

POLICY COMMITTEE MEETING

July 18, 2011

4:00 p.m.

County Complex, Building A

1) Roll Call

Present

Mr. Rich Krapf
Mr. Jack Fraley
Mr. Al Woods
Mr. Tim O'Connor

Staff Present

Mr. Allen Murphy
Ms. Ellen Cook
Ms. Tammy Rosario
Ms. Jennifer VanDyke

Mr. Jack Fraley called the meeting to order at 4:00 p.m.

2) Old Business

Mr. Fraley noted there was no old business to discuss and asked Ms. Ellen Cook to speak on Green Building.

3) New Business

A) Green Building

Ms. Cook stated that this is stage two for this item and the first draft of the proposed policy. Ms. Cook stated that the structure of the document is similar to the public green building policy that was adopted by the Board of Supervisors (BOS) in March 2010.

Mr. Rich Krapf made a recommendation to add a goal that includes the use of native and/or drought tolerant plants.

Ms. Cook stated that this would be suitable.

Mr. Fraley stated that he crafted a revised *Purpose* statement for everyone to consider. Mr. Fraley stated that he did not want to have the social component included within the language of the purpose. Mr. Fraley's suggestion is:

"The purpose of this policy is to establish and promote green and sustainable building practices in support of the 2009 Comprehensive Plan sustainability goals. The intent of these practices is to provide environmental benefits, conserve natural resources, increase operational efficiencies and support local economic development."

Ms. Tammy Rosario stated that the Comprehensive Plan did have social components in it, and the wording was intended to reflect that. She stated that in terms of green building, the intended benefits include keeping energy bills down for users, which is a social good.

Mr. Al Woods stated that he thought that Mr. Fraley's suggestion was suitable. He stated that the two texts suggest the same thing. He stated that Mr. Fraley's version offers fewer details; it is broader in context.

Ms. Cook asked if it would be acceptable to reference the public Sustainable Building Policy within Mr. Fraley's newly suggested *Purpose* language.

Mr. Fraley stated that that would be suitable.

Mr. Fraley stated that on page 4, number #4B it states: "For both new construction and renovation/expansion (commercial, industrial, and institutional and apartments) a single structure of less than 10,000 square feet of gross floor area." Mr. Fraley asked if these structures were to be exempt from the construction standards brought forth in this policy.

Ms. Cook stated that this language could be clarified. She stated that those structures would be commercial. She stated that this language is to be applied to commercial and industrial structures. She stated that the chart on the following page also includes commercial and industrial, though under the subheading of "Non-Residential/ Multifamily and Apartment".

Mr. Woods suggested adding a footnote to indicate that non-residential includes these other things.

Mr. Fraley suggested adding a third column.

Ms. Cook stated that these items were grouped this way to be in sync with case review requirements. She stated that single family residential units would not require a site plan.

Mr. Fraley asked for more information on "the Green Building Fund Deposit".

Ms. Cook stated that this involves essentially a bonding procedure. She stated that in stage one there was a discussion regarding a process to ensure that developers get the certification that they committed to doing.

Mr. Fraley stated that he fears hearing criticism regarding more paperwork and more money. Mr. Fraley asked if this would become a new requirement.

Ms. Cook stated that it would.

Mr. Fraley stated that at the previous meeting there had been a discussion regarding requirements versus providing incentives.

Mr. Krapf stated that it would be prudent to talk with other localities that are establishing the same green building goals. He stated that it would be good to know if they have had developers default on green building projects after the application process.

Ms. Cook stated that her inquiries have led her to believe that the rate of default is pretty low. She stated that she spoke with planners in Arlington, Virginia. She stated that they have this fund themselves to safeguard from default, though it has rarely occurred that someone had to forfeit money.

Mr. Krapf asked if there is latitude for a promissory note. He stated that he does want to encourage green building as much as possible but he does not want to put in place additional hurdles.

Mr. Tim O'Connor stated that there are currently letters of credit that are in place. He asked if it would become the County's responsibility to correct the construction standards of the structure if it did not meet these specifications.

