Planning Commission Meeting
July 28, 2010
Verbatim Excerpt

APR Item #09-IV-1S – Mount Vernon District

Markup Session (Public Hearing held on July 14, 2010)

Chairman Murphy: The grand finale.

Commissioner Flanagan: Yes.

Chairman Murphy: Oh, yes. I get carried away here. APR 09-IV-1S.

Commissioner Flanagan: Thank you, Mr. Chairman.

Chairman Murphy: Wake up.

Commissioner Hall: Wake up.

Commissioner Flanagan: APR Item 09-IV-1S is generally located between the Landsdowne and Hunter Estates developments on the west side of Telegraph Road. APR Item 09-IV-1S proposes clustered single-family residential use at a density of 0.5 to 1.0 dwelling units per acre, with conditions relating to low impact development design and preservation of existing trees on the site as a buffer to surrounding properties and from traffic-related noise generated from Telegraph Road. Staff analysis notes that replanning the site from residential use at a density of one to two dwelling units per acre to a density of 0.5 to one dwelling units per acre would create a pocket of very low density development in an area with densities that are not less than one dwelling unit per acre for the entire length of Telegraph Road and beyond and is not justified. I agree. Staff does however support adding development conditions proposed by the nomination that would help to preserve the natural topography and existing tree cover on this site. Also, density at the lower end of the one to two dwelling units per acre range is desirable to support the good planning principle of a transition density that tapers the density between one dwelling unit on one side, Hunter Estates, and the less than two dwelling units per acre on the other side, Winstead Manor, and makes rezoning attractive. For these reasons, staff recommended an alternative for residential use at the lower end of the Adopted Plan density of one to two dwelling units per acre to include the nomination's development conditions. The Task Force recommended approval of the nomination with residential use planned at the density of one dwelling unit per acre. I cannot support that recommendation for the reasons noted above by staff. Mr. Chairman, FOR APR ITEM 09-IV-1S, I therefore MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE STAFF ALTERNATIVE, AS MODIFIED AND SHOWN ON MY HANDOUT DATED JULY 28, 2010.

Chairman Murphy: Without objection.

Commissioners Hart and Flanagan: Mr. Chairman?

Chairman Murphy: I'm going to - - all right. I was going to pass the gavel to - - to Commissioner Alcorn for a minute.

Commissioner Murphy: Mr. Chairman, to put it as succinctly as possible, I think this family who owns these parcels of land, after paying taxes on them for many, many years, this family has been jerked around enough. As you recall, under the current Plan and under the current language, they filed a very complete and comprehensive PDH-2 application, which was analyzed very carefully, very rigorously by the staff. Not only was the subject property analyzed, but it was analyzed within the context of the abutting properties and the abutting neighborhoods. The staff gave, in my opinion, a very strong recommendation to approve the PDH application with the proffers that were submitted with that application. Commissioner Flanagan had a problem. He didn't agree with the staff interpretation. He didn't agree with the staff recommendation. He sided with the citizens who came in and testified and said that this would not be in conformance with their communities. We want to save the trees. The whole nine yards. We voted and the motion went to deny the application. It went down 1 to 11. We then made a motion to the Board of Supervisors that passed 11 to 1, to recommend to the Board of Supervisors that that PDH application be approved. After a very interesting vote at the Board, the Board denied the application. In my opinion, the nominator here has - - has tried to manipulate the Comprehensive Plan, coming back initially with a nomination that would place the density at the same density the land is currently planned and zoned - - 0.1 to - - 0.5, I should say, to - - it's 0.5 to one dwelling unit per acre, which gives, quite frankly, the owners of that land absolutely no way to rezone that property. As a matter of fact, owning that property now by-right, they can take down every damn tree on that site. And I know this is a compromise position here tonight. Staff is trying - - you know - - manipulate and come up with a position that - - and Mr. Flanagan is trying to do the same thing. But quite frankly, the proffers that were in the initial PDH-2 application have now been incorporated into the nomination. Like I don't think that's the way we should do it. I really don't. And although everyone has a right to nominate a parcel that he or she does not own, in this particular case when you are going to try to down-plan some property, it might be a good idea to ask the landowner what he or she feels about that down-zoning, that down-planning. And I asked the nominator at the public hearing, if you owned land and someone came in with a Plan amendment and down-planned it, what were your reaction be? And there was no answer, and that was not a rhetorical question. I think the Plan language is exactly right as it stands right now. And I would offer a SUBSTITUTE MOTION TO DENY THE NOMINATION AND TO RETAIN THE COMPREHENSIVE PLAN.

