MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, FEBRUARY 25, 2015

PRESENT: Peter F. Murphy, Springfield District
Frank A. de la Fe, Hunter Mill District
Julie M. Strandlie, Mason District
James R. Hart, Commissioner At-Large
John C. Ulfelder, Dranesville District
James T. Migliaccio, Lee District
Earl L. Flanagan, Mount Vernon District
Kenneth A. Lawrence, Providence District
John L. Litzenberger, Jr., Sully District
Janyce N. Hedetniemi, Commissioner At-Large

ABSENT: Ellen J. Hurley, Braddock District
Timothy J. Sargeant, Commissioner At-Large

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The meeting was called to order at 8:23 p.m., by Chairman Peter F. Murphy, in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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COMMISSION MATTERS

WITHOUT OBJECTION, CHAIRMAN MURPHY MOVED THAT COMMISSIONER LAWRENCE FILL THE ROLE OF PARLIAMENTARIAN DURING THE ABSENCE OF COMMISSIONER SARGEANT.

The motion carried by a vote of 10-0. Commissioners Hurley and Sargeant were absent from the meeting.

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Commissioner Lawrence thanked the Planning Commission for giving him the opportunity to act as Parliamentarian during Commissioner Sargeant's absence.

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Commissioner Hart announced that the Planning Commission's Environment Committee would meet on Wednesday, March 4, 2015 at 7:00 p.m. in the Board Conference Room of the Fairfax County Government center to discuss either electrical vehicle charging stations or building energy policy.

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Commissioner Litzenberger said that on February 9, 2012, the Planning Commission approved RZ 2011-SU-024/SE 2011-SU-009, Pohanka Stonecroft, LLC, to permit a car dealership that included a wind turbine. He stated that the wind turbine had been installed and was now operational and encouraged the Commission to visit the site.

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FDPA C-448-35-01 – DANA ROBERT TOWNEND (Deferral)

Commissioner Migliaccio: Thank you, Mr. Chairman. Just a second here – okay, I have three deferrals tonight. All three of them, I believe, are related to reaffirmation of an affidavit. The first one is for an FDPA. I MOVE THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING FOR FDPA C-448-35-01 FOR DANA ROBERT TOWNEND TO A DATE CERTAIN OF MARCH 26, 2015.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to defer the public hearing on FDPA C-448-35-01 to a date certain of March 26, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motion carried by a vote of 10-0. Commissioners Hurley and Sargeant were absent from the meeting.)

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SE 2014-LE-035 – HAIMANOT YIDENGITU/HAIMI'S HOME CHILD CARE (Deferral)

Commissioner Migliaccio: Okay. Thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING FOR SE 2014-LE-035 FOR – I will make a mistake on this, but – HAIMANOT YIDENG [sic] HAIMI'S HOME CHILD CARE TO A DATE CERTAIN OF MARCH 19TH, 2015.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of the motion to defer SE 2014-LE-035 to a date certain of March 19th, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motion carried by a vote of 10-0. Commissioners Hurley and Sargeant were absent from the meeting.)

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SE 2014-LE-064 – EYORUSALEM HAILU BEST CHILD CARE (Deferral)

Commissioner Migliaccio: And one last one, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION DEFER THE PUBLIC HEARING FOR SE 2014-LE-064, HAILU BEST CHILD CARE, to a date certain of – oh, sorry, TO AN INDEFINITE DATE.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of the motion to defer the – SE 2014-LE-064 indefinitely, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motion carried by a vote of 10-0. Commissioners Hurley and Sargeant were absent from the meeting.)

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SE 2014-PR-032/2232-P14-4 – VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER (Deferral)

Commissioner Lawrence: Mr. Chairman, I MOVE TO CONTINUE THE DEFERRAL OF THE DECISION ONLY FOR SE 2014-PR-032 TO NEXT WEEK – MARCH 4TH.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion continue the deferral of this application to a date certain of March 4th, say aye.

Commissioners: Aye.

Chairman Murphy: Oppose? Motion carries.

Commissioner Lawrence: Thank you very much.

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(The motion carried by a vote of 10-0. Commissioners Hurley and Sargeant were absent from the meeting.)

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SE 2013-HM-016 – JBG/RESTON EXECUTIVE CENTER (Decision Only)
(The public hearing on this application was held on February 4, 2015.)

Commissioner de la Fe: Thank you very much, Mr. Chairman. Tonight, I have a decision only. We were supposed to have done it last week. However, the weather prevented us from doing it so we will do it now. And we do have – we held a public hearing on SE 2013-HM-016, JBG/Reston Executive Center – to tonight – we had deferred, as I said, to last week. But we're doing it tonight because we didn't meet last week. Could I have a representative of the applicant please step forward, identify yourself for the record, and answer my question.

