

Fairfax County Sidewalk and Trail Committee
Minutes of the October 10, 2007 Meeting

Members Attending: Deborah Leser (Sully District), Wade Smith (Dranesville District), Bruce Wright (Hunter Mill District), Peter Christensen (Mount Vernon District), Roger Diedrich (Providence District), Roy Brooks (Mason District), Gene Bartlow (Springfield District), Mary Flowers (Clifton Horse Society), Dan Iglhaut (NVRPA), and Ann Pimley (Fairfax Area Disability Services Board).

Staff Attending: Charlie Strunk and Jeffrey Hermann (FCDOT), Regina Coyle, David Marshall and Sheng-Jieh Leu (DPZ), Assad Ayoubi and Dave Anglin (DPWES).

The meeting was called to order at 7:35 PM by Wade Smith, Vice Chairman.

Minutes of the September Meeting: The minutes were approved unanimously with four changes. On page 3 in Jenny Pate's report "The Accotink Stream Valley reroute has been bid" was changed to "The Accotink Stream Valley CCT reroute is expected to be bid this fall." On page 3, Rosslyn and Buses were misspelled and were corrected. In the last paragraph the study on the extension of the Mount Vernon Trail has been completed, the George Washington Memorial Park Superintendent David Vela has not released the report with the park's recommendations.

Presentation by Fairfax County Staff on Waivers and Escrows.

David Anglin began the presentation by describing the way DPWES determines the amount of money set aside in escrow for trails that are waived. After the waiver has been granted, the developer will provide plans of the required structures. Employees of DPWES will "scale off" the length of the trail. The amount of money that can be required as an escrow is established by the Public Facilities Manual. It is a function of the square yardage of trail that would have been constructed and ranges from \$12 per square yard to \$54 per square yard depending on the type of trail to be constructed. If DPWES knows that the county will be constructing the structure they can ask for a 25% administrative fee to cover those costs. The conditions of the site are usually not known since a field visit is not usually done. If specific conditions are known, DPWES can attempt to increase the amount of the waiver accordingly but this is not routine.

Bruce Wright calculated that the amount of money escrowed for an asphalt trail using the formula described above would be less than 25% of the amount that Charlie Strunk described as the cost of constructing asphalt trail by the county today (\$100 to \$150 per linear foot).

The escrowed funds are tied to the site at which the improvements were to have been constructed. If the construction of the walkway appears to be unlikely in the near future, funds are often donated instead to the District Walkway Funds. This is not a part of the escrow process but takes place instead of the escrow. A donation to the Walkway Fund is a voluntary donation on the part of the developer. Funds in the District Walkway Fund

are not tied to a specific site but frequently are applied to projects that serve the community that would have been served by the waived structure.

The fact that the escrowed funds are tied to a specific site has resulted in the large amount of money set aside for escrows that is insufficient for each project but in aggregate is a significant sum. There are approximately 1400 funds for waived walkways. Fourteen million dollars is set aside for all escrows of which 85% are walkways. Because of a legal opinion by the Commonwealth of Virginia, these funds are not available for anything other than the original projects for which they were set in escrow. Senate Bill 1252 from the 2007 General Assembly would have made this money available for other uses but it was not passed.

Mr. Anglin reported that in September, 2007 the regulations governing escrow amounts were changed for the first time since 2001. Effective January 1, 2008 the amount of money required for escrowed trails will be increased 18% and there will be an automatic adjustment yearly based on the Construction Price Index of the prior year. The changes were recommended by a consultant hired by the county.

Mr. Anglin has made a list of the escrows available to the committee members. Each project is identified by Tax Map as well as magisterial district, however the magisterial district designations may not be correct since they have not been changed as the district boundaries have been changed. Committee members are encouraged to review the projects to determine if any are appropriate for implementation by the county at this time.

Mr. Anglin described the process followed by the county when a developer defaults on a bond without completing required improvements. For many years there was insufficient staff to enforce compliance with bonds or follow up on bonds in default. During the past few years, the Board of Supervisors has provided more staff and asked for increased enforcement. Usually Bonds and Appeals attempts to work with the developer to get the improvements built since insufficient funds are usually remaining on the bonds to construct the missing improvements. Penalties accruing to developers who default on bonds include: more stringent bond requirements for future projects and/or seizure of funds. The PFM states that developers who repeatedly default on bonds must obtain the approval of the BOS for any new projects in the county.

