

Planning Commission Meeting
April 3, 2014
Verbatim Excerpt

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17 – FURNACE ASSOCIATES, INC.

Decision Only During Commission Matters
(Public Hearing held on February 27, 2014)

Commissioner Flanagan: Thank you, Mr. Chairman.

Chairman Murphy: Nice to see you with us this evening.

Commissioner Flanagan: Well it's nice to be here after having a few hours' sleep. But thank you, Mr. Chairman. First, I wish to thank the 56 citizens that signed up to speak and those that didn't sign up to speak, but stayed up anyway to speak and listen until 3:00 a.m. the next morning. And the reason for that is they recognize the huge long-term impact of this Special Exception Amendment that will be borne by the Lorton community. I think the 56 speakers set a record for the Planning Commission and I think we should all take note of the fact that this is a significant turnout by any community in Fairfax County. The decorum of the Lorton citizenry gave new meaning to why it's a good – it's to our good fortune to be an American. Their testimony presented new information, new viewpoints, and were supported with facts – facts that have been the basis for much post-hearing additional testimony and some changes to the application. Their testimony was a great help to we Commissioners in determining what we are sworn to do – make sure that all Special Exceptions are in harmony with the surrounding community with the Comprehensive Plan recommendations – and, third, with the Zoning Ordinance. I wish, however, that the Commission tonight was considering a compromise offered by the representatives of the Lorton community, who met with the applicant after the public hearing. Their compromise called for the certain closure of the landfill by the end of 2022 in order for the landfill to reach 412 feet; the elimination of the wind turbines' threat to wildlife; the elimination of the seven-story earth and berm wall threat to the adjacent RPA, floodplain, and Giles Run; and the alternate location of solar panes to the sites being served. In other words, instead of being a distance from the sites that will use the electrical energy, they would be moved, actually, to the sites where they would be using the electrical energy. I could have easily supported such a compromise. But that is not the application before us tonight for a decision. Instead, as you are aware, Furnace Associates has filed a Special Exception Amendment application – SEA 80-L/V-061-02 – seeking the expansion of their existing 250-acre construction demolition and debris landfill in Lorton and a continuation of its operation until the year 2034. The SE also seeks to add electrical generating facilities, a radio-controlled aircraft field – amateur, I mean a small aircraft field – hobby aircraft – a baseball hitting range, and a golf driving range to the site at the cessation of the landfill's operations. Concurrent with the SEA is a 2232-V13-18 for solar and wind electrical generating facilities on this 250-acre site. In addition, Furnace Associates have filed two applications that relate to its 9-acre property on the west site of Furnace Road. A Proffered Condition Amendment application, PCA 2000-MV-034, proposes the deletion of a proffered mixed-waste reclamation facility that's there now. The PCA application also proposes to permit solar electrical generating facilities as the proffered use for that property. Concurrent with the PCA 2000-MV-034 is

another 2232 application – it’s actually number 2232-V13-17 – for the establishment of a solar electrical generating facilities. To say that these applications have been contentious would be a serious understatement. The Commission held its public hearing on these applications on February 27, 2014, and that public hearing did not conclude until 3:00 a.m. on the following day. Subsequently, over 200 members of the South County Federation attended a meeting to discuss these applications. The majority of the South County community associations have vehemently opposed this application. The issue has hit home for many community residents, as they participated in striking a bargain with this same applicant in 2007 to have the landfill close by the end of 2018, only to now be faced with an application seeking a substantial expansion of the landfill coupled with the request for an extension of the landfill’s operations until 2034. I would like to first address the centerpiece of the applicant’s proposal – the SEA application. The existing landfill is located on property that is comprised of approximately 250 acres with a permitted overall height of 412 feet. However, this SE application proposes to reduce the maximum height to 395 feet from 412 and to expand the currently-approved 4-acre platform on top to more than 40 acres. The 40-acre plus platform, in turn, would necessitate the continued – the construction of a 70-foot high – which is the equivalent of a 7-story building – high earth and berm or wall extending two miles around the entire perimeter of the landfill. If the berm wall, which would be seven stories high, were to fail, it would undoubtedly spill onto the nearby RPA, floodplain, and the Giles Run Stream. In addition, homeowners in the nearby Lorton Valley subdivision would be severely impacted. The standards for approval of this SEA are set forth in Zoning Ordinance Section 9-006. In my opinion, this application clearly fails to satisfy two such standards. First, Section 9-006 states that the Special Exception uses must be in harmony with the Comprehensive Plan. The Plan recommendations for this area of the County specifically call for gateway site building design. Gateway uses are supposed to create a sense of place in the community and should embody and announce the fabric of the community. This area of South County is rich with history, notable architecture, and a strong sense of community. Over the last 10 years, this body has helped to define, redevelop, and morph the South County area from heavy industrial uses into a newly developed, vibrant, and engaged community. An even larger landfill does nothing to announce South County as a place worth even visiting and is inconsistent with our vision to turn the Lorton community into a beautiful “gem” in Fairfax County. Quite simply, it is difficult to conceive of any land use that is more inconsistent with the notion of a gateway than a mountainous debris landfill. In addition, the construction of the 40-acre plus platform and the 7-story vegetated berm is inconsistent with the stated goal of protecting the ecological integrity of the streams in the County, as set forth in Objective 2 in the Environmental Section of the Policy Plan and General Standard Number 3 in the Zoning Ordinance, Section 9-006. Second, pursuant to General Standard Number 3, a Special Exception use should not adversely affect the use or development of neighboring properties and, further, shall not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof – end of quote. We hear abundant evidence – we heard abundant evidence at the public hearing which supports the conclusion that the continued use of this site as a landfill through 2034 would, in fact, adversely affect the use of – the use or development of the neighboring properties, including those in Lorton Valley, Shirley Acres, Sanger Street, Laurel Hill Subdivisions, the Workhouse Cultural Arts Center, Laurel Hill parkland, the nationally recognized championship public golf course, and the future development of the adaptive re-use

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

site – that’s the old maximum security prison. Without question, this current SEA application generates a substantial number of adverse land uses, transportation, visual, and environmental impacts – which will only get worse if the proposed SEA is approved as that not – as not only adding seven – earth and wall, behind which trash will be piled upon existing landscaped mountain sides. At the present sides, there are two sides that are landscaped substantially. Further, there is no doubt in my mind that the proposed extension and expansion would hinder or discourage the continued revitalization of the South County community. I further recommend denial of the 2232 application for solar and wind electrical generating facilities on the existing landfill property. Again, these facilities are contrary to the provisions of the adopted Comprehensive Plan. Solar and wind facilities siding on top of a 395-foot tall mountain of debris, covering a 40-acre plus platform, does nothing to create a sense of place and is not a gateway use, as called for by the Comprehensive Plan. In addition, the facilities are poorly conceived. Among other things, there is no evidence that the wind conditions at this location are sufficient to generate enough electricity to support the installation cost of the wind turbines. Equally damaging to this application, the wind turbines would be a threat to the already threatened American bald eagle population that is, once again, resident in the Mason Neck area. This is not a mere apprehension of harm. Rather, staff from the US Fish and Wildlife Service have confirmed that it previously advised the applicant that this location was unsuitable for wind turbines due to the effect on the local and migrating natural wildlife. Interesting, the proposed development conditions also allow the applicant to buy out of the green energy components of this application for a sum that may very well be less than it will cost to build the improvements. I therefore have concluded that the location, character, and extent of the proposed solar and wind electrical generating facilities on the landfill property is not substantially in accord with the adopted Comprehensive Plan. Finally, we have – we also have a Proffered Condition Amendment application and a second 2232 application for the applicant – from the applicant, which proposes to eliminate the proffered recycling center on the applicant’s property on the west side of Furnace Road to allow for the construction of a solar electrical generating facility. The applicant indicated that it would move to withdraw the PCA application in the event that its current SEA application is denied. Accordingly, consistent with my findings as to the SEA application, I have concluded that we should deny the 2232 application for the west side of Furnace Road and recommend to the Board of Supervisors that it deny the Proffered Condition Amendment application to eliminate the recycling center. In summary, Mr. Chairman, there are more benefits to the County by denying than approving this application. Some in addition to those that I’ve noted above are: one, denial of the application will benefit Fairfax County by improving air quality when the landfill is capped, as recommended by the Planning Commission in 2006. The Sierra Club testimony states that methane gas is a potent contributor to global warming – 25 to 75 – to 72 percent more potent than carbon dioxide. And only 20 to 75 percent of the methane gas is ever captured by most landfills. So in other words, we have 80 to 25 percent freely escaping. The increase – increasing the production of greenhouse gases by expanding the landfill and delaying the capping to 2035 is contrary to the County air policy objective, number one. And two, denial will benefit Fairfax County by hastening recycling when the last landfill in Fairfax County is closed in 2018, as now wisely recommended by the Commission in 2006. The current Board of Supervisors solid waste management plan encourages recycling. It does not encourage landfill expansion. The County, the Virginia

