Planning Commission Meeting
October 15, 2015
Verbatim Excerpt

SEA 83-V-083 – SEJ ASSET MANAGEMENT AND INVESTMENT COMPANY

Decision Only During Commission Matters

Commissioner Flanagan: I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE SEA 83-V-083, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED OCTOBER 14, 2015, WITH THE FOLLOWING CHANGES: CONDITION 6 SHALL BE DELETED. That took place between - last night and today. And A NEW CONDITION SHALL BE ADDED AS FOLLOWS: "NOTWITHSTANDING THE IMPROVEMENTS SHOWN ON THE SEA PLAT, THE APPLICANT MAY CONTINUE USE OF THE ARMISTEAD ROAD ACCESS POINT IN A MANNER ACCEPTABLE TO VDOT. IMPROVEMENTS TO THE ARMISTEAD ROAD ACCESS POINT, SUCH AS THOSE REQUIRED AS A RESULT OF AN ACCESS MANAGEMENT EXCEPTION REVIEW, SHALL BE SUBJECT TO THE REVIEW AND APPROVAL OF VDOT AND SHALL BE INCORPORATED INTO THE APPLICANT'S SITE PLAN SUBMISSION PRIOR TO FINAL SITE PLAN APPROVAL."

William O'Donnell, Zoning Evaluation Division, Department of Planning and Zoning: Commissioner Flanagan, you may just want to ask the representative of the applicant to come up and agree on the record to that change.

Commissioner Flanagan: Okay. Is the - - oh the applicant is here. Okay, fine.

Karen Cohen, Esquire, Applicant's Agent, Vanderpool, Frostick, and Nishanian, PC: Karen Cohen with Vanderpool, Frostick, and Nishanian, on behalf of the applicant.

Commissioner Flanagan: Last -- after the public hearing there was not an opportunity to ask you to - whether you confirm the conditions of SEA that were dated October 14. Do you agree with the conditions that are dated October 14, 2015?

Ms. Cohen: As revised tonight.

Commissioner Flanagan: And also do you - - Do you also affirm your acceptance of the new condition that I - that I just read?

Ms. Cohen: We do.

Commissioner Flanagan: You do? Thank you.

Vice Chairman de la Fe: Okay.

Commissioner Hart: Mr. Chairman?

Commissioner Flanagan: That’s the - the motion.

Commissioner Litzenberger: Second.

Vice Chairman de la Fe: Seconded by Mr. Litzenberger. Any discussion? Questions? Let's go down - - Ms. Hurley first? Or -

Commissioner Migliaccio: Do we have it written down anywhere that we can see it? And has staff looked at this and approved it?

Mr. O'Donnell: Yes, staff has reviewed it internally and it's a - it's a condition that's being modified per the discussion from the Planning Commission and, therefore, it was prudent that he made the motion to make the change. But staff has reviewed it; it's okay, the applicant has agreed to it; and what it's doing is it's basically giving VDOT the - the ability to review any changes to that access point and make sure it meets the Access Management requirements.

Commissioner Migliaccio: And do you have copies so we can at least say we read it before I vote on it?

Mr. O'Donnell: This - - On a change like this, we've - we've done this on other applications before. I mean, it could have been done yesterday. And this is a situation where Commissioner Flanagan and the applicant both agree that we're changing it through a motion rather than through a staff-imposed development condition. Because staff's - staff's development condition was Condition Number 6, which is being deleted.

Commissioner Migliaccio: I understand that. I was just curious if we had a written thing, if Commissioner Flanagan had copies or anything that we could look at. That's all.

Vice Chairman de la Fe: Okay, Commissioner Hurley.

Commissioner Hurley: Yes. In part because we don't have a written copy of what you just read, I still don't understand. Are we still telling people that, okay, for now the entrance will remain as it is, but if VDOT wants to, we're going to tell people to make 180-degree turns and all of those other really bizarre changes to try to get to the south light at Richmond Highway? Is that what it says?

Mr. O'Donnell: The condition is saying that the applicant can use the access point but if it becomes a problem VDOT has the ability to make the change, and - and that's basically what we're trying to do. Our development condition before was trying to, you know, improve the - the access as best as possible through signage and - and deterring the ability. This condition is saying VDOT is going to look at it through the Access Management process.

