



DUMFRIES, VIRGINIA

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AT A PUBLIC HEARING AND REGULAR MEETING OF THE PLANNING COMMISSION, HELD ON APRIL 7, 2014, AT 6:50 P.M., IN COUNCIL CHAMBERS, 17755 MAIN STREET, DUMFRIES, VIRGINIA:

I. Call to Order

Mr. Webb called the meeting to order.

II. Roll Call

Present: John Webb, Chair
Christopher Padberg, Vice-Chair
Naeem Arshad
Selonia Miles
Lou Praino
William O'Kelly Russell
Louise Waggy

Staff Present: Laura O'Dell, Town Planner/Zoning Administrator

PUBLIC HEARING 6:50

III. 2014 Comprehensive Plan

Ms. O'Dell stated the Comprehensive Plan was up for a public hearing and consideration this evening.

The public hearing was opened to public comments.

Pete Singh, owner of property located adjacent to the landfill, pointed out the Comprehensive Plan (CP) states the landfill is to be treated, for all practical purposes, as if it were a recreational area. He has heard the Town will own the recreational area. He asked if his neighbor was going to be a recreational area or a landfill. At this point, it is not clear. The property, as it stands today, is being planned under the new Comprehensive Plan. He felt there needed to be a little direction as to what the outcome of the so-called "recreation area" is in relation to setbacks on both sides of the property. He asked if the landfill is maintaining the necessary setbacks today, because it abuts residential property. If you were to physically observe it, it may or may not. He sees the landfill, every two months, getting closer and closer to the property line and one fine day, it is obvious that it will take over his property. It does have an effect as to how it is classified, because when he comes in with a site plan for his property he does not know how his next-door neighbor will be treated. If the person to the right and left are residential then it is residential; however, the person in the back is a landfill. He would like to see some better direction in the CP as to how property lines and DSM standards are to be maintained by the various property owners. He noted the CP is more than

just a document. It sets the direction for property owners in the Town as to what can be done with their property. He pointed out that going down Main Street the average lot width is between 50 and 75 feet. What that means is that none of those properties, individually, can be developed with the setbacks in the current ordinance. He wanted to see the CP address those things. The CP is one of those documents that sets the direction, allows a property owner to develop his property for its best use, and has a direct effect on the budget by creating revenue from taxes. He noted density, setbacks, and height play a role as to how a parcel can best be used and give the maximum yield to the Town to improve transportation, create bicycle paths, fund the Police Department, etc.

There being no further comments the public hearing was closed.

IV. First Town Center CUP 2014-001

Ms. O'Dell noted the public hearing was for a conditional use permit (CUP) to allow for four floors of residential above ground floor commercial. The project is called the First Town Center. The applicant, Pete Singh, was available for any questions.

The public hearing was opened to public comments.

Nancy West noted she was on Council from 2008 to 2011. During that time, the Town Center was very much a part of the business of the Town Council. She was not before the Planning Commission (PC) to speak against the project. What she understands now is that Mr. Singh is considering raising the structure to five stories. When she was on Council she never heard the PC approved anything more than three stories. The Town has nothing that is five stories high, including the Elwye building, on northbound Route 1. For years, that was jokingly called the Dumfries high-rise because it is three stories and has an elevator. Three stories seems high enough for any structure in the Town. Anything over that would be overpowering especially on Main Street. At a recent meeting held at Williams Ordinary she looked at the building concept and thought a five-story building on Main Street was just too overpowering. She wondered whether the fire department had equipment to take care of a fire in a five-story building. She wondered who would want to live in a building so close to Main Street that is almost in the line of traffic on a Friday afternoon. At that meeting, one of the gentlemen who has an office there stated that on Thursday and Friday afternoon he is unable to make telephone calls because of the noise and vibrations from the traffic on Route 1. Again, she was not opposed to the project; however, she is opposed to a structure that is more than three stories.

There being no further comments the public hearing was closed.

REGULAR MEETING 7:00 PM**V. Adoption Approval of Minutes from March 10, 2014**

Ms. Waggy moved, seconded by Mr. Praino, to adopt the March 10, 2014 meeting minutes as presented. The motion carried by the following voice vote: Mr. Arshad, yes; Ms. Miles, yes; Mr. Padberg, no; Mr. Praino, yes; Mr. Russell, yes; Ms. Waggy, yes; Mr. Webb, yes.

