

Planning Commission Meeting
May 9, 2013
Verbatim Excerpt

RZ/FDP 2011-PR-017 – COMMONS OF MCLEAN L/CAL LLC

Decision Only During Commission Matters
(Public Hearing held on May 1, 2013)

Commissioner Lawrence: Thank you, Mr. Chairman. Tonight, we have the decision on RZ 2011-PR-017 and FDP 2011-PR-017. We had the public hearing last week and the decision was deferred to tonight. Staff has published an addendum to the staff report in which the matters that needed to be dealt with are described and detailed. Commissioners will recall that what we had to do was finish up some work still in progress at the time of the public hearing and also to take into account some questions raised at the hearing itself. With the cooperation of the applicant, staff has completed the work. A section of the Addendum summarizes the changes and additions to proffers. I won't detail all those changes and additions. But note, for example, that the question of providing retail and services on the site will be reviewed as build-out takes place each time an FDP is filed. You'll hear more about that in a minute. In the same way, such issues as parking amounts and the potential for energy sharing will be addressed at FDP time. We believe this will provide for these items, but allow for flexibility to respond to market conditions. There's one more small change that I think is needed before the case is presented at the Board. I'd like to get the applicant on record as agreeing to the change. Is the applicant represented?

Evan Pritchard, Esquire, Walsh, Colucci, Lubeley, Emrich & Walsh, PC: Yes, Commissioner Lawrence. Evan Pritchard here on behalf of LCOR.

Commissioner Lawrence: Thank you, Mr. Pritchard. What we seek is a rewording of Proffer 5F such that, "IF A FAVORABLE DECISION IS MADE ON INCORPORATING RETAIL AND/OR SERVICE AT THE TIME OF AN FDP SUBMITTAL, THE USE CAN BE LOCATED IN THE BEST SPOT FOR IT ON THE SITE, WHICH MIGHT BE IN THE BUILDING PROPOSED, BUT COULD ALSO BE IN A BUILDING PREVIOUSLY BUILT UP ON THE SITE THAT IS STILL UNDER YOUR CONTROL." Will your client agree to that rewording?

Mr. Pritchard: Yes, they will. Thank you.

Commissioner Lawrence: Thank you very much, Mr. Pritchard.

Mr. Pritchard: Thank you.

Commissioner Lawrence: Mr. Chairman, I intend to move the waivers and disclaims en bloc for this application, unless any Commissioner who doesn't value his or her life has an objection.

Vice Chairman de la Fe: Mr. Lawrence.

Commissioner Donahue: Mr. Chairman, I do have a couple of comments or questions I would like to ask that probably should be done before the motion, I'm guessing.

Vice Chairman de la Fe: Yes, unless there is - - we can do it during discussion.

Commissioner Donahue: Right. That's what I'm saying. I don't know when Mr. Lawrence is going to go into the motion. So, as long - if we're going to have some discussion, that will be fine. Thank you.

Vice Chairman de la Fe: We are on verbatim so it should be short.

Commissioner Donahue: I'll try.

Vice Chairman de la Fe: Mr. Lawrence.

Commissioner Lawrence: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2011-PR-017.

Commissioner Hart: Second.

Vice Chairman de la Fe: Been seconded by Mr. Hart. Is there any discussion? Mr. Donahue.

Commissioner Donahue: Mr. Chairman, in general, a couple of questions and, of course, they relate to fields - I guess I'm known as the "Field Nazi" these days - and also to retail, there have been a couple of changes to the proffers on fields. And I should first say very quickly how much we appreciate the applicant working with Cap One to do the type of things in fields and facilities they have done. We appreciate it. But there have been a couple of changes, I think, in the last 48 hours in the proffers concerning fields. Is that correct, Mr. Katai? Didn't one come out in email and -

Bob Katai, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ): Yes.

Commissioner Donahue: And the one here tonight is a change from the email, is that not correct?

Mr. Katai: That is correct.

Commissioner Donahue: Okay. I don't know if they were supposed to address the timing of the fields or how much time we should allow for the building of the fields. But I think it's true to say the fact of the matter is the proffer is now currently - - the latest proffer as currently printed doesn't really change the result much from the initial set of proffers that came in. And possibly, the applicant should address this. I don't know.

