

Planning Commission Meeting  
March 1, 2012  
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT – PUBLIC ENTERTAINMENT ESTABLISHMENTS

Decision Only During Commission Matters  
(Public Hearing held on February 23, 2012)

Vice Chairman Alcorn: Okay, I believe we have one other Commission business item and then we'll move into the workshop; Commissioner Hart.

Commissioner Hart: Thank you, Mr. Chairman. Ordinarily I would prefer to get more of a consensus on a controversial topic before our vote. I apologize in advance for the length of the motion and that we had to vote on a CIP night, but we have no more time before this goes to the Board on Monday – excuse me, Tuesday.

Vice Chairman Alcorn: Tuesday.

Commissioner Hart: Tuesday. Last week, we held a public hearing on a proposed Zoning Ordinance Amendment regarding public entertainment establishments. I want to thank the speakers who came out as well as the many citizens and industry representatives who submitted written comments and emails. We asked for electronic comments and we certainly received them.

Commissioner Hall: We got them.

(Audience applauds.)

Commissioner Alcorn: Okay, thank you. I would remind folks that this is not a public hearing. Please do restrain your applause. We have a lot of things we need to get through. Mr. Hart, please.

Commissioner Hart: Yes, thank you. I also want to express my deep thanks to our staff, particularly Jack Reale and Lorrie Kirst, and our Zoning Administrator, Eileen McLane, for all their fine work on this case. Once again, they have provided prompt and professional responses and analysis of complicated issues within an abbreviated timeframe. This is a very difficult Amendment and has become more complicated as our discussions progressed. We do not have a consensus as to whether there is a crisis or what exactly that crisis is. We have received an extraordinary amount of opposition. There is considerable skepticism among my fellow Commissioners of certain aspects of the proposal. Several constructive suggestions have been made, which fall outside the scope of the advertising and therefore cannot be considered. This project also is a Priority One item for the Board of Supervisors with a Board hearing next Tuesday afternoon. If the Commission is going to make a recommendation, we must make it tonight. While I largely agree with the criticism, I also agree to a large extent with staff's analysis. I am therefore going to propose a compromise with two motions. First, I will suggest we recommend most of the staff proposal with some minor editorial changes and an increased maximum size of the permitted dance floor in an eating establishment. Whatever happens on the first motion, I also am going to propose a follow-on motion to revisit this topic with some specific suggestions for study and readvertising. While this approach is not an ideal solution, I believe it's an appropriate recommendation at this time, given the severe constraints of the scope of advertising and the Board's fast track timeline. I would like

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

to explain my rationale for this compromise. First, as to logistics, this Amendment would shift certain categories of application from the Board of Zoning Appeals to the Planning Commission and Board of Supervisors track. Staff anticipates this will add approximately two Planning Commission meetings per year. While we have to be mindful of our caseload, I believe we can absorb the increase. I also believe it is the Board's prerogative to decide what categories of application it wishes to hear. As to the industry opposition to the banquet/reception component of the application, I believe in part that stems from a misapprehension about the permissibility of accessory uses. Staff has indicated that most hotel uses would be unaffected and that they would not need to apply for an SE. Occasional wedding receptions or parties at a restaurant where the tables were cleared for dancing may also be deemed by the Zoning Administrator to be an accessory use, and not necessarily require an SE. As to billiard parlors, karaoke, and hookah establishments, the criteria for those applications would be essentially the same as now, but the approval decisions would shift from the BZA to the Planning Commission and Board of Supervisors. The Board apparently wants to pick up those cases and no problems with that approach have been identified. There was some opposition, however, to the terminology selected. I believe that it will be less offensive to refer to the hookah parlors as "public smoking establishments" and will recommend accordingly. We are deleting billiard parlors from the C-5 District, but there are none now and no existing businesses would be affected. Reduction of the dance floor size limit is the most controversial aspect of the proposal. Staff believes that limiting the size of the dance floor may be important to minimize negative impacts. Currently, an eating establishment may have a by-right dance floor up to 1/8 of the dining area. For a larger dance floor, there is currently a Special Permit category for "dance hall," which under the Amendment instead would be a Special Exception for "public entertainment establishment." The staff report proposes limiting the by-right dance floor to a maximum of 1/8 or 150 square feet, whichever is smaller. Larger dance floors would require a Special Exception for a "PEE" (Public Entertainment Establishment Use) rather than a dance hall and the Board of Supervisors would make the decision rather than the BZA. As far as we can tell, however, no other jurisdictions yet regulate the maximum size of a dance floor. Interestingly, I found some jurisdictions require a minimum size; that is, if you have a dance floor, it can be no smaller than a certain floor area depending on the number of seats for dining. What seems to have prompted this Amendment to the Priority One list is a perception of problems associated with nightclub type uses. The most frequently cited example, Fast Eddies on Route 1, had a dance hall Special Permit from the BZA for two years, but when they applied for an extension of that Special Permit, it was denied. I made the motions both times, but frankly my concerns were different from the size of the dance floor. The principal problem in my evaluation was the proximity of the nightclub use to the adjacent residential area. There was insufficient parking for the use and its crowds, at least calculated at the shopping center rate and occupancy level. The overflow parking extended into the neighborhood. The late hours of the dance hall caused noise, trash, and other problems for neighbors trying to sleep. While the size of the dance floor was a factor, it was not really the main problem. Overcrowding at times could be an issue and other collateral impacts were identified, but those situations were more appropriate for the Fire Marshall or Police Department and also had nothing to do with whether the use should be a Special Permit or Special Exception or something else. In any event, as a Special Permit, the use was denied by the BZA after two years, even under the existing Ordinance. While I am sympathetic to the expressed frustration about impacts from nightclub-type uses, I tend to agree that the proposal before us may be an overreaction to a perceived crisis which has little to do with

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

the Zoning Ordinance and much more to do with enforcement of the fire code and occupancy limits, drug laws, and the like in limited areas. Supervisor (sic) de la Fe pointed out and I tend to agree –

Commissioner de la Fe: Commissioner, please.

