

Planning Commission Meeting  
February 3, 2011  
Verbatim Excerpt

SE 2010-LE-017 – ISKALO CBR, LLC  
2232-L10-17 – WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Decision Only During Commission Matters  
(Public Hearing held on January 13, 2011)

Commissioner Migliaccio: Thank you, Mr. Chairman. I have one decision only tonight. And before we go on verbatim I would like to ask staff a few questions, and perhaps the applicant. Staff, after the site visit that we had, I believe that it was January 21<sup>st</sup>, did VDOT and OT find that the WMATA buses could safely navigate the intersection of Backlick Road and the Fairfax County Parkway, as Development Condition 16 had indicated?

St. Clair Williams, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ): I'm St. Clair Williams with the Department of Planning and Zoning. Yes. Following the site visit to watch the bus - - review the turning movements, both Fairfax County DOT and VDOT - - both determined that there were no turning issues. They've also provided memos, which I believe you would have received via email yesterday.

Commissioner Migliaccio: Yes, thank you. Mr. St. Clair (*sic*), does this application satisfy the criteria of Section 9-400 for the transportation facilities in our Code?

Mr. Williams: Yes. Staff has determined that the application is in conformance with the applicable standards of Section 9-404 of the Ordinance.

Commissioner Migliaccio: And two more: Does Objective 38 of the Plan apply to this application?

Mr. Williams: Objective 38 of the Policy Plan refers to County maintenance facilities and it actually states that it's to "ensure that County vehicle maintenance facilities are located on adequate and appropriate sites."

Commissioner Migliaccio: – but not WMATA facilities.

Mr. Williams: Yes. That would not be a County facility.

Commissioner Migliaccio: Okay. And, does this application conform to the agreement between WMATA and the County?

Mr. Williams: I have consulted with the County Attorney's Office on this matter and there is a master agreement between WMATA and Fairfax County. It states that, I guess, WMATA would comply with all laws, ordinances, and regulations of the County. And based on staff's review of the application, this application is in conformance.

Commissioner Migliaccio: Okay. And one last one, is this proposed use in harmony with the adopted Plan?

Mr. Williams: Staff's determination is that the application is in harmony with the Comprehensive Plan.

Commissioner Migliaccio: Okay, thank you. And one question for the applicant, please.

*[Inaudible]*

Chairman Murphy: Hold on. Before – we're having an audio... Can you hear? No, it's - - it's - - Can we get some audio adjustment down here, guys, okay? Because I can hardly hear the applicant. God knows, we don't want to miss one of those words.

David Gill, Esquire, McGuireWoods LLP: That's right.

Chairman Murphy: Okay. Go ahead.

Commissioner Migliaccio: Thank you. There has been a question about the service area. Do you have any map or any diagram to show us the proposed service area?

Mr. Gill: Sure. It may be a little bit difficult to see here as it comes up here on the overhead for each individual - - but the red dot here is the service - - is the proposed bus garage. As you slide over what we've done is highlighted the three closest WMATA routes that are going to be serviced from this garage. And those are in yellow on this plan. You can see there is a number of routes going east and west here along Old Keene Mill Road. There is the REX facility, which is the Richmond Highway Express, which is actually run by WMATA. They are WMATA buses that, pursuant to "John Quigley Buyer," it is pursuant to the contract – correct? – but we –

Unidentified Associate: – No, they're Metrobuses. The paint is different.

Mr. Gill: They are Metrobuses, just painted differently to reflect the Richmond Highway Express. Those run from Fort Belvoir directly to the Huntington Metro and points north as well as bus service originating to and from the Springfield Metro.

Commissioner Migliaccio: And, and - - oh, I'm sorry. And that bottom one, is that Richmond Highway? Is that Route 1? I can't –

Mr. Gill: Yes, it is. Yes. Sorry. It is difficult to see. We have copies of the map. We'd be happy to share it with the Commission.

Commissioner Migliaccio: Thank you. One other question.

Mr. Gill: Sure.

Commissioner Migliaccio: Can you explain - - there's been questions at the public hearing about air pollution. Can you just tell us what you did as the applicant?

Mr. Gill: I think we mentioned this a little bit at the public hearing, but because this project was subject to WMATA applying for federal funds, instead of federal stimulus funds and FTA funds in order to help fund this project, it underwent the federal environmental analysis that's required, including compliance with federal environmental regulations. As part of that environmental evaluation, WMATA also did an air quality analysis. That was part of it; it was included prior to their public hearing they held back in June of 2009. The public hearing was in July but the analysis was from June. And they concluded that there was no impact, largely because this is swapping facilities within the same area. And, again, because air quality is measured on a broader scale that - - there was a conclusion by that analysis that there was no impact from the proposed facility.

Commissioner Migliaccio: And one final question that was brought up quite a bit: Do you as - Does the applicant commit to not using Newington Road?

Mr. Gill: Absolutely.

Commissioner Migliaccio: Okay, thank you.

Chairman Murphy: All right. Mr. Migliaccio.

