

Planning Commission Meeting
September 20, 2012
Verbatim Excerpt

RZ/FDP 2010-PR-021 – CAPITAL ONE BANK (USA) NA
PCA 92-P-001-08 – CAPITAL ONE BANK (USA) NA

Decision Only During Commission Matters
(Public Hearing Held on July 25, 2012)

Commissioner Lawrence: Thank you, Mr. Chairman. I can't resist the – many years ago in Paris, I was going to an elevator in the hotel and there was somebody else who was going there. And it was, "After you, sir. Oh no, sir, after you." That followed, "You, monsieur. Oh no, you monsieur." Well tonight, I want to go last – even laster than Commissioner Alcorn. But I wanted to get a sense of the Commission. We have a big application where a lot has happened with proffers and with some material that came in yesterday. Even today, we have some small changes. I'm going to have the applicant summarize how the issues were handled. But if Commissioners prefer, and perhaps some do, it would be – we can wait until after the public hearings to give you a chance to look at what got sent in today. And then we'll do the decision. How does that sit with everybody? I see lots of smiles of delight. Okay, go ahead.

Commissioner Hall: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Hall: I don't see any reason to postpone it unless the applicant brings something that is so bizarre to our attention, we may just want to go ahead and vote after the presentation.

Commissioner Lawrence: All right, we have nothing new that I know of. These are all corrections and changes to proffers.

Chairman Murphy: All right.

Commissioner Lawrence: So we can proceed now if you like.

Chairman Murphy: All right, let's try that.

Commissioner Lawrence: Is that okay with everybody?

Chairman Murphy: Let's try that, okay.

Commissioner Lawrence: Good.

Chairman Murphy: You happy with that?

Commissioner Lawrence: I'm always happy.

Chairman Murphy: Okay. Mr. Calabrese.

Anthony Calabrese, Esquire, Cooley LLP: Mr. Chairman, I'm delighted to fail a bizarre test this evening. I have nothing that will befall my category, I'm happy to report. My –

Chairman Murphy: Please identify yourself for the record. I know you're very famous in this county.

Mr. Calabrese: Tony Calabrese with the Cooley law firm on behalf of Capital One, Mr. Chairman. My Mr. Murphy is going to pull up the PowerPoint just in case we need it, which I suspect we will not. I am relieved to report, as noted by Commissioner Lawrence, that our revised proffers were sent electronically to the Planning Commission last evening. I just wanted to quickly highlight the major changes, which are now embodied within our proffers in 64 pages of CDP and FDP notes. With regard to retail, we worked out the retail phasing concerns that I believe Commissioner Hart raised in July when we met before you. Schools – we agreed to the future updated school generation formula that was encouraged of us. We increased our at-grade connection contribution to the Metrorail system, which sits at our doorstep. We worked very cooperatively with NCS on the athletic field proffer. With regard to the critical Jones Branch Connector, we've spent a lot of time happily working with staff, Transportation, and VDOT on now for really almost 18 months. We have reached a reasonable consensus with regard to the credit associated with that essential road. We're truly elated and I don't think we had this news when we met before you in mid-July that the Board of Supervisors has worked – working with the Office of Transportation, has now pulled together the critical funding for this essential Tysons East and West road that will serve not only as a transportation lane, but also as a pedestrian/bicycle lane. I think that's a huge benefit to McLean, to Vienna, and to Tysons. With the approval of this application and the fairly immediate dedication of the 1.65 acres of land from Capital One, you and we can help ensure that one of Tysons most important and needed transportation lanes can occur quickly. Mr. Flanagan, I understand, raised some good questions, particularly based on your experience with regard to the distribution of workforce units. Just to remind you all, we had already proffered the \$3.00 per square-foot for non-residential contributions as well as to the 20 percent workforce housing construction. I understand – Mr. Flanagan understandably – that you want to avoid having workforce units consolidated in a lesser class building, if you will. I think we've addressed that in more than a couple of ways. The PTC District does not require it, but we have proffered to have all of our workforce units on-site. We have four very attractive residential buildings. So if we zoom in on the PowerPoint that Shane is bringing up, all four of those buildings are located within an eighth of a mile of the Tysons East station, which I think is terrific. In addition, we have refined Proffer 8 to confirm that additional details on the phasing and location of workforce units will be submitted to the County with a new FDP for our residential buildings. And finally, Proffer 58 ensures that the exterior architecture of any building that contains any workforce units meet our high architectural standards and be complementary to the other buildings as well. The Gates of McLean service drive – Mr. Hart noted some ambiguities on a couple of the notes between the CDP and FPD and our proffers. And we have, with staff's help, worked those issues out and brought clarity. We absolutely have a commitment to construct that service drive and that is now quite clear in the proffers. Finally, with regard to