Catherine Lewis, ZED, DPZ: I think we actually have an error. There was an - there is a previous set - or previous discussions about this. And I think what we printed is not the correct set. We're - there was concerns - what we had wanted to do was - we had talked about the proffer as

written, which talks about the 1800th RUP or December 31st, 2025, whichever is later. And there were concerns about that timing that, you know, whichever occurs later, what if things go gangbusters and we have to wait until 2025. That's not something that we want so we had talked to the applicant about going back to the previous proffer language moving up the RUP to the 100th RUP for the fifth building – the fifth building the development, whatever that is, not necessarily Building 5 – and that the applicant was also going to, with each FDP, look to opportunities within the site for additional interim recreation areas. And, you know, there are a number of spaces that, with the phasing, there may be opportunities to have some smaller fields that would open up.

Commissioner Donahue: So that sounds more like – pardon me – more like the email I got either last night – I didn't read it until this morning. That's really what the proffer is going to look more like that for this.

Ms. Lewis: That's right. I think in our haste to get this out, we – because, you know, this was going on at like 7:30 last night - we got the wrong set in. But that was what we are intending to do and we'll make sure that's cleaned up before the Board.

Commissioner Donahue: The reason I'm concerned about this one is it gives very little protection – well, I'm not going to get into that. Since we have a different proffer, we'll look at that in between the – by the time of the Board meeting and we'll react to that. The other one is on retail. The reason I am concerned about retail is that, as I read the Comprehensive Plan, this development and this project and this proposal should have retail in it. And I mean an assurance of retail, some degree of a guarantee for that, and that's not here. In fact, if we had the time – and we don't – I would probably make the argument that the proffer, as it is written, could be viewed, could be implied as in opposition to what is said in the Comprehensive Plan because, quite frankly, if the applicant does not see it in their discretion to do retail, they're not going to do it. Is that not correct?

Ms. Lewis: I don't think that, at least, staff necessarily saw that. You know, we – if you pull out and look at the, you know, the area in a larger context, you have Station Street, which is Scotts Run South, and we do have – we have a firm commitment to do retail along that street. And then you also have an existing shopping center on the other side. I think there was – staff had some concerns about requiring, you know, someone to put in retail because that might... You know, if the market isn't there and they're trying to force it in there and they have to drop rents, is that going to actually hurt these other streets that are really set up to be these, you know, retail streets? Are we going to be cannibalizing the other retail that we, you know, are looking for? But what we are doing is, we have worked with the applicant, because I think you're right. Nobody can tell 50 years down the road what the market will be. And one of the concerns we expressed to the applicant was that the way the proffers were written about ceiling heights in the ground floors that they had talked about, "Well, if we think there is a possibility of retail, then we'll design it with 16 feet, but otherwise 14." And we said, "Well, you know, but that doesn't help us in the future. We want these buildings to be able to change over time. And if there is a market for retail, it would be a shame that you couldn't capitalize on that because you didn't design your

buildings in that.” And I don’t think that, you know, they – I think they were trying to state in that proffer that they would look and try to see if there were opportunities for retail. I don’t think it closes the door though because we have tried to make sure that these buildings can – that they can change uses over time.

Commissioner Donahue: All right. My own personal opinion. I agree with your comments and what Commissioner Lawrence has said about the market and forcing the market and agree 100 percent. Nevertheless, I think the statement on retail should be stronger. And I would suggest – correct me if I’m wrong – that even if we did somehow try to require - and I realize proffers have to be voluntarily given - but if we did try to require something in the area of 35,000 to 40,000 square feet of retail, there is a Proffered Condition Amendment process available if that simply isn’t working out. That, to me, is the way to go in a situation like this. Isn’t there?

Ms. Lewis: Well, I guess we were trying to allow them to change, you know, with time without going through that process. You know, for a lot of people, going through a PCA process is enough of a barrier that they’re not going to do it.

Commissioner Donahue: Okay. Thank you, Mr. Chairman.

Vice Chairman de la Fe: Thank you. Mr. Hart, I believe you had –

Commissioner Hart: Yes, thank you, Mr. Chairman. Two things: first, for purposes of the motion, I just wanted to make sure that approval of the RZ is linked to the April 24 proffers or some other – I don’t know if there’s a different iteration, but I think the motion didn’t say the date. And we’ve gotten so many revisions. And then, I know we have got one clarification that Mr. Lawrence mentioned, and Ms. Lewis was talking about maybe another. I thought - point one, let’s just clarify for the motion, which version of - which date of proffers go with the RZ approval.

Mr. Katai: It will be the May 8th proffers - the very front title page –

Commissioner Hart: It’s not April 24; it’s May 8.

Mr. Katai: May 8, 2013.

Commissioner Hart: Okay. Subject to the –

Mr. Katai: On the cover sheet, it has the May 8th date. I just realized that on a secondary sheet, it does have the April 24th date, but the cover sheet is correct. It is the May 8th, 2013.

