

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
THURSDAY, FEBRUARY 4, 2016**

Present: Peter F. Murphy, Springfield District
Frank A. de la Fe, Hunter Mill District
Ellen J. Hurley, Braddock District
John C. Ulfelder, Dranesville District
James T. Migliaccio, Lee District
Julie Strandlie, Mason District
Kenneth A. Lawrence, Providence District
Karen Keys-Gamarra, Sully District
James R. Hart, Commissioner At-Large
Janyce N. Hedetniemi, Commissioner At-Large
Timothy J. Sargeant, Commissioner At-Large

Absent: Earl L. Flanagan, Mount Vernon District

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The meeting was called to order at 8:18 p.m., by Chairman Peter F. Murphy in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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COMMISSION MATTERS

RZ-2014-DR-022 – BASHEER/EDGEMOORE-BROOKS LLC (Decision Only)
(The public hearing on this application was held on January 21, 2016.)

(Start Verbatim Transcript)

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Commissioner Ulfelder: Thank you, Mr. Chairman. As I mentioned last night, I was planning to further defer the decision in the Brooks Farm rezoning in Great Falls, so with that, I MOVE THAT THE PLANNING COMMISSION FURTHER DEFER THE DECISION ONLY FOR BASHEER/EDGEMOORE BROOKS, LLC, RZ 2014-DR-022, TO A DATE CERTAIN OF FEBRUARY 25th, 2016, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENTS.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to further, further defer decision only on RZ 2014-DR-022, to a date certain of February 25th, with the record remaining open for comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

The motion carried by a vote of 11-0. Commissioner Flanagan was absent from the meeting.

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Chairman Murphy announced that he had met with Vice Chairman de la Fe this evening regarding the recommendations for positions on the Commission's committees and would submit them to staff tonight to come up with a final version which would be presented to the Commission at the next meeting to ratify the nominations.

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Chairman Murphy announced that Jeanette Nord, Senior Deputy Clerk to the Planning Commission, had submitted her resignation effective February 19, 2016. She had been with the Commission since May 2007 and they wished her well in her future endeavors.

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Prior to the public hearing, Commissioner Lawrence announced his intent to defer the decision only on PCA/CDPA 2011-PR-023 CITYLINE PARTNERS, LLC & FDP 2011-PR-023-04 RENAISSANCE CENTRO TYSONS, LLC, scheduled for tonight due to one issue that would require additional time to address.

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ORDER OF THE AGENDA

Secretary Hart established the following order of the agenda:

1. PCA/CDPA 2011-PR-023– CITYLINE PARTNERS, LLC
FDP 2011-PR-023-04 – RENAISSANCE CENTRO TYSONS, LLC

This agenda was accepted without objection.

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PCA/CDPA 2011-PR-023 - CITYLINE PARTNERS, LLC –

Appls. to amend the proffers and the conceptual development plan associated with RZ 2011-PR-023, previously approved for mixed-use development (hotel and retail), to permit mixed-use development (multi-family residential and retail) and associated modifications to proffers and site design with an overall Floor Area Ratio (FAR) of 3.09. Located on the S. side of Westpark Dr., at its intersection with Jones Branch Dr., on approx. 2.0 ac. of land zoned PTC. Comp. Plan Rec: Transit Station Mixed-Use. Tax Map

29-4 ((7)) 2A. (Concurrent with FDP 2011-PR-023-04.)
PROVIDENCE DISTRICT. PUBLIC HEARING.

FDP 2011-PR-023-04 - RENAISSANCE CENTRO TYSONS, LLC – Appl. to approve a final development plan for RZ 2011-PR-023 to permit mixed-use development (multi-family residential and retail). Located on the S. side of Westpark Dr., at its intersection with Jones Branch Dr., on approx. 2.0 ac. of land zoned PTC. Tax Map 29-4 ((7)) 2A. (Concurrent with PCA/CDPA 2011-PR-023.)
PROVIDENCE DISTRICT. PUBLIC HEARING.

