

4:00 p.m. Item - RZ-85-P-050 - THE CALIBRE COMPANIES OF VA., INC.  
Providence District

On Wednesday, February 12, 1986, the Planning Commission voted 8-0-1 (Commissioner Fasteau abstaining; Commissioners Lilly and Sparks absent from the meeting) to recommend to the Board of Supervisors approval of RZ-85-P-050 for rezoning to the PDH-20 District, and approval of the conceptual development plan, subject to the execution of proffers consistent with the proposed development conditions, dated February 7, 1986, amended as follows:

Condition #3 will stay as written except for these amendments:

"The applicant will provide a primary access to the property through the adjacent property of Calibre Summit Square Limited Partnership as shown on the conceptual development plan. A stub street shall be provided to connect to parcel 32 to the north as shown on the conceptual development plan in order that access to Borge Street might be accomplished if such access is deemed appropriate in the future."

Condition #4 to read: "The applicant will construct an emergency access to Flagpole Lane which meets with the Fire Marshall's approval, which access shall be maintained until such time as a secondary access is made available to the application property."

Condition #7 to read: "The applicant commits to restricting construction traffic to its primary access through Summit Square."

Condition #8 to read: "The applicant commits to working with the County Arborist in order to preserve the mature trees on the site."

Condition #9 to read: "The applicant commits to providing supplemental screening consisting of mature trees of eight feet in height with a mix of deciduous and non-deciduous trees along the border adjoining the existing townhouse communities."

The Commission further voted 8-0-1 (Commissioner Fasteau abstaining; Commissioners Lilly and Sparks absent from the meeting) to recommend to the Board of Supervisors that it recommend that the Director of the Department of Environmental Management approve a waiver of the transitional screening requirements as they apply to the application property's borders with parcel 32 and I-66.

The Commission also voted 8-0-1 (Commissioner Fasteau abstaining; Commissioners Lilly and Sparks absent from the meeting) to recommend to the Board of Supervisors that it recommend that the Director of the Department of Environmental Management approve a waiver of the barrier requirements as they apply to the application property's borders with I-66.

The Commission voted 7-0-1 (Commissioners Fasteau and Harsel abstaining; Commissioners Lilly and Sparks absent from the meeting) to recommend to the Board of Supervisors that it recommend that the Director of the Department of Environmental Management approve a waiver of the barrier requirements as they apply to the application property's borders with parcel 32.

The Commission also voted 8-0-1 (Commissioner Fasteau abstaining; Commissioners Lilly and Sparks absent from the meeting) to recommend to the Board of Supervisors waiver of the 200-foot setback requirement.

The Commission further voted unanimously (Commissioners Lilly and Sparks absent from the meeting) to defer indefinitely decision on the final development plan.

Planning Commission Meeting  
February 12, 1986  
Verbatim Excerpts

RZ-85-P-050 - THE CALIBRE COMPANY OF VA., INC.

After Close of the Public Hearing

Vice-Chairman Harsel: All right. I will close the public hearing and recognize the Commissioner from the Providence District for leadership on the case. Mrs. Annunziata.

Commissioner Annunziata: I don't know what kind of leadership----. There are obviously a lot of questions and still some remaining problems, so I'm going to say at the outset that it is not my intention to move approval of the final development plan because I don't believe that we are at a stage in the development of this application in which that's going to be possible. What, in effect, we'll be doing is dealing with a rezoning and a conceptual development plan. And if the conceptual development plan is approved, there will be enough flexibility in it to, hopefully, resolve the remaining questions. Frankly, I think most of them relate to the access issue. I'm also going to tell you preliminarily something I don't know that I've ever done before. I am not in favor of, at this point, I tend not to be in favor---I'm going to put it that way---of a secondary access requirement here. I---it is not that I don't appreciate staff's position, but I don't know if the need for it is as strong as is suggested, particularly when it's balanced against the impact on the adjoining communities. But it would be my intent not to come to closure on that issue this evening. That is because I feel that I would like to take a closer look at it before the final development plan. But I'm just telescoping my bias against, and telling staff as well as the individuals who came out here to testify that unless there is a good reason provided between now and then, assuming this thing goes through, and I don't know what the Commission is going to decide on it, I would probably be disinclined to propose a final development plan that showed a secondary access, either through Flagpole or to Borge Street. My intent would be to follow the recommendation of the citizens who came out here who live on Flagpole and that is to restrict that to an emergency access, and to leave a stub street showing on the conceptual development plan which would potentially provide access up to Borge, but that is the issue that would need final resolution. And that is exactly the issue which I am stating publicly that I am, at this point, not probably going to be in favor of, even at a later date. But I feel it's important to leave that flexibility just so we can look at further development that's coming in next door. It would also be my intent to add those provisions that I asked the applicant to agree to in rebuttal regarding screening, and the provision regarding the preservation of mature trees. I think there are two issues that I don't think can be totally resolved tonight. And I'm not sure---in fact, I don't think---I think one of them can't be resolved in the near future at all. That latter one is the issue of parking. I don't believe there is any basis, any legal basis, any authority, and albeit I know you asked us not to be so technical and legalistic, but we've taken an oath of office to try to act consistent with the law to the best of our ability. I think we have to go with what the requirements are presently. We may all

