Planning Commission Meeting
April 30, 2008
Verbatim Excerpt

RZ/FDP 2007-MV-011 - CARRHOMES, LLC

Decision Only During Commission Matters
(Public Hearing held on March 27, 2008)

Commissioner Flanagan: Thank you, Mr. Chairman. The application before us this evening requests a rezoning of 7.46 acres of property, located at Tax Map No. 99-4((1)) parcels 32 and 33, the subject property, on the west side of Telegraph Road, approximately 100 feet north of its intersection with Newington Road. The subject property is zoned to the R-1 District and is presently developed with one abandoned single-family dwelling that is planned for demolition. The application before us this evening proposes to rezone the subject property from the R-1 District to the PDH-2 District to permit the development of 11 single-family detached dwelling units, subject to proffered conditions that were mostly – most recently amended by the applicant on April 23, 2008. As you will recall from the earlier public hearing on this application, 30 days ago, the subject property has several existing site conditions that must be taken into account in analyzing this application. The subject property is located in the Accotink Creek Watershed, adjacent to the Kernan Creek Resource Protection Area. It is heavily-forested and vegetated with mature, high-quality hardwoods measuring up to 40 inches in diameter including oak, hickory, yellow poplar, and beech trees, as well as a particularly noteworthy American sweetgum tree that I will discuss further in a moment. The subject property also is characterized by average-to-steep slopes. Further, the Fairfax County Soils Map indicates that the soils throughout the subject property are generally poor and are subject to slippage. Because of its frontage on Telegraph Road, several of the dwellings in the proposed development will also be subject to high levels of transportation-related noise. Access to this development is proposed to be via a public street connecting to Winstead Manor Lane which will cross a wetland area on the subject property. A privately-maintained pipestem, which would extend in a southerly direction from the cul-de-sac, would provide access to Lots 6, 7, 8, and 9 of the proposed development, so that 36 percent of the lots in the proposed development would be served by pipestem – by a pipestem driveway. The Public Facilities Manual, specifically Section 2-0103.2, states that pipestem lots generally may not represent more than 20 percent of the total number of lots within a subdivision and, therefore, the Board's approval of a modification of this PFM requirement is also requested as part of this rezoning application. The proposed development plan depicts an extended detention dry pond for stormwater management, coupled with two perpetually undisturbed open-space areas that are proposed to be the subject of conservation easements. The proposed dry pond would be located to the south of the subject property, visible and adjacent to Telegraph Road, and in close proximity to an existing VDOT stormwater management facility. A seven-foot-high retaining wall would be constructed between the proposed Lots 8 and 9 and the proposed stormwater detention pond. Primarily, I note that the property before us this evening is currently zoned to a reasonable zoning district classification, the R-1 District. The applicant has acknowledged that such development is feasible by preparing a plan for consideration that depicts the by-right development of seven single-family dwellings on the subject property. The development of the subject property under its existing R-1 District zoning plainly would be

compatible with the established R-1 community, Hunter Estates, that is contiguous to the subject property on its western property line. And illustrated – or as illustrated by the applicant's own R-1 plan, the construction of seven, rather than eleven, single-family homes on the subject property would, among other things, eliminate the need for privately maintained pipestem driveways. Additionally, larger yards are provided with the R-1 plan. Development under the R-1 District regulations, for example, would provide a minimum side yard of 20 feet and a minimum front yard of 40 feet, while the application before us promises a minimum side yard of eight and a minimum front yard of 18 feet. Turning to the Zoning Ordinance provisions governing the approval of planned developments, General Standard Number 1 of the Zoning Ordinance, Section 16-101 states that the planned development must conform to the Comprehensive Plan. Both the existing R-1 District zoning for the subject property and the proposed PDH-2 District zoning are consistent with the Comprehensive Plan's site-specific recommendations for this area, which recommend clustered single-family dwellings at a density of one or two dwelling units per acre. However, in my opinion, the applicant has not demonstrated that the proposed development plan conforms to the Residential Development Criteria that are set forth in Appendix 9 to the Land Use section of the Policy element of the Comprehensive Plan and several objectives set forth in the Environment Section of the Policy element of the Plan. Residential Development Criteria Number 4, for example, states that all development should be designed to take advantage of existing quality tree cover to the maximum extent possible, and all proposed utilities, including stormwater management and outfall facilities as well as sanitary sewer lines, should be located to avoid conflicts with tree preservation areas. Similarly, Objective Number 10, Policy a of the Environment Section of the Policy Plan states that the "maximum amount of tree cover" should be preserved on developing sites. General Standard 3 of Zoning Ordinance Section 16-101 also calls for the effective – efficient utilization of land in planned developments to permit the maximum protection and preservation of its scenic assets and natural features, including trees, streams, and topographic features. The County's Urban Forester has concluded that the subject property is characterized by numerous high-quality trees, a number of which may be considered specimen or champion trees for their species. Although the proposed development plan indicates that approximately 20 percent of the trees on the subject property will be preserved, it does not propose to save a number of high-quality holly and beech trees in and around 9 and 10 of the proposed development, nor does it preserve a specimen American sweetgum tree in this area that measures approximately 37 inches in diameter. Further, the proposed development plan generally depicts limits of clearing and grading and utility trenches that are in close proximity to the proposed tree save areas, thereby raising legitimate concerns about whether these trees will survive the proposed construction on the subject property. Such concerns are heightened as a result of recent experience with the adjacent Winstead Manor development, where the tree save areas depicted on the development plan have been diminished due to their proximity to the limits of clearing and grading, and in some instances their proximity to the retaining wall and stormwater management facilities for the development. Based upon these concerns, I simply am unable to conclude that the applicant has adequately demonstrated that its proposed development plan provides for the maximum protection and preservation of the quality tree cover that characterizes the subject property. Further, Residential Development Criteria Number 3 requires new residential developments to take existing topographic and soil conditions into consideration and, moreover, to protect current and future residents from the

