

MINUTES OF THE PLANNING COMMISSION WORK SESSION
Wednesday, February 16, 2011
York Room, City Center, Fountain Plaza II, 700 Town Center Drive
Newport News, Virginia

PRESENT: Sharyn Fox, Chairwoman; Victor Albea, Vice-Chairman; Cleon Long; Clara Swanson; Wesley Maxwell; J. Doug Coenen, Jr., H. Eugene Roberts; Robert B. Jones; (Staff: Sheila W. McAllister, Director of Planning; Kathy James-Webb, Manager of Current Planning; Michael King, Manager of Comprehensive Planning; Angela Hopkins, Senior Planner; Carl Jackson, Senior Planner; Johnnie Davis, Planner, David Watson, Planner, Sandy Hitchens, Planning Technician; Lynn Sugg, Deputy City Attorney; Christine Mignogna, Zoning Administrator)

ABSENT: Lorraine P. Austin; Saul Gleiser, Senior Planner

Ms. Fox opened the work session at 1:00 PM.

Kathy James-Webb, Manager of Current Planning, began the work session with a presentation on a zoning text amendment regarding Planned Residential Development (PRD).

Ms. McAllister noted that back when we were doing PRDs, you could reduce the lot sizes, but if you wanted to do multiple family and single family, you would have been rezoned to the R2-A Townhouse Dwelling district and then you would have been allowed to do the reduced lot sizes and do the mix. You were not allowed under that PRD to add uses that weren't permitted under that zoning district like we are doing now.

Ms. James-Webb stated in pyramid zoning, single family was allowed by right.

Ms. McAllister stated the smallest lot size was 6,600 square feet and you could go lower than 6,600 square feet

Ms. James-Webb stated you could go down to a townhouse footprint size lot.

Ms. McAllister stated if you really read those regulations, you could go as low as the smallest lot size, which was 6,600 square feet, but we allowed people to go as low as a townhouse lot size for single family. She said that Planning Commission is not an official body, but it is a recommending body.

Ms. Fox stated that the meeting on March 2, 2011 is only for the change to the regulations and we do not have any applications coming up at this particular hearing? We do not have anything pending?

Ms. James-Webb stated that nothing has been submitted. There may be something out there that may come in because they want to amend something that they've already done.

Ms. Fox stated that the PRD that they approved last year (The Preserve at Fisher's Creek) does not change anything with that particular approval, unless they want to change something.

Ms. James-Webb stated that if they wanted to come in and do a completely different location for the community facilities, adding additional high density units to the development, acquiring additional land, those are triggers for it to come back to the Planning Commission.

Ms. McAllister stated that because there was not an ordinance associated with that PRD, even though they came through if they choose not to do the PRD, they can still develop it as it is zoned unless they sign a PRD agreement, which they have yet to sign.

Ms. Sugg stated the existing regulations requires they sign the PRD agreement, and they just have not done that yet.

Ms. Fox asked if that attaches any issues to them signing it after we vote on these regulations.

Ms. Sugg stated that if they sign it after the Planning Commission votes on the regulations, then they could move forward with the plans that were already executed and approved.

Ms. Fox stated, so unless they make a change, what has been approved by us stands.

Mr. Roberts asked if they had a time frame in which they are required to sign a PRD agreement.

Ms. Sugg stated that there is no time frame, but they cannot move forward with their plans until it is signed.

Ms. Fox asked why they have not signed the agreement yet.

Ms. Sugg stated they have development issues. They have not moved forward on the PRD.

Ms. Fox stated we have new Commissioners since the last PRD and it was a very interesting process and she thought it would be good for everyone to become more familiar with it, especially in light of the changes if that particular project does come back up. It is hard to ask questions about that project since there really is nothing to ask about at this point.

Ms. McAllister stated that the question that came up was what would happen to the parcel next to the PRD. They had purchased the lot next to the development where they could have developed a second access, but they cannot develop that second access because the owners that own to the street would not allow them to utilize that property, but they did buy the lot next to them and with that lot, they wanted to add an additional seventeen units. They also want to move away from attached duplexes to zero-lot line two-family units. And they also want to relocate the clubhouse from the end of the street to the entrance because they have to build the recreational amenities first and if they leave the clubhouse where it located, they would have to build that road to get to it to build just the clubhouse and they do not want to do that. They are making a lot of internal changes, which is going to require them to have to come back for an amendment.

Ms. Sugg stated that even under the old regulations, they would have to come back.

Mr. Jones asked if this was a PRD the Planning Commission had already approved.

Ms. Fox stated yes, back in 2009.