John McGranahan, Jr., Esquire, Applicant's Agent, Hunton & Williams LLP, reaffirmed the affidavit for PCA/CDPA 2011-PR-023, which was dated January 15, 2016.

Lynne Strobel, Esquire, Applicant's Agent, Walsh, Colucci, Lubeley & Walsh, PC, reaffirmed the affidavit for FDP 2011-PR-023-04, which was dated January 19, 2016.

Commissioner Hart disclosed that Hart and Horan, PC, currently had an attorney/client relationship with the law firm of Walsh, Colucci, Lubeley & Walsh, PC, in which there were attorneys representing adverse parties, but indicated that it would not affect his ability to participate in this case.

Suzanne Wright, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She noted that staff recommended denial of the applications because the Workforce Housing Proffers, as currently drafted, did not meet the Comprehensive Plan nor the Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines as approved by the Board of Supervisors.

Commissioner Lawrence asked Ms. Wright if this proposal, not including the issue with the Workforce Housing Proffers, was on par with the quality of previous Tysons proposals. She agreed that the application was similar to the quality of other applications received.

Ms. Strobel said that these applications were a part of Arbor Row, Building D which was zoned Planned Tysons Corner Urban District, and were previously approved for a hotel and retail. She said the application before the Commission tonight was for a residential building with retail. Ms. Strobel said the applicant had worked with staff through design and proffered improvement issues but the recommendation for denial was based on the method by which the applicant had chosen to address the Workforce Housing objective. She explained that this application provided two options: (1) to provide 20 percent of the units as Workforce Dwelling Units (WDUs) or (2) the applicant would make a two part cash contribution consisting of 1.5 percent of the sale prices of the market rate dwelling units to be used to establish the Tysons Affordable Housing Trust Fund.

Ms. Strobel explained the following regarding Option 2, cash contribution for WDUs:

- The projected total contribution should be between 1.3 and 1.6 million dollars with the provision of a minimum contribution of 1 million dollars should the units sell for less;
- The establishment of an affordable trust fund in Tysons was critical to ensure that funds were collected from this development along with other non-residential development;
- It would provide flexibility and opportunity regarding the purchase and/or preservation of WDUs in Tysons; and
- Cash contributions were not prohibited by the Tysons Workforce Dwelling Unit Policy.

Ms. Strobel explained that the decision to include the contribution option for these workforce dwelling units were due to the following concerns:

- A purchaser qualifies for a WDU to buy the unit and then the monthly condominium fees increase or there was a special assessment that was beyond the purchaser's means;
- A purchaser buys a WDU while a student then upon completing the education gets a job which exceeds the minimum threshold earnings, that unit would no longer meet the WDU objective; and
- Military personnel who qualify then were unable to meet the restriction of owner occupied if transferred.

Ms. Strobel said that the nature of high-rise construction created some limitations regarding the unit layout, the ability to change that layout, and the ability to vertically stack the units along with the cost which could result in significant economic loss. She said that when the Affordable Dwelling Unit Ordinance was adopted in 1990, it was supported by the development community because it offered bonus density which off-set the cost of providing housing in crisis that were less than market rate. Ms. Strobel further explained that over the years, this Ordinance was amended to include low-rise multifamily construction but high-rise was never included because no amount of bonus density could be provided to off-set the cost of affordable housing with high-rise construction. She said that this contribution proposal was comparable to other jurisdictions and a way to fulfill the Workforce Housing objective while generating a source of capital to achieve the housing vision in Tysons. She said the Tysons Plan had flaws because it did not distinguish between for rent and for sale WDUs and between high-rise and low-rise construction. Ms. Strobel said that this application should be evaluated on its merits and compared it to other Tysons applications that were allowed to contribute funds in lieu of athletic fields due to their small project size. She suggested that the Board of Supervisors initiate a targeted review of the for sale WDU policy concurrently with the approval of these applications.