"adverse impacts of transportation-generated noise." These criteria are reiterated in Objectives 4 and 6 of the Environment section of the Policy Plan. And Objective 6 further recommends that density should be limited on slippage soils. The staff report states that the property outside of the riparian area on the subject property consists of average to steep slopes, poor soils, and are subject to slippage, and high noise levels based on the site's frontage on Telegraph Road. However, the applicant has not prepared a geotechnical study or a noise study for the subject property for our use in considering this application, so we are left with many important unanswered questions about the extent to which such issues can and will be mitigated with the proposed development. Accordingly, I am unable to conclude on this record that Criteria 3 – Number 3 of the Residential Design Criteria and Objectives 4 and 6 in the Environment section of the Policy Plan have been satisfied. I therefore am also unable to conclude that, pursuant to Zoning Ordinance section 16-101(1), development at a higher density substantially conforms to the Comprehensive Plan. Pursuant to Zoning Ordinance Section 6-101, we must also consider whether the proposed development depicts an innovative and creative design, facilitates the use of the most advantageous construction techniques, and promotes high standards in the layout, design, and construction of residential development. Although the applicant's proffered commitments to utilizing green building techniques and offering universal design to potential buyers are commendable, the proposed development plan otherwise depicts a rather traditional effort to maximize yield through the use of pipestem driveways and minimal side yard and setbacks. For stormwater management, the proposed development simply depicts a traditional dry pond that is situated adjacent to Telegraph Road side-by-side with an existing VDOT storm management facility. As only one example of the innovative techniques that were available to the applicant for stormwater management but not utilized was this proposed development. An inground rainstorm system could have been used which would have eliminated the need to stack two detention ponds side by side on Telegraph Road. The traditional detention facilities that were instead selected by this applicant simply do not, in my opinion, employ the "state of the art" techniques for stormwater management that are recommended in Criteria Number 3 of the Residential Design Criteria in the Comprehensive Plan. In balancing these factors, the applicant has not adequately demonstrated in my opinion that its proposed development plan is sufficiently innovative and creative to satisfy the Zoning Ordinance's standards for planned developments. In summary, the subject property may reasonably be developed under its existing and reasonable R-1 District zoning, and such R-1 development plainly would be compatible with the surrounding development. Based on the factors that I just outlined, I do not believe that the applicant has adequately demonstrated that the proposed PDH-2 development on the subject property conforms to the Residential Development Criteria, the objectives set forth in the Environment section of the Policy Plan, and the Zoning Ordinance standards for the planned developments. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT DENY RZ/FDP 2007-MV-011.

Chairman Murphy: Is there a second to the motion?

Commissioner Litzenberger: I'll second it for discussion purposes.

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

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Let me just make a few – few remarks. I've already spoken to Mr. Flanagan. And regrettably, I'm not going to be able to support this motion. I can understand, and I have, for many years on the Commission – the importance that we all face when we have citizens come in and the majority of the citizens feel that this rezoning application or that rezoning application is not the appropriate zoning application for a parcel in close proximity or abutting their properties. And this is what happens every time we face an infill parcel, especially an infill parcel that has environmental constraints or has environment issues. I think the citizens did a great job coming in and articulating that position. And I can understand a Planning Commissioner's desire to support the citizens in his district. And I also understand the importance that it is for members of the Planning Commission. And I have been an advocate of this for over 25 years to support the district commissioner in an application because he or she is the one that has the rose pinned on them. And they're the ones that are carrying the heavy water, and they're the ones that have had the meetings; and they're the ones that have dealt with homeowners' associations and umbrella organizations and the staff and the applicant, to try to bring it all together. And I know how important that is. So when I say I'm not going to support an application that – support a motion by a – by a Commissioner of a district, it's because I really don't think it's – it's a good motion, and I don't think it's the right position. In this particular case, notwithstanding the fact that the citizens almost came out in "una voce" and said they don't support the application; there is a time where we have to make a distinction as to whether or not we serve the process or we serve the citizens. And that's always a tough decision to make, but sometimes in land use the majority doesn't always win. Sometimes, we have to look at the process. We have to look at the basics that make this process work. And one the of the basics that makes the process work is the language of the Comprehensive Plan that deals with the site that is before us, the application property. And Mr. Flanagan was mentioning this in the Policy Plan, and this in the Policy Plan, and that's great. And if the Policy Plan is a guide – I mean if the Comprehensive Plan is a guide, the Policy Plan is a philosophical guide that deals with the really huge issues that we all face in the land use process. It's sort of like "Googling." You have an opinion; you google it, you'll find twelve opinions that agree with you. And you can look through the Policy Plan and you could come up with phrases and sections of the Plan that deal with the large land use process in the County. But when you look at the Comprehensive Plan as it applies to the subject property before us, which was not mentioned in the motion or the rationale for denying the motion, it clearly states that this parcel is planned for R-1 to R-2 and cluster. And that's exactly what is before us. And the number of units which started off at – what, 14 – is now down to 11. So there's been some compromise. With the 11 units that's allowed under the Comprehensive Plan, we also have a proffer package that basically is dealing with four units. If we didn't have those four units, as was stated by the maker of the motion, this could be R-1 with seven units. You wouldn't have this proffer package. And some of the people said – that came up before us at the

