MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
THURSDAY, MARCH 29, 2007

PRESENT: Walter L. Alcorn, Commissioner At-Large
Frank A. de la Fe, Hunter Mill District
Earl L. Flanagan, Mount Vernon District
Janet R. Hall, Mason District
Suzanne F. Harsel, Braddock District
James R. Hart, Commissioner At-Large
Ronald W. Koch, Sully District
Kenneth A. Lawrence, Providence District
Rodney L. Lusk, Lee District
Peter F. Murphy, Jr., Springfield District
Timothy J. Sargeant, Commissioner At-Large

ABSENT: Nancy Hopkins, Dranesville District

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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

Commissioner Lawrence MOVED THAT THE DECISION ONLY ON RZ 2006-PR-029, CEDAR LANE DEVELOPMENT LLC, BE FURTHER DEFERRED TO A DATE CERTAIN OF APRIL 19, 2007, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioner Koch seconded the motion which carried unanimously with Commissioner Hopkins absent from the meeting.

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Commissioner Lawrence MOVED THAT THE DECISION ONLY ON RZ 2006-PR-013, WASHINGTON PROPERTY COMPANY, LLC, BE FURTHER DEFERRED TO A DATE CERTAIN OF MAY 31, 2007, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioner Hall seconded the motion which carried unanimously with Commissioner Hopkins absent from the meeting.

Commissioner Lawrence MOVED THAT THE DECISION ONLY ON SE 2006-PR-005, WASHINGTON PROPERTY COMPANY, LLC, BE FURTHER DEFERRED TO A DATE CERTAIN OF MAY 31, 2007, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioner Hall seconded the motion which carried unanimously with Commissioner Hopkins absent from the meeting.

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Commissioner Hall announced that the Planning Commission's Policy and Procedures Committee would meet on Wednesday, April 4, 2007, at 7:30 p.m. in the Board Conference Room, to review the upcoming Area Plans Review process. She called attention to a memorandum regarding this topic from Marianne Gardner, Planning Division, Department of Planning and Zoning, with attachments.

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Commissioner de la Fe announced his intent to accept the withdrawal of PRC Plan 6734-PRC-002-2, JBC/RIC, LLC & RIC Retail, LLC, which was scheduled for a public hearing at the Planning Commission meeting on Wednesday, April 4, 2007.

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Commissioner Hart noted that the Planning Commission's Environment Committee had met earlier this evening to receive a United States Green Building Council presentation. He announced that the Committee would meet again on Thursday, April 19, 2007 and Thursday, May 10, 2007, at 7:30 p.m. in the Board Conference Room. Commissioner Hart said that the Committee had also scheduled a field trip for the morning of Saturday, April 28, 2007, to visit the Wetlands Studies and Solutions, Inc.'s "green" building. Chairman Murphy added that Commissioner Hart had been elected Chairman of the 2007 Environment Committee.

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Chairman Murphy commended Commissioner Lusk for his involvement in this year's Capital Improvement Program process and said he had done an excellent job.

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<u>RZ 2006-PR-022 - VAN METRE HOMES AT SUNCREST, LLC</u>
<u>FDP 2006-PR-022 - VAN METRE HOMES AT SUNCREST, LLC</u> (Decisions Only)
(The public hearing on these applications was held on January 18, 2007. A complete verbatim transcript of the decisions made is included in the date file.)

Commissioner Lawrence MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS DENIAL OF RZ 2006-PR-022.

Commissioner Alcorn seconded the motion which carried unanimously with Commissioner Lusk not present for the vote; Commissioner Hopkins absent from the meeting.

Commissioner Lawrence MOVED THAT THE PLANNING COMMISSION DENY FDP 2006-PR-022.

Commissioner Alcorn seconded the motion which carried unanimously with Commissioner Lusk not present for the vote; Commissioner Hopkins absent from the meeting.