Commissioner Migliaccio: Thank you, Mr. Chairman. On January 13<sup>th</sup> of this year we held a public hearing to receive comment regarding application SE 2010-LE-017, concurrent with 2232-L10-17. The applicant proposes to build in Lee District a regional non-rail transit facility for up to 160 buses, located on Cinder Bed Road, a driveway for uses in an I-District and uses in a floodplain. This facility will ultimately be owned and operated by WMATA and replace an aging bus garage on Royal Street. The proposed building would be located on what is now blighted industrial property on the I-95 Corridor Industrial. Per Plan guidelines, this and the adjacent lots are designated to remain industrial. One benefit of locating a facility here among compatible uses includes the minimal impact it would have on its immediate neighbors. This application has not been without critics who have raised some valid points throughout the process. With citizen input, this application has been improved through a number of development conditions. Chief among them are the ones that relate to traffic. The applicant has committed to not run buses on Newington Road, a key point for nearby residents. Instead, all buses will travel down Cinder Bed Road to Backlick Road and then onto the Fairfax County Parkway. The applicant has also committed to provide a stoplight at the intersection of Newington Road and Cinder Bed Road. While these conditions may not please everyone, they have made this a better application. The application also benefits the environment. The applicant will clean up and restore a blighted property with extensive environmental issues and will employ BMPs not currently found onsite in order to protect Long Branch stream. The facility will be LEED certified up to the Silver level. In addition, the existence of a compressed natural gas pipeline onsite will help facilitate a quicker transition to a fleet of buses powered by CNG.

Overall, this application would provide much needed mass transit capacity for this part of the County as it grows and it would help improve the efficiency of the transit system by providing a new garage at a key location. The nearest residential neighborhood - - neighborhood, which is in Lee, supports this application with the development conditions, as does the Lee District Land Use Committee. County staff has reviewed both the SE and 2232, and recommends approval. I concur. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION FIND THAT THE FACILITY PROPOSED UNDER 2232-L10-17 SATISFIES THE CRITERIA OF LOCATION, CHARACTER, AND EXTENT AS SPECIFIED IN SECTION 15.2-2232 OF THE *CODE OF VIRGINIA* AND IS SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE COMPREHENSIVE PLAN.

Commissioners de la Fe and Alcorn: Second.

Chairman Murphy: Seconded by Mr. de la Fe and Mr. Alcorn. Is there a discussion of the motion?

Commissioner Flanagan: Mr. Chairman?

Chairman Murphy: Mr. Flanagan.

Commissioner Flanagan: Mr. Chairman, I would like to move a substitute motion at this time. I WOULD LIKE TO MOVE THAT THIS MATTER BE DEFERRED TO THE NEXT DATE AVAILABLE. And if I can get a second to that.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of the motion?

Commissioner Migliaccio: Mr. Chairman?

Commissioner Flanagan: Yes, Mr. Chairman, I'd like to - -

Chairman Murphy: All right. Mr. - - ? Substitute.

Commissioner Migliaccio: Oh, I'm sorry.

Chairman Murphy: Mr. Flanagan.

Commissioner Hall: That's odd. Why?

Commissioner Flanagan: No, it's not odd at all.

Commissioner Hall: What's the purpose of the -

Chairman Murphy: He's going to say right now.

Commissioner Hall: Oh, all right. I'll wait.

Chairman Murphy: That's why I said, "Discussion."

Commissioner Hall: Ah, good. I'll listen.

Commissioner Flanagan: Okay. During the subject public hearing on January 13th, a Commissioner asked to be provided with a map of the Metrobus routes in Virginia. And I was able to find such a map and I'd like to ask the staff to put that up on the screen at the present time. This cannot be focused a little better than that?

Chairman Murphy: Probably not. I don't think it's - - I think it's the texture of the original that I'm looking at. Sometimes - -

Commissioner Flanagan: There's nothing wrong with the focus of the original.

Kristin Abrahamson, ZED, DPZ: Well, if you tune to your little screens it should be pretty clear.

Commissioner Hart: I can't read it.

Commissioner Hall: Oh no, they're not. But we have copies.

Chairman Murphy: We all have copies.

Commissioner Flanagan: Anyway, we all got - - I think that all the Commissioners got copies of it anyway.

Chairman Murphy: Yes.

Commissioner Flanagan: My understanding - - and staff, I'd like to ask these questions. You know - - no it was.

Chairman Murphy: Is that the best you can do?

Ms. Abrahamson: That's the best I can do.

Chairman Murphy: Okay, go ahead, Earl.

Commissioner Flanagan: Oh, I can read it from the - - I'll tell you what those words say there. The - - but I'd like to ask the staff. Staff, as I understand it, this facility on - - the proposed facility on Cinder Bed would take the place of the Royal Street - -

Chairman Murphy: There we go.

Commissioner Flanagan: - - garage that's now in Alexandria. Is that correct?

Mr. Williams: That is correct.

Commissioner Flanagan: And does the - - my understanding is that the Royal Street serves all those blue lines on there, all the Metrobus blue routes that are in Alexandria and Arlington to the - - on this map. This map contains the lines, those blue lines you see on there are basically the routes of the Metrobus system.

Mr. Williams: Yes, I think that would be a better question for the applicant to answer.