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

Department of Environmental Quality, and the EPA all consider landfills as a last resort and a dying industry as more debris is recycled. And three, denial will benefit Fairfax County by protecting a major Fairfax County asset and visitor attraction, the American bald eagle – one of our national symbols in addition to the American flag. Not to protect rare wildlife is contrary to the County Environmental Policy Objective 9. And four, denial will benefit Fairfax County by reducing the number of trucks with a Lorton destiny, as wisely recommended by the Planning Commission in 2006. To allow truck traffic for an additional 17 years, as requested, is contrary to Zoning Ordinance Section 9-006. Accordingly, Mr. Chairman, let me pull up here my motions. I seem to have lost my motions here. Okay – accordingly, Mr. Chairman, for these reasons and based on all of the evidence presented in the public hearings on these applications, I MOVE THAT THE PLANNING COMMISSION FIND THE SOLAR AND WIND ELECTRICAL GENERATING FACILITIES PROPOSED UNDER 2232-V13-18 DOES NOT SATISFY THE CRITERIA OF LOCATION, CHARACTER, AND EXTENT, AS SPECIFIED IN SECTION 15.2-2232 OF THE *CODE OF VIRGINIA*, AS AMENDED, AND IS NOT SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN. I ALSO MOVE THAT THE PLANNING COMMISSION DENY SEA 80-L/V-061-02.

Commissioner Sargeant: Mr. Chairman?

Chairman Murphy: Is there a second? Seconded by –

Commissioner Sargeant: Mr. Chairman, I would like to make a few comments to go with my second.

Chairman Murphy: Okay, seconded by Mr. Sargeant.

Commissioner Sargeant: Mr. Chairman, thank you very much. And let me begin by first of all acknowledging the applicant's participation in recent meetings with representatives of the South County community and business leadership. That goal was to determine whether additional dialog was possible. But at the end of the process, the two sides agreed to disagree. Now even with some recent modifications, this application is still not ready for our support and here are some reasons. The applicant had included a covenant at its own offering to – in development conditions that would have provided greater certainty requiring a closure date. I'm told that this evening that that development condition will be removed for other reasons that Commissioner Hart can elaborate. We should know that this issue has been – we should know, quite simply, that this issue closure and that kind of certainty had been addressed to the satisfaction of all parties. The lack of certainty here has certainly been one of the foundations of dispute in the South County area. The applicant has now agreed to lower the final height of the landfill from 412 to 395 feet. However, the applicant says the revised SEA Plat to reflect this change will not be ready until a week after tonight's decision. As staff noted in response to one of my questions earlier today, in general staff would review a revised plan along with revised conditions or proffers. In a question to staff regarding the amended development condition, I asked staff whether they still agree with the statement on page 19 of the staff report that the applicant has only committed to providing the methane gas and geothermal infrastructures and installation of

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

three wind turbines in phase one. According to the staff response dated today, “The applicant has only committed to provide methane gas and geothermal infrastructure and installation of three wind turbines in phase one for the SEA site. The applicant has committed to provide solar on the adjacent PCA side.” This is one of those areas where we can provide better certainty and a better application. With regard to green energy, the applicant correctly notes the extension discussions and task force initiatives and leadership by the Board of Supervisors itself over time to promote alternative energy. And certainly, repurposing a landfill with green energy is not a unique or uncertain idea. We are likely to this – this concept go forward elsewhere as well as here. But in my response to whether the Board of Supervisors has approved any legislation to create a green energy triangle, staff responded today that they are not aware of any legislation to create a green energy triangle at this time. Yes, a green energy triangle can occur without legislation, but my question to gauge the Board’s current involvement and commitment at this time. Is it lost on anyone here that the County’s plan for green energy rests, perhaps, on a new bed of methane? At the end of the day, we should not forget that green energy and cash proffers may be the result of a landfill expansion and extension. We still have a 70-foot berm around the perimeter of the landfill and possibly until 2034 for landfilling activities. A better understanding about responsibility and liability for these structures and any public uses on this site are in the best interests of the County and its citizens. While the applicant’s consultants do provide expertise and assurance regarding the stability and longevity of the berm, the County would be better served to provide its own third-party scrutiny regarding the future of the proposed structure. One engineer said to me, “Nothing lasts forever.” So with this, Mr. Chairman, I second the motion to deny the SEA and 2232. Thank you.

Chairman Murphy: Further discussion of the motion? Mr. Hart.

Commissioner Hart: Thank you, Mr. Chairman. I agree with Commissioner Flanagan. This has been a contentious application and I would like to address, in part, why I think that happened and what we can do about it. I agree also that perhaps we can do better on this type of application. Never the less, I’ve reached a different conclusion than Mr. Flanagan regarding what our recommendation to the Board of Supervisors should be at this point. And earlier today, staff had circulated a series of motions – we received some motions last week – but I had circulated three motions today, the first of which would be what I think we should do on the SEA and the corresponding 2232. I’d like to address first why I think this particular application became so contentious and do so in an effort to try and extract from the land use decision some of the emotion – some of the emotional difficulties that we’ve had with this case. Several years ago, and I think there were four of us – Commissioner Lawrence, Commissioner de la Fe, Commissioner Murphy, and myself – voted on the previous iteration of the Special Exception, which was praised and celebrated at the time as a win/win situation. It was going to provide this overlook park. It was going to provide certainty as to the closure of the landfill in 2018. And it also importantly contained a provision regarding the applicant’s release from liability for the landfill – that it would be taken through – a dedication would be taken by the Park Authority. At the time, I think – I speak for myself, but I think my colleagues would agree – we did not know that the Park Authority might not end up taking the dedication. As it turned out, sometime after the approval, the Park Authority ultimately decided to not accept the dedication of the facility.

