

**MINUTES OF THE PLANNING COMMISSION WORK SESSION**  
**Wednesday, August 17, 2011**  
**10th Floor Conference Room of the City Hall Building**  
**Newport News, Virginia**

**PRESENT:** Sharyn Fox, Chairwoman; Victor Albea, Vice-Chairman; Robert B. Jones; Clara Swanson; Wesley Maxwell; H. Eugene Roberts; Cleon Long; Lorraine P. Austin; J. Doug Coenen, Jr. (Staff: Sheila W. McAllister, Director of Planning; Kathy James-Webb, Manager of Current Planning; Michael King, Manager of Comprehensive Planning; Saul Gleiser, Senior Planner; Johnnie Davis, Planner, Lynn Sugg, Deputy City Attorney; Christine Mignogna, Zoning Administrator

**ABSENT:** None

Ms. Fox opened the work session at 2:00 PM.

Ms. Fox stated it is always good to go through the by-laws at least every other year, especially when the Commission has new members. The primary purpose of this review is for questions, comments, or if anyone would like to make suggestions, changes, or clarifications. She stated there have been some concerns expressed about the invocation.

Ms. Fox asked Ms. McAllister if she would like to add anything to the by-laws review. Ms. McAllister stated that Planning staff would like to change the comprehensive plan updates process. The by-laws are specific to the way we did *Framework for the Future*. We are not going to move far from that, and today may not be a good time to make any changes or look at that process.

Ms. McAllister commented on removal from the Commission. She stated she knew that Council said that if you are on a board or commission, you cannot miss more than three meetings a year, if someone misses more than three meetings a year what happens. Ms. Fox asked if those were excused or unexcused absences. Ms. McAllister stated she would look into that, as she thought that was applicable to unexcused absences at consecutive meetings. Ms. Mignogna informed the Commission of how the Board of Zoning Appeals handles member absences and their procedure for removal. Ms. Fox asked if the Commissioners want to adopt any new language regarding absences to the by-laws. Ms. Swanson stated they should look at what City Council has voted on because she thought that was something the Commissioners signed as part of their oath of office. Ms. Fox stated she does not want to make any changes right now because it may not be in accordance with what City Council has mandated. Ms. Sugg stated she would find out for the Commission and let them know if there is a mandatory number of meetings that they are not supposed to miss. They will be advised and they can decide at a later time if they want to put it in their by-laws.

Ms. McAllister stated that, regarding Chairmanship, the term is limited to two years and Ms. Fox's term would be ending at the end of 2011. The Commissioners should start to consider who they want to replace Ms. Fox, considering the responsibilities and time commitment associated with the position. She stated the chair typically runs the Commission meeting in coordination with the Director of Planning. Ms. Fox shared her experiences in meeting the demands of being chairman, and the various meetings the chairman needs to attend in addition to Planning Commission public hearings, which are included in the by-laws. With the *Framework for the Future* task force starting again soon, the Planning Commission chair also chairs the Oversight Committee. Ms. McAllister stated she did not feel an Oversight Committee would be necessary as it is an extra layer that is not necessary when you are doing updates because the Planning Commission acts as an Oversight Committee.

Ms. McAllister stated that she would like to move away from people being tied to a specific geographic area as opposed to not looking at the city as a whole. Members from each task force would work in focus groups for each element of the plan. She stated that, for example, as opposed to just working on housing for Planning District 1 or 2, instead, members of the task force would actually choose an element of the plan to work on. Each task force would have a maximum of 10 people, and then other people could come in and out, volunteering as they discuss the housing section of the overall plan. So, even though they are coming from a specific geographic area, they are looking at a section of the plan for the city as a whole. Ms. Fox stated she felt that was a great approach.

Mr. Jones asked if the task forces correspond with the committees and to whom would they report. Ms. McAllister stated that, currently, each different task force is its own committee and they work on each element of the plan for that particular geographic area and they report back to Planning Commission and the Oversight Committee as a whole. They have a chair who sits on the Oversight Committee and that person would bring all of the recommendations from that task force to the Oversight Committee and, typically, the Oversight Committee went with what the task force chair was recommending because that was the geographic group for that geographic area. She stated that there used to be a Task Force Congress for all of the planning district task forces who were working on several different elements. At the congress, all of the recommendations from all of the different task forces would be presented for a specific item such as housing, and then we would get a consensus at the congress on recommendations, and that consensus would go to the Oversight Committee. The congresses failed the last time because there were not a lot of decisions to be made.

