

Planning Commission Meeting
May 31, 2012
Verbatim Excerpt

2232-V11-25 – FAIRFAX COUNTY PARK AUTHORITY (WESTGROVE PARK INTERIM OFF-LEASH DOG AREA)

During Commission Matters

Commissioner Flanagan: Well thank you, Mr. Chairman. Now I'd like to go on verbatim.

Chairman Murphy: All right, we'll go on verbatim. Mr. Flanagan.

Commissioner Flanagan: Thank you, Mr. Chairman. I would first like to thank all the 18 speakers that took the time to provide pro and con testimony on May 17 at the public hearing on a Park Authority application, 2232-V11-25, for the approval of the off-leash dog area within the park. Since that time, of course, we've had – and even before, but since that time we've had additional testimony, which I ask be made a part of the record. I was prepared to concur with the staff's conclusion that the proposal by the Fairfax County Park Authority for an interim off-leash dog area within Westgrove Park at 6801 Fort Hunt Road, as endorsed by the adjacent Westgrove, Villamay, Belle Haven, Montebello Associations and the entire Mount Vernon Council membership and Supervisor as being in substantial accord with the provisions of the adopted Comprehensive Plan. Let's see. Testimony, however, questioned whether the 2232 application was in accord with one of the provisions in the Comprehensive Plan that is specific to Westgrove Park. The provision recommends that initiate – the Park Authority initiate a Master Planning process and develop with a mix of active and passive recreational facilities in accordance with the approved Plan. The Commission then approved a motion to defer the decision until tonight to give the County Counsel time to review the staff recommendation for approval and the public hearing testimony. As a result of the County Counsel review, I have concluded that the Park Authority application for an interim off-leash park dog area within a small 10 percent area of Westgrove Park is not in precise accord with one of the provisions in the Comprehensive Plan. But it is in accord with all the other provisions in the Comprehensive Plan. Other provisions recommend a park at the Westgrove location and that any park may have an off-leash dog area among other features. As you are aware, the Planning Commission is not required to find that a 2232 application is in precise accord with the Comprehensive Plan. Each of us are only required to be satisfied that an application is substantially in accord with the Plan, with the emphasis – where the emphasis is on the word “substantially.” The interim feature will actually reduce the off-leash use of the entire park while the Master Plan now underway since 2004 is being completed. I'd also like to note that I did contact the National Park Service and the Dyke Marsh, of which this is of great concern for most of the speakers that we had at our public speaking – did clarify the fact that dogs on leash are regularly allowed in the Dyke Marsh. Both there's a – on the George Washington Parkway Trail, goes from one end of Dyke Marsh to the other and dogs are regularly walked up and down that area, probably maybe more so than would be in this interim use. In addition, the marina there in the Dyke Mash has dogs permitted on leash and there is a picnic area on the north end of Dyke Marsh where there is a – dogs are permitted on leash. They also indicated that they don't have any supervision of the dogs in Dyke Marsh – that they really don't know whether what type of monitoring of the walkers of the dogs in the marsh

are being effective or not. In fact, the Director of the National Park Service indicated that they're off-leash quite a bit because there's always new people coming and they don't know what the rules are and they bring their dogs in and turn them off-leash in the Dyke Marsh area. So it appears to me that we have probably a better opportunity to control the dogs in the Westgrove Park by confining them to a 10-percent area of the park and thereby regulating them and having them monitored and of course if they don't follow through on their commitment by the use, the interim use could be terminated at any point for a violation of their use. I therefore MOVE, Mr. Chairman, THAT THE PLANNING COMMISSION FIND THE SUBJECT APPLICATION 2232-V11-25 SATISFIES THE CRITERIA OF LOCATION, CHARACTER, AND EXTENT AS SPECIFIED IN THE *VIRGINIA CODE* SECTION 15.2-2232, AS AMENDED, WITH THE NOTE THAT THE STAFF HAS FOUND THIS TO BE IN substantially, substantial both on the part of the Park Authority and the staff, that this has constituted a SUBSTANTIAL ACCORD WITH THE COMPREHENSIVE PLAN PROVISIONS.

Commissioner Donahue: Second.

