Albemarle County Planning Commission
January 17, 2017

The Albemarle County Planning Commission held a meeting on Tuesday, January 17, 2017, at 6:00 p.m., at the Albemarle County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Bruce Dotson, Karen Firehock, Tim Keller, Jennie More, Mac Lafferty, Pam Riley, Daphne Spain, and Bill Palmer, University of Virginia (UVA) representative.

Other officials present were Andrew Gast-Bray, Assistant Director of CDD/Director of Planning; Stephanie Mallory, Planning Assistant; and John Blair, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Gast-Bray, acting as temporary chair as this was the first meeting of the New Year, called the meeting to order at 6:00 p.m. and established a quorum. He noted this meeting is primarily to go over organizational issues for the Planning Commission.

Election of Officers: Chairman and Vice-Chairman:

Mr. Gast-Bray opened nominations for the election of Chair of the Planning Commission for calendar year 2017.

Mr. Lafferty nominated Tim Keller to be Chair for 2017.

Ms. More seconded the motion.

Mr. Gast-Bray invited other nominees. There being none, Mr. Gast Bray closed the nominations for the Chair position. He requested a motion to accept Tim Keller as Chair of the Planning Commission for calendar year 2017.

Mr. Lafferty moved to accept Tim Keller as Chair of the Planning Commission.

Ms. Spain seconded the motion.

Mr. Gast-Bray asked for a roll call.

The nomination of Tim Keller as Chair of the Planning Commission for 2017 carried by a vote of 5:0:2. (Ms. Firehock was absent from the vote. Mr. Keller abstained from the vote.)

Mr. Gast-Bray turned the meeting over to Mr. Keller, Chair.

Mr. Keller noted that Karen Firehock was running late to the meeting and said that the next item was to elect a Vice Chair. Mr. Keller asked for nominations for Vice Chair of the Planning Commission for 2017.

Mr. Dotson nominated Karen Firehock to be Vice-Chair for 2017.

Ms. Spain seconded the motion.

Mr. Keller invited other nominations.

There being none, Mr. Blair suggested a motion to close the nominations.

Ms. Spain moved to appoint Karen Firehock as Vice-Chair.

Mr. Lafferty seconded the motion.

The nomination of Karen Firehock as Vice-Chair of the Planning Commission for 2017 carried by a vote of 6:0:1. Ms. Firehock was absent from the vote.

Ms. Spain pointed out they all voted this way because Ms. Firehock indicated last time that she would be willing to serve.

The meeting moved to the next agenda item.

Discussion of 2017 Planning Commission Rules of Procedure

Mr. Keller said they had all decided that it would be helpful to have this meeting because there were several things that warranted some thought and discussion, and several commissioners, Mr. Blair and Mr. Kamptner, had previously raised those. Mr. Keller said that those who have had the course recently have heard from the expert on Planning Commissions that it is good to look at the bylaws and update them annually, even if that process is no more than agreeing to the existing ones and having members look and make sure they were comfortable with everything. He suggested having Mr. Blair run them through the pieces including the three ideas or concepts that he shared with the Commission that they have heard before, with members adding other matters they would like to discuss.

Mr. John Blair, Deputy County Attorney suggested first looking at Section 2 – Regular Meetings. He stated there is a provision added that says, "Additionally, if the chair or the vice-chair – if the chair is unable to act – determines in consultation with the director of planning that all scheduled public hearing items have been withdrawn or deferred at the request of the applicant, the chair may cancel the scheduled meeting." Mr. Blair pointed out the Commission had held a meeting in which both items had been deferred, but; since the current rules of procedure only speak about weather and don't really give authority to the chair or vice-chair to cancel the meeting because both items had been deferred at the request of the applicant, the Commission held a brief five-minute meeting. He stated that this change would address that situation so if there were a meeting scheduled that had one public hearing item and the applicant wanted to defer that item to another meeting, the chair could – in consultation with the director of planning – cancel that meeting. Mr. Blair asked the Commission if they wanted him to run through each item or discuss each one as it is brought up.

Mr. Keller responded that Mr. Blair has set a tone for them to deal with each one as they come up, and that has been useful for them with other items.

Ms. More asked if it was an advertising issue, because she recalled before that one had been a deferral and one had been an advertising error.

Mr. Blair replied that this would be able to override the advertising as well, and the real predicament was that the bylaws only talked about weather as the reason for cancellation. He stated that if something had been advertised, they could cancel the meeting, and would ask planning staff to provide notice to the media and anyone else who receives those notices.

Ms. Riley commented that it is a good idea to amend it this way.

Mr. Dotson said that he still has a question as to whether there is anything in the state code or elsewhere that says the Commission has to approve a deferral, because he could envision a situation in which the Commission did not want to defer an item – even though the applicant requests it. He asked how much latitude there is on request for deferral.

Mr. Blair explained that if it is at the request of the applicant, that does not require a hearing on that date, and that would not violate the "shot clock" as long as the applicant is the one requesting deferral.

Mr. Dotson asked if the applicant, in conjunction with the Planning Director, determines whether a deferral was indefinite.

Mr. Blair responded that typically, the applicant communicates with the planner on the issue, who would then talk to the Planning Director and David Benish about whether the deferral is to a certain date, or an indefinite deferral.

Mr. Dotson said that the language states that the finding would be communicated to the members of the Commission and the press as promptly as possible, and the hope would be that the press would pick up on that so the public was informed – because not everyone who was notified there would be a meeting would receive direct notification. He commented that there would just be some judgment on the part of the Planning Director that there is sufficient time to notify people via the media.