Commissioner Hart: Oh, that's right. I beg your pardon. I've promoted you. Spell check didn't catch that.

Vice Chairman Alcorn: Commissioner Hart.

Commissioner Hart: Commissioner de la Fe pointed out, and I tend to agree, that we may be spraying the whole County with DDT because of one fruit fly. I do not believe that the perceived problems with nightclubs are a zoning enforcement problem as much as a zoning approval problem. Parking lot fights and blocked fire exits are never going to be handled effectively by development conditions, nor are the development conditions of a Special Exception any more enforceable than those of a Special Permit. While police activity is another type of complaint, the reports of police calls with, for example, the Fast Eddies on Route 1 were predominantly for dates and times during which there was no dancing or for traffic stops or other unrelated calls nearby. But if the nightclub-type uses are never approved in the first place and the patrons must go elsewhere, the associated impacts may go with them. We may disagree, but the Board may determine in its wisdom that nightclubs and their patrons, whether in certain districts or Countywide, may be unmanageable and unwanted. Some may feel it is more appropriate for our citizens to patronize Arlington or Alexandria nightclubs and let those Police Departments and Fire Marshals deal with any problem. With a Special Exception process, the Board can make that call on a case-by-case basis. The Planning Commission will be involved, making a recommendation should any applications be filed. So, if all we can do within this advertising tonight is limit the size of by-right dance floors, where do we draw the line? Dancing is very popular. One of the top rated television shows the last few years has been "Dancing with the Stars". Suitable venues seem to be at a premium. Special Exceptions can be expensive and we do not want to eliminate dancing through regulation. I hope we can strike a balance. I do believe that the 150 square feet proposed is too small to be functional. I also do not believe that limiting the size of the dance floor is going to guarantee compliance with the fire code, drug laws, or other applicable regulations. However, I agree that some upper limit, for the time being, will tend to limit the size of crowds at any given establishment. I will propose that we recommend a compromise figure of 250 square feet, which would be an area approximately 15.8 by 15.8. An eating establishment then could have 1/8 of the dining area or 250 square feet, whichever is smaller, for a by-right dance floor and no pool tables, without the financial burden of a Special Exception process. At 250 square feet, my suggested limitation only affects eating establishments with a dining area of 2,000 square feet or larger. Smaller establishments still would be under the current formula. As to the 150 square feet, I think we have heard loud and clear that dance floors that small are pointless. Our kitchen in the back is crowded if eight or ten commissioners are standing around getting coffee and doughnuts. Thirty-eight to fifty people dancing would be impossible. Three square feet per person may be appropriate for standing on a crowded Metro train, but dancers in my experience tend to move around- some more than others – to musical accompaniment. At 250 square feet, several couples could share the floor. That space obviously would not be sufficient for large crowds or certain types of dancing

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

such as the jitterbugging couple in the video with cartwheel moves, but in my judgment, 250 square feet strikes a balance between essentially eliminating dancing as an accessory use in eating establishments and the Board keeping tight control over whether any nightclub use is allowed. If we had more time to work on this and more flexibility with the solution, I believe we could craft Ordinance text that would more effectively address the perceived problems with uses such as the Fast Eddie's without negatively impacting other uses. My fellow commissioners have made many constructive suggestions, which I am advised, unfortunately fall outside the scope of the advertising. My follow-on motion will therefore propose that the topic be readvertised and that staff work with us and report back within 12 months on several topics. I would suggest that our process include robust outreach to the community, including both industry and citizens, possibly including a workshop format and brainstorming and evaluation of whether other jurisdictions have a better handle on managing impacts from nightclub-type uses and methodologies we might borrow. If the PC and staff undertake a wider review of this topic with opportunity to suggest options for broader advertising, we may be able to help the Board accommodate its objectives without harming legitimate businesses or denying our citizens the right to enjoy legitimate social activities. The topics I would suggest revisiting in depth include the following:

- First, I think the most significant issue may be physical proximity of nightclub uses to residential. Although geographic distance limitations can be difficult to draft and administer, many jurisdictions regulate uses with reference to the distance from other uses. For the nightclub type use, the impacts are very different for a site with ample parking surrounded by industrial, than in a residential area with limited parking.
- Second, we should evaluate Commissioner Lawrence's suggestion whether a "critical mass" approach differentiating between sizes of establishments would be appropriate. We already regulate big box stores differently from ordinary retail because at a certain size they may have additional impacts. Perhaps a nightclub-type use at a certain size or occupancy level should be treated differently from a storefront restaurant with a dance floor.
- Third, parking ratios for a nightclub-type component also should be monitored and revisited. I believe for the Fast Eddie's on Route 1, for example, the parking historically required computed at the shopping center rate was much too low, as evidenced by the overflow into the neighborhood. This Amendment tonight will revise the parking requirement upwards, but we may want to continue that analysis.