public hearing; and some who have County positions – that R-1 is better than having cluster with a proffer package. And I'm sorry, I don't buy off on that. It just doesn't work that way. Read the proffers; it addresses many of the things that Mr. Flanagan brought up in his motion that I don't consider to be still outstanding issues. Also on the citizens in this area, there are some who live in identical zonings that have already been approved by the Board of Supervisors. It's very difficult to turn down an application where you have R-2 cluster right next door, basically, to the application that's R-2 cluster. And the reason the Comprehensive Plan calls for cluster is due to the fact that we do have environmentally sensitive subject property here. And therefore, that is dealt with by the applicant, by the staff, in its analysis of the application before us in the proffer package that's finally before us this evening. And during this whole time, when this land sat there and was paid – taxes were paid by the family who has owned this land for years, and the language in the Plan was reading one-to-two, no one, no one in the neighborhood, no one from any of the umbrella groups, no one on the Mount Vernon Task Force ever introduced any language into the Plan to amend the language in this Plan to keep it at R-1. So for years, it's been R-1 to R-2. And that's what's before us this evening. And that is why it is in conformance with the Plan and the applicable Zoning Ordinances. Is it a perfect plan? I have never seen an infill parcel with environmental constraints that is a perfect plan. But I have moved on several of these applications and I've had the same flack from the citizens as Mr. Flanagan had during the public hearing. And we've had to make a decision. And I've made some tough decisions, as it applies. But we have to also consider the legal ramifications of these decisions. At one time, a Mount Vernon case was turned down by the Board of Supervisors and it went to Court. The Court found for the developer, and that application was kicked back to this Planning Commission. And we had to hear it with the direction from the Court to approve it without proffers. That is not a good thing. That is allowing the Courts to do the rezoning in Fairfax County. Fortunately, in that particular instance, we had a developer who went extra-dimensional and added some things to the development which were part of the original proffer package. But don't bet on the come that that's going to happen again. So, I'm sorry I took so much time. But I really feel strongly about this. And I intend to vote no. Further discussion of the motion?

Commissioners de la Fe and Hart: Mr. Chairman?

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

Commissioner de la Fe: Mr. Chairman, I just want to say that my – I agree with your comments. I will abstain in this case, but my – it's as close as I have come to voting against the recommendation of a District Commissioner. I still will not do so, but will abstain; but will make the comment that everything that has been pointed out here as things that are not being done or meeting the development criteria and so forth, are things that would not even be considered and would not be required and would not prevent a developer going to the R-1 which is the current zoning, clear-cutting the place and building seven houses with much more. I mean, there would be absolutely nothing to prevent that from happening. And that's one of the things that I always consider in my cases when I look at a package such as this. So I can't support the motion, but I will abstain.

