

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
THURSDAY, APRIL 19, 2018**

PRESENT: Peter F. Murphy, Chairman, Springfield District
James R. Hart, Commissioner At-Large
James T. Migliaccio, Lee District
Ellen J. Hurley, Braddock District
John C. Ulfelder, Dranesville District
John A. Carter, Hunter Mill District
Julie M. Strandlie, Mason District
Walter C. Clarke, Mount Vernon District
Phillip A. Niedzielski-Eichner, Providence District
Donté Tanner, Sully District
Mary D. Cortina, Commissioner At-Large

ABSENT: Timothy J. Sargeant, Commissioner At-Large

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The meeting was called to order at 7:36 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

2232-M17-37 – Green Spring Gardens, 4603 Green Spring Road, Alexandria, VA 22132

(Start Verbatim Transcript)

Commissioner Strandlie: So, the first thing – first thing on agenda is a “feature shown” related to Green Springs Garden. The Master Plan for Green Spring Garden serves as a conceptual guide for the future development of the park site. The revised Master Plan was approved by the Fairfax County Park Authority Board on April 27th, 2016, after a series of public meetings that included input from the surrounding community. It proposes the incorporation of 2.5 acres of recently acquired land into the existing park, as well as – and as well as an expansion of the existing horticulture center and gardens, enhancements to the park entry zone, additional parking, new trails, improving pedestrian connectivity and guidance for environmental and heritage resources. I concur with staff’s conclusion that the revision of the Master Plan for Green Springs Gardens, located at 4603 Green Spring Road, Alexandria, Virginia, application 2232-M17-37 is consistent with the Comprehensive Plan provisions and should be considered a “feature shown,” pursuant to Section 15.2-2232 of the Code of Virginia.

Commissioner Cortina: Second.

Chairman Murphy: Seconded by Ms. Cortina. Is there a discussion of the motion? All those in favor of the motion to concur with the feature shown determination in 2232-M17-37, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

The motion carried by a vote of 11-0. Commissioner Sargeant was absent from the public hearing.

(End Verbatim Transcript)

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RZ 2017-MA-013/SE 2017-MA-009 – VULCAN MATERIALS COMPANY, LLC
(Decision Only) (Public Hearing on these applications held on March 1, 2018; Decision Only from March 8, 2018 and March 15, 2018)

(Start Verbatim Transcript)

Commissioner Strandlie: Thank you. I have one more thing. On tonight's agenda was a decision only on Vulcan Materials Company application for a rezoning and a special exception. I am going to defer this decision only again to June 14th, 2018. There will be another addendum to the staff report and we will continue to – to work on the specifics on this case. I once again repeat my offer to the community. I would be happy to meet with you to discuss process and substance. My email address is julie.strandlie@fairfaxcounty.gov. Thank you. And, Mr. Chairman, with that, I MOVE TO DEFER THE DECISION ONLY FOR RZ 2017-MA-013 AND SE 2017-MA-009 TO A DATE CERTAIN OF JUNE 14TH, 2018, WITH THE RECORD REMAINING OPEN FOR WRITTEN TESTIMONY.

Commissioners Hart and Cortina: Second.

Chairman Murphy: Seconded by Mr. Hart and Ms. Cortina. Is there a discussion of that motion? All those in favor of the motion to defer decision on RZ 2017-MA-013 and SE 2017-MA-009 to a date certain of June 14th, with the record remaining open for comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Strandlie: THIS WILL RESULT IN THE BOARD OF SUPERVISORS HEARING CONCURRENTLY SCHEDULED FOR MAY 1ST, BEING DEFERRED TO A LATER DATE, WITH A RECOMMENDATION OF THE BOARD OF SUPERVISORS HEARING BE DEFERRED TO JUNE 10TH.

Chairman Murphy: Yeah, we have...all those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Strandlie: Thank you.

Chairman Murphy: Thank you very much.

The motion carried by a vote of 10-0-1. Commissioner Sargeant was absent from the public hearing. Commissioner Clarke abstained from the vote.

(End Verbatim Transcript)

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Chairman Murphy announced the Planning Commission's annual awards banquet scheduled for Sunday, April 22, 2018. He stated four former Planning Commissioners would be honored, Frank A. de la Fe, Earl E. Flanagan, Janyce N. Hedetniemi, and Karen A. Keys-Gamarra.

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ORDER OF THE AGENDA

Commissioner Migliaccio established the following order of the agenda:

1. PCA 82-S-032-02 – STERLING CENTER LC
2. PCA 91-H-001/PCA 79-C-090-02/RZ 2017-HM-019/SE 2017-HM-016 – TH HOLDING COMPANY, LLC
3. PCA/FDPA 1996-LE-047 – HD DEVELOPMENT OF MARYLAND, INC.
4. RZ/FDP 2017-SP-029 – CHRISTOPHER LAND, LLC

This order was accepted without objection.

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Chairman Murphy called the first case on the agenda.

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PCA 82-S-032-02 – STERLING CENTER LC – Appl. to amend the proffers for RZ 82-S-032 previously approved for industrial use to permit industrial use and associated modifications to proffers and site design with an overall Floor Area Ratio (FAR) of 1.0. Located on the W. side of Sully Rd. and S. side of Penrose Pl. approx. 800 ft. E. of Lee Rd. on approx. 9.72 ac. of land zoned I-6 and WS. Comp. Plan Rec: Industrial Use. Tax Map 34-3 ((1)) 30A and 30B. SULLY DISTRICT. PUBLIC HEARING.

John F. Amatetti, Applicant's Agent, VIKA Virginia, LLC, reaffirmed the affidavit dated March 16, 2018.

Sharon Williams, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. She stated that staff recommended approval of PCA 82-S-032-02.

Commissioner Tanner noted a typographical error in Appendix 1, Number 4 of the proffers. He stated the escrow amount should be \$100,000 and not \$10,000. Ms. Williams stated the applicant was made aware of the typographical error and the change would be made before the execution of the proffers, prior to the Board of Supervisors' hearing.