Management of occupancy loads, licensing, and occupancy enforcement may be important areas. Other Virginia jurisdictions have somewhat different procedures, including licensing requirements for nightclubs, which might result in tighter control over how well an establishment deals with overflow crowds. Again, if the occupancy of the facility stays within approved limits, the impacts of the use are mitigated. We have not really scratched the surface on occupancy issues. Noise is another potential issue. We already will be looking at the Noise Ordinance in the near future, but there may be particular aspects related to nighttime entertainment. Dancing uses might be less of a problem in an industrial district and maybe the Ordinance could be less restrictive, not necessarily requiring a special exception. Other jurisdictions seem to have better experiences with dancing venues. For example, the Spanish Ballroom in Glen Echo has several hundred people on a big

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

dance floor – I believe 70 by 110 or 7700 square feet – on weekends and apparently no appreciable police problem. Facilities such as the Carlyle Club in Alexandria with upscale dining, a big band-type orchestra, and dance floor also seem to be handling their issues satisfactorily. Picante on Route 50 also did not seem to cause a police department problem. Perhaps we can find some common denominators to encourage uses like that. We have also discussed on occasions the importance of nightlife to economic development, including tax revenue and the well-being of our citizens. We had anticipated and welcomed, for example, a future entertainment district in Tysons Corner and recognized the need for entertainment venues in other areas. The Clarendon Ballroom in Arlington, for example, takes advantage of the location near Metro. We would not want to eliminate that potential or make it even more difficult for small businesses to operate or our citizens to enjoy entertainment locally. My colleagues also have made certain other observations and suggestions, including hours of operation, combination with alcohol, frequency of dancing, and others, which I would like us to have the chance to deliberate upon with benefit of time and staff input. If we had more time and the advertising allowed broader study, I believe we could provide a more helpful recommendation. Given the short fuse before next Tuesday and the perceived urgency of adopting the dance floor limitation, however, I believe we have to move forward as best we can and recommend that even if the Board adopts the package now, that the Board also direct staff to continue to work on this project as I have outlined. Therefore, Mr. Chairman, I will have two motions. First, I MOVE TO RECOMMEND THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE PROPOSED PUBLIC ENTERTAINMENT ESTABLISHMENTS ZONING ORDINANCE AMENDMENT BE ADOPTED AS CONTAINED IN THE ADVERTISED TEXT DATED JANUARY 24, 2012, WITH THE EXCEPTION OF THE REVISIONS TO THE PROPOSED EATING ESTABLISHMENT, PUBLIC ENTERTAINMENT, AND HOOKAH DEFINITIONS, AS INDICATED IN THE REVISED HANDOUT TEXT DATED FEBRUARY 29, 2012, WITH AN EFFECTIVE DATE OF 12:01 A.M. ON THE DATE FOLLOWING ADOPTION.

Commissioner Migliaccio: Second.

Vice Chairman Alcorn: Seconded by Mr. Migliaccio. Any discussion on that motion?

Commissioner Lawrence: Mr. Chairman.

Vice Chairman Alcorn: Mr. Lawrence.

Commissioner Lawrence: Thank you, Mr. Chairman. I have to say that I will not be able to support the motion as made. Even if the size of the dance floor is the proper driver for what we are attempting to do here, there is no way that I can see that I can have confidence in the number 250 any more than I had confidence in the previous number. I think before we write this into Code, we need to have enough information to choose any quantitative discriminator wisely. Thank you, Mr. Chairman.

Vice Chairman Alcorn: Mr. de la Fe.

Commissioner de la Fe: Mr. Chairman, as I stated last week during the public hearing, I don't know what we're trying to solve. Or I think I know what we're trying to solve and I don't know

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

that limiting the size of a dance floor is the appropriate means of accomplishing that. The – as Mr. Hart stated, there are a number of Ordinance provisions already relating to occupancy, health permitting, police, Fire Marshal regulations that I think can adequately address the problems that we're trying to solve through limiting the size of the dance floor. I just don't know what it is that we're trying – what this will do. So I have – I recognize all the work that staff has done, in particular Commissioner Hart, on this. I just don't see what this solves.

Vice Chairman Alcorn: Commissioner Hurley followed by Commissioner Flanagan.

Commissioner Hurley: Thank you, Mr. Chairman. Granted that not all dancing will be barred by this – everybody needs to understand that. Even if approved, there will be plenty of places to dance. However, it also does not appear that everyone understood all the dancing already going on without any problems whatsoever. Thank you for all your letters. It seems to me that we just have not yet arrived at the point that the package is 100 percent ready to move forward. I cannot vote to do so.

Vice Chairman Alcorn: Okay, thank you. Commissioner Flanagan.

Commissioner Flanagan: Yes, thank you, Mr. Chairman. I was struck by Commissioner Hart's further investigation into adjacent jurisdictions and whether they use square footage at all in regulating dance floor size. And I must say that I'm puzzled by the fact that staff is recommending square footage there and I think that subject does need to be better understood, given the information that Commissioner Hart has brought forward tonight. And I'd like to ask staff, though I'd like to give them the benefit of responding, is there some reason that staff didn't leave the criteria as 1/8 of the restaurant space and went with a square footage?

