

Planning Commission Meeting
Wednesday, December 20, 2000, 7:30 p.m.
McCoart Government Building

**Transcript of Commissioner Deliberations and Vote on
PLN2000-00077, Southbridge Rezoning, Phase IIB
PLN2000-00078, Southbridge Rezoning, Phase IIA
PLN2000-00079, Southbridge Town Center Special Use Permit**

*Rene Fry – Chairman, Dumfries District
Thomas Rasetta – Coles District
Bruce Holley – Neabsco District
Fred Penar – Gainesville District*

*Billy Isbell, Vice-Chair, Woodbridge District
Thomas Sarel – Brentsville District
Hector Quintana – At Large
Geoffrey Swanberg – Occoquan District*

Sharon Pandak – County Attorney

*Rick Lawson – Director of Planning
Bob Bainbridge – Planning Staff*

Fry: First item on the Agenda is Rezoning Application PLN2000-00077 Southbridge, Phase IIB. And this is in the Woodbridge and Dumfries Magisterial Districts and I'm the Chair, so . . . I can't make a motion. This is action only by the Planning Commission.

Isbell: I guess we'll do this in order, one at a time.

Fry: Commissioner Isbell. Let me recognize you. Microphone on?

Isbell: I believe so. I don't really want to talk a long time. This is a big case, but we've spent a lot of time on it and a lot of work sessions, a lot of public testimony. I would call to mind finally that the Potomac News, although we don't usually follow newspaper recommendations, came out with an editorial recommending approval. I guess that would be the 9th person. We had a Sector Plan in '93. It was pretty big, called for over 4,000 homes. Legend came out with an application for 3,600 homes. It's now before us for 2,900 homes, with a possible 2,504 if the Possum Point Road thing doesn't work out. This application has matured and I guess it . . . going back to when Doug James was the Planning Director and the big thing was how fast could we get things through the staff and the Planning Commission, it would come out with a cookbook - 170 cookbook? - well, this is a case where the maturation process has led to dramatic improvement in the project. Therefore, I am ready to recommend approval of Rezoning PLN2000-77 Southbridge Phase IIB.

Quintana: Second.

Fry: I have a motion to approve Rezoning Application PLN2000-00077 Phase IIB, second by Commissioner Quintana.

Quintana: [unintelligible]

Fry: Second or motion?

Quintana: Well, I want to submit the last of the 27 emails I have received for the public record. For the record let it show that 23 were in favor, four were against. That brings my personal total of speakers or individuals, and taking out the duplicates who have contacted me via email or spoken before us, the 74 for and 51 against. I also am aware of about two different petitions, both of them over 300 signatures if favor and opposed so those numbers were roughly equal. In the long run the balance was roughly equal between supporters and opponents of the project. I just wanted to state that, for the record, it

does play some part of my decision. It is not the predominant role. I don't believe it to be the predominant role at the Planning Commission level.

I've been up here a short period of time, but in that short period of time I've probably come to understand that I - and it's not a good or bad to this, it's just a fact - I probably take the most narrow role view of the Planning Commission's role with regard to decision making. The reason I seconded Commissioner's Isbell's motion, for several reasons. And I'll try to be brief myself. Number one, I have to commend the applicant as well as staff with this difficult process, but I've got to be honest with you, if every applicant did what this applicant did - as far as providing information when asked, working with staff, taking criticism and concerns and responding to them. And trying to make a better product the way they have, we'd have a lot of an easier job sitting up here that what sometimes we do. And I think both the applicant should be commended in communicating with us and communicating with staff and staff should also be commended with the way they communicated with the applicant and with us. In the final analysis, a lot of good issues were raised, for and against.

I took a look at this project, and I have always said I judge based on the preponderance of the evidence. I believe this is consistent with the Comprehensive Plan. I believe it is consistent with those ordinances that we must follow. And so did staff in recommending approval. I believe the applicant has acted in good faith. I believe that some valid concerns were raised about issues dealing with environmental concerns and traffic concerns, but I believe the applicant has answered those. I believe that staff has supported those answers and I believe that I do not have a good reason to deny the application.

I will, and perhaps this is a bit out of character and I apologize to anybody ahead of time that might be offended, go on to say one thing and I want to make it clear - I want to make it clear to the applicant, to the staff, to members of the public and any members of the press and to my colleagues up here, this is an opinion. This is not a fact and it is not something I used in reaching my final decision. Because it isn't a fact and I can't allow that type of subjectivity to creep into my decisions. But I will say this, and it's sort of an underlying, undercurrent, dirty little thing nobody wants to talk about.

