MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, SEPTEMBER 27, 2006

UNAPPROVED
OCTOBER 17, 2006

PRESENT: Walter L. Alcorn, Commissioner At-Large
John R. Byers, Mount Vernon District
Frank A. de la Fe, Hunter Mill District
Suzanne F. Harsel, Braddock District
James R. Hart, Commissioner At-Large
Nancy Hopkins, Dranesville District
Ronald W. Koch, Sully District
Kenneth A. Lawrence, Providence District
Rodney L. Lusk, Lee District
Peter F. Murphy, Jr., Springfield District

ABSENT: Janet R. Hall, Mason District
Laurie Frost Wilson, Commissioner At-Large

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The meeting was called to order at 8:16 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 Alcorn noted that the Transit-Oriented Development Committee had met earlier this evening to continue developing transit-oriented development guiding principles for inclusion in the Comprehensive Plan. He announced that the Committee would meet again on Wednesday, October 4, 2006 at 7:00 p.m. in Conference Rooms 4 and 5 of the Fairfax County Government Center. He encouraged everyone to attend who was interested in transit-oriented development in the County.

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Chairman Murphy reminded the Planning Commission that it would not meet on Thursday, September 28, 2006.

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FS-S06-53 - T-MOBILE NORTHEAST, LLC, 13122 Moore Road

Chairman Murphy MOVED THAT THE PLANNING COMMISSION CONCUR WITH THE "FEATURE SHOWN" DETERMINATION IN FS-S06-53.

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

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FS-S06-55 - T-MOBILE NORTHEAST, LLC, 7008 Elkton Drive

Chairman Murphy MOVED THAT THE PLANNING COMMISSION CONCUR WITH THE "FEATURE SHOWN" DETERMINATION IN FS-S06-55.

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

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FS-L06-49 - T-MOBILE NORTHEAST, LLC, 5850 Tilbury Road
FS-S06-46 - NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC., 11209 Fairfax Station Road

Chairman Murphy MOVED THE CONSENT AGENDA ITEMS, WITHOUT OBJECTION.

The motion carried unanimously with Commissioners Hall and Wilson absent from the meeting.

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ORDER OF THE AGENDA

Secretary Harsel established the following order of the agenda:

1. ZONING ORDINANCE AMENDMENT (FENCE AND/OR WALL HEIGHT)
2. ZONING ORDINANCE AMENDMENT (CONDOMINIUM APPLICANTS)
3. ZONING ORDINANCE AMENDMENT (ARCHAEOLOGICAL SURVEY SUBMISSION REQUIREMENTS)

This order was accepted without objection.

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ZONING ORDINANCE AMENDMENT (FENCE AND/OR WALL HEIGHT) - To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows: (1) Allow the Board of Zoning Appeals (BZA) to approve a special permit to allow for an increase in height for a fence and/or wall in any front yard subject to the following: (a) The maximum fence and/or wall height shall not exceed six feet and shall be ineligible for an administrative height

increase; (b) The sight distance requirements must be met; (c) The height increase shall be based upon such factors to include the orientation and location of the principal structure, the orientation and location of nearby off-site structures, topography, presence of multiple front yards, and concerns related to safety and/or noise; (d) The proposed fence and/or wall shall be in character with the existing on-site development, harmonious with the surrounding off-site uses and structures, and shall not adversely impact the use and/or enjoyment of any adjacent property in terms of location, height, bulk, scale, and any historic designations; (e) The BZA may impose such conditions it deems necessary to ensure compliance with these criteria; and (f) Special permit plat and architectural submission requirements are established; (2) Allow the Zoning Administrator to administratively approve up to a 10 percent increase in fence and/or wall height for an existing structure provided that: (a) The sight distance requirements are met; (b) The increase in height is due to variations in topography on the site or of the fence materials; (c) Any existing noncompliance was done in good faith and through no fault of the property owner; (d) Such fence and/or wall height increase shall not be detrimental to the use and enjoyment of other properties in the vicinity; and (e) All such requests shall be accompanied by illustrations supporting the need for the height increase and identifying the location(s) for which relief is sought; (3) Provide that fence posts not wider than six inches by six inches, finials, post caps, lighting fixtures, or similar features as determined by the Zoning Administrator, may exceed the maximum height of any fence and/or wall by not more than nine inches provided they are spaced an average distance of six feet apart and a minimum distance of three feet apart; and (4) Pursuant to authority granted by the Sect. 15.2-2286(A)(6) of the *Code of Virginia*, establish special permit applications fees of $295 for an increase in fence and/or wall height for a single family dwelling lot and $2,645 for an increase in fence and/or wall height for all other uses, and for amendments to previously approved proffered conditions, development plans, final development plans, conceptual development plans, concurrent conceptual/final development plans, special permits, and special exceptions establish an application fee of $295 for an increase in fence and/or wall height for a single family dwelling lot and $2,645 for an increase in fence and/or wall height for all other uses.
COUNTYWIDE. PUBLIC HEARING.

