

5/11/98

4:30 p.m. Item - PCA-84-D-049-2 - TYSONS II LAND COMPANY, L.L.C.
Providence District

On Thursday, March 26, 1998, the Planning Commission voted 9-0-2 (Commissioners Kelso and Hunter abstaining; Commissioner Hall absent from the meeting) to recommend to the Board of Supervisors approval of PCA-84-D-049-2, subject to the execution of the proffers dated March 19, 1998.

On Thursday, April 2, 1998, the Planning Commission voted 7-0-1 (Commissioner Hall abstaining; Commissioners Coan, Downer, Hall, and Kelso absent from the meeting) to approve FDPA-84-D-049-3, subject to the Board of Supervisors' approval of PCA-84-D-049-2.

Planning Commission Meeting
March 26, 1998
Verbatim Excerpts

PCA-84-D-049-2 - TYSONS II LAND COMPANY, L.L.C.
FDPA-84-D-049-3 - TYSONS II LAND COMPANY, L.L.C.

Decision Only During Commission Matters

Commissioner Coan: PCA-84-D-049-2 and FDPA-84-D-049-3, Tysons II Land Company. This was almost ready to go a few weeks ago after I thought I had tightened it up and several of my fellow Commissioners felt I hadn't tightened it up enough. So it was put off. There should be in front of you a revised set of proffers to go with the PCA. I call your attention to the second page where Item #4 appears with a substantial amount of underlining. This, in effect, limits the types of food facilities that may be included as secondary uses in the office buildings that would developed on this site. I would like to read that language into the record. Presently it reads -- it is proposed to read: "No fast food restaurant shall be permitted to sell primarily ready to consume hamburgers or fried chicken." Ms. Hall raised the question about tacos, so now it reads: ". . . ready to consume hamburgers, fried chicken or tacos or that have drive-through facilities. Other restaurants which qualify under the Fairfax County Zoning Ordinance as fast food restaurants, but not -- that do not sell primarily hamburgers, fried chicken or tacos are permitted. These include, but are not limited to, delicatessens, coffee shops, bagel shops, ice cream, yogurt and frozen dessert stores, rotisserie or grilled chicken restaurants and bakeries. Any permitted fast food restaurants shall be designed: 1) to maintain and protect the high quality of the Tysons II planned development" If I may interject here, that was the whole concern that I had in this matter and I think others of you did too. Back into the language: ". . . 2) to be conducted entirely within an enclosed building. No such fast food restaurant shall be permitted to operate vehicle-based food delivery service. No vehicles used for food delivery from the application property shall have rooftop, aerial or other signage not attached to the sides of the vehicle. The signs associated with any fast food restaurant shall comply with the provisions of the approved comprehensive sign plan, CSP-84-D-049 for Tysons II, as the same may be amended." And then we had also added earlier: "Additionally, no quick service food stores shall be permitted other than those which: 1) shall be oriented to cater primarily to the occupants of the principal use or 2) sell a speciality line of products such as a chocolate shop, bakery, coffee shop, wine and cheese shop or gourmet shop." WITH THAT CHANGE TO THE PROFFERS that were originally presented to us, I therefore MOVE THAT WE RECOMMEND TO THE BOARD APPROVAL OF PCA-84-D-049-2.

Commissioners Byers and Alcorn: Second.

Chairman Murphy: Seconded by Mr. Byers and Mr. Alcorn. Is there a discussion of the motion?

Commissioner Downer: Yes, I have a question, Mr. Chairman.

Chairman Murphy: Ms. Downer.

Commissioner Downer: Thank you. Where it says: "No such fast food restaurant shall be permitted to operate vehicle-based food delivery service." Then we say, in the next sentence: "No vehicles used for food delivery from the application property shall have rooftop, aerial or other signage not attached to the sides of the vehicle." Isn't that a contradiction?

Commissioner Coan: It's my understanding that the first sentence is designed for something -- a place where that is the primary way of serving its customers, through delivery. The second is designed to -- in recognition that some places may have a catering operation, but that's not their principle way of serving their customers and it's designed to avoid the ubiquitous lighted rooftop pizza things, without going into anybody's name.

Commissioner Downer: But it doesn't say that's a primary use. I wonder if something should be there to say: "No vehicles used for . . ." no, go up to the first one: "No such fast food restaurant shall be permitted as a primary use to operate vehicle-based food delivery services.". I don't know. To me, it's confusing.

Commissioner Palatiello: Mr. Chairman?

Chairman Murphy: Mr. Palatiello.

Commissioner Palatiello: I understand where Mrs. Downer is going with this, but it seems to me that it's not inconsistent because there are third party companies that provide a delivery service that is not owned or operated by the restaurant, but this third party -- it is their own business. So what this -- as I read this, it means that the permitted types of restaurants could not operate their own vehicle-based food delivery service, but if one of these third party companies were to operate, the limitations on the rooftop aerial or other signage would apply.

Commissioner Downer: In other words, you're saying that if it were a Domino-type operation that mainly did deliveries to homes or businesses versus --

Commissioner Palatiello: I don't think Mr. Coan wanted to get into the names of specific companies, but I think --

Commissioner Coan: I didn't think I had to name any of them, but --

Commissioner Downer: -- versus an eat-in Big M or whatever. I think I see what you're saying there.

Commissioner Coan: I would urge -- this was -- this has been -- maybe the applicant's counsel would like to -- Mr. Tompkins, would you like to come forward and address this?