Mike, Lacy, I apologize for using your first names, but I know you guys. There's a lot of buzz in this community that Legend doesn't have the pockets deep enough to finish this project. You guys brought it before us. I have to assume you do and I have no evidence to the contrary so that is my assumption. Part of the reason I made this decision, along with the things I've already cited is the reputation the two, two fine gentlemen have in this community and it's a reputation that goes a long way back. I can only hope that if, in the future, this project is flipped, in its entirety or in a portion thereof, that you all maintain your commitment to this community and try to find the best possible buyer that will give us, at a bare bones minimum, a project that is no worse if not better than what we've been shown here by you and you all busted tail to give us. And I'm counting on the reputation of you two fine gentlemen to ensure that.

And I've got to be honest with you, you know I got to stay objective up here and a lot of people don't like that sometimes, but I do consider it. Part of my objective criteria, whether I serve here for two months, two years or, God forbid, as long as Bruce Holley for [unintelligible].

Holley: Isbell too.

Quintana: But, as long as I sit up here, I can consider one of my objective criteria the past track record that I have and word indeed when an applicant and his representatives come before us - and I daresay, Mike, I doubt it's going to be your last time here and, Lacy, I know it's not going to be yours. So, keep that in mind, but I approve it. I think it's a

good project. I think it'll revitalize Route. I think it's an excellent endeavor. And I think you guys have worked real hard to give us the best possible project we could have and I thank you for that.

Fry: Mr. Penar.

Penar: I guess I don't - everybody's going to get patted on the back for doing a good job. And I think that everybody has worked hard on this and my thanks to you all. We had a lot of public hearings and we heard a lot of concerns about environment, about soils, slopes, damage to the creeks and the Potomac River. And we heard that the impacts are not likely to be known until too much damage has already been done to the site. We've heard that predictive engineering technology has not been adequate in the recent past when it comes to dealing with these soils. We've heard doubts expressed about economic benefits, we've heard concern that the commercial portion of this project is too far from the main roads, we've heard concerns of potential harm to existing businesses, of heavy traffic on 95 and Route 1, the school district's inability to refurbish existing schools much less build new ones, overcrowded schools and the County's lack of a track record in monitoring execution of large development and cost to taxpayers.

We make our judgments based on Virginia Code, which requires us to look at the health, safety, welfare of the inhabitants and consider that. When I look at the Zoning Ordinance, the Zoning Ordinance requires a development should be planned to harmonize with the natural features of the property. This development has a lot of extensive cut-and-fill and I don't believe it's consistent with the Zoning Ordinance. The Comprehensive Plan also calls for fitting the development into the natural contours of the land, to minimize the clearing of trees, and cut-and-fill. The extensive clearing and cut-and-fill projected for this development approaches 75% of the total land area. And it's not consistent with the Comprehensive Plan and, as a matter of fact, it's contrary to both the Comprehensive Plan and the Zoning Ordinance.

The Environmental portion of the Comprehensive Plan. It allows for development of areas with steep slopes and highly erodible soils with appropriate engineering solutions. Because of the predominance of steep slopes and highly erodible soils on this site, the majority of the proposed development is likely to require specialized engineering solutions. Public testimony has clearly indicated that engineering solutions have not been particularly successful on very similar land in the recent past on simple road building projects in the immediate area. The staff analysis cautions us that "the proposed density of development may be too high and the effectiveness of the applicant's development mitigation measures would not be known until after grading occurs on the property."

No evidence of successful past performance by the applicant has been presented for this proposed development, which provides a level of confidence that the engineering solutions, yet to be identified, are likely to be successful or viable. In fact, public testimony related to problems visited on existing residences on Possum Point Road associated with a similar development in Wayside Southbridge has shown that even application of well-understood erosion control techniques proved inadequate for this combination of topography and soil types. The applicant proposes to continue the same style of extensive clearing and slope elimination as employed in Wayside Southbridge. The fact that the applicant has proffered to fund a County inspector position is of uncertain value when the essential engineering solutions are not well understood.

Mitigation of earth disturbance impacts. The proffers rely on special erosion control methods for mitigation and those measures are dependent on the Southbridge Community Design Guidelines. These Guidelines are not proffered and are subject to

change at the sole discretion of VMIF/Anden/Southbridge/Venture. Moreover, these Guidelines do not address mitigation of earth disturbance impacts at all. In fact, they only address maintenance of silt basins. And Legend takes no responsibility for that maintenance. It places that responsibility on developers of individual blocks.