Commissioner Hedetniemi commented that in terms of the priorities of the county, Workforce Housing was critical if it was going to balance the type of populations it wanted to encourage within walking distance of businesses and jobs. She said it was too simplistic to compare the applicant's proposal with the athletic field contributions and did not agree with Ms. Strobel's approach to the situation.

Commissioner Strandlie pointed out that during the Seven Corners Comprehensive Plan Amendment the Commission requested a follow-on motion for a comprehensive study of the county's Affordable Housing Policy and suggested that Ms. Strobel contact Planning Division staff to see what resulted from the subcommittee.

Commissioner Hart said that there had been applications before the Commission previously where a policy was not in effect yet but the application, along with the proffers, was still decided upon and asked staff how much additional time was needed. Cathy Lewis, ZED, DPZ, explained that staff had been in discussions with the applicant regarding the provision of units only until January 4, 2016, when they included the buyout contribution as a part of the revised proffers. She said it would require additional assistance and research due to the complicated proposal and could not provide a timeframe at this time. Mr. Fred Selden, Director, DPZ, agreed with Ms. Lewis and added that over the deferral period staff would meet with the Department of Housing and Community Development to determine what process they would need to go through and to establish a timeframe. He noted that it might be a two-step process with one process for the zoning case and another process that addressed the broader Tysons Plan.

Commissioner Hart asked Ms. Strobel if there was a way to differentiate the condominium fees between a workforce dwelling unit and the market units. She said there might be a solution that involved the market rate owners subsidizing the workforce unit owners or the developer subsidizing but questioned whether it would be a fair situation to either party. Commissioner Hart noted that there was an amount of risk involved when buying into a condominium or townhouse community for all owners. He asked Ms. Strobel if the applicant was still attempting to provide the units or was only opting for the cash contribution. She said the applicant was willing to continue the search for opportunities to provide the units.

Ms. Lewis noted that the applicant had the option to locate the WDUs in another location, such as a rental building in the Arbor Row area, and that they did not have to be within the for sale unit building.

Commissioner Ulfelder and Ms. Strobel discussed whether this was a problem primarily facing the high-rise condominium developer. She explained that it was the high cost of this type of construction that forced them to find another alternative for the WDUs. Commissioner Migliaccio asked Ms. Strobel if the applicant would consider the third option proposed by Ms. Lewis, units provided in other rental buildings within Arbor Row. Ms. Strobel explained that could be an issue because the residential buildings had been sold to other

developers. In addition, she said it would be a challenge to provide rental WDUs concurrently with the building of the condominium structure and asked if that would be a requirement. Commissioner Migliaccio suggested that staff, the Commission, and the Board of Supervisors would need to find some flexibility as this was continued to be worked through. Further, noting that the county would require some commitment to have the WDUs within this condominium building or a nearby one.

Commissioner Hurley asked Ms. Lewis if the buyout option was in violation of the Comprehensive Plan; wherein, she explained that while it was not in violation, staff had no guidelines on what would be an appropriate amount. In addition, Ms. Lewis said the applicant requested a 16 percent bonus density which was normally given when units were provided but since this proposal was for a monetary contribution she questioned why they would need it. She said staff would need to research the surrounding jurisdictions policies in order to get a point of comparison and then determine what would be appropriate for Fairfax.

Commissioner Ulfelder and Ms. Wright discussed staff's primary concerns regarding the WDU options proposed by the applicant; wherein, she explained that because this was the only building in this application there would not be another option readily available where the county could place these units once given a cash contribution and it was a concern whether the proffered contribution would be equivalent to the provision of 20 WDUs. She reiterated that they would need to benchmark with other jurisdictions with similar issues to determine a guideline for Fairfax County.