Mr. Jones asked if the agreement was the result of the approval of the Planning Commission.

Ms. Sugg stated yes, Planning Commission approves it, and then under the existing regulations, they enter into an agreement with the City, and that has not occurred yet.

Mr. Jones stated they would have to sign the agreement.

Ms. Sugg stated yes, they would execute an agreement, and then the developers could move forward with their plans, but now it looks like they want to move forward with different plans, and the regulations say that if they are doing something that is going to materially alter the master plan, they have to go back to Planning Commission.

Mr. Jones stated that under the new PRD recommendation, the fee would be raised, and they would come before Planning Commission, but then they would have to go before City Council.

Ms. Sugg stated Planning Commission would make a recommendation to City council, and City Council would enact an ordinance.

Ms. Swanson stated The Preserve at Fisher's Creek was the one that had a huge negative reaction by the neighborhood.

Ms. Fox stated it was very heated. That is one reason I wanted us to talk about it before it comes back up. One of our issues was that we felt it was better to approve the PRD than the by-right use of the property. It could be any kind of cheap housing that a builder chose to throw up on there. The approved PRD is age restricted to 55 and older, so there were no children, no schools, and no buses.

Mr. Roberts stated that he felt that some of the things that come up in public hearings that the surrounding neighbors raise are valid concerns, and they have probably lived there for years and it has been a wooded tract of land that they have enjoyed from a visual standpoint. They have talked about walking in there and seeing all of the wild life that is there, walking their dogs and children were allowed to play in there, but the bottom line is it is an undeveloped piece of property. We sit on the Planning Commission to review requests of the land owners, as to how they want to develop it, and all of those things sound good, and they also talked about visual, and the neighbors across the lake and how their view is going to be destroyed because now they have to see a community center or the rear of someone's house. They are all valued concerns, but as a body that has been appointed to assist in orderly development, do we say no and not approve it because of those things? Well, then you are confiscating someone's property, so all of those things have to be looked at with reasonable care, but in the end, if it is not detrimental, then this body has to move forward and put conditions on it for development.

Ms. Fox stated they approved it at that time.

Ms. Swanson said it was a difficult meeting because a lot of people were very emotional and they were ready to fight.

Ms. Fox stated we are always weighing what is being said. She also stated that the PRD being approved had some conditions that were beneficial to the existing neighborhood that were more than what could go in there without a PRD and that is how she felt most of the Planning Commission came to their decision.

Mr. Jones stated the Regulations Committee has reviewed the language and approved it so the next step is coming before the entire body.

Mr. Albea asked, regarding Section 45-1507.D, the recommendation, says that the Planning Commission shall prepare a report indicating its recommendation. Would staff prepare that?

Ms. McAllister stated staff would prepare that report.

Mr. Long asked what was the difference between PRD and Master Plan.

Ms. McAllister stated you are approving the Master Plan with the PRD.

Mr. Long asked if the Master Plan was under the PRD, or if they were two separate documents.

Ms. Sugg stated the PRD is just the name of the development, and the PRD will have a master plan.

Mr. Jones stated the master plan is the actual layout and design of the PRD.

Ms. Sugg stated it is redundant in a way because the Planning Commission is making a recommendation on an approval of a PRD but technically they are also approving the plan of development, which is the master plan.

Ms. Mignogna stated we have had requests for additions to homes under old PRD regulations prior to 1997. We are probably going to get requests under the 1997 PRD regulations by individual homeowners. At what point do we at Codes Compliance say "that is just way past what has been approved and now everything changed". Is there a point that we say you have really altered what has been approved after the PRD?

Ms. McAllister stated that as long as they are within the parameters of the established setbacks, I do not think there is one, not for an individual property.

Ms. Fox stated she felt that was enough on PRDs.

Ms. James-Webb presented a zoning text amendment regarding Summary of Uses by District regarding Pawn Shops.

Mr. Jones asked if the police department was going to start regulating pawn shops.

Ms. James-Webb stated no, we are going to help regulate proliferation. They will be commenting on every application and so they are going to be critical for our approvals.

Ms. Fox asked about the pawn shops that are already in business?

Ms. James-Webb stated they are legally non-conforming.

Ms. Fox stated this is only for new pawn shops.

Mr. Jones stated the police used to get a disk at the end of the month that recorded everything that was brought in to them, and the police get that from them and they matched it against stolen items and those kinds of things. Now they probably have a different system.

Ms. McAllister stated they have a new electronic system that is automatic.

