

Anatomy of a Motion to Cease and Desist

As carried out by the Frederick County Planning Commission on November 17, 2011 --
Complete text of the first 32 minutes of the meeting.

Regarding Comprehensive Plan Review in the Urbana Region, as requested by the
Frederick County Board of County Commissioners.

Characters:

*Planning Commission Members: John McClurkin, Chair; Robert Lawrence, Secretary;
Catherine Forrence, Audrey Wolfe; Robert White Jr.; Richard Floyd, Vice Chair*

County Attorney: Michael Chomel

County Planning Staff: Jim Gugel and Eric Soter, Director

Chairman McClurkin opens the proceedings and acknowledges Commissioner
Forrence.

Forrence: How ya doin' ...

White: Ha Ha Ha

Forrence: ... Umm, I don't know if anyone can hear me. Is my mike working? ...
check, check ... well, I don't think it really is ... well, anyway, Ummm ... you know I've
been up here for ... this is my last year, fifth year ... and ... Ah, recently... there .. I
swear I lie awake and night before we have some meetings and I have something to say
and I get here ... and I don't say it. But I'm going to say it today ... ummm ... about this
rezoning process that's under way ... there was a campaign promise made by
Commissioner Young and Billy Shreve, and I'm not sure if Paul Smith or whoever else
made a com ... promise to voters in the last election ... that they would restore their
property rights ... and these ... umm ... and some to the property owners actually
contributed to the candidates ... in the last election and were supporters ... so ... aaaah
... here we had just adopted after a year and a half review ... Umm ... the last
comprehensive plan ... ummm ... that went to all of the municipalities in Frederick
County ... it went to the Maryland Department of Planning. It went to the Maryland
Department of Natural Recourses ... There was a lot ... eeeeh ... we went through it
word by word, this Board did ... and the Gardner board adopted it ... and when the

current BOCC was elected into office stated that they decided that they were going to make changes to the land use, because they wanted to ... with a stroke of the pen ... give back some property rights to people that they felt had those rights taken away ... umm ... they ... that's their prerogative ... but that has nothing to do with land use planning ... ummm ... our role is under (article) 66B (of the Maryland Constitution) is to look out for the health, safety and welfare of the voters, but not just to voters, but everybody in Frederick County. It has nothing to do with paying campaign promises ... or ... wuuup ... ah, honesty being concerned about ... umm ... the value of land use speculation. Our role has something different than that ... ummm ... the cost to the county in adopting our last comprehensive plan ... umm, you know it went to the state agencies, municipalities ... this board meeting weekly, staff's time ... it was significant .. and there's no reason ... there was nothing wrong with the comprehensive plan ... and what is being undertaken ... is just this idea of just ... aaaah ... rezoning, and it hasn't been framed in that way to the Planning Commission it was ... you ... last night we heard from land use attorney's ... that we could change the text of the comprehensive plan ... that's what this is about. This is about ... the Board of County Commissioners can't impose the Planning Commission to under take a rewrite of the comprehensive plan ... they are free to initiate a comprehensive rezoning .. and that's what they are doing under the guise of giving back the property rights to these developers, because that's what the county attorney's office told them ... that was the only way that that was going to fly ... ummm ... with the Maryland Department of Planning or in the courts ... they had to make it seem that it was a comprehensive rezoning ... so that's what this is ... it is a mistake, because the text of the comprehensive plan isn't going to change ... any rezoning that is going to happen is going to be contrary to the policies of our comprehensive plan ... so, it's futile to carry on ... ummm ... these public meetings ... this public hearing process when ... when these proposed zoning changes are not going to be consistent with the comprehensive plan ... and actually the Maryland Department of Planning ... ummm ... understands that ... and sent a memo today to the planning staff noting their concerns ... right, Eric? ... with the ... I have a copy of it ... with the ... the proposed changes ... so what I think ...

McClurkin: This is the first I have heard about it and I am only the Chairman ...

Other members mumble

Forrence: what I think ... Hold On! What I think happened ... it was the planning staff sent a list of the ... umm ... applications to the Maryland Department of Planning and the various agencies ... ummm ... saying ... umm, you know... these .. this is sort of an amendment to the comprehensive plan ... which it isn't an amendment to the comprehensive plan ... the language of the comprehensive plan ... this, this binder here (holding up the 2010 comp plan binder) ... isn't, isn't going to be changing ... the only thing that is happening is a comprehensive rezoning ... and you know .. these, these ... applicants that come up ... and, and, and ... now we're talking about pee ... in situations where applicants ... just are requesting land use changes that weren't even discussed in our last comprehensive ... ahhh. It's not the staff's fault, because they are operating under the direction of Board of County Commissioners ... and that's what they're paid to do ... and they are doing their job ... but Uh Humm ... and part of our job is good land use planning ... that's what happened when we came up with this comprehensive plan ... ummm ... the staff hasn't presented and we haven't asked the staff to give us ... ahhh ... any traffic studies or any kind of infrastructure impact studies that would show that any kind of changes to land use will have zero impact on the county tax payers ... ummm ... we have no idea ... when we undertook that last comprehensive plan we had traffic studies from all of the regions ... we understood that ... uh, you know ... we understood that things had to be in priority funding areas ... we had to worry about community growth boundaries, water resources ... aaaah ... you know, this is spot ... you know this idea that this a comprehensive rezoning, just because we are opening up the process to everyone ... ammmm ... doesn't make good land use process ... it has nothing to do with the policies of what we are trying to do here, here in Frederick County. Ammmm

McClurkin: Okay, you want to take a pause for a moment?