Commissioner Hurley: But I'm not understanding. It's not - - I'm not concerned about the applicant's access. We already said that the trucks, the gas tankers are still going to have to use the existing access, but the general public is going to have to make that bizarre U-turn through the veterinary hospital. So I'm not talking about the applicant's access. I'm talking about the general public. And so from what this motion says, VDOT could impose that weird 180-degree turn to get out of - and through the veteran's [*sic*] - I'm sorry, the veterinary hospital to get out to

the stop light. I'm still not sure what we're voting on and I can't support the motion when I really don't understand it.

Vice Chairman de la Fe: Okay, Commissioner Hart.

Commissioner Hart: Yes, thank you, Mr. Chairman. I have objected from time to time when we try and vote on last-minute handouts that we haven't had a chance to understand, and we don't even have a handout now. I heard what Commissioner Flanagan said. I was trying to listen to it and I was trying to understand, and about the best I can understand from it is that it's something like notwithstanding what's on the plat, we're going to try and leave it the way it is for now until VDOT says no. And then, I guess, when VDOT says no, we're back to the mish-mash that nobody seemed to like last night. I'm not sure that's a resolution so much as a - a - kicking it down the road a little bit or - or avoiding the - the - us taking a position on what the - that confusing traffic movement was. And so procedurally, I have a problem voting on something that's not in front of me and I haven't been able to think about, and we haven't really vetted with staff. We had a lot of questions last night that - - I think I might have had more. Having said that, under 9-006, General Standards for a Special Exception, Subsection 4, all these standards have to be met. But Subsection 4 says the proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood. I was not satisfied last night that the proposed use - and this is - "shall" is mandatory - that the proposed use shall be such that pedestrian and vehicular traffic associated with such use would not be hazardous or conflict with the existing and anticipated traffic. I thought there were conflicts with the in-coming left-turn traffic crossing directly in front of the people going out to Armistead Road with that, sort of, left-hand movement through the veterinary hospital. I thought there was another conflict with all of the in and out in that very narrow spot with the three parking spaces in front it. And I hadn't quite heard how we were getting around that, so I think - - if I understand what we're voting on - and we have to vote tonight to get this to the Board by Tuesday - I'm not persuaded at least that 9-006, Subsection 4 has been satisfied. Because I think we're still leaving open, as long as VDOT says no, this - this strange crisscrossing tangle at the point where they cross over to the animal hospital. So unless somebody can explain that to me, I don't think I can support this. Thank you.

Vice Chairman de la Fe: Commissioner Sargeant, you had -

Commissioner Sargeant: Two questions - - just to confirm that there was a conversation with the occupants and operators at the animal hospital.

Commissioner Flanagan: Yes, today I did make a trip down - - I had to down to Dale City. They have another animal hospital in Dale City, so I had to go all the way down to Dale City to meet with the owner at their facility there. And they did indicate to me that they had received the letter - registered letter - that asked them to review and to object if they wished, you know, to the arrangements that are in this application about crossing their property, and they indicated that they had no problem with that. In fact, when they got the building permit for their building, they had to agree to allow the - the station to have access to the site across their property. And so I then asked the owner if the - there was anything in the proffer - or the condition, rather, that they had any limitation on the, you know, the number of vehicles that could cross in front of their

property. And they said no, it was just unlimited; any amount of vehicles coming across their property was okay. And then I asked them if they had any objection to this application as it has been presented to the Planning Commission and they said they had no. And I asked for that to be confirmed in a - in an email to me, which I had not yet received when I came out here this evening, but I can, probably, you know, provide that as part of the record if you wish.

Commissioner Sargeant: And my second question is if you could re-read the motion.

Commissioner Flanagan: The condition?

Commissioner Sargeant: Yes.

Vice Chairman de la Fe: Okay, Mr. Ulfelder. Do you want the -

Commissioner Flanagan: He wants me to - he wants me to - to read it again.

Vice Chairman de la Fe: Yes, read it again.

Commissioner Flanagan: Yes.

Vice Chairman de la Fe: Slowly, so that everybody understands it.

Commissioner Flanagan: The new condition that replaces Condition Number 6, which is on the same subject, is that, "Notwithstanding the improvements shown on the SEA plat, the applicant may continue the use of the Armistead Road access point in a manner acceptable to VDOT. Improvements to the Armistead Road access point, such as those required as a result of an Access Management Exception Review, shall be subject to the review and approval of VDOT and shall be incorporated into the applicant's site plan submission prior to the final site plan approval." Now, I received this latest revision a few minutes before I left for the meeting tonight, and it may be that the staff has some explanation of the Access Management Review that is mentioned.