Mr. Roberts stated that, when a police representative came and spoke to the Regulations Committee, it was eye opening because if you do not go to a pawn shop or use or operate one, you do not know the requirements, but the officer who was there apparently it is his primary task everyday to retrieve hand written reports from all of the pawn shops in the city, and then he takes those reports and looks at them against reports of stolen items that the police department has to see if there is any correlation and that is how they track the movement, potential movement, of stolen items into pawn shops. It is all being done now by hand with paper and part of the requirement is going to be that everything is transferred over an electronic system. I cannot image that they have not done that before and the work it is for them on a daily basis to review it.

Mr. Jones stated a lot of the stuff is moved very quickly.

Mr. Long asked how we really control proliferation of the pawn shops. This came up in the last Planning Commission meeting we had and I remember when I took the Planning Commission class, there was a case where a Wendy's was located on the corner of an intersection, then a McDonalds came in and wanted to be located across the street, and the teacher said "You can tell a person if the McDonald's says if you have a Wendy's across the street, we should be able to be located across the street" but when the Wendy's was placed there, there was no McDonalds so you can bar that McDonalds from coming into that intersection because the land use, we are only allowing one fast food location at this intersection and not two. And so I am wondering, when we have cases where we want to control the spread of a pawn shop or tattoo parlor, can we use that argument and say "at the time when we located the first shop, there was no pawn shop at this location and now there is one, so that is not a good argument for us to put another one in this particular location."

Ms. Sugg stated if you use good planning principles which is related to the health, safety, and welfare of the community in terms of why you are choosing to deny an application, and with the Wendy's and McDonalds example, here you are adding traffic to that intersection.

Ms. McAllister stated that, with pawn shops, because they are associated with the buying and selling of stolen items, there are certain locations where you may not want them. We have had two pawn shops come through, near Dresden Drive, and what happened was there was a pawn shop in one building and the pawn shop owner wanted to move into the building next to him, where we basically said you can do that, city council approved it, and his existing business was supposed to close because he said it was going close. But that was our issue, that we did not want the two pawn shops right there together, right next to where the old pawn shop was, and someone else came in for another pawn shop right there on the corner and that one was denied for the reason that, at that time, we had just approved the pawn shop, the other pawn shop was still non-conforming because the two-years had not lapsed, so someone could have moved back into that building and then you'd have three pawn shops right there together.

Mr. Long stated denying a pawn shop because there is already a pawn shop in that location would not open up a person saying "well we already have a pawn shop in the area and you are being selective to me and allowing another pawn shop to exist, but not me." That question is going to come out.

Ms. McAllister stated if you know those are places where people typically sell stolen items, you do not want them all in the same place, you do not want someone to go shop their stolen items around because if you have three of them right there, the first guy is legitimate and says no, I am not going to take it, you just came here with 10 other items just like that. I can't say that you stole them but it is unlikely that you'd have 10 items of the same within the same day. You want them to not be able to just go next door and that guy says "ok, I'll take them." I think there is more of a safety aspect associated with that particular use.

Mr. Long agreed, and stated he was just trying to make sure that when they are voting there is no reasonable doubt that we can or cannot do it without someone saying you are being selective toward us because X, Y, or Z already has a pawn shop there.

Ms. James-Webb stated that is why you are supposed to rely on our staff reports. To give you guidance about that, that is our job.

Mr. King stated where proposals are permitted by use permit, those are a case by case basis, a stand alone on its own merits, not necessarily because you approve one, that is why it is a special use permit, it is unique to the circumstance of that request and that property, so other than being consistent and not being arbitrary in evaluating it, it does not mean because the Commission recommends a use permit today, that a similar case at a different location may not be appropriate because of factors that we will point out in our analysis in the reports.

Ms. Sugg stated there is a section in our city code of eight conditions that Planning Commission is supposed to find before granting a district use permit, and maybe we could email those to you just as a reminder that deal with factors that you should consider as to whether a use permit should be granted or not.

Ms. McAllister asked if that was something that they would want made part of the staff report.

Mr. Long stated he felt that would help especially when they have to vote, they could say it and based on this or that reason, they aren't going to vote for it.

Ms. Fox stated this was interesting and educational and there is a lot to think about the next time they get a new pawn shop application.

Ms. James-Webb presented a zoning text amendment regarding a new use, Self Service Ice Vending Units.

Ms. Fox asked if they can proceed if they meet the criteria.

Ms. James-Webb stated yes. Once they meet the general criteria, they could locate in these zoning districts by right.

Mr. King asked, in the case of a hurricane, where the city would need to purchase a large volume of ice, these vendors would be out there, and since we get reimbursed through FEMA, this would be an ideal opportunity to get ice in a location that might be close to a neighborhood and distribution points and those kinds of things.