That problem – that fiasco – has mushroomed into a lot of angst and complaints in the community, which I think contributed to the hostile reaction, at least, with the South County folks initially towards this application, the number of speakers we had, the length of the public hearing, the volume of the communications we've received, much of which communicates quite clearly anger over these disappointed expectations. That this was supposed to be a proffer, in fact it's been suggested to us by some that promises were broken or that the applicant should be held to these – to these promises or that there was a deal that the applicant somehow has broken. And from my perspective, that is absolutely not what happened. On a Special Exception, the applicant doesn't make promises. The Board of Supervisors, instead, imposes development conditions – the rules by which an application will be governed. What the Board of Supervisors is saying – we're approving this use, subject to the following terms. You will do this, this, this, and this. We found out, I think, as recently as last week if we – maybe we knew before or maybe I just didn't pick up on it – in one of the memoranda from staff, I learned I think for the first time that Development Condition 53, which was the key to the whole deal – which provided that at such time as the applicant was formally released from liability by DEQ, then some other things would happen. That would lead to the dedication of the facility as a public park. Well, we found out a few days ago – or at least I found out – that the County Attorney's office had never seen Development Condition 53 until long after the approval. And then this all blew up into something. I mentioned at the beginning that I had circulated some motions and the final motion, a follow-on motion, addresses my concern about what went wrong on this case and to make sure that this never happens again. And I hope it is something on which, no matter what our position is on the four applications in front us tonight, that going forward we can agree on this and that something positive can come out of this. And with respect to the follow-on motion, I think it is susceptible – that this situation is susceptible of repetition because we have repeatedly planned for innovative parks in Tysons. I think we will expect them, perhaps, in Reston as well and perhaps in other places – where we're putting parks in unusual places – on top parking garages, on tops of buildings. And we need to make sure that, going forward, the Park Authority's decision-making process is integrated into the land use decision – that it's not separated – that we not approve something that's dependent on the Park Authority doing something and that the whole approval is contemplating this is going to turn into a park and the Park Authority is going to take it. And secondly, that the County Attorney's office be integrated into the process so that where there are situations where we are contemplating dedication of land for a park or acceptance of land for a park or acceptance of maintenance responsibility or a transfer of liability or something like that – that before this is voting on – before its approved – the County Attorney's office has had an opportunity to vet those development conditions, make sure we're all on the same sheet of music, that the condition is going to work, and that the deal that we contemplate is the deal that's going to happen. We'll get to that. Coming back to this particular application, I think if it hadn't been for the disappointed expectations about the failure of the previous package to work – to turn this into a park – to turn this into a situation where the applicant is being released from liability and the landfill is correspondingly closed in 2018 – it's a much easier case to resolve. I think that on a Special Exception, our function also is somewhat different. And it's different even still on a 2232. I would adopt, generally, for the purpose of the discussion – we don't want to be here until three in the morning again – the rationale in the staff report and staff's professional analysis regarding the provision in the Comprehensive Plan, the

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

provisions in the Zoning Ordinance, and whether the applications each, I'll say, fall within the strike zone. On a 2232 in particular, we see this on telecommunications and we see it sometimes on Park Authority applications. Sometimes any number of things could fall within that strike zone. Any number of things might meet the criteria of location, character, and extent whether we agree with them or not – whether they would be our first choice – whether we would choose to do it in that way. And on these, I think staff has correctly analyzed them. With respect to the Special Exception, also, I will address briefly – Commissioner Sargeant had addressed Development Condition Number 60, which I had deleted in the motion on the – or if we get – depending on what happens. If we get to my motions, I am deleting Development Condition 60, which was – which did two things. It established a covenant at the end that would run through the Board of Supervisors and to an unnamed third party. In general, it would certainly be possible for an applicant to agree to a private covenant, a private agreement, a side-agreement of some sort. It might even be appropriate in a rezoning case where an applicant is making proffers. Where they're making proffers, they're saying, "Please rezone our property and here's what we're going to do if you do that." But on a Special Exception, our function is somewhat different. The General Assembly has set up a system whereby we evaluate whether certain non-residential uses of special impact are appropriate in certain areas. And if they are – if they meet certain other criteria – what development conditions are appropriate to mitigate the impacts running from the use? Those might address things like lighting and noise and transportation and buffering, landscaping, that sort of thing. To the extent that a development condition was designed to require a covenant to run to the benefit of a private third party, it's not mitigating any impact at all. It's not landscaping. It's not buffering. It's not dealing with noise. The reason that's in there is going back to this first problem with what went wrong with the park. The concern that's been expressed is that the Board of Supervisors cannot be trusted and there needs to be someone – some guardian at the gate besides the Board of Supervisors – some private party to control the destiny of this property down the road. That's not something we've ever done. That's not something the General Assembly has authorized. We can't impose, as a development condition, a requirement on a private party that they give up property rights to somebody else where it's not mitigating an impact. It's dealing with some political problem or some other issue. And again, if some private agreement were to be worked out between the parties, that's fine. But we're not in the business of telling those people what to do. That's – that's the problem with Development Condition 60. Otherwise, I think staff has correctly analyzed each of the uses and imposed a very rigorous set of development conditions, which impose also extraordinary financial contributions and requirements on this applicant over a course of many years. The applications also, I think, are – I would say – are not perfect. And in my discussions with several of you, I think we were close to a consensus on some additional points. I had hoped very much, and I know that several of us did, that the committee that Commissioner Sargeant worked on – I think we appreciate the efforts by Commissioner Sargeant, Commissioner Flanagan, and the people who participated – to try and get a compromise – to try and get a consensus. And we hope to do that on most of our cases. It didn't work here for whatever reason. Nevertheless, the applicant had made voluntarily some changes to their proposal, which staff also supports – scaling it back someone, cutting six years off of their proposal – from 2040 to 2034 – reducing the height from 412 feet to 395 feet. I think there were several other points identified, sometimes simultaneously, by multiple commissioners on which we don't necessarily have a development

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

condition. But at the same time, I think it is reasonable for us to look at these applications and say, "Yes, they fall within the strike zone." And the Board of Supervisors might have discretion to approve them. But at the same time, if the Board will work on these six items, they will be closer to a consensus. I think the application will be improved. I think with further discussions between staff and the applicant and the community – and the Board is sophisticated enough to do this – we can make this a better situation. We can road map for the Board how they get there. This is also, I think, an extraordinary application in terms of the time frame, as we've discussed briefly. The 2232 applications run out on Thursday. They are deemed approved as a matter of law if we take no action before then. The Board of Supervisors, theoretically, could extend them again. But there is no guarantee that they will. And we all know what happens in this building if there's a power outage, if there was a fire alarm, if there's a snowstorm again, and something happens – and even if the Board wanted to vote next week – if for some reason they don't, the applications are deemed approved. And we don't want to be in that situation. The Board has given us a deadline. I think we have done – we have rigorously vetted these applications. We have reviewed a great deal of material. Staff has been working day and night to try and digest all the stuff – answer all these questions. And I think in this extraordinary situation, we can identify for the Board suggestions for areas of improvement. And I've tried to do that. Rather than denying the whole thing – recognizing at the same time staff's careful analysis of this and the Board's commitment to any number of policies which are consistent with continuing to have a construction debris landfill within Fairfax County – whether that's for economic development purposes – whether it's for an industrial use continuing to contribute to the tax base – whether it's because we're going to need a place for construction debris for all the growth that's planned in Tysons and Reston and the revitalization areas. And if we don't have it here and the debris has to be shipped out of the County to somewhere in Maryland or Manassas or down the northern neck – wherever it's going, it's going to cost more and take longer – put more vehicles on the road for a longer period of time. And it frustrates, I think, our objectives for getting buildings to comply with, for example, LEED certification, which is going to require something like that. The Board will have the flexibility to determine these types of policy issues in that context. I think I would address, separately, when we get to the – if we get to the other motion – the particulars of that if there's a need for that. But where we are on the first – the SEA and the first 2232 – I think we shouldn't flat out deny it. I think what we should do is my motion, which recognizes that the applications fall within the strike zone, but identifies for the Board six points on which the Commission feels there could be improvement.

Commissioner de la Fe: Mr. Chairman, which motion are we talking about?

Commissioner Hart: I'm arguing why we shouldn't approve Mr. Flanagan's motion to deny the first – the SEA and the first 2232.

Commissioner de la Fe: You're talking about your motion. I haven't seen – you haven't made any motion.

Chairman Murphy: He's just giving you a preview.

Commissioner de la Fe: Oh – okay.

Commissioner Hart: I'm telling you why. Stay tuned we'll get there.

Chairman Murphy: Further discussion?

Commissioner Hart: Mr. Chairman, I had one more point.

Chairman Murphy: Okay.