Buffers and sensitive areas. Even the "super" buffers along Powell's Creek, which are proposed as undisturbed areas, as subject to clearing and grading for the installation of utilities, according to the proffers. There is a request for waiver of perimeter buffers. The waiver of perimeter buffers is required by Zoning Ordinance, may result in subjecting additional acreage to intensive development and eliminate the intended visual separation between areas of diverse zoning. This deficiency applies both within the development, and the boundaries between this and existing developments.

Tree preservation. No commitment has been made to preserve specimen trees. The only trees that are at least 75 percent in diameter of the largest tree of its type in the entire state of Virginia are to be preserved.

Employment Uses. The Comprehensive Plan envisions a maximum of ten to 25% of the total employment project area to be used as retail. Retail is a secondary use. The proffers demand more retail than allowed -- 35%. The proffers insist that retail is to be credited as primary employment use, when it's really a secondary use in an employment district. The proffers insist that the golf course be counted as primary employment use and all the nonresidential in the Town Center is to be counted as primary employment use. This approach presents a misleading picture of the mix of employment and retail and significantly inflates the real extent of employment use, which would be realized in this development. The proposed 35% retail is excessive by itself and insisting on classifying it as employment is unacceptable.

Transportation. I've got a concern that the Transportation Plan is inadequate. A small point because the streetscape plan doesn't consider required underground utility easements. It's hypothetical at best and provides no assurance that it can be implemented. Employment, commuter parking and nonresidential is located as far from major transportation corridors, Route 1 and 95, as the property will allow. This is not consistent with good planning and would result in all the traffic associated with those uses being required to pass through residential areas to get there.

A transportation analysis has been performed using Level of Service D. Level of Service D is not the acceptable standard. It is the definition of the worst that the County is willing to tolerate.

A 20% reduction of the projected traffic assumed in the Transportation Planned in unproved and possibly a guess at best. No evidence or testimony has been presented that the Transportation Demand Management Plan will result in a 20% reduction but all the analysis for the Transportation Plan is based on that assumption. No objectively measurable criteria are proposed to evaluate the effectiveness of the Transportation Demand Management Plan or ascertain that the 20% reduction is being met. The staff analysis further cautions that the Transportation Demand Management Plan and parking requirements will need to be updated as the development proceeds. If changes in the development occur, which require a revised traffic analysis, per the proffers only on-site intersections can be considered, even if those changes impact the major external roadways which provide access to this development, and impact other communities and commuters.

The third concern . . . the last concern I have in the County's ability to oversee this development. Here are some highlights reflecting my concerns about our ability as a County to manage this development. The staff analysis repeatedly cautions that "the proffers are complex and may be difficult to interpret as development of the property

proceeds. Staff analysis extends that concern to the numerous waivers and modifications proposed for the Town Center. The proffers require that the County determine that a Level of Service D or worse exists on the road network of this development at any given time. We've heard testimony, time and time again here, from our Public Works Department that we don't even know the Level of Service on problem roadways that we already have. What miracle should I anticipate that would really let us deal with the transportation level of service issue in this development?

Distinctions and definitions of terms in the proffers, such as natural open space, preservation areas, restoration areas, restored areas, preserved buffer restoration areas, undisturbed areas, protection zones, transition areas, landscape buffers. Those definitions are exceedingly complex and will be difficult to administer. In addition, the staff analysis reports that the definition for natural open space in the Design Guidelines are not consistent with the rezoning proffers or the Natural Open Space Management Plan definitions. There are built in disconnects right off the bat.

These are not the only reasons I can't support this development, but they are the more serious.

Fry: Thank you. Mr. Holley.

Holley: I'll be significantly shorter. Fred, you did a very detailed analysis. I would like to start out to say the applicant and his land use attorney are to be commended for their cooperation and outstanding management efforts of this project and we sincerely, sincerely mean that. You've done a wonderful job. Staff also has provided a Spartan effort and I recognize the policy constraints within which they must work.

Unfortunately, most of the folks who have emailed us in support of the project are also unaware of what those in-house constraints are. Therefore, I cannot support this project under the rules with which we are forced to process it. I feel there are too many unknown unknowns and I cannot compromise my principles. I would be remiss in my duties to do otherwise.

I cannot, nor will not, nor am I obligated to provide total disclosure for my vote. I only have one vote. I have tried during the past to surface salient points without being a crusader or effective the will of the Commission. I have one vote: so be it.