Ms. McAllister stated that the pre-wire for a generator is not going to be wired for a generator. In order for it to be, well, we had originally asked them to actually wire it for a generator so the only thing you would have to do is flip a switch and you could just hook up the generator. That is not going to be the case. The case is, and it doesn't necessarily mean that we are going to use them even in an emergency because you would have to have a contractor come out and re-wire this for what you would actually need to hook up for a generator. That is important because they said it was too costly to actually completely wire it.

Ms. Fox asked what "pre-wired" meant.

Mr. King stated he felt it was where the wires are in place and ready to install a connection where you could just plug in and turn on a switch, but it is there in case the city or some other mechanism would find a reason where we do need that location in the future for an emergency, we would pay for it or some other means to have them install the actual plug thing.

Ms. Fox stated what they might actually want to see "pre-wired for generator connection".

Mr. Roberts stated the expense is really expensive. There are two apparatuses you can use. One is called an automatic transfer switch and that is tied to Virginia Power's source. What it does it keep you from getting two loads because if the power comes back on and Virginia Power restores the power to that unit, you do not have the generator running as well as the main service going into it? You can get an overload, so that is why it is automatic. You can also have what's called a manual transfer switch so it doesn't do it automatically. The automatic is when as soon as Virginia Power goes off line, you have maybe a 2 or 3 second delay for that automatic transfer switch to sense before it starts the generator up. With a manual transfer switch you do not have to have that, you lose the power, then you have to go out there and manually switch it, then the generator comes up, but in this case, you aren't going to have the generator there anyway because it would be either on loan from FEMA or the city would contract with someone to provide the generator, so I would think you would do a manual transfer switch if you did anything. But it is those switches that people do not want to pay for to have it available.

Mr. Albea stated "pre-wired for a generator" whether it is manual or not does not guarantee that the vendor is going to hook up to a generator. So is this a sole source, all of the ice houses look the same.

Ms. James-Webb stated this is the only interested company we have had, but there will be other companies.

Ms. McAllister stated that it is a new industry, but they are not beautiful.

Mr. Albea stated he would want to go with pre-wire for a generator, and if they want to keep that, would they want to have a generator on-site? Or would we want to try to push the vendor into a corner?

Ms. McAllister stated we tried and their argument is if they do that, then the city would have to do a formal contract with them stating that they would only use them during an emergency, and we cannot do that, so this is as close as we can get to that, and if we'd ever want to use it, we'd have to have the contractor out there to do the switches.

Mr. Albea asked if it would benefit to put this language anywhere. It sounds good, but if I am just imposing a fee on someone that never is going to have this use, if the City does not come to them for ice, they do not anticipate the city or anyone for this matter coming to them for ice and they just put this use out in a parking lot and make whatever profit margin they do there. Why would they have the need to wire it to a generator if they never intends to hook up to one?

Ms. McAllister stated they do not, but we do not know what the future holds for us and we may, in an emergency, need to use them, so we want them to be pre-wired for a generator, even if it means we have to go out there and re-wire it to do what we have to do to hook up to a generator.

Mr. Albea stated that if the City is going to have to re-wire it, why would you put that condition on each use?

Mr. Roberts stated there is a certain amount of pre-wiring you can do when you wire this anyway, even without the automatic or manual transfer switch. They can at least pull wires out to a junction box and isolate them from their electrical panel in the right capacity, with the right size leads so that you could hook a generator to it and that is probably all in the end the that you are going to get them to provide and just leave it that. If you remember for gas stations, ever since the hurricanes that we have experienced in the past, now you need approval of a gas station, you require them to have a generator. If they have, either on-site or the ability to bring one in, but it is already wired with a transfer switch and everything can be plugged in because of the shortage that we had in the last hurricane, it devastated the peninsula and when you did not have available, there was no power, even with fuel in the tanks you could not get it out of the ground.

Mr. Jones asked how normally would they, in emergency services, how do they usually do it?

FEMA brings the ice in trucks and it takes days.

Mr. Jones asked if this would be part of a plan to avoid the trucking in of ice if we set up some kind of comprehensive system where we can get ice out of places like this or 7-Eleven?

Mr. Albea stated he would go all or nothing. If I am going to make you pre-wire for a generator, I am going to make you have a generator on site. I am not for it, but I do not see where we are going to impose a condition on someone that they may never ever use. I think gas is different.

Ms. James-Webb stated they may find that it is in their best economic interest. If that disaster lasts a long time, the company might actually do it for themselves so they can make some money. They would be hurting themselves not to pre-wire it even for a manual switch. I think it is in their best interest to actually do that.

