

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
THURSDAY, JANUARY 9, 2014**

PRESENT: Frank A. de la Fe, Hunter Mill District
Jay P. Donahue, Dranesville District
Earl L. Flanagan, Mount Vernon District
Janet R. Hall, Mason District
James R. Hart, Commissioner At-Large
Janyce N. Hedetniemi, Commissioner At-Large
Ellen J. Hurley, Braddock District
Kenneth A. Lawrence, Providence District
John L. Litzenberger, Jr., Sully District
James T. Migliaccio, Lee District
Peter F. Murphy, Springfield District
Timothy J. Sargeant, Commissioner At-Large

ABSENT: None

//

The meeting was called to order at 8:15 p.m., by Chairman Peter F. Murphy, in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

//

COMMISSION MATTERS

In accordance with the Planning Commission Bylaws, Chairman Murphy announced that Planning Commission Officers would be elected at the third Planning Commission meeting of the year on Thursday, January 16, 2014.

//

Commissioner Litzenberger said that he had been asked about the status of application SEA 81-C-081-02, Girl Scout Council of Nation's Capital. He indicated that staff had informed him that the applicant had filed an appeal to the ruling issued by the Fairfax County Board of Zoning Appeals to the Fairfax County Circuit Court and he would keep the Commission informed on this case.

//

Commissioner Hall announced that the minutes for February 2013 and March 2013 were available for review and asked that the Commission review them. She said that she would move to approve these minutes at the Planning Commission meeting on Thursday, January 23, 2014.

//

Commissioner de la Fe stated that due to a scheduling conflict, he MOVED THAT THE PLANNING COMMISSION FURTHER DEFER THE DECISION ONLY ON RZ/FDP 2013-HM-012, SEKAS HOMES, LTD., TO A DATE CERTAIN OF THURSDAY, JANUARY 23, 2014, WITH THE RECORD REMAINING OPEN FOR WRITTEN AND ELECTRONIC COMMENTS.

Commissioner Hall seconded the motion which carried by a vote of 12-0.

//

Commissioner Flanagan state that due to the cancellation of the Planning Commission meeting on Wednesday, January 15, 2014, the public hearing for S13-IV-LP1 had also been canceled. He added that the South County Federation required additional time to comment on this application; therefore, he MOVED THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING ON S13-IV-LP1, A COMPREHENSIVE PLAN AMENDMENT FOR VULCAN QUARRY, TO A DATE CERTAIN OF THURSDAY, FEBRUARY 27, 2014.

Commissioner Litzenberger seconded the motion which carried by a vote of 12-0.

//

Commissioner Hart stated that there had been a disagreement between an applicant and staff regarding the legal and financial consequences of the Planning Commission's decision to defer the joint public hearing for PCA 2000-MV-034, SEA 80-L/V-061-02, 2232-V-13-18, and 2223-V13-17, Furnace Associates, Inc. to Thursday, April 24, 2014. He added that the in lieu of this development, he MOVED THAT THE PLANNING COMMISSION RECONSIDER THE DECISION MADE BY THE COMMISSION ON WEDNESDAY, JANUARY 8, 2014, TO DEFER THE JOINT PUBLIC HEARING ON PCA 2000-MV-034, SEA 80-L/V-061-02, 2232-V-13-18, AND 2223-V13-17, FURNACE ASSOCIATES, INC., FROM WEDNESDAY, FEBRUARY 5, 2014, TO THURSDAY, APRIL 24, 2014.

Commissioners Hall, Hedetniemi, and Migliaccio seconded the motion which carried by a vote of 10-2. Commissioners Donahue and Flanagan voted in opposition.

Commissioner Hart MOVED THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING ON PCA 2000-MV-034, SEA 80-L/V-061-02, 2232-V-13-18, AND 2223-V13-17, FURNACE ASSOCIATES, INC., TO A DATE CERTAIN OF THURSDAY, FEBRUARY 27, 2014, WITH THE UNDERSTANDING THAT DOING SO WAS NOT INTENDED TO PREJUDGE IN ANY WAY THE MERITS OF THE APPLICATION OR INHIBIT ANY DISCUSSION OR CITIZEN INPUT.

Commissioner Hedetniemi seconded the motion which carried by a vote of 12-0.

Commissioner Sargeant made a follow-on motion wherein he MOVED THAT ENCOURAGE ALL THE PARTIES INVOLVED IN PCA 2000-MV-034, SEA 80-L/V-061-02, 2232-V-13-18, AND 2223-V13-17, FURNACE ASSOCIATES, INC., TO RESOLVE THE MATTER

INVOLVING THE APPLICANT'S SITE PLAN PRIOR TO THURSDAY, FEBRUARY 27, 2014.