have our doubts as to the adequacy of that parking requirement, but I don't feel, I don't feel comfortable in suggesting to this applicant that they have to meet yet another requirement that no one else has been held to. And, unfortunately, if that requirement proves to be inadequate I think the people living in the adjoining communities are going to be adversely impacted. There's no way to look at it---there's no other way to look at it, and I think we're going to have to, I think it's going to have to be accepted. I don't think there's anything we can do about it. I know you don't like to hear anyone say that, particularly in a public body, but that's my view. I think there's a little bit more flexibility on the architectural issue, not as much as you would like. This is not an area in which we have an architectural review board provision. I don't think we can require stringent architectural design requirements, but I do think there is some accommodation that can be made. I, myself, tend to believe that the resolution lies with screening. That's primarily because I, as the applicant pointed out, you can get three-story townhouses here and they wouldn't have to accommodate anyone's request with respect to architecture at certain ranges of density. So I'm going to go with the screening aspect to it. Finally, on the issue of density, I have looked at it, as I have earlier described my understanding of the process, I think the Plan allows for development of a residential community here of between 16 and 20 units per acre. At one point I had a question about whether or not this should come in at 21, I guess it was 21.5 units per acre as opposed to 20. So I'm also telling you immediately where I'm coming from. I thought they had met the development criteria requirements. In other words, it wasn't a question, for me, of whether they should come in at 20 or 16, but whether they should come in at 21 or 20. There's not much of a difference there. The open space requirement has in the past, when it's been met, the ordinance, when it's been exceeded has been sufficient, a sufficient basis for that extra density that has been requested. And I personally don't see a basis, at this point, for denying that bonus in this case. The issue of traffic that's in the surrounding areas I don't think is the engine that can work the denial in the case. And I think Commissioner Sell addressed that earlier. The impact on the surrounding community, as I understand it, is strictly, is primarily one of that secondary access. And there really has been no issue raised with respect to how it might, or how it so adversely affects the adjoining network that this should be denied. So those areas are the prime areas, primary areas of my, of my review of the case. And I've indicated to you the general parameters of what I think the resolution is. And at this point I'm going to put a motion before the Commission so that my colleagues can share with you their conclusions based on their review of what they've read and what they've heard this evening. It will be a MOTION FOR A RECOMMENDATION TO THE BOARD THAT THE ZONING ORDINANCE, AS IT APPLIES TO THE APPLICATION PROPERTY, BE AMENDED TO THE PDH DISTRICT, AND THAT THE CONCEPTUAL DEVELOPMENT PLAN BE APPROVED, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THE PROPOSED DEVELOPMENT CONDITIONS AS AMENDED AS FOLLOWS:

CONDITION #3 WILL READ: "THE APPLICANT WILL PROVIDE, FOR THE RESIDENTS OF THE SUBJECT PROPERTY, A STUB STREET CONNECTION TO PARCEL 32 IN ORDER THAT ACCESS TO BORGE STREET MIGHT BE

ACCOMPLISHED IF SUCH ACCESS IS DEEMED APPROPRIATE IN THE FUTURE."  
That would be condition #3.

CONDITION #4 WOULD READ: "THE APPLICANT WILL CONSTRUCT AN EMERGENCY ACCESS TO FLAGPOLE LANE WHICH MEETS WITH THE FIRE MARSHALL'S APPROVAL, WHICH ACCESS SHALL BE MAINTAINED UNTIL SUCH TIME AS A SECONDARY ACCESS IS MADE AVAILABLE TO THE APPLICATION PROPERTY."

THERE WILL BE AN ADDITIONAL CONDITION #7 WHICH STATES THAT: "THE APPLICANT COMMITS TO RESTRICTING CONSTRUCTION TRAFFIC TO ITS PRIMARY ACCESS THROUGH SUMMIT SQUARE."

#8 WILL STATE THAT: "THE APPLICANT COMMITS TO WORKING WITH THE COUNTY ARBORIST IN ORDER TO PRESERVE THE MATURE TREES ON THE SITE."