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you, Mr. Chairman. I too cannot support the motion. I don't recall ever opposing a commissioner's denial recommendation on a rezoning. But I believe this is a significant case and I'd like to amplify the record with my reasons. I'd like to address, first, the justification for denial of the rezoning, and second, a disturbing undercurrent in this case which I hope we won't see again. First, I'm troubled by the appearance of discrimination in such a denial. Staff might feel that I am sometimes tougher than they are on some of these criteria, but on this case I would agree with staff that the application is in accordance with the Comprehensive Plan, the Zoning Ordinance, and the Residential Development Criteria. More importantly, however, I believe that the denial is improper where the Board has already granted the same zoning category requested, PDH-2, at slightly higher density, to a similarly situated property owner, the property next door, which is probably the most similarly situated property in Fairfax County. It's not possible to identify meaningful differences between these two properties which have identical treatment under the Comprehensive Plan and essentially identical site characteristics. Certainly this package of proffers is an improvement over the previous case. Although interesting reasons have been articulated for justifying the recommendation of denial, I do not believe those reasons have been consistently followed by this Commission or the Board and that it is inappropriate to base a denial on design details not typically dispositive. If these types of issues, such as the lack of a geotechnical study or the lack of innovative stormwater design, were of sufficient magnitude to warrant denial, then I could support a further deferral to allow staff and the applicant to address them. Instead they appear arbitrary, pretextual, and most significantly, unique to this case. If these have come up before, I don't ever recall them being a basis for denial. Secondly, I'm troubled by the disturbing suggestion that by-right R-1 development of this property will preserve more trees or be more environmentally sensitive than a PDH-2 development with proffers. We've received numerous emails advocating by-right development at this site, ostensibly for environmental reasons. To the contrary, by-right R-1 development provides no tree save whatsoever, no conservation easements, no proffers for root pruning, no protective fencing, no proffers for maintenance or replacement. With R-1, we instead have development on the honor system and no enforceable commitment to preserve any particular trees in any particular location. Because of the Ordinance requirements, moreover, the amount of site disturbance necessary on this site must increase substantially with R-1 and decrease any available area for tree save. With the increased lot size under R-1, approximately triple the lot size widths proposed, and 40-foot-minimum front yards, the area to be flattened and graded for the installation of the public street, site utilities and construction of house pads must necessarily widen and spread out. While there may be slightly less impervious surface with seven houses than eleven, the driveway length in R-1 must increase substantially, minimizing any reduction in impervious surface. More significantly, I believe water quality in Chesapeake Bay is degraded by increased site disturbance as well as displacement of wildlife. In the R-C district, for example, where water quality is the primary objective, we look at the amount of undisturbed area rather than impervious surface. Although the Ordinance requires some amount of tree cover, that calculation is projected by looking at coverage in the future and can be met by planting young trees in disturbed areas, which are in no way equivalent to undisturbed

woodlands. Nothing in the Ordinance precludes this site from being clear-cut under a by-right R-1 scenario. As we run out of undeveloped land in Fairfax County, the remaining sites become increasingly difficult to evaluate for rezoning purposes. The leftover scraps often contain steep slopes or poor soils, as here, and are difficult to engineer. These rezoning cases are not going to get any easier. But to those who would encourage us to ignore our Comprehensive Plan and to instead promote by-right R-1 development, I would caution you: "Be careful what you wish for. You may get your wish." If this site goes by-right, with no enforceable tree save, with a much wider graded and cleared swath, not to mention no schools proffer, no parks contribution, no proffers whatsoever, we have not done the community any long-term favors. If concerns about – if concerns about density are the real objection, then perhaps the solution may be a Plan amendment. But we are kidding ourselves if we buy into the notion that a by-right R-1 development of sites like this will save more trees and benefit the environment. I believe the promotion of by-right R-1 development, without proffers, instead of following the Comprehensive Plan, is a tremendous mistake. Thank you.

Chairman Murphy: Further discussion of the motion?

Commissioner Lawrence: Mr. Chairman?

Chairman Murphy: Mr. Lawrence.

Commissioner Lawrence: Thank you Mr. Chairman. I – I intend to abstain, but I'd like to make two points for the record. Mention has been made of the idea of clustering the houses. If you look at the layout, what it is is an exercise in using just about all of the land that's there that can be used. It – it allows either for a shade tree on those houses that can even benefit from shade or for a deck, but not both. The point I'd like to make about that is that we can't let the future continue to be like the past. If it were to go R-1, I'm under no illusions that many trees would be spared, but at least the lots would be big enough to allow for both at some point in the future. Our Urban Forester tells us that we're going to have to plant something over two and half million trees in the County to make our tree canopy goal, which is a fairly modest goal. It's not many more percent coverage than what we now have. The only place – when you look at the County, the only place we can do that is on ground that's already been zoned residential. That's where we have enough acres to be able to do this. But when the lots are so filled with structure, not necessarily because the structure is so big but it's so big in comparison to the available land, that there isn't room to do that, then we're condemning this particular place to a loss of that potential for energy efficiency and other benefits: air quality, and so on, forever. We must be able somehow to look at both. In terms of what happens to that site, I really do believe that the damage ensuing from the clearing and grubbing and site prep operations, if it's R-1, is going to be pretty much comparable to what will happen if it were to go forward under the proposed zoning. So in terms of habitat, for example, it's going to be about a wash. But again, there would be no – there's essentially not much difference in the impact of that, whether we go with the existing zoning or with the proposed. If we really could get innovation and really could get

green design under the P district, then the houses would have been sited probably very differently and the lots would have been treated probably, very differently. But since you have to make your grades for your internal street and for your driveways and so on and the bulldozers and the graders are going to be doing what they're going to do. Thank you, Mr. Chairman.

Commissioner Lusk: Mr. Chairman?

Chairman Murphy: Mr. Lusk.