Ms. Fox stated pre-wiring doesn't seem too burdensome, but having to get a generator and keep it on site and maintain it, that seems to me like an extra added.

Mr. Albea stated for this problem, I am all or nothing.

Mr. Jones stated they probably do not want to do it because they do not know if they would spend all of the money and do this and the City might never use it.

Mr. Albea stated that the City may never use it, but if it is outside a dense neighborhood, then the people in the neighborhood may use it for ice. We were talking City, but let's look at the residences around it.

Mr. Roberts stated that is only if it is a city-wide outage and that is not normally the case. You have certain areas that may be out, at some storm you have one area and you do not have the area, the next storm and it will switch around. I think this is a good compromise.

Ms. Fox stated she thought it was a very good compromise.

Mr. Albea stated it should be all or nothing.

Mr. Long asked if we are going to require them to have a bond for that seasonal operation. I know when we do the radio towers and cell phone towers they have to put a bond up so that if they abandon it the bond will take care of the removal of the tower? Is their removal going to be enforced?

Ms. James-Webb said it will be enforced by Codes Compliance. This is in the general regulations of the Zoning Ordinance so they would enforce that.

Ms. Fox asked if there are places in the city that these could be located based on what's in here.

Ms. James-Webb stated we did a map to see where they could be located.

Mr. Coenen asked how many locations were there. It seems to me there were very few.

Ms. James-Webb stated there were logical places. Shopping centers, though some of them have grocery stores. Where they would really like to go is gas station sites that are less than an acre. But they were looking at it not just from "it is a 2 acre or greater site" rather, "it is a 2 acre or greater site but is it a place where I, as the owner, would be collecting money, would be I safe going to that area collecting money?" That is also part of their criteria, so it limits them to some degree by that, but there were sites. I would think there were over 10.

Ms. McAllister stated that these are not uses that we would want to see on every corner.

Ms. Fox felt it was a good compromise from what was understood earlier. And she knew that we do have people that are ready to go with this, so I know Regulations Committee has looked at it long and hard.

Ms. Swanson stated that even though we have identified a number of sites that meet the criteria of the standards, the folks who we are talking about applying will say they cannot use that site because it has a grocery store. We are not restricting them because there is a grocery store, they are saying that contractually, there is probably a non-compete and the grocery store has the ability

to keep us out of that site, but we have identified a bunch that meets these standards. It may not be any that some particular ice vendor would want to make application for, but that is their business choices, not ours. She stated that the people who were giving us the talking points at our Regulations, they had their application and their product and their plan in mind and kept saying this would not work for us, and it is like, that is not our problem. We are identifying what works for us, for the City.

Michael S. King, Manager of Comprehensive Planning, gave a presentation on the Plan Amendment Process.

Mr. Roberts asked about other jurisdictions and other states. Do they employ the amount of citizen input that Newport News does in their five-year review?

Mr. King stated no they do not. There are communities in the western part of our state that when their plan comes up in five years, they type a memo that the community has reviewed it and put it back in a file with no public input. It is required by state law to have a comprehensive plan and update it. Technically, in the code it says review the plan every five years. A lot of plans are farmed out to consultants and there are a minimum of two meetings with the community. We have not heard, and fellow planners might know more than I, we have not heard of anyone who has a lengthy process like we do with as much civic involvement in our comprehensive plan preparation, so people put a lot of time and effort into this and it is actually reflective of what the community does. There is a direct line between them and what they see in the product so I think we do a better job than most, not because it is us, but simply because we have a more involved process.

Mr. Roberts stated that our citizens have more of a buy in, so it is as much their plan as it is the corporate city itself.

Ms. McAllister stated that most communities are required to have a public process. Some like ours, some not like ours, but the public hearing process by state code is part of that community outreach portion of it.

Mr. King stated that a community may have a public hearing on an update but there is not the involved solicitation of input as our city has. Another point is that, from our profession, and for your concern as Planning Commission, the comprehensive plan is the basis for everything we do in this business. It is the beginning and everything is generated from that, everything follows from that, every document that you come into contact with whether is it the zoning ordinance, zoning map, subdivision ordinance, CIP, everything comes from the comprehensive plan initially so that shows really how important that document is because everything else flows from it. Lastly, our City Council adopts it and our elected officials have said this is the vision of our community and we have some obligation to pay credence to that document.

Mr. King continued his presentation.

Ms. Sugg asked if, regarding the old process, when he said "together", was the process such that the comprehensive plan was considered amended, and then in a separate hearing but on the same day, the zoning change was approved.

