Planning Commission Meeting
January 28, 2010
Verbatim Excerpt

SEA 85-D-033-02 – METROPOLITAN WASHINGTON AIRPORTS AUTHORITY & THE VIRGINIA DEPARTMENT OF RAIL & PUBLIC TRANSPORTATION (Decision Only)
(Public Hearing held on November 19, 2009)

During Commission Matters

Commissioner Donahue: Mr. Chairman, yes. Thank you very much. It has to do with SEA 85-D-033-02, which has simply become known as Rail Yard. And you all received revised conditions, I believe, it was late this afternoon. And with your permission, Mr. Chairman, I think the best way to go about this is – I intend to amend one of those conditions. But I would like to have the applicant or a representative of the applicant approach the microphone for a short discussion first. Can we do that?

Chairman Murphy: Mr. Rak. Please identify yourself for the record.

Jonathan P. Rak, McGuire Woods LLP: Thank you, Mr. Chairman. I'm Jonathan Rak, the attorney for the applicants.

Commissioner Donahue: Thank you, Mr. Rak. And I would call the Commission's and the applicant's attention to Condition Number 8. It is my plan, Mr. Chairman, to amend this evening Condition Number 8, and Mr. Rak, to read the following: the first line, or the first part of the first line, from notwithstanding through cover box will deleted. And the condition will read as follows: "The maximum stationary noise level generated by the rail yard at the property line of abutting residential properties shall be in accordance with the Noise Ordinance except as may be permitted in accordance with Article 6 of the Noise Ordinance." And the remainder of the Condition 8 will remain the same. And we talked a little bit before the hearing, Mr. Rak. And I think what we decided is with that change in Number 8, you will be agreeable to the rest of the condition. Is that correct?

Mr. Rak: Commissioner Donahue, you also had mentioned as shown in the circulated conditions that 10 and 19 would be deleted. Is that correct?

Commissioner Donahue: That's correct. Old 10 and old 19 will also be deleted. That's correct.

Mr. Rak: Commissioner, what Metro has asked me to say is that although the proposed conditions do not include all of the revisions that WMATA asked for in its January 27 letter, we appreciate the changes that Commissioner Donahue has proposed and we request that the Commission approve the application as moved by Commissioner Donahue.

Commissioner Donahue: Unless there are other questions, that's all I would have for Mr. Rak, Mr. Chairman. Thank you very much.

Commissioner de la Fe: I have a question.

Chairman Murphy: Mr. de la Fe.

Commissioner de la Fe: Mr. Rak, we received a letter from Metro itself, from WMATA. WMATA is not an applicant of this. They were concerned about the operation of the yard. Have you received written instructions from Metro about this?

Mr. Rak: I have not received written instructions from Metro. Mr. John Thomas with WMATA is here this evening and I have consulted with him.

Commissioner de la Fe: Thank you.

Chairman Murphy: Mr. Alcorn.

Commissioner Alcorn: With the changes that Commissioner Donahue just described, I am comfortable in supporting the motion. I would just note for the record, we've had a lot of discussion about the Noise Ordinance through this case. I understand it is on the Work Program for review and I would very much encourage staff to expedite that review. Because there are clearly some noise issues here that, I think, maybe some clarification, maybe even a change or two might be worth consideration. So, thank you.

Commissioners de la Fe and Hart: Mr. Chairman?

Chairman Murphy: Mr. de la Fe and then Mr. Hart.

Commissioner de la Fe: I don't know whether this is the appropriate time to say this, because a motion has not been made. But we've been talking about it, so I will say it at this point. Last week during the consideration of this item, I moved an amendment to it that would in essence restore the development conditions related to noise that are in the current SE, which has been in effect for decades. After much discussion, the Planning Commission deferred the decision once again until tonight. The Commission requested alternative language that attempted to incorporate the discussion last week for our consideration tonight. The Commission asked that any new language be provided in time for thoughtful consideration. This afternoon by email revised conditions arrived. We also received a letter from WMATA restating what they had stated at the public hearing last year: "The noise limitation is something the yard cannot achieve." And WMATA has requested that the Commission recommend elimination of Condition 8 as well as three others. And that's why I was asking Mr. Rak where WMATA stood. I find it ironic that because of a new interpretation of the Noise Ordinance the current condition, which has governed the yard for over a quarter century, is not valid. As I stated last week, when I made my motion to return to the currently existing conditions related to noise, my major concern is that if WMATA cannot operate the yard under these proposed conditions, the entire schedule for the opening of the Silver Line is placed at risk. We are at a point that further delay by this

Commission in sending this SE to the Board of Supervisors for action would only accomplish more delays. I appreciate what Commissioner Donahue has just said about removing the 55 LMax in Condition 8, which was my major concern. It still exists in Condition 7. However, since he saw to remove it from one I will, rather than oppose this motion, I will just abstain.

Chairman Murphy: All right. Mr. Hart.