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FAIRFAX COUNTY CAPITAL IMPROVEMENT PROGRAM MARK-UP (Decision Only) (The public hearing on this item was held on March 15, 2007. A complete verbatim transcript of the decision made is included in the date file.)

Commissioner Lusk MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE ADVERTISED FAIRFAX COUNTY CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEARS 2008 THROUGH 2012, WITH FUTURE YEARS TO 2017.

Commissioners Lawrence, de la Fe, and Alcorn seconded the motion which carried unanimously with Commissioner Hopkins absent from the meeting.

Commissioner Lusk MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT CONSIDERATION BE GIVEN TO INCREASING THE PARK AUTHORITY BONDING CAPACITY TO AT LEAST 100 MILLION DOLLARS TO THE EXTENT POSSIBLE AND PERMITTED WITHIN OUR BONDING CAPACITY.

Commissioners Lawrence and de la Fe seconded the motion which carried unanimously with Commissioner Hopkins absent from the meeting.

Commissioner Lusk MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT ADD TO THE COUNTY'S BRAC STUDY A REVIEW OF THE CIP-RELATED TRANSPORTATION PROJECTS IN THE MOUNT VERNON DISTRICT THAT ARE IN THE BRAC-IDENTIFIED STUDY AREA, BUT ARE NOW BEYOND THE FIVE-YEAR CIP TO CONSIDER CHANGES TO RANKING AND FUNDING SOURCES.

Commissioners Lawrence and Alcorn seconded the motion which carried unanimously with Commissioner Hopkins absent from the meeting.

Commissioner Lusk MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT SUPPORT THE COMMUNITY SERVICES BOARD'S REQUEST FOR THE COUNTY TO FIND A HALF ACRE OF LAND TO BUILD A PROTOTYPE BARRIER-FREE GROUP HOME AS QUICKLY AS POSSIBLE.

Commissioners de la Fe, Lawrence, and Alcorn seconded the motion which carried unanimously with Commissioner Hopkins absent from the meeting.

Commissioner Flanagan MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT SUPPORT LANGUAGE TO ITEM 13 ON PAGE 45 ABOUT PUBLIC SCHOOLS THAT REFLECTS A MOTION ADOPTED BY THE SCHOOL BOARD, CONCERNING THE CONSTRUCTION OF A SOUTH COUNTY MIDDLE SCHOOL. THE LANGUAGE WOULD BE: "THE SCHOOL BOARD WILL SUPPORT THE BUILDING OF A SOUTH COUNTY MIDDLE SCHOOL IF FUNDS ARE MADE AVAILABLE TO FAIRFAX COUNTY PUBLIC SCHOOLS FOR THIS PURPOSE, AS LONG AS NO OTHER CIP PROJECTS ARE DELAYED BY THIS ACTION."

Commissioner Sargeant seconded the motion which failed by a vote of 2-6-3 with Commissioners Flanagan and Sargeant in favor; Commissioners Alcorn, de la Fe, Harsel, Hart, Koch, and Lusk opposed; Commissioners Hall, Lawrence, and Murphy abstaining; and Commissioner Hopkins absent from the meeting.

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ORDER OF THE AGENDA

Secretary Harsel established the following order of the agenda:

1. RZ 2005-LE-021/FDP 2005-LE-021 - MICHAEL V. CURTISS AND JOANNE M. CURTISS
2. PUBLIC FACILITIES MANUAL AMENDMENTS (VDOT MANUAL CHANGE)
3. ZONING ORDINANCE AMENDMENT (LARGE RETAIL SALES ESTABLISHMENTS)

This order was accepted without objection.

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RZ 2005-LE-021/FDP 2005-LE-021 - MICHAEL V. CURTISS AND JOANNE M. CURTISS - Appls. to rezone from R-3 to PDH-8 to permit residential development at a density of 7.2 dwelling units per acre (du/ac) and approval of the conceptual and final development plans. Located on the E. side of S. Van Dorn St. opposite its intersection with Crown Royal Dr. on approx. 2.37 ac. of land. Comp.