the community center, we have a tremendously detailed, well-vetted, and I think well-thought-out series of changes that will benefit the County with regard to the 30,000 square-foot public facility. The proffers ensure that the Planning Commission, working with DPZ, will determine the timing of the implementation of that community center. Anytime an office building comes forward, you all, in consultation with DPZ, will be able to make the decision to trigger that requirement after the next – after our FDP building. Capital One has now taken on the potentially really significant risk of all building and parking garage construction cost escalation. That is now the way the proffers are structured. The base building and the parking and a number of utilities and other issues are all, in essence, at our risk and not at the County's risk. And so now the budget is tailored just to the internal tenant improvement. I think that was a very beneficial change for the County. In addition, we increased the proposed number of parking spaces reserved within the building from 30 to 35. Those are going to be very expensive parking spaces. They're under the building – underground. We conservatively estimate about \$50,000 a space so it's a \$250,000 improvement to the proffer from when I was standing before you in July. We've also designated or will designate 55 unreserved spaces that will be proximate to the community center. We really turned this upside down with scrutiny and attention. There are way too many people to thank so I'll limit our highest praise and gratitude to Ms. Lin and Ms. Lewis and, of course, to Mr. Lawrence who has been, in a word, extraordinary. We thank you, sir. It has been a tremendous effort and you've been a phenomenal referee. Before you, we respectfully submit a unique opportunity to foster a major economic development project that benefits the County, Tysons, Capital One, the existing rail tax district, the potential road improvement tax district, and the C & I District. We and you can help make the absolutely essential Jones Branch Connector a reality, support ridership of the soon-to-be-opened Silver Line and concurrently realize the objectives of the 2010 Adopted Comprehensive Plan. Mr. Murphy, I thank you. I would be happy to answer any questions.

Chairman Murphy: Thank you very much. Are there any questions? Ms. Hurley.

Commissioner Hurley: Thank you, Mr. Chairman. Two points. Well, first of all I support the package overall. And it looks very high quality. One of the staff members was just saying, "Boy, I hope I can live there when it's all finished." It looks very good. But as I mentioned at the public hearing, I'm still concerned – and for the benefit of the audience and all future large mixed-use applications – I'm concerned about the lack of specific child care mention. I'm not asking the application to build a child care center and operate it. I'm just looking for space that is built that could be turned into a child care center – something ground floor with two entrances, with drop-off access, close to outdoor play areas – you know, all that natural sunlight – all that sort of thing you want in a child care center. At least have it built. It could always be turned into a restaurant or something else. But at least enable an eventual child care facility there on-site. And my second concern is about the new proffer on page 43 on the athletic fields. You say it's available for use until at least 10 p.m. nightly. Park fields that are lit are open until 11. Perhaps because it's surrounded by residents, you don't want lit. But at least you might look at that before you discuss this with the Board of Supervisors. Secondly, the hours that it's available for public scheduling and the applicant might reserve up to 15 percent of that time. I was specifically concerned about Saturday mornings when, frankly, most of the young adults don't want to go out and do anything

at eight 'o clock on a Saturday morning. But it's a small field. It's only a third of a normal adult field, but it would be great for little kids like the under eights. If you could at least keep that Saturday morning early time preserved for the youth leagues, for we are desperate for space for the Saturday morning games. And third, where paragraph E there on page 43 where you say the users of the rec field will be able to use parking facilities – is that free parking? Or will they – will the players of these little eight-year-olds have to pay for parking?