Commissioner Lusk: Thank you, Mr. Chairman. It's a difficult thing when I think about the proximity of this property to Lee District. I think that we're pretty much on the border at this location. And I've had to do some pretty deep soul searching with regard to this application. And I've come to the conclusion that I cannot in good conscience vote against this proposal. I want to commend the applicant. I think that they have been extremely responsive to the community. They've gone out and met over 15, 16 times. They've presented a proffer package that addressed innumerable issues that had been raised both at this Commission and also in the public forum . I'm going to agree with Chairman Murphy and also Mr. Hart that this property is in conformance and is consistent with both the Zoning Ordinance and the Comprehensive Plan. I'll note that this property is also proximate to the entrance at Fort Belvoir. And again, there are opportunities for us to think about providing housing for the BRAC relocations that are coming. We know that to be a fact. And offering less might not be the appropriate answer in this instance. Again, looking at the Winstead Manor project, which is right adjacent, it's a slightly higher density. But what I think that does is it gives the applicant in this case the opportunity to seamlessly blend their development with that existing development, and that will be relative to lot size, housing size and, hopefully, housing type. We'll have to wait and see. And then finally I'll say this: I think I'm the only – maybe I should say this exactly, but I believe I'm the only member of this Commission that lives in a P-district, which is a single-family detached. Who? Okay, there's two of us. Oh, three? Okay, four. I'm the one who says it often. I don't hear – I don't always hear my colleagues – the other three members admitting that. But I will admit that I live in P-district, and I chose to live in a P-district. And I think there are a number of folks in this County who have a preference to live in a neighborhood that might have smaller lots that will require less maintenance, and that will give them the time, and possibly the flexibility to do other things. So I believe that this application is positively situated – situated and it should be – should be approved. So with that, Mr. Chairman, I'll conclude my remarks. Thank you.

Chairman Murphy: Thank you.

Commissioner Sargeant: Mr. Chairman?

Chairman Murphy: Mr. Sargeant, then Ms. Hall.

Commissioner Sargeant: Thank you, Mr. Chairman. I'm going to abstain because I do not believe this application is ready to be accepted or rejected. I think we've heard a number of concerns that need to be addressed prior to further consideration, and I would have preferred a deferral. Absent that, I will abstain. But I wanted to note that at some time, a group of citizens, and the Planning Commission, and the Board of Supervisors approved a recommended clustered, single-family development dwelling recommendation of one-to-two dwelling units per acre as this has noted. The Board of Supervisors further established that planning precedent with the development of Winstead Manor adjacent to this site. I think concerns expressed about clearing and grading in the adjacent community mean an opportunity was lost in this discussion and in this process; a discussion, a lost opportunity, to revisit that site with the same developer and say, "What can we do to improve upon what happened there and perhaps improve upon that as well?" The proffers note that a geotechnical report is due prior to the subdivision plan approval; also that noise attenuation is addressed in the proffers. A noise study has to be submitted. These issues are addressed through proffering. I think "green" building is something for which we could have set a precedent in this area. Getting it started in a particular area gives you an opportunity to further that – that implementation. "Green" building is not something that is done wholly, it is done in increments, quite often in terms of the types of levels of "green" building standards. Whether it's the NAHB standards, whether it's the LEED standards, they come in increments. I think tree save, as we've noted, is a problem. And I'm also concerned about some of the information we heard shared during this process that suggested, well, for lack of a better term, it was inaccurate. We had lengthy discussions about the inability or unwillingness to combine a VDOT dry pond with a proposed dry pond on this site when in fact the elevations of these two ponds are different, and water does not flow upward. We heard other concerns like that, that have been addressed. So it's unfortunate. I know that my fellow Mount Vernon resident in Commissioner Flanagan is doing this with absolute sincere efforts to do the best things for the interests of the – of the residents of the Mount Vernon District, but I think we could do better. And I'm going to abstain. Thank you.

Chairman Murphy: Ms. Hall.

Commissioner Hall: Mr. Chairman, I get to abstain because I wasn't here. I was celebrating my birthday on the beach. And I'm absolutely delighted I wasn't here. With that in mind, I would point out that Commissioner Flannery (*sic*) is one of our newer members to – Flanagan – is one of our newer members to the Planning commissioner and – Commission – and it's very important to listen to the citizens. It truly is. But I think, in many ways it's equally as important to read the Comprehensive Plan. Because after all, as I often preach to them, it's your Plan. You asked us to do this, and we have to follow the Plan. And if we turn – turn away from it, I think we run into nothing but problems and we come up on the short end. So all I can say is: Welcome to the Planning Commission. Thank you, Mr. Chairman.

Chairman Murphy: Is there further discussion of the motion –

Commissioner Donahue: Yes, Mr. Chairman?

Chairman Murphy: I'm sorry, Mr. Donahue.

Commissioner Donahue: That's okay, Mr. Chairman. Thank you very much. I also intend to abstain. And my reasons for abstention to some degree join with – with the gentleman to my right. I'm not sure whether to go forward with this. I'm not sure I wouldn't have supported a deferral. My concern from the start with this application has been that it's a little bit too intense. And that may sound silly to say that if we were down a couple of houses, this would be a much better plan, but I sincerely believe that that's the case we're in right now. Most of the points I was going to make have already been covered, so I'm certainly not going to repeat them. But I will say, and I've said all along on this too, I'm just not terribly impressed by the tree save, and to, I think, to support a plan which – based at least partially on a tree save because the alternative may be even worse if the tree save isn't that good in the first in the first place, I'm not sure – I'm not sure that's good reasoning. So, I'm going to abstain, Mr. Chairman. Thank you.