Plan Rec: 5-8 du/ac. Tax Map 81-4 ((1)) 37, 38, and 39. LEE DISTRICT. PUBLIC HEARING.

Gregory Riegle, Esquire, with McGuire Woods LLP, reaffirmed the affidavit dated February 2, 2007. Commissioner Hart disclosed, pursuant to *Virginia Code* Section 15.2-852, that his law firm, Hart & Horan, PC, had a lease with a right of first refusal to buy two office condominiums from H. Kendrick Sanders, who was listed as a former attorney/agent in the affidavit. He said the lease would terminate on March 31, 2007, and his law firm did not buy the units; therefore, he indicated that there was no financial relationship and it would not affect his ability to participate in this case.

Jack Thompson, Zoning Evaluation Division, Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. He noted that staff recommended approval of the applications.

Mr. Riegle explained that the applicant would construct and fund the Comprehensive Plan-recommended public road on the subject property, which would provide a vital street connection for the surrounding communities and the proposed development. He said these infrastructure improvements would outweigh the impacts associated with the proposed development. He noted that the road connection could not be made without infringement into the Resource Protection Area (RPA), but the applicant, with the assistance of staff from the Fairfax County Department of Transportation (FCDOT) and the Virginia Department of Transportation (VDOT), had modified the radius and stacking requirements to help minimize its impact on the RPA. Mr. Riegle stated that the applicant had proffered to enhance and rehabilitate substantial portions of the RPA beyond the impacted area. He said the proposed type and number of the dwelling units were in conformance with the Comprehensive Plan. He indicated that the subject applications had the support of the Lee District Land Use Advisory Committee.

In response to questions from Commissioner Hart, Mr. Riegle explained that the two internal, private 18-foot wide alleys would be connected to the proposed public road and would allow residents to drive their vehicles to their rear-load garages, located behind their dwelling units. He indicated that the typical site layout depicted a deck space that could be installed on the same side as the garage and over the driveway, using a cantilevered approach. He said the units would not have any kind of private yard other than a deck and a front stoop, but noted that amenities would be provided in the common areas.

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

Alison Lawter, 5866 Woodfield Estates Drive, Alexandria, expressed concern that the environmental issues had not been adequately addressed.

Gary Fletcher, 6051 Estates Drive, Alexandria, expressed concerns about the proposed development's impact on the natural stream valley in the rear portion of the subject property and

the loss of tree cover. He said the proposed road connection would need a retaining wall due to a steep dropoff.

There being no more speakers, Chairman Murphy called for a rebuttal statement from Mr. Riegle.

Mr. Riegle noted that the Comprehensive Plan called for the proposed public road and said the applicant would ensure that it functioned properly with the least impact. He reiterated that the applicant had proffered commitments to rehabilitate the RPA. He said staff from DPZ, FCDOT, and VDOT had concluded that the grading could be done in a way that moved it away from the adjacent houses and supporting documentation would be given to Mr. Fletcher. Mr. Riegle stated that the applicant would address grading in a way that was responsive to community concerns. He indicated that the applicant would implement measures to protect and enhance the stream valley.

Responding to questions from Commissioner Alcorn, Mr. Thompson said that staff concurred with Mr. Riegle's assessment of the environmental issues. He agreed that the subject applications provided balance between the Comprehensive Plan recommendations and the Environmental Quality Corridor and RPA delineations.

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 Lusk for action on this case. (A verbatim excerpt is in the date file.)

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Commissioner Lusk MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2005-LE-021 AND THE ASSOCIATED CONCEPTUAL DEVELOPMENT PLAN, SUBJECT TO THE PROFFERS DATED MARCH 27, 2007.

Commissioners Lawrence, Flanagan, and Alcorn seconded the motion which carried unanimously with Commissioner Harsel not present for the vote; Commissioner Hopkins absent from the meeting.