Eileen McLane, Zoning Administration Division (ZAD), Department of Planning and Zoning (DPZ): Commissioner Flanagan, Eileen McLean, Department of Planning and Zoning. Through – over the past I'd say five years, we have been seeing certain establishments – have been coming in with very large square footages overall. And there dining area is very large and that 1/8 results in a significant dance floor in the upwards of 900 square feet – 1,000 square feet – 600 square feet. In a number of those establishments, we have had a series of problems and it became apparent that once a threshold size is met – four, five, six hundred square feet – the problems set in. And at that point that the use changed from primarily an eating establishment to being one that was something more than just an eating establishment – that the dance floor no longer remained accessory to it. So based on that experience and the difficulties that we had, it was felt that an upper limit was necessary. So the 1/8 was no longer appropriate. It went into effect in 1975 and it needed to be revisited. So that was the justification.

Commissioner Flanagan: So it appears that once the dance floor space became large enough, it became a public entertainment zoning category rather than a restaurant.

Ms. McLane: It became a draw of its own and it wasn't the eating establishment that was the draw. It was the dancing so that it was – you know, it changed its flavor as the day wore on. And at nighttime, the establishment changed into an eating establishment and it had more individuals going to the establishment and the parking wasn't accommodating the use as it was being done at

night. There was more noise. I mean the side effects from the change in the use had a dramatic effect on the neighboring properties.

Commissioner Flanagan: But it would help the commissioners, I think, if we understood just how much we want to increase that 150 to 200, 250, 300. I think at the present time, the conversations I've heard, 300 seems to be a much more reasonable figure, but we don't have any data that substantiates that one way or the other. So I'm kind of with Commissioner Lawrence on this one that I think that we might be well off to take the time to get that information before we really take final action.

Vice Chairman Alcorn: Okay, thank you; Commissioner Sargeant.

Commissioner Sargeant: Thank you, Mr. Chairman. Mr. Chairman, Commissioner Hart and other members of our Planning Commission have clearly articulated the challenges associated with this Amendment in its current form. In his narrative as well, Commissioner Hart also articulated a path forward to resolve the issues associated with this Amendment. I believe that with some additional time and consideration, we will be able to resolve these issues and still address the areas of concern to the Board. I believe Commissioner Hart and staff have already conducted much very thorough research and the time needed to improve this Amendment does not need to be lengthy. Therefore, Mr. Chairman, I WOULD OFFER A SUBSTITUTE MOTION THAT WE RECOMMEND THAT THE BOARD OF SUPERVISORS DEFER CONSIDERATION ON THE PUBLIC HEARING ON THIS ZONING ORDINANCE AMENDMENT REGARDING PUBLIC ENTERTAINMENT ESTABLISHMENTS TO ALLOW ADDITIONAL TIME FOR REVIEW.

Commissioners de la Fe, Lawrence, and Litzenberger: Second.

Vice Chairman Alcorn: Seconded by Commissioners Litzenberger, Lawrence, and de la Fe. Any discussion on that substitute motion to recommend that the Board of Supervisors defer consideration of this item as currently scheduled for next Tuesday at 4:00 p.m.? Any discussion? Commissioner Hall.

Commissioner Hall: Mr. Chairman, I think it's important that we vote on the original nomination. All these people came out not just this evening, but they came out the other evening and even though they got to go home earlier we got to stay longer and I'd rather see a vote so it clearly expresses the concerns of the Planning Commission. To say study it for another year is not sufficient, in my opinion. I'd rather have an up and down vote on the motion as articulated by Mr. Hart because clearly they thought what they were doing was solving a problem and clearly it is not solving a problem.

Commissioner de la Fe: Mr. Chairman?

Vice Chairman Alcorn: Commissioner de la Fe.

Commissioner de la Fe: I'd just like to say I appreciate Commissioner Hall's remarks, but as Parliamentarian a motion has been made and seconded, so we have to vote on that one.

Commissioner Hall: That's fine.

Commissioner de la Fe: So we have to – we have to do the vote on that one.

Vice Chairman Alcorn: Okay, the motion on the table is currently a substitute motion and that motion makes the recommendation to the Board of Supervisors that they defer consideration of this matter. Any additional discussion on the substitute motion?

Commissioner Sargeant: Mr. Chairman, just to clarify, it would also recommend deferral of the public hearing.

Vice Chairman Alcorn: And deferral of the public hearing currently scheduled for Tuesday. Any additional discussion on the substitute motion? Okay, all those in favor of the substitute motion to recommend that the Board of Supervisors defer consideration and the public hearing on this matter, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion –

Commissioner Hall: No.

Vice Chairman Alcorn: All opposed?

Commissioner Migliaccio: No.

Commissioner Hart: Abstain.

Vice Chairman Alcorn: Okay, I heard division. Okay, let's go around. Commissioner Donahue.

Commissioner Donahue: Yes.

Vice Chairman Alcorn: Mr. Litzenberger.

Commissioner Litzenberger: Yes.

Vice Chairman Alcorn: Flanagan.

Commissioner Flanagan: Yes.

Vice Chairman Alcorn: Lawrence.

Commissioner Lawrence: Yes.

Vice Chairman Alcorn: de la Fe.

Commissioner de la Fe: Yes.

Vice Chairman Alcorn: Hurley.

Commissioner Hurley: Yes.

Vice Chairman Alcorn: Migliaccio.

Commissioner Migliaccio: No.

Vice Chairman Alcorn: Sargeant.

Commissioner Sargeant: Yes.

Vice Chairman Alcorn: Hart.

Commissioner Hart: Abstain.

Vice Chairman Alcorn: Hall.

Commissioner Hall: No.