Mr. Blair stated that they could look at that language, which is carried over from the old rules and procedure, and consider changing it in terms of the press. He said that the Board of Supervisors has a list of members of the public who ask for all agenda notifications, and they could tweak it to include members of the public for notification. He said that he thought it was an email list, so they could be notified by email that it had been canceled.

Mr. Dotson asked Mr. Gast-Bray for his opinion.

Mr. Keller stated that the issues that arise from this are going to be the same regardless of if the reason is weather or not, and the other issue is the technicality of how they manage getting the word out. He said that he did not know if there was a change that could be on the front page of the website and notification to the public to always check the website before they come in, so there is always a last-minute way to check.

Mr. Dotson said that he just did not want to create a rule that allows someone to game the system, in cases where an applicant anticipates that there will be a lot of opposition and thus seeks a deferral – then the Commission cannot meet and set a certain date. He stated that he would trust the staff planner to make sure that any opposition leaders know about it.

Mr. Blair said that it is important to know that the language is that the chair “may” cancel the scheduled meeting, so the chair would have some idea when talking to the Planning Director as to whether this is gaming the system or legitimate need for preparation – because the Chair does not have to cancel the meeting.

Mr. Keller asked Mr. Dotson if there was any way to tweak it to make him more comfortable.

Mr. Keller responded that he did not want staff to have to notify everyone who may have received a public hearing notice, and said that some judgment on the part of the chair and Planning Director about knowing enough ahead of time that some key leaders could be notified as to what’s happening would be his main concern.

Mr. Keller noted that it would not be in the bylaws.

Ms. More stated that in reading some of the language, it seems to speak more to a deferral that is requested instead of a public hearing in which it becomes clear to the applicant that things aren’t going as hoped, so they ask for a deferral. She said that she wanted to be sure when the applicant returns that the Commission is clear about whether they are going to have another public hearing or just take a vote at a future meeting. Ms. More said that her concern is that if the Commission has heard everything and the applicant wants a deferral, when they are back in front of the Commission and addresses them, and then there should be a public hearing in which everyone else gets to readdress the Commission. She stated that there has been a question before the Board of Supervisors where the applicant is back with no changes, and whether that is a public hearing – and in her opinion, there should be a completely new public hearing.

Mr. Keller suggested that they talk about the deferrals.

Mr. Gast-Bray said he did not know that they had really addressed that in these particular comments, as that is a different point, and he was going to have David Benish comment on past practice. He commented that you could overreact to hypothetical situations that may actually never materialize, but if there are concerns about people trying to game the system in a different way, then the chair can stipulate that if this comes back without changes, it will be handled in a certain way. He asked Ms. More if this addresses her concern.

Ms. More said that she sees the word "may" instead of "shall," and did not know if that was a good thing.

Mr. Gast-Bray said that it gives discretion to deal with the situation at hand, and when there is discretion, there is discretion, and it can be covered sufficiently in this to use the common sense approach – which is what everything is predicated on eventually anyway. He stated that he did not know if this was a big issue or not, and that is what he wanted to defer to Mr. Benish and Mr. Blair about.

Mr. Blair stated that it seems that Ms. More is speaking to Section E, Subsections 1 and 2, which says, "When the matter returns to the Commission on the dates specified, the Commission may open a new public hearing and receive comments from the applicant or any other speaker, act on the matter, consider another motion to defer, or any appropriate combination thereof." He asked if Ms. More would like a requirement to have another public hearing on the matter if there is a deferral.

Ms. More responded that she believes if the item comes back without changes, and the applicant doesn't chose to address the Commission to explain changes they've made, then they could vote – but if the applicant has made changes and wants to address the Commission, then staff would explain the changes, but the public should also have the opportunity to comment on the changes. Ms. More cited the example of Barnes Lumber, which took an indefinite deferral, and when they come back they will go through the whole thing again because their changes are huge. She said that some of the developments that get deferrals and the applicant gets to address the Commission, and then the public may have comments on any changes.

Mr. Blair stated that that is completely in their discretion, and if they as a Commission want to, they can listen to it. He said that they could change the wording to "shall," which would make it mandatory, but "may" covers the opportunity for them to hear it.

Mr. Benish mentioned that the Commission's practice has been to open for public comment on most every item before them, so that opportunity to comment is there – but what is not in that process is the notification of other people as required by public hearing. He said that generally, if there is a group of citizens that has tracked the project; staff would contact them with follow-up meeting information. Mr. Benish noted that this has been a practice, but not a policy.

Mr. Dotson asked why they were inserting the language in red, as it seemed to be for their own convenience and there is no action to take other than a deferral. He stated that it is rare, and he was not sure that it was needed.

Mr. Keller commented that in the three years he has been on the Commission, there has only been one case.

Mr. Dotson said it seems to be in contradiction to Section E on deferrals, which says that the Commission acts on those – and he is not sure they gain anything other than the rare circumstance of not having to meet, if the only reason to meet is to act on deferral. He stated that he is willing to meet for those reasons, and there may be people in the audience who have comments and could not get there on some other date.

Mr. Keller stated that he made sure they had a quorum for the short meeting, and asked how the Commission feels about making or not making a change.

Ms. Firehock asked if the chair would still be able to cancel it, because she can recall another meeting in which they had a report on what the Board of Supervisors had done – but that was it, because everything had been deferred. She stated that she recalled feeling annoyed, because she could read it online.

Ms. Riley stated that it sounds as though this is only happening a few times, and the historical information is helpful.

Ms. More commented that some of it comes to the timing in which staff received the deferral, and they have had other times in which people show up to speak about other topics. She stated that perhaps it should be left to the chair's discretion.

Mr. Lafferty pointed out that it is a "may" and not a "shall."

