MINUTES OF
PLANNING COMMISSION MEETING
MARCH 11, 1992

PRESENT: Lawrence C. Baldwin, Commissioner At-Large
David P. Bobzien, Centreville District
John R. Byers, Mount Vernon District
Patrick M. Hanlon, Providence District
Suzanne F. Harsel, Annandale District
Stephen J. Hubbard, Dranesville District
Maya A. Huber, Commissioner At-Large
Ronald W. Koch, Sully District
Peter F. Murphy, Jr., Springfield District
Henry E. Strickland, Mason District

ABSENT: Carl L. Sell, Jr., Lee District
Alvin L. Thomas, Commissioner At-Large

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The meeting was called to order at 7:36 p.m. by Chairman Peter F. Murphy, Jr.

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COMMISSION MATTERS

Commissioner Bobzien announced that there would be additional meetings of the Route 28 Task Force as follows:

1) Saturday, March 21, 1992, from 9:30 a.m. to 4:00 p.m.
at the Westfields Conference Center, and

2) Saturday, April 4, 1992, from 9:30 a.m. to 4:00 p.m.
at the GTE Commons Building.

He added that both meetings would be open to the public and that interested parties could contact the Office of Comprehensive Planning at 246-1210 for further information.

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Commissioner Bobzien also announced that there would be a meeting of the Ad Hoc Committee on the Zoning Ordinance Amendment concerning Commercial and Industrial Districts at 7:30 p.m. on Monday, March 16, 1992 in the Board Conference Room.

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Commissioner Murphy announced his intention to defer the public hearing of SE-91-S-045, DLKR Incorporated, from March 12, 1992 to May 27, 1992.

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ORDER OF THE AGENDA ITEMS

Chairman Murphy noted that there was only one item on tonight's agenda, the Zoning Ordinance Amendment concerning commercial and industrial districts.

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ZONING ORDINANCE AMENDMENT (Commercial & Industrial Districts)

Amend Articles 4, 5, & 9 regarding the commercial and industrial districts as follows:

– In the C-3 & C-4 Districts, to delete hotels, motels as a special exception use.

– In the C-5, C-6, C-7, & C-8 Districts, to revise the limitations on office to allow office as a permitted use without percentage limitation or to allow a specified percentage of the permitted FAR in the district to be used as office by right or with a specified increase in the percentage office allowed by special exception.

– In the C-5, C-6, C-7, & C-8 Districts, to revise the provisions which specify the maximum bulk or intensity of development, as measured by FAR, that is allowed in the district. As set forth below, district FARs may be adjusted to allow all or any portion of the FAR shown in the range for each district to occur by right or to allow all or any portion of the range above the base number to occur by special exception, or to increase the allowable FAR to a specified amount in the range to occur by right with all, a portion, or none of the remaining FAR in the range to be allowed by special exception. In each district, the existing Zoning Ordinance permits, by right, the FAR that is listed first in the range.

  C-5 District 0.25 to 0.50 FAR
  C-6 District 0.35 to 0.70 FAR
  C-7 District 0.50 to 1.0 FAR
  C-8 District 0.35 to 0.70 FAR

– In the C-7 District, to allow a maximum building height of 90 feet by right.

– In the I-1, I-2, I-3, & I-4 Districts, to revise the Purpose & Intent sections to reflect, among other things, office as a permitted principal use.

– In the I-1, I-2, I-3, I-4, I-5, & I-6 Districts, to revise the uses as follows:

I-1 & I-2 Districts, to modify the permitted use of establishments for scientific research, development & training to allow incidental manufacturing, production, etc., & to allow office as a principal use by right, rather than by special exception.

I-3 District, to allow industrial/flex & office as principal uses by right, rather than by special exception.

I-4 District, to delete industrial/flex as a permitted use, & to allow office as a principal use by right, rather than by special exception.

I-5 District, to allow establishments for scientific research, development & training & office as principal uses by right, rather than by special exception.

I-6 District, to add establishments for scientific research, development & training as a permitted use, & to allow office as a principal use by right, rather than by special exception.