//

FSA-V05-35-2 - VERIZON WIRELESS, 5845 Richmond Highway, Alexandria
FSA-M00-54-1 – SIRIUS XM, 3709/3711 S. George Mason Drive, Falls Church
FSA-P96-55-4 (PREVIOUSLY #FS-P13-29) - VERIZON WIRELESS, 2311 Pimmit Drive, Falls Church

Chairman Murphy MOVED THAT THE FOLLOWING CONSENT AGENDA ITEMS BE APPROVED: FSA-V05-35-2, FSA-M00-54-1, AND FSA-P96-55-4.

Without objection, the motion which carried by a vote of 12-0.

//

SE 2013-DR-001 – TD BANK, NATIONAL ASSOCIATION (Decision Only)
(The public hearing on this application was held on July 18, 2013. A complete verbatim transcript of the decision made is included in the date file.)

Commissioner Donahue MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE SE 2013-DR-001, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED JANUARY 8, 2014, WITH THE FOLLOWING MODIFICATIONS:

- A REVISION TO DEVELOPMENT CONDITION NUMBER 11 TO READ: “ANY SITE PLAN FOR THE PROPOSED FINANCIAL INSTITUTION SHALL BE COORDINATED WITH THE DESIGN AND INSTALLATION OF THE ENVIRONMENTAL REMEDIATION SYSTEM, AS SPECIFIED IN THE CORRECTIVE ACTION PLAN APPROVED BY THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY (VADEQ) TO ADDRESS PREVIOUSLY DISCOVERED SITE CONTAMINATION AND THE INFRASTRUCTURE AND CONSTRUCTION OF THE FINANCIAL INSTITUTION SHALL NOT CONSTRICT OR LIMIT INSTALLATION OR EFFECTIVE OPERATION OF THE REMEDIATION SYSTEMS SPECIFIED AND APPROVED BY VADEQ;” AND
- A REVISION TO DEVELOPMENT CONDITION NUMBER 30 TO READ: “ALL OUTDOOR ILLUMINATED SIGNAGE, TO INCLUDE BUILDING-MOUNTED AND FREESTANDING SIGNS, SHALL BE DIMMED TO AT LEAST 50 PERCENT OF FULL OPERATIONAL LEVELS WITHIN ONE HOUR AFTER THE CLOSE OF BUSINESS, UNLESS OTHERWISE REQUIRED BY THE ZONING ORDINANCE.”

Commissioners Hedetniemi and Litzenberger seconded the motion which carried by a vote of 11-0-1. Commissioner Hart abstained.

Commissioner Donahue MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A WAIVER OF LOADING SPACE REQUIREMENT FOR THE DRIVE-IN FINANCIAL USE.

Commissioner Hedetniemi seconded the motion which carried by a vote of 11-0-1.
Commissioner Hart abstained.

Commissioner Donahue MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A MODIFICATION OF PART 8 OF SECTION 11-102 OF THE ZONING ORDINANCE TO ALLOW A 9.5-FOOT PARKING SETBACK ALONG WALKER ROAD, AS SHOWN ON THE SE PLAT, IN LIEU OF THE 10-FOOT SETBACK REQUIREMENT.

Commissioner Hedetniemi and Litzenberger seconded the motion which carried by a vote of 11-0-1. Commissioner Hart abstained.

Commissioner Donahue MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A MODIFICATION OF THE TRAIL REQUIREMENT ALONG GEORGETOWN PIKE IN FAVOR OF A 5-FOOT CONCRETE SIDEWALK, AS SHOWN ON THE SE PLAT.

Commissioner Hedetniemi and Litzenberger seconded the motion which carried by a vote of 11-0-1. Commissioner Hart abstained.

Commissioner Donahue MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A MODIFICATION OF SECTION 2-505 OF THE ZONING ORDINANCE TO ALLOW THE PARKING AREA TO ENCROACH ON THE CORNER LOT RESTRICTION, AS SHOWN ON THE SE PLAT AND AS CONDITIONED.

Commissioner Hedetniemi and Litzenberger seconded the motion which carried by a vote of 11-0-1. Commissioner Hart abstained.

//

ST09-III-UP1 (A) – COMPREHENSIVE PLAN AMENDMENT (RESTON TRANSIT STATION) (Decision Only) (The public hearing on this application was held on November 13, 2013. A complete verbatim transcript of the decision made is included in the date file.)