Mr. Dotson stated that given the two types of deferrals – indefinite and date certain – that would leave anyone interested in the item not knowing what it was, in terms of planning to attend, bring support, etc. He added that his sentiment is that they do not need it.

MOTION: Mr. Dotson moved not to make the changes in red to Item 2B, regarding the chair's discretion and canceling meetings. Mr. Keller seconded the motion.

Mr. Keller asked if the rationale was the possibility of gaming the system and whether they were entering a more litigious time in terms of land use, as how that was acted on could allow someone to challenge the process.

Mr. Dotson added that the rationale was also the convenience of the public who may have attended and arranged for their attorney to come on a particular date – and if they stick with existing rules, they would either defer it indefinitely or to a certain date, so the applicant would gain some information even by coming to a meeting where there was not a full-blown hearing or decision.

Mr. Keller stated that this links to Ms. More's question where there was a decision not to have the full public hearing.

Ms. Spain said that she was hesitant to disregard the advice given by counsel, and if this is language, they need to be able to accomplish what is necessary, and then she would like it to stay in.

Mr. Blair stated that currently, the bylaws only allow meetings to be canceled because of weather, and this additional language provides the opportunity for the chair – in consultation with the Planning Director – to cancel the meeting, in cases where there may only be one public hearing item.

Ms. More said that "may" does give the chair that discretion, so the only lingering issue is timing, and if it happens that day and people are going to show up, the chair may choose to have the meeting – but if there is sufficient notice and the chair feels comfortable, then they can exercise their discretion as to whether to meet.

Mr. Keller asked if they could put a timeframe in here.

Mr. Blair responded that they could.

Ms. Firehock said that if it is too short notice and everyone is already going to come, then they should meet anyway so they can talk – and they are usually not completely surprised by acrimony or dissent.

Mr. Blair stated that if they had a ZMA and Commissioners received no emails or public input, and the applicant requests deferral to the next meeting, then that is something for the chair to weigh.

Mr. Gast-Bray said that if people show up and there is a note on the door that says the item was deferred and requests that comments be sent to staff for inclusion at that date, then it can be fielded as long as there

is a backup date. He stated that there are a lot more tools at their disposal and plenty of mechanisms by which people can provide comments.

Mr. Keller clarified that the vote is not to accept the recommendation.

The **motion** failed 1-5, with Mr. Dotson voting in favor, and Ms. Riley, Mr. Keller, Ms. Firehock, Ms. Spain, Mr. Lafferty, and Ms. More voting against.

Mr. Lafferty asked if they had to vote to include it.

Mr. Blair suggested that they go through them all, and if something is stripped out like the last time, they can vote on it – but otherwise they can vote at the end.

Mr. Blair reported that the next area was Item 3C – Matters not on the Agenda. He stated that currently, there is a three-person cap on the number of speakers, and he was not sure if they wanted to reconsider that, as there was no legal requirement either way.

Commissioners stated that they had not really noticed there was that limit.

MOTION: Mr. Lafferty moved to drop the three-person cap for speakers on "Matters not on the Agenda." Ms. Firehock seconded the motion.

Mr. Keller stated that he had asked to eliminate the item in which members of the public speak at the end, so he was going to ask that they not have that anymore, which would be another rationale for people to be able to speak during the "Matters not on the Agenda" item.

Ms. Firehock noted that with the Charlottesville Planning Commission, there could be a lot of interest in the community about a particular item, and if many people wanted to speak about it, it could put them behind on the scheduled hearings. She stated that they ended up allotting a set amount of time – such as 20 minutes – with an opportunity to speak at the end of the meeting if they did not get a chance to speak.

Mr. Keller stated that if they see a lot of those people up front and the Commission does not want to hold them there to the end, the Commission could ask them to show by raising their hands whether they agree with the speaker.

Mr. Dotson said that he liked the proposal to limit the time to 20 minutes.

Ms. Firehock stated that if there were an item of serious importance, she would hope that constituents would approach the Commission to make it an agenda item.

Mr. Blair clarified that the intent is to delete the three-person cap but add in a 20-minute time limit.

Ms. Firehock said that it was a 20-minute time period for that comment.

Mr. Keller asked if anyone objected to that.

There were no objections raised.

Mr. Blair stated that the next item is 3D, which reads: "The Commission may permit the applicant to exceed the proceeding time limits, if the Commission determines that the proposed project's complexity requires additional time for the applicant to make an adequate presentation." He mentioned that last year, there was one application in which the time period for the applicant was extended beyond the 10 minutes, based on the size of the project. Mr. Blair stated that they do this without the item in their bylaws, but this makes it clear that the Commission can grant it.

Ms. Firehock said that she agreed because it eliminated the possibility of showing favoritism by breaking their rules for certain applicants.

Ms. More stated that sometimes they have a lot more questions for applicants, and it may be good to explain that to the public, as it seems they may be given more time – even if it is outside of their regular speaking time.

Mr. Lafferty said that some projects are more complicated than others are, and the Commission is there to learn about the project as much as possible so they can make a decision.

Mr. Keller stated that there were some recent items for which there was an "expert" in the audience who wasn't necessarily speaking for or against the applicant but who had information that the Commission could use after the speaking time period.

Mr. Blair asked if that were based on Commission questions or on audience questions, as they would sometimes have the engineer come up.

Mr. Keller stated that sometimes they just shout it out, and technically, they are out of order – but in several cases, they have had good information to add. He added that they should try not to let it happen, and when it does – if it is useful – to let it happen.