CONDITION #9 WILL STATE THAT: "THE APPLICANT COMMITS TO PROVIDING SUPPLEMENTAL SCREENING CONSISTING OF MATURE TREES OF EIGHT FEET IN HEIGHT WITH A MIX OF DECIDUOUS AND NON-DECIDUOUS TREES ALONG THE BORDER ADJOINING THE EXISTING TOWNHOUSE COMMUNITIES."

I believe it's to the north and west. And that would be the end of the motion.

Vice-Chairman Harsel: All right. Do I hear a second?

Commissioner Thillmann: Second.

Vice-Chairman Harsel: Seconded by Mr. Thillmann. Point of clarification, Mrs. Annunziata, what are you---are you just giving us a whole new #3?

Commissioner Annunziata: No, just the, it would be just the first sentence. I beg you pardon. No, that---I misread my language on that. #3 WILL STAY AS WRITTEN EXCEPT FOR THESE AMENDMENTS: "THE APPLICANT WILL PROVIDE A PRIMARY ACCESS TO THE PROPERTY THROUGH THE ADJACENT PROPERTY OF CALIBRE SUMMIT SQUARE LIMITED PARTNERSHIP AS SHOWN ON THE FINAL DEVELOPMENT PLAN." Then my language with respect to the stub street follows, and I beg your pardon. Thank you. "A STUB STREET SHALL BE PROVIDED TO CONNECT TO PARCEL 32---okay---TO THE NORTH AS SHOWN ON THE FINAL DEVELOPMENT PLAN." The purpose of which is to provide possible access to Borge Street if such access is deemed appropriate in the future.

Vice-Chairman Harsel: All right. Now, #4.

Commissioner Annunziata: #4?

Vice-Chairman Harsel: Are you crossing or are you leaving---?

Commissioner Annunziata: Everything else is out except for the fact that,

except for the condition that the applicant commits to providing emergency access to Flagpole.

Vice-Chairman Harsel: Okay, so we're taking out the permits.

Commissioner Annunziata: Yes. Right.

Vice-Chairman Harsel: All right. Any other discussion?

Commissioner Byers: Madam Chairman.

Vice-Chairman Harsel: Mr. Byers.

Commissioner Byers: I'm a little new to this, but I did not understand that it was graven in stone that because an applicant met the criteria, and I acknowledge in this case that the applicant has, that it necessarily followed that we were obliged to give him the upper end of the density. I am thinking here in terms of Mrs. Fasteau's comment. And looking at this it appears to me that we're building a beehive here in the midst of an already fairly dense area and we are creating problems that are going to come back and haunt us. It would appear to me that there should be some form of compromise. And I acknowledge that, while the applicant has met all the criteria---well, I think they've got the point, to that point---could not this Commission recommend a density of 18 rather than 20 dwelling units per acre?

Commissioner Annunziata: Mr.---Madam Chairman.

Vice-Chairman Harsel: Mrs. Annunziata.

Commissioner Annunziata: Let me answer that, if I can, on a sort of theoretical basis. I think the answer to that would have to be "yes", but you'd have to give a reason.

Commissioner Byers: Madam Chairman.

Vice-Chairman Harsel: Mr. Byers.

Commissioner Byers: I think we had a 15-minute dissertation just a little while ago.

Commissioner Sell: Madam Chairman.

Vice-Chairman Harsel: All right. Are you finished?

Commissioner Byers: Yes, ma'am.

Vice-Chairman Harsel: All right. Mr. Sell, you're next.

Commissioner Sell: Well, I think the criteria are well established, and in this particular case the applicant has met the criteria. In the face of that, professional staff's recommendation that they have met the

criteria---in my reading of it, it seems that they have---the applicable criteria. That's what the criteria are for, to make these judgements. They start at 16 and they work their way up by meeting criteria. I would think we would be hard-pressed, quite frankly, in this particular case to do less because the criteria have been met. The test of the Plan, the test of the way we operate, has been met, probably more so in this case than many I can remember. So I don't think that's even an issue here. That, you may consider that to be unfortunate. You may not agree with the density, but we have a procedure by, under which we operate and they have met the test of that procedure. For us to give him anything less would, I think would lead to complications, not only in this case, but in the entire application of the Comprehensive Plan as it pertains to zoning cases.

Commissioner Fasteau: Madam Chairman.

Vice-Chairman Harsel: Mrs. Fasteau.

Commissioner Fasteau: I remember being a stickler about when we used the word "may" and "shall" in the Plan languages from time to time. I don't remember what our language is when we say, here are criteria and if this proportion is met we'll give them lower density and if all of them are met we will give them the top, and so forth. Does the language---and I direct this to staff---say "may" or "shall"? Is it permissive or mandatory?

