

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
THURSDAY, MARCH 20, 2003**

PRESENT: Walter L. Alcorn, Commissioner At-Large
Frank A. de la Fe, Hunter Mill District
Joan M. DuBois, Dranesville District
Janet R. Hall, Mason District
Suzanne F. Harsel, Braddock District
Ronald W. Koch, Sully District
Ilyong Moon, Commissioner At-Large
Peter F. Murphy, Jr., Springfield District
Linda Q. Smyth, Providence District

ABSENT: John R. Byers, Mount Vernon District
John B. Kelso, Lee District
Laurie Frost Wilson, Commissioner At-Large

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The meeting was called to order at 8:20 p.m. by Chairman Peter F. Murphy, Jr., in the Board Auditorium of the Fairfax County Government Center at 12000 Government Center Parkway, Fairfax, Virginia 22035.

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COMMISSION MATTERS

Chairman Murphy said he would entertain a motion to go into closed session to discuss proposed amendments to Chapter 101 of the Subdivision Ordinance concerning validation procedures of lots not legally created. Commissioner DuBois SO MOVED.

Commissioner de la Fe seconded the motion which carried unanimously with Commissioners Byers, Kelso and Wilson absent from the meeting.

The closed session was called to order at 8:23 p.m. by Chairman Peter F. Murphy, Jr. and was adjourned at 8:55 p.m.

Following the closed session, Commissioner Harsel CERTIFIED THAT THE PLANNING COMMISSION ONLY DISCUSSED THE PROPOSED AMENDMENTS TO CHAPTER 101 OF THE SUBDIVISION ORDINANCE CONCERNING VALIDATION PROCEDURES FOR LOTS NOT LEGALLY CREATED DURING ITS CLOSED SESSION, AS PROVIDED BY VIRGINIA LAW.

The motion carried unanimously with Commissioners Byers, Kelso and Wilson absent from the meeting.

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Commissioner Alcorn announced that the Environment Committee met with EQAC on Wednesday, March 19, 2003 to discuss the proposed amendments to the Chesapeake Bay Ordinance. He said one more meeting was scheduled for April 2, 2003 at 7:00 p.m. in the Board Conference Room. He noted that the meeting would be open to the public and encouraged everyone to attend. He said the Planning Commission decision on this matter would be scheduled in late April.

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Commissioner Smyth MOVED THAT THE PUBLIC HEARING ON RZ-2002-PR-031, ERNESTO V. AND NILA M. CASTRO, BE DEFERRED TO A DATE CERTAIN OF APRIL 3, 2003.

Commissioner Hall seconded the motion which carried unanimously with Commissioners Byers, Kelso and Wilson absent from the meeting.

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FS-Y02-22 – VERIZON WIRELESS, 15717 Lee Highway
FS-Y01-40 – NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC.,
15717 Lee Highway

Commissioner Koch MOVED THAT THE PLANNING COMMISSION APPROVE FS-Y02-22 AND FS-Y01-40 AND FIND THAT THE LOCATION, CHARACTER AND EXTENT OF THE FACILITIES PROPOSED UNDER BOTH APPLICATIONS ARE SUBSTANTIALLY IN ACCORD WITH THE ADOPTED COMPREHENSIVE PLAN.

Commissioner Hall seconded the motion which passed unanimously with Commissioners Byers, Kelso and Wilson absent from the meeting.

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ORDER OF THE AGENDA

Secretary Harsel established the following order for the agenda items:

1. ZONING ORDINANCE AMENDMENT (SIGN PROVISIONS FOR PLACES OF WORSHIP)
2. ZONING ORDINANCE AMENDMENT (CRD PARKING)
3. RZ-2002-SU-029 - LANDMARK PROPERTY DEVELOPMENT, LLC

ZONING ORDINANCE AMENDMENT
(SIGN PROVISIONS FOR PLACES OF WORSHIP)

March 20, 2003

4. FAIRFAX COUNTY CAPITAL IMPROVEMENT PROGRAM (CIP)
5. SUBDIVISION ORDINANCE (ILLEGAL LOTS)

This order was accepted without objection.

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ZONING ORDINANCE AMENDMENT (SIGN PROVISIONS FOR PLACES OF WORSHIP) - Appl. to amend Chapter 112 of the Zoning Ordinance as follows: Revisions to the sign provisions for places of worship when more than one congregation shares space in the same facility. PUBLIC HEARING.

Ms. Jane Collins, Zoning Administration 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 the application.