– In the I-3, I-4, I-5, & I-6 Districts, to revise the provisions which specify the maximum bulk or intensity of development, as measured by FAR, that is allowed in the district. As set forth below, district FARs may be adjusted to allow all or any portion of the FAR shown in the range for each district to occur by right or to allow all or any portion of the range above the base number to occur by special exception, or to increase the allowable FAR to a specified amount in the range to occur by right with all, a portion, or none of the remaining FAR in the range to be allowed by special exception. In each district, the existing Zoning Ordinance permits, by right, the FAR that is listed first in the range.

I-3 District 0.30 to 0.50 FAR
I-4 District 0.50 to 0.70 FAR
I-5 District 0.50 to 1.0 FAR
I-6 District 0.50 to 1.0 FAR

Amend Articles 4, 7, 8, 9, & 12 to establish a new C-9 Super-Regional Zoning District.

Amend Article 15, Nonconformities, Sect. 15-103 to delete Paragraph 6E regarding a nonconforming building or use in the C-5, C-6, C-7 or C-8 District.

Amend Article 17, Site Plans, Sect. 17-109 to delete the exemption for site plans solely grandfathered from Zoning Ordinance Amendment Number 89-185 by Paragraphs 2 & 3 of the grandfather provision for Zoning Ordinance Amendment Number 89-185.

Amend Article 20, Part 3 Definitions, to add a new definition of Super-Regional Shopping Center; to delete the definitions of Establishment for Scientific Research, Development & Training & Industrial/Flex; & to revise the definitions of Floor Area, Gross, Hotel, Motel, & Office.

Amend Article 1, Part 4, Conflicting Ordinances, to qualify the second paragraph such that it is only applicable to amendments which are a comprehensive implementation of a new or substantially revised zoning ordinance.

Consideration will be given to revising the grandfather provision for Zoning Ordinance Amendment Number 89-185 to, among other things, grandfather all proffered rezonings & special permits & special exceptions approved prior to December 12, 1989, & all site plans filed prior to December 12, 1989 & to adopting a grandfather provision for this amendment.

Consideration will also be given to the repeal of the amendment to the Zoning Ordinance enacted on December 11, 1989, which became Zoning Ordinance Amendment Number 89-185, and the reenactment of the Zoning Ordinance provisions existing prior to the amendment. PUBLIC HEARING.

Mr. James Zook, Director of the Office of Comprehensive Planning, presented background information concerning this Zoning Ordinance Amendment regarding Commercial and Industrial Districts. He briefly outlined the three alternatives listed in the staff report as follows:

1) a modified version of the amendment, representing approximately an 80 percent lessening of intensity;

2) a repeal of the previous amendment; and

3) the Amicus proposal.

(A copy of the staff report, with details of all three alternatives, is in the date file.)

Mr. Zook responded to questions from Commissioners Strickland, Huber, Harsel, Bobzien, and Byers concerning the three alternatives. In reply to a question from Commissioner Harsel, Mr. Zook stated that staff was not making a recommendation on this amendment.

Chairman Murphy noted that tonight's public hearing would be continued on Wednesday, March 18, 1992 at 7:30 p.m. He reviewed the procedures for speakers and called the first name on the speakers list.

Mr. James Cleveland, representing Reston Land Company, said that repeal of the previous Zoning Ordinance Amendment was absolutely necessary. (A copy of his statement is in the date file.)

Mr. Cleveland responded to questions from Commissioner Strickland regarding the economic situation in the building industry in Fairfax County.

Dr. James Gates, representing the National Council of Teachers of Mathematics, spoke about the problems that the Council had had in expanding their headquarters. (A copy of Dr. Gates' statement is in the date file.)

Dr. Gates responded to questions from Commissioner Harsel regarding the necessity for a special exception application.

Ms. Vivian Lyons, representing the Great Falls Citizens Association, spoke in support of the original amendment. She said that the economic problems in the building industry were not caused by the amendment. Ms. Lyons stated that the Association was not opposed to growth in general, but wanted to see growth planned in a proper manner.

Ms. Barbara Coen, of 11698 Fox Glen Drive, Oakton, spoke in support of the original amendment. (A copy of her statement is in the date file.)

Ms. Sally Ormsby, representing the Citizens Committee on Land Use and Transportation, supported Alternative 3, the Amicus proposal, with revisions. (A copy of her statement is in the date file.)

Ms. Ormsby responded to questions from Commissioner Hanlon regarding appropriate treatment for the landowners who were party to the suits filed against Fairfax County in this matter. Ms. Ormsby maintained that proffers were needed and that she was not suggesting unproffered rezonings.