Vice Chairman Alcorn: Okay. That's motion been made by Commissioner Murphy as a substitute. Is there a second?

Commissioner Hart, Hall, and Sargeant: Second.

Vice Chairman Alcorn: Seconded by Commissioners Hart, Hall, and Sargeant. Discussion of the motion? Commissioner Flanagan.

Commissioner Flanagan: Yes, I'd like to point out that when the prior rezoning application was before us, I was prepared to support an increase that was - - would be at the lower end of the one to two family because it would provide the - - it would follow good planning principles of having transition density between one - - a density of one on one side and a density of 1.83 on the other side. If you take the half - - you take the halfway point between those two, you're talking about 9.9 or something like that - - 9.8, which was at the lower end of the density range. So, I just think - - you know - - the Winstead Manor is not at the top of the density range. It's not at two dwelling units per acre. There are no two dwelling units per acre on one side. What there is, is less than two dwelling units per acre on the other side. So, I was willing to support that at that time, but the - - but the applicant was not willing to consider that, and the person that I consulted with was Barbara Byron - - you know - - whose - - she said, nine dwelling units is all that's really - - this site can really tolerate. Its deep ravines. It's a very difficult - - very difficult site. And getting nine units on there would be very doable, and I agree. As an architect and a site designer myself, I think that nine units on there is very, very doable. You might even be able to push it to 10, but I don't think that we're doing any service here by maintaining existing language. I think we've got a problem. All we're going to be is going to be right back to the same old place we were previously. The reason for this nomination - - my motion here is to get this thing off dead center to apply good planning principles of tapering the density between what the density is on one side and the density on the other. I don't particularly care what the density is, but it should be tapered between - - you know - - one or the other.

Vice Chairman Alcorn: Okay.

Commissioner Flanagan: So, I'm going to vote against the motion to deny.

Vice Chairman Alcorn: Okay. Commissioner Hart, followed by Commissioner Sargeant.

Commissioner Hart: Thank you, Mr. Chairman. I'm going to support the substitute motion. I largely agree with what Commissioner Murphy said. I wanted to offer some additional observations. The topography and characteristics of the nominated property are virtually identical to the Winstead Manor subdivision. The adopted Plan is appropriate to be the same, I think, for both. It doesn't seem to me to be appropriate to single out this property with additional specificity as to things like the number of units at this stage. If I understand also as a - - as a practical matter, the Commission has the prerogative to deny a nomination at which point the discussion ends. We've been, I think - - the Board has disagreed with the Commission once before on this property, but if we adopted any alternative, as opposed to adopting the Comprehensive Plan, the Board retains the flexibility to go back to what was nominated or the staff alternative - - excuse me - - the Task Force alternative, neither of which I thought was practical or appropriate. I think I asked something at the public hearing about this, but we have other areas of the County where for whatever reason, political, neighborhood pressure, or otherwise, the current zoning is greater than the adopted Plan, and in those areas no one ever files an application because there is no economic incentive for someone to apply for something less than they've got. Whether it's the nomination to go down from one to two to 0.5 to one, or the Task Force alternative where you stay at one, I guess, with some more severe conditions. No

one in their right mind, I think, would file an application to get something less than what they have with more baggage to go with it. They develop by-right. We want to incentivize, I think, someone coming through the process, having the benefit of staff and the Commission and the citizens commenting on whatever they've come up with. Hopefully there's an acceptable proffer package, hopefully the schools and the parks and the - - whoever we think is appropriate is getting some benefit out of the deal. We want them to go through that process. We can deal with it at the rezoning stage, I think, every single thing that's suggested in the added text that - - that's singling out these - - these two parcels. The things about LIDs, we deal with at the rezoning level. The number of units, I think, not only do we typically do that at the rezoning stage rather than the Plan stage, I don't know about what the technologies will be in a few years, whether with some creative design and some exceptional proffer package, the Commission might be persuaded that 10 units or 11 units or something might be more feasible than 9, or whatever. But I don't think we want to set that in stone at this point, or tie the Board's hands. I don't know that the site is ever going to be easy to develop, with the topography that it's got and the - - the problem with crossing the stream to get into it from that little stub street and everything else that we've - - we've seen with it. This is going to be a difficult case even if you didn't have the - - the neighbors on one side so - - so adamant about not developing this property like the rest of the neighborhood has gone. We can deal with all that at the rezoning stage. The adopted Plan doesn't suggest anything bad at one to two, and I don't think we're hurting anything by leaving the adopted Plan; whereas, by adopting an alternative, we're giving the Board the opportunity to go back to some of these impractical or bad or unfair, inappropriate, discriminatory, arbitrary alternatives. We should end this now.