David Houston, Esquire, Agent's Applicant, Reed Smith, LLP: Sure. For the record, I'm David Houston with Reed Smith on behalf of the applicant.

Commissioner de la Fe: Thank you, Mr. Houston. Do you agree with the development conditions now dated February 18th, 2015 on this case?

Mr. Houston: Yes, we do.

Commissioner de la Fe: Thank you very much. We had – had the public hearing. And, although there were no major – there was no major opposition to this, there were a couple of items that needed to be taken care of and – through tinkering with the development conditions and – Mr. Krasner and the applicant worked very diligently to have it done by last week. But we will do it tonight. And this is a – what I would call – an interim development for the development of this site. Because in the future, I am sure, we will be seeing it again with a major redevelopment under the new Reston Master Plan that was approved recently. But this, I believe, made sure that what is being done here in the interim meets the current needs of the developer and the marketplace without negatively affecting the requirements that we envision in the new Reston Master Plan for this site and – particularly, as far as transportation is concerned – and the crossing of the Dulles Toll Road in – on – in front of this site. We have been assured that nothing that we're doing tonight will interfere with what we assume will happen regarding those transportation needs. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SE 2013-HM-016, SUBJECT TO THE PROPOSED DEVELOPMENT CONDITIONS NOW DATED FEBRUARY 18TH, 2015.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger and Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2013-HM-016, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner de la Fe: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE ADDITIONAL STANDARDS TO ALLOW RETAIL SALES ESTABLISHMENTS, DISPLAY AREA, OR ACCESSORY OFFICE TO OCCUPY 100 PERCENT OF THE GROSS FLOOR AREA OF AN ESTABLISHMENT IN AN I-5 DISTRICT.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion – and Mr. Litzenberger – is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries – Mr. de la Fe.

Commissioner de la Fe: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE ADDITIONAL STANDARDS TO ALLOW OUTDOOR RESTAURANT SEATING IN AN I-5 DISTRICT AS CONDITIONED AND DEPICTED ON THE SE PLAT.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Hart and Mr. Litzenberger. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner de la Fe: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE FRONTAGE IMPROVEMENTS ALONG SUNSET HILLS ROAD IN FAVOR OF THE EXISTING AND PROPOSED CONDITIONS DEPICTED ON THE SE PLAT.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Same seconds. Is there a discussion of the motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner de la Fe: An finally, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE MINIMUM PLANTING AREA REQUIREMENT IN THE PUBLIC FACILITIES MANUAL WIDTH TO PERMIT A WIDTH OF FOUR FEET ALONG TOWN CENTER PARKWAY.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Hart and Mr. Litzenberger. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner de la Fe: Thank you very much, Mr. Chairman. That completes this case and I look forward to seeing these interim improvements, as well as what will come in the future.

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(Each motion carried by a vote of 10-0. Commissioners Hurley and Sargeant were absent from the meeting.)

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RZ 2013-MV-015 – VULCAN CONSTRUCTION MATERIALS, LP AND PCA 1998-MV-032/PCA 1998-MV-033/SEA 81-V-017-02 – FAIRFAX COUNTY WATER AUTHORITY (Decisions Only) (The public hearing on these applications were held on February 12, 2015.)

Commissioner Flanagan: Yes, thank you, Mr. Chairman.

Chairman Murphy: Before you make your presentation – Mr. Flanagan is going to move on a couple items. I was not present for the public hearing. But for the record, I watched every word of it at home on television so I intend to vote. I wouldn't have missed it for the world.

Commissioner Flanagan: Very good. On February 12, we held a public hearing on applications RZ 2013-MV-015 and SEA 81-V-017-02, PCA 1998-MV-032, and PCA 1998-MV-033. They would – they asked to permit the Vulcan Quarry to be enlarged in order to provide the Fairfax County Water Authority with a water reservoir in two stages. Testimony was given, primarily about two Special Exception issues – the quarry blasting limitations and the Occoquan Overlook trail. Tonight I am ready to recommend approval of the rezoning application 2013-MV-015, which will expand the National Resource Overlay District to include the proposed quarry. There was no opposition testimony from the public or from the Commissioners to the rezoning. Our recommendation is needed before the BZA can renew Vulcan's Special Permit, 82-V-091-06, to operate a quarry for the next five years following their public hearing on March 4. Tonight I am also moving the deferral of – the Special Exception 81-V-017-02 to March 18 for two reasons. First, the Occoquan Trail – Overlook Trail issue is still being negotiated and not ready for decision. As of now, it appears a proposed alternate trail will neither be an Occoquan Overlook