Ms. Cook stated that the money would go to other green building projects like education or training, not correcting construction standards.

Mr. Fraley stated that in his own research he has found few jurisdictions that apply a policy like this to private development. He stated that many jurisdictions have this policy applied to public projects. He stated he is fearful of making it more challenging for the business community, unless this was more widely used.

Ms. Cook asked if Mr. Fraley was speaking specifically to the bonding proposal or the policy in general.

Mr. Fraley stated both.

Mr. Allen Murphy stated that it would be a proffered situation, not a requirement within the ordinance.

Mr. Fraley stated that it would still be a requirement for those projects going through the legislative process. He asked if it would be required that applicants make proffers as a result of this policy.

Ms. Cook stated that it would be very similar to the Archeology-policy.

Mr. Fraley stated that it would be a standard condition for a Special Use Permit (SUP) or a proffer for a rezoning.

Ms. Cook stated that the BOS would have the discretion to not apply it to a particular case.

Ms. Rosario stated that the property owner could elect to move forward without including it, with the hope that the BOS would not expect it for a particular case.

Mr. Fraley stated that this would put the BOS in a difficult position.

Ms. Rosario asked what some of the discussions were at the Round Table regarding this matter.

Ms. Cook stated that the commercial component does represent the recommendation that came from the Round Table Report. She stated more specifically, structures less than 10,000 square feet would be exempt from this requirement. She stated that it would not apply to anything less than that. She stated that the recommendation was to apply this to rezoning and SUP cases.

Mr. Fraley stated that there would then be a push to put this in by-right at some point.

Ms. Rosario stated that she was not a part of the Round Table, but she thought there was a discussion regarding the potential burden this would place on business. She stated she had heard in other venues that meeting these certifications could make the property more marketable.

Mr. Woods stated that Mr. Rich Costello of AES had previously offered input on this matter. Mr. Woods stated that Mr. Costello had advised that taking these extra measures did not amount to a great amount of additional effort and the property does become more commercially viable.

Mr. Fraley stated that obtaining LEED certification has become more obtrusive and bureaucratic.

Mr. Woods stated that his understanding of the policy was if you wanted to take advantage of a particular incentive then there is a method in which to guarantee that you will build your structure to the specified standards.

Ms. Cook stated that this policy would be applied to all legislative cases. She stated that staff intends to incentivize the use of obtaining certification for those developments that would not have otherwise fallen under this policy. She stated that in the cluster overlay district draft one of the items you can get a density bonus by exceeding green building standards beyond the basic certified level. She stated that there are other districts coming up that would have similar incentives.

Ms. Rosario stated that the basic expectation is certification for both commercial and residential legislative cases. She stated that that which is incentivized through the residential cluster district is something above the certified level; this may be replicated in other districts.

Mr. Krapf stated that it is not only LEED, it is Earth Craft or the equivalent that is required. He stated that he does not have a problem with the policy. He stated that he is hesitant to initiate the green building fund deposit. He stated that there was wide buy-in from the building and development community that participated in the Round Table.

Mr. Fraley stated that finding a method to ensure that the work was done properly would be a challenge. He stated that incentivizing versus requiring would be preferred. He stated that when he spoke with Mr. Costello of AES, he had a mixed opinion on the proposed policies. He stated that he does not see other localities taking these measures.

Ms. Cook stated that staff did utilize a Planners Advisory Service to poll other localities and found others that have similar policies in place.

Mr. Krapf stated that there should be an effort to take a more aggressive stance in adopting sustainable practices.

Mr. Fraley stated that even if this is a recommendation it will be treated like a requirement. He stated that the business community has already begun taking these measures on their own, for example, the Food Lion presently under construction.

Mr. O'Connor stated that at one dollar per square foot, it is not a big penalty.

Mr. Murphy stated that the proposed penalty is low to ensure that the development community does not take this as harsh enforcement. He stated that the intent is to avoid the practical difficulty of other kinds of enforcement.

Mr. Fraley asked if staff is fully behind this recommendation.

Mr. Murphy stated yes.

Mr. Woods asked if this has been seen by the BOS.