Mr. O'Donnell: I - I wasn't the coordinator. It's - it's my understanding that, you know, the access it too close to the main intersection as it is and this is a situation where there's minor changes occurring to the site and we did not want to preclude those changes and the ability for the - for the, I guess it's the 7-Eleven, to continue to operate. We did have a development condition as part of our recommendation that tried to make it as less usable as possible, but still usable. This development condition is no longer - is basically saying show - show us at site plan with VDOT at the table to make sure that this is safe. And as part of that, if it's not, well then they have to go through this access management process and it's - it's even more rigorous from that point. So in both - both regards, I think the development condition is doing the same thing. It's making sure that this access is safe while allowing for the continued operation of the use. That's the best I can go without being the coordinator on the case.

Vice Chairman de la Fe: Okay, I know that there's some more questions; however, I would just remind you that we are on verbatim; so, Mr. Ulfelder.

Commissioner Ulfelder: Thank you, Mr. Chairman. If paragraph 6 [*sic*] is struck, and if VDOT says no, why don't they have to come back for an SEA for a - for - going back through what I consider not to be a minor issue - the ingress/egress issue - concerning the neighboring property and Armistead Road?

Mr. O'Donnell: No, they will have to come back for an SEA. That's the risk they're taking by not addressing this now. They could have filed the Access Management waiver earlier in the process and we would have had a better idea. That was a choice they didn't - they decided not to do. It's not a requirement of the zoning, it's a requirement of the site plan. So it is a risk.

Commissioner Ulfelder: And with that in mind, is the only solution if VDOT decides there isn't enough space between the - the stop light - the stop line and the access ingress/egress that's currently there, is the only solution to go back through the animal hospital parking lot?

Mr. O'Donnell: Yes. You would have to close this access and you would have to establish an interparcel access from there. Yes. But again, I don't know the full details of it, but I mean…

Commissioner Ulfelder: Well, that's an awfully big question to leave hanging at this point, to me.

Mr. O'Donnell: Understood.

Vice Chairman de la Fe: Commissioner Hedetniemi.

Commissioner Hedetniemi: Last night, the applicant agreed to a development condition that would essentially say that if it became a problem you would be willing to close off the - the access point between 7-Eleven and the veterinary hospital. Is this amendment taking the place of that?

Mr. O'Donnell: Well, they don't have it - - To my knowledge, we don't an option on the development plan that shows that the access is closed. We can ask the applicant to verify that - what I'm saying, but it's my understanding that we don't have an option. If they could - if they could close the access in a manner that's in substantial conformance and they get permission to - to do the access off the veterinarian, we could look at it from the administrative approval process, but more than likely it would require an SEA. So they'd have to come back through this process.

Commissioner Hedetniemi: You're at a disadvantage because you weren't case handler.

Mr. O'Donnell: I feel it. Yes.

Commissioner Hedetniemi: But there is a real issue here in terms of safety as far as I'm concerned and I'm just not comfortable with VDOT having the final say on - on something that is so open-ended.

Vice Chairman de la Fe: Okay, Mr. Litzenberger.

Commissioner Litzenberger: Thank you, Mr. Chairman. I'm wading in here on behalf of Mr. O'Donnell. After the Trinity Center negotiations in Sully, I asked Kris Abrahamson about this case because it was so unusual. Her response was that when the veterinary clinic got their rezoning approved, they agreed to all the requirements of that cut-through to comply with the requests of VDOT, so they really don't have a say. The fact that they stuck some parking spots adjacent to that, that was their decision because it's their property. But part of their rezoning approval was creating that cut-through, so I don't think we could close it even if we wanted to because then they would be in - in violation of their rezoning. So the way Kris explained it is that this is perfectly legal and that VDOT will support it. I just wanted to help us through this, since we're all on verbatim.

Vice Chairman de la Fe: Okay, Mr. Migliaccio. I just realized that misspoke when I said this was going to be the easy.

Commissioner Migliaccio: I was just thinking that. After - during this debate, I had a chance to walk over and read the new development condition. We've had it read twice. Based on what staff has said and what Mr. Flanagan has said, I'm going to support his motion tonight to get this to the Board. And I think that if we fell back to Development Condition Number 6 that we had last night, I was in support of that option also. So, thank you.

Vice Chairman de la Fe: Okay, any further comments? None. Having heard all that discussion, all those in favor of approving SEA 83-V-083, subject to the development conditions as outlined tonight by Commissioner Flanagan - all those in favor please signify by saying aye.

Commissioners de la Fe, Flanagan, Litzenberger Migliaccio, and Sargeant: Aye.