Vice Chairman Alcorn: And the chair votes aye. That motion passes 7 to 2 (sic) with 1 abstention. So that is now the main motion on the table. The main motion on the table is to request – to recommend that the Board of Supervisors defer consideration of this item and the public hearing. So let's vote on that. All in favor of that motion – this is the main motion now – please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed?

Commissioners Hall and Migliaccio: No.

Vice Chairman Alcorn: That motion carries; same division. Mr. Hart.

Commissioner Hart: Thank you, Mr. Chairman.

Commissioner de la Fe: Mr. Chairman?

Vice Chairman Alcorn: Yes, Mr. de la Fe.

Commissioner de la Fe: I would just to state for the – particularly the public that's here and on television – that we recommend to the Board of Supervisors. They can take our recommendation or not. So that is up to their decision. So whatever we do here is just a recommendation.

Vice Chairman Alcorn: Thank you, Commissioner de la Fe.

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

Commissioner Hall: Mr. Chairman?

Vice Chairman Alcorn: Yes, Commissioner Hall.

Commissioner Hall: I just think it's really important that if the Board took the time and the staff did the staff report, we need to tell them specifically our position. But to send it back and say go study it for a year is a waste of time. But that's my opinion.

Vice Chairman Alcorn: Commissioner Hall, the floor is open. You could make a motion right now if you so choose.

Commissioner Hall: Would it do any good? Because if it's not going to do any good, I'm not going to do it.

Commissioner Sargeant: Mr. Chairman?

Vice Chairman Alcorn: Yes, Mr. Sargeant and then Mr. Hart.

Commissioner Sargeant: Thank you, Mr. Chairman. In my motion for deferral, one of the things I clearly recognized is the amount and detail of the work that staff has already accomplished. We're not that far from this – from resolving this issue. I also believe Commissioner Hart has in his mind the direction and has articulated the direction that this needs to go to be efficiently resolved in a detailed and appropriate manner. I don't think we need a vote. I think we have guidance already in place based on a lot of the public hearing we have received - the input we have from staff. We can resolve this issue in a timely fashion. Thank you.

Commissioner Hall: Mr. Chairman?

Vice Chairman Alcorn: Yes, Ms. Hall. And then we're going to go back to Mr. Hart.

Commissioner Hall: That'll be fine. I just really have to disagree. I think we're going into something that we really – it was abundantly clear to me from the speakers that we don't really have a clue. And the people who are following the rules are here talking to us, but the people who are creating the problems are not here and these people are being punished. So yeah, I'll make a motion. I recommend we put aside the original motion and that we vote on the motion as articulated by Commissioner Hart and I don't know if that's proper, but that's what I would prefer to do.

Commissioner de la Fe: It is not proper.

Commissioner Hall: Again, I'm not proper.

Commissioner de la Fe: You were not on the prevailing side.

Commissioner Hall: Oh.

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

Vice Chairman Alcorn: But you could make a motion that the Commission recommend denial.

Commissioner Hall: So moved. Or you can so move.

Commissioner Migliaccio: Recommending denial on what, exactly?

Commissioner Hall: The motion as articulated by Commissioner Hart initially.

Vice Chairman Alcorn: I believe that would not be in order, would it?

Commissioner de la Fe: No, if I understand correctly, what you are stating is that you would – you are making a motion that the Planning Commission recommend to the Board of Supervisors approval?

Commissioner Hall: Disapproval.

Commissioner de la Fe: Disapproval.

Commissioner Hall: Disapproval, go back to the drawing board. We don't know enough to move forward.

Commissioner de la Fe: I don't know that that's any different than what we've already approved, but –

Commissioner Hall: Well no, but –

Commissioner de la Fe: You certainly can make that motion. It's a new motion.

Vice Chairman Alcorn: Commissioner Hall, do you have a motion?

Commissioner Hall: That's the motion.

Vice Chairman Alcorn: Okay, could you restate the motion and then we'll see if there's a second, sorry.

Commissioner Hall: Let's go back to square one. Put aside or – and **VOTE ON THE ORIGINAL MOTION AS ARTICULATED BY COMMISSIONER HART**, where he is recommending approval to the staff report **AND WE RECOMMEND** that –

Commissioner de la Fe: You are recommending disapproval of that?

Commissioner Hall: I am recommending **DISAPPROVAL OF THAT**.

Commissioner de la Fe: Okay.

Vice Chairman Alcorn: Okay, the motion has been made. Is there a second?

Commissioner Migliaccio: Second.

Vice Chairman Alcorn: Seconded by Commissioner Migliaccio. Any discussion on Commissioner Hall's motion?

Commissioner Hart: Mr. Chairman? To recommend disapproval?

Vice Chairman Alcorn: Mr. Hart.

Commissioner Hart: Yeah, I'm going to complicate this further. Poor Jacob with the world's longest verbatim in history.

Commissioner Hall: Sorry.

Commissioner Hart: The – I was going to suggest – I don't know how many follow-on motions there's going to be, but I thought I had a pretty comprehensive one that had a whole bunch of topics that maybe if we did that one, then we could figure out if we need to tell the Board anything else after that. And so my suggestion was going to be let me go next and then we'll –

Commissioner de la Fe: Well, we have a motion on the floor.

Commissioner Hart: I know. I know, but I would have said that if Walter had called on me before and I –

Vice Chairman Alcorn: Would you move to table the motion then?

Commissioner Hart: Okay, yes. I will MOVE TO TABLE COMMISSIONER HALL'S MOTION UNTIL AFTER MY MOTION.