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

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Commissioner Moon MOVED THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF THE PROPOSED ZONING ORDINANCE AMENDMENT REGARDING SIGNS FOR PLACES OF WORSHIP, AS ADVERTISED AND SET FORTH IN THE STAFF REPORT DATED FEBRUARY 24, 2003.

Commissioner de la Fe seconded the motion which carried unanimously with Commissioners Byers, Kelso, and Wilson absent from the meeting.

Commissioner Moon FURTHER MOVED THAT THE PROPOSED AMENDMENT BECOME EFFECTIVE AS OF 12:01 A.M. THE DAY FOLLOWING ADOPTION BY THE BOARD OF SUPERVISORS.

Commissioner de la Fe seconded the motion which carried unanimously with Commissioners Byers, Kelso, and Wilson absent from the meeting.

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ZONING ORDINANCE AMENDMENT (CRD PARKING) - Appl. to amend Chapter 112 of the Zoning Ordinance as follows: Revisions

to the off-street parking provisions for non-residential uses within Commercial Revitalization Districts/Areas. PUBLIC HEARING.

Ms. Susan Epstein, Zoning Administration Division (ZAD), 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 the application.

In response to a question from Commissioner Alcorn, Ms. Epstein said that staff would have no objection if the Richmond Highway corridor was excluded from the provisions of this Ordinance.

In response to a question from Commissioner Smyth, Ms. Eileen McLane, ZAD, DPZ, said that the Merrifield commercial revitalization area was not subject to an automatic 20 percent parking reduction because it was an area, not a district.

Chairman Murphy called the listed speaker and recited rules for testimony before the Commission.

Mr. Jack Wilbern, 6718 Whittier Avenue, McLean, Chairman of the McLean Revitalization Corporation, spoke in support of the proposed amendment because it would further the goals of commercial revitalization as set forth in the Comprehensive Plan.

There were no further speakers. The Commissioner had no further comments or questions and staff had no closing remarks, therefore, Chairman Murphy closed the public hearing and recognized Commissioner Alcorn for action on this application. (A verbatim transcript is in the date file.)

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Commissioner Alcorn MOVED THAT THE PLANNING COMMISSION DEFER DECISION ON THIS MATTER UNTIL A DATE CERTAIN OF APRIL 3, 2003.

Commissioner Smyth seconded the motion which carried unanimously with Commissioner Harsel not present for the vote; Commissioners Byers, Kelso, and Wilson absent from the meeting.

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RZ-2002-SU-029 - LANDMARK PROPERTY DEVELOPMENT, LLC - Appl. to rezone from R-1, HC and WS to R-3, HC and WS to permit cluster residential development at a density of 2.76 dwelling units per acre (du/ac). Located in the N.E. quadrant of Chantilly Rd. and Lee Jackson Memorial Hwy. on approx. 2.89 ac. of land. Comp. Plan Rec: 2-3 du/ac. Tax Map 34-4 ((5)) B. SULLY DISTRICT. PUBLIC HEARING.

Mr. John Thillmann, agent for the applicant, reaffirmed the affidavit dated March 3, 2003. There were no disclosures by Commission members.

Ms. Tracy Swagler, 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 the application.

Commissioner Smyth suggested that Proffer Number 9c be revised to state that removal of trees was prohibited except for dead or dying trees.

Mr. Thillmann stated that the subject property was part of a parcel which had been left intact when the surrounding Chantilly Estates subdivision had been developed in 1947, with the expectation that it would be developed commercially. He said a Plan Amendment had been approved in May, 2002 allowing residential development of the property. He explained that the only access to an adjacent gas station was through the subdivision, therefore, the applicant, at considerable expense, had agreed to construct a service drive connecting the gas station to Chantilly Road, although dedication of right-of-way was the only requirement. He said the applicant had proffered to provide a buffered noise wall around the gas station and a sidewalk along the street. He noted that the majority of the neighbors supported the application. He distributed photographs of the area and said the proposed development would be compatible with the neighborhood. (Copies of the photographs are in the date file.) He requested favorable consideration.

Chairman Murphy called for speakers from the audience.

Mr. Sam Conwell, 3924 Chantilly Road, Chantilly, expressed concern about the compatibility of the proposed development with the existing older residential neighborhood.

In response to a question from Commissioner Hall, Mr. Conwell said sidewalks would not be compatible with the existing development, which had no sidewalks.