Commissioner Flanagan: I don't know if you can see this map or not.

Mr. Gill: It doesn't recognize the REX necessarily, but - -

Commissioner Flanagan: This a Metro map, by the way.

Mr. Gill: Sure, and we don't include it on the - - the REX on there because it is - - it is a different service, but Metro does run that.

Commissioner Flanagan: Right.

Mr. Gill: The only point I would raise is absolutely lines going to other jurisdictions. That's the very reason why we have a regional transit agency, is they serve Fairfax and Arlington, Alexandria, and the District, and the region. And so yes, there are certainly service lines that will service other jurisdictions.

Commissioner Flanagan: The lines that are being serviced by that Royal Street at the present time are basically - -

Chairman Murphy: Hold on, please. Ma'am, if you're going to have a conversation on your cell phone, please take it outside. And please, if you have a cell phone, please turn it off or put it on "stun." Go ahead.

Mr. Gill: Sorry, Commissioner Flanagan, go ahead.

Chairman Murphy: Okay.

Commissioner Flanagan: The area that's just below the - - where it says "proposed Cinder Bed Road" on there, with the red star.

Mr. Gill: Yes, where the Fort is, primarily.

Commissioner Flanagan: Right. All of that area in there between all of the blue lines of the Metro lines is not served by Metro. Is that right?

Mr. Gill: Correct. Those are primarily Connector routes and those are -

Commissioner Flanagan: These are all Fairfax County Connector routes.

Mr. Gill: Right. And frankly as BRAC comes online, it's one of the reasons that made this site more attractive was we anticipate cooperating with the County and making sure we can serve BRAC, which would likely bring more of those blue lines to Fort Belvoir and the EPG.

Commissioner Flanagan: The Connector routes at the present time area all being serviced by the bus maintenance facility that already exists in Newington on Cinder Bed Road?

Mr. Gill: I can't - - that's for the County to answer.

Commissioner Flanagan: Oh, all right.

Mr. Gill: There's the facility at West Ox as well, obviously.

Commissioner Flanagan: So there is a facility there. And that facility does meet the Objective 38 - - the Policy statement in the Policy Plan that says that it should be located in the center of its service area.

Mr. Gill: For a County facility, I'd leave it to staff to answer that.

Commissioner Flanagan: Well, staff could answer it then.

Mr. Williams: Could you repeat the question, please?

Commissioner Flanagan: The bus facility that serves the Connector bus is now located on Cinder Bed Road and is in the center of its service area, thereby meeting the Policy Plan requirement that it be in the center of its service area?

Mr. Williams: Yes, I do not know the details of the services provided by the Connector buses using that site. And again, as I stated previously, the Objective 38 of the Policy Plan applies to County maintenance facilities, which the subject application is not a County maintenance facility.

Commissioner Flanagan: But that bus, I think the 2232 staff report that I had when we approved the improvement of those facilities there did state that it was not on an arterial highway. And - - is that correct? You have - -?

Mr. Williams: That is correct because, again, it also has access to Cinder Bed Road.

Commissioner Flanagan: Right, but the reason why we approved - - the only reason we approved a bus at that location was because it was grandfathered in. It was there in 1960 before the Policy Plan contained this language at the present time.

Mr. Williams: I do not know. I was - - I'm not familiar with that application.

Commissioner Flanagan: I just want to be sure this is part of the record and that is the case. On this map it shows that - - and this, by the way, is my own - - these are my own figures - - that when I left the site I found that it was 5.5 miles to the Keene Mill intersection from this site. You know, it's the first place I could come to a Metrobus line route was at - - was 5.5 miles away from this bus site.

Mr. Gill: We disagree. I mean, when we ran it, it was 4.3, but - - I mean, we're not going to look at that.

Commissioner Flanagan: It's more than one mile.

Mr. Gill: The service originates from the Metro station.

Commissioner Flanagan: Okay. Anyway, this is - - this site is not on a Metrobus route.

Mr. Gill: Correct.

Commissioner Flanagan: Okay. I also clocked it at five miles. Is five miles to Springfield Metro?

Mr. Gill: We came out at 4.3, but again - -

Commissioner Flanagan: Basically, there's a five-mile radius or circle here where there are no Metrobuses serving the public.

Mr. Gill: Again, with REX, that is - - could be closer as well. We didn't go out and measure the distance to Fort Belvoir.

Commissioner Flanagan: I measured it. It was 4.7 miles to REX and that was to the main gate over there as well. The reason why I bring that up is because I was disappointed to find that in the staff report there was no mention of the zoning requirements in Section 9-400 that are requirements for the Transportation Facilities that Special Exception applications must meet. And there's no discussion, there's no listing of those requirements for a Special Exception in the staff report, and there's no mention of any response from the applicant. The applicant didn't volunteer any information along this line in the application.

Mr. Gill: Did you check the Statement of Justification? Because we would have had to address it as part of our Statement of Justification.

Commissioner Flanagan: Okay.