Commissioner Hart: Thank you, Mr. Chairman. I too had problems with this application, at least with respect to the wording of several of the development conditions at the time of the public hearing and also last week. I appreciate the nature of the ongoing discussions and the complexity of this case. Sometimes, we're not always going to be able to reach total agreement on every condition. But to my mind with the change to the first sentence in Number 8 and the other changes that were made today, I will be able to support the application. Thank you.

Chairman Murphy: Mr. Donahue.

Commissioner Donahue: Thank you, Mr. Chairman. I had come prepared with an opening statement, but I think more than enough has been said concerning this application, other than to thank an awful lot of people, from St. Clair and Cathy Lewis, and so, so many staff people – Mike is up there – who have been so helpful with respect to this condition; and also the input I've had from Commissioners and the input I've had from the public that has helped us immensely get to what I think is an application and set of conditions which will protect everyone's interest. I'm not entirely sure I can say they make everyone happy. But I really do think they protect everyone's primary interests. So, with that, Mr. Chairman, I WOULD MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SEA 85-D-033-02, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED JANUARY 28TH, and I guess the following amendment. Should I read this in?

Chairman Murphy: Right.

Commissioner Donahue: CONDITION NUMBER 8: THE VERY FIRST SENTENCE, DELETE THE WORDS FROM "NOTWITHSTANDING THROUGH COVER BOX." AND NOW THE FIRST SENTENCE OF NUMBER 8 WILL READ: "THE MAXIMUM STATIONARY NOISE LEVEL GENERATED BY THE RAIL YARD AT THE PROPERTY LINE OF ABUTTING RESIDENTIAL PROPERTIES SHALL BE IN ACCORDANCE WITH THE NOISE ORDINANCE EXCEPT AS MAY BE PERMITTED IN ACCORDANCE WITH ARTICLE 6 OF THE NOISE ORDINANCE." AND THE REST OF THE CONDITION IS TO REMAIN THE SAME.

Commissioners Alcorn: Second.

Chairman Murphy: Do you want to delete something?

Commissioner Donahue: Oh, well no; well, yes, from the original conditions. But the revised – is taken care of.

Chairman Murphy: Okay. All right. All right. Seconded by Alcorn –

Commissioner Flanagan: Second.

Chairman Murphy: – and Mr. Flanagan. Is there a discussion of the motion?

Commissioner Lawrence: Mr. Chairman?

Chairman Murphy: Yes, Mr. Lawrence.

Commissioner Lawrence: Just an observation. I wasn't present for the public hearing, so I can't vote on the motion. However, I do hope as a practical matter that the operator of the rail system will have as much of the hooting and carrying on done inside the noise box as is possible. I do think the noise box will get at the core of the problem, which is that infernal screeching sound, having been there and had an interesting time with that. I can speak from experience on that. But that's my observation. Thank you.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 85-D-033-02, say aye.

Commissioners: Aye.

Commissioner de la Fe: Abstain.

Chairman Murphy: Opposed? Motion carries. Mr. de la Fe abstains. Mr. Donahue.

Commissioner Lawrence: And Commissioner Lawrence abstains, not present.

Chairman Murphy: – and Mr. Lawrence; not present for the hearing.

Commissioner Donahue: Thank you, Mr. Chairman. And before I do the second, I'll just note that one of the things Commissioner Lawrence is referring to is the morning at 4:00 a.m. that I dragged him down to the rail yard so he could hear the wheel squeal. And he's been on me ever since; but nevertheless.

Chairman Murphy: Some sight visits.

Commissioner Donahue: I MOVE THAT THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE MODIFICATION OF THE TRANSITIONAL SCREENING AND WAIVER OF THE

BARRIER REQUIREMENTS ALONG THE NORTHERN PROPERTY LINE IN FAVOR OF THAT SHOWN ON THE SEA PLAT.

Commissioner Alcorn: Second.

Chairman Murphy: Seconded by Mr. Alcorn. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Commissioner Lawrence: Abstain.

Chairman Murphy: Opposed? Motion carries. Same abstentions.

Commissioner de la Fe: No, I am in favor.

Chairman Murphy: Oh, Mr. de la Fe is voting in favor of this. Mr. Lawrence abstains; not present for the public hearing. Mr. Donahue.

Commissioner Donahue: Thank you, Mr. Chairman. And I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF THE COMPREHENSIVE PLAN TRAIL REQUIREMENT ALONG IDYLWOOD ROAD.

Commissioner Alcorn: Second.

Chairman Murphy: Seconded by Mr. Alcorn. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Commissioner Lawrence: Abstain.

Chairman Murphy: Opposed? Motion carries. Mr. Lawrence abstains.

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(The first motion carried by a vote of 7-0-2 with Commissioners de la Fe and Lawrence abstaining; Commissioner Sargeant not present for the vote; Commissioners Hall and Harsel absent from the meeting.

The second and third motions carried by a vote of 8-0-1 with Commissioner Lawrence abstaining; Commissioner Sargeant not present for the vote; Commissioners Hall and Harsel absent from the meeting.)

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