trail that overlooks the Occoquan River, nor be more than a trail to nowhere based on land owners' upstream testimony that they are not willing to provide the easements needed unless the trail is built as in the Comprehensive Plan. Second, the Comprehensive Plan includes explicit guidance about mitigation of blasting in order to protect nearby residential buildings from noise and vibration. During the public hearing, testimony from two seismic blasting expert firms recommended changes to blasting limitations and studies of blasting techniques and monitoring that could better address land use conditions that have occurred over the past 40 years. The testimony asserted that the current power measure of a blast isn't the only criterion for effects and in certain circumstances should be accompanied by criteria related to wave energy impacts on structures, as well as the power and pulse. The expert seemed to say that although increasing distance diminishes effects, there are factors that can result in effects being transmitted over long distances. The BZA online minutes indicate there were no prescriptive blasting limitations for the Vulcan Quarry between 1941 and 1959. But in 1959, conditions based upon testimony of blasting experts were added to the Special Permit by the BZA for the first time – that limited any blast to 10,000 pounds of explosives with an average of 6,000 pounds. In 1977, again based on expert testimony, the prescriptive limit on Vulcan blasts was changed by BZA – by the BZA from a limitation of pounds of explosive to seismic monitor readings of 0.4 of peak particle velocity and 130 decibels of air pressure. The expert noted that the limitation was ideal as there were no residential buildings within 1900 feet of the Vulcan quarry – located in 1977. It's been almost 40 years since 1977 and the 0.4 performance prescriptive blast limitation, even though many more – and the imposition of the 0.4 performance prescriptive blast limitation – even though many more existing and planned homes are now less than 1900 feet from the quarry and some are as little as 700 feet. We are told that the BZA will deal with the question of blasting on March 4 and any conditions about mitigation. I'm completely confident they'll do so. That – they have done so in the past when they extended a prior Special Permit while studies recommended by the experts were confirmed and implemented. Since the Comprehensive Plan text allows for blasting, but requires that such blasting protect nearby residential buildings from noise and vibration, I believe the Commission can't proceed until the BZA has completed its review. Then we will know that the application is in harmony with the plan, but not before. Therefore Mr. Chairman, I first move – do I need to have the rezoning – the reaffirm – the conditions reaffirmed?

Chairman Murphy: No. Just on the –

Commissioner Flanagan: Therefore, well okay. Then –

Chairman Murphy: But you're not going to go with the SE.

Commissioner Flanagan: Very good. Then, Mr. Chairman, I FIRST MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THAT THE BOARD OF SUPERVISORS APPROVE RZ 2013-MV-015 FOR VULCAN CONSTRUCTION MATERIALS, LP TO PERMIT AN EXPANSION OF THE NATURAL RESOURCE OVERLAY DISTRICT.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2013-MV-015, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Flanagan: And secondly, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION FURTHER DEFER THE DECISION ONLY FOR SEA 81-V-017-02 AND PCA 1998-MV-032 AND PCA 1998-MV-033 FOR THE FAIRFAX COUNTY WATER AUTHORITY TO A DATE CERTAIN OF MARCH 19, 2015, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. And that's the 19th of March?

Commissioner Flanagan: 19th, yes.

Chairman Murphy: Okay. All those in favor –

Commissioner Flanagan: My understanding is that there's no meeting on the 18th.

Chairman Murphy: Okay, I just want to make sure. All those in favor of the –

Commissioner Lawrence: Discussion?

Chairman Murphy: You have a discussion? I'm sorry, Mr. Lawrence.

Commissioner Lawrence: Thank you, Mr. Chairman. I share Commissioner Flanagan's confidence that the BZA will, in fact, review the criterion for noise and effects. I'm also assured by information that each time in the future this thing is extended, another review will take place. So if the state-of-the-art of judging the effects of blasting changes, as the years go by, it will get caught. It may take a couple of years for it to get caught, but it will get caught – which means that, since this hole is going to be a public facility for us – for all of us – then Fairfax County has a dog in the fight. And I think our dog is well-looked after under the present circumstances. Thank you, Mr. Chairman.

Chairman Murphy: Okay. Further discussion of the motion?

Commissioner de la Fe: No – nope.

Chairman Murphy: Okay. All those in favor of the motion to defer decision only on SEA 81-V-017-02, PCA 1998-MV-032, and PCA 1998-MV-033 to a date certain of March 19th, with the record remaining open for comment, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner de la Fe: Mr. Chairman?