Mr. Firehock said that she can think of a number of times when a lot of citizens attended to protest a second entrance – but it tuned out the applicant was no longer doing the entrance, so it was easier to find out right away than have another 20 people come up and speak against the entrance. She noted that it was not procedurally appropriate, but it did smooth out the process, and she did not want to tie the Commission's hands too much.

Mr. Blair stated that the next item was Section 4, and he proposed adding the word "voting" because they are a seven voting member Commission, but an eight-member Planning Commission and quorum is half plus one – so that would be four under the voting parameters, but five under the general membership parameters.

Ms. Spain said that with that change, on Page 5H – Motion to Amend, it should say "unanimous consent of the voting members of the Commission"; and on Page 6, it should say, "Rules may be amended by a majority vote of the voting members of the Commission."

Mr. Keller said that was a good catch.

Mr. Blair stated that the next item was related to the tie vote language, under which several items could be taken to the extreme – and it would now read: "A tie vote shall not be deemed to be a recommendation of denial, nor shall a tie vote be deemed to be a recommendation of approval," and "A tie vote shall defeat any motion to approve a preliminary subdivision plat, a variation or exception to a site plan, a final subdivision plant, or a private street." He said that the final sentence is that the Commission has final authority on those matters if no one appeals it, so there does need to be some provision on those matters they decide. Mr. Blair stated that the other wording makes it clear that in terms of recommendations to the Board, tie votes are neither approval nor denial, and the previous wording did not provide that clarity.

Ms. Spain noted that it may have just been a typo – "recommendation or denial," rather than "nor."

Mr. Keller said that several Supervisors assumed that a recent Commission tie was a defeat, so it is good to provide this clarity.

Ms. Spain stated that it may just have been "of" when it should have been "or."

Mr. Blair suggested changing it to "recommendation or denial."

Mr. Keller said that if two Supervisors interpret it that way and assume it is a defeat, there need to be an educational process – or have the Commission make it parallel and decide among themselves that the culture in the county means this is a defeat because that is how the Supervisors do it.

Ms. Firehock noted that when the Supervisors have a tie, it is a defeat, and said that either the Commission is recommending it or not able to come up with enough votes to recommend it – so it is not defeated, it is simply not recommended.

Mr. Keller said it would be great if the staff report could have that information as a standard phrase.

Mr. Benish stated that in the Commission's motions, they could clarify their intention – and staff would be clear in their transmittal of information, although the Board does read the Commission's minutes.

Mr. Dotson asked if there was also a finding of consistency or conformity with the Comprehensive Plan.

Mr. Blair clarified that this was 15.2-2232 of the Code of Virginia.

Mr. Keller asked about the part left to the Commission regarding cell phone towers.

Mr. Blair responded that he would take a look, but 15.2-2232 is an awkward part of the State Code whereby the Commission makes a finding as to whether an item is consistent with the Comp Plan – and State Code requires this to be reported to the Board of Supervisors, who can leave it as is or take it up as an action.

Ms. Riley asked if there could be an example given.

Mr. Blair explained that the police substation in Crozet several months ago had a small presentation.

Mr. Benish stated that the women's treatment center on Old Lynchburg Road needed a compliance review because it is considered a public facility, and state code refers to it as a "substantial accord" finding. He said that it does not require a public hearing, and they could act on the item if it is put on the consent agenda, but staff usually does a presentation in case there are questions. He noted that while the Commission makes a finding, there is an option for the Board to take a final action.

Mr. Blair said that he could add that.

Ms. Riley asked if this was specifically for facilities.

Mr. Benish responded that it is, noting that sometimes private utilities are considered public facilities – so that's where it can get a bit confusing.

Mr. Blair stated that he would add that language to read "a private street or a substantial accord finding with the Comprehensive Plan."

Mr. Blair stated that the next item was the "Motion to Amend," and explained that it now states that if there is a motion to amend a previous motion, they can take a vote on it – but the amendment would allow the unanimous consent of the Commission. He explained that if a Commissioner wants to amend a motion to approve the fencing requirement for a business – and all Commissioners agree – the chair could ask if the motion is accepted by unanimous consent, and if they all agreed that it would become part of the original vote.

Ms. Firehock said that this makes a lot of sense, as she could recall several cases in which something came up and staff realized they had forgotten to put in a condition, but it was something the Commission had already discussed.

Mr. Dotson noted that they have already been doing this in practice.

Mr. Blair said that they could move onto questions from Commissioners.

Mr. Keller stated that there was a question regarding gender references in the bylaws.

Mr. Blair said that there was an issue on gender neutrality, as there was use of the word “his” in several instances throughout the document.

Mr. Dotson suggested changing all of those to “they” or “their.”

Mr. Blair stated that they could take out the new Section 8 and just leave the old one in with the new references.

Mr. Dotson said that he was confused by Section K related to suspension of rules pertaining to motions, and said that his interpretation was that if someone makes a motion, someone amends it, then someone amends the amendment, they can simply start over. He said that the inclusion of the term “suspension of rules” makes him nervous.

Ms. More agreed, stating that she also interpreted it as the ability to start over.

Mr. Blair stated that they could have a motion that cancels all motion, and then start over, rather than calling it “suspension of rules.”

Mr. Dotson said that sounds like a good improvement.

Mr. Keller stated that this had become a de-facto rule of action for the Commission, and since doing so have had more clarity in the motions because they have been taking on smaller pieces before taking on the whole.

Mr. Dotson said that he also had a question about something on Page 5 related to previous questions, and asked Mr. Blair if this was the same as calling the question.

Mr. Blair explained that this says if someone tries to avoid a vote, this allows the Commission – by a 2/3 vote – to end all discussion and go straight to the question on the floor. He said that the goal is to stop dilatory discussion.