Commissioner Hart requested clarification of the escrow amount. Ms. Williams restated the escrow amount would be changed to \$100,000. Commissioner Hart inquired about the status of the construction of a traffic signal at the intersection of Penrose Place and Lee Road. Elizabeth Iannetta, Transportation Planning Division, Fairfax County Department of Transportation stated COSTCO Wholesale submitted a traffic signal installation plan which was being reviewed by the Virginia Department of Transportation. The final outcome of the signal installation plan and design for that application had not been determined. Other transportation improvements may be required to mitigate the impact of site development.

Mr. Amatetti gave a presentation wherein he stated the application was straightforward. An error in the proffer from 1982 was amended.

Commissioner Cortina stated the Environmental Analysis, Environmental Hazards Section of the staff report noted that "Petroleum-related uses have historically occurred on the site, raising the possibility of soil and groundwater contamination and future exposure to toxic vapors." Commissioner Cortina asked why the petroleum related impact on the site was not addressed. Mr. Amatetti stated the impact was addressed. When Southern States Cooperative terminated the lease of the property, Phases I and II were performed and mediation was conducted. A final bill of health was conducted and a report was submitted to staff. Ms. Williams confirmed.

There being no listed speakers, further comments or questions from the Commission, Chairman Murphy closed the public hearing and recognized Commissioner Tanner for actions on this application.

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(Start Verbatim Transcript)

Commissioner Tanner: Thank you, Mr. Chairman. I do agree this is a pretty straightforward case and I agree with staff's recommendation to make the change. Therefore, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF PCA 82-S-032-02 TO THE BOARD OF SUPERVISORS, SUBJECT TO EXECUTION OF THE PROFFERS DATED APRIL 5, 2018.

Commissioner Niedzielski-Eichner: Second.

Chairman Murphy: Seconded by Mr. – what Mr. Carter? Is there a... Oh, Mr. Niedzielski-Eichner. I'm sorry. Is there a discussion of the motion? All those in...

Commissioner Hart: Mr. Chairman.

Chairman Murphy: Yes. Mr. Hart.

Commissioner Hart: And subject to the ten thousand, I mean the hundred dollars being changed to ten thousand.

Commissioner Tanner: Correct.

Chairman Murphy: Okay.

Commissioner Hart: In number four.

Commissioner Tanner: It's a hundred thousand.

Commissioner Hart: A hundred thousand. Okay. I thought it said – I thought it said a hundred dollars. Well whatever, it should be a lot more.

Commissioner Tanner: The – the total amount is a hundred thousand dollars.

Chairman Murphy: A hundred thousand. Okay. Let the record reflect. All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 82-S-032-02, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much. Thank you, sir.

The motion carried by a vote of 11-0. Commissioner Sargeant was absent from the public hearing.

(End Verbatim Transcript)

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PCA 79-C-090-02 – TH HOLDING COMPANY, LLC – Appl. Appl. to permit deletion of land area from RZ 79-C-090. Located N. of Sunset Hills Rd. and W. of Business Center Dr. on approx. 3.58 ac. of land zoned I-4. Comp. Plan Rec: Office Use. Tax Map 18-3 ((8)) 10A1 (pt.). (Concurrent with PCA 91-H-001, RZ 2017-HM-019 and SE 2017-HM-016). HUNTER MILL DISTRICT. PUBLIC HEARING.

PCA 91-H-001 – TH HOLDING COMPANY, LLC – Appl. Appl. to permit deletion of land area from RZ 91-H-001. Located N. of Sunset Hills Rd. and W. of Business Center Dr. on approx. 1.24 ac. of land zoned I-4. Comp. Plan Rec: Office Use. Tax Map 18-3 ((8)) 10A1 (pt.). (Concurrent with PCA 79-C-090-02, RZ 2017-HM-019 and SE 2017-HM-016). HUNTER MILL DISTRICT. PUBLIC HEARING.

RZ 2017-HM-019 – TH HOLDING COMPANY, LLC – Appl. to rezone from I-4 to I-4 to permit a hotel and office development with an overall Floor Area Ratio (FAR) of 0.67. Located N. of Sunset Hills Rd. and W. of Business Center Dr. on approx. 4.82 ac. of land. Comp. Plan Rec: Office Use. Tax Map 18-3 ((8)) 10A1. (Concurrent with PCA 79-C-090-02, PCA 91-H-001 and SE 2017-HM-016). HUNTER MILL DISTRICT. PUBLIC HEARING.

SE 2017-HM-016 – TH HOLDING COMPANY, LLC – Appl. under Sects. 5-404, 9-512 and 9-618 of the Zoning Ordinance to permit a hotel and office development and increase Floor Area Ratio (FAR). Located at 1741 Business Center Dr., Reston, 20190 on approx. 4.82 ac. of land zoned I-4. Tax Map 18-3 ((8)) 10A1. (Concurrent with PCA 79-C-090-02, PCA 91-H-001 and RZ 2017-HM-019). HUNTER MILL DISTRICT. PUBLIC HEARING.

Mark C. Looney, Applicant's Agent, Cooley LLP, reaffirmed the affidavit dated April 10, 2018.

Angelica Gonzalez, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. She stated that staff recommended approval of PCA 79-C-090-02, PCA 91-H-001, RZ 2017-HM-019 and SE 2017-HM-016.

Mr. Looney gave a presentation wherein he stated the following:

- Thompson Hospitality was a locally owned business located in Fairfax County. Their corporate headquarters was located 1741 Business Center Drive, Reston. Their principal lines of business provided corporate cafeteria services to various office developments. The company also owned a number of private restaurants;
- The hotel was driven by individuals who were brought to the headquarters facility for various training exercises and corporate growth. This would also provide a new line of business for the applicant; and
- The applicant was open to discussing any concerns raised and was open to a deferral of the decision of the application.