Commissioner Hart: I wanted to address, also, the commitment to the future of Lorton. This is an issue with County – this is an application – these are applications with countywide implications. Lorton is an important part of the County and there was a lot of testimony about the history of Lorton or the problems with Lorton. We have had, I think – we are all aware of how Lorton was defined 20 or 30 years ago and perhaps by the major uses there. We had – overwhelming everything was the prison. We had the sewage plant, the landfill, the garbage incinerator, the quarry, Cinderbed Road, whatever else. We didn't have a lot of residential development. We didn't have a lot of investment and there were probably reasons for that. With the closure of the prison, however, Lorton got a second and a third look. And we've amended the Plan with the efforts of the Commission and some of the Commissioners participating in those planning activities. We have encouraged and seen a great deal of residential development. And I think Lorton is defined now by – not so much history – not so much the prison in the past – but the growth that we've seen in Lorton. And Lorton is recognized as a growth area. We anticipate there's going to be more growth in Lorton. And the Board has recognized that, which significant investments in schools and parks and public facilities and other things that are coming down the pike. The Lorton Arts Center – perhaps we've made a greater investment than we had intended. In any event, the Board is committed to Lorton. And the fact that an industrial use that's continuing, subject to rigorous development conditions is still there, is by no means an abandonment of the Lorton community or what it means. I think we should deny the – Commissioner Flanagan's motion and then we'll see what happens.

Chairman Murphy: Mr. Lawrence.

Commissioner Lawrence: Thank you, Mr. Chairman. Get my microphone on. I would like very much to go along with Commissioner Hart's proposals. And I do, in fact, plan to go along with the one that he has processed. I do agree that this kind of thing ought not to have happened in the first place and certainly ought not to happen again. However, I cannot agree to a motion for approval of this package, as presented to us tonight. I would like to say that I think we should start with a blank slate and the idea and understanding that the industrial use will, in fact, continue for an extended period of time – many years, that's what they're asking for. Now what do we do during that extended period of time? One of the things we can do is to assure ourselves as to the long-term stability of the mound of debris that they are building so that we don't run into liability problems later – and worse yet, functional problems with our energy generation system because the thing settled in the wrong way. Secondly, we will be able to hold close to the

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

end of this extended period of operation, at a time of closure as that approaches, a design contest where we can look at the technology not as it is today, but as it will be decades from now. And we can build not a series of stove pipes with individual sources of energy, but a combination or hybrid of such sources. There is a plant now existing in Florida that's advertising itself on television, which is such a hybrid. They use solar steam rather than voltaic. Voltaic is 20 percent efficient – 20 percent. In the labs, they're now doubling that. It hasn't yet reached industrial capability, but we're talking decades. We have the time to do this right if what we want is green energy. Now absent that, I can't support the application as it's presented – not because of any expectation, but because of the – the merits and the flaws of what's within the four corners of the application. Let me illustrate my position with just a couple of examples. I believe that an acceptable land use application must meet two tests. First, a condition of necessity in that the application satisfies all applicable laws and regulations. Second, a condition of sufficiency in that the application is in conformance with the Comprehensive Plan and that, as a total package, the application provides for a balance between the impacts its approval creates and the public benefits offsetting and mitigating those impacts. I do not believe the Furnace Associates proposal presented for our vote tonight shows that required balance. I'll illustrate that with just a couple of examples. The application proposes wind turbines. The applicant's consultant pointed out in the report they – that conditions at the site are marginal for energy generation using this technology, as it stands today. And the most information I have seen from the Fish and Wildlife Service is that it's unlikely there is no threat to wildlife from the turbines. But the applicant insists they be a part of the package. Even though they commit only to three machines and also include provisions for a study on wildlife impact, providing a way to back out of the technology, but retain overall approval for the extension of operations as decided. Public benefit from this feature of the proposal would then consist of a one-time cash payment. In its proposal, the applicant envisions adding an additional layer to the mound of construction and demolition debris now to be seen at the site. Atop this second layer, large mounting pads for turbines and solar cells are to be put in place. The mass of the installed equipment plus the dynamic loads from wind effects will be transmitted through the debris mound through the pads and their pilots. A condition that has the potential to result in damage to the pads and the equipment and its output would be any significant uneven settling of the debris mound over time. The last proposed development conditions that I have seen included one to the effect that unless a written certification of the long-term stability of the debris mound after it is closed is given, no infrastructure will be build atop the mound. Again, the green energy concept would be lost. In attempting to judge how likely it is that the debris mound will be stable over time, it comes quickly to mind that the debris pile was not originally intended to be in and of itself a load-bearing platform. And there is, thus, no reason to think that compaction of the pile has been a routine over the years of its operation, whatever may be done to the second layer to be added. In at least two particulars then, the value to the public of this green energy proposal is open to question. But the applicant does not want to consider leaving out the wind turbines and does not want any further deferral time to get a solid picture on the long-term stability of the debris pile and its top hamper. We are asked to vote the proposal as a package up or down. As it is presented to us tonight, I will vote against it. Thank you Mr. Chairman.

Chairman Murphy: Ms. Hedetniemi.

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

Commissioner Hedetniemi: Thank you Mr. Chairman. In the cacophony of the testimony that kept us here until 3:06 in the morning, one of the things that I remember most were the few people who spoke about the dream of green energy in this County. And the fact that we had the opportunity, if we could to be a leader and create something unusual and unique and valuable, but – Mr. – Commissioner Lawrence's point is very well-taken. I think Commissioner Hart made it also. In a number of years, we don't know what the technology is going to be. I don't think wind turbines are going to last – maybe in this situation – and maybe are not appropriate. But the green energy concept is something that I think we should not lose sight of. In some fashion or other, we should try to make it work on behalf of the County if nothing else.

Commissioner Migliaccio: Mr. Chairman?

Chairman Murphy: Mr. Migliaccio.

Commissioner Migliaccio: I'll try to be concise since we are on verbatim.

Chairman Murphy: We are on verbatim.

Commissioner Migliaccio: Yes.

Chairman Murphy: And I treasure every minute of it if our cacophony of our comments on the motion last as long as they have them, we will be here until 3:06 in the morning.

Commissioner Hedetniemi: You like that word.

Chairman Murphy: I love the word cacophony. Yes, go ahead. It's your turn for cacophony of the motion.

Commissioner Migliaccio: My goodness, the pressure. First, I would like to commend Mr. Flanagan and Mr. Sargeant for representing Mount Vernon in such a great manner on this application. Normally, as Lee and Mount Vernon, we go back and forth on items. But on this one – looking at it, it's not just a Mount Vernon issue. Looking at it, this application in my opinion has regional and countywide implications. And, therefore, it's not just a Mount Vernon issue. And, therefore, I am not able to support Commissioner Flanagan's denial tonight. Hopefully, we have a – Commissioner Hart's motion coming through, depending on what happens now on this vote. I hope by supporting a denial on these applications – it will allow on a vote on a compromise that can be sent to the Board. I feel it serves no purpose leaving this here to die or leaving this – these applications here for a deferral. It does no good. I think it needs to get to the next step. We need to have a vehicle to send this to the Board to let them work on it, to tweak it, to work around the edges. We as a Planning Commission work on the land use issues only. And that's what we're – that's our mission. All those other issues that we hear from South County – and they're very valid issues – those are more the political arena and those are more appropriately addressed at the Board level. And I think by providing a vehicle that may not be

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

perfect, but sending it up to the Board would be the best in this – for these four applications.
Thank you Mr. Chairman.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion, as articulated by Mr. Flanagan to deny 2232-V13-18 and SEA 80-L/V-061-02, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners: Nay.

Chairman Murphy: Motion – we'll have a division; Mr. Ulfelder.

Commissioner Ulfelder: Nay.

Chairman Murphy: Ms. Hedetniemi.

Commissioner Hedetniemi: Nay.

Chairman Murphy: Mr. Flanagan.

Commissioner Flanagan: Aye.

Chairman Murphy: Mr. Lawrence.

Commissioner Lawrence: Aye.

Chairman Murphy: Mr. de la Fe.

Commissioner de la Fe: Aye.

Chairman Murphy: Mr. Hart.

Commissioner Hart: Nay.

Chairman Murphy: Mr. Sargeant.