Mr. Calabrese: Ms. Hurley, quickly with regard to the day care, there are some tremendous opportunities throughout the site, I think, for the day care. The athletic field that you were just alluding to, in fact, is located right next to a perfect playground area. We do not have, as part of the FDP for the office building for Capital One pending before you, a specific designation for a day care facility. We think there are tremendous opportunities throughout the site to do that and, of course, the Planning Commission and Suzianne and Cathy will have an opportunity with each and every FDP to revisit that. I think that goal also comports with the comment from Mr. Hart about having a mix of uses – professional services in addition to retail and restaurants on that first floor. Day cares are great complements. So we took your comments to heart and we'll certainly evaluate on a going-forward basis with future FDPs. The 10 p.m. cut-off on the lights was actually at the suggestion and urging, both of Capital One and in fact of Supervisor Smyth – you're absolutely right. Those lights are literally going to be on the buildings where the four residential buildings are close to the Metro. So we thought going to 10 p.m. was appropriate. We actually started earlier, but we compromised to 10 p.m. With regard to the parking associated with those fields, there will, in fact, be some surface parking in that area and particularly on the off hours, at night, and on the weekends. I think a number of the office parking lots, like they are in so many places, urban areas included, tend to be for free. During the peak hours, they are not used to be honest. We worked very long and hard with NCS over the hours. We actually started – it is a field that we're going to be constructing. We're turfing it. We're lighting it. And we delighted to have come to the consensus that we did with NCS. We were actually initially asking for 25 percent of the prime hours. They have 33 of the prime hours, 5 to 10 p.m. during the week and 8 to 12 every Saturday. We will work cooperatively with them. I think you would be hard pressed to find a better corporate citizen, particularly with regards to fields such as those that have been on the site now since 2005. So we'll continue to take your good suggestions to heart and we'll work cooperatively with NCS. Mr. Murphy, can I answer any questions?

Chairman Murphy: Are there any other questions? Mr. Lawrence.

Commissioner Lawrence: Did I see Commissioner Hall's hand up?

Commissioner Hall: No. I was pointing towards you.

Commissioner Lawrence: Ah, I can point towards you too.

Commissioner Hall: But it's your turn.

Commissioner Lawrence: Thank you.

Commissioner Hall: You're welcome.

Commissioner Lawrence: Thank you, Mr. Chairman. Thank you, Mr. Calabrese. Mr. Chairman, tonight we have the decision on the Capital One application, PCA 92-P-001-08, and RZ/FDP 2010-PR-021. We held a public hearing on July 25. Since that date, staff and the applicant have been working on the issues as can be seen from the proffer revisions. That work continued as recently as today. Many people have devoted time and skill to this application. Mr. Chairman, the training wheels are off. Thanks to the Georgelas Group, we were able to work through a Tysons demonstration project application. Now comes Capital One, the first of a chain of responses to the 2010 Tysons Plan. In this application, we have the prospect of the phased redevelopment of the Capital One site, beginning with the expansion of corporate headquarters for this major financial institution and continuing to create an urban focal point for office, hotel, residential, and retail use which ultimately occupy the entire 26-acre site. Many strong and positive things can be said about this proposal. I'll mention just a few. For example, there's a commitment to the green spaces of parks and playing fields, as well as to the expectation of green buildings in Tysons. Further, the applicant has provided stormwater management facility designs that meet the Tysons first inch standard. As a third example, this proposal provides for a very beneficial public facility, a community center within Tysons and close to a Metro station. But the Tysons cases are large and complex. There were, as would be expected, areas needing attention in the application. Staff sent me a list of all the issues worked since the public hearing. There were 18 of them – some, of course, more major in nature than others. The County staff and the applicant's team worked with dedication, ideation, and perhaps – above all – patience, civility, and mutual respect to resolve them, big and small. We also have some material for the record. I ask that the staff memo on the playing field arrangement, which is dated September 20, 2012, be placed in the record and also the Cooley memo dated September 12 on workforce housing for this application. Mr. Chairman, this is a major building block in the fulfillment of the Tysons vision and Plan. I have eight motions to make. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2010-PR-021, SUBJECT TO THE PROFFERS CONSISTENT WITH THOSE DATED SEPTEMBER 19, 2012, AS AMENDED.

Commissioner Alcorn: Second.

Commissioner Sargeant: Mr. Chairman?

Chairman Murphy: Seconded by Mr. Alcorn.

Commissioner Sargeant: Mr. Chairman, I was not present for the public hearing. However, I've reviewed the material and the online version of the public hearing, including the exciting discussion of male versus female ginkgo trees. Very impressive.