Mr. King stated that together, they are not together in one public hearing, they both have their own separate hearing, but they are in succession. You hear the one in a public hearing, and then its closed and then you open up the rezoning. But it is hard not to think about the rezoning proposal before you and it is very easy to get confused and discuss specific site issues when really you should be discussing the land use proposal that is before in the plan amendment and how that analysis should apply to that particular case.

Mr. Coenen asked, regarding the old amendment process, it was his understanding that the comprehensive plan and the land use that was shown on that plan were to be used as a guide. If that is the case, why do you have to go through a plan amendment at all? Why can't an applicant just come forward and you guys write up your opinion on it and the applicant can make his presentation before the Planning Commission and then onto City Council?

Mr. King clarified why would we consider the plan amendment at all and just let the applicant submit a rezoning and let it stand on its own merits without changing the plan? It creates a problem and our legal counsel can elaborate on why that creates some problems. There are other issues associated with that, and the rezoning proposal and the rezoning is finally approved by City council you have conflict with the comprehensive plan, which can create a problem

Ms. McAllister stated what is important to remember and to understand, because everyone looks at zoning as the end all to everything, but when you actually read the state code, zoning is only implemented where your comprehensive plan said. If you basically said that this is how you want your city to develop, the zoning comes in underneath that and it implements that, and I know we always say that the comprehensive plan is a guide, but it is only a guide to the implementation process. The regulations strictly say that this is where your comprehensive plan is and this is where your zoning is, and the two should be working in tandem. You really aren't supposed to come in with the zoning and recommend for that zoning when it is not matching what you are saying that you really want your city to look like, and so that is why everything in here says that you adopt this comprehensive plan and once you adopt this comprehensive plan, we understand that things will change within your city, so we give you a mechanism to change that plan and as you change it, then you change your implementation, your zoning portion of it, to match what you are saying you want there now because of other things that may have changed around this particular area. And I think that is what is important to understand today is that the comprehensive plan is not sitting off on the side, and we are only looking at the zoning. You really are supposed to be looking at that comprehensive plan and your implementation tool should be following what you said that you wanted or you have to change what you said that you wanted.

Mr. King stated that the comprehensive plan is the basis for everything we do. The zoning ordinance and the zoning map is an implementation tool of the comprehensive plan. So our goal at all times is how do we get everything to comply with that comprehensive plan and future land use map that the citizens have determined is where they want to go. And when the zoning map and ordinance do not implement the plan, then we have started to stray and go away from what the community's vision is for our city. Every time we consider a zoning request or plan amendment, how is this changing what our citizens have said where they want the community to be and that this zoning is an implementation tool. What I am doing today to recommend approval or denial of a zoning change, am I implementing the citizen's vision of the comprehensive plan that is the umbrella over everything? That is just something that we are just trying to make sure that that is a second nature thought process for citizens and of course, the Commission.

Ms. McAllister stated that, beyond that, once City Council adopts the plan, it becomes their policy.

Ms. Sugg stated that the Code of Virginia states that the plan shall control the general or approximate location, character and extent of each feature shown on the plan. So, the governing body has put their stamp of approval on it and it is akin to law, it is a resolution. But, if you enact an ordinance, that is opposite to what the local governing body has said should happen in that location, then there really is just some inconsistency there, and that is why we try to keep the zoning in accordance with what the plan says. It is a guide, but it is a guide that has a stamp of approval by the local governing body.

Mr. Maxwell stated as I recall, I do not think there has ever been a situation where we have denied a plan amendment to be approved for rezoning. Any plan amendment that was denied, the rezoning was also denied.

Ms. McAllister stated we are trying to work out a new plan amendment process that works in tandem with changes of zoning to some degree and not create the huge delay that we have had in the past. But I think one thing we are also forgetting is, as part of any change to our comprehensive plan, we now have another layer because we have to send it up to VDOT to review a plan amendment based on its location. So, all of that is also part of a plan amendment, but what was happening is with the study, it is taking just too long. The process is taking too long to go through the process of the study because we have had four requests to come in at the end of January and what we are getting is that people just kind of want to come forward with their request and ignore the plan process and take their chances.

Mr. Coenen stated he was not not saying he disagreed with our opinion on that, but it has become quite a lengthy process. You still have to do the study as well.

Mr. Jones stated that is what they taught us in the training. It helps the commissioners by way of discussion to talk about why they are voting, how it conforms to the comprehensive plan; instead of just willy nilly, its part of a record. At least you have some reasoning on the record as to why you are voting.

Ms. Sugg stated you are not acting arbitrarily.

Mr. King stated that would be a good habit to get into talking about why I am voting this way because I think that our citizens envisioned "X" and I think that is how I should vote, or at least go on record doing that, and that may generate a discussion with another commissioner. That is a good process to do.