Commissioner de la Fe MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE THE FOLLOWING:

- ADOPTION OF THE “RESTON TRANSIT STATION AREAS COMPREHENSIVE PLAN TEXT” DATED JANUARY 9, 2014, THEREBY REPLACING THE CURRENT PLAN GUIDANCE FOR THE RESTON-HERNDON SUBURBAN CENTER AND TRANSIT STATION AREAS CURRENTLY FOUND ON PAGES 28 THROUGH 80 OF THE AREA II PLAN, UPPER POTOMAC PLANNING DISTRICT;

- ADOPTION OF SEVERAL OTHER PROPOSED CHANGES, AS SPECIFIED IN ATTACHMENT II OF THE MARK-UP PLAN TEXT WHICH ALIGNS, MAPS, FIGURES, AND REFERENCES IN OTHER SECTIONS OF THE PLAN WITH THE PROPOSED NEW PLAN TEXT AND RECOMMENDATIONS; AND
- ADOPTION OF THE STAFF-IDENTIFIED EDITS OF TYPOS AND GRAMMAR.

Commissioner Litzenberger seconded the motion which carried by a vote of 12-0.

Commissioner de la Fe MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DIRECT STAFF TO WORK WITH A GROUP OF STAKEHOLDERS TO REVIEW AND MAKE RECOMMENDATIONS ON HOW BEST TO INCORPORATE RESTON-SPECIFIC DESIGN FEATURES INTO FUTURE DEVELOPMENT, AS OUTLINED IN THE PROPOSED PLAN.

Commissioner Litzenberger seconded the motion which carried by a vote of 12-0.

Commissioner de la Fe MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DIRECT STAFF AND THE PLANNING COMMISSION TO DEVELOP AN INCLUSIVE PROCESS TO PREPARE A FUNDING PLAN FOR THE TRANSPORTATION IMPROVEMENTS RECOMMENDED IN THE RESTON MASTER PLAN AND RETURN TO THE BOARD WITH ITS RECOMMENDATIONS AT AN APPROPRIATE TIME. THE FUNDING TIME SHOULD INCLUDE ARRANGEMENTS FOR FINANCING THE PUBLIC SHARE OF RESTON INFRASTRUCTURE IMPROVEMENTS AND FACILITATE COOPERATIVE FUNDING AGREEMENTS WITH THE PRIVATE SECTOR. THE PLANNING COMMISSION STRONGLY BELIEVES THAT PUBLIC AND PRIVATE INVESTMENT IN RESTON IS BOTH CRITICAL AND RESPONSIBLE FOR ENSURING RESTON'S FUTURE SUCCESS.

Commissioner Litzenberger seconded the motion which carried by a vote of 12-0.

Commissioner de la Fe MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DIRECT STAFF TO CONDUCT A DETAILED EVALUATION AND OPERATIONAL ANALYSIS OF THE ENHANCED STREET NETWORK SHOWN ON THE RESTON MASTER PLAN, PRIORITIZE THESE IMPROVEMENTS, AND DEVELOP AN IMPLEMENTATION STRATEGY.

Commissioner Litzenberger seconded the motion which carried by a vote of 12-0.

//

ORDER OF THE AGENDA

Secretary Hall established the following order of the agenda:

1. CSP 2009-MV-023 – INOVA HEALTH CARE SERVICES
2. FDPA B-715-03 – JOAN WEBER

3. SE 2013-MV-011 – KIMBERLY B. AND KELLY P. CAMPBELL

This order was accepted without objection.

//

CSP 2009-MV-023 – INOVA HEALTH CARE SERVICES –
Appl. under Sect. 12-210 of the Zoning Ordinance for approval of
a Comprehensive Sign Plan associated with RZ 2009-MV-023.
Located in the S.E. quadrant of the intersection of Sanger St. and
Lorton Rd. on approx. 14.55 ac. of land zoned PDC. Tax Map 107-
4 ((1)) 75A, 77, 78, 79, 80, 81, and 82. MOUNT VERNON
DISTRICT. PUBLIC HEARING

Megan Duca, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of application CSP 2009-MV-023.

Answering questions from Commissioner Flanagan, Ms. Duca clarified that each sign associated with the subject application was located within the subject property. She explained that approval of the subject application would not permit the two signs identified in the Zoning Inspection Branch Analysis on Page 5 of the staff report, which exceeded the height and area limitations of the Zoning Ordinance for off-site signs. In addition, Ms. Duca pointed out that Development Condition Number 4 in the revised set required the applicant to remove any signs that were not depicted in the proposal or did not comply with the Zoning Ordinance, noting that the two existing off-site signs were not in compliance. She then confirmed that these two off-site signs were not included in the subject application. (A copy of the revised Development Conditions dated January 6, 2014, is in the date file.)