Donna Pesto, 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 proposed Zoning Ordinance Amendment.

In response to a question from Commissioner Lawrence, Ms. Pesto stated that subparagraph 5 on page 14 of the staff report, which required that all requests for an increase in fence and/or wall height be accompanied by illustrations supporting the need for the increase and identifying the location(s) for which relief was sought, would be subject to the Zoning Administrator's approval. She explained that subparagraph 3 on page 11 indicated that the Board of Zoning Appeals (BZA) would determine whether the special permit request was warranted based on factors, which included the orientation and location of the principal structure on the lot and the orientation and location of nearby off-site structures, and would be analyzed on a case-by-case basis.

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

Robert Sues, 3228 Highland Lane, Fairfax, expressed support for the proposed Zoning Ordinance Amendment. He noted that he had distributed correspondence from several of his neighbors who also supported the amendment. He said the amendment would provide the BZA with the flexibility to address unusually shaped lots and irregular situations and provide for sound development that would improve the beauty and usefulness of County properties and protect the safety of residents. He noted that the proposed administrative modifications would reduce staff workload in cases where fence heights differed from those proscribed in the Ordinance by minimal, insignificant heights. Mr. Sues stated that the amendment reflected the testimony presented at the public hearings, had given careful consideration to the original intent of the Ordinance, and would not impair the ability of the Ordinance to properly control development, but would simply provide an opportunity for residents to plead their case for special permit approval. He explained that the proposed language ensured that sight distance requirements would be met and that the fence height would remain in character with the existing on-site development; be harmonious with the surrounding off-site uses and structures; and not adversely impact the use and/or enjoyment of any adjacent property in terms of location, height, bulk, scale, and any historic designations. Mr. Sues said the proposed standards would adequately guide the BZA in the review of fence height increase requests on a case-by-case basis and that they would serve to adequately protect all affected parties. (A copy of his remarks is in the date file.)

Sarah McDade, 8502 Crestview Drive, Fairfax, spoke in support of the proposed amendment because it would provide residents with an opportunity to request an increase in fence and/or wall height in order to preserve their nonconforming walls and/or fences that were considered an asset to the surrounding neighborhood.

Steve DelBianco, 1920 Virginia Avenue, McLean, Land Use Chair of the Fairfax County Federation of Citizens Associations, stated that the Federation supported the provision to permit Zoning Administrator approvals of up to a five percent height increase for an existing fence and/or wall; opposed the proposal for a special permit to allow an increase in a fence and/or wall height up to six feet in front yards; and supported other provisions in the amendment, provided that applicants affirm that the relief sought would be consistent with any applicable homeowners association and/or citizens association covenants.

Responding to questions from Commissioner Hart, Ms. Pesto noted that adding a provision that required homeowners to provide affirmation on any covenants would be beyond the scope of advertising for the proposed amendment. She said private covenants would have precedence over special permit approvals.

Eugene Olmi, 2100 Windsor Road, Alexandria, asked how the amendment would address the covenants imposed by his subdivision that restricted fence heights to no more than four feet. Chairman Murphy replied that the amendment would address situations that exceeded any covenants enforced by homeowners associations or civic associations. He noted that the County had no control over legally-binding covenants generated by communities.

Mr. Olmi said the amendment would cause problems in his subdivision due to the existing covenants.

Justin McFadden, 7884 Train Court, Dunn Loring, spoke in favor of the proposed amendment because it would allow him to apply for a special permit to maintain his six-foot high fence, which was compatible with the other properties along Train Court. He said that under guidance provided by Fairfax County, he had replaced the original six-foot wood fence with the current six-foot white vinyl fence to comply with line of sight and sewer access requirements. (A copy of his remarks is in the date file.)

Scott Peterson, 6113 Hannover Avenue, Springfield, also supported the amendment because if he had to remove the fence from his corner lot, it would restrict the use of most of his yard and impair his access to privacy.

Alice Malone, 5620 Overly Drive, Alexandria, said she supported the amendment because it would allow her daughter, who lived at 5619 Overly Drive, to maintain a recently installed six-foot fence in her front yard to ensure the privacy of her children and sustain compatibility with other fences in the area.

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

Ms. Pesto recommended that the Planning Commission forward the proposed amendment to the Board of Supervisors with a favorable recommendation, as advertised, and include the five percent administrative increase.