VI. Consideration of 2014 Comprehensive Plan (CP)

Ms. O'Dell asked the PC take into consideration the 2014 CP as prepared by staff and The Berkley Group.

Mr. Webb asked what kind of motion was needed. He asked if it was just to recommend Council approve the 2014 CP. He asked because in the CP it states the PC certified the 2014 CP.

Ms. O'Dell explained the PC needs to recommend it to Council for approval or non-approval. It does not need a formal resolution unless it is an ordinance amendment, so it would just be a standard motion to move forward.

Mr. Padberg moved, seconded by Mr. Praino, that the 2014 CP be forwarded to Council with a recommendation to approve. The motion carried by the following voice vote: Mr. Arshad, yes; Ms. Miles, yes; Mr. Padberg, yes; Mr. Praino, yes; Mr. Russell, yes; Ms. Waggy, yes; Mr. Webb, yes.

VII. Consideration of CUP 2014-001, First Town Center

Ms. O'Dell noted the PC has been reviewing the First Town Center conditional use permit (CUP) application for some time. The applicant is available to answer any questions. She asked the PC to take into consideration the CUP for the First Town Center with the conditions made during the work session.

Mr. Praino moved, seconded by Ms. Miles, that the CUP 2014-001, First Town Center, be forwarded to Council with the recommendation to approve with conditions.

Mr. Webb noted the motion is to recommend approval of CUP 2014-001, First Town Center, with the conditions as read by Mr. Russell.

Mr. Russell read the following conditions with the added language.

Conditions to be added

1. The CUP is to authorize four floors of multi-family residential units located above 48,000 square feet of ground floor commercial, retail or office use.
2. The plan is only to approve the total of five floors with a final building height of 58 feet and up to 80 feet for architectural features.
3. The applicant will not have any residential units whether for employees or tenants on the first floor.

4. The applicant shall have approval from the Architectural Review Board (ARB) to demolish the existing homes on the site and have all exterior design features approved by the ARB prior to issuing any construction permits.

Staff Report

Proposed Conditions which shall be met prior to release of bond.

- A. Archaeological study **to be provided** consistent with the Virginia Department of Historic Resources to be conducted prior to construction and **reviewed and approved by the ARB.**
- B. Garrison Park Improvements consistent with proposal submitted on March 14, 2014, and letter dated February 5, 2014.
- C. Upgrade street lighting and landscaping along south bound Main Street side. Improvements to the street lighting and landscaping along north bound Main Street as a part of the project's roadside improvements plan.
- D. Installation of an architecturally approved bus stop on Main Street.
- E. Improvements to Market Street aligning to reflect integration with other planned improvements.

Mr. Padberg offered the friendly amendment that there be no disturbance to the resource protection area (RPA) and that all of the elevation calculations be determined from the centerline of Main Street at the lowest point that the building fronts Main Street, not from some fill condition that exists.

Mr. Praino and Ms. Miles agreed to the friendly amendment.

Mr. Arshad understood that if there were a buffer in the front the ground surface would count as the grade level and not the road surface.

Mr. Padberg agreed. He explained the way height calculations typically work would be the finished grade around the building. His amendment would modify that, and instead of looking at the calculation, as it would normally be done, it would be based off the centerline of Main Street, as it currently exists. The building could therefore step as it goes up Main Street. The developer is already proposing to put the building on a fairly massive pedestal relative to the centerline of Main Street, which is throwing off everyone's perception of how high this building is really going to be. As has been heard from citizen comments tonight, this is already the tallest building in eastern Prince William County (PWC), much less the Town. In good planning, scale is part of what the PC looks at. He thinks, to keep this in scale, if the PC is going to approve changes in the height allowed through a CUP that it be based off Main Street and not some theoretical elevation that is created.

Mr. Russell asked for clarification on whether the applicant is required that the first floor elevation be at 22 feet in order to be out of the floodplain.

Ms. O'Dell believed that was correct.

Mr. Russell asked if by adding the condition whether the PC would be imparting an unreasonable condition.

Ms. O'Dell indicated it might.

Mr. Russell did not want to get egg on his face when this moves forward to Council.