Commissioner Sargeant asked Ms. Strobel what the market rate would be for these condominiums. She said they were luxury units and expected an average sales price of \$800,000 dollars per unit. Commissioner Sargeant discussed with Charlene Fuhrman-Schulz, Department of Housing and Community Development, the rate determined for the WDUs; wherein, she explained that they created a price for these units based on the unit size, Area Median Income (AMI) and the condominium fee:

- Efficiency Unit – 70 percent of AMI: \$180,000
80 percent of AMI: \$191,000
100 percent of AMI: \$247,000
- One bedroom Unit - 70 percent of AMI: \$180,000
80 percent of AMI: \$212,000
100 percent of AMI: \$276,000
- Two bedroom Unit - 70 percent of AMI: \$225,000
80 percent of AMI: \$265,000
100 percent of AMI: \$346,000

Commissioner Sargeant asked staff if there were opportunities to make these units available to a broader population by providing them outside of this building or area which might make them even more affordable. Mr. Selden explained that the Tysons area was predominately non-

residential and it was a challenge to find affordable land that would allow for the development of affordable housing projects. Commissioner Sargeant commented that the pricing for WDUs appeared to be high and suggested that staff look at additional alternatives that could further help our workforce.

Commissioner Strandlie discussed with Ms. Fuhrman-Schulz previous circumstances where home owner fees increased or special assessments had occurred with affordable dwelling unit owners; wherein, she explained that while staff would work with the individual to come up with a solution, they own the unit and were responsible for such fees.

Commissioner Hedetniemi commented that the Comprehensive Plan was a guide; therefore, prohibition should not be applied. Ms. Strobel said that the affordable housing provisions discussed provided flexibility and creativity to provide opportunities for housing. She reiterated that while the Comprehensive Plan did not consider cash contributions desirable, it was not prohibited.

Commissioner Lawrence summarized that there were two issues regarding this application, one was to solve the WDU contribution without creating a precedent and the second problem was what to do with the longer range view of Workforce Housing Units. He said a possible solution was to find a way to provide WDUs within the boundaries of Tysons, on a circulator route, with convenient access to metro for people who are representative of the population.

Commissioner Migliaccio noted that many of the office buildings and other non-residential uses, who proffered cash contributions to the housing fund, would not be built for many years; therefore, the applicant's cash contribution would not be able to be combined with other contributions.

Commissioner Keys-Gamarra asked staff if any of the surrounding jurisdictions had a policy where the developer received a waiver for providing WDUs and a bonus of higher density. Ms. Wright said Arlington County had a tiered system where a developer would be required to go through a series of steps before it was decided upon. Ms. Fuhrman-Schulz added that Arlington County had a high-rise building that went through the process which involved a base density requirement along with four options to meet the affordable housing requirement by providing units: on-site, nearby off-site, elsewhere in the county or a cash contribution. She noted that if a developer wanted a bonus density, it would be received only when the units were provided. Ms. Strobel said that Arlington County had a policy in effect where they had contributions based on low-density along with a tier system but noted that if there was mutual agreement on a buyout they would accept it along with a bonus density associated with it. Commissioner Keys-Gamarra was concerned that developers would take a buyout option and the county would be without the needed affordable dwelling units. She suggested that staff research the other jurisdictions policies so the Commission could see what those comparisons were.

Commissioner Sargeant asked Ms. Strobel who would build the units after the contribution was placed in the housing trust fund. She suggested that over time, the county could implement a partnership with a non-profit group that could be involved, similar to the Arlington County

program. Ms. Fuhrman-Schulz explained that the county had the right to do capital construction and rehabilitation with the housing trust fund; however, they could not buy units outright and there was a time limitation on how long the money could remain in that fund. She said that construction would be a solution but the county would require enough money in that fund along with partners to build the units.

Commissioner Lawrence commented that a great deal of Tysons had yet to be redeveloped and some of it may never be; therefore, the county was limited to either purchasing affordable units or entering into an agreement where a developer would acquire and turn them over to the county. He said that both options were limited and created a struggle for the county to work out an arrangement which resulted in units being provided.

Chairman Murphy called the one listed speaker and recited the rules for testimony.