Commissioner Hart asked whether there were any changes to the proffers dated April 4, 2018. Mr. Looney stated no additional changes have been made since the last proffers dated April 4, 2018. He stated staff's initial concerns with the application were contributions from a road and athletic field fund. An inquiry was sent to the County regarding those funds. There were ongoing conversations with the applicant, the Office of the County Attorney and staff regarding those funds. Mr. Looney added any changes to those proffers would be subsequent to those conversations.

Commissioner Cortina inquired about the grid of streets. Ms. Iannetta stated the grid of streets ran adjacent to the Park Authority's boundary. Commissioner Cortina stated that was a narrow location. Building of a street would be almost impossible without embarking upon park property. Ms. Iannetta stated there were pre-application ongoing discussions with property owners and possible impact solutions.

There being no listed speakers, further comments or questions from the Commission, Chairman Murphy closed the public hearing and recognized Commissioner Carter for actions on this application.

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(Start Verbatim Transcript)

Commissioner Carter: There we go. Let's see. As usual, Mr. Chairman, I request the applicant confirm for the record their agreement to the development conditions dated May 3rd. So, I assume since we're asking for – we're gonna ask for a deferral, we don't need that.

Chairman Murphy: Right. Yes.

Commissioner Carter: So, Mr. Chairman. I move to defer the decision only...

Chairman Murphy: Take it easy Mark.

Commissioner Carter: I almost got it...

Chairman Murphy: Yeah...Does everybody know 911 is the number that you...okay.

Commissioner Carter: I MOVE TO DEFER THE DECISION ONLY AND WE'LL DO ALL THESE TOGETHER. FOR PCA 79-C-090-02, PCA 91-H-001, RZ 2017-HM-019 AND SE 2017-HM-016, TO A DATE CERTAIN OF MAY 3RD, WITH THE RECORD REMAINING OPEN FOR WRITTEN TESTIMONY.

Commissioners Niedzielski-Eichner and Tanner: Second.

Chairman Murphy: Seconded by Mr. Niedzielski-Eichner [sic]. Is there a discussion of the motion? All those in favor of the motion to defer decision only on these applications as articulated by Mr. Carter to a date certain of May 3rd, with the record remaining open for comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. And you gonna have to make a motion to defer the Board's public hearing because I think that's on the 1st.

Commissioner Carter: You're right. So, I MOVE THAT WE REQUEST THAT THE BOARD OF SUPERVISORS DEFER THEIR HEARING AS WELL, DATED MAY 1ST.

Chairman Murphy: Okay.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. All those in favor of the motion to request the Board of Supervisors to postpone its public hearing on this application, until the recommendation comes from the Planning Commission, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

The motion carried by a vote of 11-0. Commissioner Sargeant was absent from the public hearing.

(End Verbatim Transcript)

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PCA/FDPA 1996-LE-047 – HD DEVELOPMENT OF MARYLAND, INC. – Appls. to amend the proffers and final development plan for RZ 1996-LE-047, previously approved for a retail shopping center to permit associated modifications to proffers and site design with an overall Floor Area Ratio (FAR) of 0.35 and open space requirements. Located on the E. side of Frontier Dr., W. of Elder Ave. and S. of Franconia Rd. on approx. 7.49 ac. of land zoned PDC. Comp. Plan Rec: Retail and Office Use. Tax Map 90-2 ((1)) 101A2 and 101B. LEE DISTRICT. PUBLIC HEARING.

Andrew A. Painter, Applicant's Agent, Walsh, Colucci, Lubeley & Walsh, P.C., reaffirmed the affidavit dated March 14, 2018.

Commissioner Hart disclosed the law firm of Hart & Horan, P.C. had two cases where the attorneys in Mr. Painter's firm represented an adverse party or adverse parties. He stated that matter and those parties were unrelated to the application. Commissioner Hart stated the law firm of Hart & Horan, P.C. had no business or financial relationship and to his knowledge, did not believe this matter before the Planning Commission would affect his ability to participate in the case.

Katelyn Antonucci, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. She stated that staff recommended approval of PCA 1996-LE-047 and FDPA 1996-LE-047.

Commissioner Migliaccio asked whether the Fire Department expressed any regulation concerns. Ms. Antonucci stated the Fire Marshal required that at site plan, the applicant would have to meet all fire regulations. Outdoor storage over 6 feet was not allowed within 3 feet of the building. The outdoor storage area was modified to 3 feet away from the back wall.

Commissioner Hart asked whether there were any links between the rat complaints and outdoor storage. He asked whether there were mitigation requirements. Ms. Antonucci stated the correlation was never addressed. She suggested adding a condition that would address the issue. There were prior violations regarding the rats. Those violations were addressed. She added there were conditions for all outdoor storage as well as proposed proffers.

Commissioner Strandlie asked for a comparison between the proposed application's outdoor storage versus that of The Home Depot (Home Depot) case in the Mason District. Mr. Painter stated in the Home Depot Mason District case, no rear storage area was provided. The trade area was more in line with a regional store, versus that of the proposed application. Merchandise was rearranged in order to obtain sufficient space for product staging. There was an internal expansion of the existing store. The garden center was freed up to the new retail establishment.

Commissioner Ulfelder stated there was a history of violations for the current site and asked for the number of violations. Ms. Antonucci stated one official notice of violation was issued either in 2015 or 2016. There were, however, numerous complaints regarding outdoor storage. Commissioner Ulfelder asked whether the County responded to those complaints. Ms. Antonucci confirmed the County's response. The current managers of Home Depot stores worked with County inspectors to bring the store into conformance with the Zoning Ordinance. The outdoor storage was either removed or reduced the 250 square feet. Ms. Antonucci further stated a development condition proposed having various areas be physically demarcated with paint on the sidewalk and garage. An operating plan would also be posted inside of employee areas, detailing areas specified for outdoor sales and storage. Staff believed this would address and mitigate some of the complaints regarding outdoor storage. Commissioner Ulfelder inquired about issues regarding some of the barriers. In response, Ms. Antonucci stated there was a 7-foot brick wall and in the 50-foot conservation easement area that fell into disrepair. Part of the proffers required the maintenance of the wall. As a result of the disrepair, a notice of violation was issued. A minor site plan was filed on the property and the wall was repaired.