Ms. Fox stated the Commission needed to discuss designation of a Chaplain at the same time they discuss the invocation. Ms. McAllister stated that the invocation is part of the Planning Commission agenda. Ms. Fox stated that the issue that has been brought up is that if the Commission is going to do an invocation, it needs to be non-denominational. She asked if they need an invocation. Mr. Albea stated he thought

they should follow the City Council example. Ms. Sugg stated that the Freedom from Religion Foundation contacted the Mayor and City Council in July about the invocation that was done at City Council meetings, and they suggested that there should not be an invocation. Their office did some research and determined that, according to the U.S. Supreme Court, the invocation is constitutional by the public body. However, it should be non-denominational and should not make reference to the specific aspects of worship of any specific denomination.

Ms. Sugg's understanding is that the Mayor wants to continue with an invocation. They have a written policy where if a clergy person is invited to do the invocation, and if the person prays a denominational prayer twice in a row, they are not invited back. She believed that the advice of her office is that if they want to continue to do an invocation, that is fine, but it should just be a non-denominational invocation. Mr. Jones asked what makes an invocation denominational. Ms. Sugg stated that you can use the generic term "God" but you cannot invoke the specifics of a specific denomination referring to "Jesus" or "Buddha", for example. Ms. Sugg also stated that, according to the Supreme Court, the prayer should be addressed to the body, and not the public. The person giving the prayer is not inviting the body to pray with them, they are praying a prayer that is addressed to the body. She stated that a landmark U.S. Supreme Court case defines legislative prayer as an act to invoke divine guidance on a public body entrusted with making the laws.

Ms. Fox stated that she researched other local Planning Commissions. Hampton does not have an invocation. James City County has a moment of silence. Virginia Beach and Chesapeake use a non-denominational prayer. Mr. Gleiser stated that the City of Richmond does not have an invocation at Planning Commission meetings, but they do invite clergy to open the City Council meetings. Ms. Fox stated she feels that Planning Commission is separate from City Council because we have our own by-laws and we should do what is comfortable and if the Commission is going to do an invocation, there should be someone who is willing to do it and it would have to be non-denominational. Ms. Fox referred to a book she found with non-denominational prayers for public meetings. However, she felt that a public meeting is not a worship service and, as a group, they need to make a decision on if they want to continue with the invocation, and who would like to be Chaplain and Co-Chaplain. After a brief discussion, the Commission was in favor of having an invocation as part of the agenda. Mr. Long and Ms. Austin stated they were in favor of having a moment of silence as the invocation. Ms. Fox stated that if they do not do a prayer, then they do not need a Chaplain. Ms. Swanson stated that, as far as asking a divine being for us to be able to deliberate and do our work, does that mean that the scope of the prayer needs to be restricted to the work, or can community wellness be included in that. Ms. Sugg stated that where that line is crossed, she could not say for sure, other than the legal cases stating that the purpose of the prayer cannot be to postulate. The Supreme Court stated you cannot do converts during that prayer. Ms. Fox suggested a non-denominational prayer. Mr. Coenen asked what was the extent of the complaint about the invocation. Ms. Fox

stated that the Planning Commission invocations are Christian prayers and members of the different faiths have made comments to her about being a Christian-faith based organization and she felt this is something we need to be careful of because it is unconstitutional. Ms. Fox suggested the non-denominational prayer could be read in addition to the Planning Commission creed if the Commissioners were comfortable with that. Mr. Coenen stated he was in favor of a non-denominational prayer and not a moment of silence.

Ms. Swanson stated that with so many different concerns and different positions, she wanted to know about the group that made the suggestion or complaint to City Council, if the focus was public prayer and they are just objecting to public prayer in any form. Ms. Sugg stated yes, in association with government, as separation of church and state. Mr. Long asked what the purpose of an invocation was with a non-denominational prayer. Ms. Fox stated the moment of silence satisfies whatever internal feeling we have of our own. Ms. Sugg stated that a moment of silence is not an invocation. Mr. Jones stated a moment of silence was an issue for him.

Ms. Fox stated there is not a motion for this to change our by-laws on a two-thirds majority. She asked for a motion. Mr. Roberts stated that first they needed to vote on whether they want an invocation before they vote if they need a Chaplain. Mr. Jones stated that the by-laws state invocation, and asked if they need to change that to invocation that is non-denominational. Ms. Swanson says they need to follow the law and the law says non-denominational. Ms. Swanson made a motion to eliminate the invocation from the by-laws, striking 11-14 in the Business Procedure. Ms. Austin seconded the motion. After a brief discussion, the motion failed. Ms. Fox took a vote to leave invocation in the agenda, and the Commission voted yes. Ms. Fox stated that the invocation will remain on the agenda.