Vice Chairman Alcorn: All right.

Commissioner Lawrence: Second.

Vice Chairman Alcorn: Seconded by Commissioner Lawrence. All those in favor of tabling Commissioner Hall's motion for now, say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? Okay; that motion carries; Commissioner Hart.

Commissioner Hart: Thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THIS TOPIC BE READVERTISED WITH A BROADER SCOPE, BUT PRIOR TO AUTHORIZATION OF

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

ADVERTISING THEY DIRECT STAFF TO CONTINUE TO WORK WITH THE COMMISSION ON THIS TOPIC WITH A SPECIFIC REVIEW AND EVALUATION OF THE FOLLOWING ISSUES FOR OUTREACH AND/OR WORKSHOPS WITH THE COMMISSION, INDUSTRY, AND THE COMMUNITY:

- NUMBER ONE: PROXIMITY OF NIGHTCLUB-TYPE USES TO RESIDENTIALLY ZONED PROPERTY AND WHETHER PHYSICAL SEPARATION OF USES CAN BE INCLUDED IN THE ORDINANCE AS AN ADDITIONAL STANDARD, POSSIBLY WAIVEABLE BY THE BOARD ON A CASE-BY-CASE BASIS, AND HOW OTHER JURISDICTIONS WITH ZONING ORDINANCES REQUIRING SPECIFIC SEPARATIONS – EXCUSE ME - OF SIMILAR SPECIAL EXCEPTION USES FROM OTHER USES IMPLEMENT AND ENFORCE THOSE RESTRICTIONS;
- NUMBER TWO: UNDER WHAT CIRCUMSTANCES ESTABLISHMENTS WITH LARGER DANCE FLOORS THAN 250 SQUARE FEET COULD OPERATE BY-RIGHT RATHER THAN REQUIRING SPECIAL EXCEPTION APPROVAL IF LOCATED, FOR EXAMPLE, IN INDUSTRIAL DISTRICTS AND WITH SUFFICIENT PARKING – EXCUSE ME, BECAUSE MY FIRST MOTION FAILED ABOUT THE 250, LET ME CHANGE THAT TO 1/8 – LARGER DANCE FLOORS THAN 1/8 OF THE DINING AREA, WHETHER THOSE COULD OPERATE BY-RIGHT;
- NUMBER THREE: WHETHER EATING ESTABLISHMENTS WITH ACCESSORY DANCE FLOORS OR NIGHTCLUB-TYPE USES MIGHT BE REGULATED DIFFERENTLY DEPENDING ON THE SIZE OF THE ESTABLISHMENT OR OTHER OBJECTIVE CLASSIFICATIONS;
- NUMBER FOUR: WHETHER OTHER JURISDICTIONS EMPLOY OTHER TECHNIQUES OR CRITERIA TO FACILITATE THE MANAGEMENT AND ENFORCEMENT OF OCCUPANCY LOADS, FIRE CODE REQUIREMENTS, OR OTHER NON-ZONING REGULATIONS;
- NUMBER FIVE: WHETHER SEPARATE LICENSING OF NIGHTCLUB USES AS IS DONE IN OTHER JURISDICTIONS WOULD ASSIST WITH MANAGEMENT OF CROWDS AND COLLATERAL ISSUES IMPACTING NEIGHBORHOODS;
- NUMBER SIX: WHETHER THE ORDINANCE SHOULD CONSIDER WHETHER ESTABLISHMENTS WITH DANCE FLOORS SERVE ALCOHOL, OR ARE ONLY OPEN CERTAIN DAYS OR HOURS;
- NUMBER SEVEN: WHETHER HIGHER PARKING RATIOS ARE APPROPRIATE FOR PUBLIC ENTERTAINMENT ESTABLISHMENTS OR EATING ESTABLISHMENTS WITH DANCING OR UNDER WHAT CIRCUMSTANCES;
- NUMBER EIGHT: WHETHER ACCESSORY USES SUCH AS DANCING IN EATING ESTABLISHMENTS MIGHT BE DEFINED DIFFERENTLY CONSIDERING THE

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

FREQUENCY OF THE ACTIVITY, THE OCCUPANCY LOAD FOR THE FACILITY, OR OTHER CRITERIA RATHER THAN THE SIZE OF THE DANCE FLOOR;

- NUMBER NINE: SUCH OTHER FACTORS AND ISSUES AS STAFF DEEMS APPROPRIATE FOR FURTHER EVALUATION OF PUBLIC ENTERTAINMENT ESTABLISHMENTS OR EATING ESTABLISHMENTS WITH DANCING; AND
- THAT THE STAFF REPORT BACK TO THE BOARD WITHIN 12 MONTHS WITH A RECOMMENDATION FOR SCOPE OF ADVERTISING FOR CONSIDERATION OF ORDINANCE AMENDMENTS, INCLUDING FLEXIBILITY TO THE PLANNING COMMISSION AND BOARD TO CONSIDER SUCH CHANGES WITH INPUT FROM THE COMMUNITY.

Commissioner Sargeant: Second.

Vice Chairman Alcorn: Seconded by Commissioner Sargeant. Any discussion on that motion? Okay, all those in favor of that motion, say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries unanimously. Any additional – Mr. Hart?

Commissioner Hart: No, I didn't have any more motions, but if there are other motions for the Board we've got to do it tonight because it's coming up Tuesday.