Mr. Williams: Excuse me, if I can respond to that. Actually, yes, again the response is included in the Statement of Justification. And also the applicable standards, which apply to the site in 9-404, are actually standards which are addressed in other areas of the staff report. The first standard is that all buildings and structures shall comply with the bulk regulations of the zoning district in which they're located. And the staff report does note that the proposed development is

in compliance with the bulk standards for the zoning district or site that it's located in. Another standard which applies says, "Except in the I-6 District, all maintenance, repair, and mechanical work, except of an emergency nature, shall be performed in enclosed buildings." And while the proposed - - this proposed site - - the repairs are to take place in an enclosed building, it is on property that's zoned I-6. Standard Number 4 says, "All facilities shall be located and so designed that the operation thereof will not seriously affect adjacent residential areas, particularly with respect to noise levels." And the staff report notes that the applicant has provided a noise study which demonstrates that the noise impacts will be - - meet the County standards. And the last standard in that section which applies is Number 8, and it talks about such applications being subject to the provisions of Article 17, which is site plans. And this application will be subject to site plan review.

Commissioner Flanagan: Okay. The one thing which I'd like to have you clarify for me: On page 16 of the staff report, it starts out by listing all of the General Standards of the zoning requirements for a Special Exception. And the first one mentioned is 9-006, as I read it. The next one is 9-104, -606, -905, 9-616. I don't see any listing of the - - any of the "400" provisions there.

Mr. Williams: That is correct.

Commissioner Hart: Mr. Chairman, may I bring up a point of order?

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: Thank you. I hesitate to interrupt, but I thought the business that was on the table was the discussion of a substitute motion to defer Commissioner Migliaccio's motion to another date. It seemed to me the discussion ought to be germane to the deferral and somehow we've transitioned back into a reopening of the public hearing. We've had questions of staff, questions of the applicant, and I'm not sure what had - - how that public hearing got reopened. I thought the discussion now ought to be just on the reason for the deferral, which was Commissioner Hall's question, I think.

Commissioner de la Fe: I would agree with that.

Commissioner Flanagan: Mr. Chairman, I'm bringing this point up because I think that in order to have a complete package going to the Board of Supervisors we need to have this information listed and responded to, that there should be some response to these. And so the purpose in my deferral would be to give the staff an opportunity to indicate how that might be done.

Chairman Murphy: Okay. Further discussion of the motion?

Commissioner Lawrence: Mr. Chairman?

Chairman Murphy: Yes, Mr. Lawrence.

Commissioner Lawrence: Point of clarification on the substitute motion. If the purpose of the deferral is to include Ordinance provisions that are not now included in the staff report - -

Commissioner Flanagan: Yes.

Commissioner Lawrence: Let me ask the staff whether the omission is deliberate because what we are considering is a 2232. Staff, can you respond to that, please?

Mr. Williams: Could you repeat the question, please?

Commissioner Lawrence: As I understand it, what we have here tonight to vote on is a 2232.

Commissioner de la Fe, Chairman Murphy, and Mr. Williams: And a Special Exception.

Commissioner Lawrence: And a Special Exception.

Mr. Williams: Yes.

Commissioner Lawrence: Does the staff report list all the applicable standards?

Mr. Williams: The standards of 9-404 were not included in the staff report; however, as I just stated, those same standards are addressed in other sections of the Ordinance, which were included in the staff report.

Commissioner Lawrence: So the reason they are not addressed by number is that the same content appears in other sections of the Ordinance. Did I understand that correctly?

Mr. Williams: That is correct.

Commissioner Flanagan: I'd like to - -

Commissioner Lawrence: So in that case, the content - - the substantive content is present whether the numbers are present or not. Does that affect your desire to defer?

Commissioner Flanagan: Yes, it helps but it doesn't really answer the need to have all of them mentioned in the staff report going to the Board of Supervisors. Because I'm passing out here - -

Chairman Murphy: What's - - are we talking about the staff report for the 2232?

Commissioner Flanagan: We're talking about the Special Exception staff report.

Chairman Murphy: We haven't made that motion yet. Am I correct?

Commissioner de la Fe: We are at the 2232.

Chairman Murphy: We have not talked about the Special Exception application. We're talking about the 2232, which is the up or down for the Planning Commission. And the motion was to approve the 2232 because it met the standards - - the State standards of character, location, and extent. The second motion was to defer the 2232 application, which does not include citations from the Zoning Ordinance.

Commissioner Flanagan: But if there's a deferral on the SE, then will the 2232 also be deferred?

Chairman Murphy: No.

Commissioner Flanagan: Well, I think we need to take up the SE first.

Chairman Murphy: All right, all those in favor of the motion to defer the decision only on 2232-L10-17, say aye.

Commissioners Flanagan and Litzenberger: Aye.

Chairman Murphy: Opposed?

Commissioners: Nay.

Chairman Murphy: Motion carries. (*sic*)

Commissioner Hall: Abstain.

Commissioners: No.

Commissioner Alcorn: Motion doesn't carry.

Chairman Murphy: Motion doesn't carry, I should say.

Commissioner Hall: Excuse me.

Chairman Murphy: Mr. Flanagan was the only one that supported that motion (*sic*). Is there further discussion? Yes.