Vice Chairman de la Fe: Opposed?

Commissioner Hurley: Aye. Aye. [*sic*] Nay.

Vice Chairman de la Fe: Okay, no. Okay.

Commissioner Hart: No.

Vice Chairman de la Fe: Okay, let's - let's take division. Mr. Ulfelder?

Commissioner Ulfelder: No.

Vice Chairman de la Fe: Ms. Hurley?

Commissioner Hurley: No.

Vice Chairman de la Fe: Mr. Migliaccio?

Commissioner Migliaccio: Aye.

Vice Chairman de la Fe: Mr. Sargeant?

Commissioner Sargeant: Aye.

Vice Chairman de la Fe: Mr. Hart?

Commissioner Hart: No.

Vice Chairman de la Fe: Mr. Flanagan?

Commissioner Flanagan: Aye.

Vice Chairman de la Fe: Mr. Litzenberger?

Commissioner Litzenberger: Aye.

Vice Chairman de la Fe: Ms. Hedetniemi?

Commissioner Hedetniemi: No.

Vice Chairman de la Fe: And the Chairman votes aye, and the motion carries five to four, if I did it - if my scribblings are correct. Okay, the motion carries.

Commissioner Flanagan: Thank you, Mr. Chairman.

Vice Chairman de la Fe: Mr. - okay, well you have others.

Commissioner Flanagan: Yes, I have another -

Vice Chairman de la Fe: No, I mean on this one. Don't you have some -

Commissioner Flanagan: Yes, we have two more motions.

Vice Chairman de la Fe: Okay.

Commissioner Flanagan: I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A MODIFICATION OF THE MINIMUM REAR YARD REQUIREMENT FOR THE EXISTING SERVICE STATION/QUICK SERVICE FOOD STORE BUILDING IN ACCORDANCE WITH SECTION 9-625 OF THE ZONING ORDINANCE TO PERMIT THE BUILDING TO REMAIN AS SHOWN ON THE SEA PLAT.

Commissioner Litzenberger: Second.

Vice Chairman de la Fe: Seconded by Commissioner Litzenberger. Any discussion? Hearing and seeing none, all those in favor please signify by saying aye.

Commissioners de la Fe, Flanagan, Litzenberger, Migliaccio, and Sargeant: Aye.

Vice Chairman de la Fe: Opposed?

Commissioners Hart, Hedetniemi, Hurley, and Ulfelder: Nay.

Vice Chairman de la Fe: So it's the same division, I assume, and the motion carries five to four.

Commissioner Flanagan: Thank you, Mr. Chairman. I NOW MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A MODIFICATION OF THE FRONTAGE IMPROVEMENTS REQUIREMENT FOUND IN SECTION 17-201 OF THE ZONING ORDINANCE IN FAVOR OF THAT SHOWN ON THE SEA PLAT.

Commissioner Litzenberger: Second.

Vice Chairman de la Fe: Seconded by Commissioner Litzenberger. Any discussion? Hearing and seeing none, all those in favor please signify by saying aye.

Commissioners de la Fe, Flanagan, Litzenberger, Migliaccio, and Sargeant: Aye.

Vice Chairman de la Fe: Opposed?

Commissioners Hart, Hedetniemi, Hurley, and Ulfelder: Nay.

Commissioner Hart: Nay. I'm sorry. I'm reading the wrong one again here.

Vice Chairman de la Fe: Same division as before; the motion carries five to four.

Commissioner Flanagan: And then the last motion that I have, Mr. Chairman, is I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE A WAIVER OF THE TRANSITIONAL SCREENING AND BARRIER REQUIREMENTS IN SECTION 13-302 OF THE ZONING ORDINANCE ALONG THE WESTERN PROPERTY BOUNDARY, and that's it.

Commissioner Litzenberger: Second.

Vice Chairman de la Fe: Seconded by Commissioner Litzenberger. Any discussion? Hearing and seeing none, all those in favor please signify by saying aye.

Commissioners de la Fe, Flanagan, Litzenberger, Migliaccio, and Sargeant: Aye.

Vice Chairman de la Fe: Opposed?

Commissioners Hart, Hedetniemi, Hurley, and Ulfelder: Nay.

Vice Chairman de la Fe: Same division as before; the motion carries five to four. Thank you very much.

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(Each motion carried by a vote of 5-4-3. Commissioners Hart, Hedetniemi, Hurley, and Ulfelder opposed the motion; Commissioners Lawrence, Murphy, Strandlie were absent from the meeting.

JN