Ms. Brown: The criteria are designed as a guideline.

Commissioner Fasteau: Yes, but the language, specifically---

Ms. Brown: Well, the development criteria are part of the Comprehensive Plan which serves as a guide for development levels in the County. It is not a "shall", it is a guideline.

Commissioner Fasteau: But if you can find it, and perhaps that's asking too much for the moment, but if you can locate that area of the Plan.

Ms. Brown: Well, the development criteria are listed in Appendix 11 of the staff report. There's---

Commissioner Fasteau: Do we have anywhere language that says we "shall" grant the upper end of the range if so many criteria of the 13 are met?

Ms. Brown: No.

Commissioner Fasteau: Or does it say we "may"? That, to me, is a critical point if you're going to be legalistic about. And I'm not inclined to be, but---

Ms. Brown: No, ma'am. There's nothing "shall". The criteria are designed, as well as the Plan recommendations, are designed as a guide.

Commissioner Fasteau: As a guide. So we can still exercise discretion or judgement, good or bad.

Commissioner Sell: Madam Chairman.

Vice-Chairman Harsel: Mr. Sell.

Commissioner Sell: I don't want to get into an argument over the application of the Comprehensive Plan in this particular case, but I would think, based on my experience, if we were to deny the density here requested and agree that they had met the test of the Comprehensive Plan as far as the criteria is concerned, the line at the courthouse door might number in the hundreds. You know, we've operated since 1975 in an orderly fashion of determining density in these particular sites under the Plan. And to change it at this juncture, in this particular case, would---I know a lot of people would like to do that, there's a lot of times I'd like to too, but legally I don't think we can. I think we have, in practice, operated under a certain procedure and we have to continue that.

Commissioner Thillmann: Madam Chairman.

Vice-Chairman Harsel: Mr. Thillmann.

Commissioner Thillmann: I just, I guess I just, it might be worth adding another point. And that is that back before I became a Commissioner I used to be on the staff and it was my job to manage the process whereby these staff reports were done and before that to manage the process whereby we had a Comprehensive Plan. And before we went through that exercise I used to be in court at least once a week over a four-year period. And I can tell you that out of those maybe 50 to 75 court cases in a couple of years we won two of them. And the ones we lost were all based on that sort of thing, where we acted capriciously, arbitrarily, and without substance. And if we don't have good reasons why we don't follow the Plan, we're flat going to lose the cases, so we'd better be very careful. And my---as long as I've been on the Commission, and I think the rest of us have been on the Commission, one of the things we've used as a golden rule around here---and I tended to be a much more strict constructionist at one point than I have been of late because I've gotten more in the way of transportation improvements---but the fact is, if you don't follow the Plan and if you don't follow the criteria in the Plan, we leave ourselves extremely vulnerable. And I, for one, intend to follow it. I haven't seen a better way, and I'm told by the County Attorney and others that if we don't follow it and if, as Carl indicated earlier, people start beating the door across the street to Circuit 9, we're going to be back where we were 14 years ago, which, in large part, caused the problems which we're experiencing today, which is that we had leap-frog, unregulated development that basically tore at the basic fabric and infrastructure of this County. And we're still playing catch up from those days. Anyway, I'll get off my soapbox.

Vice-Chairman Harsel: Any other---

Commissioner Annunziata: Madam Chairman.

Commissioner Sell: Madam Chairman.

Vice-Chairman Harsel: Mrs. Annunziata's next, Mr. Sell.