Commissioner Sargeant: Yes.

Chairman Murphy: Mr. Migliaccio.

Commissioner Migliaccio: Nay.

Chairman Murphy: Ms. Hurley.

Commissioner Hurley: Nay.

Chairman Murphy: And the Chair votes nay and the motion is defeated 6 to 4; Mr. Flanagan.

Commissioner Hart: You want me to go? Or he wants to do his other motion?

Chairman Murphy: You want to do your other – you want continuity here?

Commissioner Flanagan: As long as he had – we're on the SEA. We might as well hear his motion.

Chairman Murphy: Okay.

Commissioner Hart: Thank you, Mr. Chairman. What I would like to do, if I may, is read the motion. If there's a second, I would speak briefly to it. I MOVE THAT THE PLANNING COMMISSION FIND THE SOLAR AND WIND ELECTRICAL GENERATING FACILITIES PROPOSED UNDER 2232-V13-18 SATISFY THE CRITERIA OF LOCATION, CHARACTER, AND EXTENT AS SPECIFIED IN SECTION 15.2-2232 OF THE *CODE OF VIRGINIA*, AS AMENDED, AND ARE SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN. I FURTHER MOVE THAT THE PLANNING COMMISSION FIND THAT SEA 80-L/V-061-02 MEETS THE APPLICABLE LEGAL CRITERIA, SUBJECT TO STAFF'S PROPOSED DEVELOPMENT CONDITIONS WITH THE DELETION OF DEVELOPMENT CONDITION 60 FOR THE REASONS ARTICULATED IN THE STAFF REPORTS AND SUBSEQUENT MEMORANDA AND, THEREFORE, RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SPECIAL EXCEPTION AMENDMENT SEA 80-L/V-061-02, SUBJECT TO STAFF'S PROPOSED DEVELOPMENT CONDITIONS DATED MARCH 28, 2014, WITH THE FOLLOWING MODIFICATION: DELETE DEVELOPMENT CONDITION 60 IN ITS ENTIRETY. AND FURTHER, THAT THE COMMISSION'S RECOMMENDATION OF APPROVAL ON THE SPECIAL EXCEPTION IS COUPLED WITH THE FOLLOWING ADDITIONAL ITEMS FOR CONSIDERATION BY THE BOARD:

- THE COMMISSION RECOGNIZES THAT ALTHOUGH A CONSENSUS BETWEEN THE APPLICANT AND ALL CITIZENS MAY NOT BE POSSIBLE, FURTHER REFINEMENTS TO STAFF'S PROPOSED DEVELOPMENT CONDITIONS, IN CONSULTATION WITH THE APPLICANT, COUNTY STAFF AND THE COMMUNITY, MAY FURTHER IMPROVE THE APPLICATION, AND PROVIDE REASSURANCES REGARDING POTENTIAL IMPACTS FROM THE APPLICATION.

THE PLANNING COMMISSION RECOMMENDS THAT SPECIFIC TOPICS FOR THE BOARD'S CONSIDERATION SHOULD INCLUDE THE FOLLOWING:

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

- A) THAT THE BOARD CONSIDER DELETION OF THE REQUIREMENT, DEVELOPMENT CONDITION 46 AND ELSEWHERE, THAT THE APPLICANT INSTALL WIND TURBINES AT THIS LOCATION AND INSTEAD REQUIRE A COMMITMENT BY THE APPLICANT TO INSTALL OTHER GREEN ENERGY TECHNOLOGY OF AN APPROPRIATE AND EQUIVALENT NATURE;
- B) THAT THE BOARD CONSIDER WHETHER THE APPLICANT'S \$500,000 ANNUAL CONTRIBUTIONS BETWEEN 2019 AND 2038, AS REFERENCED IN DEVELOPMENT CONDITION 49, SHOULD BE INDEXED TO INFLATION OR SUBJECT TO COST OF LIVING INCREASES, OR SOME OTHER INCREMENTAL INCREASES;
- C) THAT IN ADDITION TO THE POTENTIAL MEETINGS REFERENCED IN DEVELOPMENT CONDITION 27, THE BOARD CONSIDER A REQUIREMENT THAT THE APPLICANT BE REQUIRED TO DESIGNATE AN OMBUDSMAN OR COMMUNITY LIAISON WITH CONTACT INFORMATION AVAILABLE TO THE SUPERVISOR'S OFFICE AND COMMUNITY TO FACILITATE PROMPT DIALOGUE REGARDING CITIZEN COMPLAINTS OR FIELDING QUESTIONS OR CONCERNS ABOUT THE OPERATIONS;
- D) THAT THE BOARD CONSIDER ADDITIONAL CLARIFICATION OF THE APPLICANT'S LONG TERM RESPONSIBILITY FOR THE STRUCTURAL INTEGRITY AND STABILITY OF THE SOLAR PANELS OR OTHER STRUCTURES INSTALLED ON TOP OF THE LANDFILL, INCLUDING POST-CLOSURE;
- E) THAT THE BOARD CONSIDER ADDITIONAL LIMITATIONS ON REMOVAL OF VEGETATION, OR SUPPLEMENTAL VEGETATION AS MAY BE DETERMINED BY DPWES, IN THE 5.2-ACRE PRIVATE RECREATION AREA REFERENCED IN DEVELOPMENT CONDITION 56 TO REINFORCE THE BUFFERING IN THE DIRECTION OF THE LORTON VALLEY COMMUNITY TO THE NORTH;
- F) THAT THE BOARD CONSIDER WHETHER THE CLOSURE DATE COULD BE SOONER THAN 2034, REFERENCED IN DEVELOPMENT CONDITIONS 12 AND 60 – and that's a correction from the text that was sent out earlier – it's 12 rather than 11 – OR THE HEIGHT OF THE FINAL DEBRIS ELEVATION BE reduced – FURTHER REDUCED BELOW 395 FEET, REFERENCED IN DEVELOPMENT CONDITION 12 – that's another correction, it's 12 rather than 11 – OR THE HEIGHT OF THE 70 FOOT BERM, DEVELOPMENT CONDITION 29, BE REDUCED IF DETERMINED TO BE STRUCTURALLY SOUND BY ALL APPROPRIATE REVIEWING AGENCIES;
- AND FURTHER, THAT THE COMMISSION DOES NOT INTEND FOR THE ABOVE SUGGESTIONS FOR ADDITIONAL DISCUSSION TO RESTRICT OR LIMIT IN

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

ANY WAY APPROPRIATE TOPICS TO BE CONSIDERED BY THE BOARD FOR POTENTIAL REVISIONS TO THE DEVELOPMENT CONDITIONS.

I FURTHER MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE WAIVERS AND MODIFICATIONS THAT WERE DISTRIBUTED TO YOU IN STAFF'S HANDOUT DATED MARCH 28, 2014 AND:

- DENIAL OF A MODIFICATION OF THE INVASIVE SPECIES MANAGEMENT PLAN REQUIREMENT, PURSUANT TO SECTION 12-0404.2C OF THE PUBLIC FACILITIES MANUAL; AND A
- DENIAL OF A MODIFICATION OF THE SUBMISSION REQUIREMENTS FOR A TREE INVENTORY AND CONDITION ANALYSIS, PURSUANT TO SECTION 12-0503.3 OF THE PUBLIC FACILITIES MANUAL.

Commissioner Hart: I won't read the waivers and modifications that are in the attachment. But, Mr. Chairman, if the Chair will indulge me –

Commissioner Migliaccio: Second.

Commissioner Hart: Well I haven't finished, please. I neglected to ask that – at the County Attorney's suggestion – to have Mr. McDermott acknowledge the staff – or excuse me, the applicant is in agreement with the development condition package and less devout to Condition 60. If he could just acknowledge that on the record and then I'm done.

Chairman Murphy: Mr. McDermott, please come down and identify yourself for the record.