Commissioner Lusk MOVED THE PLANNING COMMISSION APPROVE FDP 2005-LE-021, SUBJECT TO DEVELOPMENT CONDITIONS DATED MARCH 29, 2007 AND SUBJECT TO THE BOARD OF SUPERVISORS' APPROVAL OF RZ 2005-LE-021 AND THE CONCEPTUAL DEVELOPMENT PLAN.

Commissioner Lawrence seconded the motion which carried unanimously with Commissioner Harsel not present for the vote; Commissioner Hopkins absent from the meeting.

Commissioner Lusk MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF THE 200-SQUARE FOOT PRIVACY YARD REQUIREMENT FOR SINGLE FAMILY ATTACHED DWELLING UNITS.

Commissioner Lawrence seconded the motion which carried by a vote of 9-1 with Commissioner Hall opposed; Commissioner Harsel not present for the vote; Commissioner Hopkins absent from the meeting.

Commissioner Lusk MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT DIRECT THE DIRECTOR OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES TO APPROVE A PFM MODIFICATION OF THE MINIMUM WIDTH REQUIREMENT OF A PRIVATE STREET.

Commissioner Lawrence seconded the motion which carried unanimously with Commissioner Harsel not present for the vote; Commissioner Hopkins absent from the meeting.

Commissioner Lusk MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE HEIGHT LIMITATION OF FENCES TO PERMIT A NOISE BARRIER TO EXCEED SEVEN FEET IN HEIGHT, EIGHT FOOT MAXIMUM, AS SHOWN ON THE CDP/FDP.

Commissioner Lawrence seconded the motion which carried unanimously with Commissioner Harsel not present for the vote; Commissioner Hopkins absent from the meeting.

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> PUBLIC FACILITIES MANUAL AMENDMENTS (VDOT MANUAL CHANGE) - To amend Chapter 7 of the Fairfax County Public Facilities Manual (PFM). The amendments address January 2006 revisions to Appendix B of the Virginia Department of Transportation (VDOT) Road Design Manual regarding subdivision street design standards. Where possible, the proposed amendments refer to the VDOT Road Design Manual or other relevant state manuals rather than restating design standards. COUNTYWIDE. PUBLIC HEARING.

Judith Cronauer, Code Analysis Division, Department of Public Works and Environmental Services, presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of the proposed Public Facilities Manual (PFM) Amendments.

In response to a question from Commissioner Hart, Ms. Cronauer explained that the proposed Section 7-0406.14E (72-01-PFM) required that the width of a dedicated right-of-way be wide enough to build a trail as shown on the adopted Comprehensive Plan, which would allow staff to

upgrade the trail to the minimum 10-foot width and turn the maintenance over to the Virginia Department of Transportation (VDOT). She said this proposed language would not conflict with the recent Plan update.

Commissioner de la Fe recommended that "(minimum 10 foot trail width)" be deleted from the end of the first sentence under the proposed Section 7-0406.14E (72-01-PFM). Ms. Cronauer concurred with this recommendation.

Chairman Murphy called for speakers from the audience, but received no response. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, he closed the public hearing and recognized Commissioner Hart for action on this item. (A verbatim excerpt is in the date file.)

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Commissioner Hart MOVED THAT THE PLANNING COMMISSION DEFER THE DECISION ON THE PROPOSED AMENDMENTS TO THE PUBLIC FACILITIES MANUAL, WHICH ADDRESS REVISIONS TO APPENDIX B OF THE VIRGINIA DEPARTMENT OF TRANSPORTATION ROAD DESIGN MANUAL, TO A DATE CERTAIN OF APRIL 19, 2007, WITH THE RECORD REMAINING OPEN FOR WRITTEN AND ELECTRONIC COMMENTS.

Commissioner Lawrence seconded the motion which carried unanimously with Commissioner Hopkins absent from the meeting.

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The Commission went into recess at 9:25 p.m. and reconvened in the Board Auditorium at 9:41 p.m.