Mr. Painter gave a presentation wherein he stated the following:

- The property was constructed in the late 1990s. Home Depot was the original tenant;
- The property was subdivided into three parcels; the existing 116,000-square foot Home Depot, the parking garage and the remaining property;
- Home Depot paid into a common area maintenance fund to maintain the landscaping of the property to include a 7-foot brick wall. JBG Smith Properties was responsible for the maintenance of the wall. The construction timeframe of the wall was not Home Depot's responsibility;
- The trade area for the Home Depot site served the Springfield, Franconia, Kingstown, Burke, Lorton and other areas to the south and west;
- With the amount of growth in the southeast of Fairfax County, there have not been a concurrent increase in the number of home improvement stores. Home Depot's volume have increased annually. Growth included customer and contractor demand for do-it-yourself lawn and garden products;
- There were allegations of violations between the spring and fall seasons. The agreed Home Depot order led to a zoning violation which was issued in 2015. A long-term solution was in place where storage and staging would occur between certain dates and locations. Increased truck deliveries to replenish supply, types of merchandise, customer access and convenient safety, were considered;
- Three staging areas, storage and outdoor display areas were provided;
- The proffer condition amendments clarified some administrative tie-ups regarding hours of operation and outdoor pallet storage;

- A number of upgrades have been made to the site. Those upgrades included additional plantings, improvements to pedestrian enhancements, wayfinding signage and the installation of crosswalks; and
- There was a condition that required Home Depot to create and maintain an operation restriction site plan.

Commissioner Migliaccio stated for the past few years, the community did not consider Home Depot a good neighbor. He asked how this situation would be remedied. Mr. Painter stated there would be demarcated painted areas for storage. Neighbors, citizens, customers and County inspectors would be able to identify those storage areas. The applicant met with Springfield Forest Citizens Association president and former vice-president. The applicant agreed to establish a community liaison and would provide the president of the citizen's association the name and contact information for both the store manager, night manager and Lee District Supervisor to whom complaints would be submitted. Mr. Painter stated the community was concerned with the lack of year-round vegetative screening. With the original application approval, the County agreed the applicant would maintain a 50-foot vegetative buffer. The vegetative buffer was never maintained and there was a variety of invasive species. The applicant installed year-round evergreen screening to fill in those areas. Regarding the parking garage, Mr. Painter stated there were noise and lighting complaints. The applicant agreed to install light shields for all lighting fixtures neighboring Elder Avenue. In the middle opening of the garage, a mesh screen wall would be installed. This wall would prohibit light trespass that stemmed from the garage. Commissioner Migliaccio inquired about the outdoor speakers and noise level from a speaker phone coming from Home Depot. Mr. Painter stated there were no outdoor speakers and those were prohibited by the proffers. He also stated the applicant would look into noise levels from a possible speaker phone.

Commissioner Strandlie reverberated the comments on the repeated violations. She stated the repeated violations also occurred at the Home Depot store located at 6210 Seven Corners Center, Falls Church. Corrective actions were taken at that store and since then, there have been no repeated violations. Commissioner Strandlie suggested Home Depot review their corporate practices and become better neighbors on mentioned issues. Mr. Painter agreed.

Commissioner Ulfelder suggested Home Depot create a position for the purpose of implementing adhering and complying with County regulations specific to the application. This individual would also be a point of contact for the adjacent neighbors and homeowners association. Mr. Painter stated the applicant would not object to appointing a designated compliance officer. Someone who was not the manager. The applicant would work on language regarding same.

Commissioner Hart stated citizens expected that after the approval of an application, commitments expressed in the proffers and development conditions were upheld. He stated compliance should not be left solely up to a store manager. There should be a greater institutional acceptance that the Zoning Administrator was in charge. Commissioner Hart stated these occurrences of violations and issues became difficult for citizens to believe the work of the Planning Commission, and in turn hurts the process. Conditions added to proffers or development conditions should be adhered to. Absent from the laminated plaque and the number for the citizens association, Commissioner Hart asked whether there were other solutions that

remedied the reoccurring violations. Mr. Painter stated he could not address Home Depot's current corporate model which had changed since its 1998 model. This change was as a result of increased business to include garden products and seasonal sales products. Mr. Painter stated the demarcated painted areas included the operations restrictions site plan, the information provided by the store managers and the Lee District Supervisor's office and the homeowners, would provide a higher level of sensitivity to all issues. The risk of violations would diminish.

Commissioner Cortina stated more efforts would be required to rectify the situation. She noted issues with traffic congestion, pedestrian safety and site challenges. The lower levels of the parking garage were seldom utilized and the loading dock was on the opposite side of excess parking. Commissioner Cortina made a comparison to the Home Depot store located 2815 Marrilee Drive, Fairfax. In response, Mr. Painter stated one of the main concerns during the application process was the potential for vehicular pedestrian conflict. There was a lot of cross movement and interchanging lighting upon entering the site from Frontier Drive. The applicant proposed a knee wall at the entrance be extended into the garage. The applicant tried to remove a crosswalk outside the garden center; however, due to the Americans with Disabilities Act accessibility requirements, the crosswalk remained. Rumble strips were proposed to slow the flow of traffic. Staff informed the applicant this was not acceptable. Mr. Painter agreed that demarcation paint alone would not remediate the situation; however, there was the channelization of pedestrians with the extension of the knee wall. The customer loading area was moved further away from the entrance of the garage and a dedicated area would be cordoned off during certain times of the year.

Commissioner Ulfelder asked whether all the materials brought to the site were sold at the same location. Mr. Painter stated the site was not a staging area for other stores or distribution centers. All materials delivered to the site were date stamped and brought into the store within 48 to 72-hours.