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

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. I can't support the motion on this. I'm very conflicted in some ways because I think over the years I have fought for Park Authority positions on things. I have supported giving them more money sometimes than they've started out asking for. And I think with maybe the exception of a BZA application with a Cochran problem, I think I've always supported what the Park Authority was applying for. But I think there are severe Countywide implications for an application such as this, affecting not just Park Authority applications or dog parks or anything else. Our statutory function on a 2232 is to answer a simple question. Is the application before us in conformance with the Comprehensive Plan? We don't get into policy decisions. We don't get into finding alternative sites. We don't necessarily do the job of the Park Authority Board or anyone else. I don't see the 2232 process as a substitute for the Park Authority's Master Planning process, which seems to have been what happened here. We've gotten a ton of letters and emails and many of them made actually excellent points. I think both sides have something to say on this. But our role on a 2232, as spelled out by the General Assembly, should not be conflated with the policy decisions about whether the dog park is a good idea or we need to protect Dyke Marsh or anything else. The process tonight, I think, was further confused with the self-styled designation of this as an interim use. There's no such thing as an interim use in the *State Code*. We don't define it in the Zoning Ordinance. We have no power to put a time limit on anything. All we can do on a 2232 is make a determination about whether the use is in conformance with the Comprehensive Plan. We have here site-specific text. We have two sentences. One of them is about whether the property would be leased or owned. It's not germane. And the other sentence is explicitly clear that the Park Authority was going to do a Master Plan process and the park would be developed in accordance with it. Commissioner

Flanagan notes that, “Well, it’s not really in accordance with that sentence, but it’s substantially in accordance with everything else.” Well, that sentence is all there is and I think it’s disingenuous for us to rubber stamp this and say, “Well yes, it’s a park. I guess that anything that the Park Authority applied for, if it’s a park, is sort of generally a park,” and then our function is meaningless. It’s true that the Park Authority started to do the Master Plan process and it got controversial. They acknowledged there was no consensus and it stopped several years ago. Then, presumably, they’re going to bring it up again, but they don’t have it. Not tonight. And somehow for whatever reason, this became politically controversial because people were getting tickets and I guess that’s not something we’re involved in. And the Park Authority has punted this to us. They haven’t exactly approved it. What they’ve approved, I think, is an agreement with a contingency with this group and the agreement provides that if the Park Authority – if the Planning Commission approves it, then they’re going to approve it. We – I think Commissioner Murphy’s phrase is – “danced with this bear” before with the School Board on telecommunications once or twice – that on a controversial site, maybe the thing to do is to let the Planning Commission fumble around with it with a 2232 and if the Planning Commission approves it, well then maybe the School Board is off the hook. I don’t see it. That’s how it works. Mr. Dargle, the Director of the Park Authority, in his letter of December 16, which is in the record, was explicitly clear that he said, “It is anticipated that any Master Plan process for Westgrove Park will generate considerable public debate as occurred previously and a resolution of future planned uses at this site may not be satisfactory to all factions of the community.” That’s putting it mildly. “Also, as you mentioned, the proposal for an interim use is an off-leash dog park at Westgrove Park does not meet our requirements for operating off-leash dog parks, nor our requirement that such uses be Master Planned.” This was a point actually Commissioner Sargeant brought out at the public hearing. The Park Authority’s own requirements for dog parks explicitly require that they be part of a Master Plan process, which hasn’t happened. In addition, this is Mr. Dargle’s letter again, “On-site access and parking do not meet public use standards. The Park Authority Board does not support the proposed interim use at this site.” Somehow magically, through the forces of politics, here we are with the Park Authority opposed a few months ago and now we have an application that they are bringing forward and we have to make this determination. I think it boils down to a procedural issue. The side-stepping of this Master Plan process – it may be politically expedient, but it’s not in conformance with the Comprehensive Plan. Not even close. This is an easy call for us calling balls and strikes on a 2232. The Park Authority Board needs to decide if this site should be an athletic field or vegetable gardens or a dog park, skate boards, whatever – back to nature. Either that, or they can amend the Comprehensive Plan and put in some text that maybe it’s not so site-specific or maybe even go to the General Assembly and say well 2232 – 15.2-2232 needs to be amended and put in something about – you have to be in conformance with the Comprehensive Plan, except maybe if it’s less than two acres or less than two years or it’s an interim use and we’ll say what that is. But we don’t have that. I think it’s somewhat contrived to rubber stamp this and agree that we’re in conformance because it’s a park. I don’t think that’s what the reading of the Plan language is and I don’t think that’s what any of the citizens would have thought whether in Mount Vernon or anywhere else in the Plan that this kind of thing comes up. That if this is what the Plan says – that there’s going to be some sort of Master Plan process and all these things vetted first before it comes to the Commission, but that’s what we meant. Maybe I have it wrong and maybe we are