Vice Chairman Alcorn: Okay. Thank you, Mr. Hart, for speaking your mind - - potted plant on this Commission.

Commissioner Hart: Right.

Vice Chairman Alcorn: Commissioner Sargeant.

Commissioner Sargeant: Thank you, Mr. Chairman. The staff language suggests the number of nine dwelling units for this site, which is a fixed number, and I think we're going to see anything that comes before us based on some solid engineering and some architecture and some solid planning would have to be such before it would be acceptable. So, whether it's nine, whether it's a number slightly higher, that's something for consideration, and I think the flexibility of the current language is appropriate. Apart from the numbers of - - of dwelling units per acre, I think it's important to remember that the surrounding communities have a substantially higher number of residential units now than would ever be comprised by a development on this site. The impact on that, as reflected in Telegraph Road, is the aggregate. It's not singling out this parcel. This parcel has to prove how it - - how it melds in with development that's existing, but we cannot overlook the impact of the existing development. The number of residential units, whether it's Winstead Manor, is higher than what would be possible on this site, even at its maximum. The number of units to the west of this site in the existing neighborhoods, the number of all those units, regardless of whatever the development or zoning density is, the number of units is greater.

The impact is the aggregate, and you have to look at this in the aggregate. This site will not, in and of itself, influence the traffic patterns to a different level of service on Telegraph Road. It is not appropriate to single out one such parcel such as this. Finally, I would note the letter that we all received from the President of the adjacent Winstead Manor HOA. One sentence from that - - from the gentleman says, "Quite frankly, we have placed ourselves in the position of the owners of Leatherland and we feel that it is their right to pursue whatever it is they desire. It is the obligation of the County to decide what rezoning may or may not be appropriate." I certainly understand and appreciate the sincere efforts of the Task Force to honor the concerns of the citizens who brought this forward and of Commissioner Flanagan to try and find a way of - - of tapering, of tiering the development here, but I think as Commissioner Hart has suggested, leaving this for further design and flexibility in the future is the appropriate way to go. So, I will support the motion to retain the adopted Plan.

Vice Chairman Alcorn: Okay. Thank you. Commissioner Lawrence, followed - - and then back to Commissioner Flanagan. Commissioner Lawrence.

Commissioner Lawrence: Thank you, Mr. Chairman.

Commissioner Murphy: Mic.

Commissioner Lawrence: Commissioner Hart moved this - - Commissioner Hart moved this ahead a move or two in the chess game. I'm interested what might happen. The last time, we ended up approving the PDH approval, which went to the Board where it was denied. Can staff enlighten us? Were there any significant or salient grounds that jumped out in that denial? If we retain the adopted Plan, this nomination goes no further. The next thing that would happen would be some proposal for development of this land. What would happen when it got to the Board, or can that be predicted? Is there any - -?

Marianne Gardner, Planning Division, Department of Planning and Zoning: Well, no. Exactly, Mr. Lawrence, it can't be predicted. The Board would exercise its right to either approve a rezoning or reject it.

Commissioner Lawrence: And along those lines, do you - - does anyone recall what - - what grounds there were for denial of our recommended approval the last time?

Commissioner Murphy: Mr. Chairman, maybe I just might throw in - -

Vice Chairman Alcorn: Mr. Murphy.

Commissioner Murphy: I think we're talking to the Planning staff and not the DPZ staff and they might not have a handle on it that - -

Commissioner Lawrence: It's possible. Yes.

Commissioner Murphy: - - the DPZ staff has.

Commissioner Lawrence: Does anybody else have any recollection?

Commissioner Murphy: I'm not speaking for you guys, but I mean - -

Commissioner Lawrence: Does anybody else have any recollection as to what happened and why they - - ? Commissioner Hart is nodding.

Commissioner Hart: What I remembered is that several of the Supervisors left the room before the vote, and that told me a lot.

Commissioner Lawrence: So, would we all leave before we - -?

Commissioner Hart: I'm ready to leave at any time.

Vice Chairman Alcorn: Yes. I think we'll be all leaving very soon, but let's - - let's finish this vote.

Commissioner Lawrence: So, the course of action you propose, Commissioner Hart, is if we deny the nomination it goes no further, and so there's nothing more to chew on. Thank you very much. Thank you, Mr. Chairman.

Vice Chairman Alcorn: Okay. Commissioner Flanagan.