In addition to my principles, I have thought long and hard since we closed the Public Hearing last Saturday the 13th of December. The words of LOCCA/PELT to the effect that, quote, and I hope that I'm paraphrasing this correctly, they did not think the County could perform and make it happen and, therefore, were not in favor of it, close quote. That made a great impression on me.

Also, the Cherry Hill area was part of the voter rejected Waterfront plan and that had a significant effect on my thinking. In addition, I have recently been appointed to represent four regional Planning District Commissions as a voting member on the new Potomac Watershed Roundtable, which is just forming up and their mission will be to continue to decrease pollutants in the Potomac River. These factors, plus the unrevealed constraint points, are an overview of my vote. With that said as succinctly as possible, I will vote no on these three issues.

Fry: Thank you. Commissioner.

Swanberg: I'd like to compliment Commissioner Penar on his ability to articulate concerns. And especially the concerns, many of the same concerns that I've wrestled with since the closing of the Public Hearing. Back and forth and up and down on this. I have to admit I'm not as disciplined and skilled as Commissioner Penar is to put these thoughts down in such a succinct manner. I promise I'll work on that over the next few years. I only

can say that I echo his concerns and his feelings, and for those reasons I am unable to support this project also.

Fry: Any other Commissioner wish to make a statement? Commissioner Rasetta.

Rasetta: I like to essentially ditto the comments of my other Commissioners. I've wrestled with this as well. And I think that Mr. Penar articulated all of the same concerns that I had and probably a lot more. My original concerns centered mainly around environmental. There's been a lot of things in the press over the last year or two about loss of habitat and lands near watersheds, in particular the Potomac and the Chesapeake Bay in particular, with Virginia being the worst of the three - Pennsylvania, Maryland, surrounding states - regarding loss of watersheds, wetlands, things of that nature.

I travel quite frequently through West Virginia and Pennsylvania and I've seen the technique of mountaintop mining, where you essentially come in and doze off the top of hills and push them into the valleys and don't worry a whole lot about how that happens. It gives me a lot of heartburn every time I make a trip up in that direction. Having walked on the parcel we're talking about tonight and knowing what the plan is, I don't see a lot of difference in how they would engineer this property to accomplish this development that's substantially different that what I've observed with mountaintop removal techniques in West Virginia and Pennsylvania.

I've had extreme heartburn for a number of years, as a matter of fact, since I came here in 1987 about the way that development takes care of things like erosion and siltation. In my opinion, the Occoquan is pretty much a 12 mile long silt trap. It's only a matter of time before you have to dredge the dam area because it will be silted up.

I don't think that the current engineering techniques for controlling siltation and erosion are adequate even under the enhanced standard. On our trip to the Cherry Hill Peninsula back in June I was extremely unhappy with what I already saw going there. There were large areas of hills that were taken down. There was a huge creek bed, that was essentially mud hole, and I really didn't like what I saw. And when we walked certain areas to the rear of the current development where there's extremely steep slopes, it was apparent to me that you couldn't control erosion on those hills.

And I think that the amount of environmental damage done on this parcel would be so significant that I would not support development on it. Mainly for those reasons, I will vote no.

Sarel: Mr. Chairman.

Fry: Mr. Sarel.

Sarel: I support the staff's analysis and recommendations. Since we started our Public Hearings on this matter, the applicant has responded to concerns to revise his proffers and, while there are a lot of unknowns in an engineering sense, this is a bird in the hand. We know what we're going to get and I think we can go forward with it.

Fry: Okay. Anybody else? I think everybody spoke.

Fry: I have a few things I want to clear up before we take the vote on it. One is, I have . . . staff, you handed me a piece of paper here, it says revised proffer conditions dated December 15, 2000. On our desk was revised proffers dated 10 December. From my email I downloaded revised proffers that have most of these conditions dated the 25th in them, but that document is dated 10 December. I'd like to know what I'm - what set of proffers am I voting for tonight? Is it the ones that are dated for 10 December with

this attached as the revised and, if it is, can we get this so that . . . I guess I can figure out which one the big rezoning and the small rezoning is. But I'd like to make sure that - we need to sync up the time.

The second thing is that on the rezoning paperwork there are inconsistencies with the amount of - well, first of all we talked to residential . . . help me out, Bruce. It's residential moderate - the correct - the staff report referred to the type of land use as SRM and specifically moderate . . .

Holley: Suburban Residential Moderate.