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 FORWARD TO THE BOARD OF SUPERVISORS THE PROPOSED ZONING ORDINANCE AMENDMENT ON FENCE AND/OR WALL HEIGHT WITH A RECOMMENDATION FOR ADOPTION AS ADVERTISED, WITH THE PROVISION THAT ALLOWS FOR A MAXIMUM ADMINISTRATIVE INCREASE OF FIVE PERCENT IN LINE 45 ON PAGE 13 OF THE STAFF REPORT.

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

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ZONING ORDINANCE AMENDMENT (CONDOMINIUM APPLICANTS) - To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows: Clarify who may file a special permit, special exception, rezoning, development plan, variance, sign permit, Building Permit and Non-Residential/Residential Use Permit application, submit a site plan, sign proffered conditions in condominium developments as follows: (1) During the time period the declarant (developer) has a right to create additional units or to complete the common elements, the declarant has the authority to execute, file, and process any site plan, parking tabulation, application for special permit, special exception, variance, or rezoning, to include a development plan, conceptual development plan, final development plan, generalized development plan, or proffered conditions with respect to the common elements or a plan/application affecting more than one unit. (2) Once the declarant no longer has the right to create additional units or to complete common elements, the unit owners' association, as defined in the Virginia Condominium Act, has the authority to execute, file, and process any site plan, parking tabulation, application for special permit, special exception, variance, or rezoning, to include a development plan, conceptual development plan, final development plan, generalized development plan, or proffered conditions with respect to the common elements or a plan/application affecting more than one unit. (3) A site plan, application for special permit, special exception, variance, or rezoning to include a development plan, conceptual development plan, final development plan, generalized development plan, or proffered conditions affecting only one unit may be filed by the unit owner. (4) For purposes of obtaining Building Permits, Residential Use Permits or Non-Residential Use Permits, and sign permits, the unit owner, including the declarant if the declarant is the unit owner, shall apply for permits for the unit, and the unit owners' association must apply for permits for common elements. COUNTYWIDE. PUBLIC HEARING.

Paige Mathes, 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 proposed Zoning Ordinance Amendment.

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

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Commissioner Alcorn MOVED THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS ADOPT THE PROPOSED ZONING ORDINANCE AMENDMENT RELATING TO CONDOMINIUM APPLICANTS, AS CONTAINED IN THE STAFF REPORT DATED JULY 31, 2006

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

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> ZONING ORDINANCE AMENDMENT (ARCHAEOLOGICAL SURVEY SUBMISSION REQUIREMENTS) - To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows: Add an Archaeological Survey Data Form submission requirement for all rezoning, development plan, special exception, special permit, special exception, and variance applications located wholly or partially within, or contiguous to, a Historic Overlay District and resulting in 2,500 square feet or more of land disturbing activity; and add a Phase I Archaeological Survey submission requirement for such application properties determined to have a low or medium to high probability to yield significant archaeological resources. COUNTYWIDE. PUBLIC HEARING.

Cynthia Chambers, 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 proposed Zoning Ordinance Amendment.

Commissioner de la Fe pointed out that the proposed amendment would not preclude the Fairfax County Park Authority (FCPA) from requesting developers to conduct a Phase I archeological survey, regardless of whether the site was located in or near a Historic Overlay District, and would also not prohibit applicants from proffering to conduct an archaeological survey. Ms. Chambers and Elizabeth Crowell, Cultural Resource Management and Protection Section, FCPA, concurred.

In response to questions from Commissioner Byers, Ms. Crowell explained that the FCPA Cultural Resources staff made their preliminary assessment based on background research, which typically involved reviewing site files, including proprietary information on the County's Geographical Information System, survey data forms, archaeological site forms, and associated documentation to gather information about previously documented archaeological sites; prior levels of disturbance; archival information, including primary and secondary sources; historic maps; and aerial photographs to develop a general historic context for any archaeological findings. Ms. Crowell indicated that staff would submit this information in a written document to the applicant as justification for staff's decision.

Chairman Murphy called the first listed speaker.

Eileen Watson, 7221 Pinewood Street, Falls Church, Chair of the Northern Virginia Building Industry Association's (NVBIA) Environmental Committee, indicated her support for the proposed amendment as an appropriate method to identify any historic resources early in the development process. However, she recommended that the County adhere to the Virginia Department of Historic Resources standards for Phase I archaeological survey requirements to sufficiently identify any historic resources that may exist on a property without placing an excessive financial burden on developers. She expressed concern about the proposed testing requirements, noting that they far exceeded the state standards, and said that the purpose of the Phase I survey was to only identify the existence of a site and not collect artifacts and excessive testing would lead to substantial cost increases. Ms. Watson said she agreed that the average cost of $1,000 to $2,500 per acre as noted on page 4 of the staff report would be an appropriate estimate for the state standard survey, but estimated that those costs would be ten times greater for the proposed survey requirements. She suggested that clarification be added on how the FCPA would determine the areas of low, medium, and high probabilities of yielding significant archaeological resources and how that information would be used. She further suggested that the amendment require machine trenching instead of remote sensing and "ground truthing" as the method for surveying suspected cemetery sites, noting that ground penetrating radar would only be useful in open areas and transporting that equipment through wooded areas would be difficult. (A copy of her remarks is in the date file.)