Commissioner Hall: I need to abstain because even though I was here at the beginning of the meeting, I did go home ill. So I did miss the public hearing. So I'll be abstaining from voting on this issue.

Chairman Murphy: And I'm glad you brought that up because I had to leave before the public hearing, but I watched the public hearing tonight on video. All those in - - ? Okay.

Commissioner de la Fe: Mr. Litzenberger also supported, I believe.

Chairman Murphy: Did you support that?

Commissioner Litzenberger: The deferral, yes.

Chairman Murphy: Okay. Mr. Litzenberger and Mr. Flanagan supported the deferral, okay. Further discussion of the motion? All those in favor - -?

Commissioner Lawrence: We just made the motion.

Commissioner Alcorn: No, we're returning to the main motion.

Commissioner Hall: Now you return to the main motion.

Commissioner Lawrence: Return to the main motion.

Chairman Murphy: That which I'm - - yes, okay. All right, all those in favor of the motion to approve 2232-L10-17, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Hall: Abstain.

Chairman Murphy: Opposed?

Commissioner Flanagan: Nay.

Chairman Murphy: Motion carries. Mr. Flanagan votes no. Mr. Migliaccio.

Commissioner Migliaccio: Thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2010-LE-017, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED FEBRUARY 2<sup>ND</sup>, 2011.

Commissioners de la Fe and Alcorn: Second.

Chairman Murphy: Seconded by Mr. de la Fe and - - was there another second? Mr. Alcorn. Is there a discussion of that motion?

Commissioner Flanagan: Mr. Chairman?

Chairman Murphy: Mr. Flanagan.

Commissioner Flanagan: I apologize for bringing up my motion during the - -

Chairman Murphy: Okay.

Commissioner Flanagan: - - the 2232 - -

Chairman Murphy: That's all right.

Commissioner Flanagan: - - to the Commission. But, now is the time to bring it up. And yes, I would - - I WOULD LIKE TO SEE IS THE APPLICATION IMPROVED BY INCLUDING IN THE APPLICATION A LISTING OF THE SPECIAL EXCEPTION REQUIREMENTS LISTED IN 9-400, WITH RESPONSE.

Chairman Murphy: Are you MAKING A MOTION NOW TO DEFER?

Commissioner Flanagan: YES.

Chairman Murphy: Okay. Is there a second to that motion?

Commissioner Litzenberger: Second.

Chairman Murphy: Mr. Litzenberger seconded the motion. For discussion, Mr. - -

Commissioner Flanagan: - - Flanagan.

Chairman Murphy: Flanagan. Mr. Lawrence.

Commissioner Lawrence: Just a point of clarification, Mr. Chairman.

Chairman Murphy: Yes.

Commissioner Lawrence: Just a point of clarification. It is for staff. If the content of these ordinances - - these provisions of the Ordinance - - is covered in the staff report, is it permissible to reference those in a document appended to the staff report by the time it gets to the Board for their disposition?

Ms. Abrahamson: Thank you, Commissioner Lawrence. And actually, it's - - certainly we could do an appendix - - an addendum, I'm sorry - - with an appendix attached. But it is common practice for staff not to always list every redundant standard. And what we probably erred in was we didn't list the citation. But often you'll see the citations - - three, four, five citations - - and we'll give you the summary statement on them. We don't usually go through them over and over again when they're redundant.

Commissioner Lawrence: Could such a citation statement be prepared and attached?

Ms. Abrahamson: All it would be--would be, you know, the section number. It just would be - -

Commissioner Lawrence: And that would not violate the scope of advertising?

Ms. Abrahamson: No. No. It has nothing to do with that.

Commissioner Lawrence: Thank you very much. Thank you, Mr. Chairman.

Commissioner de la Fe: Mr. Chairman?

Chairman Murphy: Yes, Mr. de la Fe.

Commissioner de la Fe: I have a point of - - further point of clarification from staff, or maybe from Commissioner Flanagan. What SE standards are not included in the staff report? I see, beginning on page 16 of the staff report, "Special Exception Requirements (See Appendix 10)." And then it lists "General Standards" and then the discussion of that. There are standards for all Category Use 1 - - you know, all sorts. What specifically is not in the staff report?

Commissioner Flanagan: Okay. That's what I was enumerating.

Ms. Abrahamson: Yes. The standards that Mr. Flanagan is referring to are Section 9-404, which are Standards for All Category use - - All Category 4 Uses, excuse me. And again, because those standards are somewhat redundant of the others, we often don't separately evaluate them and lump them into the discussion; although, usually we do include a header that says, "These are the sections we've reviewed." And that was omitted inadvertently. But the standards themselves are covered by the other standards that have been discussed. So the only thing that's really missing is a header that says, "Section 9-404." That's it. And that would be the substance of an addendum to say we typographically left out a citation, but the review has been completed below.

Commissioner de la Fe: Okay, thank you. That answers my question.

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Mr. Alcorn, and then Mr. Hart.

Commissioner Alcorn: Just another point of clarification for staff. In this motion, are we being asked to make a recommendation on the staff report? Or are we being asked to make a recommendation on the application?

