointed out that rating systems provided considerable room for choice, particularly at a baseline certified level. He said since there were certain prerequisites in the LEED program, any LEED project would have commonality in that regard, but some projects might focus discretionary criteria on energy conservation while others might focus on recycled materials, water conservation, or site issues. Mr. Kaplan pointed out that because green building components could be negotiated through the zoning process on a case-by-case basis, if certain aspects of green building were desired, there would be an opportunity to look at them. But for the broad Countywide policy and a Policy Plan linkage to green building performance, he said staff thought it would be best to leave the flexibility for site specific

determination in the hands of the developers as long as they worked within the context of green building rating systems.

Reference to green building rating systems in the Plan Amendment

Mr. Kaplan said a wide spectrum of perspectives had been raised:

- LEED and only LEED should be referenced in the policy because it was not sponsored by industry, had a rigorous review process, and eliminated "green washing."
- A recommendation against the staff proposal to allow for equivalent approaches to be considered during the zoning process.
- A LEED certified level be established as a minimum standard for all construction with graduated density incentives for development that went beyond the certified level (i.e., silver, gold, and platinum certification).
- LEED should not be referenced at all; the use of LEED for a state tax incentive had been rejected in favor of a focus on energy efficiency; and that the application of green building practices in the County would not make a dent in global carbon emissions.
- The marketplace should determine how and where green building practices would be applied.
- Most building practices would not provide a return on investment; therefore, incentives were needed.
- The Green Globes system be recognized explicitly in the policy in addition to LEED;
- Green Globes was not as rigorous as LEED and should therefore not be referenced as its equal due to concern about the subjectivity of criteria; insufficient verification; lack of rigor; and lack of prerequisites in that system.
- That no rating system be referenced in the Plan or that all be referenced.
- Green building practices and LEED would ultimately be codified so why should they be referenced as a package.
- Focus on specific green building criteria instead of an overall ratings package.
- Focus on incentives based on measured building performance as opposed to an upfront emphasis during the zoning process on programs such as LEED and Energy Star.

Mr. Kaplan said staff was crafting the Plan amendment consistent with the strawman and continued to recommend the use of LEED as an acceptable rating system and the reference to

LEED as a benchmark for alternative approaches. He explained that staff did not feel comfortable referencing other systems at this time because LEED was well regarded as a broadly applied system, with rigorous third-party review; had been applied in many jurisdictions around the country; and was recommended specifically in the draft Council of Governments Report. He said the Plan language would retain flexibility so that other systems could be applied if they were on par with LEED in both scope and process. In response to comments that the text should limit reference to LEED, he said concerns had been expressed by members of the committee about the evolving nature of green building ratings systems and the need to retain flexibility. He pointed out that staff also felt flexibility was appropriate to allow consideration of viable approaches that would be comparable to LEED if and when such approaches were presented during the zoning process. He said staff recognized that developers might have ideas that staff had not thought about. Mr. Kaplan indicated that staff agreed with the comments suggesting the pursuit of commitments to individual green building practices which could be done through negotiation during the zoning process; however, it was viewed as an augmentation rather than the replacement of efforts supporting overall green building certifications.

Mr. Kaplan reiterated that Chairman Connolly had clearly indicated his interest in Countywide incentives that would not only apply to growth centers. Therefore, he suggested that it might be best to craft the advertisement to allow for the consideration of a broader approach to green building linkages rather than limiting consideration of this idea to growth centers. He said, however, that staff was recommending that the linkage idea be limited at this time to growth centers because that was where most of the development was going to be occurring and it would afford an opportunity to see how effective the policy was before it was applied more broadly. Chairman Hart asked if there were any objections to this approach and none were expressed.

Responding to a question from Commissioner Sargeant, Mr. Kaplan said that the strawman laid out an approach that said if development was at the high end of the intensity/density range, or if a Plan option was used resulting in a change of use in an area, there would be a linkage between that proposal and some level of green building performance. He said staff recommended that the proposed amendment be advertised to allow for consideration of applying the linkage anywhere in the County.

Commissioner Flanagan said he agreed with this approach. He also said that at the public hearing, a representative from the Northern Virginia Building Industry Association had indicated that most of the projects now built in the County complied with the lower level of certification. Mr. Kaplan responded that some would disagree with that statement.

Mr. Kaplan noted that there was not enough time to address the remaining categories of comments and stated staff's intent to proceed with the staff report based on the strawman but advertise the proposed amendment to cover a broader scope.