Mr. Lafferty asked if they needed a 2/3 vote on the calling of the question, then would go back to the original motion.

Mr. Blair confirmed that they would need a 2/3 voting member vote to end the discussion, and then would vote on the matter.

Ms. Firehock said that she understood the reason but could see a downside if there was a small minority that was in disagreement with the rest, because the 2/3 could shut down discussion – and that could be very demoralizing.

Ms. More stated that she could envision a situation where it was being used to silence debate.

Mr. Lafferty said that it clarified for him that they have to vote on the call, and it has to be a 2/3 vote, before the motion is brought up to vote.

Mr. Gast-Bray stated that fortunately he does not deal with larger, more contentious bodies, but the rationale is there for such situations. It is probably easier [here] to train chairs to be respectful, etc.

Mr. Blair said that 2/3 would have to be a 5-2 vote, and 3/4 would have to be a 6-1 vote.

Ms. Firehock stated that there have been many situations in which she was a minority, and many in which she agreed with the minority.

Ms. Riley pointed out that they can have a motion to reconsider, so it cannot go on perpetually.

Mr. Blair said that the language in that item, J, should be changed to include the term "voting member" just to provide clarity.

Mr. Keller stated that they should vote on this so they have time to consider other suggestions about this document.

MOTION: Mr. Lafferty moved to accept the changes as discussed. Mr. Dotson seconded the motion, which passed unanimously (7-0).

Mr. Keller said that they would start with Mr. Dotson's discussion of meeting time.

Mr. Dotson stated that when he was on the Commission many years ago, they started at 7 p.m., and then moved it up to 6 p.m. because they had such a large number of applications – but that has not been the case in recent years. He said that this is a question of what they deem to be the most convenient time for the Commission and the audience, given other evening obligations. Mr. Dotson said that people seem to be happy with 6 p.m., and Commissioners concurred.

Mr. Gast-Bray said that all other evening boards start at 6 p.m., so there would have to be some public education if this one were to change.

Ms. Firehock stated that regarding Matters not on the Agenda, the language states: "The Commission shall neither engage such a speaker in dialogue, nor engage in a discussion on the matter raised by a speaker at that time." Ms. Firehock said that she sent a note to the chair that this should be stricken, because the way it reads now means the Commission is not allowed to engage – but sometimes a constituent will ask a simple question, and under literal interpretation, Commissioners would not respond at all to that person.

Ms. More said that her only concern would be to give accurate information so they may look to staff for that, which could put them on the spot if they are not prepared.

Ms. Firehock responded that they would not have to answer constituents, but could just thank them for their questions. She said that in her work with other boards and commissions, she advocates for some sort of empathetic response so Commissioners are not just staring at constituents.

Mr. Lafferty stated that for the MPO Policy Board, they would generally react to questions and comments after everyone has sat down, so they do not get into a one-on-one argument with someone addressing them.

Ms. Firehock said that the Commission could provide some general feedback, as it would be more responsible public governance.

Mr. Blair stated that it is a wise amendment, but he thinks the chair should announce that the Commission would not engage in a dialogue with speakers under "Matters not on the Agenda," because people may take it as an invitation to use that forum for discussion of issues.

Ms. More said that it would be wise to make that statement for all agenda items.

Mr. Keller suggested that they take Mr. Blair's recommendations, and suggested adding those guidelines to the chair's "cheat sheet." He said that maybe after the public has spoken on other matters, the Commissioners could make comments as the Supervisors do, should they choose to – with some separation of time so it is not a direct confrontation.

Mr. Dotson stated that there was a case with the Field School application in which a speaker wanted to cross-examine staff during the "Matters not on the Agenda" item, and Mr. Keller asked him to direct his comments to the Commission. Mr. Dotson suggested including a statement of some kind on the Commission's agenda that says public comments should be addressed to the Commission.

Mr. Keller suggested adding it to the sheet of civic responsibilities that is provided when there is a contentious agenda item.

Mr. Blair said that there are some printed guidelines, so perhaps that statement could be added.

Mr. Gast-Bray stated that he liked the idea of separating the Commission's comments so there is a bit of a cooling off period, and they can reiterate that everything has been heard but they are not supposed to address speakers directly.

Ms. Firehock asked if those statements are also online, as well as on the back of the agenda, and perhaps it would be helpful to have the rules and guidance available in that format also.

Mr. Keller stated that the pre-meeting is not really a part of the meeting culture, and given the discussion of meeting times, they may not wish to explore it. He said that because the city did it and other jurisdictions do it, he wanted to bring it to their attention. Mr. Keller stated that it seems to him to have the potential to take some transparency out of their sessions, and this body has shown that they try to be open and let everyone have their say. He said that if only the media is present at a meeting and staff is answering questions, the discussion gets lost for the public later. Mr. Keller stated that he is not an advocate for the pre-meeting, and from his observation it does not save anytime as the issues are just rehashed at the full meeting.

Mr. Keller said that having an opportunity for more than two people to meet with staff and/or applicants onsite kinds of projects would be useful. He stated that at some point in the future, if the county grows to a large size, this might be necessary due to the volume of applications – but at this point, it probably is not. Mr. Keller said that he was not sure if this should be a mechanism in the bylaws or something that is just called, and he did think it was valuable to have the City Planning Commission able to participate in the Places 29 discussions. He stated that it would have been useful for county commissioners to be at Brookhill or Adelaide, and he did not envision this being many times a year but could be considered for certain kinds of projects in the future.

Ms. Riley stated that it would be beneficial for them to do some onsite visits together, and she was under the impression that they could just adjourn a regular meeting to a future onsite meeting, on an as-needed basis.