Commissioner Alcorn: And all the speakers.

Commissioner Sargeant: And the speakers. So I will be participating in the vote tonight.

Chairman Murphy: Further discussion of the motion?

Commissioner Flanagan: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Flanagan: Thank you, Mr. Chairman. First of all, I would like to thank Mr. Calabrese for his efforts with regard to my comments about workforce housing. But I will not be able to support the motion with the text in Proffer 58A regarding the option to segregate workforce housing into one of the planned residential buildings. During the public hearing, I noted problems where such has occurred elsewhere and was assured that the workforce housing would be integrated as each 100 units were built. In fact, in the public hearing minutes the secretary also states, "In response to questions from Commissioner Flanagan, Mr. Calabrese confirmed that the workforce/affordable housing units would be built in phases. He added that the County Zoning Ordinance required their dispersion throughout the development and confirmed that pedestrian access would be available to Metro." I do not favor government approving the segregation of anyone anywhere. Without the elimination or modification of the second sentence in Proffer 58A, I will abstain rather than vote to approve such text.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2010-PR-021, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Flanagan: Abstain.

Chairman Murphy: Mr. Flanagan abstains, as does Mr. Sargeant.

Commissioner Sargeant: Nope.

Chairman Murphy: Oh, that's right. You're not abstaining. I'm sorry. Mr. Flanagan abstains. All right, Mr. Lawrence.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2010-PR-021.

Commissioner Alcorn: Second.

Chairman Murphy: Seconded by Mr. Alcorn. Is there a discussion? All those in favor of the motion to approve FDP 2010-PR-021, subject to the Board's approval of the Rezoning, say aye.

Commissioners: Aye.

Commissioner Flanagan: Abstain.

Chairman Murphy: Mr. Flanagan abstains. Motion carries.

Commissioner Lawrence: I FURTHER MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF PCA 92-P-001-08.

Commissioner Alcorn: Second.

Chairman Murphy: Seconded by Mr. Alcorn. Is there a discussion of that motion? All those in favor of the motion to approve PCA 92-P-001-08, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Flanagan abstains.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS MODIFY SECTION 2-414B OF THE ZONING ORDINANCE REQUIRING A 75-FOOT SETBACK OF COMMERCIAL BUILDINGS FROM INTERSTATE 495 TO THAT SHOWN ON THE CDP.

Commissioner Alcorn: Second.

Chairman Murphy: Seconded by Mr. Alcorn. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Flanagan: Abstain.

Chairman Murphy: Mr. Flanagan abstains.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A DEVIATION FROM THE TREE PRESERVATION TARGET TO ALLOW TREE CANOPY TO BE PROVIDED THROUGH NEW TREE PLANTING AS DEPICTED ON THE PLAN.

Commissioner Alcorn: Second.

Chairman Murphy: Seconded by Mr. Alcorn. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER TO ALLOW THE USE OF UNDERGROUND STORMWATER MANAGEMENT AND BEST MANAGEMENT PRACTICES IN A RESIDENTIAL DEVELOPMENT, SUBJECT TO WAIVER NUMBER 6835-WPFM-001-1.

Commissioner Alcorn: Second.

Chairman Murphy: Seconded by Mr. Alcorn. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS MODIFY THE PFM TO REDUCE PLANTING WIDTH FROM EIGHT FEET TO FOUR FEET WITH STRUCTURAL PLANTING CELLS.

Commissioner Alcorn: Second.

Chairman Murphy: Seconded by Mr. Alcorn. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Lawrence: And finally, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION WAIVE THE COUNTYWIDE TRAILS PLAN REQUIREMENT TO PROVIDE A REGIONAL TRAIL ALONGSIDE INTERSTATE 495 IN FAVOR OF SIDEWALKS SHOWN ON THE CDP.

Commissioner Alcorn: Second.

Chairman Murphy: Seconded by Mr. Alcorn. Is there a discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Lawrence: Thank you very much, Mr. Chairman. Thank you, applicant. Thank you, Tysons team. The County needs to know how well it is served by these people.

Chairman Murphy: Absolutely. It's a great way to begin, in essence, the development of the future of Fairfax County.

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(The motions carried by votes of 10-0-1 with Commissioner Flanagan abstaining; Commissioner Litzenberger absent from the meeting.)

JLC