Chairman Hart emphasized his desire that the advertisement be flexible enough to cover issues that might be brought up at the public hearing so that it would not have to be readvertised.

In response to a question from Commissioner Sargeant, Mr. Kaplan said the strawman did not recommend application of residential green building rating systems beyond ENERGY STAR for homes and was not included in the staff report, based on the concurrence of this approach by the committee. Responding to another question from Commissioner Sargeant, Mr. Kaplan said the proposed policy supported green building practices generally and laid out in bullet point format what that meant; therefore, those bullets were best management practices for green building design, applicable to both residential and non-residential development. Commissioner Sargeant said he thought incentives should also be provided for a residential component of a high-intensity structure. Mr. Kaplan replied that he didn't know how that would be done in the absence of a standardized rating system, but that by outlining individual green building practices, they could be tied into negotiation during the zoning process but it would not be an incentive approach. Commissioner de la Fe said he believed that green building should also be applicable to residential development and should be included in the advertisement, especially in view of Chairman Connolly's desire that incentives be Countywide.

Commissioner Hart pointed out that that there would be a package of follow-on motions that would address issues not included in the Policy Plan amendment.

Chairman Hart recognized James Patteson, DPWES, to address incentive approaches that fell outside the context of the Comprehensive Plan.

Mr. Patteson said there were four areas of green building incentives: tax credits, expedited processing, permit fee rebates and staff recognition of green building practices.

Tax Credits

Mr. Patteson explained that the General Assembly had enacted *State Code* 58.1-3221.2 which allowed localities to adopt beneficial tax credits for green building. He said staff had a number of concerns about this legislation:

- It was vague and allowed for a beneficial tax credit to any building that exceeded an unspecified USBC standard by 30 percent as determined by "any qualified licensed engineer or contractor."
- Since the County currently imposed a real property tax based on land and improvements at a uniform rate, charging a differential tax rate would require reprogramming the County's real estate tax computer programs and systems at a significant cost which would be necessary prior to enacting a tax credit program.
- Assurance that the benefits of a tax credit were ongoing and that energy efficient measures conformed to continuously evolving energy codes and standards.
- Unknown impact to County revenues.

- Tax credits toward energy conservation were targeted by the *State Code*; energy efficiency was only one category in the LEED program and energy efficiency measures have the greatest potential return on investment and therefore probably require the least incentive for builders to incorporate. Tax credit incentives need to account for this and for other categories that the County does not need to incentivize due to existing County requirements.
- Protection of revenue resources in light of falling revenues this year and a projected drop next year also.

Expedited Processing

- Building plan review is not a significant consideration, although that process can be expedited.
- Site plan review based on a priority ranking from 2.0 to 10.0, depending upon the type of plan; about 50 percent of plans were already expedited; green building plans could be expedited against lower ranked plans; review needed to set priority rankings.

Fee Rebate

- Fee schedules built into the County's codes and ordinances for review and inspection based on cost to perform service and were related to specific Board of Supervisors' directed recovery rates which cannot be legally waived because it would constitute a gift; creating a new class of fees for green building that provided a reduced or zero fee would not be equitable because it would result in higher fees for other permits and charging more for a permit than it costs to perform the service would be in violation of *State Code*.
- Green Building Fund could be used as a mechanism to reimburse contributions to projects that became LEED certified.

Reviewers and Inspectors with Specific Knowledge

Training in process: staff enrolled in USGBC 101; serving on IRC technical committee, active in ASHRAE committees; other opportunities being sought to improve the skills of staff.

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Commissioner Alcorn suggested that the County sponsor a competitive, well-publicized annual recognition program for green builders.

Chairman Hart said most likely specific recommendations on these issues would not be made soon. He suggested requesting the Board for authorization to further study them.

In response to a question from Chairman Hart, Mr. Patteson said expedited processing would not require a Public Facilities Manual amendment.

Another committee meeting was scheduled for November 1, 2007. (Note: This meeting was subsequently postponed to November 15, 2007.)

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The meeting was adjourned at 8:15 p.m.
James R. Hart, Chairman

For a verbatim record of this meeting, reference may be made to the audio recording which can be found in the Planning Commission Office, 12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Linda B. Rodeffer

Approved: November 15, 2007

Linda B. Rodeffer, Clerk
Fairfax County Planning Commission