Mr. Richard Hutchison, 13648 Birch Drive, Chantilly, spoke in support of the application. He said the proposed development benefited Chantilly Estates from both an aesthetic and a safety standpoint.

Responding to a question from Commissioner Koch, Mr. Hutchison said the application allowed for future consolidation of the older neighborhood.

Ms. Elinor Schneider, 3920 Downs Drive, Chantilly, said she generally supported the application, but cited a concern about the depth of the stormwater pond. She also said that the new development might get confused with the existing Chantilly Estates development.

There were no further speakers; therefore, Chairman Murphy called upon Mr. Thillmann for a rebuttal statement.

Addressing the concerns raised by Ms. Schneider, Mr. Thillmann said that the name of the proposed development would be changed from Chantilly Estates to Chantilly Estates II, and that the stormwater pond, which would be dry 90 percent of the time, would be approximately four feet deep. He said that staff was in favor of sidewalks because if consolidation and development of adjacent property occurred, the sidewalks could be extended.

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 Koch for action on this application. (A verbatim excerpt is in the date file.)

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Commissioner Koch MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ-2002-SU-029, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED MARCH 20, 2003.

Commissioner Hall seconded the motion which carried unanimously with Commissioners Byers, Kelso, and Wilson absent from the meeting.

Commissioner Koch FURTHER MOVED THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE MINIMUM DISTRICT SIZE FOR THE R-3 CLUSTER DISTRICT.

Commissioner Hall seconded the motion which carried unanimously with Commissioners Byers, Kelso, and Wilson absent from the meeting.

Commissioner Koch MOVED THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF THE OPEN SPACE PROVISIONS OF PARAGRAPH 4 OF SECTION 2-309 OF THE ZONING ORDINANCE.

Commissioner Hall seconded the motion which carried unanimously with Commissioners Byers, Kelso, and Wilson absent from the meeting.

Commissioner Koch MOVED THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF THE PFM STANDARD 2-0103-2 TO ALLOW MORE THAN 20 PERCENT OF THE LOTS TO BE ON PIPESTEMS.

Commissioner Hall seconded the motion which carried unanimously with Commissioners Byers, Kelso, and Wilson absent from the meeting.

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FAIRFAX COUNTY CAPITAL IMPROVEMENT PROGRAM
(CIP) - A public hearing will be held on the Advertised Capital

Improvement Program, Fiscal Years 2004-2008 (with Future Fiscal Years to 2013.) PUBLIC HEARING.

Ms. Pamela Nee, Planning Division, Department of Planning and Zoning presented the staff summary of the CIP, noting that it included the following program elements: schools, parks, human services, housing development, revitalization, neighborhood improvement, community development, court facilities, public safety, facilities maintenance and management, solid waste, sewer, water, and transportation. She explained that this year's program included 282 County management projects with a five year funded total of 1.7 billion dollars, with the largest elements being schools and transportation. (A copy of the proposed CIP is in the date file.)

Chairman Murphy called the first listed speaker.

Ms. Winifred Shapiro, 10424 Collingham Drive, Fairfax, Chairman, Fairfax County Park Authority Board, requested that consideration be given to increasing the proposed 2004 park bond referendum from the \$50 million shown in the advertised CIP to at least \$75 million over the four-year period to meet the demands for more athletic fields, community park improvements, stream valley protection measures, trail linkages and improvements, equestrian facilities and historic site preservation, and interpretation, and to continue their land acquisition program. She also requested that the requirement to split the recommended \$50 million into \$20 million for land acquisition and \$30 million for development, be removed to allow flexibility in establishing funding categories. (A copy of her remarks is in the date file.)

In response to a question from Commissioner Smyth, Ms. Shapiro said since the Park Authority Board did not know at this time what might be an appropriate division of funds for acquisition and development; they would like the flexibility to be able to make a decision at a later date.

Ms. Nell Hurley, 4502 Olley Lane, Fairfax, requested that the Planning Commission consider ten specific actions concerning the allocation of resources for public schools, as outlined in detail in her remarks. (A copy of her remarks is in the date file.)

Mr. Charles Fegan, 4715 Declaration Court, Annandale, Braddock District member of the Library Board of Trustees, said that it was imperative that the Planning Commission support the library facilities program for two new libraries and the renovation of four others contained in the advertised CIP in order to meet the ever increasing needs of citizens for the vital services provided by libraries.