Chairman Murphy: Is there further discussion of the motion? Mr. Flanagan? You want to change your vote?

Commissioner Flanagan: Oh no, no. Quite to the contrary. I have really enjoyed the comments of each of the Commissioners. And I think they're all, you know, heart-felt observations. But I would like to thank Commissioner Janet Hall for – previously on another issue before this, I think it was the DAKS Restaurant on Route 1, if you'll remember, where we had a provision in the Comprehensive Plan that we were going to be ignoring, and we voted to ignore it. And I – the thing that I think this Commission is going to have to come to grips with in the future, I hope, as a newcomer who's observing what's occurred here, is that we seem to pick and choose what is mandatory.

Commissioner Hall: Exactly.

Commissioner Flanagan: If it says from one-to-two – if it says one-to-two, you know, that's mandatory. But some other of the Comprehensive Plan language that I have embodied in my motion to deny is discretionary. So we've got to make up our mind, what is it? Is it mandatory? Is it discretionary? And I think you put it – your finger right on it, Commissioner Hall, at that DAKS commission's – when you said, "What are we here for? We're here not to by-rote, you know, follow, you know, the Comprehensive Plan. There are times when the Commissioners have to make decisions and they're not well-supported by the language that's in the Comprehensive Plan. We have to do what is right; what's best for the County, regardless of what's, you know, in the Comprehensive Plan." And I think that, to a certain extent, our Chairman Murphy, you know, has rightly stated that it is a guide. The Comprehensive Plan is a guide. It is not mandatory. But it does – the items that I quoted in my motion to deny were basically – we were – we were being encouraged to do more about those things, about open space, about protecting trees, about being innovative and being creative, you know, and what we're doing and not accepting run-of-the-mill solutions that are put before us. So consequently, I don't see any consistency with what we've all been talking about here. I think we've all been –

it was an outstanding, very good dialogue about, you know, what it is to be a Planning Commissioner. So I'd like to thank you all. And I will be voting nay on the motion.

Chairman Murphy: All right. Before discussion, all those in favor. I'm going to have – call for two motions here. One will be on the rezoning to recommend to the Board. And the other will be on the FDP. All those in favor of the motion RZ 2000 – to approve –

Commissioner Harsel: No.

Commissioner Flanagan: – to deny.

Chairman Murphy: Hold on a minute. All those in favor of the motion to recommend to the Board of Supervisors that it deny RZ 2007-MV-001(*sic*), say aye.

Commissioner Flanagan: Aye.

Chairman Murphy: Opposed?

Commissioners: Nay.

Commissioner Harsel: Abstain.

Murphy: The motion fails with – voting nay: Mr. Litzenberger, Mr. Hart, Mr. Murphy, Mr. Alcorn, and Mr. Lusk. Mr. Flanagan votes aye. The rest of the Commission abstains.

Chairman Murphy: Second. Motion carries. All those in favor of the motion –

Commissioner Hart: No, it failed.

Commissioners: Motion failed.

Chairman Murphy: Motion denied; fails. All right. Now we do the FDP. All those in favor of the motion –

Commissioner Alcorn: Or should we do the –

Commissioner Harsel: He didn't make a motion under the FDP.

Chairman Murphy: I know, but okay.

Commissioner Alcorn: Should we do it separately?

Chairman Murphy: We'll do a separate motion. I'll – I'll take the – I'll get everybody off the hook. I'll pass the gavel to Mr. Alcorn.

Vice Chairman Alcorn: Mr. Murphy.

Commissioner Murphy: Thank you, Mr. Chairman. All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2007-MV-001 (*sic*), subject to the proffers dated April 23rd –

Commissioner de la Fe: – 011

Commissioner Murphy: I'm sorry. What are we doing?

Vice Chairman Alcorn: Mr. Murphy, you're making a motion to recommend approval –

Commissioner Murphy: – approval of RZ 2007-MV-001. (*sic*)

Vice Chairman Alcorn: 011.

Commissioner Murphy: 011, sorry.

Commissioner Harsel: Zero, eleven.

Commissioner Murphy: Zero, eleven.

Vice Chairman Alcorn: The motion has been made.

Commissioner Flanagan: Point of order.

Vice Chairman Alcorn: There's a point of order by Commissioner Flanagan. Yes, Mr. Flanagan.

Commissioner Flanagan: Yeah, I thought the by-laws required a motion to be made by – on this – on any issue to be made by the Commissioner from –

Commissioner Murphy: You'd vote it down. You want to make the motion to approve, I'll let you do it.

Commissioner Flanagan: No, no, I just – I just meant – I thought any motion had to be – as a newcomer to the Commission.

Vice Chairman Alcorn: No, that is a custom, but there is – Mr. de la Fe?