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ZONING ORDINANCE AMENDMENT (LARGE RETAIL SALES ESTABLISHMENTS) - To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows: (1) Add a new retail sales establishment-large use which is defined as any establishment containing 80,000 to 120,000 square feet or more of gross floor area wherein the primary occupation is the sale of merchandise for the consumption by the immediate purchaser. (2) Allow retail sales establishments-large by right in the PDC and PRC Districts when depicted on an approved final development plan or development plan and in the C-6, C-7, C-8, and C-9 Districts when such use is located within a building that contains a minimum of from 500,000 to 1,000,000 square feet of gross floor area with at least six

principal uses that are connected by party walls, partitions, or similar structural members to form one continuous structure. (3) Retail sales establishments-large that do not meet the limitations in Par. 2 above may be allowed in the C-6, C-7, C-8 ,C-9, PDC, and PRC Districts with special exception approval by the Board of Supervisors and subject to the following additional standards: (a) The Board shall determine that such use will be compatible with and not adversely impact adjacent properties and the local area road system; (b) The Board shall determine that parking is provided and designed in such a manner as to minimize impacts on adjacent properties; (c) Such use shall be designed so that pedestrian circulation is coordinated on-site and on adjacent properties; (d) Such use shall be designed to provide safe and convenient access and to minimize any potential conflicts between service and delivery vehicles, passenger vehicles, and pedestrian traffic, and to minimize noise and outdoor lighting impacts from the use on adjacent properties; (e) Structures shall be designed to protect the character of the neighborhood through the use of architectural and site design methods; (f) All outdoor service, storage, and display, with the exception of outdoor seating, shall be fully screened with solid fences, walls, berms, evergreen hedges, or a fence, wall, berm, and/or landscaping combination; and (g) All signs shall be in scale and harmony with the development and shall be located and sized so as to ensure convenience to the visitor, user, or occupant while not adding to street clutter or detracting from the character of the surrounding properties. (4) Revise the retail sales establishment definition to allow the sale of bulk items provided that the primary occupation of a retail sales establishment is the sale of merchandise for the use or consumption by the immediate purchaser. COUNTYWIDE. PUBLIC HEARING.

Commissioner Alcorn disclosed that his firm, Alcorn Consulting, had a financial relationship with Consumer Electronics Association, whose active membership included several “big box” retailers; therefore, he indicated that he would recuse himself and not participate in this case.

Lorrie Kirst, 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 proposed Zoning Ordinance Amendment.

In response to questions from Commissioner Hart, Ms. Kirst said the average size of a grocery store in the County was 65,000 square feet or less and that “big box” retail stores, such as Target and Costco, ranged from 100,000 to 140,000 square feet. She explained that staff’s rationale for the 80,000-square foot breakpoint was to protect residential neighborhoods from “big box” stores. She noted that in 2004, Prince William County had adopted a “big box” retail store ordinance, which also had an 80,000-square foot threshold.

Ms. Kirst responded to further questions from Commissioner Hart about circumstances under with special exception (SE) approval would and would not be required. She noted that "big box" stores requiring SE approval would be subject to proffers or development conditions depicted on an approved development plan and that those that did not require SE approval would be subject to site plan review, which would include an examinations of the associated impacts.

Responding to additional questions from Commissioner Hart, Angela Rodeheaver, Fairfax County Department of Transportation (FCDOT), explained that FCDOT's role in site plan review was to examine associated traffic impacts on the adjacent street network and ensure safe and adequate entrance into the property. She said the Virginia Department of Transportation was also involved in the site plan review process.

In response to further questions from Commissioner Hart, Jan Brodie, Deputy County Attorney, noted that the advertised amendment provided a range between 80,000 and 120,000 square feet to define a large retail sales establishment. She stated that the amendment also provided an advertised range of 500,000 to 1,000,000 square feet to permit a large retail sales establishment that contained at least six principal uses, all of which were connected to form a continuous structure, as a by-right use. Ms. Brodie said the proposed alternate grandfathering provisions that had been submitted by industry representatives would be within the scope of the advertising. (A copy of the language is in the date file.)