Ms. O'Dell noted the developer stated it had to be at 22 feet for floodplain and insurance purposes. She explained that would be the first floor with the basement underneath.

Mr. Russell reiterated that Mr. Padberg's change would be basing the elevation off the centerline of Main Street, which he believes at the lowest point is 16 feet. That is a six-foot difference. He asked if that is a six-foot difference on the applicant and is that reasonable.

Mr. Padberg explained the applicant is asking for something beyond what is in the Zoning Ordinance. He asked how it could be unreasonable for the PC to ask.

Mr. Russell asked if the insurance company is saying the building must be at 22 feet for the first floor elevation.

Ms. O'Dell believed that it was.

Mr. Singh explained the Department of Environmental Quality (DEQ) allows development in the floodplain area. This portion of Main Street is in the floodplain area. In order to meet the criteria the first floor elevation must be above the floodplain by a foot. The floodplain study was completed, reviewed by the Public Works Director, and it was determined the floodplain is set around 21.2 inches, or something like that, for Main Street. This mandates the first floor, where a human is going to work, should be above the floodplain therefore the floodplain was set, for practical reasons, at 22 feet. It is true the elevation changes along Main Street. He explained that where he is standing now, Main Street is almost at 24 feet; however, as you head toward the furniture store it dips down and then goes back up. He mentioned that when Fraley Furniture was built, 25 or 30 years ago, the floodplain was not critical to the community. If they were to improve the place, the floor elevation will go up. It is the same situation with Williams Ordinary. He did some research and Williams Ordinary's elevation is above 22 feet for the first floor and the basement is underneath. There is the criteria one has to follow. The floodplain insurance mandates the building be placed above the 21.2 feet, so therefore it was set at 22 feet. At 22 feet as far as consideration of the setback, etc. it works very well because of the elevation. The elevation from here, Whiskey Street, starts slopping down to around 17 feet, then it starts to rise, and by the time it reaches Williams Ordinary it is back to 19 feet.

Mr. Padberg thought Mr. Russell brought up a good point. Perhaps the way to word his amendment, relative to the elevation, would be that it would be based off the centerline of Main Street, but in no event shall the maximum height be less than what is normally allowed by the Zoning Ordinance. That way the PC would not be creating anything that would cause him

to have a lesser allowance than is allowed by the Zoning Ordinance. In terms of scale, he did not want the monument of a pedestal that is being created in the plan to keep out of the floodplain to further aggravate the scale concern he has and has been echoed by citizens tonight.

Mr. Webb asked if in the amendment the PC wanted to reference the Town Code of 22 feet above floodplain in the motion. He mentioned the developer would not be able to get insurance.

Mr. Padberg stated that no one is asking the developer to build below what is being proposed and in no event does he intend to circumvent the existing maximum height the Zoning Ordinance provides for. What he does not want to do by virtue of allowing the CUP variation on the height plus what the floodplain is forcing the developer to do. In other words, there is a portion of the building that the developer is conveniently getting a lot more out of than what is being applied for. The application is for 80 feet but there are portions of the building that will be 85 or 87 feet.

Mr. Webb explained the height of the building, the four stories, is going to be where the normal elevations are taken from, which is centerline to the building, between the high and low point, wherever that centerline is, up at the front of the building. From that point, the building cannot go up more than 58 feet; however, he can go up to 80 feet with the cupolas or façade. In other words, the fifth floor cannot be any higher than 58 feet.

Mr. Padberg understood; however, that would be 58 feet from the pedestal being built that is already above Main Street.

Mr. Webb agreed.

Mr. Padberg indicated from the very beginning that he has a problem with the scale of the project and height is an issue. He appreciated the height has been reduced by a story. He noted there is a cap on the height of a building. The applicant has asked for something in addition to that and has presented no valid reason as to why. In addition to the maximum height there will be several more feet at the valley of Main Street where it dips below the floodplain with a pedestal. As a public official, he is protecting the interest of the people on the other side of the street. The scale of the building to him is out of hand. He has a tremendous amount of respect and admiration for the developers past projects. The developer gets a gold star in terms of the finished product and the appearance. There is a lot going for this in that respect. It has been drawn on paper as a tremendous asset to the Town. He just has concerns about the scale of the project and at the valley of Main Street; this project is beyond even what is being approved.