Francis McDermott, Esquire, Hunton & Williams, LLP: Mr. Chairman, members of the Commission, my name is Frank McDermott. I'm the attorney for the applicant. And we have certainly negotiated and are agreeable to the conditions as you propose to be modified.

Commissioner Hart: Thank you. That's my motion.

Chairman Murphy: Seconded by Mr. Migliaccio –

William Mayland, Zoning Evaluation Division, Department of Planning and Zoning: Excuse me, Commissioner?

Chairman Murphy: Is there a discussion of the motion?

Commissioner Sargeant: Mr. Chairman?

Mr. Mayland: Mr. Chairman?

Chairman Murphy: Yes, Mr. Sargeant.

Mr. Mayland: Mr. Chairman.

Chairman Murphy: Hello. Sorry, wait a minute. Hold on.

Mr. Mayland: Sorry, the motion's modifications – they're actually DATED APRIL 3rd, not March 28th. Sorry, I think that was – I think it was an older version. So it was our mistake. But April 3rd is we distributed today.

Commissioner Hart: Oh, I didn't intentionally change it, but –

Mr. Mayland: So if we can just correct that.

Commissioner Hart: If that date is incorrect – the April 3rd motion for waivers and modifications is attached to the text of my motion and if the date should be April 3rd rather than March 28th that – yes that's correct.

Chairman Murphy: Okay, Mr. Sargeant.

Commissioner Sargeant: Thank you, Mr. Chairman. Commissioner Hart referenced specific, I think, staff comments related to this deletion of Development Condition 60. Staff comments? Are there specific written comments somewhere with regard to this particular deletion proposal? You referenced some staff – I believe you referenced some staff comments or something text with regard to the issue of deleting Development Condition 60.

Mr. Mayland: Condition Number 60 was a recent addition that was just distributed on March 28th.

Commissioner Sargeant: In his comments, he talked about – I think you referenced particular text or something related to deletion of Development Condition 60. Maybe it was extemporaneous.

Commissioner Hart: Is that a question for me?

Commissioner Sargeant: Yes.

Commissioner Hart: Mr. Chairman, if I could answer his question.

Chairman Murphy: Please.

Commissioner Hart: The staff reports and subsequent memoranda I'm referring to are the – the – we got staff reports at the beginning. We got an addendum. We've gotten many, many memoranda from staff. It's not – it's – it meets the applicable legal criteria, subject to this

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

package – except for Development Condition 60 as staff has articulated. The staff reports are not about Development Condition 60. The staff reports are about the applicable criteria.

Commissioner Sargeant: That's fine. I wanted to clarify that because I wanted to make sure there was not something other, text-wise, that was not related to the deletion of this that we had not seen yet. So you saying there's nothing else relating to that text regarding the deletion? If it was, I just wanted it included in the record so we all had it to look at. But if there's nothing specific to text relating to the development – deletion of Development – that's fine.

Commissioner Hart: There's nothing that's not attorney/client privilege that we can – I mean, we can't put in memoranda from counsel so it is what it is.

Commissioner Sargeant: All right, thank you. Mr. Chairman, just real quickly – I think – I certainly appreciate the comments we've heard and the initiatives regarding this motion. I think speaking to Commissioner Hart's and even Commissioner Migliaccio's comments about this being a regional and Countywide issue – I agree very much with that. And I think that's one of the challenges we have here with the issues related to the current – the current application with regard to the specificity and the certainty of the development conditions. That won't change moving it to the Board. However, with that comment, we can only hope that that will improve.

Chairman Murphy: Is there further discussion of the motion? All those in –

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: I didn't speak to it. I wanted to address one point that I didn't mention previously. With respect to Commissioner Lawrence's points – and I believe I had tried to incorporate in A and D the points that he had raised – specifically with reference to the structural stability of the pile and the berm. I believe that staff's conclusion, as supported by the applicant's technical submissions, confirm that the pile as a whole is more stable with the berm than without – and that the berm will be subject to rigorous and subsequent reviews by the Geotechnical Review Board, by the Department of Public Works and Environmental Services, and the Department of Environmental Quality. We're not really capable of – I'm not capable of doing a technical analysis of that sort of thing from a structural engineering standpoint. But I am satisfied that with the regulations that we have, this is going to be reviewed by multiple agencies who know what they're doing in a very rigorous way. But I will also call that out as an issue for the Board for further clarification, which I think would help reassure the citizens on that point. I've commented on the rest of it. I think it is more responsible for us to send a recommendation to the Board, seeing it the way it is and making these suggestions.

Commissioner Lawrence: Mr. Chairman?

Chairman Murphy: Mr. Flanagan? I mean Mr. Lawrence.

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

Commissioner Lawrence: A brief reply. I thank you Commissioner Hart for including that. I was not as concerned with the berm, which was designed with a fudge-factor of two and I think is probably going to hold up, as I was with the porosity of the pile. So that when I talk about settlement, what I'm talking about is it yielding under the weight of these concrete pads after some period of time when the wind loading has been at work being transmitted through the thing. Maybe I didn't make myself clear, but that's what I had in mind. I wasn't talking about berm failure.

Commissioner: It – Mr. Chairman, if I may respond to that – the D is directed to the structures on the top – not the berm. I mean it may look at something with the berm also, but the point of D is dealing with the structural integrity and stability of the solar panels or other structures installed on the top. And that's what the Board can look at.

Commissioner Flanagan: Mr. Chairman?

Chairman Murphy: Mr. Flanagan.

Commissioner Flanagan: I'm not going to be able to support the motion, primarily because I think just from a political point-of-view – I think it's better always to move denial. I would've supported the considerations that Commissioner Hart brings up if they in amendment to my motion to deny. I think it's a stronger recommendation from the Planning Commission to the Board of Supervisors if it's a motion to deny with the investigation with all the subjects that he listed for his motion to approve. I wouldn't have had any objection if had amended my motion to attach them as considerations that he thought were worthwhile investigating after it gets over to the Board of Supervisors. So I – I'm just – so I'm – as it is right now without that consideration, I'm going to have to continue to object to the motion.

Chairman Murphy: Further discussion? All those in favor of the –

Mr. Mayland: Mr. Chairman? I'm sorry.

Chairman Murphy: I'm sorry.

Mr. Mayland: We were unclear if there was a second to Mr. Hart's motion.

Chairman Murphy: Yes, seconded by Mr. Migliaccio.

Commissioner Migliaccio: I seconded it.

Mr. Mayland: Okay, thank you very much.

Chairman Murphy: Keep up straight over there, you know? Please. All right, all those in favor of the motion to recommend to the Board of Supervisors that they approve SEA 80-L/V-061-02 and 2232-V13-18, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners: No.

Chairman Murphy: Motion carries. I believe we have the same division unless anyone changed his or her mind so it's approved 6 to 4. Mr. Flanagan. It's your turn.

Commissioner Flanagan: And that's again. Yes, thank you. Yes, Mr. Chairman, I also have a follow-on motion. I MOVE THAT THE PLANNING COMMISSION FIND THAT THE SOLAR ELECTRICAL GENERATING FACILITY PROPOSED UNDER 2232-V13-17 DOES NOT SATISFY THE CRITERIA OF LOCATION, CHARACTER, AND EXTENT AS SPECIFIED IN SECTION 15.2-2232 OF THE *CODE OF VIRGINIA* AS AMENDED AND IS NOT SUBSTANTIALLY IN ACCORD WITH THE COMPREHENSIVE PLAN. AND I ALSO MOVE THAT THE PLANNING COMMISSION DENY PCA 2000-MV-034.

Commissioner Sargeant: Second.

Commissioner Flanagan: Do I have a second? Did I get a second?

Chairman Murphy: Yes, hold on just a minute. You were going on 2232-V –

Commissioner Flanagan: This is the PCA motion.

Chairman Murphy: Okay – 2000-MV-034.

Commissioner Flanagan: Yes.

Chairman Murphy: Okay, all right. I'm sorry. Okay, and the 2232-V13-17.

Commissioner Flanagan: That's right.