Responding to a question from Commissioner Alcorn, Ms. Crowell indicated that depending upon the probability to yield archaeological resources on a site, the shovel testing intervals would vary with the maximum allowed by the state standard of 50 feet. She stated that staff had recommended closer interval testing on sites in or near a Historic Overlay District because they had a high probability to yield archaeological resources due to the historic nature of the area.

In response to another question from Commissioner Alcorn, Ms. Chambers said staff anticipated receiving approximately 6 to 10 applications a year that would be subject to the proposed Phase I archaeological survey submission requirements.

Commissioner Alcorn requested that staff consider adding language in the Ordinance to clarify the sentence, "A primary reason for requiring applicants to submit information to the Cultural Resources Section is to help staff better locate the areas of potentially significant resources to limit the areas of investigation," as found under the "Project description and staff review of existing archaeological resources" paragraph on page 5 of the staff report. Ms. Chambers replied that Cultural Resource staff would review the project description information provided by the applicant and examine the site to determine what areas would need to be investigated. She said only a small portion of a property would require a survey.

Commissioner Alcorn recommended that staff verify whether this type of language was commonly included in the Zoning Ordinance.

Responding to questions from Commissioner Hart, Ms. Crowell said that the proposed amendment had been reviewed by various historical and archaeological professionals. She explained that staff had recommended that shovel testing be performed every 20 feet on sites that had a high probability of archaeological resources because staff had found this to be the most effective way to discover resources and limit the amount of work that developers would have to perform if future phases were required. Ms. Crowell stated that the 20-foot testing interval was considered fairly standard in areas where there was high archaeological probability, noting that testing intervals would depend on the level of probability.

In response to further questions from Commissioner Hart, Ms. Crowell indicated that "suspected military sites," as identified in subparagraph 1 under provision 5A on page 12 of the staff report, referred to Civil War sites, including battlefields and earthworks; Revolutionary War sites; the Washington-Braddock Route that crossed the Mason Neck area; War of 1812 sites; and other similar sites that had past engagements related to military activities. She said the NIKE Missile site could be a potential site for a Phase I archaeological survey, although one was not currently planned. Ms. Crowell explained that staff usually required archaeological surveys on sites that were 50 years old or older, had particular historical significance based on the people or the event it had been associated with, or had architectural significance associated with cultural resources.

Responding to a question from Commissioner Alcorn, Ms. Crowell pointed out that the City of Alexandria had an ordinance that required archaeological surveys be conducted within city limits; the City of Arlington did not have an ordinance, but required archaeological surveys on a case-by-case basis; and Loudoun and Prince William Counties required archaeological surveys countywide.

Larry Baldwin, 13708 Leland Road, Centreville, said the proposed Phase I archaeological survey submission requirements would fail to carefully consider recorded facts about sites in the Centreville Historic Overlay District and would only rely upon sampling and collecting of artifacts, which could lead to inaccurate results.

In response to a question from Commissioner Alcorn, Mr. Baldwin suggested that the Planning Commission not support adoption of the proposed amendment in its present form because he said it would not adequately serve the needs of the Centreville Historic Overlay District.

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

Ms. Chambers suggested that the Commission recommend to the Board of Supervisors adoption of the amendment, as stated in the staff report.

Responding to a question from Commissioner Alcorn, Ms. Chambers noted that staff did not recommend any additional changes to the proposed language at this time.

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 Alcorn for action on this item. (A verbatim excerpt is in the date file.)

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Commissioner Alcorn MOVED THAT THE PLANNING COMMISSION RECOMMEND ADOPTION TO THE BOARD OF SUPERVISORS OF THE PROPOSED ZONING ORDINANCE AMENDMENT RELATING TO ARCHAEOLOGICAL SURVEY SUBMISSION REQUIREMENTS AS STATED IN THE STAFF REPORT DATED JULY 31, 2006.

Commissioners de la Fe and Byers seconded the motion which carried unanimously with Commissioners Hall and Wilson absent from the meeting

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The meeting was adjourned at 9:25 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: _____

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