MINUTES OF
PLANNING COMMISSION MEETING
MAY 21, 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, Braddock District
Stephen J. Hubbard, Dranesville District
Maya A. Huber, Commissioner At-Large
Ronald W. Koch, Sully District
Henry E. Strickland, Mason District
Alvin L. Thomas, Commissioner At-Large

ABSENT: Peter F. Murphy, Jr., Springfield District
Carl L. Sell, Jr., Lee District

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The meeting was convened at 7:50 p.m. by Vice Chairman Patrick M. Hanlon

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COMMISSION MATTERS

Commissioner Strickland MOVED THAT SITE PLAN #4237-SP-07-2, IN CONNECTION WITH PCA-C-52-2 FOR SKYLINE GARDEN APARTMENTS, BE RECOMMENDED TO THE DIRECTOR OF DEM FOR APPROVAL.

Commissioner Hubbard seconded the motion which passed unanimously with Commissioners Baldwin, Byers, and Harsel not present for the vote; Commissioners Murphy and Sell absent from the meeting.

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CHAPTER 118 – CHESAPEAKE BAY PRESERVATION ORDINANCE - ZONING ORDINANCE AMENDMENTS MARK-UP – The Planning Commission will hold a markup session & make recommendations to the Board of Supervisors on the proposed amendment to the Fairfax County Code, Chapter 118, Chesapeake Bay Preservation Ordinance. While no public testimony will be allowed at this session, the meeting is open to all interested observers.

Vice Chairman Hanlon explained that if there were no objections, there would be questions and answers and when the conversation lagged, he would call on Commissioner Huber to make the motion, at which point the verbatim would start.

Commissioner Huber referred to the May 15, 1992 memorandum, page 30 under (c), and questioned whether the sentence, "There shall be no fee assessed for the review of exception requests submitted pursuant to this section" applied to Article 6 or the entire Ordinance.

Mr. Noel Kaplan, Long Range Planning Division (LRPD), Office of Comprehensive Planning (OCP), said that it was a paragraph under Section 118-6-10 and would apply to any exception application for approved and pending plans of development.

Commissioner Hubbard referred to Section 118-6-10, page 29, #9 and asked why it was taken out, and what the consequences would be of putting it back.

Mr. Michael Congleton, Zoning Administration Division, OCP, said that he had learned this evening that the particular site where #9 would come into play had not been fully developed yet, and therefore the ramifications of putting it back in would affect one site. He added that staff would have no objection if it were put back in.

In response to Commissioner Strickland's question on fees, Mr. Congleton said that all the fees would be in Phase II of the amendment which would be before the Planning Commission in June, and would be going to the Board of Supervisors for authorization on May 27, 1992.

Commissioner Huber referred to page 10 and questioned whether the maintenance would be assured if the County had to assume that responsibility.

Mr. Bruce Douglas, LRPD, OCP, said that it was an issue that was outside the framework of the Ordinance. He added that the issue of whether the County provided adequate maintenance for stormwater facilities under its jurisdiction would be an open question.

Commissioner Huber said she had a communication from Commissioner Sell which stated that he would like site permits grandfathered and that he had proposed two paragraphs to that effect. She asked for an explanation of what site permits were. Mr. Congleton said that staff's basic understanding was a site permit was the last permit issued by the County before the ground was actually broken on the site. He added that in response to Commissioner Sell's concerns, Mr. Freedman had checked the computer today and had indicated that the site plan for Crossroads had been approved. He added that if in fact it had been approved, it would be grandfathered under paragraph 5; and if it was a recent submittal, it would be grandfathered under paragraph 4. Mr. Congleton said that staff would double check it but did not think that Commissioner Sell's amendment would be necessary.

Commissioner Hanlon referred to the new language on page 11, subparagraph f(1) that set forth three circumstances in which the requirement for 45% phosphorous removal would not apply because they were all connected with an "and." He noted that all three circumstances would have to apply to allow that exemption to go into effect. He added that from reading the cover, that the intention was to make it "or" so that any one of the three would cause the exemption. He then asked staff to clarify their intent. Mr. Douglas said that the language was correct, and that all three criteria would have to apply.

Commissioner Hanlon suggested that Mr. John Freedman, Department of Environmental Management (DEM), check the language on page 12, (g) to make sure the sentences said what staff intended them to say. Commissioner Hanlon then referred to page 13, Section 118-3-3 (b) and said that one of the requirements under the water quality impact assessments was that it was necessary to display and discuss the type and location of proposed Best Management Practices to mitigate the proposed RPA encroachment and/or adverse impacts. He then asked where the language was that would give the Director of DEM the authority to say that if the mitigation that he wanted wasn't there he could refuse to allow the development to go forward. Mr. Kaplan responded that the language regarding water dependant development was taken straight from the State regulations. He added that it would require water quality impact assessment and would fall under the provisions of Section 118-4-5.

Commissioner Hanlon then referred to Section 118-6-8, Exceptions for Roads, and remarked that it could be read two ways, and asked what the Director would have to find in order to make the waiver. Mr. Congleton responded that the sentence did not make any sense and that staff would get back to him with revised language. He added that the intent was that the Director could allow the establishment of private roads through an exception process.