Fry: Moderate. And that's not a land use in the Comprehensive Plan. So, we need to get -- no, the word's not moderate. It's inconsistent - I mean it's not inconsistent, we understand the intent, but in the Comprehensive Plan it's medium, and not moderate. So there's a loose interpretation but it does . . . every place that it says moderate, the document does refer to a housing max of one to four units per acre. So, must take these little notes down. Thank you very much. We looked at that [unintelligible]. So, let's just make sure that the document, the staff report has cleaned up that little chart in there so there isn't a . . . I'm trying to close up the little technical issues.

Bainbridge: Mr. Chairman, the previous Comprehensive Plan had moderate. It was changed with the '98 Plan. That's what the problem is.

Fry: Please don't think for one minute that I'm in any way . . . I love you guys. You guys have worked hard on this and I don't mean to be even the slightest bit. But these are inconsistencies that have been pointed out to me and I just want to get the record clear as we move it forward.

So, I kind of need your guidance, Rick, on how I'm going to marry these two documents together. Because I assume that the real proffers . . . I guess I can't assume, because I don't know. I don't know the answer to what proffers I have here. I have one dated . . . I have a piece of paper that says revised proffer conditions dated 15 December and I have a list of proffers for this development that we're ready to vote on dated 10 December.

Bainbridge: Mr. Chairman, it was my understanding, in discussions with the applicant this afternoon that you had been emailed the December 15th proffers.

Fry: I had - surely the date is correct that I received it, but here is my printed - I took this down - that's correct, that is an email. And I thought that maybe my document said the 15th on it, but here's my document that I printed out and it's . . . unless you guys have a color copier, mine's got all the red highlights around it, so that I did take this down from my email and it's dated 10 December. So, tell me which one we're going to include on this particular case, because I - now, the one I have dated 10 December on rezoning application 2000-0077 does, in fact, have all of these . . . I can verify that it has five of the seven that I'm reading in that document. So, what do you want me to do?

Lawson: I would vote on the December 10 proffers, Mr. Chairman. The sheet of paper that you have in your hand was prepared to point out the changes that had occurred in the proffers from the beginning of the public hearing process and to summarize those for you. It's not legally - it's not a legal document anyway. It was just to sort of point out for informational purposes. So you're certainly not voting on a handout that was given to you to help identify the changes that had occurred.

Isbell: And my motion was based on December 10th.

Fry: All right. We have a motion -- excellent point and one I will take. I just wanted to make sure we iron this little detail out, as anal as it appears to be. We have a motion on PLN2000-0077

[break in tape]

Fry: . . . major items on it is that there was clarifications made in that with regard to Land Bay SS-19 which specifically dedicated it to park land. There was a nine to 18 hole golf course -- I'm going to highlight these to you so they're not confused because there is a document dated 10 December that talks to a 9 hole golf course, so I just . . . okay?

Quintana: [unintelligible]

Fry: Okay. So we're all in agreement that it's this 10 December. And I'm going to pass this down for the record so that we all know which that is. Also, I have been receiving more emails than I actually have time to clip together. I haven't been keeping count here, I'm just trying to get all the emails on public record -- I pass those emails. If there's any Commissioners that have any emails that you haven't had, please pass them to the Secretary.

[Unintelligible]

Fry: Okay. Pass those down. So we know we have the motion to second for PLN2000-0007. It's for the proffers dated 10 December and those have been put in the record. I guess it's now my turn, because I was the only one who didn't get to speak to Cherry Hill and it's in my district. Part of it is, anyway -- this particular application is.

Fry: When I looked at Cherry Hill the first thing that came to mind is that I distinctly remember in the Comprehensive Plan in 1998 that we targeted this specific area for one of our highly populated areas because of the fact that we had a rail service through it. When you're trying to plan communities, you try to say well, how am I going to get the traffic going and most of us who have lived in Eastern Prince William County know that the Occoquan Bridge is the last stop before gridlock and each day that statement becomes more profound. Two years from now it will take you every, even when we get done with whatever the cost of this . . . this soup bowl is up there at Cherry Hill -- it's going to -- I mean Springfield. It's going to be a wonderful thing because those of us who have been to Disney World are starting to recognize what's really being built up there in Springfield and they're just going to take all the traffic and put it up there in the sky and we're all going to roam around for 45 minutes and, at the end of that, we're either going to be suburbanized or urbanized, one end or the other of it, and have this wonderful sensation that we had a pleasant ride through the 45 minute mixing bowl.