Ms. Abrahamson: Much as we would love you to, you know, make a recommendation on our staff, it is your evaluation that you're considering. The staff report is merely an aid for your consideration of the facts of the case and therefore what you're voting on are the facts of the case. You know, the staff recommendation is explained in the staff report, and we try to put it forth for you, but that has nothing to do with what you recommend.

Commissioner Alcorn: That's what I thought. Thank you.

Commissioner Flanagan: Mr. Chairman?

Chairman Murphy: Mr. Hart, then Mr. Flanagan. We're on verbatim.

Commissioner Hart: Thank you. Thank you, Mr. Chairman. I think Commissioner Alcorn has made my point. Thank you.

Chairman Murphy: Mr. Flanagan.

Commissioner Flanagan: Yes. The reason for listing them is because there should have been a discussion that would have - - at the public hearing - - that brought all of these issues up. And that did not occur because they weren't listed in the staff report. Had 9-404, Paragraph 8 been listed in the staff report, it would have - - you would have known that it says that the regional non-rail transit facilities and electrically powered regional rail transit facilities operated by WMATA shall be established in conformance with the provisions of the agreement between WMATA and the County. I passed out to everybody here the first page of that - - of that agreement and there is a controversy at the present time as to whether - - between legal counsel, as to whether that requires WMATA to comply with the County's Objective 38 or not. And so I've consulted with the corporation counsel on this and they have told me that they think it's odd that it would be alleged that they're not - - that WMATA is - - is not complying with the County's requirements - - Policy requirements in this regard. They think it's odd but, as St. Clair Williams accurately stated, if you take it to read it literally, it says the County only has to comply with those requirements for County facilities. But in this memorandum that you have before you, WMATA clearly promises to abide by all of the requirements that are the obligation of County facilities. So I'm just saying that there's a - - there's a disconnect here in the staff report at the present time. And I'm not voting against this application, I'm just saying that this is something I think needs to be cleared in the next week. And my deferral is to allow staff and everybody time to make these corrections.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to - - yes.

Commissioner Hall: If I can figure - - oh, okay, I think this is working. You know, I thought this only happened in the federal government, but let me take a shot because what I'm hearing is kind of disconcerting, or maybe making a mountain out of a molehill. I'm not sure which it is, but let me make sure. Basically, the provisions are there; they were maybe omitted in one place but they do appear, and it's clear that the intent of the staff report lists the pertinent regulations. Is that right?

Mr. Williams: That is correct. And I would just like to add that I have consulted with the County Attorney's Office regarding the agreement between WMATA and the County and, again, it does state that WMATA will comply with all County laws, ordinances, and regulations. However, the objectives of the Policy Plan which the Commissioners referred to are not laws, ordinances, or regulations. They're guidelines, so therefore that isn't - - that would not be applicable.

Commissioner Hall: They're guidelines, so they're not regulations at all. Okay. You know, I like - - in one way I do like the federal government. I'm the chief of contracting and procurement. I love the Christian Act. And for those of you who don't know what that is, it has nothing to do with religion. But it was a case where even if it isn't there, it's there. So I kind of get the feeling that, even though it isn't there, it's there. So I don't have a problem with it. Thank you, Mr. Chairman. Not that I can vote - - because I missed the public hearing.

Chairman Murphy: Further discussion of the motion?

Commissioner Flanagan: Mr. Chairman?

Chairman Murphy: Mr. Flanagan.

Commissioner Flanagan: Yes. One of the requirements that hasn't been mentioned yet, which I think you should all be aware of, it says that - - in the 400 series, it says that if an applicant is, for a Special Exception, and only in the case of a Special Exception, do they have to comply with the Comprehensive Plan. So the Comprehensive Plan doesn't become just another guideline, it's now a requirement that they have to comply. So that's - - that's the sticking point here, that this legal point needs to be brought to the attention of the Board of Supervisors before it gets to them. It needs to be settled and I'm asking for a week to settle it.

Chairman Murphy: All right. All those in favor of the motion to defer the decision only on SE - -

Commissioner de la Fe: The recommendation.

Chairman Murphy: - - the recommendation to defer Special Exception 2010-LE-017, say aye.

Commissioners Flanagan and Litzenberger: Aye.

Chairman Murphy: Opposed?

Commissioners: Nay.

Chairman Murphy: Motion carries.

Commissioner Hall: Abstain.

Chairman Murphy: Vote - - and Ms. Hall abstains. Mr. Flanagan voted aye.

Commissioner de la Fe: Motion fails.

Chairman Murphy: Motion fails. I'm sorry. And Mr. Litzenberger voted to support the motion. Now, we'll return to the main motion. All those in favor of the motion to - -

Commissioners Flanagan: Mr. Chairman? Mr. Chairman?

Chairman Murphy: Yes. We're on verbatim, Earl.

Commissioner Flanagan: I know. This is an important issue in my mind.

Chairman Murphy: Go ahead. All right.

Commissioner Flanagan: If the Board agrees to disregard, you know, the requirement for - - that are in Number 38 (*sic*), then I recommend that Condition 15 - - I would like to move an amendment to Condition 15, and that - - if I can get a second to that.