Chairman Murphy: Mr. Tompkins, as you address this, I'd like to you, please, since it is a proffer, reaffirm that you concur with this proffer since I'm sure you gave it voluntarily.

Benjamin Tompkins, Esquire: Let me take these one at a time. My name is Ben Tompkins. I represent the applicant in the matter. We may have had some philosophical concerns with the level of detail in this proffer, but I would say that it is given voluntarily, notwithstanding that. The distinction I would draw there is, we are permitted to have restaurants there. You might have a restaurant that also provides delivery service, and in that context, that's the restriction on vehicles that could not have the --

Commissioner Coan: Lighted signs.

Mr. Tompkins: There you go. There can be no fast food delivery, but if one were to have a restaurant -- for example, a Chinese restaurant that's not a fast food restaurant -- they might be able to make deliveries, subject to these limitations.

Commissioner Downer: Okay.

Chairman Murphy: Further discussion of the motion?

Commissioner Alcorn: Mr. Chairman?

Chairman Murphy: Mr. Alcorn.

Commissioner Alcorn: I move that with closure of the taco loophole, these fish are ready to fry.

Chairman Murphy: Further discussion of the motion?

Commissioner Coan: I have none, Mr. Chairman.

Chairman Murphy: All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA-84-D-049-2, subject to the proffer statement dated March 19, 1998, as last revised, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hunter: Abstain, Mr. Chairman. I was not here for the public hearing.

Commissioner Kelso: Abstain.

Chairman Murphy: All right. Mr. Kelso abstains; Mr. Hunter abstains, not present for the public hearing.

Commissioner Coan: Mr. Chairman, I next MOVE THAT WE APPROVE, SUBJECT TO BOARD APPROVAL OF THE PCA, FDPA-84-D-049-3. And I would like to speak to that a moment.

Commissioner Byers: Second.

Chairman Murphy: Seconded by Mr. Byers. Discussion of the motion? Mr. Coan.

Commissioner Coan: Yes. We have added -- what precipitated all this was a -- on the final development plan there was a list of permitted and non-permitted uses. And I just want to call to the attention of everyone that that has been remedied. The problem of what could and could not be included was remedied and that material was passed out several weeks ago. I just wanted to call that to your attention.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to approve FDPA-84-D-049-3, subject to the development conditions dated March 19, 1998, and subject to the Board's approval of the PCA, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Hunter and Kelso: Abstain.

Chairman Murphy: Motion carries. Mr. Kelso and Mr. Hunter abstain, not present for the public hearing.

Commissioner Hunter: Mr. Chairman, just for the record, I would like to note that Commissioner Kelso and I were out of town eating tacos.

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(Both motions carried by a vote of 9-0-2 with Commissioners Kelso and Hunter abstaining; Commissioner Hall absent from the meeting.)

GLW

Planning Commission Meeting
April 2, 1998
Verbatim Excerpts

PCA-84-D-049-2 - TYSONS II LAND COMPANY, L.L.C.
FDPA-84-D-049-3 - TYSONS II LAND COMPANY, L.L.C.

During Commission Matters

Commissioner Alcorn: As the stand-in district Commissioner for the Providence District this evening, I have a motion regarding an item that we passed at the last Planning Commission meeting. Upon the advice of staff, and to clarify the motion adopted by the Planning Commission regarding FDPA-84-D-049-3, which I believe is also known as the taco case that we had the other day, Tysons II Land case, I will be making a motion to reconsider that action which was taken at our last meeting. That motion included a reference to development conditions; however, the applicant had previously incorporated the conditions proposed by -- into the proffers. Therefore, development conditions referenced in the motion were not included in the staff report. Therefore, the motion to approve FDPA-84-D-049-3 should have been subject to the Board of Supervisors approval of the Proffered Condition Amendment, PCA-84-D-049-2 only and not subject to development conditions. Therefore, I MOVE THAT THE PLANNING COMMISSION RECONSIDER ITS MOTION OF LAST MEETING REGARDING FDPA-84-D-049-3.

Commissioner Byers: Second, I think.

Chairman Murphy: Seconded by Mr. Byers. Please don't ask me to repeat the motion. All those in --

Commissioner Hall: Mr. Chairman, can I get a clarification? I was not here for the vote, so I didn't vote, so therefore can I vote to have reconsidered or should I just abstain?

Chairman Murphy: I think you should just abstain.

Commissioner Hall: I think I will. Thank you.

Chairman Murphy: All those in favor of the motion to reconsider this motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Alcorn. And Mrs. Hall abstains.

Commissioner Alcorn: And, Mr. Chairman, I FURTHER MOVE THAT THE PLANNING COMMISSION APPROVE FDPA-84-D-049-3 SUBJECT TO THE BOARD OF SUPERVISORS' APPROVAL OF PCA-84-D-049-2.

Commissioner Byers: Second.

Planning Commission Meeting
April 2, 1998
PCA-84-D-049-2 & FDPA-84-D-049-23

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Chairman Murphy: Seconded by Mr. Byers. Discussion of the motion? All those in favor of the motion to approve FDPA-84-D-049-3, subject to the Board's approval of the PCA, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries; Mrs. Hall abstains.

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(Both motions carried by a vote of 7-0-1 with Commissioner Hall abstaining; Commissioners Coan, Downer, Harsel, and Kelso absent from the meeting.)

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