Commissioner Annunziata: I don't know if I need to comment on anything any further, although I would like to share just two views with you. I think it's, I feel it's important that those of you who feel strongly about the density issue understand something here. If you ask Marty Brown what my view was of the density issue in this case within this last week, she will tell you that I took the view that nothing more than 16 ought to be permitted. And so I am a person who is coming to this with some reluctance, coming to this motion with some reluctance. I went through the exercise that I described to you I feel that we must go through in order to make a, or come to a conclusion that is fair. A lot of the Commissioners have talked about the court. I don't think you need to talk about what the court's going to do because I think that an understanding of what's involved is within your own experience and your own knowledge. I think it's a very simple principle. If this Commission has, in the past, when other applications have been before it, taken the position that when the criteria are met the application gets approved, then I'm not so sure too many among you would say that it is fair to take an inconsistent position with an application when the criteria are met, either because there is a lot of emotional feeling about it, and also because we might agree with some of the things you've raised. For example, I agree that the parking issue might be a problem, but I don't know how to get around the fact that our ordinance only requires this 1.5 parking. We have never done it in the past, we've never required---at least I don't think we have---. And I don't think that we can act---we are not permitted to act outside the law. And if you take the full implication of any suggestion that we do act outside the law, then you can be assured that the next application will be totally unpredictable because we don't have to follow anything. And I don't think that's what the suggestion is. I don't---I also happen to agree that the impact on the traffic in the larger Vienna/Oakton area is always a consideration. I don't know that 114 units is going to break the camel's back because I think we've got a bigger problem up there, much bigger. And I don't disagree with the view that the aggregate should be looked at, but when we haven't looked at it, or that, in this sense, that we haven't denied other applications on that ground, I don't know that I would personally feel comfortable in taking that kind of inconsistent position in the case before me. Maybe we have to have different rules. I don't think there's anyone on this Commission who would be opposed to different rules if we were permitted to operate under different rules either by law or by tradition. And I'm telling you that historically we've taken certain positions. I think out of a sense of fairness, I think we have to, we have to, if we're going to be, if we're going to take a position, in this case, of denial then my suggestion that it had to be for a reason is not intended to be flip. There has to be a rational basis for the decision. If each individual Commissioner believes that the criteria have been met, then I think the conclusion is not just one that we might have to come to, but probably, if only because historically we have always come to that conclusion we are going to have to take. Now, if a Commissioner on this body feels that the criteria have not been met, then that is the purpose of this discussion and I think it ought it be, I think those concerns ought to be stated.

Vice-Chairman Harsel: Is there any other discussion on the motion?

Commissioner Fasteau: A clarification, Madam Chairman.

Vice-Chairman Harsel: Mrs. Fasteau.

Commissioner Fasteau: Will Mrs. Annunziata refer back to her comment about the final development plan? Is there any procedure that she has in mind about approving that, or having something brought back to her or us? You mentioned it once, Mrs. Annunziata, I just wondered what you intended to do with that.

Commissioner Annunziata: Well, my intent was that the decision on the final development plan be deferred.

Commissioner Fasteau: Thank you.

Commissioner Annunziata: And the reason for it is the issue of access, for one, is very much up in the air, and I am not prepared to make a recommendation with respect to that access at this point.

Commissioner Sell: Madam Chairman.

Commissioner Fasteau: Well, my question really was, what procedure are you going to follow in approving it when it finally gets to that point? Are you going to have it brought back to you, or what?

Vice-Chairman Harsel: It has to be.

Commissioner Annunziata: It has to come before the Commission. The---it was my intent to defer the decision.

Commissioner Fasteau: Because it wasn't part of your motion, that's why I asked.

Commissioner Annunziata: No, because it would come subsequently.

Commissioner Fasteau: Thank you.

Commissioner Annunziata: If the conceptual development plan is not approved, then the issue on the final development plan is moot.

Commissioner Fasteau: Thank you.

Commissioner Sell: Madam Chairman.

Vice-Chairman Harsel: Mr. Sell.

Commissioner Sell: I'm sorry, but just follow up on that so I can understand---maybe the staff can help me---we are proposing to approve, recommend to the Board of Supervisors that it approve a conceptual development plan; that our--approval of a final development plan would be

that it the FDP would have to be in substantial conformance with the conceptual development plan. I would presume then, since we have put specific conditions on the conceptual, and if the Board were to adopt that conceptual, we could not remove them from the final.

Ms. Brown: I think the intent here is that the conceptual, approval of a conceptual development plan does allow for some flexibility. In this case the concern is over the location of this access point and where it should be located along this stretch of land. I think---

Commissioner Sell: If that's the case we could move, we could approve a final too.

Commissioner Thillmann: Madam Chairman.

Ms. Brown: The final development plan would fix that access point, whereas if you approved a conceptual only there would be some flexibility for moving that---

Commissioner Sell: But it couldn't remove it without an amendment, is what I'm getting to.

Vice-Chairman Harsel: Mr. Thillmann.

Commissioner Thillmann: I think if we go back to the motion that was made that was, in fact, Commissioner Sell's question was the same as Murphy's question to me when the motion was being made. And if I could paraphrase, my understanding was that the reason why the motion included those three alternatives was so that when we looked at the final development plan, including the screening and exactly where the berm was going to go and all the rest of it, that a decision at that point would be made as to which one of those access points ought to be major access points and which ones ought to be dropped off. And I think that the statement prior to the motion specifically addressed that point and indicated that that was the purpose of that language. So that's the way I understood it to be.

Vice-Chairman Annunziata: All right. Let's have a clarification then from Mrs. Annunziata.