Ms. Anne Andrews, member of the Mount Vernon Center for Community Mental Health Advisory Board, said the Center, built in the early 1970s, provided critical mental health and emergency services for people in crisis, many of which were mandated by State Code. She said increased usage of the Center had resulted in numerous problems related to the aging of the building, including mold, heating and air conditioning problems, air quality issues, and space limitations. She said renovations and upgrades were critical for the health and safety of staff and clients, and to ensure that the building was in keeping with the revitalization and redevelopment of the Mount Vernon corridor.

Ms. Andrews read into the record a statement of Chris Rosenthal, President of the Advisory Board, supporting the expansion and renovation of the Center. (Note: The letter was not submitted for the date file.)

Mr. Walter Duka, Vice President, Woodburn Foundation, 3340 Woodburn Road, Annandale, urged the Planning Commission to give the highest priority to funding for the renovation of the Center. He said the 30-year old building was dingy, dilapidated and devoid of space needed by clients and staff. He said squirrels and raccoons nested in the attic, a toilet was beyond repair, and the building recently had to be evacuated due to a gas leak in the heating system. He said the Center currently served 6,000 clients with an anticipated increase in the caseload of 10 to 15 percent over the next five years. He invited Commissioners to visit the Center to see firsthand the deteriorating and depressing condition of the building.

Commissioner Harsel, noting that she had visited Woodburn Center, said it was the most depressing place she had ever seen. Mr. Duka added that the only reason the facility was not a total disgrace was due to the efforts of a very dedicated staff who somehow managed to make the best of the existing situation.

There were no further speakers. The Commission had no other comments or questions, and staff had no closing remarks, therefore, Chairman Murphy closed the public hearing and recognized Commission DuBois. Commissioner DuBois noted that markup was scheduled for April 3, 2003 and that the Board of Supervisors would hold public hearings on the CIP and the budget on April 7, 8, and 9, 2003, with markup on April 21, 2003, and adoption of the budget on April 28, 2003.

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The Commission recessed at 10:20 p.m. and reconvened in the Board Auditorium at 10:30 p.m.

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SUBDIVISION ORDINANCE (ILLEGAL LOTS) - Appl to consider amendments to Chapter 101 of the County Code which address issues related to the validation of lots that were not legally created. The proposed amendments would validate all divisions of land that occurred prior to September 1, 1947, and that met all applicable provisions of the Zoning Ordinance in effect at the time the division of land occurred. The proposed amendments would also validate all subdivisions of property undertaken by recordation of a plat approved by the County that complied with all applicable provisions of the Subdivision Ordinance and Zoning Ordinance in effect at the time the plat was recorded even though the lot or parcel being subdivided was not a legally created lot or parcel. The proposed amendments would also allow validation, upon approval of a validation plat and subject to stipulated conditions, of individual parcels that were created in

violation of provisions of the Subdivision Ordinance after August 31, 1947, provided that: a) the parcel met all applicable provisions of the Zoning Ordinance in effect at the time the parcel was created or at the time of validation; and b) the parcel has sufficient frontage on a public street, or obtains a waiver of the street frontage requirement. The proposed amendments would allow validation, upon approval of a validation plat and subject to stipulated conditions, of individual parcels that were created in violation of provisions of the Subdivision Ordinance, provided that on August 14, 1978, and at the time of the request for validation, there is an existing single family home on the parcel, or the County issued a building permit for construction of a single family home on the parcel, the construction was in fact completed, and there is an existing single family home at the time of the request for validation. Parcels created after the effective date of the amendments may not be validated until 2 years after the date the parcel was recorded and then only if the owner(s) have not been notified by the County during that 2-year period that the purported subdivision was illegal. The proposed amendments would become effective on March 11, 2003, at 12:01 a.m. PUBLIC HEARING.

Mr. John Friedman, Department of Public Works and Environmental Services (DPWES), introduced Ms. Michelle Brickner, Director, Office of Site Development Services, DPWES, and John Foster, Esquire, Assistant County Attorney. Mr. Friedman presented the staff report, a copy of which is in the date file. He noted that staff recommended approval of the proposed Subdivision Ordinance Amendment.

Mr. Friedman responded to questions from Commissioner Moon about how a property owner could determine if a lot had been properly subdivided, how long the process would take, the costs involved, and the approximate number of illegal lots in the County.

Mr. Foster responded to a question from Commissioner Moon about the legal ramifications of selling an illegal lot.