So, when I look at -- with that thought, when I look at Cherry Hill, I said, boy, this is good. One respect is that we have a good employment center and we have a rail service and this can make the high density -- when you start looking at people per acre for that whole area and the start looking at infrastructure, it really takes your breath away. Because, as Commissioner Penar and the rest of the Commissioners have articulated, you can take each one of these elements and pick it apart and see that there are risks. And one of the things that we have to do as a Planning Commission is, is look at the law, look at our Comprehensive Plan, look at our Ordinance on how we manage -- how we direct staff to manage how we're going to build things and control elements, and look at those weaknesses. And I think that, I would like to focus that tonight you've seen and heard some of the weaknesses with respect to how we would manage this very complex issue. I, too, agree that there is not adequate criteria that manages erosion control. And I often reflect, because I look at this community and I look at Montclair and Montclair is 3,100 homes and this is 2,900 homes. Montclair has steep slopes that match and in many cases absolutely duplicate a lot of what we're seeing

on this peninsula. We've had the soil problems and we've heard the engineering design. And that was probably one of the relieving things that started swaying me to that maybe this might be a good thing.

I personally am not going to vote for this tonight because of one reason. I think that the applicant did a great job. I think he addressed every issues that we have. The problem is that, it's so intense on the entire community, that the County and the state have not made the adequate commitments to protect the developer, who has every legal right to go - I mean we have some checks in this. One of the good things is that this development can, in fact, stop at 654 if the County and the state do nothing. There's only 654 homes that can be built if the county and state absolutely do nothing. Meaning that there would be no interchange put in at Route 1 and the VRE station was never built or the commitment to build that was never done. So that's the number - that's the first checkpoint.

And so I looked at that checkpoint, said, well, okay, all things considered, what's the worst scenario? The worst scenario is 654 homes. Now, what do I get with that 654 homes and what impact does that have on the infrastructure and what is the commitment of the applicant. And when I looked at that, my risk factor went sky high because now I have risk on the infrastructure that's not going to be borne by the applicant and that there's no commitment on the county to provide. No commitment whatsoever.

And so as much as I would like to praise the applicant for addressing environmental issues, and I think that they've done a great job of that. I hear a lot of people talking about . . . about Powell's Creek with half-hearted voices. I've been committed to Powell's Creek for 13 years. Committed in that - show me the money and I can show you 13,000 people that have committed over \$3 million of their own money to Powell's Creek to make sure it's clean. And that's the people who live in Montclair. And the people who now live in Ashland. Show me the money - those people do. And none of them came here to tell us of the woes of the Creek, because they're managing it every day. They're managing erosion issues on and on and on. So for those of you that came and talked about Powell's Creek and how much you really love it, show us a little commitment because I can show you that there's probably 30,000 people starting up around Route 95 that really have made that commitment to Powell's Creek.

And a lot of other reasons. I would like to echo Commissioner Penar, who has, I think, articulated some very good points. I find myself being in opposition to this approval. And, with that, please take the call, the roll.

Clerk: Mr. Holley.

Holley: No

Clerk: Mr. Isbell.

Isbell: Yes.

Clerk: Mr. Penar.

Penar: No.

Clerk: Mr. Quintana.

Quintana: An emphatic yes.

Clerk: Mr. Rasetta.

Rasetta: No.

Clerk: Mr. Sarel.

Sarel: Yes.

Clerk: Mr. Swanberg.

Swanberg: No.

Clerk: Chairman Fry.

Fry: No.

Clerk: Three yeses and five noes.

Fry: Okay, next item on the agenda is Rezoning application 2000-00078, Southbridge Phase IIA. Can I have a motion?

Isbell: Mr. Chairman?

Fry: Yes.

Isbell: I made a motion to approve, which was turned down. The Planning Director said that does not necessarily constitute a denial. The approval did not get done.

Holley: Mr. Chairman, I move for denial.

Swanberg: Second.

Fry: Okay, Commissioner Holley has made a motion to approve for denial – for denial of Southbridge Phases IIB, seconded by Commissioner Swanberg. Please call the roll.

Clerk: Mr. Holley.

Holley: Yes.

Clerk: Mr. Isbell.

Isbell: No.

Clerk: Mr. Penar.

Penar: Yes.

Clerk: Mr. Quintana.

Quintana: . . . no this time.

Clerk: Mr. Rasetta.

Rasetta: Yes.

Clerk: Mr. Sarel.

Sarel: No.

Clerk: Mr. Swanberg.

Swanberg: Yes.