witnessing a miracle tonight. This is like the Immaculate Conception. We have Plan text that says it's going to be in conformance with a Master Plan and the Master Plan has never happened, but here we are. And the application is somehow in conformance with something. Now, if we say no – if we don't agree with this, maybe it goes to the Board? And can the Board bust the Plan? Well, that's their prerogative and they've done it before. And maybe this is a political emergency and maybe this is a situation where, notwithstanding the Plan text, which a lot of people and a lot of staff have sweated blood over – over lines and words and commas. We've spent many nights in this room over Plan text. Maybe it means something. Maybe it doesn't. But this is a – I've gone a long time, I think. This is a really easy issue. We have a simple question to answer on a 2232. Is this in conformance with the Plan text? It's not even close. Substantially, no, it's not barely. It's not anything. When we explicitly say in the Plan text that we're going to wait for the Park Authority's Master Planning process, we have to wait. If they approve something, then we're in a better position to deal with it. I can't support this. Thank you.

Chairman Murphy: Mr. Lawrence.

Commissioner Lawrence: Thank you, Mr. Chairman. I align myself with Commissioner Hart's conclusion. Let me put a little different frame on it and I'll be brief. All we have as a guide to land use is the Comprehensive Master Plan. In this particular case, the Comprehensive Master Plan defines for this piece of land a very specific state of affairs, namely that there is a completed Master Plan coming out of the Park Authority. Not initiated – completed. And activity is going to be in accord with that completed Plan. I'd like to point out that there is Plan text that specifies specific states of affairs in other parts of the County for other matters altogether – for example, Tysons. If the Plan doesn't serve as a guide here when it's not convenient to have it serve as a guide, where will it serve as a guide? Thank you, Mr. Chairman.

Chairman Murphy: Thank you.

Commissioner Alcorn: Mr. Chairman?

Chairman Murphy: Mr. Alcorn.

Commissioner Alcorn: Mr. Chairman, I'd like to make a substitute motion. I'D LIKE TO MOVE THAT THE PLANNING COMMISSION DEFER DECISION ON THIS ITEM INDEFINITELY UNTIL THE PARK AUTHORITY COMPLETES THE MASTER PLAN PROCESS AND THEN WE WOULD MAKE A RECOMMENDATION OR A DECISION AT THAT POINT.

Commissioners Lawrence and Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Lawrence and Mr. Migliaccio. I have a discussion. Mr. Caperton, how are we on time here on an indefinite deferral if this motion carries and the substitute motion prevails?

Chris Caperton, Planning Division, Department of Planning and Zoning: Chris Caperton, Department of Planning and Zoning. I need to look at that original application and see if we would have to do some sort of extension on that. I mean we could certainly handle that, but we might also talk to the Park Authority about actually withdrawing the application if we're going to wait for a two-year or a lengthy Master Planning process. I'd want to confer with the Park Authority about that in terms of time frame. I mean the Master Plan would eventually trump this motion I would think because the Master Plan would then –

Chairman Murphy: How long – let me just ask, I'm sorry, let me just – if we deferred it to a date within the parameters of the time until we have a decision from the Park Authority if they would accept an extension until the Master Plan process, would that be more satisfactory?

Mr. Caperton: Well again, I would want to check with the Park Authority. I mean we can extend the time indefinitely. We can pick a date and extend to that date and extend it again if we need to.

Chairman Murphy: Okay. Mr. Flanagan?