Mark Zetts, 6640 Kirby Court, Falls Church, representing the McLean Citizens Association, said that the association had adopted a resolution in support of this application in December 2015, a copy of which is in the date file. He noted that last night the association members met again to discuss the new proffers, which included the buyout option, and were still in favor of approval. Mr. Zetts said that this was an improvement over the originally approved application citing the attractive building design with adequate parking in the back. He also noted that the number of trips generated were cut in half from the original application. Mr. Zetts said this was a smaller building than others in Tysons and the cash contribution might give more flexibility. He said there were currently proffers for 3,500 affordable dwelling units in the Tysons area and cautioned against comparing Tysons to other localities because it was very different. In closing, Mr. Zetts said that since the Tysons Plan was adopted in June 2010, there had been unfinished business addressed over the years, similar to this current WDU situation, and was confident that the county would deal with it appropriately.

Chairman Murphy called for speakers from the audience, but received no response. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Chairman Murphy closed the public hearing and recognized Commissioner Lawrence for action on this item.

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(Start Verbatim Transcript)

Chairman Murphy: The public hearing is closed; Mr. Lawrence, please.

Commissioner Lawrence: Thank you, Mr. Chairman.

Chairman Murphy: Welcome back.

Commissioner Lawrence: I said at the outset that I would move to defer the decision only. I think the reason for that is now obvious. If commissioners haven't had a chance to read the addendum that was issued to the staff report, we, I think we only got it last night, I recommend

that you take a look at it. That the developer has approached this in good faith is obvious from the merits of the – of the – of the application, setting aside the difficulty we have with WDUs. That the county is only recently on the scene with the present proffer and its permutations, I will accept. But time is of the essence. Time is money. We need to get this, this case settled without knocking everything else sideways and at the same time go to work on what do we do really about this should it come up again. I do agree with Ms. Strobel that, that we are not going to have a plethora of luxury condominiums in Tysons. On the other hand, we need the WDUs. It's a, it's a fundamental of the Tysons Plan. So we need to work toward that and I believe that we can, in good faith, resolve this thing. Therefore, Mr. Chairman, I MOVE TO DEFER THE DECISION ONLY – find the right piece of paper – on, FOR PCA/CDPA 2011-PR-023 AND FDP 2011-PR-023-4 TO A DATE CERTAIN OF FEBRUARY 17TH, 2016, WITH THE RECORD TO REMAIN OPEN FOR WRITTEN AND ELECTRONIC COMMENT.

Chairman Murphy: Is that 2016?

Commissioner Lawrence: Yeah.

Chairman Murphy: Okay.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of the motion? All those in favor of the motion to defer these applications to a date certain of February 17th, with the record remaining open for comment, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries and I believe there's a Board day of the 16th?

Commissioner Lawrence: So we need to...

Chairman Murphy: So we need TO MOVE, WE NEED TO RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT DEFER ITS PUBLIC HEARING DAY ON THESE APPLICATIONS –

Commissioner Lawrence: That was an inter-commissioner ballistic missile that just struck over.

Commissioner de la Fe: It came from your case.

Chairman Murphy: I thought you were firing something at me. I was ready to go back to that. Okay... – TO A DATE FOLLOWING THE PLANNING COMMISSION'S DETERMINATION ON FDP 2011-PR-023-04 AND PCA/CDPA 2011-PR-023, is there a motion?

Commissioner Hart: SO MOVED.

Chairman Murphy: Mr. Hart.

Commissioner Migliaccio: Second.

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

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

(End Verbatim Transcript)

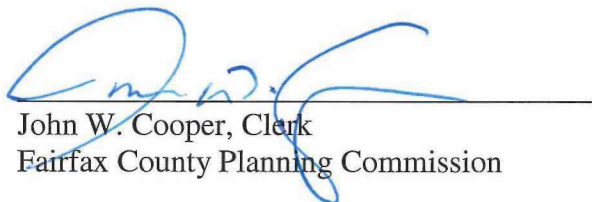
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The meeting was adjourned at 9:45 p.m.
Peter F Murphy, Chairman
James R. Hart, Secretary

Audio and video recordings of this meeting are available at the Planning Commission Office,
12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Teresa M. Wang

Approved on: July 14, 2016



John W. Cooper, Clerk
Fairfax County Planning Commission