Clerk: Chairman Fry.

Fry: Yes.

Clerk: Five yeses and three noes.

Fry: All right. The next item on the agenda is to Rezone Application PLN2000-0078, Southbridge Phase IIA.

Isbell: Regardless of the direction this is taking, we need to play this out for the [unintelligible]. I recommend approval of Rezoning PLN2000-0078.

Quintana: Second.

Fry: I have a motion to approve PLN2000-0078, Phase IIA, seconded by Commissioner Quintana. Call the roll.

Clerk: Mr. Holley.

Holley: No

Clerk: Mr. Isbell.

Isbell: Yes.

Clerk: Mr. Penar.

Penar: No.

Clerk: Mr. Quintana.

Quintana: Yes.

Clerk: Mr. Rasetta.

Rasetta: No.

Clerk: Mr. Sarel.

Sarel: Yes.

Clerk: Mr. Swanberg.

Swanberg: No.

Clerk: Chairman Fry.

Fry: No.

Clerk: Three yeses and five noes.

Holley: Mr. Chairman, I make a motion for denial of PLN2000-00078.

Fry: I have a motion to, for denial of PLN2000-00078, Southbridge Phase IIA and seconded by Commissioner Penar. Please call the roll. Am I moving too fast?

Holley: No, just don't lose the rhythm.

Fry: Okay.

Clerk: Mr. Holley.

Holley: Yes.

Clerk: Mr. Isbell.

Isbell: No.

Clerk: Mr. Penar.

Penar: Yes to deny.

Clerk: Mr. Quintana.

Quintana: No.

Clerk: Mr. Rasetta.

Rasetta: Yes.

Clerk: Mr. Sarel.

Sarel: No.

Clerk: Mr. Swanberg.

Swanberg: Yes.

Clerk: Chairman Fry.

Fry: Yes.

Clerk: Five yeses and three noes.

Fry: The next item on the agenda is Special Use Permit 2000-00079, Southbridge Town Center.

Isbell: Mr. Chairman, I recommend approval of the Special Use Permit 2000-00079.

Quintana: Second.

Fry: I have a motion to approve Special Use Permit 2000-00079, Southbridge Town Center and seconded by Commissioner Quintana.

Clerk: Mr. Holley.

Holley: No

Clerk: Mr. Isbell.

Isbell: Yes.

Clerk: Mr. Penar.

Penar: No.

Clerk: Mr. Quintana.

Quintana: Yes.

Clerk: Mr. Rasetta.

Rasetta: No.

Clerk: Mr. Sarel.

Sarel: Yes.

Clerk: Mr. Swanberg.

Swanberg: No.

Clerk: Chairman Fry.

Fry: Yes.

Clerk: Four yeses and four noes.

Fry: Okay, we have a tie vote. We're going to pass it to the Board as a tie vote?

Holley: What's the legal . . .

Fry: Motion fails.

Sarel: Counselor . . .

Fry: Motion fails?

Pandak: I think you've already found it. The motion fails.

Fry: Okay, motion fails.

Holley: Mr. Chairman, I move for denial.

Fry: I have a motion to move for denial of Special Use Permit 2000-00079, Southbridge Town Center, seconded by Commissioner Penar.

Clerk: Mr. Holley.

Holley: Yes.

Clerk: Mr. Isbell.

Isbell: No.

Clerk: Mr. Penar.

Penar: Yes.

Clerk: Mr. Quintana.

Quintana: No against denial.

Clerk: Mr. Rasetta.

Rasetta: Yes.

Clerk: Mr. Sarel.

Sarel: No.

Clerk: Mr. Swanberg.

Swanberg: Yes.

Clerk: Chairman Fry.

Fry: No.

Clerk: Four yeases and four noes.

Fry: Motion fails.

Isbell: What's going on here?

Holley: I think legal counsel . . .

Lawson: I'm not sure how the votes change but, to begin with, there's another procedural and legal issue about approving a SUP without the underlying rezoning. So you can't do that. You cannot vote in favor of the Special Use Permit.

Pandak: My view would be that, in the absence of the underlying rezoning, you can't have a SUP approved anyway. So, that's . . . you may want to . .

Lawson: You may want to reflect your intentions . . .

Pandak: . . . reflect your vote with respect to that, but as a practical and a legal matter . . .

Fry: Well, the Chair can't recall the vote but . . .

Isbell: I'm not sure, is it . . . as the maker of the original motion, may I change?

Fry: Yes.

Isbell: It goes against my intentions, but in order to move the thing out . . .