Responding to other questions from Commissioner Hart, Ms. Kirst stated that staff believed that larger retail stores contained within developments that were 1,000,000 or more square feet in size, such as the malls located at Fair Oaks, Tysons Corner, Tysons Corner II, and Springfield, should not be subject to the SE process because they provided adequate infrastructure. She said SE approval would be required for a consolidation of existing tenant spaces in a shopping center due to the increased impacts on traffic, noise, lighting, and other aspects. Ms. Kirst explained that staff would streamline the SE process for a "big box" store proposal in a revitalization district by scheduling the Planning Commission and the Board of Supervisors' public hearings closer together and allowing the site plan and SE to be processed concurrently. She indicated that all proposals for "big box" stores would be subject to applicable zoning requirements, but the Board of Supervisors would be able to impose conditions and restrictions that might be deemed necessary to mitigate negative impacts.

Commissioner Hall suggested that "for use or consumption by the immediate purchaser" be removed from the proposed definition for a retail sales establishment because it was unnecessary.

Commissioner Lawrence commented that "big box" stores should be required to be architecturally compatible with residential neighborhoods.

In response to a question from Commissioner Harsel, Eileen McLane, Zoning Administrator, ZAD, DPZ, noted that the use exceptions listed in the proposed definition of a large retail sales establishment had been specifically defined in the Zoning Ordinance. She said that even though

customers could rent equipment and trucks at Home Depot, it would not be considered a rental and ancillary service establishment since its principal use was retail sales.

Chairman Murphy called the first listed speaker and noted that the rules for public testimony previously cited still applied.

John McBride, Esquire, representing AJDwoskin & Associates, Inc., said the proposed amendment was too broad and vague; provided too much leverage to the grandfathering provisions and interpretations by staff on case-by-case determinations; and would be detrimental to the leasing, lending, refinancing, and reinvestment industries. He recommended that references to regional and super-regional centers be removed since they were already defined in the Zoning Ordinance. Mr. McBride commented that the amendment would adversely impact many existing vital shopping centers that served adjacent communities, contributed to the commercial tax base, and supported Fairfax County's economy. He pointed out that the Prince William County Zoning Ordinance had a provision for re-letting existing space for minor improvements and requested that staff apply this concept to the proposed amendment to provide certainty to the private sector and help staff effectively implement the proposed provisions. (A copy of an excerpt from the Prince William County Ordinance is in the date file.) He said it would be unfair to require a retailer or store owner to submit to the extensive and expensive SE process to only change the building footprint by less than 2,500 square feet, noting that the Zoning Ordinance already allowed minor modifications for certain nonconforming uses. Mr. McBride also said it was unreasonable to include grocery stores in the proposed amendment because their square footage was increasing to accommodate a broader variety of products. He noted that he had submitted a letter on daily trip generation for selected commercial retail land uses, a copy of which is in the date file.

Paul Weinschenk, representing the International Council of Shopping Centers, expressed opposition to the proposed amendment because it failed to identify legitimate and significant problems that would warrant additional regulations on the development industry. He expressed concern that the provisions would impact the ability of property owners to adequately finance their projects and jeopardize the economic revitalization within the County by making financing difficult or impossible to achieve, imposing barriers in the development process, and creating long-term disincentives for redevelopment. Mr. Weinschenk recommended that staff and industry representatives work together to develop Ordinance provisions that would be effective for Fairfax County and limit the likelihood of unintended consequences that would create needless and expensive delays to the development process and unintended work for members of both the private and public sectors. He noted that several industry representatives had drafted alternate Ordinance language, which had been distributed to the Commission and staff. (A copy of the language is in the date file.) He explained that the alternate language permitted carve-outs from the SE process to extend more broadly to include any project type that met the square footage requirement, a large retail use proposed to be constructed within the footprint of an existing building, and a large retail use located in an existing building proposed to be expanded by no more than 2,500 square feet. Mr. Weinschenk stated that the alternate language also provided design standards to address issues, such as architectural design, parking, pedestrian