Mr. Robert Kelly, representing the Fairfax County Chamber of Commerce, felt that it was important for the County to send a strong statement to businesses that Fairfax County supported business enterprises. He added that the Chamber supported repeal of the 1989 ZOA. (A copy of Mr. Kelly's statement is in the date file.)

Mr. Kelly and Commissioner Hanlon discussed the Route 28 tax district and property values in Loudoun County. Commissioner Hanlon expressed the view that the 1989 amendments were perceived as an anti-business message only by the business community itself.

Commissioner Huber commented that there were problems in the building industry prior to approval of the 1989 amendments.

Commissioner Baldwin commented on the number of vacant office buildings. In response to a question from Commissioner Baldwin, Mr. Kelly said that repeal of the 1989 amendments could contribute to an economic upturn.

Commissioner Strickland also commented on the number of vacant office buildings. Mr. Kelly concurred with Commissioner Strickland's statement that the first order of business was to fill the vacant offices before building new ones.

Ms. Brigitte Laffitte-Smith, representing the Chantilly Coalition for Planned Growth, suggested that the previously approved amendments be retained and that the Commission consider the proposal for a new C-9 District. (A copy of Ms. Laffitte-Smith's statement is in the date file.)

In response to an inquiry from Commissioner Harsel concerning the statistics on page 2 of Ms. Laffitte-Smith's statement, Mr. Zook said he would have to do further calculations before he could agree or disagree with the statistics presented.

Commissioner Hanlon commented on development in the Route 28 tax district.

Commissioner Hubbard pointed out that there were inconsistencies in the current proposal for a new C-9 District.

Ms. Mary Dunn, representing Citizens for Balanced Growth, urged retention of the 1989 amendments. She suggested that separate public hearings be held on the proposal for a new C-9 District. (A copy of Ms. Dunn's statement is in the date file.)

Ms. Jean Packard, of 4058 Elizabeth Lane, Fairfax, urged preservation of the previous ZOA and the Comprehensive Plan.

Ms. Merrily Pierce, of 1062 Carper Street, McLean, supported retention of the original ZOA or the Amicus alternative (Alternative 3). (A copy of Ms. Pierce's statement is in the date file.)

Ms. Rena Tidwell, representing Homeowners Against Neighborhood Destruction (HAND), spoke in support of the original amendments. (A copy of Ms. Tidwell's statement is in the date file.)

Commissioner Byers commented to Ms. Tidwell that the price of freedom was eternal vigilance. He stated that, unfortunately, citizens involved in land use planning were called upon to come back again and again to support the Comprehensive Plan and protect their communities.

Carson Lee Fifer, Jr., Esquire, of McGuire, Woods, Battle and Boothe, spoke about the status of the pending law suits, noting that at present there was no schedule for hearings on the merits of the suits. He added that there still were damage claims outstanding. Mr. Fifer supported Alternative 1, which he said was shaped by three basic concepts: fairness, stability, and value. He elaborated upon these three concepts and briefly discussed the proposed C-9 District.

Commissioner Hanlon and Mr. Fifer discussed the special exception procedures necessary to obtain office use in commercial districts.

In response to a question from Commissioner Byers, Mr. Fifer stated that Alternatives 1 and 2 had many authors.

In response to Mr. Fifer's comment that the special exception process was lengthy and expensive, Commissioner Huber pointed out that litigation was even more time consuming and expensive.

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The Commission went into recess at 9:50 p.m. and reconvened in the Board Room at 10:10 p.m.

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Edward Byrne, Esquire, of McGuire, Woods, Battle and Boothe, exhibited a map showing commercial and industrial districts in Fairfax County. He maintained that most of those districts were established prior to 1989. Mr. Byrne said that repeal of the 1989 amendments would not result in office sprawl that was contrary to the Comprehensive Plan. He added that the Plan reflected the appropriateness of office uses in many areas.

Mr. Byrne responded to questions from Commissioner Hanlon regarding the result of repealing the 1989 amendments. They also discussed Alternative l.

In response to questions from Commissioner Harsel, Hr. Byrne said he represented the landowners' steering committee which included representatives from the litigation steering committee and business leaders. He pointed out three major industrially planned and zoned areas in Fairfax County, excluding the Dulles and Tysons areas which he noted were presently the subject of special studies.