Chairman Murphy: Okay, all those in favor – seconded by –

Commissioner Flanagan: Mr. –

Commissioner Migliaccio: Mr. Sargeant.

Chairman Murphy: Mr. Sargeant, okay. All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners: Nay.

Chairman Murphy: Same division? The motion failed 6 to 4. Mr. Hart, your turn.

Commissioner Hart: Thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION FIND THAT THE SOLAR ELECTRICAL GENERATING FACILITY PROPOSED UNDER 2232-V13-17 SATISFIES THE CRITERIA OF LOCATION, CHARACTER, AND EXTENT AS SPECIFIED IN SECTION 15.2-2232 OF THE *CODE OF VIRGINIA*, AS AMENDED, AND IS SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF PROFFERED CONDITION AMENDMENT PCA 2000-MV-034, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED FEBRUARY 10, 2014 AND CONTAINED IN APPENDIX 1 OF THE STAFF REPORT. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF PARAGRAPH 11 OF SECTION 11-102 OF THE ZONING ORDINANCE FOR A DUSTLESS SURFACE TO THAT SHOWN ON THE GENERALIZED DEVELOPMENT PLAN. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL TO PERMIT OFF-SITE VEHICULAR PARKING FOR THE OBSERVATION POINT FOR SPECIAL EXCEPTION AMENDMENT SEA 80-L/V-061-02, PURSUANT TO SECTION 11-102 OF THE ZONING ORDINANCE.

Commissioner Migliaccio: Second.

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

Commissioner Flanagan: Mr. Chairman?

Chairman Murphy: Yes, Mr. Flanagan.

Commissioner Flanagan: I'm not going to be able support the motion here because what this motion does is effectively – it takes away the one recycling piece of land that we have in Fairfax County. And I don't have any I – to my knowledge, there isn't an alternate site for recycling other than this particular site. So I think it violates the County's policy of encouraging recycling by taking away the one site that is now planned for recycling. I just – it just seems like we're going totally against our – the Policy Plan. I just – I can't believe that the Planning Commission is not going to support the Policy Plan.

Chairman Murphy: Okay, further discussion? Mr. Sargeant.

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

Commissioner Sargeant: Thank you, Mr. Chairman. I think one of the things to which Commissioner Hart is referencing is the opportunity to help further spark the recycling component of construction debris industry. And you had that opportunity there to keep not only the business of traditional construction debris going forward for a number of years, but also to help further serve as a catalyst to get the recycling of construction debris as well. Certainly, the option of solar panels in this area – it's nine acres. It sounds fun and it would be fine – except that you could move those solar panels elsewhere and still continue with your recycling and address the traffic issues that are associated with that. So you had some opportunities, which – to Commissioner Flanagan's point – will probably be lost in the future. Thank you.

Chairman Murphy: Further discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 2000-MV-034 and 2232-V13-17, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners: No.

Chairman Murphy: Motion carries – same division. Did anyone switch? Okay, motion carries. Thank you very much – 6-4.

Commissioner Hart: Mr. Chairman, one more.

Chairman Murphy: Is that it? Mr. Hart.

Commissioner Hart: Yes, I got one more.

Chairman Murphy: Okay.

Commissioner Hart: Unless Earl's got something.

Chairman Murphy: You got another one?

Commissioner Flanagan: No.

Chairman Murphy: Did you run out?

Commissioner Hart: Okay, thank you. I've got one more. Thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT DIRECT DEPARTMENT OF PLANNING AND ZONING STAFF – IN CONSULTATION WITH THE PLANNING COMMISSION, PARK AUTHORITY AND OFFICE OF THE COUNTY ATTORNEY, AS APPROPRIATE – TO EVALUATE AND

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

REPORT BACK TO THE BOARD, WITH APPROPRIATE RECOMMENDATIONS ON THE FOLLOWING TOPICS, WITHIN 18 MONTHS:

- A) IN LAND USE APPLICATIONS INVOLVING THE CREATION OF A PUBLIC PARK, INCLUDING INNOVATIVE OR UNCONVENTIONAL LOCATIONS FOR PARK FACILITIES, SHOULD ADDITIONAL PROCEDURES OR PROTOCOLS BE IMPLEMENTED, SO AS TO BETTER INTEGRATE, INTO THE COUNTY'S LAND USE DECISION MAKING PROCESS, THE PARK AUTHORITY'S DECISIONS ON ACCEPTANCE OF DEDICATION, OR RESPONSIBILITY FOR MAINTENANCE OR LIABILITY, PRIOR TO ACTION BY THE PLANNING COMMISSION AND/OR BOARD OF SUPERVISORS?

- B) IN LAND USE APPLICATIONS INVOLVING THE CREATION OF A PUBLIC PARK, INCLUDING INNOVATIVE OR UNCONVENTIONAL LOCATIONS FOR PARK FACILITIES, SHOULD ADDITIONAL PROCEDURES OR PROTOCOLS BE IMPLEMENTED SO AS TO ENSURE THE OFFICE OF THE COUNTY ATTORNEY HAS AN APPROPRIATE OPPORTUNITY TO REVIEW PROPOSED LANGUAGE OF ANY DEVELOPMENT CONDITIONS OR PROFFERS, SPECIFICALLY INCLUDING PROVISIONS FOR CONVEYANCE, ACCEPTANCE, OR DEDICATION OF LAND OR ASSOCIATED RESPONSIBILITY FOR MAINTENANCE OR LIABILITY AND ANY CONDITIONS PRECEDENT, PRIOR TO ACTION BY THE PLANNING COMMISSION AND/OR BOARD OF SUPERVISORS?

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of that motion?

Commissioner Sargeant: Mr. Chairman?

Commissioner de la Fe: Mr. Chairman?

Chairman Murphy: Mr. Sargeant, then Mr. de la Fe.

Commissioner Sargeant: If I could make a friendly amendment, just to add the words RECREATION FACILITIES as well – park and recreation.

Commissioner Hart: Where is that?

Commissioner Sargeant: You don't have it. That's why I would like to suggest putting it under – perhaps the second line, "Unconventional–" – in somewhere in here, I think you need to reference park and recreation facilities. That's what we've been working on for a number of months now.

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

Commissioner Hart: If staff is okay with adding that – FOLLOWING PARK FACILITIES IN THE SECOND LINE OF A AND THE LINE OF B – Mr. Mayland. If staff's okay with that –

Chairman Murphy: You okay?

Mr. Mayland: No issue.

Commissioner Hart: Then I'm okay with that.

Chairman Murphy: All right. Further discussion?

Commissioner de la Fe: Yes.

Commissioner Flanagan: Yes.

Chairman Murphy: I'm sorry, Mr. de la Fe. And then Mr. Flanagan.

Commissioner de la Fe: I respect Commissioner Hart's intent with this. But frankly, what he is recommending be studied is what I as a district Planning Commissioner assume happens in any case. So I just think that we are reacting as government often does to study something that should not happen because it happened once and it will happen again – and whether we studied it to death or not. I just think we are reacting to one particular case and we probably will create another myriad of procedures that will fail once again and then we'll study it again. So I think we're just doing what government always does and that is react to a failure by creating a commission that will create procedures. Sorry, I'm – worked for the government for 45 years and that's what happens.

Chairman Murphy: I was going to say your government's showing.

Commissioner de la Fe: I know. I mean it's absurd. This should be happening and it's up to the local Planning Commissioner to make sure that it happens. And attorney's change, Park Authority Boards change, Board of Supervisors change, and Planning Commissioners change. And frankly, that's probably what happened here. And I – I don't agree that it was the Planning – the Park Authority's fault that this failed.

Chairman Murphy: Further discussion of the motion?

Commissioner Sargeant: Mr. Chairman.

Chairman Murphy: Yes, Mr. Flanagan.