Chairman Murphy: Well, we want to hear what it is.

Commissioner Flanagan: I have a - -

Chairman Murphy: Do you have a list of them?

Commissioner Flanagan: Okay, I'D LIKE TO RECOMMEND THAT 15 BE WORDED TO ADD THE FOLLOWING TEXT: No buses shall use - - well, I guess I should say, "NO BUSES SHALL USE TELEGRAPH ROAD NORTH OF THE FAIRFAX COUNTY PARKWAY UNLESS NEEDED TO ACCESS ROUTES THAT ORIGINATE DIRECTLY FROM TELEGRAPH ROAD." And then, "NO BUSES SHALL USE RICHMOND HIGHWAY NORTH OF THE FAIRFAX COUNTY PARKWAY UNTIL RICHMOND HIGHWAY IS IMPROVED TO SIX LANES OR WHEN THE LEVEL OF SERVICE IS 'D' OR BETTER, UNLESS NEEDED TO ACCESS ROUTES THAT ORIGINATE DIRECTLY FROM RICHMOND HIGHWAY." And I'd like to - - if I can get a second.

Commissioner Litzenberger: Second.

Commissioner Flanagan: I'd like to, you know, give rationale behind that.

Commissioner de la Fe: Is this a substitute motion?

Commissioner Flanagan: This is an amendment to the motion, yes.

Chairman Murphy: Main motion.

Commissioner Flanagan: The motions would still stand. Yes.

Chairman Murphy: All right. Is there a discussion to that motion?

Commissioner Flanagan: Yes, Mr. Chairman.

Chairman Murphy: All right, Mr. Flanagan.

Commissioner Flanagan: Now that Condition 15 prevents any increase to traffic through Lee District along Telegraph Road, I MOVE THAT THE FOLLOWING TEXT PROVIDE THE SAME FOR THE MOUNT VERNON DISTRICT ALONG ROUTE 1 NORTH OF THE PARKWAY: "UNTIL ROUTE 1 HAS BEEN WIDENED TO ACCOMMODATE BRAC AND END THE 25 MINUTES NEEDED TO MOVE PAST THE GATES INTO AND OUT OF FORT BELVOIR." I see no benefit to Fairfax County inviting "deadhead" buses that don't pick up any County residents and only provide further congestion. In addition, I'd like to also note that - - that this - - that Mount Vernon District probably will bear the most of the brunt of any of this extra traffic by having this bus facility at this location. So that is the reason for advancing the amendment.

Chairman Murphy: All right. That's the discussion. Further discussion on the amendment? All those in - - Mr. Migliaccio?

Commissioner Migliaccio: No, never mind.

Chairman Murphy: All those in favor of the amendment, as articulated by Mr. Flanagan, say aye.

Commissioners Litzenberger and Flanagan: Aye.

Chairman Murphy: Opposed?

Commissioners: Nay.

Chairman Murphy: Motion fails.

Commissioner Hall: Abstain.

Chairman Murphy: Mr. Litzenberger and Mr. Flanagan vote in support of the motion. Ms. Hall abstains. Returning to - -

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: Thank you. I have a discussion on the main motion if we're ready.

Chairman Murphy: All right. Further discussion on the main motion, which we have now returned to, to recommend to the Board of Supervisors, that it approve SE 2010-LE-017. Mr. Hart.

Commissioner Hart: Thank you Mr. Chairman. I will be supporting the motion. Because this is an application with Countywide or regional implications, I wanted to add some comments to the record to explain my decision. I'm sorry, Jeanette; this is going to be a long night. I was troubled initially by the transportation aspect of this application, but I'm now satisfied that both VDOT