In response to questions from Commissioner Harsel, Ms. Jane Gwinn, Zoning Administrator, said that industrial zones had been in existence in Fairfax County since the first Zoning Ordinance was created in 1941. She added that it was her belief that the rural and non-rural zoned designations were eliminated in 1959.

Commissioner Baldwin and Mr. Byrne discussed the major industrial areas in Fairfax County.

In response to a question from Commissioner Strickland, Mr. Byrne replied that he couldn't say for sure that repeal of the 1989 amendments would favorably affect the office vacancy rate in the County.

Mr. Ray Pelletier, representing the Fairfax County Federation of Citizens Association, supported the original ZOA and opposed the repeal of that amendment. (A copy of Mr. Pelletier's statement is in the date file.)

Mr. George Smith, of 1327 Portia Place, McLean, spoke about the original goal of balancing growth and transportation needs. He suggested that the Comprehensive Plan should have a section to address financial concerns. He submitted a copy of a resolution passed by the Board of Supervisors (a copy of which is in the date file) concerning the Comprehensive Plan.

Ms. Marsha Stanley, of 3245 History Drive, Oakton, supported the original ZOA and opposed the repeal of that amendment. (A copy of Ms. Stanley's statement is in the date file.)

In response to a question from Commissioner Hanlon, Mr. Zook confirmed that, under Virginia law, failure by the Planning Commission to make a recommendation on this matter was the same as approval. Mr. Zook said that the Commission's recommendation could be that more study was needed before final action was taken.

The next two listed speakers, Ms. Bea Garcia and Ms. Nettie Hervey did not appear when called upon.

Mr. William Lauer, President of the Northern Virginia Building Industry Association (NVBIA), announced that he would be speaking on behalf of himself and Mr. Roger Snyder, the next listed speaker. He supported repeal of the 1989 ZOA which he said contributed to the unprecedented budget deficit and financial crisis now confronting Fairfax County. He spoke about the economic impact of the amendments, noting that the number of jobs in the construction industry had severely declined in the last two years. Mr. Lauer said that if the Commission did not recommend repeal, then Alternative 1 would be a workable course of action. (A copy of Mr. Lauer's statement is in the date file.)

Mr. Lauer responded to questions from Commissioners Hanlon, Huber, Harsel, and Strickland concerning his testimony and the impact of the 1989 ZOA.

Mr. Edward Byrne, representing The Evans Company, supported Alternative 2, repeal of the previous ZOA, or Alternative 1. He added that he did not support Alternative 3. (A copy of Mr. Byrne's statement is in the date file.)

In response to a question from Commissioner Hanlon, Mr. Byrne explained that The Evans Company filed suit shortly after approval of the 1989 ZOA and then investigated the possibility of seeking a special exception or rezoning. He added that it was decided that the climate was not favorable for approval of a special exception or rezoning.

Mr. David Keyes, of 11340 Waples Mill Road, Oakton, spoke about traffic problems in Fairfax County. He supported the original ZOA.

Ms. Winnie Shapiro, representing the League of Women Voters, supported the original ZOA or Alternative 3. She was opposed to Alternative 2. (A copy of Ms. Shapiro's statement is in the date file.)

Jerry Emrich, Esquire, of Walsh, Colucci, Stackhouse, Emrich and Lubeley, noted that he represented a number of litigants in the pending court cases. He added, however, that he was not testifying on their behalf at this time, but simply wanted to make a few general comments. He anticipated that most, if not all, of the litigants would agree to dropping their suits if either Alternative 1 or 2 were to be adopted. Mr. Emrich said it was very important that there be by-right office use in commercial and industrial districts.

Mr. Emrich responded to questions from Commissioners Strickland and Baldwin concerning uses by right in non-residential districts and transportation problems.

Mr. John Callow, of Callow Associates, commented on the current economic situation and spoke in support of higher density land use. (A copy of Mr. Callow's statement is in the date file.)

Mr. Callow responded to questions from Commissioners Hanlon, Harsel, and Strickland concerning concentration of higher densities, transportation improvements and funding for them, and Comprehensive Plan goals.

The next listed speaker, C. Thomas Hicks, did not appear when called upon.