When Commissioner Flanagan asked about the removal of the six freestanding flutter flags also identified in the Zoning Inspection Branch Analysis on Page 5 of the staff report, Ms. Duca said that these flags had been removed. A discussion ensued between Commissioner Flanagan and Ms. Duca regarding existing signs on the site that did not comply with the Zoning Ordinance wherein Ms. Duca indicated that the proposed signs would be governed by the provisions of the subject application, which would make them consistent with the Zoning Ordinance. Ms. Duca also clarified that Sign E would also be governed by the subject application and confirmed that it would no longer be considered an illegal sign.

Timothy Sampson, Agent, Walsh, Colucci, Lubeley, Emrich & Walsh, PC, stated that the proposal included two signs that were not currently installed on the subject property. He then pointed out the berm along Lorton Road obstructed the view of the Inova Lorton HealthPlex on the site and the proposal would install signage along Lorton Road. Mr. Sampson clarified that a permit had been issued for Sign E on the site and that it had not been installed illegally. He also said that the applicant had removed the necessary signs identified at the time of site inspection in the summer of 2013. Mr. Sampson said that the applicant agreed with the development conditions crafted by staff and that the South County Federation Land Use Committee did not express any concerns about the proposal.

Commissioner Lawrence noted the difficulty of identifying streets and specific addresses at the Inova Lorton HealthPlex. He then asked how visitors who were unfamiliar with the site would be guided to their destination. Mr. Sampson pointed out that Inova was studying this issue and intended to improve wayfinding and addressing at Inova facilities. He then stated that the address for the facility on the site would be reflected on proposed signs. In addition, he said the signs would include Inova logos to assist visitors in identifying the facility. Commissioner Lawrence suggested that Inova coordinate with individual practices to provide landmarks or other identifying features to direct visitors to the appropriate parking areas.

Commissioner Sargeant indicated that the issue of supplying navigation applications with appropriate addresses for Inova facilities had been discussed with the Southeast Task Plan. He then said that the staff report indicated that the staff did not support additional flexibility to install additional signs in the future, but noted that Development Condition Number 5 permitted signage in accordance with Section 12-103 (2) (Q) of the Zoning Ordinance without an amendment to the subject application. When he asked for clarification on this matter, Mr. Sampson explained that the section of the Zoning Ordinance referred to in Development Condition Number 5 contained certain provisions that permitted off-site signs for hospitals, which was coordinated by the State of Virginia. In addition, he indicated that the applicant and staff had discussed the possibility of future buildings that would be constructed on the subject property and since the signage requirements for these buildings was not yet known, additional flexibility was required to install the necessary signs without the need for a Comprehensive Sign Plan Amendment (CSPA). He said that staff did not agree with this position, favoring the use of a CSPA for additional signs. However, Mr. Sampson stated that the applicant did not object to the development conditions as articulated.

Commissioner Flanagan commended the applicant for coordinating with him and providing language in Development Condition Number 8 to protect the existing trees and shrubs on the site. He then asked if the possible solutions he offered to Commissioner Lawrence's concern regarding address and street identification for the site could be articulated in writing. Mr. Sampson explained that he did not support articulating such provisions for the subject application because this issue pertained to other Inova sites, but he indicated that he would forward these concerns to the appropriate parties.

Commissioner Flanagan pointed out that there was another health facility located near the site, which had signage along I-95 that directed vehicles to this facility. He said that there were no similar signs that directed vehicles to the subject property and asked if this would be addressed by the proposal. Mr. Sampson explained that this issue would be addressed through provisions for such signage prescribed by the State of Virginia. A discussion ensued between Commissioner Flanagan and Mr. Sampson regarding the current visibility of the Inova Lorton HealthPlex on the site from Lorton Road and Silverbrook Road, the applicant's previous efforts to install signage at other locations along Lorton Road, and the need for off-site signage wherein Mr. Sampson stated that there was currently no signage along Lorton Road in the area between Sanger Street and I-95.

When Commissioner Flanagan asked about signs located along I-95, Mr. Sampson confirmed that these signs were off-site signs specific to hospitals.

Chairman Murphy called for speakers from the audience, but received no response; therefore, he noted that a rebuttal statement was not necessary. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Flanagan for action on this case. (A verbatim excerpt is in the date file.)

//

Commissioner Flanagan MOVED THAT THE PLANNING COMMISSION APPROVE CSP 2009-MV-023 SUBJECT TO THE DEVELOPMENT CONDITIONS DATED JANUARY 6, 2014.

Commissioner Litzenberger seconded the motion which carried by a vote of 12-0.

//

FDPA B-715-03 – JOAN WEBER – Appl. to amend the final development plans for RZ B-715 to permit extension into rear yard. Located at 8203 Tis Well Dr., Alexandria, 22306, on approx. 2,047 sq. ft. of land zoned PDH-5. Tax Map 102-3 ((23)) 115A.
MOUNT VERNON DISTRICT. PUBLIC HEARING

Joan Webber, Applicant/Title Owner, reaffirmed the affidavit dated December 3, 2013.