flow, lighting, landscaping, product displays, screening, and signage. He indicated that the alternate grandfathering provisions clarified the status of properties that were already subject to existing Conceptual Development Plans (CDP), Final Development Plans (FDP), and other existing special permits and addressed concerns about developments that had existing or pending site plans, existing buildings that had become vacant, and existing buildings that had been subject to casualty.

Responding to a question from Chairman Murphy, Ms. Kirst explained that revitalization plans for the main center of Fair Oaks Mall and Springfield Mall, which each contained more than one million square feet, would not be subject to SE approval; however, certain types of renovations would impact the surrounding free-standing pad sites.

Chairman Murphy expressed concern that the proposed provisions would discourage the economic advantages of revitalization in the areas surrounding the Fair Oaks and Springfield Malls. He asked whether staff had discussed this with the Economic Development Authority and reviewed the economic development portion of the Comprehensive Plan regarding how this amendment would impact the economic aspects of revitalization areas and new development.

Commissioner Hart pointed out that any retail uses located within the mall structure would be permitted by-right, but surrounding retail use buildings that were separate from the mall building might require SE approval. Ms. McLane concurred with his statement.

In response to questions from Commissioner Hart, Mr. Weinschenk stated that the alternate language permitted a by-right retail sales use in situations where a retailer had been replaced by a different retailer within an existing building; an existing retailer had decided to make modifications to the building façade, site entrances, and building functions in order to create and sustain a vibrant and vital use; or an existing grocery store had expanded to include adjoining stores. He noted that the alternate language added the provision, “When such use is a reestablishment of a preexisting retail use of more than 120,000 square feet” in order to clarify that this would be permitted by-right.

Kevin Crown, senior planner with The Peterson Companies, said he was opposed to the proposed amendment because of the absence of a rationale as to why it was necessary or urgent. He expressed concern that many specialty retailers and grocery store chains would be required to obtain SE approval just to redesign their prototypical footprints to increase the square footage. He pointed out that design standards and how they related to screening, lighting, and other aspects needed to be reevaluated. Mr. Crown suggested that staff consider whether concerns associated with large retail uses could be addressed within the current established Ordinance regulations. He further suggested that staff continue to work with the business and development community to create language that truly enabled a more workable amendment that would be to the benefit of staff, the development industry, and County residents.

Kip Killmon, 11196 Longwood Grove Drive, Reston, said he owned a Ford dealership on 5.4 acres of C-8 zoned property in Tysons Corner. He expressed concern that the proposed

amendment would impact the future use of his property and similarly zoned properties due to the SE requirement.

Responding to questions from Commissioner Harsel, Mr. Killmon indicated that a 120,000-square foot building that he could currently construct by-right on his property would require SE approval if this amendment was adopted, which he said was unreasonable.

Mark Looney, Esquire, with Cooley Godward Kronish LLP, voiced his objection to the proposed amendment because of a lack of need in Fairfax County as compared to other jurisdictions that had adopted a similar ordinance. He said staff had failed to address all issues expressed by the industry representatives and recommended that the decision be deferred for as long as necessary to address these issues. He explained that the Institute of Transportation Engineers' Trip Generation Manual indicated that "big box" stores had fewer trip rates in comparison to shopping center rates for the same 100,000 square feet of retail use. Mr. Looney submitted alternate Ordinance language, a copy of which is in the date file, which would permit large retail uses by-right for modest expansions and teardowns and replacements within the existing footprint at more than the 80,000-square foot limitation. He stated that the alternate language also clarified the proposed standards for SE review of large retail proposals. He said the proposed additional grandfathering language provided certainty and predictability to ensure that shopping centers would be properly managed in a manner that would not require frequent requests for staff interpretations of compliance with the amendment.