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

Bill Shuttleworth, 6717 Elder Avenue, Springfield, representing Springfield Forest Citizen Association, spoke in opposition to the application in its current form. He stated the following:

- The Springfield Forest Citizens Association was part of the application process and had ongoing discussions with Supervisor Jeffery C. McKay and Commissioner James T. Migliaccio regarding the community needs;
- Springfield Forest Citizens Association filed the last two site complaints;
- The approved final development plan amendment with inadequate year-round transitional screening, diminished the vegetative buffer. Adequate screening should be required for the site. The urban forester was asked to review the supplemental planning;
- The plan was not perfect; however, could address some of the community needs; and
- The proffers and development plan should be adhered to.

Commissioner Migliaccio asked whether there was anything else the applicant could do to communicate with the citizens and the association. Mr. Shuttleworth reverberated Commissioner Ulfelder's suggestion regarding assigning staff to implement and enforce adherence to County's regulations and requirements.

Commissioner Ulfelder asked whether the Springfield Forest Citizens Association met annually. Mr. Shuttleworth stated the homeowners association met four times a year. Commissioner Ulfelder suggested an invite should be sent to the store manager. Mr. Shuttleworth agreed. He also stated the National Night Out Against Crime was held annually. An invitation would be extended.

Commissioner Hart asked Mr. Shuttleworth whether he was aware of any speaker noise coming from the site. Mr. Shuttleworth stated he could not confirm Commissioner Migliaccio's comments regarding the speaker noise levels at the site. He stated his home was directly south of the site.

Mr. Painter in his rebuttal testimony stated the applicant sent an e-mail to the site's division manager to inquire about the noise issue. He suggested adding a proffered condition that would address the noise. Commissioner Migliaccio announced his intent to defer the application. He stated this would allow time to address Commissioners Hart's concerns. Mr. Painter proposed language for the compliance officer. Commissioner Ulfelder stated the store manager should also be made aware of all complaints. He suggested the compliance officer and the manager should be two separate bodies.

There being additional speakers, further comments or questions from the Commission, Chairman Murphy closed the public hearing and recognized Commissioner Migliaccio for action on this application.

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(Start Verbatim Transcript)

Commissioner Migliaccio: Thank you, Mr. Chairman. I thought I'd have this all straight tonight, but I think we just need one more week to get a few conditions done, since it's gonna be on the FDPA and we're the only body that will be acting on that. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION DEFER THE DECISION ONLY FOR PCA/FDPA 1996-LE-047, TO A DATE CERTAIN OF APRIL 26TH, 2018.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? And the RZ too. Do we have an RZ?

Commissioner Migliaccio: No, we're not rezoning anything....

Chairman Murphy: Okay. Oh and FDP [sic] and PCA. I'm sorry. All those in favor of the motion to defer the PCA 1996-LE-047 and FDPA 96 – 1996-HL- - LE-047 [sic], to a date certain of April 26th, with the record remaining open for comments, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

The motion carried by a vote of 11-0. Commissioner Sargeant was absent from the public hearing.

(End Verbatim Transcript)

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RZ/FDP 2017-SP-029 – CHRISTOPHER LAND, LLC – Appls. to rezone from R-1 to PDH-3 to permit residential development with an overall density of 2.88 dwelling units per acre (du/ac) and approval of the conceptual and final development plan. Located on the N. side of Fairfax County Pkwy. approx. 350 ft. E. of its intersection with Seabrook Ln. on approx. 2.44 ac. of land. Comp. Plan Rec: Residential 2-3 du/ac. Tax Map 97-2 ((1)) 6. SPRINGFIELD DISTRICT. PUBLIC HEARING.

The public hearing was in the Springfield District; therefore, Chairman Murphy relinquished the Chair to Vice Chairman Hart.

E. John Regan, Jr., Applicant's Agent, Christopher Land, LLC, reaffirmed the affidavit dated January 29, 2018.

Vice Chairman Hart stated the application was subject to the restrictions contained in the *Virginia Code* Section 15.2-2303.4, which the Virginia General Assembly enacted in 2016. This law significantly restricted the ability of a locality to discuss possible proffers, because this discussion could violate the statute and subject the county to liability. In an abundance of caution, and even though the Planning Commission was not the locality, the Commission would discuss and consider only what the applicant proposed and the impacts of any potential development. Nothing in the discussion should be construed as a request, suggestion or requirement for any proffer. The Planning Commission would listen to the applicant's suggestions about how to mitigate impacts of its proposed development, and would discuss those mitigation measures to the extent possible. Due to the new legislation and the uncertainty over the application, the discussion of certain issues may be more constrained than was historically the case. In the past, the County opened elaborative discussions about proffers with developers in the community. Testimony from the public represented only the views of the individual speakers and not that of the locality.

William Mayland, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. He stated that staff recommended approval of RZ 2017-SP-029 and FDP 2017-SP-029.

Commissioner Cortina asked for clarification on the resource protection area (RPA) and Lot 5. Mr. Mayland stated earlier versions of the development plan showed Lot 5 as possibly being in the RPA. The applicant revised the development plan and Lots 5 through 7 were relocated further south. No portions of those lots were located in the RPA.