Commissioner Annunziata: Let me clarify this if I can. There's one primary access that is shown on the conceptual development plan and that is going through Summit Square. That access is not really in controversy in the sense that no one seems to disagree with its provision or its location. The staff is of the view that a secondary access must be provided. I've already suggested that I am not in entire agreement with that point of view, but that I am willing to keep the matter open at this point just for flexibility. The reason that the conceptual, the final development plan, I believe, should not be acted upon tonight is this: if we are going to go with the secondary access it would be better not to fix its location at the point that it is presently shown on the conceptual development plan because it may restrict us to a degree that would be inappropriate, it would restrict the route to a degree that would be

inappropriate. And that is the primary reason that I am not willing to move on the final development plan because I think that it needs a bit of---well, I think it needs a lot of clarification on the part of staff, not only with respect to whether it should be fixed there, but I still am not comfortable with whether we need it at all. And my intent would be that unless I am persuaded that it would be needed, it would not, there would be no secondary access at all. If, by the time the final development plan came through, it would appear that it is needed, then I think we should keep the flexibility of positioning in the way that would cause the least impact on everyone concerned. And that's why it's been kept open by deferring, by my intent to defer the final development plan. And then there are the other issues with respect to screening and so forth and so on, but that, they are secondary in a lot of respects.

Vice-Chairman Harsel: All right, now, a point of clarification. Where do we stand since the applicant has presented us one plan and he calls it the conceptual final development plan. The proffered development conditions talk to the conceptual final development plan, is one. Now, unless we cross that out can't he proceed---

Ms. Brown: If you approve it as a conceptual, or if the Board approves it as a conceptual development plan only, it would stand only as a conceptual development plan. A final development plan could be submitted later that would have to be in substantial conformance with the conceptual development plan. However, I would note that on this plan that this secondary access point is shown as a stub connection. The amendment to the proffers that are in the motion on the floor now make it clear that that is a stub connection which could provide access to Borge Street if deemed appropriate, so there is the flexibility in that language and in the way the stub connection is shown on the plan, to either allow that secondary access or not allow it at the time of a subsequent final development plan.

Commissioner Sell: CALL THE QUESTION.

Vice-Chairman Harsel: All right. I have a call for the question. All those in favor of the motion which is that we rezone it to the PDH-20 District consistent with the development conditions presented, and approve the conceptual development plan, signify by saying aye.

Commissioners: Aye.

Vice-Chairman Harsel: Opposed?

Commissioner Fasteau: I abstain.

Commissioner Sell: The conditions as amended by Mrs. Annunziata.

Vice-Chairman: As amended by Mrs. Annunziata tonight for the conceptual. An abstention by Mrs. Fasteau. All right. Mrs. Annunziata.

Commissioner Annunziata: Okay, I would further MOVE THAT WE RECOMMEND

THAT THE BOARD OF SUPERVISORS RECOMMEND THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT APPROVE A WAIVER OF THE TRANSITIONAL SCREENING REQUIREMENTS AS THEY APPLY TO THE APPLICATION PROPERTY'S BORDER WITH PARCEL 32 AND I-66.

Commissioner Murphy: Second.

Vice-Chairman Harsel: You've heard the motion, seconded by Mr. Murphy. Any discussion? I cannot vote for this particular motion because I don't think we need a barrier on half a lot line waived. It's all or nothing, so I can't support it.

Commissioner Thillmann: Madam Chairman, as I understood it, the barrier, this is not the barrier waiver. This is Route 66, where, if we're going to get a noise barrier, what do we need the screening for? It's a different issue.

Vice-Chairman Harsel: It's 32, she said parcel 32 which is a part of the northern boundary. She's made it a double and I can't go for the parcel 32 waiver. I can go for the 66, but not parcel 32.

Commissioner Thillmann: Could we ask the maker of the motion to separate those two out then?

Commissioner Annunziata: Sure. We can take them independently.

Vice-Chairman Harsel: All right. Do you want to restate your motion?

Commissioner Annunziata: Well, I think that---I'll restate it---but I just think you can deal with the parcel 32 and I-66 separately. You want me to restate it?

Vice-Chairman Harsel: Uh-huh.

Commissioner Annunziata: I FURTHER MOVE THAT WE RECOMMEND THAT THE BOARD OF SUPERVISORS RECOMMEND THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT APPROVE A WAIVER OF THE TRANSITIONAL SCREENING REQUIREMENTS AS THEY APPLY TO THE APPLICATION PROPERTY'S BORDER WITH I-66.

Commissioner Murphy: Second.

Vice-Chairman Harsel: Seconded by Mr. Murphy. Any discussion? All those in favor signify by saying aye.

Commissioners: Aye.

Vice-Chairman Harsel: Opposed? The motion carries. Mrs. Annunziata.