In response to questions from Commissioner Hart, Mr. Looney explained that the proposed modification to paragraph number 7 under Section 9-533 clearly defined the SE standard requirements for buffering and screening requirements, which would not supersede the specific zoning district requirements. He noted that the proposed modification to the second grandfathering provision applied to a site plan that was under review by the County or an amendment to an existing approved site plan. He said this provision would be clarified. He said the phrase "diligently being prosecuted" had been removed from the proposed grandfathering provision in the staff report because it had already been defined as a general principle under Virginia law.

Responding to a question from Commissioner Flanagan, Mr. Looney stated that the proposed alternate language that permitted by-right regional shopping centers and super-regional shopping centers had addressed the same issues as depicted in the proposed amendment to Sections 4-605, 4-705 4-805, and 4-905 in the staff report.

In response to questions from Commissioner Lawrence, Mr. Looney explained that a large retail use should be permitted by-right in C-7 and C-8 zoning districts when it was located within a building no closer than 200 feet from either residentially zoned or used land because the impacts of and issues associated with such uses should have been addressed when the property was originally zoned.

Responding to questions from Commissioner Harsel, Mr. Looney noted that the proposed alternate paragraph number 8 under Section 9-533 applied to large retail use proposals that required SE review; therefore, staff would examine the proposed signage to ensure it was in harmony with its surroundings. He stated that "to the extent feasible" had been inserted at the beginning of alternate paragraph number 3 because it would be difficult to coordinate interparcel pedestrian access with an uncooperative adjacent landowner. Commissioner Harsel expressed concern that the proposed alternate language conflicted with and was less stringent than the Zoning Ordinance.

Frank McDermott, Esquire, with Hunton & Williams LLP, expressed opposition to the proposed amendment because it would negatively impact opportunities for revitalization and economic development within the County, impair the County's reputation for fairness in its land use and economic development processes, and cause many unintended negative consequences. He said the availability of commercial financing to support new construction and reconstruction of retail centers and uses would be impaired by a discretionary legislative approval requirement. Mr. McDermott stated that this amendment would restrict grocery stores from evolving beyond the 80,000-square foot threshold and suggested that the threshold be increased to up to 120,000 square feet. He said that other large retail uses that had supportive infrastructure should not be required to obtain SE approval.

In response to questions from Commissioner Hart, Ms. Kirst stated that a large retail sales establishment depicted on an approved FDP would be covered by the grandfathering provisions. She noted that a proposed change to a roofline due to a new tenant would not require SE approval.

Mr. McDermott referred to the first grandfathering provision in the staff report and said that a FDP was not proffered unless it was part of a CDP. Ms. Kirst replied that staff would clarify this language.

There being no more speakers, Chairman Murphy called for concluding remarks from staff.

Ms. McLane explained that the Board of Supervisors had directed staff to address the possible negative impacts and compatibility issues associated with large retail sales establishments within neighborhoods and propose regulations intended to mitigate such impacts. She noted that staff had examined existing large retail uses and recent trends within other jurisdictions and Fairfax County and determined that such uses might not be harmonious or compatible with certain neighborhoods. She said the proposed amendment would allow staff to analyze the appropriateness of a large retail proposal on a case-by-case basis.

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

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Commissioner Hart MOVED THAT THE PLANNING COMMISSION DEFER THE DECISION ON THE LARGE RETAIL SALES ZONING ORDINANCE AMENDMENT, TO A DATE CERTAIN OF APRIL 4, 2007, WITH THE RECORD REMAINING OPEN FOR WRITTEN AND ELECTRONIC COMMENTS.

Commissioner Lawrence seconded the motion which carried unanimously with Commissioners Alcorn and Hall not present for the vote; Commissioner Hopkins absent from the meeting.

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The meeting was adjourned at 11:35 p.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: Kara A. DeArrastia

Approved on: September 11, 2008

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