Commissioner Hanlon referred to page 30, Article 7, Appeals, and said that he was toying with the idea of trying to insert a standard of review, such as: "The decision of the Director shall be upheld unless the Board finds that it is arbitrary and capricious, not supported by substantial evidence, or otherwise not in accord with the provisions of this Chapter." He added that it would provide the Board with a way of dealing with appeals of discretionary decisions by creating a standard. Mr. Congleton replied that he would defer it to the Office of the County Attorney. He added that based on his knowledge of the *Code of Virginia*, legislative bodies did not need standards in order to make decisions.

Commissioner Bobzien explained that the Reston Land Corporation made a presentation which talked about the considerable man-made lake and pond infrastructure which it had in place. He added that rather than rely on the general exception provisions, Reston Land requested that their particular situation be highlighted and that the Director of DEM be specifically permitted to approve exceptions in those developments. He then read into the record Section 118-6-11, Exceptions for PRC Districts. (See copy of proposed amendment in date file.)

Commissioner Huber asked whether there would be a problem if the proposed Section 118-6-11 were adopted as part of the Ordinance. Mr. Douglas said that the exception procedures were already sufficient enough to deal with any contingency Reston Land may have in mind. He added that such language was not needed and would send up a signal for special treatment. Mr. Congleton added that it was a Water Quality Ordinance and not a Zoning Ordinance Amendment, and staff would be hesitant about singling out one class or district for a different type of treatment, based on Zoning District. Mr. Congleton said that the existing exception procedures would take care of it.

Commissioner Strickland stated that he was concerned that the PRC District was being singled out for special privileges. Commissioner Bobzien responded that there was no other District in

the Zoning Ordinance where there would be that kind of water infrastructure and the trade off would be the ability to have water's edge development. He added that it was a very unique situation and would not involve special treatment because it would set up a framework for the Director of DEM to analyze it specifically, as opposed to making the PRC Districts rely on the general exception.

Commissioner Harsel referred to paragraph (a) of proposed Section 118-6-11, and asked whether all three alternatives would have to be met or just one. Commissioner Bobzien said any one of the three alternatives would have to be met. He added that it would give the Director, upon written request, the authority to approve an exception, if he deemed it to be the appropriate thing to do.

Commissioner Harsel then asked staff if there were similar criteria for the entire County. Mr. Douglas said that it there were similar criteria, they would be under Section 118-6-5, Resource Protection Area Exception, which was the use exception provision in Section 6.

Vice Chairman Hanlon asked whether it was Commissioner Bobzien's intent to add his proposed criteria to staff's criteria a through f in Section 118-6-6, or in place of staff's criteria. Commissioner Bobzien reiterated that the intent was to highlight the particular needs in the PRC District and he did not think there would be any problem in making it step g in Section 118-6.

Vice Chairman Hanlon asked Mr. Douglas if adding step g to Section 118-6-6 would solve many problems. Mr. Douglas said that 6-6 was the criteria the Director would apply. Commissioner Bobzien said that he would not make the amendment tonight, but would encourage Reston Land to work with the County in trying to get their particular needs incorporated under the umbrella of Section 118-6-6 before the Board of Supervisors public hearing.

Mr. Congleton referred to page 25, Section 118-6-8, Exceptions for Roads, and suggested that a period be placed after the words "public road" and that the rest of the language be deleted.

There being no further questions, Vice Chairman Hanlon recognized Commissioner Huber for action on the case. (See verbatim excerpts contained in the date file.)

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Commissioner Huber MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION, AS QUICKLY AS POSSIBLE, OF THE CHESAPEAKE BAY PRESERVATION ORDINANCE AS REVISED AND DATED MAY 15, 1992, WITH THE REVISION THAT WE AGREED TO ON PAGES 25 AND 29.

Commissioner Strickland seconded the motion.

Commissioner Hubbard MOVED AN AMENDMENT TO THE MOTION TO PICK UP THE STAFF AGREED UPON RETENTION OF PARAGRAPH 9, ON PAGE 29.

Commissioner Harsel seconded the amended motion which passed unanimously with Commissioners Murphy and Sell absent from the meeting.

Vice Chairman Hanlon MOVED THAT WE AMEND THE MOTION BY STRIKING THE WORDS "PROVISIONS OF THIS CHAPTER WHICH THE APPLICANT ALLEGES TO HAVE BEEN VIOLATED BY THE DECISIONS AND THE REASONS THEREFORE" AND REPLACING THAT PHRASE WITH "GROUNDS THEREFORE." AND THEN TO ADD THE FOLLOWING SENTENCE: "THE DECISION OF THE DIRECTOR SHALL BE UPHELD UNLESS THE BOARD FINDS THAT IT IS ARBITRARY AND CAPRICIOUS, NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, OR OTHERWISE NOT IN ACCORD WITH THE PROVISIONS OF THIS CHAPTER."

Commissioner Bobzien seconded the amended motion which passed unanimously with Commissioners Murphy and Sell absent from the meeting.

Mr. Bruce Douglas suggested language to clarify the wetland permits certification on top of page 12, at the end of the first sentence, to insert the words "…IN ANY AREAS REQUIRING SUCH PERMITS."

Commissioner Huber accepted the amendments to the main motion, Commissioner Strickland accepted the amendments as the seconder, and the main motion passed unanimously with Commissioners Murphy and Sell absent from the meeting.

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The meeting was adjourned at 8:50 p.m.
Peter F. Murphy, Jr., Chairman
Suzanne F. Harsel, Secretary

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

Minutes by: Sandra L. Stever

Approved on: October 14, 1992

Mary A. Pascoe

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