Holley: [unintelligible]

Pandak: You have to be on the successful side to reconsider the . . . the motion's failed, so it really almost gets to be a moot point.

Holley: [unintelligible]

Pandak: That's correct. I think that the Chair could appropriately recognize someone.

Fry: Yes. I think I was going to do that. Thank you. Mr. Holley.

Holley: Sir, I'm confused and I don't want to get in trouble.

Fry: Mr. Isbell.

Isbell: Although I'm in favor of the Town Center and the underlying rezonings, I do want to be legal. I recommend denial of the Special Use Permit under with . . .

Fry: Okay, I have a motion to reconsider. Do I have a second?

?: Was that a reconsider . . .

Isbell: I guess it was. I made a motion to . . .

Lawson: You don't need a . . . well . . .

Pandak: Procedurally, Mr. Chairman, at the risk of being arcane about this, I believe a motion to reconsider would be in order and then, once there's a vote on [unintelligible] that if that passes, then you would revote on the main motion.

Fry: Okay. Thank you. Whew. I'm glad I've got my Roberts Rules down. Thank you very much I . . .

Sarel: Mr. Chairman, I move we reconsider our last motion.

Fry: Okay, I have a . . . I have . . .

Sarel: That we reconsider our last motion.

Fry: I have a motion to reconsider our last motion, seconded by . . . do I have a second?

Rasetta: Second.

Fry: Seconded by Commissioner Rasetta.

Sarel: This is to reconsider, right?

Fry: Reconsider. All in favor? Please take the roll.

Holley: This is for approval, is that correct?

Fry: No, this is a motion to reconsider.

Isbell: Reconsider denial.

Fry: Reconsider denial then we will vote again.

Holley: Told you I was confused.

Fry: Okay.

Sarel: This was . . .

Fry: Commissioner Holley, are you okay now with what we're doing?

Holley: Got it.

Fry: Okay. Call the roll.

Clerk: Mr. Holley.

Holley: Yes to reconsider. I hope that's right.

Clerk: Mr. Isbell.

Isbell: Yes.

Clerk: Mr. Penar.

Penar: Yes.

Clerk: Mr. Quintana.

Quintana: Yes to reconsider only.

Clerk: Mr. Rasetta.

Rasetta: Yes.

Clerk: Mr. Sarel.

Sarel: Yes.

Clerk: Mr. Swanberg.

Swanberg: Yes.

Clerk: Chairman Fry.

Fry: Yes.

Clerk: Eight yeses.

Fry: Okay. Can I have a motion on the Town Center Special Use Permit?

Holley: Are you going to do it, Billy?

Isbell: I'm not going to do it. Well, I will do it. There's no sense in being a horse's south end. I recommend denial of the Special Use Permit, based on our procedural requirements.

Fry: I have a motion to . . . for denial of Special Use Permit 2000-00079, Southbridge Town Center, seconded by . . . Commissioner Rasetta.

Swanberg: I have a question and I guess it's a question for Counsel. In your comments about the relationship . . . Special Use Permit with regards to the absence of the underlying rezoning, would it be appropriate for the motion to state denial in light of the failure of the rezoning – the underlying rezoning?

Pandak: Certainly, that's appropriate if the Commission wants to reflect that.

Swanberg: I would recommend that the motion be amended . . .

Lawson: Friendly amendment . . .

Fry: We have a friendly amendment to . . . can the maker of the motion accept that?

Isbell: [unintelligible]

Fry: Will the seconder of the motion accept that?

[Unintelligible]

Fry: The friendly amendment is to add the words that, in light of the lack of an underlying rezoning to this, we are voting for denial. Okay, everybody understand the motion? Please take the role.

Clerk: Mr. Holley.

Holley: Yes to deny.

Clerk: Mr. Isbell.

Isbell: Yes.

Clerk: Mr. Penar.

Penar: Yes.

Clerk: Mr. Quintana.

Quintana: In order to avoid being the south end of the horse, I abstain.

Clerk: Mr. Rasetta.

Rasetta: Yes.

Clerk: Mr. Sarel.

Sarel: No.

Clerk: Mr. Swanberg.

Swanberg: Yes.

Clerk: Chairman Fry.

Fry: Yes. I'll try to keep good order now. Thank you.

Clerk: Six yeses, one no and one abstain.

Sarel: Southbridge is . . . move it up to the Supervisors.

Fry: Thank you. Next item on the agenda . . .

*Transcribed on December 28, 2000
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