Commissioner Donahue: Mr. Chairman?

Vice Chairman Alcorn: Yes, Mr. Donahue.

Commissioner Donahue: Thank you, Mr. Chairman. I think what we've done now – to make sure I'm clear on this – is we have recommended the Board defer consideration and also have sent a follow-on motion. I think I'm okay, but let me ask you this. The one thing I'm fearful of that I don't think can happen now, but maybe it can, is the Board will disregard the motion to defer and go ahead, in which case they are going ahead and voting on something I'm not sure they should vote on, but never-the-less something that includes – I think – a 250 square foot – maybe a 150 square foot –

Vice Chairman Alcorn: 150 square foot.

Commissioner Donahue: A 150 square foot limitation?

Vice Chairman Alcorn: Correct.

Commissioner Donahue: On the dance floor, which I think is disastrously small. And therefore, I think what I would like to do is make a motion that, if the Board does decide to go forward, that the dance floor limitation that they should consider would be 500 square feet. And therefore, I

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

THINK WHAT I WANT TO DO IS MAKE A MOTION TO CHANGE THE PROPOSED AMENDMENT ON PAGE 7, LINE 4, TO READ 500 SQUARE FEET RATHER THAN 150 SQUARE FEET.

Vice Chairman Alcorn: The motion's been made. Is there a second?

Commissioner Lawrence: Point of clarification, Mr. Chairman.

Vice Chairman Alcorn: Yes, Mr. Lawrence for a point of clarification.

Commissioner Lawrence: Does the maker – let's see now – is the phrasing of this motion in the event the Board decides to continue with this?

Commissioner Donahue: In the event the Board ignores our first recommendation to defer and goes to a vote on the merits of this proposition.

Commissioner Lawrence: So it's contingent on that situation?

Commissioner Donahue: Correct.

Commissioner Lawrence: Okay, thank you. Thank you, Mr. Chairman.

Vice Chairman Alcorn: Okay, is there a second?

Commissioner Litzenberger: Second.

Vice Chairman Alcorn: Seconded by Commissioner Litzenberger.

Commissioner Hart: Mr. Chairman?

Vice Chairman Alcorn: Commissioner – actually, Commissioner Hart then Commissioner de la Fe.

Commissioner Hart: Yes, thank you, Mr. Chairman. Can I inquire is it changing – it's changing to 500 square feet, but is it from yesterday's text changing hookahs to "smoking establishments" or is it from the original staff report?

Commissioner Donahue: I think what I am changing is from the original staff report and only that line, page 7, line 4. What you're saying is if we're going back to the original staff report, we have problems because we're not including the wording of your amendment. And I understand and I can see that.

Commissioner Sargeant: Mr. Chairman?

Vice Chairman Alcorn: Actually, Mr. de la Fe then Mr. Sargeant.

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

Commissioner de la Fe: Mr. Chairman, I think the discussion we are having now – and having the last couple minutes – we don't know what the size should be. We don't know what should be included and I think that that's why we asked the Board of Supervisors to defer its public hearing and its consideration until we have had more time and the public has had more time. So I – I mean the Board can ignore us if they wish. I mean that is their prerogative. We're only advisory. But I don't want to go on record as recommending anything at this point.

Commissioner Donahue: Mr. Chairman?

Vice Chairman Alcorn: Commissioner Sargeant and then Commissioner Donahue then Commissioner Migliaccio.

Commissioner Sargeant: Thank you, Mr. Chairman. I agree very much with Commissioner de la Fe and I think it overlooks what we just approved. We approved Commissioner Hart's second motion, which in detail – informed detail – provides an outline for resolving these issues. And it's not just – as important as the square footage of the dance floor is – there are other issues of consideration here. And Commissioner Hart has done an excellent job of outlining those types of issues. Proximity of nightclub uses to residentially zoned property, circumstances for establishing larger dance floors, eating establishments with accessory dance floor – how they might be regulated differently. There's a detailed list that he has provided. It is a path forward and I think we should follow that because we obviously consider this a priority one issue of safety concerns that have been articulated by staff. We want to address that. I believe we can do it in less than a year. We can do it effectively. But not if we add onto the stuff and say, "Well we don't like this motion, but if you do it here's what we recommend." I don't think that solves the problem. I think we stick to what we have from Commissioner Hart as a second motion for follow-on action. I'm very confident that Commissioner Hart and staff can resolve these issues in a very timely manner.

Vice Chairman Alcorn: Okay, thank you. We are on verbatim. Commissioner Donahue.

Commissioner Donahue: Mr. Chairman, thank you. Yeah, I appreciate and agree to some degree with what Commissioner Sargeant and Commissioner de la Fe have said. However, if the Board decides not to go with the deferral motion, they are taking something which is on record. It's from the staff. It's not the Planning Commission. Nevertheless, it is a 150 square foot recommendation from the staff, which I think is terribly, terribly inappropriate.

Commissioner Sargeant: Mr. Chairman?

Commissioner Donahue: Just one second. In addition to that, if they are going to take something like this on, I think it should be the recommendation of the Planning Commission that they make as – what I might call liberal or allowable as the study goes on – as allowable of square footage consideration as is possible. And I think 150 feet is totally, totally inappropriate. And I think we should be on record as saying we think it should be bigger. Thank you.

Vice Chairman Alcorn: Commissioner Migliaccio, then Commissioner Flanagan, and then we vote.