and the Office of Transportation have concluded that the intersection with the Fairfax County Parkway is safe for the buses which are the subject of the applications. The support of those agencies was confirmed with the memoranda we received this past week. This process is not an exact science. Although we may not always achieve unanimity, I believe we have abundant evidence in the record, coupled with favorable recommendations from our professional staff, including Transportation, to justify our support of the applications. We've also received an unusual volume of written communications in opposition to the application. Some of this is based on unfortunate rumors. I believe some of the opposition also misconstrues the law applicable to our decision. First and foremost, in Virginia, a locality's comprehensive plan is a guide, not a mandatory regulation. The General Assembly has provided in Section 15.2-2233 that the Plan is general in nature to show the general or approximate location, character, and extent of each feature. And a comprehensive plan is not the same thing as a zoning ordinance. The Ordinance requirement that an application be harmonious with the adopted Plan still is not the same thing as incorporating - - incorporating generalized Plan text as mandatory regulation. If the Comprehensive Plan was the last word on land use, on the one hand it would need to be much more specific, and on the other hand we might not need to hear so many applications. The Board of Supervisors also retains the important flexibility to approve an application, notwithstanding Plan text, and it occasionally exercises its judgment to do so for the greater good. Nothing in the Ordinance deprives the Board of that discretion. Ordinarily, under our Zoning Ordinance, applications such as these must be in harmony with the adopted Comprehensive Plan. Harmony, however, does not necessarily require total uniformity or inflexibility. To the contrary, a harmonious county necessarily includes a great variety of uses with adjustments and coordination. To my way of thinking, the concept of harmony implies that multiple components coexist and complement each other. In the land use context, harmony could be achieved among multiple uses through a combination of development conditions appropriate to the context. A bus facility easily can coexist in harmony with other component parts of an industrial area, or the whole county, especially with the imposition of development conditions. An argument is made by some opponents that although this particular site is surrounded by industrial uses, it is over one mile from an arterial roadway and therefore inconsistent with the adopted Plan. But staff has included important development conditions that, for example, prohibit bus traffic to and from this use on Newington Road or Loisdale Road. With specific and appropriate development conditions, even an otherwise inconsistent application can be harmonized with the spirit and intent of the Comprehensive Plan. The evaluation of these development conditions is part of our land use function. Here, with the restrictions recommended by staff, I believe harmonization has been satisfactorily accomplished and this use, in my judgment, is in harmony with the Plan. Specific references to Plan Objectives 38 and 39 also are made by opponents. But both Objectives 38 and 39 are expressly applicable only to County-owned public facilities, not those owned by others or operated by other entities. That text simply does not govern a WMATA facility unless it is on County-owned land. The reliance on Objectives 38 and 39 is incorrect. Air pollution from buses is another articulated rationale for denial. But we have other bus facilities throughout the County, including within residential areas, and we have no criteria or local zoning regulations regarding the permissible level of air pollution from buses. If air pollution were an appropriate justification for zoning denial, we would not locate bus facilities anywhere in the County. In the overall sense, buses can reduce air pollution significantly because they are reducing the number of vehicles on the road. I do not

believe a denial of this bus facility based on fears of air pollution is consistent with the applicable standards in the Zoning Ordinance; nor for that matter is there any prohibition now on which streets WMATA chooses to run its buses or the location of bus stops. No matter what, this applicant still must comply with the Noise Ordinance and important site plan requirements. Nothing in the approval will relax or modify those requirements. Similarly, some of the opposition complains of the lack of enforcement of development conditions on other approvals. That is a matter for enforcement, not an issue for denial. If citizens have specific examples of violations of development conditions, they need to notify Zoning Enforcement staff. Our system is essentially complaint driven, and staff may not even be aware of the specific issue. Zoning Enforcement staff will follow up if notified. Another unfortunate rumor is that there is a statute requiring that bus facilities be located within one mile of an arterial roadway, making this application somehow illegal. No such statute exists and there is nothing illegal about this application. I recognize that there is adamant opposition from a number of the nearby Mount Vernon residents, but land use is not a popularity contest. We need, from time to time, to locate bus facilities such as this within the County and Cinder Bed Road, a blighted industrial area, is an appropriate location for this type of use, particularly with the imposition of these development conditions. Therefore, Mr. Chairman, I believe this application warrants our favorable recommendation to the Board of Supervisors. 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 SE 2010-LE-017, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Hall: Abstain.

Commissioner Flanagan: Nay.

Chairman Murphy: Motion carries. Mr. Flanagan votes no.

Commissioner Flanagan: Right.

Chairman Murphy: And Ms. Hall abstains. Thank you very much. Is that it?

Commissioner Migliaccio: No, Mr. Chairman, one last - -

Chairman Murphy: I'm sorry. Go ahead.

Commissioner Migliaccio: - - piece. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE MODIFICATION OF THE INTERIOR PARKING LOT LANDSCAPING REQUIREMENTS, IN FAVOR OF THAT SHOWN ON THE SE PLAT.

Commissioner de la Fe: Second.

Chairman Murphy: Seconded by Mr. de la Fe. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much. Thank you, Mr. Williams, excellent job as usual.

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The substitute motion to defer the decision on 2232-L10-17 failed by a vote of 2-7-1 with Commissioners Flanagan and Litzenberger in support; Commissioner Hall abstaining; Commissioners Harsel and Sargeant absent from the meeting.

The motion to approve 2232-L10-17 carried by a vote of 8-1-1 with Commissioner Flanagan opposed; Commissioner Hall abstaining; Commissioners Harsel and Sargeant absent from the meeting.

The substitute motion to defer the decision on SE 2010-LE-017 (to include references to Sect. 9-400) failed by a vote of 2-7-1 with Commissioners Flanagan and Litzenberger in support; Commissioner Hall abstaining; Commissioners Harsel and Sargeant absent from the meeting.

The motion to amend Development Condition Number 15 of SE 2010-LE-017 failed by a vote of 2-7-1 with Commissioners Flanagan and Litzenberger in support; Commissioner Hall abstaining; Commissioners Harsel and Sargeant absent from the meeting.

The motion to recommend approval of SE 2010-LE-017 carried by a vote of 8-1-1 with Commissioner Flanagan opposed; Commissioner Hall abstaining; Commissioners Harsel and Sargeant absent from the meeting.

The motion to recommend approval of the modification of the interior parking lot landscaping requirements carried by a vote of 9-0-1 with Commissioner Hall abstaining; Commissioners Harsel and Sargeant absent from the meeting.

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