Commissioner Annunziata: I WOULD FURTHER MOVE THAT WE RECOMMEND THAT THE BOARD OF SUPERVISORS RECOMMEND THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT APPROVE A WAIVER OF THE TRANSITIONAL SCREENING REQUIREMENTS AS THEY APPLY TO THE APPLICATION PROPERTY'S BORDER WITH PARCEL 32.

Commissioner Thomas: Second.

Vice-Chairman Harsel: Seconded by Mr. Thomas. Any discussion? All right, for reasons stated earlier I will be voting against it.

Commissioner Annunziata: Madam Chairman.

Vice-Chairman Harsel: Mrs. Annunziata.

Commissioner Annunziata: Let me just state that with respect to that motion, that the problem with keeping the barrier requirement is that that's also where the stub street goes. And I appreciate what you're saying. I mean, I think there is something odd about what the motion is suggesting, but on the other hand I don't know why, how you put a wall next to a stub street. Maybe staff would like to address that.

Vice-Chairman Harsel: You don't. You go one or the other way.  
Mrs.---Ms. Brown.

Ms. Brown: Madam Chairman, I would note that the transitional screening requirements and the barrier requirements are separate. This motion, as you stated it, relates only to transitional screening and not the barrier.

Commissioner Annunziata: Okay, so we're not talking about---

Ms. Brown: If you want to add the barrier to that motion you need to do that or else---

Commissioner Annunziata: No, I don't. No, well, because my understanding is that this screening would follow along the whole property line, not only along property, line 32, so that the transitional screening would be available next to across from the townhouses, but right next to 32 which is going to develop, I guess, consistently or alike or similarly to, that would be left without landscaping on the ground that eventually they're going to be alike. Is that it?

Ms. Brown: Right. Yes.

Commissioner Annunziata: Okay. So there's no wall as it's presently stated.

Ms. Brown: You need to add a waiver of the barrier requirement if you want to waive the barrier.

Commissioner Annunziata: But staff is not recommending a waiver of the barrier requirement.

Ms. Brown: I think that, I think that staff would recommend that. It's an oversight in that motion.

Vice-Chairman Harsel: Um-hum.

Commissioner Annunziata: So we're back to that. Well, okay, my, the, I'm just going state again for Commissioner Harsel and anyone else who's having a problem, it just seemed as though the transitional screening requirement, with or without barrier, wasn't appropriate here where there's a stub street being recommended at the same time. And that's the nature of my motion, but I'd be happy to hear your comments on that as well. At this point it's only transitional screening.

Vice-Chairman Harsel: All right. I can go with that.

Commissioner Sell: CALL THE QUESTION.

Vice-Chairman Harsel: All right. All those in favor signify by saying aye.

Commissioners: Aye.

Vice-Chairman Harsel: Opposed?

Commissioner Fasteau: Madam Chairman, I skipped one when we were talking. I'm abstaining on all of these.

Vice-Chairman Harsel: All right. Mrs. Fasteau abstains. Mrs. Har---- otherwise everyone votes aye since we're just talking screening. Mrs. Annunziata.

Commissioner Annunziata: All right. I WOULD FURTHER MOVE THAT WE RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT RECOMMEND THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT APPROVE A WAIVER OF THE BARRIER REQUIREMENT AS IT APPLIES TO THE APPLICATION PROPERTY'S BORDER WITH I-66.

Commissioner Thillmann: Second.

Commissioner Murphy: Second.

Vice-Chairman Harsel: You've heard the motion, seconded by Mr. Thillmann and Mr. Murphy. All those in favor signify by saying aye.

Commissioners: Aye.

Vice-Chairman Harsel: Opposed?

Commissioner Fasteau: Abstain.

Vice-Chairman Harsel: Mrs. Fasteau abstain. Mrs. Annunziata, have you got any more motions? ✓ 5

Commissioner Annunziata: All right. I WOULD FURTHER MOVE THAT WE RECOMMEND TO THE BOARD OF SUPERVISORS THAT the director of the, that IT RECOMMEND TO THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT TO APPROVE A WAIVER OF THE BARRIER REQUIREMENT AS IT APPLIES TO THE APPLICATION PROPERTY'S BORDER WITH PARCEL 32.

Commissioner Thillmann: Second.

Vice-Chairman Harsel: All right. You've heard it seconded---

Commissioner Annunziata: Madam Chairman.

Commissioner Thillmann: Staff amended recommendation.

Commissioner Annunziata: Yes, this is a staff recommendation, but if I understood correctly, there is still some question about whether the adjoining community wants that wall up. And I don't think that the fact that the barrier requirement is not waived for the remaining boundary line precludes the applicant coming to some agreement. If the adjoining community doesn't want to see a wall, I don't see that there's any reason that it need to be up there.