Commissioner Hart: That’s why I ask because somebody reading this five years from now on a case as complicated as this isn’t going to know what we did. But it’s May 8th on everything, no matter what other dates pop up.

Mr. Katai: That is correct.

Commissioner Hart: And we'll straighten that out before the Board if there are any typos.

Mr. Katai: We will.

Commissioner Hart: Somebody said, "haste is not good."

Vice Chairman de la Fe: And it will be subject to May 8th, as amended.

Commissioner Hart: Yes.

Vice Chairman de la Fe: – tonight.

Commissioner Hart: With Mr. Lawrence's clarification, possibly another from Ms. Lewis, if I understood.

Commissioner Flanagan: Mr. Chairman?

Commissioner Hart: The second point –

Vice Chairman de la Fe: We are on verbatim, folks.

Commissioner Hart: I know that. To Commissioner Donahue's point about the retail mix, which is an important issue on many of these Tysons cases, I thought – if I understood what was happening – there were going to be a series of FDPs later and we're going to get another bite at the apple as buildings come in. Is that right, Ms. Lewis?

Ms. Lewis: Yes, that's correct.

Commissioner Hart: All right. Thank you.

Vice Chairman de la Fe: Thank you.

Commissioner Donahue: Mr. Chairman, just for the record. Mr. Chairman, I'm saying I'm not satisfied with that. And I don't think it's that clear. And I think if we go through that process, the wording of the current proffer has the potential to give us problems. Thank you.

Vice Chairman de la Fe: Mr. Flanagan.

Commissioner Flanagan: Yes, I just had one clarification. At the public hearing, there were a couple of Commissioners who inquired about how many residential buildings there are. My understanding is there is going to be five. And the concern was that there would be – the project would take, maybe, 25 years. Maybe the fifth building wouldn't be built until 25 years

from now. And I was wondering – the suggestion was that we wanted some assurances that the workforce provision that does allow all the workforce housing to occur in one building wouldn't be in that fifth building, that all the workforce housing wouldn't be in that fifth building 25 years from now. And we had reassurances from the applicant that that would not occur. But has there been some sort of a statement included in the proffers that reflects that assurance?

Mr. Katai: I think the applicant would be best to answer that question.

Mr. Pritchard: Commissioner Flanagan, we did not go back and amend that proffer because my understanding of the conversation was we've already - - with the first... There are seven residential buildings total, by the way, and the FDP for the first building is already in. And there are 66 WDUs committed in that building. So, you know, that's 66 out of the 471. We are happy to revisit that proffer going forward if we must, but we felt like that provided the Planning Commission and the Board some assurances that it – while there is some flexibility in the proffers, that's not, of course, our intent to consolidate them all into one building.

Commissioner Flanagan: Thank you for the clarification.

Mr. Pritchard: Sure.

Vice Chairman de la Fe: Thank you very much. And Mr. Lawrence, perhaps after all this discussion you may want to restate your motion.

Commissioner Lawrence: I forget. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2011-PR-017.

Commissioner Flanagan: Second.

Ms. Lewis: Mr. Lawrence, I think you might want to add subject to proffers dated May 8th.

Commissioner Lawrence: SUBJECT TO THE PROFFERS NOW DATED MAY 8TH, 2013, AS AMENDED WITH THIS EVENING'S CHANGE.

Vice Chairman de la Fe: Okay, it has been moved and was there a second?

Commissioner Flanagan: I'll second it.

Vice Chairman de la Fe: Mr. Flanagan seconded. And I will not ask for further discussion. We have discussed it enough. All those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries. Mr. Lawrence.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2011-PR-017, SUBJECT TO DEVELOPMENT CONDITIONS DATED –

Ms. Lewis: April 17th.

Commissioner Lawrence: APRIL 17th, 2013, AND SUBJECT TO THE BOARD'S APPROVAL OF THE REZONING.

Commissioners Flanagan and Hart: Second.

Vice Chairman de la Fe: Seconded by Mr. Hart and Mr. Flanagan. Is there any discussion? Hearing and seeing none, all those in favor please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

Commissioner Lawrence: Finally, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE MODIFICATIONS AND WAIVERS AS LISTED IN THE HANDOUT PROVIDED TO YOU TODAY AND WHICH SHALL BE MADE A PART OF THE RECORD OF THIS CASE.

Commissioners Flanagan and Hart: Second.

Vice Chairman de la Fe: It's been moved and seconded. Is there any discussion? I would just say that there are 18 of those things. I wish we could do something about amending the Ordinances and the provisions. Any further discussion? All those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

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(The motions carried unanimously with Commissioners Hurley and Murphy absent from the meeting.)

JLC