There were no disclosures by Commission members.

Nicholas Rogers, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. He noted that staff recommended approval of application FDPA B-715-03.

When Commissioner Flanagan asked about the extent of the modifications in the most recently revised set of Development Conditions, Mr. Rogers confirmed that these modifications were only editorial in nature. (A copy of the revised Development Conditions dated January 9, 2014, is in the date file.)

When Commissioner Hart explained the reason why the proposal required an FDPA instead of a Special Permit, Mr. Rogers confirmed that an FDPA was necessary because the previously-approved application that designated the site as a P-District was not sufficiently flexible to permit modifications to the dwelling units, such as porches, hot tubs, or decks. Commissioner Hart then encouraged staff and the Commission to better anticipate the types of modifications to the dwelling units that homeowners might pursue.

Ms. Webber concurred with Commissioner Hart's statement regarding the importance of anticipating possible modifications to dwelling units in P-Districts. She then indicated that she would pursue the necessary permits for the modifications to her dwelling unit.

Chairman Murphy called for speakers from the audience, but received no response; therefore, he noted that a rebuttal statement was not necessary. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Flanagan for action on this case. (A verbatim excerpt is in the date file.)

//

Commissioner Flanagan MOVED THAT THE PLANNING COMMISSION APPROVE FDPA B-715-03, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED JANUARY 6, 2014.

Commissioners Lawrence and Litzenberger seconded the motion which carried by a vote of 12-0.

//

SE 2013-MV-011 – KIMBERLY B. AND KELLY P. CAMPBELL – Appl. under Sect. 2-904 of the Zoning Ordinance to permit uses in a flood plain. Located at 11727 River Dr., Mason Neck, 22079, on approx. 1.56 ac. of land zoned R-E. Tax Map 122-2 ((2)) 7. Also under the Board's consideration will be the applicant's Water Quality Exception Request #5203-WRPA-010-1 and Water Quality Impact Assessment #5203-WQ-019-1 under Section 118-6-7 (Chesapeake Bay Preservation Ordinance) of Chapter 118 of the Code of the County of Fairfax to permit encroachment within a Resource Protection Area (RPA). MOUNT VERNON DISTRICT. PUBLIC HEARING

Jason Hickman, Esquire, Agent and Attorney-in-Fact for the applicant, Compton & Duling, LC, reaffirmed the affidavit dated November 27, 2013.

Commissioner Hart disclosed that his law firm, Hart & Horan, PC, occasionally had cases where attorneys from Mr. Hickman's firm represented an adverse party. However, he had no knowledge of a pending case of this nature and since there was no pending case related to the proposal with a business or financial relationship, he said it would not affect his ability to participate in this case.

Megan Duca, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She noted that staff recommended denial of application SE 2013-MV-011 because the applicant had not demonstrated to the satisfaction of the Department of Public Works and Environmental Services (DPWES) and the Geotechnical Review Board (GRB) that the slope on the subject property would be sufficiently stable.

Referring to pages 8 and 9 of the staff report, Commissioner Hart pointed out that an Agreed Final Order was mentioned. He explained that there were instances with similar orders, citing cases with the Fairfax County Board of Zoning Appeals, where an applicant had been unable to

meet the provisions of the order by the deadline and required an extension. He then asked whether there was a provision in the Agreed Final Order that stipulates the consequences for not obtaining a Special Exception (SE) by the deadline. Ms. Duca said that the order indicated that the applicant would be subject to fines if they did not meet the deadline. A discussion ensued between Commissioner Hart and Ms. Duca regarding the County Attorney's determination on the deadlines for such an order wherein Ms. Duca stated that staff and the applicant had been coordinating with the County Attorney on the subject application and while an amendment to the Agreed Final Order had been considered, no decisions had been rendered.

Referring to the Special Exception Plat, Commissioner Hart stated that the SE approved in 2004, SE 2004-MV-038, applied to parcels further north than the parcels pertaining to the subject application. He said that the proposal did not affect the development on the adjacent property, but noted that certain features on the subject property, such as the rip rap, were inter-dependent with this off-site development. He also asked whether a portion of the lot line extended into the State of Maryland. Mary Ann Welton, Planning Division, DPZ, explained that the Virginia General Assembly adopted a resolution in 2005 stipulating that any structure that began in the State of Virginia would be subject to Virginia jurisdiction. A discussion between Commissioner Hart and Ms. Welton ensued regarding whether there were any violations on the adjacent property to the south of the site and how the subject application could be applied to a parcel of land located on an adjacent property wherein Ms. Welton pointed out that this property had not been involved when the applicant was issued a Wetlands Permit in August 2001 and was part of a different homeowners association, adding that the current association supported the applicant's Wetlands Permit.