Commissioner Flanagan: Thank you, Mr. Chairman. I too think this is a – sort of a feel good sort of a proposal here. I suppose it doesn't hurt. It doesn't do any harm, but I don't think we should be raising expectations. I would much prefer the previous suggestion about the covenant with the

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

land. I think things of that sort are a much better way of gaining the ends that we're trying to achieve here. If there had been something of this sort done at the time that we had the agreement back in 2006, I think we wouldn't be in this pickle right now in my opinion. So and – I don't think this is – I don't disagree with Mr. – Commissioner Hart on this. This was a suggestion that came up in the – the idea of a covenant – using a covenant is a subject that came up in the group that studied it after the public hearing at the request of Chairman Bulova. In fact, I was the one who put it on the table at the group meeting. And it's – it was something that you can ask for and that the applicant could – this was voluntary. This was something that he – it wasn't required of him. It's something you can always bring up. And if the applicant is willing to do so, why you're that much ahead. So I – that was the only way the covenant got in there to begin with – because the applicant proposed putting it in there. So I don't understand why we're concerned about this covenant issue.

Chairman Murphy: Ms. Hedetniemi.

Commissioner Hedetniemi: At the risk of going on too long on this subject, I also was a fed. And I know that sometimes we tend to try to correct by adding more corrections and by becoming more involved. I would suggest possibly that the impact of this whole activity has been – has been noted and has been sufficiently concerning to a number of people that maybe we don't need to have a regulation – a motion, in effect, to accomplish what Commissioner Hart has raised as something that we need to be conscious of. And we just keep it in mind and make sure that we don't over-extend ourselves beyond what could have been a good process initially.

Chairman Murphy: Further discussion of the motion?

Commissioner Sargeant: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Sargeant: Probably – this mission is fine. It – to your point, it won't solve a great deal. It will focus on one component of what was a far more complex mismatch of timing and everything else. So I think, probably, a broader review would appropriate, but this is a fine start.

Chairman Murphy: Further discussion? All those in favor of the motion, as articulated by Mr. Hart –

Commissioner Hart: If I could –

Chairman Murphy: Almost articulated by Mr. Hart.

Commissioner Hart: To Commissioner de la Fe's point, I wasn't meaning to blame to Park Authority necessarily. I don't know where this went off the rails. I just know that it did. And thought it would reasonable –

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

Commissioner de la Fe: You made it very clear in your statement that it was the Park Authority. You did. It's in the record.

Commissioner Hart: Everything I said – the Park Authority at the time of the approval, I thought, was on – and I thought all four of us thought that. Maybe everybody did – that the Park Authority was on board. We would never have done this if they were not going to do it after the fact this went wrong. We ought not be voting on things if their decision is subject to something else happening later. The Park Authority does an amazing job. They are the stewards of – they're perhaps the biggest landowner in the County. They're the stewards of many, many properties. And it may have been a reasonable decision in this instance –

Commissioner de la Fe: It was a different Park Authority Board.

Commissioner Hart: -to take a property that doesn't have – that it was an old landfill that maybe had liability. My problem is the process didn't work because we got left high and dry after the fact. Anyway, I don't mean to pass the blame on the Park Authority and I'm trying to make that clear.

Commissioner Migliaccio: Mr. Chairman?

Chairman Murphy: Mr. Migliaccio.

Commissioner Migliaccio: Mr. Hart, I know you were trying to end on a high note, as was everyone in here.

Commissioner Hart: I was. I thought – maybe in the middle.

Commissioner Migliaccio: Perhaps just withdrawing your motion and packing it up and let's go home.

Commissioner Hart: Let's see what happens.

Chairman Murphy: All those in favor of the motion as – I'm not going to ask if there's any more discussion, I guarantee you – all those in favor of the motion, as articulated by Mr. Hart, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Migliaccio: No.

Commissioner de la Fe: I abstain.

Chairman Murphy: Okay, the motion carries. Mr. Migliaccio votes no. Mr. de la Fe abstains.

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

Commissioner Flanagan: Mr. Flanagan votes no.

Chairman Murphy: And Mr. Flanagan votes no.

Chairman Murphy: Okay. Just a couple words, if I may. As Chairman of the Planning Commission, it is my honor when there are an even number of Commissioners to be the swing vote. I did that for many reasons. Mathematically, if I didn't swing the way I swung, the motion would have failed anyway and we would be stuck with a hung jury at 5 to 5 because there are only 5 – 10 Commissioners present tonight. But I didn't really do – and I thought that would send a bad motion – message to the Board because I don't think anyone here would have been willing to change the numbers. And we could have been here until 3:15 Sunday night trying to figure out how we were going to get a 6 to 5 vote. Also, I am not in favor of sending to the Board of Supervisors, no matter how awesome the task, a recommendation without a recommendation. We don't do that. But I look at it more as a challenge to both the citizens and Mr. McDermott and the applicant. This is not a free pass for the applicant. And it's not a free pass for the citizens either. I don't know what the Board is going to do, but if you want the best deal possible – if the Board approves this – it is your time, both of you, to stop spinning your ties, work together, and come up with a meaningful compromise to present to the Board of Supervisors that they can act on with credibility and with what's best for Lorton and this County. Because I agree, this is not an MV application or an SP or a LE. It is a countywide application. It just happens to be in the Mount Vernon District. And I can remember back when – when I first started on the Planning Commission – and citizens from this area where you live now came to Elaine McConnell and me and said we're tired of living in an area that's known for a dump and a prison. What can you do about it? And lo and behold, Till Hazel came and said, "Let's do Crosspointe and I'll throw in a school." And that was really the first magnificent residential development Lorton had seen for years and years and years. And that kicked off, I believe, the residential development in that area of the County and what's gone on ever since. And I know their issues with what's going on with the dump and what's going on with this and that and the other thing on that parcel of land. But this is a time to work together. I want to thank Mr. Flanagan. He has done job at the tiller – sailing this ship again with some – on some rocky waters along with Mr. Sargeant and those other folks that served on the committee. I want to thank the staff, the backup singers who we didn't hear from this evening. And also, in particular, Mr. Mayland and Ms. Tsai. They have been tethered to bucking broncos for a long time and the ride ain't over yet. Because as this goes to the Board, and I think they're bringing some messages with them as to how not only the citizens but how the Planning Commission feels, that will be articulated when the Board of Supervisors gets together and find – find and determines what to do with this application – Mr. Flanagan.

Commissioner Flanagan: Thank you for allowing me to – to take the opportunity to thank the President of the South County Federation, the Vice President of the South County Federation, and the Chairman of the Land Use Committee who have come out this evening not to testify, but just to be sure that they fully understand the discussion that we have just now had. And so I really do thank them for being here this evening. That's Mr. – it's the three of those gentleman sitting back there.

April 3, 2014

PCA 2000-MV-034/SEA 80-L/V-061-02/2232-V13-18/2232-V13-17

Chairman Murphy: Thank you guys.

Commissioners: Yes, thank you for coming.

//

(The first motion failed to pass by a vote of 4-6. Commissioners Hart, Hedetniemi, Hurley, Migliaccio, Murphy, and Ulfelder voted in opposition. Commissioners Hall and Litzenberger were absent from the meeting.)

(The second motion carried by a vote of 6-4. Commissioners de la Fe, Flanagan, Lawrence, and Sargeant voted in opposition. Commissioners Hall and Litzenberger were absent from the meeting.)

(The third motion failed to pass by a vote of 4-6. Commissioners Hart, Hedetniemi, Hurley, Migliaccio, Murphy, and Ulfelder voted in opposition. Commissioners Hall and Litzenberger were absent from the meeting.)

(The fourth motion carried by a vote of 6-4. Commissioners de la Fe, Flanagan, Lawrence, and Sargeant voted in opposition. Commissioners Hall and Litzenberger were absent from the meeting.)

(The fifth motion carried by a vote of 7-2-1. Commissioners Flanagan and Migliaccio voted in opposition. Commissioner de la Fe abstained. Commissioners Hall and Litzenberger were absent from the meeting.)

JLC