Mr. Webb understands now what Mr. Padberg was saying. The 58 feet would be taken from the centerline of Main Street and centerline of the building. That clarification then does not have anything to do with the floodplain. The developer could still get above the floodplain it would just restrict the height of the building from a different location than what would normally be used.

Ms. O'Dell questioned the building height would then be 36 feet tall from grade.

Mr. Russell stated that 58 minus 6 would equal 52 feet.

Mr. Padberg noted the number of stories is up to the developer and the design with that height.

Mr. Singh stated what was being talked about would be a significant hardship. The developer is trying to keep the height in accordance with Zoning Ordinances. When he first came in and got feedback from the staff it was within Zoning Ordinances; however, façade or appearance wise it was a little too overpowering. So, they removed one floor, which amounted to almost, in the Town's perspective, a little over \$200,000 in tax revenue. That was explained to the Town staff and the end consensus was what was being presented in the CUP. Due to technical conditions, the elevation has to be set at 22 feet. That cannot change, that is set. He noted the elevation has to stay at 22 feet and cannot be stepped down.

Mr. Padberg clarified he is suggesting, if the elevation is exceeded, the way his amendment is being proposed, the building may have to go from a five-story to a four-story building in certain areas.

Mr. Singh questioned a five-story to a four-story.

Mr. Padberg agreed.

Mr. Singh noted the break point is not there.

Mr. Padberg indicated he was not here to be the architect. He was here to deal with planning and scale. It is his personal opinion that the project is out of scale.

Mr. Arshad pointed out the 3-D drawing provided this evening that the south end of the building looks like the highest point, from there the 58 feet, and then it goes down to a four to six foot concrete pad going 58 feet above that. He felt it would have to be redesigned and restudied for the change. He thinks it will significantly make a difference in this plan. As far as an allowable CUP, it allows up to 75 feet and a condition is being put on the structure to be exactly 58 feet. So, if there is a six-foot porch it is still below 75 feet. He felt it was not going to increase the height of the building significantly and would look symmetrical. He understands there are plans to place bushes, flowers, and things to hide the porch in areas that it is that high.

Mr. Russell understood the general practice of construction, whether building on a new site or redevelopment, that the elevation is based on the proposed grading of the site. The final grade is what you are basing the elevation of a building on. He understands where Mr. Padberg is coming from. He made the friendly amendment that the 58 feet limit be based on the 22 feet elevation, which the PC knows is the minimum the applicant has to provide to build the structure. That way it is being linked to a set height, is not adding fill to go even higher, and the building height will be set at 58 feet based on the 22 feet elevation. He understands there will be a change of elevation of six-feet between the centerline and the foundation of the building; however, the building is set back and the applicant is trying to make it work. He echoes the comments made by both residents, as well as several PC members, that this is a significant development in the Town. What the PC is doing is going to affect future development in the Town. The only place he has seen where there are similar redevelopments was in the City of Falls Church where they have redeveloped areas with residential on top, commercial on the bottom, and they had six floors with the top floor stepped back similar to what Mr. Singh did to his building. The one thing that everyone has to take away from this is, this is the significant visual that anyone and everyone going through the Town will see. They are going to see it from the hill coming toward Dunkin' Donuts and coming down the hill from Route 234. Whether you think this is appropriate or not, the plain fact is, there is going to be a very tall building that is going to dominate the Town.

Mr. Webb clarified the friendly amendment made by Mr. Russell would erase the second part of Mr. Padberg's friendly amendment that all of the elevation calculations be determined from the centerline of Main Street at the lowest point that the building fronts Main Street. He explained what needed to be done was determine between Mr. Padberg, Mr. Russell, the motioner and the seconder which one to vote to keep.

Ms. O'Dell stated what needed to take place was one needed to be voted up or down and then the other voted on.

Mr. Webb corrected Ms. O'Dell stating that if they could come to an agreement there would be no need to vote.

Mr. Padberg stated he would withdraw the second half of his friendly amendment leaving in that there is no disturbance in the RPA.

Mr. Webb clarified the motion on the floor included the conditions to be added, staff's recommendation, and the friendly amendment made by Mr. Padberg dealing with the RPA. The friendly amendment made by Mr. Russell would go away since that is part of the CUP. He requested a reason be provided if anyone votes no. The motion carried by the following roll

call vote: Mr. Arshad, yes; Ms. Miles, yes; Mr. Padberg, no; Mr. Praino, yes; Mr. Russell, no; Ms. Waggy, yes; Mr. Webb, no.