Chairman Murphy: Yes, Mr. de la Fe.

Commissioner de la Fe: Mr. Flanagan, there is a Resource Protection Area Exception related to the RZ. Did you mean to approve that – recommend approval of that, as well as the rezoning? Or – how do you want to handle that?

Commissioner Flanagan: Staff didn't – didn't ask me to do that.

Commissioner de la Fe: According to what we have here, it says, "Staff recommends approval of Resource Protection Area Exception 7589-WRPA-01-1, subject to the proposed-"

William O'Donnell, Zoning Evaluation Division, Department of Planning and Zoning: Yes, you're correct in that. We would – that's related to the Vulcan Construction Materials – related to the Special Permit application ultimately. So we would want it – a recommendation, ultimately – it would be the Board's decision. Typically, when we have a case with an RPA exception, we go to the Planning Commission for their recommendation. And then we would also – the Board – have the final decision on that. That would be the time that the Board would do the – the natural resource rezoning so if you could make that recommendation, that'd be great.

Chairman Murphy: Mr. Flanagan.

Commissioner de la Fe: Mr. Flanagan-

Commissioner Flanagan: I would like to make a recommendation that he just quoted.

Commissioner de la Fe: Mr. Flanagan, DO YOU RECOMMEND APPROVAL OF RESOURCE PROTECTION AREA EXCEPTION 7589-WRPA-01-1, SUBJECT TO THE PROPOSED DEVELOPMENT CONDITIONS DATED OCTOBER 23, 2014 AND CONTAINED IN APPENDIX 8?

Commissioner Flanagan: YES.

Chairman Murphy: Say, "so moved."

Commissioner de la Fe: SO MOVED. Second.

Chairman Murphy: Seconded by Mr. de la Fe. Is there a discussion of the motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries – carried.

Commissioner de la Fe: Thank you.

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(Each motion carried by a vote of 10-0. Commissioners Hurley and Sargeant were absent from the meeting.)

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ORDER OF THE AGENDA

Secretary Hart established the following order of the agenda:

1. PCA 77-D-025 – FAIRFAX COUNTY PARK AUTHORITY
2. SE 2014-MV-055 – NGOC MAI NGUYEN

This order was accepted without objection.

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PCA 77-D-025 – FAIRFAX COUNTY PARK AUTHORITY – Appl. to amend the proffers for RZ 77-D-025. Located on Sugarland Run Stream Valley Park, N. of Wiehle Ave., E. of Cliveden Ct. cul-de-sac, on approx. 14.26 ac. of land zoned R-3. Comp. Plan Rec: Public Park. Tax Map 11-1 ((8)) (4) A. DRANESVILLE DISTRICT. PUBLIC HEARING.

Gayle Hooper, Applicant's Agent, Fairfax County Park Authority (FCPA), reaffirmed the affidavit dated October 22, 2014.

There were no disclosures by Commission members.

Michael Van Atta, 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 PCA 77-D-025.

Ms. Hooper explained that the existing basketball court on the subject property had been installed prior to the establishment of the Chesapeake Bay Ordinance and the associated Resource Protection Area, adding that it was also located within a 100-year floodplain. In addition, she pointed out that there was an existing tot lot located on the site, but noted that this feature had been sufficiently maintained while the basketball court had become blighted. She then stated that the application would permit the removal of the basketball court from the site, adding that its removal would facilitate restoration efforts in the surrounding area.

Chairman Murphy called the first listed speaker and recited the rules for public testimony.

Daniel Flavin, 12262 Cliveden Street, Herndon, said that he was the president of the Dranesville Homeowners Association (DHA) and indicated that his residence was located near the existing basketball court on the subject property. He added that his neighborhood contained 165 residences and some residences were located near the stream valley. Mr. Flavin said that in his discussions with the applicant, it was explained to him that there were insufficient funds to maintain the basketball court. He also noted that the basketball posts had already been removed from the site and the applicant had subsequently contacted the DHA to request the authorization to remove the basketball court. He then explained that he did not respond to the request due to liability concerns and stated that he coordinated with the applicant to clarify this issue. Mr. Flavin indicated that he did not object to the subject application, but he expressed concern regarding the FCPA's procedures for pursuing the proposed modification to the site. In addition, he noted that the DHA had adopted the nearby tot lot and this tot lot not maintained by the FCPA, explaining that the DHA paid for the landscaping and mulching of the area. He also expressed concern that the applicant would remove the tot lot and portions of the nearby trail if it became blighted, saying he favored preserving these features.