Mr. King continued his presentation.

Mr. King asked for thoughts and questions and how they felt the plan amendment process, which way they thought would work best for the commission.

Ms. Fox asked if Mr. King was looking for them to come up with some sort of consensus for him today. Maybe we should probably think about this.

Ms. McAllister stated this was something they just wanted the Commission to know we were working on. We will probably try to come up with another process that shortens it and come up with parameters for when a study should be required, but no matter what we do, every time someone comes in and requests a plan amendment, it would still come to you, its wouldn't be an automatic approval just because someone's requesting a plan amendment, we will still do a staff report based on that request, but it may not be recommended for approval.

Mr. King stated it is ok to say no. We have not mentioned that. The Commission does not have to say yes to everything. It is alright to look and say we have heard your request, but no.

Mr. Albea stated he did not know the legality, but since we throw the term out "guide" for the comprehensive plan, are we supposed to have all of the zoning line up with it? Would it be inappropriate to have a work session for a plan amendment before it comes to the actual Planning Commission meeting?

Ms. Sugg stated that would be up to you.

Ms. McAllister stated no. If someone requests a plan amendment, to bring it to a work session so we can sit around the table. We can do that.

Mr. Albea stated he felt they would get a lot more accomplished in a work session for a plan amendment, especially if we want things to line up with the comprehensive plan if we are going to move forward with the study or if we are going to deny the study, I think that so we can be consistent, because I will go back to that apartment complex that we just went down the wrong road, but I think making a decision in that meeting did not get everyone's gears turning and everybody thinking along a line of "we are making a change for the comprehensive plan to go on the land use and rezone it" where I think we could have gotten more accomplished in a round table discussion as opposed to just a public hearing.

Ms. Sugg stated City Council does that a lot right? You all have work sessions for a lot of those.

Ms. McAllister stated that we are talking about a work session prior to the actual hearing.

Ms. Fox stated she felt that work sessions are always beneficial and she is a big fan.

Mr. Jones asked if they would actually vote at the work sessions.

Ms. Fox stated no, it is a discussion like this is where you can ask questions and clarify issues in your mind. They are open meetings, just like this.

Ms. McAllister stated that at that point you would already have the staff report and reviewed it, and now you would just hold a work session to discuss the plan amendment.

Mr. Albea clarified only for plan amendments.

Ms. Fox stated there are some plan amendments also that perhaps we can look at a staff report and perhaps we would not need a work session.

Mr. Albea asked who would determine that. To me, for plan amendments, if we are going to look at the comprehensive plan, I would say we look at all of them.

Mr. Coenen stated they do not come in that often.

Ms. Fox stated that was something really good to think about. Are we comfortable with the work sessions talking about plan amendments?

Mr. Coenen stated he thought it was a good idea and I think it is important enough that we do that.

Mr. King stated he felt it was beneficial to the Planning Department as well to be able to give you some information and to hear what your questions are and discuss them in an informal setting where we can give you answers.

Ms. Fox stated we can ask questions.

Mr. Jones asked if the work sessions should be open to the public and let them know about them.

Ms. Fox stated we do, we have to advertise them. Just like we announced it at our meeting and it is posted, all of our meetings are advertised open to the public, available.

Ms. Sugg stated the public would have the opportunity to come to the work session.

Mr. Albea stated that the public would not be able to speak.

Ms. McAllister stated not unless the chairperson recognizes them.

Mr. Jones stated that in Norfolk they had people come and they did presentations at a work session and everything and they did not vote on it.

Ms. Fox stated she thought a work session was a great idea.

Mr. Albea stated he thought there are so few that he did not think it would be an issue.

Ms. Fox stated that everyone seemed comfortable saying that a work session for plan amendments.

Ms. Fox mentioned the next item on the agenda, Planning Commission Requests for Deferral.

Mr. Albea suggested that Ms. McAllister put this item on the agenda. He personally felt good looking at staff reports from other Planning Commissions that are nowhere near as good as what we get from our staff. To discuss the case with whoever prepared it, even if we need to go higher than that preparer, or Sheila, or Kathy, to get more input, I think we need to be as informed as we possibly can before the meeting and to know why we are going to a deferral. I do not think that there have been a lot of cases where the applicant has made us sway to another side so to speak, but I just hope that we are comfortable when we make deferrals to know that it goes back to staff and its impacting time and things of that nature. Just know why we are going to a deferral, do not just defer because of the applicant.

Ms. Fox stated that when they vote, they obviously have a motion or a second and everyone gets an opportunity to vote yay or nay on a deferral.