Commissioner Flanagan: Yes. I wanted to make sure everybody was clear about why I have made the recommendation that I made. It has nothing to do with whether anybody's paid taxes on this land for years and years. In fact, if you'll remember at the public testimony, it was stated that Ms. Leatherland had rejected becoming a part of Winstead Manor. She rejected it, and that was what the testimony was. I don't have any way on checking on that. I haven't bothered to check on it because I'm not interested in that as a consideration. I'm interested in whether it's good planning or not - - you know - - to have a transition in here between the two intensities. And I think that follows good planning principles, and I'm sticking to my good planning principles. Thank you.

Vice Chairman Alcorn: Fair enough. All right. We ready to vote? Okay. We have a - - oh, Commissioner Hall.

Commissioner Hall: What would it be if I didn't add my two cents? I hear what you're saying and I understand why you're saying it as the Planning Commissioner for Mount Vernon. You think it would be logical to gradually move up, and that is certainly something that you can take into consideration at the time of the rezoning. I - - I'm not worried about if the guy's going to make money or not, and I'm very sorry, but that's - - that's really not the consideration. And I really wouldn't like anybody downsizing my property behind my back through this system. But

sometimes you just can't put language into the Plan that really has to come out of the rezoning practice, or the procedure. And when you're evaluating the application, I think the existing Plan gives you the greatest flexibility to ensure that you'll have a viable application. I don't want anybody leaving here thinking the Comprehensive Plan is based on who can make how much money, or whose land it is, because as rotten as that it is, in my opinion, because I would take it personally, the object of the Comprehensive Plan is for the citizens to think about not the existing owner of the property because his rights are protected, he can go and get it redeveloped exactly at what it is today. We're talking about the planning. So, I'm not making my recommendation, from my understanding, based on any of that criteria, but I'm interpreting what your desire is and thinking that the most flexible way to proceed is to leave the language the way it is and use your good principles during the rezoning. That's just my two cents.

Commissioner Flanagan: Just one minute.

Vice Chairman Alcorn: Yes, Mr. Flanagan, and then let's vote.

Commissioner Flanagan: Since we have - - I told my wife we would be done by 10:30.

Commissioner Hall: It was up to you. I gave you a fabulous suggestion.

Commissioner Flanagan: Well, I just wanted to be sure that - - I don't have any problem with down-planning in the - - in the Horizons process, we took 20 million of FAR on Richmond Highway and reduced it to 10 million. And this particular property that we're talking about - - this Planning Commission down-planned it at the same time during Horizons from three to four dwelling units to one to two. So consequently it's already been down-planned - - you know - - once, and that was done without anybody - - you know - - going - - I'm sure we went behind a lot of people's backs when we did that, and there were a lot of people who didn't know that it was being down-planned.

Commissioner Hall: I doubt that. I think what happens is people don't read - -

Commissioner Flanagan: Sure.

Commissioner Hall: - - things that are delivered to - -

Commissioner Flanagan: Right.

Commissioner Hall: - - their houses.

Commissioner Flanagan: Yes.

Commissioner Hall: Because everything back then was the newspaper, and it was - - you know - - if you don't participate in the process, don't say we're sneaking behind your back - -

Commissioner Flanagan: Sure.

Commissioner Hall: - - because we don't do that.

Vice Chairman Alcorn: Okay. Let's go ahead and vote. The motion on the table is the substitute motion made by Commissioner Murphy to retain the adopted Plan. All those in favor of the substitute motion, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All those opposed, say "Nay."

Commissioner Flanagan: Nay.

Vice Chairman Alcorn: Okay. The Chair - - temporary Chair votes, "aye," and the motion passes, Commissioner Flanagan voting, "nay." Okay. The Chair is yours.

Chairman Murphy: All right. Thank you very much. It's always difficult to be the lone toreador in the ring fighting the bull while the rest of the folks are in the stands throwing the bull. And Mr. Flanagan did a remarkable job, but as we all know by - - by State law that we are - - Planning Commission is the custodian of the Comprehensive Plan. And we take a deep interest in making sure that it's the right Plan at the right time and under the right circumstances. And even though there are disagreements on the Plan that just emphasize the dynamicity of the process. And Mr. Flanagan did a remarkable job representing the Mount Vernon District as he always does. We do have some differences of agreement, and that's why we have this public hearing process. I'll ask Mr. Alcorn to do the omnibus motion if he would.

Commissioner Alcorn: Sure. And I'll just say - - I want to thank Commissioner Flanagan for making it an interesting evening. So - -

Chairman Murphy: And no cookies.

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(The substitute motion to deny the nomination carried by a vote of 10-1 with Commissioner Flanagan opposed; Commissioner Harsel not present for the vote.)

KAD