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

Commissioner Migliaccio: Thank you, Mr. Chairman. I agree with what Commissioner Hall has said earlier and what Mr. Donahue is saying now. We have a job to do. We have a staff report recommending something. We may not agree with it, but we have something. We have a public hearing scheduled on Tuesday for the Board of Supervisors. Without our recommendation – we're a recommending body – we're sending nothing up to them except punt this down the road. So either we can – we should vote on this. It can fail, fine. But we can vote on it tonight.

Vice Chairman Alcorn: Commissioner Flanagan.

Commissioner Flanagan: Well I was going to – as a point of clarification or a point of order – Commissioner Donahue seems to be indicating that there are, as of now, there are two motions to the Board of Supervisors; the original one, the substitute motion, and then the subsequent motion of Commissioner Hart. I don't think we can send two motions on the same subject to the Board.

Commissioner de la Fe: Yes, we can.

Commissioner Flanagan: Because that just gives them –

Commissioner de la Fe: We can send as many motions as we want.

Commissioner Flanagan: On the same subject?

Commissioner de la Fe: Yes.

Vice Chairman Alcorn: Correct.

Commissioner Flanagan: Because I always thought that a substitute motion took the place of the original motion; and therefore, you could never act on that.

Vice Chairman Alcorn: Commissioner Donahue, what is your pleasure on your motion?

Commissioner Donahue: I would like to put that motion on the floor and vote on it.

Vice Chairman Alcorn: Okay, Commissioner Hall and then we vote.

Commissioner Hall: I'm going to be really short. I think we're making a big mess out of this. The bottom line is – with all due respect – forget your motion. Vote on the original motion that Jim was putting forward. My sense is it goes down and then his follow-on motion covers all the bases and that's clean.

Commissioner de la Fe: Well, we have already voted on that.

Commissioner Hall: But we can also vote to take it back.

Vice Chairman Alcorn: Okay, the motion on the floor is Commissioner Donahue's motion, which – let me try to state it if I could – if the Board does decide to consider this Zoning Ordinance

Amendment on Tuesday that the minimum square footage be changed to 500 square feet, as contained in the staff report.

Commissioner Migliaccio: Mr. Chairman? One question.

Vice Chairman Alcorn: Yes? Mr. Migliaccio.

Commissioner Migliaccio: We cannot ask staff for their opinion on 500 square feet?

Jack Reale, ZAD, DPZ: I'd like to make a brief point of clarification on, particular, the follow-on motion from Commissioner Donahue. Stipulating a higher number – it's fine if that's what you wish to do, but the Board has the prerogative to go to any square foot number above 150 under the scope of the current advertising. So I don't think it's critical to insert a critical – to insert a specific number because they have the option of going higher. They just can't go below 150.

Vice Chairman Alcorn: Okay.

Commissioner Donahue: My only follow-up to that would be – that's true, but again it leaves them without a sense of the Planning Commission.

Commissioner de la Fe: Mr. Chairman, I WOULD CALL THE QUESTION.

Vice Chairman Alcorn: Okay, question's been called. Let's vote. All those in favor of the motion by Commissioner Donahue, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed?

Commissioners: No.

Vice Chairman Alcorn: All right, division. Commissioner Donahue.

Commissioner Donahue: Yes.

Vice Chairman Alcorn: Litzengerger.

Commissioner Litzengerger: Yes.

Vice Chairman Alcorn: Flanagan.

Commissioner Flanagan: Yes.

Vice Chairman Alcorn: Lawrence.

Commissioner Lawrence: No.

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

Vice Chairman Alcorn: de la Fe.

Commissioner de la Fe: No

Vice Chairman Alcorn: Hurley.

Commissioner Hurley: No.

Vice Chairman Alcorn: Migliaccio.

Commissioner Migliaccio: Yea.

Vice Chairman Alcorn: Pardon?

Commissioner Migliaccio: Yes.

Vice Chairman Alcorn: Sorry; Sargeant.

Commissioner Sargeant: No.

Vice Chairman Alcorn: Hart.

Commissioner Hart: Abstain.

Vice Chairman Alcorn: Hall.

Commissioner Hall: No.

Vice Chairman Alcorn: And the chair votes no. And let's see; one, two, three, four – four in favor. And one, two, three, four, five against (sic) and one abstention. The motion fails.

Vice Chairman Alcorn: All right, is that it?

Commissioner Lawrence: Mr. Chairman, do we still have a motion on the table?

Vice Chairman Alcorn: No. (sic)

Commissioner de la Fe: We have acted on the motions and I move we go to the workshop.

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(The first motion to approve the proposed amendment, as modified, was not voted on since it was replaced by a substitute motion to defer.)

ZOA – PUBLIC ENTERTAINMENT ESTABLISHMENTS

(The substitute motion to ask the Board to defer its public hearing carried by a vote of 8-2-1 with Commissioners Hall and Migliaccio opposed; Commissioner Hart abstaining; Commissioner Murphy absent from the meeting.)

(The motion to table the proposed disapproval motion of the original recommendation carried unanimously with Commissioner Murphy absent from the meeting.)

(The next motion to recommend that the proposal be reauthorized with a broader scope carried unanimously with Commissioner Murphy absent from the meeting.)

(The last motion to offer a square footage amendment should the Board choose to proceed failed by a vote of 4-6-1 with Commissioners Alcorn, de la Fe, Lawrence, Hurley, Hall, and Sargeant opposed; Commissioner Hart abstaining; Commissioner Murphy absent from the meeting.)

JLC