When Commissioner Ulfelder asked about additional improvements that the DHA favored for the site, Mr. Flavin stated that the asphalt for the existing trail had deteriorated and was subject to flooding in certain areas. He then indicated that the DHA favored improving this trail.

Commissioner Ulfelder stated that residents in the surrounding community had expressed concern about the state of the subject property. He then said that the proposal would not modify the proffer for the tot lot, adding that removing this feature would require another PCA. A discussion ensued between Commissioner Ulfelder and Mr. Flavin regarding the usage of the trails around the subject property wherein Mr. Flavin noted that the tot lot and the trails were frequently utilized by the residents of his community.

Commissioner Ulfelder recommended that Mr. Flavin coordinate with the applicant to improve the trail.

In response to questions from Commissioner Litzenberger, Mr. Flavin confirmed that the applicant had removed the posts on the basketball court prior to requesting permission to remove the asphalt. He then indicated that the FCPA was responsible for maintaining the basketball court.

Responding to questions from Commissioner Hedetniemi, Mr. Flavin said that he had contacted an individual within the FCPA regarding the maintenance of the tot lot prior to the submission of the subject application. He then explained that when the FCPA indicated that it did not have sufficient funds to maintain the tot lot, the DHA decided to adopt the site. However, Mr. Flavin noted that the DHA did not adopt the basketball court, stating that he had not spoken to the applicant about this feature prior to receiving a letter requesting the removal of the asphalt.

Commissioner Strandlie expressed concern regarding the maintenance of the tot lot, noting that the County required a certain depth for mulch and wood chips on such features. She then asked about the equipment present on the site, whether this equipment was inspected, and whether the DHA had documentation that articulated the responsibilities for maintaining the tot lot. Mr. Flavin explained that the DHA has entered into a standard adoption agreement with the applicant

to assume the maintenance for the tot lot. Commissioner Strandlie then reiterated the importance of ensuring the equipment on the tot lot was inspected to ensure its sufficient safety and suggested that the DHA coordinate with the applicant to delineate the appropriate procedures for inspecting the site.

Commissioner Hart pointed out that the proposal would modify Proffer Number 6, as shown in Appendix 1 of the staff report, to state, "One tot lot/apparatus area shall be provided." He then asked whether the applicant had sufficiently satisfied this proffer because the tot lot was no longer maintained by the applicant and the proffer did not specify the maintenance procedures for this feature. Mr. Van Atta explained that the language of the proffer came from the initial rezoning for the site, which was approved in 1977, and the existing basketball court had been present when the land was dedicated to the FCPA.Commissioner Hart concurred with Commissioner Starndlie's remarks regarding the need for the DHA to coordinate with the applicant to clearly articulate the maintenance responsibilities for the tot lot.

There being no more speakers, Chairman Murphy called for a rebuttal statement from Ms. Hooper, who concurred with Mr. Flavin's comments regarding the insufficient funding for certain features on the subject property. She said she supported pursuing agreements between communities and the FCPA to assist in the maintenance of parkland. She then pointed out that the FCPA was still responsible for the safety of its facilities, even if a community had agreed to maintain a piece of parkland. Ms. Flavin added that certified playground safety inspectors were required to inspect the equipment on an FCPA property.

Commissioner Ulfelder echoed remarks from Mr. Flavin regarding the frequent use of the tot lot on the site. He then asked whether the applicant would coordinate with the DHA to review the current agreements regarding the maintenance of the tot lot on the site and the condition of the trails, Ms. Hooper said that she did not object to meeting with the community to address these issues.

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 Ulfelder for action on this case.

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Chairman Murphy: Public hearing is closed – Mr. Ulfelder.

Commissioner Ulfelder: Well, another simple and straight-forward matter from the Dranesville District.

Chairman Murphy: Watch your woodchips.

Commissioner Ulfelder: Pardon?

Chairman Murphy: Watch your woodchips.

Commissioner Ulfelder: Yeah right. I'm going to go ahead and move to approve this evening. The key here is – even though they apparently backed into it literally, the basketball court is not functional. And I think in the long run it's better that it be – the asphalt be removed and that steps be made to return that small area to its natural state. On the other hand, I think that there are some issues that came up this evening and I know that they will follow through with them with the homeowners association and take a look at that. So therefore, Mr. Chairman, I'M GOING TO MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF PCA 77-D-025, SUBJECT TO PROFFERS DATED JANUARY 13, 2015.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 77-D-025, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

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(The motions carried by a vote of 10-0. Commissioners Hurley and Sargeant were absent from the meeting.)