Edward Finnegan, Esquire, of Shaw, Pittman, Potts and Trowbridge, expressed regrets for his partner, Mr. Hicks, who was not able to come to tonight's meeting. Mr. Finnegan spoke on behalf of Intergraft Corporation, owner of 10.78 acres, zoned I-4 and located in Reston. He outlined the land use history of that property and said that a .48 floor area ratio (FAR) was a reasonable expectation for the site. Mr. Finnegan supported adoption of Alternative 1.

Mr. Finnegan responded to questions from Commissioners Huber and Harsel concerning why Intergraft did not seek special exception approval and other land uses in the area, respectively.

In response to questions from Commissioner Strickland, Mr. Finnegan said he was not at liberty to discuss the positions of his other clients on this matter. Commissioner Hanlon concurred with Mr. Finnegan's response which he felt was not only within Mr. Finnegan's right, but within his obligation to his clients as well.

Mr. Steven Cumbie, representing the Northern Virginia Chapter of the National Association of Industrial and Office Parks (NAIOP), said that, while many members of NAIOP supported complete repeal of the 1989 ZOA, in the spirit of compromise, NAIOP was advocating Alternative 1. Mr. Cumbie discussed five issues as justification for support of Alternative 1. (A copy of Mr. Cumbie's statement is in the date file.)

Commissioner Strickland quoted from a document entitled "Office Paper," dated March 1991, and purportedly authored by Mr. Cumbie, as follows: "There was plenty of capital available to developers from financial institutions, most of it highly leveraged. Fairfax County's Zoning Ordinance, by failing to distinguish office space from industrial or retail space, proved a poor blueprint for land use policy." He said that the second sentence could be used as justification for the County's action in the 1989 ZOA. Mr. Cumbie responded that he did not agree with that statement and did not remember making it.

The next listed speaker, Charles Veatch, was not present. Mr. Cumbie explained that Mr. Veatch was also associated with NAIOP and asked that his own remarks be considered as Mr. Veatch's testimony as well.

The next four listed speakers, Patricia Hudson, W. Brad Gable, Suzanne Farr, and David Taylor did not appear when called upon.

Mr. Thomas Hyland, representing the Apartment and Office Building Association (AOBA), explained that he was speaking for the four previous speakers. He supported Alternative 2, repeal of the 1989 ZOA.

Mr. Hyland responded to questions from Commissioners Hubbard, Strickland, and Baldwin concerning Fairfax County's perceived attitude toward business and affordable housing.

Mr. David Stroh, representing Lehndorff-Tysons Joint Venture, owner of the Tysons Corner Center, supported Alternative 2. He also supported creation of the proposed new C-9 District. (A copy of Mr. Stroh's statement is in the date file.)

Mr. Stroh responded to questions from Commissioners Huber, Strickland and Harsel concerning the proposed C-9 District.

Mr. William Byrnes, representing the McLean Citizens Association, spoke in support of the original 1989 ZOA. He said that no change was needed. Mr. Byrnes maintained that the ZOA was not, as implied by some speakers this evening, the cause of the recession in the building industry. He said that the problem occurred because there was too much supply and too little demand. He added that the problem would not be solved by increasing the supply.

Mr. Glenn Stroup, of 13615 Flintwood Place, Herndon, spoke in opposition to repeal of the 1989 ZOA. He supported the expedited rezoning process outlined in Alternative 3. Mr. Stroup urged that, if any other action was taken, the County should first obtain legally binding commitments from all litigants that they would both drop existing suits and forsake future claims based on the same grounds. (A copy of Mr. Stroup's statement is in the date file.)

The next two listed speakers, Katie Bird and Norma or Fred Hoffman, were not present. Chairman Murphy noted therefore that Mr. Stroup was the last speaker for tonight's public hearing. He reminded everyone that the public hearing would continue on Wednesday, March 18, 1992 at 7:30 p.m.

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The meeting was adjourned at 1:06 a.m.
Peter F. Murphy, Jr., Chairman
Suzanne F. Harsel, Secretary

For a verbatim record of this meeting, reference may be made to the audio and video recordings which may be found in the Office of the Planning Commission of Fairfax County, Virginia.

Minutes by: Gloria L. Watkins

Approved on: September 23, 1992

Mary A. Pascoe, Clerk to the
Fairfax County Planning Commission