Ms. Fox stated that Mr. Maxwell has been performing the invocation and asked him if he was comfortable being the Planning Commission Chaplain and offering a non-denominational prayer. Mr. Maxwell stated he would. Mr. Albea asked if they could address, as a Commission, if anyone would be willing to read a non-denominational prayer if Mr. Maxwell was unavailable. Ms. Fox stated that if Mr. Maxwell was not available, she would not have an invocation without a back-up person. Ms. Swanson suggested that the by-laws, when you look at the duties of the Chaplain, it states the Chaplain shall be responsible for the invocation, and he is responsible for that agenda item. That does not necessarily mean that he has to be there and do it. He could ask someone to do it. There is no official Co-Chaplain and she felt that the by-laws do not need to be changed to have other people do the invocation. Ms. Fox stated she wants a back-up in the event Mr. Maxwell is not there, and Mr. Jones stated he would read a non-denominational prayer for Mr. Maxwell if he is unavailable. Ms. Austin suggested that, in the event Mr. Maxwell or Mr. Jones were unavailable for the invocation, a vote should be made to amend the agenda. Ms. Fox asked if everyone was comfortable with these decisions and the Commission agreed.

Ms. Swanson asked if the Commission actually voted at work sessions. Ms. Fox stated that if they are changing their by-laws, they have to vote. Ms. Sugg stated that the Planning Commission acts by vote, and even though there are no cases before the Planning Commission at these work sessions, they still need to vote on issues dealing with Planning Commission.

Mr. Albea asked if there should be anything in writing to limit the amount of time people speak on behalf of cases before the Commission. Ms. Sugg stated that should probably be in the by-laws because if you do have a big case then at least you have the authority by referring to your by-laws to say speakers are limited.

Ms. McAllister reminded the Commission that, many times, this is the only opportunity the applicants get to address Planning Commission. Ms. McAllister stated that typically, applicants are allowed to speak as long as the Planner. In individual cases you want to hear everything the applicant says because Planning Commission minutes are the only opportunity City Council gets to know the applicant's side. When they go before City Council, they get five minutes whether they are the applicant or not. At least in the minutes, by the time it gets to City Council they have a pretty good idea of the discussion and why Planning Commission voted the way they did. They know that the applicant really had an opportunity to present their case, and City Council is more comfortable following Planning Commission. If you do not allow the applicant enough time to speak, more likely than not, the case will come back before Planning Commission.

Ms. Sugg stated that if you do not have it specified, you get to do what you want. City Council has time limits, but if you have a case where you want to hear more, you have not violated your own policy. Ms. McAllister stated there are situations where even if there is a time limit, they will find a way to get around those limitations. Mr. Coenen stated a time limitation should be at the discretion of the chairperson. Mr. Roberts stated that the applicant needs a forum to state what they need to state and if it takes five minutes or thirty minutes then they need to plead their case. He did not feel that the Commission needed to be so restrictive that they should set a policy that applicants only have five minutes to speak. There are few times that the Commission has had to meet until 5:00 P.M. and the few times that we have to meet for two or three hours should just be accepted by the Commission. Ms. Fox stated that the Commission should state that they want to hear from the applicant when they make their presentation and make time limitation requests depending on meeting attendance. She stated she felt comfortable with the by-laws the way they were written. The Commission agreed.

Ms. Fox reiterated that nothing was changed today, and a record of this discussion will be included in the minutes so that future Planning Commission members can review them.

Ms. Fox asked if there was anything else the Commission would like to discuss.

**CPC WORK SESSION**

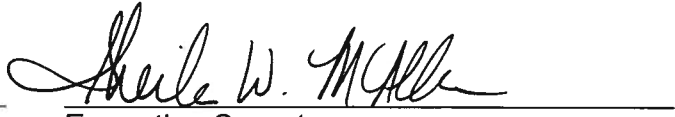
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Ms. Sugg discussed research she did on land uses regarding CU-11-288 which is the proposed church in Oyster Point.

There being no further discussion, the meeting adjourned at 1:37 P.M.

  
Recording Secretary

  
Executive Secretary