Vice-Chairman Harsel: Okay. You've heard the motion---

Commissioner Annunziata: Would that be required under---all right, let me ask staff before we make a mo---before we move on this. If the wall became an issue with the adjoining community and they chose not to have it and the applicant agreed, would the fact that it's not recommended for a waiver here preclude their taking it out, preclude their building it?

Ms. Brown: The Director of the Department of Environmental Management can waive that at time of site plan.

Commissioner Annunziata: Even without a recommendation?

Ms. Brown: Right.

Commissioner Annunziata: Okay. So we can ignore it and that can still be worked out between the parties so to speak.

Vice-Chairman Harsel: Okay, we'll strike that motion.

Commissioner Annunziata: No, the motion is not stricken because the motion goes to parcel 32 which is recommended for waiver.

Vice-Chairman Harsel: Oh. All right. For the barrier?

Commissioner Annunziata: Right.

Vice-Chairman Harsel: We're waiving the barrier. All right. All those in favor signify by saying aye.

Commissioners: Aye.

Vice-Chairman Harsel: Opposed?

Commissioner Fasteau: Abstain.

Vice-Chairman Harsel: Mrs. Fasteau and Mrs. Harsel abstain.

Commissioner Annunziata: Last motion. I FURTHER MOVE THAT WE RECOMMEND THAT THE BOARD OF SUPERVISORS WAIVE THE 200 FOOT SETBACK REQUIREMENT.

Commissioner Murphy: Second.

Vice-Chairman Harsel: I thought we did that. You've heard the motion, seconded by Mr. Murphy. All those in favor signify by saying aye.

Commissioners: Aye.

Vice-Chairman Harsel: Opposed?

Commissioner Fasteau: Abstain.

Vice-Chairman Harsel: The motion carries. Mrs. Fasteau abstains. We'll have a two minute recess.

//

Ms. Brown: Madam Chairman.

Vice-Chairman Harsel: Ms. Brown.

Ms. Brown: I don't think a motion was made on the deferral of the final development plan.

Commissioner Thillmann: We don't have to.

Vice-Chairman Harsel: We don't have to make a motion, Ms. Brown.

Ms. Brown: If you wanted to defer the decision---

Vice-Chairman Harsel: We're just not acting on it. We need to have one come back---

Commissioner Thillmann: The public hearing---

Commissioner Annunziata: Okay. I think, to set the record, to make the record clear I will first thank the citizens for coming out. I really do appreciate your participation in it. I hope you don't take the recommendation for approval, which was not fully consistent with your position, as a sign that we weren't listening. I hope you will understand our approach to the application and we welcome your comments and I hope you'll come to the Board meeting and share them again. Let me make a motion THAT WE DEFER DECISION ON THE FINAL DEVELOPMENT PLAN INDEFINITELY, is the best way to put that at this point.

Commissioner Thomas: Second.

Vice-Chairman Harsel: Seconded by Mr. Thomas. Any discussion? All those in favor signify by saying aye.

Commissioners: Aye.

Vice-Chairman Harsel: Opposed?

Commissioner Fasteau: Aye.

Vice-Chairman Harsel: Oh, Mrs. Fasteau votes aye on that.

Commissioner Annunziata: Madam Chairman, I am assuming that the record will be kept open for written comments on the final development plan.

Vice-Chairman Harsel: All right. We will keep the record open for written comments.

//

(The first motion, for approval of the rezoning, passed by a vote of 8-0-1 with Commissioner Fasteau abstaining; Commissioners Lilly and Sparks absent from the meeting.)

(The second motion, for waiver of the transitional screening along I-66, passed by a vote of 8-0-1 with Commissioner Fasteau abstaining; Commissioners Lilly and Sparks absent from the meeting.)

(The third motion, for waiver of the transitional screening along parcel 32, passed by a vote of 8-0-1 with Commissioner Fasteau abstaining; Commissioners Lilly and Sparks absent from the meeting.)

(The fourth motion, for waiver of the barrier along I-66, passed by a vote of 8-0-1 with Commissioner Fasteau abstaining; Commissioners Lilly and Sparks absent from the meeting.)

(The fifth motion, for waiver of the barrier along parcel 32, passed by a vote of 7-0-2 with Commissioners Fasteau and Harsel abstaining; Commissioners Lilly and Sparks absent from the meeting.)

(The sixth motion, for waiver of the 200-foot setback requirement, passed by a vote of 8-0-1 with Commissioner Fasteau abstaining; Commissioners Lilly and Sparks absent from the meeting.)

(The seventh motion, for deferral of a decision on the final development plan, passed unanimously with Commissioners Lilly and Sparks absent from the meeting.)

GW