Replying to questions from Commissioner Hart, Ms. Welton confirmed that there were certain portions of land that were outside the tax map area of the subject property, but reiterated that the adjacent property to the south of the site was not part of this proposal.

William Mayland, ZED, DPZ, said that while staff preferred that the adjacent property to the south be included in the proposal, he indicated that this neighboring property could not be included because of the time constraints. He added that staff had made an effort to maintain the necessary timetable for the applicant to resolve the existing violation on the site. In addition, he stated that if the proposal were denied, then the applicant would have to coordinate with the courts or amend the proposal to resolve the violation.

In reply to questions from Commissioner Lawrence, Mr. Mayland said if the proposal were approved, then the applicant would still be required to obtain additional permits, such as Water Quality Impact and Research Protection permits. In addition, he pointed out that the development conditions in Appendix 1 of the staff report articulated the necessary actions that the applicant must implement if the proposal were approved. Mr. Mayland then explained staff's rationale for recommending denial, saying that they had determined that the applicant had not sufficiently addressed their concerns regarding the stability of the slope. A discussion ensued between Commissioner Lawrence and Mr. Mayland regarding the implications for potential disagreements between decisions by the Planning Commission and the court wherein Mr. Mayland noted that despite efforts by the applicant to resolve this issue, they were unable to do so within the time frame stipulated by the court.

Mr. Hickman addressed Commissioner Hart's concern regarding the deadlines for addressing this issue, explaining that a contractor that had been hired did not obtain the necessary permits when constructing an improvement on the subject property. He then said that this oversight led to the existing violation on the site and the applicant had been cooperating with staff to resolve this violation. Mr. Hickman indicated that the applicant did not object to the deadlines specified by the court or the fines for not meeting these deadlines, adding that the applicant was committed to obtaining the necessary permits. He added that by approving the subject application, the Planning Commission would not violate the decision rendered by the court. In addition, he noted that the deadlines stipulated by the court had been issued prior to the commencement of fines. Mr. Hickman echoed Ms. Duca's remarks regarding the applicant's coordination with staff and the County Attorney to adjust the deadlines, adding that there had been difficulties in processing the subject application. He pointed out that the applicant had submitted applications for permits pertaining to Water Quality Impact and Resource Protection Areas (RPA) by the date prescribed by staff. He also indicated that staff's recommendation for denial was contingent on the slope stability of a certain portion of land. Mr. Hickman then explained that an assessment conducted by the GRB had determined that most of the property had a Factor of Safety (FS) of 1.25 or above, but a small portion of the property had an FS of 1.1. He stated that while the GRB recommended an FS of 1.25, the Public Facilities Manual (PFM) requirement for slope stability was an FS of 1.1. In addition, he noted that this small portion of land was undisturbed and stable. He also indicated that it would cost the applicant approximately \$100,000 to increase the slope stability on this small portion of land from an FS of 1.1 to 1.25. Referring to page 15 of the staff report, which indicated that an FS of 1.25 was a requirement, Mr. Hickman pointed out that this requirement pertained to disturbed area whereas the area in question was undisturbed. He then stated that the GRB would not support the application because the applicant would not commit to increasing the slope stability from an FS of 1.1 to 1.25, as recommended. He added that this issue was the only point of disagreement between the applicant and staff. Mr. Hickman addressed Commissioner Lawrence's remarks regarding the effects of approving the subject application, stating that this application was part of a larger ongoing process. He also echoed staff's remarks about the development conditions, which required the applicant to submit an application for a Water Quality Impact permit and an RPA approval.

Responding to questions from Commissioner Flanagan, Mr. Hickman said that he was aware of staff's recommendation for denial during the course of his discussions with staff and the County Attorney. He also indicated that the applicant intended to proceed with the necessary processes to resolve the existing violation.

Commissioner Flanagan commended staff for clarifying that the developments along the Potomac River fell under the County's jurisdiction.

Commissioner Flanagan said that he concurred with Commissioner Hart's concerns regarding the proposal's encroachment onto the adjacent property south of the site. Mr. Hickman said that the applicant had met with the homeowners association for the adjacent property and they did not object to the proposal or the improvements that had already been made on the property, adding that an affidavit had been submitted to that effect. When Commissioner Flanagan asked staff if they had received this affidavit, Ms. Duca confirmed that the applicant had submitted this document to them, but it was not included in the staff report. Mr. Mayland added that the

homeowner association for the adjacent property was not part of the subject application and was not included on the affidavit for the subject application.