Mr. Blair clarified that they could adjourn to that particular time and place, and the bylaws contain a provision for special meetings – which are called by the chair or requested by two or more members of the Commission, upon written request made to the secretary, and shall specify the matters to be considered at the meeting. He cited an example of Commissioners requesting a meeting to take place at Barnes Lumber in Crozet to make a site visit.

Mr. Keller said that this is the same way they have handled the educational sessions, and they may be able to save some difficulties in the future, if they had the opportunity in exceptional situations.

Mr. Gast-Bray asked what the threshold would be.

Mr. Keller responded that staff needs to provide guidance as to how many days are needed to properly advertise it.

Mr. Benish confirmed that it is 7 days for FOIA, with 10 days needed for procurement. He stated that a simple notice posted in public locations can suffice for a number of meetings, but he was not sure about this situation.

Mr. Keller said that they could use their existing guidelines, but would most likely need to amend their times so they are realistic for staff.

Ms. Firehock stated that there could potentially be some issues with logistics in terms of where they can convene, if the meeting can be recorded, and where the public can park.

Mr. Keller said that he had no problem with it being 14 or 21 days.

Mr. Lafferty said that many times, they do not have that much notice.

Ms. More stated that they were getting notice of upcoming projects, with a few months' time, so it would probably occur to them which ones would require this type of trip.

Mr. Keller asked if they could institutionalize a requirement to have agendas several months in advance, as they had received from staff before.

Mr. Benish responded that staff could do that.

Mr. Dotson stated that he did not think it was something for the bylaws.

Mr. Benish said that staff could get that to the Commission at the beginning of each month and it could be made available online, but noted that the agendas will change and they would not want the public to fix on the exact dates.

Mr. Gast-Bray stated that there is the technical issue of managing the website for it to be a much more useful tool, so staff would need to keep it up to date as much as possible.

Ms. More said that her question is whether they need a quorum of no action was taken on the trip.

Mr. Blair responded that it would still work; they just would not transact any business. He cautioned the Commission that they wouldn't want to get into extending the time for applicants due to the complexity of the project – and they wouldn't want to go to a few sites and suddenly have all applicants inviting them to their sites, as visits to some and not others may be perceived as unfair.

Mr. Keller stated that he does not have the need to be onsite with an applicant, and he is interested in being onsite with the information they have from the applicants and others – either Commissioners or staff, ideally the lead staff person, on the small number of really complicated projects they have.

Ms. More said that her understanding from the Commissioner training for the localities that did this is that Commissioners do not discuss the project or engage in conversation when they are onsite, and staff's presence is only to help direct and orient them to the site, so it has to be done very carefully. She stated that they are just there to gather information and may ask technical questions of staff, and get oriented to the roads and logistics of the site.

Mr. Keller said that was well stated, but in some places because of the way they've institutionalized it, they don't have to have staff going out multiple times with different Commissioners and two of the Commissioners going out with the applicant. He stated that this is still the uneven part as he sees it, and perhaps this discussion needs to be held in the context of a larger framework. Mr. Keller noted that there have been many occasions on which the Commissioners have seen the site differently, and if there was time with staff to have the lead staff person available, they could all have the benefit of multiple questions being asked of staff – with the Commissioners having a strong personal ground rule that they would not talk back and forth. He said that if there are different sets of questions that come from different perspectives, each Commissioner is getting the benefit of those questions that they did not think of themselves.

Ms. Firehock asked if they would be going out to the sites in situations where they have not yet received

the application.

Staff responded that they would not.

Ms. Firehock stated that Commissioners very frequently get developers asking to meet with them – with no paperwork or maps for those projects – so they want to give them a one-sided perspective. She said that the Commission does not know what staff's concerns are, and she really detests the meetings and does not like to have them, and she did not want to be on a field trip for which they had not received the entire report.

Mr. Gast-Bray responded that what the Commission is interested in is worth looking into, but is more complex than it seems at first blush, and staff should probably get together and discus how to achieve this in a way that doesn't get anyone into trouble, i.e. the "rules of engagement." He said that there might be several ways to approach this for individuals to take on their own, with encouragement from staff that they may want to familiarize themselves with a site, and there may be situations where there is a field trip so they can understand the topography of a site. Mr. Gast-Bray commented that their points are all very valid, and asked the Commission if they would allow staff to process this and come up with a proposed solution.

Mr. Keller stated that they all seem to agree that this is not appropriate to be in the bylaws, and this is an opportunity to express something that could make them better Commissioners or better in dealing with certain types of projects.

Mr. Gast-Bray said that they did have this in New Hampshire [referring to site visits as a Planning Commission].

Mr. Benish commented that most of these would be legislative reviews, which would require a community meeting, and that is probably the first clue the Commission would have that an application is something they need to be more engaged with. He said that the Commissioners who go to the community meetings are getting notice of them, and that is probably the time to start thinking about what additional input is needed. He stated that Brookhill is an example, and staff has encouraged the applicant to do a worksession with the Planning Commission, but they have decided not to take that approach and instead to take a more individualized approach with the neighborhoods.

Mr. Keller asked if the Woolen Mills meeting that he and Ms. Riley had attended for their own information had been set up by the developer or set up by the city.

Mr. Benish responded that his advice to the city was that a community meeting should be a joint community meeting at the least, and probably a joint worksession and the applicant agreed.

Ms. Riley stated that it would be great to get recommendations from staff, and she is less interested in applicant-specific type of tours and is more interested in issue or small area plan types of tours – a general orientation if they are looking at capacity issues, etc. She added that it would have been helpful with the wineries and breweries to have done a tour, because she is not familiar with those sites, and they ought to be thinking about longer term, strategic types of orientations.

