

**FAIRFAX COUNTY PLANNING COMMISSION
LAND USE PROCESS REVIEW COMMITTEE
WEDNESDAY, MAY 6, 2009**

COMMITTEE MEMBERS PRESENT:

Frank A. de la Fe, Hunter Mill District
Earl L. Flanagan, Mount Vernon District
James R. Hart, At-Large
Kenneth A. Lawrence, Providence District
John L. Litzenberger, Jr., Sully District
Peter F. Murphy, Jr., Springfield District
Timothy J. Sargeant, At-Large

OTHER COMMISSIONERS PRESENT:

Walter L. Alcorn, At-Large
Jay P. Donahue, Dranesville District

STAFF PRESENT:

James P. Zook, Director, Department of Planning and Zoning (DPZ)
Regina C. Coyle, Director, Zoning Evaluation Division, DPZ
Barbara J. Lippa, Executive Director, Planning Commission Office
Kara A. DeArrastia, Deputy Clerk to the Planning Commission

OTHER PRESENT:

Sara V. Mariska, Esquire, Walsh, Colucci, Lubeley, Emrich & Walsh, PC

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Chairman Peter F. Murphy, Jr., called the meeting to order at 7:03 p.m. in the Board Conference Room, 12000 Government Center Parkway, Fairfax, Virginia 22035. He noted that the first order of business was approval of minutes.

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Commissioner Flanagan MOVED TO APPROVE THE MINUTES OF MARCH 11, 2009.

Commissioner Litzenberger seconded the motion which carried unanimously.

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Chairman Murphy noted that the application review process had been the topic of the June *Planning Commission Roundtable* program.

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Chapter 527 Traffic Impact Analysis Procedures

Regina Coyle, Director, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ), explained that on January 8, 2009 the Committee had received an update from Fairfax

County Department of Transportation staff on the implementation of Chapter 527 legislation requiring the Virginia Department of Transportation (VDOT) to review traffic impact analyses (TIAs) associated with Comprehensive Plan amendments or zoning applications. She stated that the Committee would be given an opportunity to review the new procedure before it was sent to the Board of Supervisors (BOS).

After a brief discussion, Mr. Zook suggested that a committee meeting be scheduled to discuss the impacts of VDOT review standards, timelines, and levels of analyses on the processing of Plan amendments and zoning applications.

Applications Received

Ms. Coyle explained that in response to a request from Commissioner Flanagan, a weekly report was now available online listing all applications that had been received.

After a brief discussion, Ms. Coyle said staff used the word “received” to indicate that an application had been filed but not accepted. She said once an application was accepted, it was referred to as “filed.” Mr. Zook noted that the clock started when an application had been accepted.

Commissioner Hart said it would be helpful for Commissioners to learn how to use LDSnet at <http://ldsnet.fairfaxcounty.gov/ldsnet> to search for information about a particular application. Mr. Zook asked Commissioners who would be interested in a tutorial to contact his office.

Technology Improvements

Ms. Coyle explained that staff had been working on ways to improve the graphics used at public hearings and on the legibility of maps in the staff reports. She said staff would present their findings at a committee meeting in June or July.

Public Hearing Deferral Fees

Ms. Coyle reported that on April 27, 2009, the BOS had adopted a Zoning Ordinance Amendment that increased fees for zoning applications that achieved the 75 percent cost recovery rate. She said the BOS had deferred the decision to charge \$1,000 for an applicant-requested deferral of a Planning Commission or BOS public hearing and \$130 for deferral of a Board of Zoning Appeals (BZA) public hearing. Ms. Coyle explained that the fee would apply to cases deferred after newspaper advertisement and noted that the Planning Commission needed to make a recommendation prior to the scheduled Board date of June 22, 2009.

In response to a question from Chairman Murphy, Mr. Zook noted that the BOS-adopted fee increases would go into effect on July 1, 2009.

Ms. Coyle stated that the development industry had suggested that the deferral fee not be imposed until three weeks prior to the public hearing but pointed out that the advertisement was

published four to six weeks before the hearing. She noted that deferrals allowed more time for staff to work with the applicant and the community to address unresolved issues but could have a negative impact on citizens, especially those who had to take off work to attend daytime BOS hearings.

Responding to a question from Commissioner Flanagan, Ms. Coyle noted that in many cases applications had to be deferred due to affidavit problems. After discussion, Mr. Zook said he would confer with the County Attorney's Office about circumstances which required revisions to affidavits.

Commissioner Alcorn expressed concern that a deferral fee could be a disincentive to thoroughly addressing all issues and that he was not sure if \$1,000 was a sufficient penalty.

Chairman Murphy agreed and said there could be disagreement about who was responsible for a deferral. He also commented that holding a public hearing on a case with many unresolved issues could lead to a very long night.

Responding to questions from Chairman Murphy and Commissioner Flanagan, staff said the deferral fee would apply to all zoning cases but not 2232 applications.

Commissioner Hart commented that deferrals were often beneficial because they allowed time to address unresolved issues, which made for shorter public hearings. However, he said a fee would serve as an excellent motivator for applicants to ensure that their notices and affidavits were prepared correctly and filed on time. He asked staff to verify that the proposed BZA deferral fee would adequately cover the cost of re-advertisement.

Ms. Coyle distributed an updated chart on Planning Commission Case Actions for FY 2009, a copy of which is in the date file.

Commissioner Sargeant suggested that a staff member from the Supervisor's Office be assigned, in lieu of a member of ZED staff, to work with the District Commissioner to verify that application requirements had been met. Mr. Zook was not in favor of this idea.

Commissioner de la Fe said he too was not in favor of Commissioner Sargeant's suggestion because it was the responsibility of the Commissioner to attempt to resolve all issues before an application reached the BOS. He also said that he thought a deferral fee would generally not be beneficial other than for budgetary purposes because deferrals were usually not caused by the negligence of the applicant.

Mr. Zook summarized the committee's discussion concerning deferral fees:

- Appropriate when deferral was due to the fault of the applicant.
- Could cause premature public hearings.
- \$1,000 was insufficient to discourage deferrals.

- Difficult to determine who caused deferral.
- Determine early in the process if a deferral would be needed.

Commissioner Lawrence commented that a negative staff report and the possibility that the Commissioner would support staff recommendation usually got the applicant's attention. He agreed with Commissioner Hart that if applicants did not prepare their affidavit correctly, they should be charged a fee.

In response to a question from Commissioner Flanagan, Mr. Zook said that a fee would not be imposed if a case were deferred prior to advertisement, despite the number of recurrences.

Commissioner Litzenberger said that allowing eight months for negotiation between the staff and the applicant and publishing the staff report four weeks prior to the public hearing instead of two could reduce the number of deferrals. Mr. Zook said staff would consider this. He pointed out that the fee would not be imposed on an applicant if the Commission decided to defer the application.

Mr. Zook said he would present a recommendation at the next committee meeting to impose a fine for incorrect or untimely affidavits and notifications and to postpone a decision on deferral fees pending reexamination of the County's land use application review process.

Future Meeting Dates

Follow-up Committee meetings were scheduled for the following dates, at 7:00 p.m., in the Board Conference Room:

- Wednesday, June 10, 2009
- Wednesday, July 8, 2009
- Wednesday, July 29, 2009

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The meeting was adjourned at 8:13 p.m.
Peter F. Murphy, Jr., 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
Edited by: Linda B. Rodeffer
Approved: June 10, 2009

Linda B. Rodeffer, Clerk
Fairfax County Planning Commission