Ms. Rosario stated that Stage One went through the BOS. She stated that some Board members had discussed incentives, while other Board members had spoken of requirements.

Mr. Fraley asked how much the SUP fee comes to.

Mr. Murphy stated that it typically is several thousand dollars.

Mr. Fraley stated that staff tracks SUP conditions; this could be tracked in a similar way.

Ms. Cook stated that the bonding process would serve the purpose of tracking.

Mr. Fraley stated that he does not want the proposed bonding method. He stated that he preferred using a letter of credit.

Mr. O'Connor stated that there would have to be one letter of credit per project.

Ms. Cook stated that the County would permit use of a letter of credit, a bond or any of the financial instruments that the Engineering and Resource Protection Division accepts.

Mr. Woods stated that as a practice this would be just one other item that the applicant would have to submit.

Mr. Fraley stated that he would like to hear what the Economic Development Authority (EDA) would have to say about this proposal.

Mr. Krapf stated that he does not mind hearing further opinions from those entities that can speak to the pros and cons of the proposal but that this input should not be the only factor.

Mr. O'Connor stated that you want to have people comply with the certification. He stated that there are those that will voluntarily comply. He stated that at one dollar per square foot the penalty may not be effective.

Mr. Fraley suggested that there should be a list describing exactly what the County wants to see with proposed plans.

Ms. Cook stated that during Stage 1 staff had text in the memo discussing this option. She stated that staff had not recommended this path, as staff would not have the technical expertise to verify that the green building standards were being followed.

Mr. Fraley stated that this item was not identified as a priority so there is time to further discuss it.

Mr. Krapf stated that he is fine with having the EDA provide input. He stated that he would like to see more incentives to further encourage green building practices.

Mr. Woods stated that he agrees with Mr. Krapf. He stated that he is sensitive to the punitive aspect of the proposal. He stated that he would prefer incentives over requirements.

Mr. O'Connor stated that if there are only incentives they may not achieve the preferred outcome.

Mr. Fraley opened the discussion to the public.

Mr James Peters of AES stated the development community wants additional clarity. He stated when ordinances or policies are clearly spelled out, the community can better adapt.

Mr. Woods suggested adding a definition for Energy Star, since it is mentioned in the document.

B) Residential Cluster Overlay Districts Zoning Ordinance update

Ms. Cook reviewed some of the changes made to the draft ordinance.

Mr. Krapf asked a question regarding Section 24-548 on density. He asked what the reasoning was in making the calculated total developable acreage 125% for those parcels that have more than 25% of non-developable land.

Ms. Cook explained how the calculation in the ordinance was intended to work, such that parcels with a certain amount of nondevelopable land would be allowed to use some of that land in calculating density, but this would never equate to more than 100%.

Mr. Fraley stated that he would like to better understand how the cluster overlay relates to the Transfer of Development Rights (TDR) program. He stated that he would like to reserve any additional density in residential districts for the TDR program. He stated that he does not want to see density in rural lands.

Ms. Rosario stated that staff is having some difficulty since the Cluster Overlay Ordinance and the TDR Feasibility Study are being reviewed concurrently. She stated that if the TDR proposal moves forward, staff will come back and revisit the Cluster Overlay Ordinance.

Mr. Fraley stated that he sees the difficulty in this timeline. He stated that he has a completely different vision for the ordinances if the TDR is adopted.

Mr. Krapf agreed with Mr. Fraley's concern. He stated that it is best not to have competing means of achieving bonus density. He stated that in the state of Virginia there have been two attempts made at achieving a TDR program; they both failed.

Mr. Fraley asked why staff chose not to have the density based on the developable acreage.

Mr. Murphy stated that the BOS directed staff to base density as such in the Economic Opportunity (EO) district but had not provided specific guidance for the other districts. He stated that if you do not give an allowance for non-developable land, then the density numbers will be significantly lower.

Mr. Fraley suggested that everyone read the section on how to calculate density and see if they can determine how to apply the calculations. He stated that it is difficult to understand and an illustration would be helpful.

Ms. Rosario suggested adding an example.

Mr. Fraley stated that he would like to see a by-right cluster overlay option.