Commissioner Hurley asked staff whether Mr. Hickman's statement about the recommendation from the GRB, that the applicant increase the slope stability to an FS of 1.25, was accurate. Kanthan Siva, Site Development and Inspection Division, Land Development Services, pointed out that the PFM requirement for slope stabilization was not an FS of 1.1, noting that the PFM did not make a specific FS recommendation. He then explained that the commonly recommended FS for a slope throughout the County was 1.25. He also noted that the Building Plan Review Division of the Department of Public Works and Environmental Services stipulated that an FS of 1.25 was required. Mr. Siva added that staff had not been involved in determining the cost of increasing the stability of the slope.

When Commissioner Hurley asked about the circumstances under which staff would recommend approval of the subject application, Mr. Siva indicated that staff would support the proposal if the applicant increased the stability of the slope as recommended by the GRB.

When Commissioner Hart asked about the dimensions of the rip rap on the site, Mr. Hickman confirmed that the existing rip rap was approximately 150 feet in length with approximately 70 feet located off-site.

Commissioner Hart reiterated his concern that the development on the subject property and the stability of the slope affected portions of the adjacent property to the south. He then asked why the owner of the adjacent property was not included in the subject application. Mr. Hickman indicated that the affidavit acknowledged the adjacent property and permitted development on the subject property. A discussion ensued between Commissioner Hart and Mr. Hickman regarding the scope of the advertising for the subject application, the consequences of approving an SE that did not include all affected parcels, and the reason for excluding some portions of the land from the subject application wherein Mr. Hickman indicated that the applicant had been under time constraints.

When Commissioner Hart asked about staff's primary concerns with the subject application, Ms. Duca stated that the issue of slope stability was the primary outstanding issue for the subject application. A discussion ensued between Commissioner Hart and Ms. Duca regarding whether the portions of the site affected by the slope stability extended into the adjacent property to the south wherein Mr. Siva confirmed that a small portion of the slope would extend into this property.

In response to questions from Commissioner Migliaccio, Mr. Hickman clarified that the GRB recommended a slope stabilization FS of 1.25. He then deferred to the applicant's engineer for more information regarding the slope stability and the applicant's position that an FS of 1.1 was sufficient. Kenneth Fraine, Geotech Engineer, Soils and Structure Consulting, stated that the PFM did not specify an FS of 1.1 and only required that the slope be sufficiently safe. He then pointed out an FS of 1.1 was consistent with historical guidelines for undisturbed areas. Mr. Fraine pointed out that it was determined that there were certain areas of the subject property where the slope was disturbed and a FS of 1.25 would be required. He then identified the portions of the site that were undisturbed and noted that analysis of these portions were

determined to exceed an FS of 1.1, which was consistent with accepted guidelines. He also indicated that he did not concur with staff's recommendation that the entire slope on the subject property be improved to an FS of 1.25.

Mr. Mayland pointed out that Mr. Fraine was not listed on the affidavit.

When Commissioner Migliaccio asked whether staff agreed with Mr. Fraine's statement, Mr. Siva stated that staff did not agree. He added that a minimum FS of 1.25 was consistent with the guidelines of the GRB. Mr. Hickman then pointed out that there had been extensive analysis of the subject property that had concluded that the slope was sufficiently stable.

Chairman Murphy called for speakers, but received no response; therefore, he noted that a rebuttal statement was not necessary. He then called for concluding staff remarks from Ms. Duca, who declined.

Chairman Murphy asked about the applicant's intentions if the Board of Supervisors approved or denied the subject application. Mr. Mayland explained that the development conditions outlined the applicant's course of action, but noted that these conditions could be amended.

Ms. Duca indicated that denial of the application would require the Zoning Administrator to make a recommendation to the County Attorney to pursue additional action in court, adding that the court would determine the consequences to the applicant. A discussion between Chairman Murphy and Ms. Duca ensued regarding whether approval or denial of the proposal was preferable wherein Ms. Duca confirmed that approval would require the applicant to comply with the development conditions.

A discussion ensued between Commissioner Lawrence and Mr. Mayland regarding the possibility of dedicating the portions of the slope that were not sufficiently stable to a conservation easement.

Mr. Mayland reiterated that Mr. Fraine was not listed on the affidavit. A discussion ensued between Chairman Murphy and Mr. Hickman wherein Chairman Murphy stated that Mr. Fraine should be added to the affidavit prior to the Board of Supervisors' public hearing for the subject application.