Commissioner Flanagan: Mr. Chairman, yes. I would have moved to defer the application myself if I thought that there was some resolution in the offing – within the short period of time – but I thought it was better to go forward with my motion based upon the advice of Counsel that we do have the authority to approve applications where each legislator here is able to vote their each individual opinions. But I think that what's the problem here might be that the Park Authority has to hold public hearings in conjunction with the Master Plan process and that may extend the time period beyond the statutory limitation on this.

Chairman Murphy: Well then the only alternative is to deny the application and let them start from scratch again. Quite frankly –

Commissioner Alcorn: Or they withdraw.

Chairman Murphy: Yes. Mr. de la Fe?

Commissioner de la Fe: I was going to say I think if we deny the application, the Board of Supervisors – I mean the applicant has the ability to appeal to the Board of Supervisors on that. It isn't – you know.

Chairman Murphy: I know. Mr. Alcorn.

Commissioner Alcorn: Yes. With that in mind, I'LL WITHDRAW MY SUBSTITUTE MOTION.

Chairman Murphy: All right. Any further discussion on the motion made by Mr. Flanagan and that is to approve the 2232? All those in favor of the motion to approve –

Commissioner Sargeant: Mr. Chairman?

Commissioner Hart: Tim –

Commissioner Sargeant: Mr. Chairman?

Chairman Murphy: Mr. Sargeant. Hold on.

Commissioner Sargeant: I think somewhere in between these two motions we've heard is a possible solution and one is to defer it to a particular time so you can get the input from Park Authority staff and Mr. Caperton as to whether or not there is a possible resolution here in terms of timing. I would suggest a resolution and I'll base it on Mr. Caperton's suggestion of how much time would be allowable to get everybody together and figure out what time frame we're talking about. If it's not good enough, then you can certainly deny it. But, if it is good enough –

Chairman Murphy: That's where I was – that's where I was going initially. Can you give us a –

Mr. Caperton: Well in terms of this application, we have no time limit. It's not like a telecom application that has sort of statutory limits. We can, you know, defer this out into the future however far you'd like. But I think we would want to work with the applicant to see if that even makes sense because –

Commissioner Sargeant: My suggestion would be defer to a certain time so that you have an opportunity to communicate with the applicant and thus figure out what is or is not possible before this Board makes a very final decision.

Commissioner Flanagan: I can support that, Mr. Chairman.

Chairman Murphy: Okay hold on just a minute? Let me look at a date here. July 19?

Commissioner Flanagan: July 19.

Chairman Murphy: Okay. Let's go back to the alternate motion.

Commissioner Hart: Mr. Chairman? Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Hart: I wanted to ask if I may, does the Park Authority Board meet before July 19?

Chairman Murphy: They will now.

Commissioner Hart: Well I guess they're going to have to.

Chairman Murphy: I'd hate to inconvenience them, but I think something this important they would probably may have a meeting. I'm just guessing.

Sandra Stallman, Park Planning Branch, Fairfax County Park Authority: The Park Authority Board meets on the second and fourth Wednesday of each month.

Commissioner Hart: So the answer is yes they will.

Ms. Stallman: Yes.

Commissioner Hart: Okay.

Chairman Murphy: Okay. Mr. Alcorn.

Commissioner Alcorn: Thank you, Mr. Chairman. I WOULD MOVE A SUBSTITUTE MOTION THAT THE PLANNING COMMISSION DEFER DECISION ON THIS MATTER UNTIL A DATE CERTAIN OF JULY 19 TO CONCUR A RESOLUTION OF THE ISSUES RAISED HERE TONIGHT.

Commissioners Flanagan and Migliaccio: Second.

Commissioner Sargeant: Mr. Chairman, I would second that motion and provide some certainty to the future going forward on a decision for both the citizens in the Mount Vernon area on both sides of this issue I think.

Chairman Murphy: Seconded by Mr. Migliaccio, Mr. Sargeant, and Mr. Flanagan. I hope this is a rhetorical question. Is there a discussion of the motion? All those in favor of the motion to defer a decision on 2232-V11-25 to a date certain of July 19, with the record remaining open for comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: Abstain

Chairman Murphy: You abstain? Yes, Mr. Litzenberger abstains.

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(The motion carried by a vote of 10-0-1 with Commissioner Litzenberger abstaining; Commissioner Hall absent from the meeting.)

JLC