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SE 2014-MV-055 – NGOC MAI NGUYEN – Appl. under Sects. 6-105, 6-106 and 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 7664 Henry Knox Dr., Lorton, 22079, on approx. 4,629 sq. ft. of land zoned PDH-5. Tax Map 107-2 ((4)) (A1) 22. MOUNT VERNON DISTRICT. PUBLIC HEARING.

Ngoc Mai Nguyen, Applicant/Title Owner, reaffirmed the affidavit dated February 19, 2015.

There were no disclosures by Commission members.

Carmen Bishop, 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 approval of application SE 2014-MV-055.

When Commissioner Flanagan asked whether the applicant was aware of the statement on page 5 of the staff report, which stated that staff had concluded that the subject application did not interfere with any covenants, Ms. Bishop indicated that staff had discussed this issue with the applicant.

Replying to questions from Commissioner Hedetniemi, Ms. Bishop said that the backyard deck was approximately 42 inches above ground, which was consistent with the requirements of the Zoning Ordinance and County building codes. She also stated that the outdoor play area in the front-yard was located near the front door of the dwelling unit and was screened from the road by shrubs. In addition, Ms. Bishop said that children playing in this area would be supervised to ensure their safety, adding that there was a photograph of this area in Appendix 2 of the staff report. A discussion ensued between Commissioner Flanagan and Ms. Bishop regarding the screening for this play area wherein Ms. Bishop confirmed that there was no fence around the front yard play area on the property and the applicant utilized shrubs to screen the area, adding that the area was not located in close proximity to the road.

When Commissioner Lawrence asked whether the applicant would hold events where groups of children would show up simultaneously at the site, Ms. Bishop indicated that no such events were discussed with the applicant.

Commissioner Strandlie pointed out that it was uncommon for a homeowners association to permit a home child care center to use a community play area. She then asked about the applicant's usage of this play area. Ms. Bishop explained that the play area was owned by the homeowners association and the applicant was required to transport the children attending the home child care center to this area. A discussion ensued between Commissioner Strandlie and Ms. Bishop, with input from William Mayland, ZED, DPZ, regarding the homeowner associations' willingness to permit the applicant to utilize the play area wherein Ms. Bishop said that the homeowners association did not object to the applicant's usage of the area, but noted that this position could change and the applicant would subsequently be required to utilize another play area, such as a public park.

Referring to the memorandum in Appendix 4 of the staff report regarding the inspection of the home child care center on the site, Commissioner Ulfelder pointed out that the Senior Zoning Inspector that inspected the sight had not checked the box stating that this area provided two means of exit. He also stated that Development Condition Number 12 in the revised set dated February 20, 2015 required that the applicant comply with the Virginia Uniform Statewide Building Code, which included two means of egress from a sleep area. He then asked staff whether the sleep area for the proposed home child care center was acceptable. Ms. Bishop indicated that this sleep area was sufficiently open to meet the necessary requirements for a sleep area and the Senior Zoning Inspector had not checked the box in the memorandum because he determined that its condition was acceptable. (A copy of the revised development conditions is in the staff report.)

Commissioner Hart expressed concern about the length of the driveway at the home child care, citing other residential developments in P-Districts that utilized shorter driveways. However, he indicated that the length of the driveway for the facility on the subject property would be sufficient, adding that larger vehicles could cause issues at other properties. A discussion ensued between Commissioner Hart and Ms. Bishop regarding the size of the driveway on the subject property and the vehicles it could accommodate wherein Ms. Bishop referred to a photograph of the driveway on the site in Appendix 2 of the staff report, which showed that the driveway could accommodate two vehicles.

A discussion ensued between Commissioner Flanagan and Ms. Bishop regarding Development Condition Number 6, which permitted two non-resident employees at the proposed home child care center, and whether this violated the covenants of the surrounding community.

Ms. Nguyen stated that she had been operating a home child care facility on the site since August of 2010. She also indicated that she had obtained a Special Permit from the County and was licensed by the State of Virginia to care for a maximum of 12 children. In addition, she said that her home child care facility had the support of the surrounding community, noting that letters of support had been submitted from parents of children who attended the facility. Ms. Nguyen stated that she would coordinate with staff and her community to address their concerns and would meet the necessary requirements prescribed by the County. She then indicated that she had contacted the residents in her surrounding neighborhood and noted that no objections to the proposal were expressed, adding that the home child care facility had no outstanding complaints. Ms. Nguyen said that the home child care facility's impact on traffic and noise would be minimal, adding that she would continue to coordinate with the County and the community to address their concerns. She then commended staff and her community for their assistance during the application process. (Copies of the letters of support are in the date file.)