Vice Chairman Hart asked for visuals of the RPA and environmental quality corridor (EQC) lines on Sheet 5 of the Conceptual Development Plan and Final Development Plan. Mr. Mayland provided visuals. Vice Chairman asked whether the RPA and EQC lines were accurately portrayed. Mr. Mayland stated during the review, the RPA line was previously shown. The EQC line was established during review of the application. The adjacent property was established with the Whisperwood community. Staff recommended the applicant consider the line on site because it provided protection of the existing stream and the adjacent steep slope. Commissioner Hart asked whether the RPA line was on a Fairfax County map. Mr. Mayland confirmed. Commissioner Hart asked whether the applicant proposed to disturb any area within the EQC. Mr. Mayland confirmed certain areas within the EQC would be disturbed. He stated within the RPA portion, there were areas on the northeast corner of the site where there would be an extension of the sanitary sewer line. Within the central portion of the EQC, there would be an extension of a stormwater line. Commissioner Hart asked how the applicant planned to address impacts to the disturbed area within the RPA and EQC areas. Mr. Mayland stated this would be addressed during the subdivision review process. Mr. Mayland reiterated the EQC line was not established until approval of the application. Should the application be approved, the applicant would establish the EQC line and would provide the protection of the area. Discussion continued between Commissioner Hart and Mr. Mayland regarding protection and impact to the disturbed area beyond the EQC boundary. Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning reiterated during the subdivision process, the applicant would need to meet the standards stipulated in the Public Facilities Manual (PFM) for the installation of stormwater management facilities. Ms. Strunk stated she was not certain of the PFM standards or necessary requirements for replanting close to an outfall. Commissioner Hart inquired about the condition of the stream which was the focus of the RPA and EQC. Mr. Mayland stated the stream was perennial offsite and would become a nonperennial stream onsite. There were wetlands associated with the stream. He deferred to the applicant to address the quality of the stream. Regarding the EQC line, staff tried to preserve the buffer of the nonperennial stream and wetlands from development. Commissioner Hart asked whether the stormwater of the proposed development would have any effect on the stream or stream erosion. Commissioner Hart further asked whether there was any anticipated impact on water quality of the stream as a result of the disturbance of the EQC or the RPA. In response, Mr. Mayland stated no impact was identified during the review. He further indicated the applicant would provide for a long-term preservation of the open space adjacent to the referenced stream.

Commissioner Cortina stated it was her understanding mitigation credits were requested. Mr. Mayland stated the applicant would create nutrient credits allowed by the PFM. Should the application be approved, the applicant would go through the subdivision process to review the stormwater in accordance with the PFM, which would provide for the ability to receive nutrient credits to meet water quality control criteria of the Stormwater Management Ordinance. Commissioner Cortina stated whether or not the nutrient credits were allowed by the ordinance, taking a nutrient credit allows for handling the water quality elsewhere in the watershed. She stated the water quality was not being addressed in the application. Mr. Mayland stated the applicant met and addressed the water quality and quantity through the provisions of the PFM. These provisions included offsite nutrient credit purchase.

Clark L. Massie, Applicant's Agent, Tetra Corporation, gave a presentation wherein he stated the following:

- The proposed plan was consistent with the Comprehensive Plan. It allowed for the completion of infill development;
- The property was owned by the same family since 1949;
- The proposed development would allow for the connection of the EQC which was identified on either side of the Whisperwood community. It allowed for the preservation of the environmentally sensitive area, created a 30% open space versus 20% that was required, and the density and layout was compatible with the adjoining community;
- The proffers were consistent with the proffer legislation. All proffers offered by the applicant were offered voluntarily and attributable to the application. There was a contribution of \$13,300 for onsite recreation, over \$14,000 for offsite recreation and \$49,000 for schools. The applicant proposed a number of house design features to include high quality architectural design, a noise study that would be conducted and based on the results would lead to the provision of additional acoustical methodology in the construction of the homes. The homes would be energy efficient;
- The Springfield Land Use Committee have unanimously recommended approval of the application;
- The applicant agreed to work with Mr. Peter Smith and would mitigate all landscaping issues. There was a buffer along the back portion of one of the lots that would be removed and trees would be planted; and
- This was a single-family home application; no townhomes were being constructed. The proposed application also preserved the stream.

Commissioner Murphy acknowledged receipt of Mr. Peter Smith's letter. He stated Mr. Smith's letter indicated that at the community meeting, the applicant gave assurance that on the landscaping plan, they would have some trees as a buffer. Commissioner Murphy asked whether the applicant made good on the promise. Mr. Massie stated there was a note that was provided to the latest version of the plan which addressed the landscaping and potential of being able to plan offsite with the adjoining property owner's consent. He stated there was a small easement that ran along the back of the property. Any type of plantings would be kept out of that easement unless that easement was eliminated.

Vice Chairman Hart called the first listed speaker and recited the rules for testimony.

Peter Smith, 7736 White Willow Court, Springfield, stated the following:

- The proposed development included a vegetative buffer between the two communities;

- The plantings and screening should be done on the developer's parcel and not encroach on other parcels;
- The proposed development would obstruct the light and air, and adversely affect the natural environment. The Planning Commission should consider the preservation of light, air, and the natural environment under *Virginia Code* Section 15.2-2283, and Article 13, Part 3, Section 13-301 of the Fairfax County Zoning Ordinance;
- At the Springfield District Land Use Committee meeting, the applicant agreed to plant a line of evergreen trees as privacy screen along the eastern boundary. That assurance was never incorporated into the landscaping plan; and
- The proposed development would require the destruction of all of the existing trees along the parcel's eastern boundary.

Commissioner Murphy announced his intent to defer the decision of the application. This time would allow for the applicant to respond and address all concerns.

Vice Chairman Hart acknowledged the Planning Commission's receipt of Mr. Smith's letter dated April 17, 2018, Mr. Michael Charecky's letter of April 19, 2019 and a handout from Mr. Andrew Holmes.