Commissioner de la Fe: I was going to say the – the original motion was made by the District Commissioner, the appropriate Commissioner. That motion was denied. Therefore, any other Commissioner can make any other motion that they want on this particular case.

Commissioner Murphy: All right. Let me restate it. I MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT APPROVE RZ 2007-MV-011, SUBJECT TO THE PROFFERS DATED APRIL 23RD, 2008.

Vice Chairman Alcorn: I'll second that motion.

Commissioner Lusk: Second.

Vice Chairman Alcorn: Seconded by the Chairman – acting Chairman and Commissioner Lusk. Any discussion on that motion? Commissioner Flanagan.

Commissioner Flanagan: I'd like clarification: Do both motions go to the Supervisors?

Commissioner Murphy: No, the FDP stays here.

Commissioner de la Fe: The verbatim goes to the –

Commissioner Flanagan: The verbatim goes?

Commissioner Harsel: Yes. He meant your motion and his motion.

Commissioner Murphy: Yes, Everything goes.

Commissioner de la Fe: Everything that we've been saying goes –

Commissioner Murphy: That's why she's working –

Commissioner Flanagan: Very good. Thank you. Okay.

Vice Chairman Alcorn: Additional discussion? All those in favor of the motion – oh, Mr. Lawrence.

Commissioner Lawrence: I'm sorry. In order to be consistent, I must abstain. I cannot move to approve any more than I could move to deny.

Commissioner Murphy: Okay. That's fine. Okay. That's why we're doing it.

Commissioner Sargeant: Mr. Chairman, I hold the same position. I'm going to abstain.

Commissioner Donahue: As do I.

Commissioner Hall: I still wasn't here.

Commissioner Flanagan: And I voted no.

Commissioner Harsel: Aren't you glad you were –

Commissioner Flanagan: Commissioner Flanagan voted no.

Vice Chairman Alcorn: All those in favor of recommending that the Board of Supervisors approve RZ 2007-MV-011, please say aye.

Commissioner Murphy: Aye.

Vice Chairman Alcorn: According to the – consistent with the proffers dated April 23rd, 2008, please say aye.

Commissioners Alcorn, Hart, Litzenberger, Lusk, and Murphy: Aye.

Vice Chairman Alcorn: All those opposed?

Commissioner Flanagan: Nay.

Vice Chairman Alcorn: Abstentions?

Commissioners de la Fe, Donahue, Hall, Harsel, Lawrence, and Sargeant: Abstain.

Vice Chairman Alcorn: Same division as the first motion. That motion carries. Now, Commissioner Murphy.

Commissioner Murphy: Thank you, Mr. Chairman, I MOVE THE PLANNING COMMISSION APPROVE FDP 2007-MV-011, SUBJECT TO THE BOARD'S APPROVAL OF THE REZONING AND THE CONCEPTUAL DEVELOPMENT PLAN.

Commissioner Lusk: Second.

Vice Chairman Alcorn: Seconded by Commissioner Lusk. Is there a discussion on that motion?

Commissioner Sargeant: Mr. Chairman, I will abstain once again.

Commissioner Sargeant: Mr. Chairman, I will abstain once again.

Commissioner Harsel: Mr. Chairman?

Vice Chairman Alcorn: Ms. Harsel.

Commissioner Harsel: Are there any final development conditions with the FDP?

Cathy Lewis, Zoning Evaluation Division, Department of Planning and Zoning: Yes, there is –

Commissioner Murphy: Sorry.

Ms. Lewis: The final development plan conditions dated January 9th, 2008.

Commissioner Murphy: Subject to the development conditions dated –

Ms. Lewis: – January 9th, 2008 (*sic*).

Commissioner Flanagan: Is that acceptable without a seconder?

Commissioner Lusk: Yes.

Vice Chairman Alcorn: Okay. All those in favor – or any additional discussion on that motion? All those in favor of approving the motion as articulated by Commissioner Murphy, please say aye.

Commissioners Alcorn, Hart, Litzenberger, Lusk, and Murphy: Aye.

Vice Chairman Alcorn: All those opposed?

Commissioner Flanagan: Nay.

Vice Chairman Alcorn: Abstentions?

Commissioners de la Fe, Donahue, Hall, Harsel, Lawrence, and Sargeant: Abstain.

Vice Chairman Alcorn: Same division. That motion passes.

Commissioner Murphy: Mr. Chairman, I MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE PFM STANDARD FOR A TYPICAL SECTION OF UNDIVIDED STREETS BE MODIFIED TO PERMIT THE 47-FOOT-WIDE RIGHT-OF-WAY TO TAPER TO 44 FEET IN WIDTH IN ORDER TO ALIGN THE PROPOSED PUBLIC STREET WITH THE EXISTING RIGHT-OF-WAY AS DEPICTED ON THE CDP/FDP.

Commissioner Lusk: Second.

Vice Chairman Alcorn: Seconded by Commissioner Lusk. Any discussion? All those in favor of the motion –

Ms. Lewis: We just realized that the FDP conditions had been updated in the subsequent addendum and they're actually DATED MARCH 11TH.

Commissioner Murphy: Without objection.