When Commissioner Hedetniemi reiterated her concerns about the safety of the children utilizing the front yard play area, Ms. Nguyen stated that the children were supervised by her and an assistant while this area was being used.

Answering questions from Commissioner Flanagan, Ms. Nguyen said that her home child care center had been in operation since 2010. She then explained that she had not obtained a Special Exception before its operation began because it was not required, saying that she only obtained a Special Permit from the County and a license from the State of Virginia.
When Commissioner Lawrence reiterated his concerns about large gatherings on the subject property or parents arriving at the same time, Ms. Nguyen explained that her home child care center utilized staggered pick-up/drop-off times to ensure that parents did not arrive at the same time. She then indicated that parents were required to inform her if their assigned times changed. In addition, she stated that her home child care center did not organize large gatherings or events and only child care services would be provided on the site.

Replying to questions from Commissioner Hart, Ms. Nguyen indicated that the front yard play area accommodated a maximum of six children and noted that two adults would be present to supervise the children while this area was in use. She also pointed out that this play area was lined with shrubs to screen it from street, adding that she also placed large planters around the area to supplement the screening. In addition, she said that the children who utilized the front play area were approximately two to three years of age.

Chairman Murphy called the first listed speaker.

Susan Fermit, 7650 Grayson Mill Lane, Lorton, representing Lorton Station Community Association (LSCA), expressed concern about the applicant's usage of the community playground, noting that this area was approximately one-half mile from the site. She then stated that the LSCA had not ruled on whether the children attending home child care centers were permitted to use this facility, noting that this playground was reserved for homeowners and their

guests. Ms. Fermit explained that staff had requested that the LSCA coordinate with its insurance company to determine whether this playground could be utilized by children from a home child care center, saying that LSCA's insurance company had prescribed a narrow range of uses for this area for liability reasons. She added that if the LSCA ruled that such a use was prohibited, then every homeowner in the community, including the applicant, would be informed of this policy.

When Chairman Murphy asked whether the LSCA had gotten a response from its insurance company regarding the usage of the community playground, Ms. Fermit said it had inquired to the company, but had not received a response.

Continuing her testimony, Ms. Fermit said the roads and recreation facilities within the community were privately maintained and LSCA's concerns regarding the usage of community features pertained to legal liability. In addition, she indicated that there was limited parking availability within the community and a pass was required to utilize on-street parking. Ms. Fermit pointed out that a letter supporting the subject application from the LSCA had been included in the staff report in Appendix 2. However, she pointed out that the LSCA had not been aware that the home child care center would require a Special Exception and clarified that LSCA did not have a position on the subject application. In addition, Ms. Fermit said that there was significant traffic congestion when exiting the community. She also explained that the LSCA did not contain explicit provisions on home-based businesses like child care centers or non-resident employees, stating that the LSCA supported uses that complied with County guidelines.

Commissioner Migliaccio asked whether the LSCA had received any complaints from residents regarding excessive usage of the community playground. Ms. Fermit indicated that the LSCA had received no such complaints.

A discussion ensued between Commissioner Lawrence and Ms. Fermit regarding the extent to which the applicant's staggered pick-up/drop-off times for the home child care facility addressed the LSCA's concerns on parking within the community wherein Ms. Fermit expressed concern about the parking accommodations for the two non-resident employees, noting that residents did not have a designated spot along the street.

Replying to questions from Commissioner Flanagan, Ms. Fermit indicated that the LSCA did not have any prohibitions on home-based businesses and the policies of the association were articulated in covenants. She then reiterated that her concern regarding the usage of the community playground by children attending the applicant's home child care center pertained to potential liability issues. Mr. Fermit said that the LSCA could adopt a policy prohibiting the use of the playground by children attending home child care centers, adding that each homeowner in the community would be subsequently informed.

Commissioner Hart asked whether staff's recommendation was contingent on the availability of a visitor's parking space. Ms. Bishop explained that the applicant had informed staff that one of the non-resident assistants utilized a visitor's parking pass. A discussion ensued between Commissioner Hart and Ms. Bishop regarding the availability of visitor parking for non-resident assistants on the site wherein Ms. Bishop pointed out that the applicant had not indicated that parking for non-resident assistants was an issue.

Chairman Murphy called for speakers from the audience.