Michael Charecky, 7732 White Willow Court, Springfield, stated the following:

- Mr. Charecky and his family were new homeowners in the Whisperwoods community;
- Mr. Charecky's children attended Fairfax County Public Schools and were active in sports and the performing arts;
- The Charecky family witnessed flourishing populations of wildlife in their backyard that were indigenous to the Fairfax County area;
- The Construction of the new development would take place along their property line and would obliterate two streams. This would destroy the natural watershed area and would cause deterioration and erosion beyond what would currently exist in the area. A retaining wall for the proposed encroaching townhomes would destroy the local flora, fauna and environmental integrity of the surrounding area. The subdivision's existing landscape would be destroyed and would affect the structural integrity of the homes in the area;
- The United Services Automobile Association homeowner's insurance, was based on current standards of an area. The construction of an adjacent retaining wall could potentially put some of the homes in the middle of a flood zone causing an increase in insurance premiums. An official environmental study was not reflected in the proposed application;
- The Veteran's Administration (VA) inspected the residence, surrounding area and document easements. The VA certified inspector was uninformed about any development

plans which could result in the VA balking on a loan guarantee for the property, which would cause significant hardship for the family;

- Mr. Charecky contacted a realtor, who in turn contact their legal team, the seller's agent and the mortgage company regarding any official easements and/or agreements regarding the previous owners' acquiescence to the proposed development; and
- There should be a change to the rezoning request as this would cause an intrusion to the Fairfax County's watershed and wildlife areas. A full disclosure of all proposed requests should be considered and set up in accordance with the requirements of the state legislations.

Commissioner Ulfelder asked for visuals of the location of Mr. Charecky's property into the stream area. Mr. Charecky provided visuals. Vice Chairman Hart asked when the pictures were taken and location of picture 6 – drainage Pipeline on existing property with visible erosion, provided by Mr. Charecky to the Planning Commission. Mr. Charecky stated the pictures were taken three days prior to the hearing. Commissioner Hart inquired about an exposed pipe in picture 6. Mr. Charecky stated the pipe controlled some of the erosion that came down through the left side of Lots 50 and 49. Commissioner Hart inquired if the exposed pipe was on Mr. Charecky's property. Mr. Charecky confirmed the pipe was located on his property. The water from the erosion came downstream from the pipe stem and surrounded Whisperwood community.

Commissioner Ulfelder asked whether the stormwater came off the back yards of Lots 49 and 48. Mr. Charecky stated the lots were on a pipe stem and there were three other properties where water flowed down from the pipe stem. Commissioner Ulfelder asked what types of problems would occur if the pipe stem was removed. Mr. Charecky stated the pipe was installed to help mitigate the water flow. Without the pipe the water would become more exacerbating.

Commissioner Murphy asked Mr. Charecky how long he owned the property. In response, Mr. Charecky stated he owed the property for approximately three weeks.

Andrew Holmes, 7734 White Willow Court, Springfield wherein he stated the following:

- Lot 49 abuts to the proposed Lot 5 of the development. This was a severe terrain B shaped structure;
- Based on the measurements of plan, Lot 49 was at the side of the hill where the retaining wall would be constructed;
- There was an extreme slope between current development and showed the downhill water flow and current drainage ditch; and
- The area between Lot 5, the proposed development and Lots 49 and 50 of the existing homes housed a watershed. The homeowners were concerned that the retaining wall and leveling on one side of the drainage flow would result in water driven erosion on Lots 49

and 50. Construction of a single-family home on the rear of the hill would require a substantial amount of tree clearing and grading. Construction of retaining wall and a house structure would change the land contour and would change the flow of water. The water erosion would not be a fast process and there would be future water erosion issues as a result of the proposed development.

Commissioner Ulfelder asked staff whether they agreed that the impact of the retaining wall would exacerbate the existing problem of erosion and runoff. Mr. Mayland stated the Department of Land Development Services was part of the review process of the application and no issues or concerns were raised. He deferred to the applicant's engineer for additional information.

Commissioner Niedzielski-Eichner asked whether it was possible to ask questions to the County Attorney. In response, Vice Chairman Hart stated it was not possible at this point of the hearing. Commissioner Niedzielski-Eichner stated there should be clarification and the speakers should be aware of what Vice Chairman Hart's opening remarks meant. Commissioner Murphy interjected and stated the opening remarks made by Vice Chairman Hart were made clear to the citizens.

Vice Chairman Hart asked when Mr. Holmes' pictures were taken. Mr. Holmes stated the pictures were taken on April 19, 2018 at 3:00 p.m. Vice Chairman Hart asked for visuals of the eroded area. Mr. Holmes provided visuals. He also stated the County's easement was behind Lot 48. There was a severe amount of drainage ditch erosion from stormwater runoff down the terrain, toward Lots 49, 50 and flowed into the EQC. Vice Chairman Hart asked whether staff saw the conditions depicted in Mr. Holmes' visuals. Ms. Strunk stated staff received Mr. Holmes' visuals at the hearing and would have to review before providing comment. Vice Chairman Hart asked whether staff saw the eroded area depicted in Mr. Holmes's visuals. In response, Mr. Mayland stated he visited the site on two occasions but did not walk at the back portion of the site due to no-trespassing signs on the property. He stated he walked and drove around the neighborhood; however, did not walk behind Lots 49 and 50. The site was observed from the property boundaries.

Mr. Massie deferred to the applicant's engineer to address technical questions regarding the application. David T. McElhaney, Applicant's Engineer, Urban LTD, stated speaker's observations were consistent with engineer's observations during the engineering analysis. Mr. McElhaney stated the applicant's proposal addressed the storm drainage concerns. The erosion issue that occurred through the drainage was also addressed. Concentrated runoff came from the Fairfax County Parkway area from a storm pipe built when improvements were made to parkway. That storm pipe discharged to the upstream end of the applicant's property and conveyed down an existing drainage ditch, which eventually went to the area depicted in Mr. Holmes' visuals. This discharge caused the erosion. The proposed application picked up the storm drainage at the upstream end of the applicant's property and piped it down to a detention system. That erosion causing factors would be removed. At time of development, the applicant would reroute a substantial amount of the water away from the sensitive area.

Commissioner Ulfelder asked for the location of the detention facility that would handle the storm drainage. Mr. McElhaney provided visuals. He stated the underground detention system was located between proposed Lots 3 and 4. There was a substantial amount of offsite drainage

the applicant would pick up and would convey into the underground detention system. This drainage would no longer be in the eroded channel.