Ms. Rosario stated that there is a by-right option.

Ms. Cook stated that there is not much land zoned for it. She stated that up to one dwelling unit per acre in LDR and between four and twelve units per acre in MDR are allowed with Planning Commission approval of a master plan, rather than the full legislative process.

Mr. Fraley stated that staff has listed what can and cannot be counted as open space.

Ms. Cook stated that what can be counted is listed on page 19. She stated that on page 20 the design aspects are discussed.

Mr. Fraley stated that he likes the definition as well as the statement on page 20 starting with, "Open space shall be arranged..." He complemented staff on Section 24-551.

Mr. Krapf pointed out a typo on the top of page 21.

Mr. Woods asked what the rationale was for the affordable housing density bonus discussed on page 17.

Ms. Rosario stated that staff modeled this item against the previously established bonus densities. She stated that the density bonus of 1.5 was meant to give it a stronger emphasis among the list of items as opposed to a credit of one.

Mr. Woods stated that staff elected to weigh it more heavily. He asked will this incentive achieve the intended goal.

Mr. Murphy stated that by giving it greater weight, yes.

Ms. Rosario stated that the County has had success in getting both clusters and affordable units. She stated that the Comprehensive Plan recognized that more had to be done to achieve the intended outcome.

Mr. O'Connor stated that the number of affordable housing units is low. He stated that within most developments the number of affordable housing units averages between three to four percent.

Mr. Fraley stated that this discussion is centered on affordable housing units rather than workforce.

Mr. Woods stated that it is centered on both.

Mr. Fraley stated that there is no definition for workforce housing. He stated that there is a definition for affordable.

Ms. Rosario stated that the Comprehensive Plan laid a foundation for this effort, and that staff is in the process of bringing forward an affordable and workforce housing policy.

Mr. Fraley asked if there were any questions or comments from the public.

Mr. Bob Spencer of the James City County Concerned Citizens (J4Cs) committee stated that he understood the policy to mean that if you have 25% or less of undevelopable land then there is no bonus available to you. He stated that if you have more than 25% of undevelopable land then you get a bonus of 25%. He stated that this system would potentially motivate people to purchase those pieces of property that have more than 25% of undevelopable land for development purposes.

Ms. Cook stated that it is not truly a bonus; it is that you get some incremental allotment back – for the purpose of calculating allowed density - from what you are restricted from developing.

Mr. Spencer asked if there were definitions for workforce housing and affordable housing.

Ms. Rosario stated that there is currently a definition for affordable housing but not workforce housing.

Mr. Peters asked if staff had applied the nondevelopable land formula to existing properties to better forecast the outcome of using the proposed residential cluster development density calculations.

Ms. Cook stated that staff did look at a number of master plans to consider the outcome. She stated that the outcome was more stringent but still aimed to be fair.

Mr. Peters asked for clarity on required design elements, specifically how to handle a mixture of housing models on small sites.

Ms. Rosario stated that she understands that Mr. Peters is concerned with varying the unit types on a small site. She asked if it would be difficult to vary the lots sizes on a smaller parcel.

Mr. Peters stated potentially. Mr. Peters referenced the items seen on page 18 and asked if this was an attempt to tie in the goals of the Comprehensive Plan.

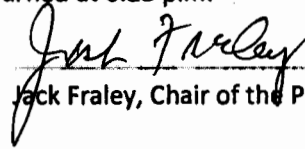
Mr. Fraley stated yes. He stated that this covers workforce housing, special environmental design, open space design principles and other elements.

Mr. Peters stated that the development should be designed to complement existing topography and minimize the need for alteration of the landscape. He stated that if you want the open space design on a small site there is a greater likelihood that you will have to alter the topography.

Mr. Fraley stated that it is beneficial to avoid altering the topography to the best degree possible. He stated that you ideally want to fit the development to the land. He stated that the conceptual plan review will enhance the ability to achieve the elements listed here.

4) Adjournment

Mr. Woods moved to adjourn. The meeting was adjourned at 6:25 p.m.



Jack Fraley, Chair of the Policy Committee