Mr. Benish said that in the meantime, Commissioners should contact him, Mr. Gast-Bray, Elaine Echols, or Margaret Maliszewski in the case of ARB items. He stated that the Commissioner from the district for which there is an application will get the application, as well as a copy for the at-large member, and if Commissioners are asked a question by an applicant, they should contact the lead planner to get an extra copy.

Ms. Firehock commented that sometimes the applicants come to the Commission very prematurely.

Mr. Gast-Bray stated that the Planning Department has been revisiting their processes and have been reshuffling staff to address current and future demands. He said that they have been authorized to hire two planners and are scheduling interviews with their first round of applicants, and are considering associating

things with the community advisory councils and their jurisdictions rather than just the neighborhoods.

Mr. Benish stated that the County Executive's Office is also looking at the CAC issues in the context of the Board's strategic initiatives, and there may be a recommendation for augmentation coming from that level.

Mr. Keller said that there has been some frustration with Commissioners and others in terms of how the CAC issue unfolded, and asked Mr. Benish to suggest to the County Executive's office that they get Commission input before those ideas are finalized.

Ms. More stated that some Commissioners in other localities disclose prior to the public hearing that they have made a trip to the site, even if it wasn't with the applicant, or they disclose that they met with the applicant – although that is avoided as much as possible. She said that Albemarle does not have that, and asked if it was wise to do that or if it just created unnecessary concern.

Mr. Gast-Bray said that they did not need to disclose that if it was just a site visit on your own, and understanding their neighborhoods was part of their job as Commissioners, but if they are doing something more formal, there are means by which to disclose that. He stated that in his previous job, the Commissioners would declare it ahead of time and remind everyone that there would be no discussions among each other. Mr. Gast-Bray said that he did not know the rules here at this point and does not yet have a good answer for them.

Mr. Keller stated that he hoped Mr. Gast-Bray had a list of those things and could respond to the set of them, and said that Commissioners who served as consultants usually have a letter of introduction. He said that they asked for calling cards a few months and Mark Graham said he would get them, but they do not have them yet and he is not sure if a calling card had the same clout as a placard or letter. Mr. Keller stated that there is a personal safety standpoint of going individually into sites, especially with no identification, and asked that staff get back to the Commission within a month.

Ms. Spain noted that the Board of Supervisors have magnetic nametags at public meetings so that people know they can come up and ask them questions.

Mr. Gast-Bray responded that staff is looking into nametags for them.

Mr. Keller suggested having a letter that had a paragraph stating who is who.

Ms. Firehock said that it would be nice to have nametags.

Mr. Keller said that Mr. Graham was looking into that, and was looking at making all Commissioners members of the Urban Land Institute, with money in the budget for it.

Committees List

Mr. Keller stated that Ms. Spain had mentioned that there we some outdated items on it.

Ms. More noted that she is a Commission liaison for the ACE Committee but is not a voting member.

Ms. Spain said that she was on the Pantops CAC, rather than Mr. Keller.

Mr. Keller stated that the Fiscal Impact Committee was going away, and there would be a new committee with either one or two Commission representatives on that – and he would be interested in continuing with that.

Mr. Lafferty said that he served on CTAC and the MPO Technical Advisory Committee. He mentioned that there was a House bill introduced recently to eliminate ACE funding.

Mr. Dotson said that the Piedmont Environmental Council had sent out an email that day regarding a House

bill related to abilities to sell the tax benefits of ACE, and noted that ACE is a county program.

Mr. Lafferty said that he thinks it was about defunding conservation easements.

Ms. Spain stated that on the bylaws regarding organization of agenda, it says that the committee reports are only on the first meeting of each month, and she thought the chair asked for those when needed.

Mr. Keller said that if they correct that, then they should correct it on the master agenda to be in line with the bylaws.

Mr. Lafferty agreed with Ms. Spain, because the meetings are spread out over the month.

Mr. Dotson commented that once a month is often enough, because listening to reports may feel that their time is not being well spent, and perhaps they should be at the end of the agenda.

Mr. Lafferty said that if they spread them out over the month, they would not take as long for one group.

Mr. Keller said that he liked the proposal to move them to the end and keep doing it each time based on who has been to a meeting they want to share.

Commissioners agreed.

Mr. Blair said that he would advise a vote since they have already moved on.

MOTION: Ms. Spain moved that with the bylaws, Page 2, Item 3B-2, "Committee Reports," they strike the clause "only on first meeting of each month," and that Item 2 be moved down to "Preceding Old Business." Ms. More seconded the motion.

Ms. Firehock stated that a lot of people come to the beginning of the meeting for their item, then they leave, so if committee reports are at the end, they would likely be made to an empty chamber. She suggested keeping it where it is and have the reports remain short.

Ms. More said that she thought the public might be figuring out what they would be saying in their three minutes, and she thought that the committee reports were for fellow Commissioners.

Ms. Firehock stated that there are always some announcement components to those reports, so if they are done at the end, there may not be public present to get that information.

Mr. Dotson said that he understood Ms. Firehock's point, so they should keep the reports abbreviated, avoid acronyms, and treat it as though they are explaining it to someone who doesn't know what they are talking about.

Mr. Keller asked Ms. Spain if she was willing to amend it.

Ms. Spain agreed to the amendment to keep it as Item 2 on the agenda.

The motion passed unanimously (7-0).

Meeting Dates and Times

Commissioners discussed meeting dates and agreed that they should not have a meeting on Election Day.

Ms. Riley commented that she had put last year's meeting dates in, but they changed.