Charity Fisher, 2209 Jib Lane, Woodbridge, spoke in support of the proposal. She stated that two of her children attended the applicant's home child care center. She then addressed concerns regarding the parking at the site, stating that the staggered drop-off/pick-up procedure ensured that parents could park in the driveway when dropping off their children. Ms. Fisher explained that parents were required to utilize the driveway and this procedure was articulated to the parents upon enrollment, adding that parents had to give the applicant prior notice if they arrived late and were not permitted to park on the street. In addition, she said that parents were required to park in the driveway fully to ensure that the sidewalks and streets remained clear. Ms. Fisher commended the applicant for the service provided by the home child care center on the site. She also addressed concerns regarding the safety of the children utilizing the front yard play area, stating that this area was sufficiently screened. In addition, she indicated that the community supported the proposal.

A discussion ensued between Commissioner Flanagan and Ms. Fisher regarding the route she utilized to access the subject property and the availability of the driveway wherein Ms. Fisher noted the effectiveness of the applicant's staggered pick-up/drop-off policies and indicated that the driveway could accommodate two vehicles.

David Kyle, 7671 Henry Knox Drive, Lorton, voiced support for the subject application. He said his residence was located across from the subject property and commended the applicant for her service. He then stated that her home child care center did not generate a significant traffic impact and noted the effectiveness of the applicant's staggered pick-up/drop-off policy.

There being no more speakers, Chairman Murphy called for a rebuttal statement from Ms. Nguyen, who declined.

Referring to Ms. Fermit's testimony regarding the LSCA's concerns regarding potential liability issues for permitting children from the home child care center to use the community playground, Commissioner Flanagan asked if there was an alternate recreation area for the applicant to utilize. Ms. Nguyen stated that if her home child care center could not utilize the community playground, then she would utilize a public park.

Commissioner Migliaccio said that there had been instances in Lee District where home child care centers did not have insurance. When he asked whether the applicant had liability insurance, Ms. Nguyen indicated that her home child care center was sufficiently insured.

Commissioner Flanagan announced his intent to defer the decision only for this application at the conclusion of the public hearing.

Chairman Murphy called for concluding staff remarks from Ms. Bishop, who declined. Answering questions from Commissioner Flanagan, Ms. Bishop and Mr. Mayland explained the following:

- The applicant's drop-off/pick-up schedule was not articulated in the development conditions to permit sufficient flexibility to modify that schedule as needed and staff did not typically require that this schedule be included in the development conditions;

- The applicant's current drop-off/pick-up schedule for the home child care center on the site was determined to be sufficient by staff;

- The applicant employed one non-residential assistant that utilized a visitor's pass to park in the visitor parking areas in the community and the other non-residential assistant did not utilize a vehicle to access the site;

- The applicant was not required to provide sufficient parking for both non-resident assistants if one of the non-resident assistants did not utilize a vehicle;

- The parents of the children utilizing the home child care center were required to utilize the driveway for pick-up/drop-off, as articulated in Development Condition Number 8;

- The applicant was responsible for keeping the driveway clear to accommodate for pick-up/drop-off and for determining how another non-resident employee would park if they utilized a vehicle;

- The development conditions did not contain any provisions requiring the applicant to install additional screening around the front yard play area and provisions pertaining to the operation of the home child care center was beyond the purview of the subject application; and

- The State of Virginia required certain home child care centers to install fences around play areas but the Zoning Ordinance did not contain any guidelines pertaining to outdoor play areas for such facilities, adding that the County deferred to state guidelines for addressing this issue.

A discussion between Commissioner Hedetniemi and Ms. Bishop ensued regarding the LSCA's policy on the installation of fences in the front yard of residences wherein Commissioner Hedetniemi commended the applicant's efforts to screen the front yard play area from the street.

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.

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Chairman Murphy: Public hearing is closed – Mr. Flanagan.

Commissioner Flanagan: Thank you, Mr. Chairman. I MOVE TO DEFER THE DECISION ONLY FOR SE 2014-MV-055 TO A DATE CERTAIN OF MARCH 12, 2015, WITH THE RECORD REMAINING OPEN FOR WRITTEN TESTIMONY.

Commissioner Lawrence: Second.

Chairman Murphy: Second by Mr. – Mr. Lawrence. Is there a discussion of the motion? All those in favor of the motion to defer decision on SE 2014-MV-055 to a date certain of what?

Commissioner Flanagan: That was-

Commissioner Hart: 12th.

Chairman Murphy: March 12th with the record remaining open for comment, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motion carried by a vote of 10-0. Commissioners Hurley and Sargeant were absent from the meeting.)

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The meeting was adjourned at 9:57 p.m.
Peter F. Murphy, Chairman
James R. Hart, 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 17, 2015

John W. Cooper,
Clerk,
Fairfax County Planning Commission