Mr. Padberg voted no because the height is out of scale.

Mr. Russell abstained due to conflicting issues with the proposed height, not meeting the scale of the Town.

Mr. Webb stated that usually an abstention is due to a personal reason, involvement with somebody dealing with the property or something like that. He did not know about an abstention vote.

Mr. Russell stated he would change his vote to no based on height.

Ms. Waggy stated that Fraley Boulevard is higher than Main Street. If you look at it from that viewpoint, and they have that up as high as it is ever going to be, then it is not as big a distraction as you think it is going to be.

Mr. Webb voted no due to the height along Main Street and the 230 some residential units being too much and will have a traffic impact on Route 1 during early morning and late afternoon rush hour.

Ms. Waggy mentioned minutes that needed to be approved or disapproved.

Mr. Webb thought it was already done.

Ms. Waggy mentioned the ones at the dais when they came in. She knew that most of the minutes the PC had a question. "Can members of the Planning Commission vote to accept minutes from a meeting that they did not actually attend?" She assumed this is a ruling, by whom?

Ms. O'Dell stated it is a ruling by Olaun Simmons, Town Attorney. The formal meeting started rather quickly and she was unable to say anything. She was going to suggest amending the agenda to allow for discussion on the minutes. She stated the opinion was provided to her a few days ago.

Ms. Waggy stated the PC had gotten ones that was much more current, which was March 10, or were those voted on.

Ms. O'Dell stated those were voted on earlier.

Ms. Waggy stated there was February 10 that most everybody was there for.

Mr. Webb indicated the PC did not officially amend the agenda with a vote, which is required. He suggested having them on the agenda for next meeting and go through all of them. He needed to get with Ms. O'Dell because some minutes were sent out in November or December that were not part of the last ones to go over.

Mr. Padberg agreed wholeheartedly with the concept of what was just said in terms of not being on the amended agenda. With that aside, he was not at the last meeting and something may have happened that he was not aware of. His basis on this was that he could not remember what happened two years ago well enough, to under oath, certify the minutes. He asked if something changed because he did not see why they keep coming back.

Mr. Webb asked if that was part of the interpretation.

Ms. O'Dell stated it was.

Mr. Webb asked that the interpretation from the Town Attorney be read or explained.

Ms. O'Dell went over the following information provided by the Town Attorney. Can members of the PC vote to accept minutes from a meeting that they did not actually attend? Yes, Robert's Rules of Order, entitled "Reading and Approval of Minutes" which says in pertinent part, "It should be noted that a member's absence from the meeting for which minutes are being approved does not prevent the member from participating in their correction or approval." Can the current PC vote to adopt minutes from meetings that were created by former members of the PC? Yes. She noted there is more detail regarding that answer.

Mr. Webb asked if that was in the packet.

Ms. O'Dell stated it was not; however, it was printed and provided to the PC this evening.

Mr. Webb wanted to stay with having the minutes on at the next meeting in May. He was going to take the determination home and review it.

Mr. Praino read from the opinion that although the PC has not adopted Robert's Rules, or any rules, it is commonly understood to hold itself bound by the rules and creation of the general parliamentary law. He asked what the general parliamentary law response was to this.

Mr. Padberg was not trying to make life anymore difficult then it can already be for Ms. O'Dell. His point has nothing to do with the legal ruling. He was at the meetings for the minutes. There is no dispute that he was or was not there and the same for Mr. Praino and Mr. Webb. His concern is how he is going to remember this stuff. The problem is he is legally bound to this in saying that the PC did it. He can go through and in good faith say, this is his recollection when he brought this up eight months ago. He was okay with a month, two, or three after a meeting. He knows that sometimes they are not caught the next month, but two years later, he does not feel confident.

Ms. O'Dell noted it a suggestion was made that the PC adopt Robert's Rules of Order.

Mr. Webb asked if that would be in the bylaws.

Ms. O'Dell agreed. She noted the PC seems to struggle a lot with order and there is nothing formal on the books.

Mr. Webb noted two or three updates ago it was the abridged Robert's Rules of Order was in the bylaws, which was not put back in when it went from the very old bylaws to the current ones. He thought the PC should put it in the bylaws.