In response to a question from Commissioner Moon, Mr. Friedman said he thought that signatures of lenders and trustees would be required on validation plats for lots created after 1947. He said he would research this matter and report back to Commissioner Moon. Commissioner Moon commented that it could be a difficult and time consuming process to obtain signatures of lenders and trustees. Responding to another question from Commissioner Moon, Mr. Friedman said the review process to validate a plat would take 30 days or less, unless they were inundated with requests, in which case it could take longer.

Responding to a question from Commissioner Moon, Mr. Foster said that although the Subdivision Ordinance did not contain an appeal process, the *Code of the County of Fairfax* allowed for reconsideration by the Director of DPWES, which could be appealed to the Fairfax County Circuit Court.

Mr. Friedman responded to questions from Commissioner Smyth and Commissioner Alcorn about buildable lot determinations made between June 1, 2000 and May 31, 2002, as shown in the Attachment to the staff report dated March 10, 2003. He responded to another question from Commissioner Alcorn about grandfathering the validation of lots created before 1947.

Chairman Murphy called for speakers from the audience and reviewed the rules for testimony before the Commission as previously stated.

Mr. Louis Genuario, Jr., Genuario Properties, 8400 Radford Avenue, Alexandria, President, Northern Virginia Building Industry Association (NVBIA), said it was difficult for property owners and business people to understand how their property rights had been forfeited due to non-compliance with the Subdivision Ordinance when their property had been recorded in the County's land records. He pointed out that since 1929 many lots had been subdivided by recording metes and bounds with the Circuit Court and that building permits had been issued for improvements without the owners ever knowing their lots were considered illegal. He said because these lots were shown on County identification maps, building permits issued, and real estate taxes collected, it proved that the County recognized the validity of the lots. On behalf of NVBIA and the Engineers and Surveyors Institute, Mr. Genuario recommended several revisions to the proposed Ordinance, including permitting the Director of DPWES to authorize proposed uses on parcels that were not contrary to the purpose or intent of the Zoning and Subdivision Ordinances, and allowing the Board of Zoning Appeals (BZA) to hear appeals of cases in which an invalid lot determination had been made. (A copy of his presentation is in the date file.)

In response to a question from Commissioner Alcorn, Mr. Foster said that the revisions recommended by Mr. Genuario were not within the scope of the advertised Ordinance Amendment. Commissioner Alcorn said that in spite of constraints placed on the Commission by legal counsel, the Planning Commission would do everything within its power to address this issue in a manner responsive to the concerns of citizens.

Responding to a question from Commissioner Moon, Mr. Foster explained that if revisions to the Ordinance were approved that were outside the scope of the advertised amendment, the County could be sued. Mr. Foster said a solution to this problem would be for the Commission to recommend approval or denial of the proposed amendment as advertised, and then request the Board of Supervisors to authorize a readvertisement proposing additional changes.

Commissioner Hall expressed frustration at the apparent lack of flexibility the Commission had in its ability to provide property owners with a timely solution to problems that they had not created.

In response to a question from Commissioner Koch, Mr. Foster said again that if desired changes to an Ordinance were outside the scope of an advertisement, the Board of Supervisors should authorize a readvertisement containing the changes.

Chairman Murphy commented that the Commission and the Board had exercised flexibility in the past when amending Ordinances.

Responding to a question from Commissioner Moon, Mr. Foster said if a second motion was made tonight requesting the Board to authorize additional changes to the Ordinance, it would need to be readvertised and scheduled for public hearings before the Commission and the Board.

Ms. Mary Kearny, 1144 Waverly Way, McLean, said she had discovered in January that she owned an illegal lot when she attempted to sell it to a builder. She said up until that time, she had no idea that her home, which had been built in 1947 on a lot subdivided in 1945, was located on a non-buildable lot, and had even obtained a building permit in 1976 to construct an addition. She explained that she and her husband were senior citizens who could no longer afford to pay taxes on their property which was valued at almost \$900,000, but because they were unable to sell it, they had lost a new house they had contracted to buy.

Commissioner Hall said she was appalled that Ms. Kearny found herself in such a position at this stage in her life.

Commissioner Moon explained to Ms. Kearny that if the Commission recommended approval of the subject amendment and the Board of Supervisors approved it, her lot would automatically be validated and she would be able to sell it. Commissioner DuBois pointed out that this matter was scheduled for public hearing before the Board on Monday, March 24, 2003, so it was possible that her lot would be considered legal the next day.

