Planning Commission Meeting
October 29, 2009
Verbatim Excerpt

AR 01-H-001 – HIU NEWCOMB, FAMILY, LLC
(Decision Only) (Public Hearing held on October 15, 2009)

During Commission Matters

Commissioner Donahue: Two weeks ago, Mr. Chairman, we heard application AR 01-H-001 to renew the Potomac Vegetable Farm Local A&F District. We discussed two land parcels: an approximately 21-acre parcel which qualifies for renewal, it would seem to me, and an approximately 5-acre parcel too small to qualify on its own merits. Under certain circumstances, the smaller parcel could be incorporated into the larger parcel and thereby qualify for the tax allowances in the district. But because the parcels are not contiguous, this option is not available under current State law. It was clear from witness statements in the discussion at Commission level that more time was needed. So we closed the public hearing and deferred decision to this evening. And in the two weeks since then, we have had staff meetings; Ms. Zottl and Ms. Abrahamson have made themselves available. We've talked to an awful lot of people; Mike Long at the County Attorney's Office; Kevin Greenlief, Director of Tax Administration; the applicants themselves were very helpful. And unfortunately, we have been unable, I think, to come up with a way to do this under a normal simple motion from the Planning Commission. And as a result, Mr. Chairman, I think we are probably going to have to – and I'll be moving in just a second – we are probably going to have to go after some type of enabling legislation or possibly modify or amend the enabling – legislation under which we currently working. And therefore, Mr. Chairman, I'll be making two motions, the first one as follows: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT AR 01-H-001 BE APPROVED IN PART AND APPENDIX F OF THE FAIRFAX COUNTY CODE BE AMENDED TO RENEW THE POTOMAC VEGETABLE FARM II LOCAL AGRICULTURAL AND FORESTAL DISTRICT, SUBJECT TO ORDINANCE PROVISIONS DATED OCTOBER 6TH, 2009.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve AR 01-H-001, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Donahue: Mr. Chairman?

Chairman Murphy: Mr. Donahue.

Commissioner Donahue: Second motion as follows, and it is designed primarily to urge the Board of Directors (*sic*) to come to some solution concerning this matter. And therefore, I MOVE, Mr. Chairman, THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD INVESTIGATE ALTERNATIVE MEANS OF PROVIDING FAVORABLE TAX STATUS FOR PARCEL 19-3 ((1)) 42A, INCLUDING BUT NOT LIMITED TO, PURSUIT IN THE GENERAL ASSEMBLY OF APPROPRIATE ENABLING LEGISLATION FOR AMENDMENT OF THE CURRENT LEGISLATION GOVERNING THIS TOPIC.

Commissioner Sargeant: Second.

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

Commissioner de la Fe: Mr. Chairman?

Chairman Murphy: Mr. de la Fe.

Commissioner de la Fe: Mr. Chairman, I'm not sure that – last week or whenever the public hearing was held, I was going to offer the type of, you know, secondary motion. I'm not sure that I want to associate myself with the particular language in this one because I personally believe that it is within the ability of the Board of Supervisors, if they pursue it properly, to accomplish the same purpose as an act from Richmond. So I will abstain from this motion because I really think the Board should find a way of doing this within their own means. There are ways of doing it and accomplishing the same purpose.

Commissioner Donahue: Mr. Chairman?

Chairman Murphy: Mr. Donahue.

Commissioner de la Fe: – regardless of what a lawyer tells you. Find another one.

Commissioner Donahue: I think within the motion there probably is the authority to do that on the part of the Board, okay, because we talked about enabling legislation but we also talked about other means, so they don't have to go to enabling legislation, they can do it themselves. I would humbly disagree, based on all the information I've had over the last week or two. And I'm going to ask staff to comment on this as well. Given the current State legislation, which does insist, I believe, that the parcels actually be contiguous, up against one another, I think for the Board to move in certain ways would clearly be in violation of the current State ordinance. And that's what I'm getting from the County Attorney. That's what I'm getting from the Tax

Administrator. That's what I'm getting from staff. And I will leave it up to staff at this point in time to further explain.

Commissioner de la Fe: Mr. Chairman? If I may –

Chairman Murphy: Yeah.

Commissioner de la Fe: – respond to that particular one. When this was in the Hunter Mill District, this was an A&F District, including both parcels. They have never been contiguous. The character of the land between them has changed and the use has changed. But contiguity must not have been an issue because it was an A&F District. And if what made the previous one possible, even though they were not contiguous was the fact that the two pieces were connected by non-developed land. That condition still exists because the two parcels are connected by Park Authority land which will never be built on. It is open space. So I believe that applying the same criteria that was applied originally, rather than the new one of contiguity, you know – I mean, that's just my view, and that's why I will abstain from this.

Commissioner Donahue: Mr. Chairman?

Chairman Murphy: Yes, Mr. Donahue.

Commissioner Donahue: Again, I will let staff elaborate to a greater degree than I could. Under the State statue for local districts, whatever happened before – and I think staff's going to get into that a little bit – but whatever happened before, contiguousness quite clearly, as it has been explained to me, is one of the essential elements at this point in time. Now, there are different ways to contiguousness, and that is what I was exploring with the County Attorney up until 4:00 this afternoon. And as he explained it to me – and I have to admit, I came to agree with him – that element simply is not present. And without it we are going to have major problems with the State if we try to slip that five acres into the A&F District.

Chairman Murphy: Further discussion of the motion?

Commissioner Harsel: Mr. Chairman?

Chairman Murphy: We're on verbatim.

Commissioner Harsel: I know. I want a point of clarification. You said in part – I'm doing this for the clerk. Are we excluding 19-3-42A (*sic*) in your motion?

Commissioner Donahue: That's correct.

Commissioner Harsel: That's part of clarification.

Chairman Murphy: Thank you very much. We appreciate that. Further discussion of the motion? All those in favor of the motion as articulated by Mr. Donahue, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner de la Fe: Abstain.

Chairman Murphy: Motion carries. Mr. de la Fe abstains.

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(Commissioner Sargeant seconded the motion which carried by a vote of 10-0-1 with Commissioner de la Fe abstaining; Commissioner Flanagan absent from the meeting.)

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