Mr. Benish said that he did not recall the schedule changing that much, although there had been a logistical issue with meeting a state code deadline, and they had to call for a special meeting. He stated that there

are times that items are scheduled and then there are deferrals, so a meeting gets canceled – but they usually try to stay on this schedule. He added that there was one other circumstance because of a notification issue.

Mr. Keller stated that he may have been guilty in some of those logistics as well, and said that Mr. Benish had been meeting with him and Ms. Firehock to review what would be on the agendas – and commented to Mr. Gast-Bray that they have gone too long without doing that. Mr. Keller said that Mr. Benish would raise concerns about having two public hearings that would go on for hours and hours, and in those cases, they would work with him and suggest having another meeting. He stated that if they have things like Adelaide and the wineries on the same night, they are not doing their business well.

Ms. Firehock said that sometimes things did not seem that controversial, but things started happening that led to a large number of public speakers.

Mr. Benish stated that Brookhill caused some complications, and Mr. Dotson was caught up in that scheduling issue – but for the most part, staff tries to stay on the dates because they know the Commission is planning for those dates. He added that there was one other circumstance for which they called a meeting to get some deferrals done, and sometimes items drop off of planned agendas. Mr. Benish said that they could move the November 7 meeting up to October 31, adding that the agendas are based in part on state code – which requires projects to have a certain period of a review. He said that applicants will often agree to deferral, but the meetings are set up in a way that meets code requirements, and they can move meetings earlier.

Mr. Gast-Bray noted that there is currently no business scheduled for January 31.

Mr. Keller said that he would ask Commissioners to try to protect their Tuesdays, knowing the ones they have to protect, and if they find themselves in a situation that necessitates alternate dates, they would see if they have a quorum. He stated that he liked having the agenda two months out, and while he understood why they did not want to advertise that to the public, it was very helpful to the Commission.

Consent Agenda

a. **Approval of Minutes:** October 18, 2016, November 1, 2016, and December 6, 2016

Mr. Keller asked if any Commissioner wanted to pull an item from the consent agenda. There being no one he asked for a motion.

MOTION: Mr. Lafferty moved to approve the Consent Agenda. Mr. Dotson seconded the motion, which passed unanimously (7-0).

Other Matters Not Listed on the Agenda from the Public

There were none, and the meeting proceeded.

Review of the Board of Supervisors Meeting – January 4, 2017

Mr. Benish stated that there were no items the Commission had seen previously at that Board meeting, so there was nothing to report.

Old Business

Mr. Keller invited old business. There was none, and the meeting proceeded.

New Business

Mr. Keller invited new business. Mr. Keller reminded the Commission of the January 24, 2017 joint meeting with the city. He said that he knows that Ms. Riley has thoughts on the affordable housing side, and Ms. Spain had thoughts on Rivanna, which Mr. Lafferty may also want to weigh in on. Mr. Keller suggested that they familiarize themselves with the MOU regarding redevelopment and affordable housing so they have a common ground for discussion; and the second is the MOU regarding the environment.

Ms. Riley stated that it would be useful to get the staff matrix on the items that county and city staff should be collaborating on.

Mr. Gast-Bray said that staff is working on that and hopes to have it by the meeting, including the map.

Ms. More asked if the Commissioners had the items Mr. Keller had mentioned.

Mr. Gast-Bray responded that it was being emailed to the Commissioners separately.

Mr. Keller asked for confirmation that Ms. Spain would not be able to attend the joint meeting with the city, stating that the hope is that there will be time for discussion – not just a presentation – on the two reports.

Ms. Riley said that she sent Commissioners a summary of what she and Ms. Firehock had done when they met with staff on December 8. She stated that the study the city had done is a really large document with a lot of material, and her thought was to have the city staff focus on the recommendations that the city's housing advisory committee had developed for City Council. Ms. Riley stated that the committee had gone through all of that material and honed it down to short-term, long-term and interim kinds of recommendations.

Mr. Keller stated that they have talked about accurate data collection shared between the three bodies – regional planning, the city, and the county – and there are many issues of housing and affordable housing to be discussed.

Ms. Firehock asked if there is a link to the presentation for tomorrow.

Mr. Gast-Bray responded that it would come to them tomorrow night.

Ms. Firehock said that she recalled a meeting related to transportation in which the Commission was criticized for not having a lot of questions – but the reason why is because they did not get the information until that day. She said that she found that highly annoying, but here they are again in the same situation.

Mr. Gast-Bray noted that the Planning Department had just received the final changes and made some suggested corrections to inconsistencies.

Ms. Spain said that she was confused about the meeting at 4:00, and asked whether they were also going to the evening meeting.

Mr. Keller explained that there was a transition from Liz Palmer to Diantha McKeel as Chair of the Board of Supervisors, and Ms. McKeel suggested that the meeting be earlier so the Commission did not have to sit through the public hearing on wineries. He said that the Supervisors also had a matter to deal with at 5:30, and the item went back and forth – but at this point everyone is available at 4:00 p.m.

Mr. Lafferty clarified from the earlier discussion on the ACE Program that the House bill limits the amount of tax credit a donor can get, so it hurts the conservation easements by making it less attractive for the donor.

Mr. Keller stated that they would welcome the return of Sharon Taylor, and encouraged Commissioners to let her know she is in their thoughts.

Adjournment

With no further items, the meeting adjourned at 8:16 p.m. to the Tuesday, January 18, 2017 joint Albemarle County Board of Supervisors/Planning Commission meeting at 4:00 p.m., Auditorium, Second Floor, County Office Building, 401 McIntire Road, Charlottesville, Virginia.

Andrew Gast-Bray, Secretary

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)

Approved by Planning Commission
Date: March 7, 2017
Initials: SCT