Nancy Gibb, Esquire, with Mackall, Mackall, and Gibb, 4031 Chain Bridge Road, Fairfax, and a member of the BZA, said in 1997 DPWES started interpreting the Subdivision Ordinance in a new way. Up until that time, she explained that any division of land before 1947 was considered to be legal because the 1929 Ordinance only required the recordation of a plat when a street was being dedicated. She said if there was no street, a plat was not necessary and could be divided by metes and bounds. She said the solution to the problem would be for the County to go back to its pre-1997 interpretation. (A copy of her presentation is in the date file.)

In response to a question from Commissioner Koch, Mr. Friedman said the Director of DPWES was responsible for administering the Subdivision Ordinance.

Responding to a question from Commissioner Hall, Mr. Friedman said that the existence of the 1929 Subdivision Ordinance was not well known until the early 1990s, about the same time problems with illegal lots were beginning to be recognized. He said for that reason Mr. John Winfield, formerly of DPWES, had issued a memorandum in 1997 addressing the problem. Mr. Foster added that when the 1929 Ordinance came to light, it could not be ignored, therefore, parcels created at the time it was in effect had to comply with its provisions. Commissioner Hall said it would have been prudent for DPWES to determine the validity of the 1929 Ordinance when it was discovered and the impact it would have on the property owners. (A copy of Mr. Winfield's memorandum is in the documents submitted by Nancy Gibb, Esquire, and is in the date file.)

Mr. Earl Elliott, 2825 Woodlawn Trail, Alexandria, speaking on behalf of himself and James Bondurant, 6301 Telegraph Road, Alexandria, owners of 2111 Griffin Drive, Alexandria, said he discovered he owned an illegal lot when he applied for a permit to demolish a house located on it. He said he did not know why the lot was illegal because a title search had been conducted in 1986 when he purchased the property; building and electrical permits had been obtained since that time; the property had been surveyed and a permit issued in 1953 to install a sewer, although the County could find no record of this survey; and the Fairfax County Redevelopment and Housing Authority had subordinated a deed for a loan for improvements to the property in 1981. He said he had a prospective buyer for the property, but because it was considered an illegal lot, he could not sell it.

James Hart, Esquire, Hart and Horan, said although he was speaking on his own behalf, as a member of the BZA, he had heard a number of these cases. He said he did not agree with the position of the County Attorney's office on this issue, but did agree with Ms. Gibb's interpretation of the 1929 Ordinance that if a street was not being dedicated, a plat did not need to be recorded. Referring to a question asked by Commissioner Moon earlier, Mr. Hart said that lenders and trustees would need to sign deeds incorporating validation plats, and that such a validation process would be an unfair and expensive burden on innocent homeowners. He suggested that grandfathering be linked to whether a house had been built on a lot, not when the lot had been created.

Mr. Hart responded to a question from Commissioner Koch about the possibility of mortgage companies foreclosing on loans held on illegal lots.

In response to a question from Commissioner Harsel, Mr. Hart said, in his opinion, if lots with houses were declared legal, an owner could demolish an existing house and replace it with a larger one. Commissioner Alcorn pointed out, however, that the new house would have to conform to the Zoning Ordinance and necessary permits would have to be obtained.

In response to a question from Commissioner Moon, Mr. Foster said that the Planning Commission could adopt one of the proposed amendments contained in staff's proposal and defer a decision on the other three.

Responding to a question from Commissioner Moon, Mr. Foster said the County Attorney's Office had consistently interpreted the 1929 Subdivision Ordinance to mean that any document purporting to subdivide land must receive the approval of the County Engineer, and was not limited to subdivisions created for the purpose of dedicating roads.

In response to a question from Commissioner DuBois, Mr. Foster said that grandfathering lots with houses on them would not be within the scope of the advertised amendment.

William Baskin, Esquire, Baskin, Jackson, and Hansbarger, 301 Park Avenue, Falls Church, said he did not agree with staff's recent analysis of the 1929 Ordinance and said if staff went back to the interpretation in effect prior to 1997, there would be no need for an amendment. He added, however, if an amendment was deemed necessary, he endorsed Mr. Hart's proposal to grandfather lots improved with houses.

Ms. Caroline Baldwin, 8965 Fort Hunt Road, Alexandria, said because her property was considered to be an illegal lot she could not sell it and purchase a home she had contracted to buy.

In response to a question from Commissioner Alcorn, Ms. Baldwin said her house had been built in 1953 or 1957, and the deed for the current lot had been recorded by metes and bounds in 1964. Mr. Alcorn pointed out that in that case, she would need to go through the validation process if the proposed Ordinance Amendment was approved. Ms. Baldwin said she did not think property owners should be held accountable because the County chose to reinterpret an Ordinance that had been in effect for many years.