Vice Chairman Alcorn: Without objection, the motion is so amended to reflect the development conditions dated March 11th. All those in favor of recommending that the PFM standard for a typical section of undivided streets to be modified as articulated by Commissioner Murphy, please say aye.

Commissioners Alcorn, Hart, Litzenberger, Lusk, and Murphy: Aye.

Vice Chairman Alcorn: All those opposed?

Commissioner Flanagan: Nay

Vice Chairman Alcorn: All abstain?

Commissioners de la Fe, Donahue, Hall, Harsel, Lawrence, and Sargeant: Abstain.

Vice Chairman Alcorn: Same division. That motion carries. Commissioner Murphy.

Commissioner Murphy: One more. I MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT SECTION 2-0103.2 OF THE PFM BE MODIFIED TO ALLOW FOUR OF THE ELEVEN PROPOSED LOTS, OR 36 PERCENT, TO BE PIPESTEM LOTS.

Commissioner Lusk: Second.

Vice Chairman Alcorn: Seconded by Commissioner Lusk. Any discussion? All those in favor of the motion to recommend that Section 2-0103.2 of the PFM be modified to allow four of the eleven proposed lots, or 36 percent, to be pipestem lots, please say aye.

Commissioners Alcorn, Hart, Litzenberger, Lusk, and Murphy: Aye.

Vice Chairman Alcorn: All those opposed?

Commissioner Harsel: Nay.

Vice Chairman Alcorn: Abstentions?

Commissioners de la Fe, Donahue, Hall, Lawrence, and Sargeant: Abstain.

Vice Chairman Alcorn: Same devotion (*sic*). Same –

Commissioner Harsel: No, I voted no on the pipestem. You've got to be alert!

Vice Chairman Alcorn: Okay.

Commissioner Flanagan: Commissioner Flanagan voted no also.

Vice Chairman Alcorn: Okay. Commissioners Flanagan and Harsel vote nay. Commissioner Litzenberger, Hart, Murphy, Alcorn, and Lusk vote aye. And abstentions from Commissioners Lawrence, Donahue, and Sargeant, and de la Fe, and Commissioner Hall.

Commissioner Flanagan: We have some more votes? I think I'm picking up support here.

Commissioner Harsel: Don't get your hopes up.

Vice Chairman Alcorn: The Chair is yours.

Chairman Murphy: Thank you. I want to take this opportunity to – to thank Mr. Flanagan. I know it's been a tough, a tough road to hoe. I'm serious. I think this goes to prove – this doesn't happen very often, but when it does happen, I think you will note that we do take this business very seriously. And we're not shrinking violets when it comes to expressing our own opinion on how we feel cases should go, although sometimes they don't go exactly as the motion is made. But it was all done in good faith. We remain a close body and work together for the betterment of this County. I also want to take this opportunity to thank staff. It has not been an easy road to hoe for the staff: St. John.

Commissioner Hall: St. Clair.

Chairman Murphy: St. Clair. I'll get something straight tonight. It's been a long night. We haven't even heard from Mr. Moon yet. Well, thanks anyway. We want to thank the applicant. And in particular, I want to thank the citizens. I understand there were, at last count, 22 meetings that probably escalated since the last time I had a report. They worked very tough on this application and we appreciate your efforts. Thank you very much.

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(The first motion, to recommend denial of RZ 2007-MV-011, failed by a vote of 1-5-6 with Commissioner Flanagan in favor; Commissioners Alcorn, Hart, Litzenberger, Lusk, and Murphy opposed; Commissioners de la Fe, Donahue, Hall, Harsel, Lawrence, and Sargeant abstained.)

(The second motion, to recommend approval of RZ 2007-MV-011, carried by a vote of 5-1-6 with Commissioners Alcorn, Hart, Litzenberger, Lusk, and Murphy in favor; Commissioner Flanagan opposed; Commissioners de la Fe, Donahue, Hall, Harsel, Lawrence, and Sargeant abstained.)

(The third motion, to approve the Final Development Plan, carried by a vote of 5-1-6 with Commissioners Alcorn, Hart, Litzenberger, Lusk, and Murphy in favor; Commissioner Flanagan opposed; Commissioners de la Fe, Donahue, Hall, Harsel, Lawrence, and Sargeant abstained.)

(The fourth motion, to recommend approval of the modification of the PFM Standard concerning the right-of-way, carried by a vote of 5-1-6 with Commissioners Alcorn, Hart, Litzenberger, Lusk, and Murphy in favor; Commissioner Flanagan opposed; Commissioners de la Fe, Donahue, Hall, Harsel, Lawrence, and Sargeant abstained.)

(The fifth motion, to recommend to the Board of Supervisors that Section 2-0103.2 of the PFM be modified to allow four pipestem lots, carried by a vote of 5-2-5 with Commissioners Alcorn, Hart, Litzenberger, Lusk, and Murphy in favor; Commissioners Flanagan and Harsel opposed; Commissioners de la Fe, Donahue, Hall, Lawrence, and Sargeant abstained.)

JP