Ms. Swanson stated that at the last meeting she wanted to have said to that applicant "Now you understand that you are asking for these three changes and if you want us to vote today it is not going to have those three changes, do you want us to vote today the way it is proposed or do you want to have an opportunity to have it changed, which means a deferral. And I was kicking myself for not having asking that because I could not tell if it was "this would be nice or good or this is a killer". Ms. Swanson stated before the deferral vote motion came up, she should have said do you really want us to defer it so we can add these things or study things that you are proposing or would you rather accept it the way it is? I mean, these are just minor things that you are kind of thinking about.

Ms. Fox stated there was a lot of confusion over exactly what the changes were that they wanted. I think all of us felt very sympathetic toward the applicant but also felt that we to vote on it as a land use issue, which may not have been particularly what they wanted. But I had no problem voting for a deferral because I think there were four major items.

Mr. Jones stated they did not even know who owned that land on the other side of the fence.

Ms. Fox stated and the TV and video equipment, which I am not inclined to vote against because that is something we have been making a condition other than the one outside camera, and I think that is pretty important in a facility like that. So, I think that the deferral process gives them the opportunity to talk to staff again and hear "wait a minute; this is what we are willing to take out or leave in."

Mr. Albea stated that the applicant did not get the conditions the day of the meeting.

Ms. James-Webb stated that in some cases the applicants do not call. Some applicants that get the conditions, which is what happened in the case of the last applicant, and they felt they were getting singled out for certain things like the video cameras. They did not realize that it is a standard condition. Ms. Fox made a comment stating that we do this for every conditional use permit, but it did not sink in at the time.

Mr. Jones stated it could have been more concisely "ok, I move to approve with the condition that the video camera is not there, whatever, or they put a fence in the back"; you could have made that amendment and then had it vote up and down. You could not even make that amendment?

Ms. Swanson stated that you could, but staff doesn't want us to. They want to be able to have input.

Mr. Jones stated he knew why we did not do it in that situation because there were outstanding items, but I have seen it in other cases where someone's said ok let's include this or that.

Ms. Fox stated that you could have made a deferral or made a motion to approve it without the video cameras or fence, and we could have voted yay or nay for that. That is always an option.

Ms. James-Webb stated that means the motion fails. Then someone else would say it is deferred.

Ms. Fox stated that is always an option. As far as I know, you can make a motion relative to that item.

Ms. McAllister stated that when someone wants changes to that extent, that is an application that should be deferred. This was not an application that came in last month, we came up with some conditions, and we sent it to Planning Commission. They had ample opportunity to come in and discuss the conditions with staff, which they did not do. They knew when they got it what conditions they did not like, and their thing is to circumvent staff, let's go to Planning Commission and we tell them that these are conditions that we cannot live with and our thing is we are looking at that use, not the use that it is Youth Challenge. It is auto repair and it is going to be auto repair whether Youth Challenge is there or some other auto repair is there, so we have to look at the extent of what could possibly happen on this site because we have opened the door. We may be doing it for Youth Challenge, but we have now opened the door, and if it is approved, you want to put as many conditions up there that would minimize its impact if it was a fully fledged auto repair shop or if it becomes a used car dealership in the future.

Mr. Jones stated that, in a way, you did make such a motion to approve it but change whatever, you would actually be doing them a disservice too because the rest of the commissioners might just vote against it for whatever reason.

Ms. Fox stated that she thought that deferral went as well as it could have been expected and hoped for. She was very happy when Cleon made that motion because I do not think anyone was ready to approve that application and take those conditions out.

Ms. Swanson stated that she would have voted for it as recommended by staff, if we had gone to the vote. Just like you said, you had your chance and come in with a new proposal if you want, but you blew it.

Ms. Fox stated to always remember you have the right to make a motion and it will either get seconded, and there have been motions where they were not seconded and the motion fails.

Mr. Jones stated that if someone had amended it and it had gone up for a vote and lost, then it would be too late to defer it right? It is better to make the deferral motion first and see if that flies.

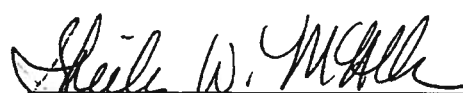
Ms. Fox stated she thought that was good to know and she is sure we will see them again at the next meeting and we will all feel better about it.

Mr. Albea stated he is going to recommend for another deferral.

Ms. Fox stated he can recommend whatever he wanted to. All I do is ask for a motion and pray someone makes one.

There being no further discussion, the meeting ended at 2:37 P.M.


Recording Secretary


Executive Secretary