Mr. Praino noted the requirement for written minutes was directed by the State. It was not Robert's Rules or anything else. The State has rules on writing them, filing them, so there must be something relating to this.

Mr. Webb has gone to the State's site, looked under the PC regulations, and has found nothing that speaks on voting, approving, or anything. He thought all that has to be done is putting in Robert's Rules of Order. All it states on the State's site is that the PC will keep a record of meetings. The only ones who are telling the PC to vote to approve or deny the minutes is Robert's Rules of Order, it is not the State or the Town.

Mr. Praino pointed out the State has not approved Robert's Rules of Order and the binding argument for the PC. He noted the PC is bound by the State and are inclusive. If it is not in the zoning then it is up to the State to come up with something.

Mr. Padberg noted if the Attorney could come up with some legal language for him to sign saying the minutes, from whatever the effective dates are, that this is his best intention. He does not mind spending an entire weekend going through the minutes and scanning for known errors. He did not want to be in a position, five years from now, for somebody to think that what is in the minutes he approved with the same weight that he would something from two months ago. He knows it sounds ridiculous. He also does not want to hold the Town hostage either. If the Attorney can come up with a little something that he can sign, and the rest of the PC, although he did not want to speak for the PC, that this is our best intention, that is fine. He wants to help the Town and the reason he donates all this time.

Ms. O'Dell understood and noted she would talk to the Attorney.

Mr. Arshad asked if the package should be taken home, studied and if the PC finds something that is not accurate or seems inaccurate it should be brought up at the next meeting; edit it, approve it, or disapprove it.

Mr. Webb noted the PC would discuss the minutes at the next meeting and look at what the Town Attorney says about what Mr. Padberg said.

Mr. Padberg indicated that could be sketched into the motion. This is the best that we know, this is an error, we are going to do better from here on, but this is going back two years.

Mr. Webb pointed out that there are still a lot from 2013 minutes the PC has not received yet that will be coming. He did not know when they would.

Ms. Waggy explained to Mr. Padberg, since he was not at the meeting, she made the motion to adopt the minutes that did not pass because there were too many abstentions from members who were not on the PC at the time. She mentioned the motion was made to accept the minutes as recorded.

Mr. Padberg questioned it being done.

Ms. Waggy noted Mr. Praino did not put the vote over.

Mr. Padberg stated there were not enough votes.

Mr. Praino stated there were enough PC members.

Ms. O'Dell explained there was a question made for the Attorney as to whether or not it is recordings or minutes taken and that is what the difference is. The PC came to the consensus that you could not approve recordings for minutes. Official written minutes are to be approved.

Mr. Padberg questioned not being able to approve recorded ones because they are already recorded.

Mr. Webb stated there was another way the PC could do this other than going along with what Ms. Waggy was saying. The PC could approve written minutes from the recordings of these dates and list the dates. What the PC is doing is approving the minutes written from a recording of the meeting. So, the minutes are being approved from the recording, which is what Ms. Waggy was trying to do except they have to be written.

Mr. Padberg noted he was misunderstanding the term recorded.

Mr. Webb clarified the PC has to vote on written minutes, but the PC can vote on written minutes from the recordings.

Mr. Praino mentioned that was the motion at the last meeting. He clarified the motion was accept the minutes as transcribed on these dates, but there were not enough people voting for it.

Mr. Webb stated it would be brought back up next month.

Mr. Padberg asked who transcribes the minutes.

Ms. O'Dell, Mr. Praino, and Mr. Webb responded that the Town Clerk, Dawn Hobgood, does.

Mr. Padberg stated that Ms. Hobgood does an outstanding job of capturing the moment, especially for not attending the meetings. Several times, he has been amazed at how well the minutes are written to be truthful. He knows it is a lot to go through.

Adjournment

Ms. Waggy moved, seconded by Mr. Padberg, to adjourn the regular meeting. The motion carried by the following voice vote: Mr. Arshad, yes; Ms. Miles, yes; Mr. Padberg, yes; Mr. Praino, yes; Mr. Russell, yes; Ms. Waggy, yes; Mr. Webb, yes.

Minutes submitted by

Approved by

Dawn Hobgood
Town Clerk

John Webb
Chair