Mark Goetzman, Esquire, Walsh, Colucci, Stackhouse, Emrich and Terpak, PC, 2200 Clarendon Boulevard, Arlington, said he was appearing on behalf of Leslie and Peter Berk, owners of 10616 Good Springs Avenue, Great Falls. He said the Berks had purchased the property in May 2000 for over \$500,000 and when they decided to build a new home on the property, a grading permit showing the demolition of the existing house had been issued. He said the house was razed, but when a grading plan for new construction had been submitted, the Berks were informed that their lot was illegal. He said this decision had been appealed and a decision was pending before the Board of Zoning Appeals, but in the meantime, his clients faced undue financial hardships. He said the house had been constructed in 1953 and since that time, the property had been recognized by the County as a legal single family lot by virtue of the fact that it had been taxed as such and because building permits had been issued. He proposed alternative language for Section 101-2-9, Validation of Parcels Developed with Single-Family Homes, as found in an attachment to his letter to the Planning Commission dated March 18, 2003. (A copy of this letter is in the date file.)

In response to a question from Commissioner Moon, Mr. Goetzman said he had not included undeveloped lots in his proposed alternative language because owners of undeveloped lots would have time to go through the validation process, although they would still have to bear the costs involved. Commissioner Alcorn pointed out that another reason for excluding unimproved lots was because development would be dependent upon the issuance of building permits.

Henry Mackall, Esquire, Mackall, Mackall and Gibb, 4031 Chain Bridge Road, Fairfax, said he had been practicing law in Fairfax County for over 50 years and had recorded many lots during that time with no idea that he was doing something illegal. He added that the present interpretation of the Subdivision Ordinance was not reasonable and said the County should validate all lots created prior to 1978 whether or not the property had a house on it.

Stephen Fox, Esquire, 10511 Judicial Drive, Fairfax, said no remedy was needed because Section 2-405 of the 1978 Zoning Ordinance addressed this issue. He suggested that the Planning Commission recommend to the Board of Supervisors that staff's interpretation of the 1978 Zoning Ordinance be upheld. He said the validation process would be very expensive and arduous for property owners.

At the request for Commissioner Moon, Mr. Fox quoted Section 2-405 of the 1978 Zoning Ordinance, after which Commissioner Moon asked Mr. Foster for his interpretation of it. Mr. Foster said Section 2405 addressed Zoning Ordinance compliance only, not the separate subdivision ordinance issues before the Commission tonight. He further explained that the *Code of Virginia* provided for the grandfathering of lots created before 1941 for Zoning Ordinance purposes only, but did not address subdivision ordinances. Mr. Fox said that he disagreed with Mr. Foster's comments.

James Downey, Esquire, address unknown, said he represented Mary Ellen Blevins who owned a parcel of land considered unbuildable because it was created by metes and bounds in 1955. He said the lot was vacant and although it did not have road frontage, it had an ingress/egress easement from an adjacent property owner. He said because it was located in an R-C District, waiver of public road frontage was not an option, and he requested consideration be given to a provision allowing for public road frontage waivers in an R-C District.

Mr. Bill Gorman, Esquire, address unknown, said he agreed with the position of Ms. Gibb and that the present interpretation of the Subdivision Ordinance impugned the integrity of the legal community, surveyors, and engineers, who had been doing business in the County for decades, as well as court clerks who had admitted instruments to record. He suggested that the implication that lots had been illegally created and recorded be removed from the amendment language.

In response to a question from Commissioner Alcorn, Mr. Gorman said that he thought the Zoning Ordinance should control what could be built on a property, not the Subdivision Ordinance. He said a solution to the problem would be to validate all lots that conformed to the Zoning Ordinance in effect at the time they were created or at the time a building permit had been issued.

Ms. Meeta Cruz, 12733 Lee Highway, Fairfax, said after she and her husband had gone to considerable expense planning a renovation and an addition to their home, she discovered she owned an illegal lot when she submitted drawings to the County for building permits. She said she could not sell or renovate her home and implored the Commission to solve the problem.

Mr. John Joy, address unknown, said after he had contracted to purchase two lots in the Langley Farms area, he discovered they were considered to be an illegal and a non-buildable subdivision of property, even though a house was located on the property. He said this placed an undue burden on both him and the sellers of the property, and pointed out that under the circumstances, the property was not worth what he had paid for it.