Assad Ayoubi, Regina Coyle, and David Marshall described the process of granting waivers in Fairfax County. Mr. Ayoubi stated that DPW follows the recommendation sent to them by DPZ, which he assumed was the recommendation by the Trails Committee. Mr. Ayoubi stated that his department never went against the recommendation of the Trails and Sidewalks Committee recommendation as forwarded to him by Mr. Leu. The committee members explained that the recommendation to approve a waiver was determined by the interaction of the Trail and Sidewalk Committee Representative and the staff of the District Supervisor and was ultimately the decision of the District Supervisor. Gene Bartlow referred Mr. Ayoubi to the report that the committee members receive each month which lists decisions that were not in accordance with the recommendation of the Trails and Sidewalks Committee Representatives.

Mr. Ayoubi stated that during the past 10 years DPW was granting fewer waivers since the philosophy of the department was that the BOS wanted the trails to be built. He further stated that fewer waivers are being requested by developers because this philosophy was well known to them.

Trails are not usually waived in their entirety. More often the developer requests a modification of the original requirement. The amount of improvements that can be required of a developer depends on the size of the project that is proposed. Case law in Virginia (State Code 15-2 Zoning Ordinances) has established that the cost of the improvements can not be disproportionate to the project proposed. For example, if an applicant wants to be a concrete apron for a piece of mechanical equipment, the applicant may need to apply for a waiver for any improvements that are triggered by the application – such as turn lanes, sidewalks, or trails. Such a small project would not normally be sufficient to enable the county to require construction of the road improvements but would be considered onerous to the applicant and he or she could sue the county for unfairly restricting his or her right to develop his or her property. Although lawsuits are not common, the process of negotiation frequently involves the Fairfax County Attorney's office. This office can recommend to DPZ and DPWES that certain improvements be waived.

Regina Coyle stated that when a waiver request is received, the zoning evaluation process includes evaluation by DPZ and two public hearings. The staff develops a report and a position which is forwarded to the Planning Commission for its decision. That recommendation is then forwarded to the BOS where final responsibility for a decision lies.

The committee members and staff present discussed the Springfield Country Club Waiver extensively. The original request for was an amendment to a special exception to allow the country club to enclose their tennis courts as well as make other improvements which include such items as expanded parking. The trail that would have been required was along Old Keene Mill Road. Photographs of the affected area had been distributed to the committee members by District Representative Gene Bartlow. DPZ's recommendation to the Planning Commission and the Planning Commission's recommendation to the BOS was for partial construction of the required trail to the bus stop. Several members of the committee expressed concern that an opportunity to construct a trail in an area already extensively traversed by the public was lost. It was the opinion of the staff that the scope of the proposed development did not warrant asking for more trail and that denial of the waiver request would place the county at risk of litigation.

Wade Smith thanked the staff for their presentation. The committee members will continue to discuss this issue at the November meeting.

Staff Report – Charlie Strunk

Mr. Strunk introduced Jeff Hermann, a new transportation planner who will work with both the bicycle and pedestrian task forces.

On October 15, the county will present the new bicycle racks on the Fairfax Connector buses. Instructions on the use of the racks are available on the web site and DVD's will be shown on October 15th.

A first draft of a bicycle map of the county will be presented to the BOS on October 15 as well. Mr. Strunk thanked the Fairfax Advocates for Better Bicycling (FABB) for their assistance in the production of this map.

Staff Report – Sheng Leu

The deadline for nominating a trail to National Recreational Trails is November 1, 2007. Committee members suggested the Cross County Trail. Mr. Leu will find out if the CCT was nominated last year.

The web site of the Council of Governments (COG) includes a file of Bicycle and Pedestrian Plans for the National Capital Region. Using the file, Mr. Leu identified 138 trails in Fairfax County. He could not ascertain whether they were planned, funded or constructed.

Greg Galligan has resigned from the At-Large position. The chairman of the BOS appoints a representative to this position.

The terms of a number of committee members will expire at the end of January, 2008.

Old Business

Wade Smith encouraged district representatives to work on verifying the Existing Trails Map and get the results to Mr. Leu as soon as possible.

Wade Smith expressed a concern that a number of committee members have missed several meetings in a row and hopes that they will be able to return to full functioning on the committee soon.

New Business

Ann Pimley asked that the committee revisit the issue of a regulation that sidewalks be cleared of snow at the next meeting.

Ann Pimley notified the committee of the Transportation Summit on October 27 at the Government Center. Although the focus is on transportation for people with disabilities, all are welcome. The Summit is from 12:30 PM to 3:00 PM.

The meeting was adjourned at 9:40 PM.

Submitted by Deborah Rimmer Leser, Secretary