Answering questions from Commissioner Hart, Ms. Duca indicated that if the proposal was denied, then the existing violation on the subject property would remain unresolved and the applicant would be required to resubmit the application. She also said that the applicant would still be subject to the Agreed Final Order. In addition, Ms. Duca stated that a judge could add additional provisions to the Agreed Final Order if the issue returned to the court. She noted that the Agreed Final Order was rendered in December 2012.

Replying to questions from Commissioner Sargeant, Ms. Duca indicated that approval of the subject application would not free the applicant from the obligations prescribed in the Agreed Final Order. She pointed out that the applicant would have to obtain the other approvals listed in the order.

A discussion ensued between Commissioner Sargeant and Ms. Duca regarding the possibility of modifying the development conditions to address staff and the applicant's concerns wherein Ms. Duca pointed out that Development Condition Number 6 would require the applicant to achieve an FS of 1.25 for the entire slope and the applicant would have to achieve this if the subject application were approved, adding that DPWES would also have to approve a Soils Report of the slope.

When Commissioner Sargeant asked whether the standard FS of 1.25 had been utilized in other instances, Mr. Siva confirmed that this standard had been utilized in other areas, noting that certain areas required a greater FS. He also pointed out that these standards had been stipulated in building permit requirements, but noted that they were not articulated in the PFM. A discussion ensued between Commissioner Sargeant and Mr. Siva regarding the possibility of achieving an FS of 1.25 in increments wherein Mr. Siva said that this was possible, but it would not be cost-effective.

In reply to questions from Commissioner Flanagan, Mr. Mayland indicated that deferral of the decision for the subject application would only be beneficial if the applicant were willing to modify the proposal to require an FS of 1.25 for the slope. He also confirmed that the Board of Supervisors' public hearing for the subject application had not yet been scheduled, which would afford the applicant time to modify the application. A discussion ensued between Commissioner Flanagan and Mr. Mayland regarding the effect of the Commission approving the subject application wherein Mr. Mayland reiterated that Development Condition Number 6 required the applicant to achieve an FS of 1.25, but noted that staff did not support including a development condition that the applicant did not support.

Commissioner Hall noted the applicant's desire to develop the subject property, the issues the applicant encountered with contractors, the subsequent violation on the site that led to the Agreed Final Order, and the applicant's unwillingness to spend the necessary funds to achieve an FS of 1.25 for the slope. Mr. Hickman explained that staff had agreed to allow the applicant to submit applications for the necessary permits while the issue regarding the slope was discussed, stating that this caused a substantial delays in addressing the issue and subsequent disagreements. In addition, he noted that staff had asked for additional certifications in later discussions that further complicated the issue.

In response to questions from Commissioner Hall, Ms. Duca reiterated that the primary outstanding issue for the subject application was the stability of the slope, saying that the applicant had not achieved an FS of 1.25. In addition, Mr. Siva indicated that this level of stability was necessary to ensure that the slope would not be eroded. Ms. Duca added that this stability was needed to ensure that the adjacent property would not be adversely affected. A discussion ensued between Commissioner Hall and Mr. Hickman regarding the proximity of the dwelling unit on the property to the shoreline wherein pointed out that the area of the slope in question was undisturbed and the dwelling unit was located approximately 70 feet from the shoreline.

Commissioner Migliaccio said that he was concurred with staff's determination that an FS of 1.25 was required for the slope.

Commissioner Hart explained the rationale for the slope stability requirements, stating that there were concerns regarding erosion in this area and noting the importance of ensuring that waterfront properties were protected against major storms. When he asked staff about the erosion concerns for the site, Ms. Duca stated that the applicant had installed a rip rap to stabilize the slope on the property.

A discussion ensued between Commissioner Hart and Mr. Siva regarding other sites where storms had caused significant damage to the land and efforts to prevent such damage wherein Ms. Welton confirmed that the applicant had been granted permission to install the rip rap and the development on the site was more extensive.

Commissioner Hart said that while he sympathized with the applicant's effort to avoid spending significant funds to stabilize the slope, he supported the provisions recommended by staff. He also indicated that he did not favor deferring the decision for the subject application because it could subject the applicant to additional fines from the court.

There were no further comments or questions from the Commission; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Flanagan for action on this case. (A verbatim excerpt is in the date file.)

//

Commissioner Flanagan MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DENY SE 2013-MV-011.

Commissioner Lawrence seconded the motion which carried by a vote of 8-0-4. Commissioners Hall, Hedetniemi, Murphy, and Sargeant abstained.

//

The meeting was adjourned at 10:45 p.m.
Peter F. Murphy, Chairman
Janet R. Hall, Secretary

Audio and video recordings of this meeting are available at the Planning Commission Office, 12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Jacob Caporaletti

Approved on: September 18, 2014



John W. Cooper, Clerk to the
Fairfax County Planning Commission