Regarding stormwater, Commissioner Cortina asked how the applicant planned to address the impact of Lots 5, 6 and 7. In response, Mr. McElhaney stated a portion of storm drainage from Lots 5, 6, and 7 would be directed toward the front of those lots and pickup into an inlet and tied into the storm drainage system. In the rear of Lots 5, 6 and 7, that drainage would sheet flow toward the EQC area. The applicant did not propose to discharge any of the storm sewer systems into the drainage channel. The runoff would go into the detention system and eventually into the EQC area. Commissioner Cortina asked how the applicant planned to address the impact of the EQC. Mr. McElhaney stated the sheet flow runoff associated with Lots 5, 6 and 7 would be minimum and would be in accordance of the PFM requirements. Should there be concentrated runoff, an underground vault would be installed.

Commissioner Carter asked whether this was a ditch or stream and whether setbacks were required in the regulations for a ditch or stream. He further inquired about the height of the retaining wall and how it addressed the impact of the adjacent lots to include the water. Mr. McElhaney stated there were two drainage ways that were major elements associated with the topography. Those were located in the boundaries depicted in the visuals. This was not considered a stream from the standpoint of the core's definition. This was an existing drainage way that conveyed runoff from the existing Fairfax County Parkway. Mr. McElhaney reiterated this drainage would be rerouted. There was a drainage/stream at the rear of the property where the EQC area was located that would be preserved. This area was partially within an RPA and the EQC. The only setback requirements were associated with establishment of the RPA; a 100-foot setback from the stream edge. The applicant would adhere to the all requirements associated with the RPA and the guidelines associated with the EQC. The height of the retaining wall would vary anywhere from 0-5 feet.

Mr. Massie in his rebuttal testimony reiterated the proposed property was owned by the applicant since 1949. The Whisperwood development occurred around the applicant's property. The Whisperwood development changed the character of the neighborhood throughout the years. The Whisperwood community was developed in the mid-1990s. The site contained drainage from the Fairfax County Parkway which was exacerbating the ravine. The Whisperwood developer provided the sanitary sewer easement for the connection of the subject property to the existing sewer line. The plan was consistent with the Comprehensive Plan and the density was consistent with adjoining Whisperwood community.

Ms. Strunk stated there were discussions regarding the storm drainage easement. She stated on the existing conditions map, the storm drainage easement extended to the back of the applicant's property. The Wetland Delineation Report in Appendix 3b of the staff report, showed the drainage way along the side of the property went from a man-made ditch, which was associated with the Fairfax County Parkway to a more natural stream flow channel.

Commissioner Murphy asked Mr. Massie during the course of the proceeding of the application, was the locality, or anyone acting on behalf of the locality, suggested, requested or required a proffer. Mr. Massie stated no one suggested, requested or required a proffer. Commissioner Murphy asked whether anyone acting on behalf of the locality suggested, requested or required

any proffer with regard to the proposed application. Mr. Massie stated no one suggested, requested or required any proffer. Commissioner Murphy asked to confirm all proffers conformed with the requirements of the *Virginia Code* Section 15.2-2303.4. Mr. Massie confirmed.

There being additional speakers, further comments or questions from the Commission, Vice Chairman Hart closed the public hearing and recognized Commissioner Murphy for actions on this application.

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(Start Verbatim Transcript)

Commissioner Murphy: Thank you very much, Mr. Chairman. First, I'd like to thank the citizens for coming out this evening. I know, I think Mr. Holmes has attended our Land Use Committee meeting. I appreciate the input. I specifically appreciate the letters and the – and the drawings and the pictures you sent. It's gonna make me look more clearly at what we're doing on your behalf before I make the decision because I am going to defer decision only on this. I wanna thank the applicant, they've been very corporative. And I'd particularly like to thank Bill Mayland and the staff for doing a great job. So therefore, Mr. Chairman, I would MOVE THE PLANNING COMMISSION DEFER THE DECISION ONLY ON RZ/FDP 2017-SP-029 TO A DATE CERTAIN OF APRIL 26TH – 6TH, WITH THE RECORD REMAINING OPEN FOR COMMENT.

Commissioner Migliaccio and Tanner: Second.

Vice Chairman Hart: Seconded by Commissioner Migliaccio [sic]. Is there any discussion of the motion? Seeing none, we'll proceed to a vote. All those in favor of the motion as articulated by Commissioner Murphy, please say aye.

Commissioners: Aye.

Vice Chairman Hart: Those opposed? That motion carries.

The motion carried by a vote of 11-0. Commissioner Sargeant was absent from the public hearing.

(End Verbatim Transcript)

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Chairman Murphy resumed the Chair.

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APPOINTMENT OF COMMISSIONER WALTER C. CLARKE

(Start Verbatim Transcript)

Commissioner Hart: Mr. Chairman.

Chairman Murphy: Mr. Hart.

Commissioner Hart: I was going to MOVE THAT WOULD THE COMMISSION CONFIRM THE APPOINTMENT OF COMMISSIONER CLARKE TO THE COMMISSION'S HOUSING COMMITTEE AFFECTIVE IMMEDIATELY.

Chairman Murphy: Second.

Commissioner Hart: Oh, I'm I chairing this? I'm making the motion.

Chairman Murphy: Oh. Is there a second?

Commissioner Migliaccio: Second.

Chairman Murphy: Okay. Mr. Migliaccio seconds the motion.

Commissioner Ulfelder: I'll second.

Chairman Murphy: And Mr. Ulfelder. Is there a discussion? All those in favor of the motion as articulated by Mr. Hart to place Mr. Clarke on the aforementioned committee, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hart: Thank you.

The motion carried by a vote of 12-0.

(End Verbatim Transcript)

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The meeting was adjourned at 10:17 p.m.
Peter F. Murphy, Chairman Murphy
James T. Migliaccio, 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: Samantha Lawrence

Approved on: September 13, 2018

Toni Michele Denson
NOTARY PUBLIC
Howard County, Maryland
My Commission Expires 6/14/2022



Jacob L. Caporaletti, Clerk to the
Fairfax County Planning Commission