Ms. Jill Martin, address unknown, said she and her husband had contracted to purchase a 1850s farm house owned by the Virginia Department of Transportation, known as the Thompson Farm, located on West Ox Road. She said the house had to be moved back about one acre and if this was not done within the next 30 days, the house would be demolished. She said she had worked long and hard and spent a lot of money on this project and hated to see it wasted.

In response to a question from Commissioner Alcorn, Ms. Martin said that the lot had been created in 1948 and that she would lose the house if she had to go through the validation process.

Mr. Jerome Baker, Esquire, 13122 Lazy Glen Court, Herndon, representing the owner of 2719 Chain Bridge Road, said he was also a real estate broker, and had been trying to sell the property since July 2002. He said the proposed amendment would not validate this lot because a plat had been drawn in 1941 showing a house on it, but had not been recorded until 1951. He said a simple solution would be to consider all lots which had been created before an arbitrary date, or which had houses located on them, be considered valid.

Commissioner DuBois said unfortunately, Mr. Baker's solution was something the Planning Commission had been told it could not do.

Mr. Alvin Meadows, 2730 Cooke Lane, Culpeper, said he had owned property at 5400 Ruby Drive, Fairfax, and had paid taxes on it since 1982, but that because it was an illegal lot he could not build on the property or sell it.

There were no further speakers.

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The Commission recessed at 1:15 a.m. and reconvened in the Board Auditorium at 1:35 a.m.

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Chairman Murphy said the members of the Commission were in agreement that something had to be done to provide the citizens of the County with relief for problems they had encountered by unknowingly owning illegal lots.

Commissioner Smyth said she hoped it would be clear that outlots created as part of a regularly platted subdivision, but did not meet the requirements of the Zoning Ordinance for property lot size within a zoning district, would stay as outlots and not be allowed to be built upon. In response, Mr. Friedman said the proposed amendments only provided for the validation of metes and bounds descriptions recorded at the Courthouse without proper subdivision approval, and would not impact property created in accordance with the Subdivision Ordinance in the normal manner.

There were no further comments or questions from the Commission and staff had no closing comments, therefore, Chairman Murphy closed the public hearing and recognized Commissioner Moon for action on this item. (A verbatim transcript is in the date file.)

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Commissioner Moon MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS ADOPT THE PROPOSED AMENDMENTS TO CHAPTER 101 OF THE COUNTY CODE AS STATED IN STAFF'S REPORT DATED FEBRUARY 10, 2003, AND AS AUTHORIZED BY THE BOARD OF SUPERVISORS.

Commissioners Hall and DuBois seconded the motion which carried unanimously with Commissioners Byers, Kelso and Wilson absent from the meeting.

Commissioner Moon further MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT AFTER APPROVAL OF THE PROPOSED AMENDMENTS TO CHAPTER 101, THE BOARD OF SUPERVISORS IMMEDIATELY DIRECT STAFF TO ISSUE THE NECESSARY PUBLIC NOTICES FOR AUTHORIZED PUBLIC HEARINGS BEFORE THE PLANNING COMMISSION AND THE BOARD OF SUPERVISORS TO AMEND THE DULY APPROVED ORDINANCE BY CHANGING THE DATE OF SEPTEMBER 1, 1947 TO AUGUST 14, 1978, IN SECTIONS 101-1-12 AND 13, AND 101-2-8 AND 9.

Commissioners Hall, Alcorn and DuBois seconded the motion which carried unanimously with Commissioners Byers, Kelso and Wilson absent from the meeting.

Commissioner Alcorn MOVED THAT THE PREVIOUS MOTION BE AMENDED TO ALLOW THE PLANNING COMMISSION AND THE BOARD OF SUPERVISORS FLEXIBILITY CONCERNING RANGES AND OR OPTIONS COVERING ONE: YEAR OR YEARS OF GRANDFATHERING; TWO: OPTIONS FOR GRANDFATHERING CRITERIA, INCLUDING PERMITS ISSUED, AND EXISTENCE OF HOUSING UNITS CURRENTLY OR IN THE PAST.

Commissioner Moon accepted the amendment which carried unanimously with Commissioners Byers, Kelso and Wilson absent from the meeting.

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ADJOURNMENT

March 20, 2003

The meeting was adjourned at 1:45 a.m.
Peter F. Murphy, Jr., Chairman
Suzanne F. Harsel, 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: Linda B. Rodeffer

Approved on: March 17, 2005

Linda B. Rodeffer, Clerk to the
Fairfax County Planning Commission