Forrence: ... see, I wanted to say that for so long, and I finally said it ... ummmm ... obviously the Board of County Commissioners can initiate a rezoning process, but I don't think that we need to participate any more ... I don't think that we need ... I think that what our role is to have a public hearing and send a recommendation to the Board of County Commissioners ... I think that we are wasting people's time. I think we are wasting staff's time, we're waste ... this will have to go back to the Maryland Department

of Planning, Department of Natural Resources ... all of the municipalities for all of their comments ... it will have to come back to the planning commission ... we'll have to have another public hearing ... we'll send a recommendation to the County Commissioners, who will then have to start this process all over. This is all about fulfilling a campaign promise for a selected number of properties ... and I don't want to participate in that ... I, I, I feel like that is a waste of money to that entire Frederick County ... umm ... population ... so that's what I wanted to say and I don't know if anyone else has anything to add ... or maybe disagree with me?

McClurkin: Ahh, before we get to you (Mr. White) in one second ... did you (asking staff) receive a memo about any of this?

Jim Gugel: I just had a brief conversation with them (Maryland Department of Planning) over the phone before the meeting ...

McClurkin: Did they have any concerns of what we are talking about?

Gugel: Well, I think that they summarized that they were concerned about the process ... I can't speak to it beyond that ... they can't stop the process, they can comment that they don't feel that it is appropriate, but it is still our prerogative on how we proceed.

McClurkin: OK ... and you didn't get a copy of it all, Eric?

Jim Gugel: ... well, I mean it was sent email and they usually get a hard copy to Eric. That is the typical way they do it to meet the deadline.

McClurkin: OK ... Mr. White.

White: I don't want to get into the politics of it. The Board of County Commissioners is a political entity ... but we are not a political entity. We are a planning entity ... and planning and ... ahh ... comprehensive planning and zoning is our charge. The ... ahhh ... last night I felt I was in wonder land ... things were turned upside down ... ahhh ... in order to do good planning you need data ... you need really extensive data on the impacts of traffic, schools, roads, parks ... all those things that people need when you grow and you need to ... ahhhh ... know how to grow properly and in the right context with the right infrastructure balanced against that growth ... Last night I tried to get some of that

information from the people who were here talking .. and two attorneys who are here again tonight said they would not and could not give us that information, because this was a comprehensive planning process. Well, it's a comprehensive planning process without the information ... ahhh ... you can't do that. It just doesn't work ... for anybody. Ahhh ... this is a ahhh ... really a ahhh ... travesty, is what it has become. It is not planning in the proper way. It's not planning in context. Everyone who feels that they were cheated or robbed of zoning that they have an inherent right to, have absolute immediate recourse to the court. If they feel that. It doesn't mean that we should ... dahhh ... get involved in a charade ... and I have been through two complete comprehensive planning processes now. One took three years and one took almost two years ... and as one of our Supreme Court justices said in another context ... "I may not be able to find it, but I know [comprehensive planning] when I see it ... and this ain't it." Ahhh, so I would like to ... at this time make a motion that we discontinue the current proceedings ... that we no longer look at this and simply do not take ... just back out the idea of any kind of comprehensive planning and rezoning at this time ... that is a motion.

Forrence: Ummmm ... I'll second that, but I just want to clarify ... that this was never defined as a comprehensive plan rewrite ... this was never indicated by the county attorney's office ... ummm ... in the memo from staff ... ummm ... this was a comprehensive rezoning. It was never aaah really defined as a comprehensive plan rewrite ... and I think it was confusing to a lot of people, because they didn't understand ... the board of County Commissioners can't compel us to ... ummm ... rewrite, you know, open up this comprehensive plan. The text of this document ... what they can do is initiate a rezoning. So, I just wanted to clarify that ... the, the ... I don't think that the comprehensive plan was never up for ... ummm ... haaah ... being a part of our rewrite, or part of this process ...

White: Whatever we are involved in at this point ... it is not comprehensive.

Forrence: Okay, and I, ah ... second that motion.

White: Alright.

McClurkin: Okay, we have a motion on the floor from Mr. White ... as I understand ...

White: Discontinue the process that we are in ...

McClurkin: Second from Ms. Forrence ... Mr. Chomel ...

Forrence: Well, we're in the middle of a motion, are we gonna a ...

McClurkin: we can ask for a legal opinion during the discussion part of the motion. I'm sure you've been listen to what's going on ... with arguments saying that we are compelled or we are not compelled to go forward ... this is or is not comprehensive zoning ...

Forrence: It's a rezoning.

Chomel: under 66B ... you don't have any role any the zoning process ... under the county code you have a role in comprehensive rezoning ... to make a recommendation to the Board of County Commission. You are also authorized, under article 66B to recommend a comprehensive plan or an amendment to a comprehensive plan You are holding a hearing on a proposed comprehensive rezoning and look at the comprehensive plan ... those are kind of a parallel processes. They go on as two components of an organically evolving process ... what you do with that process is your decision. But by failing to act, you do not stop the process.

McClurkin: Alright... I guess that leaves the question then ... should the motion pass and we do vote to suspend further review of the comprehensive plan at this time, what happens next?

Chomel: Well, the process moves forward. It would act as a non-recommendation, which the commissioners could then proceed with.

Forrence: Right, they will do that anyway.

Chomel: I mean, frankly, it would be more appropriate for you to recommend no change to the comprehensive plan, than it would be to purport to suspend the process.

White: You just said Comprehensive Plan. We're not ... you just now managed to talk both sides of what you said. If we are not comprehensive planning, why did you say comprehensive plan?

Chomel: Well, your question assumes a fact that I am not willing to accept that this is not a comprehensive relook at the comprehensive plan.

White: And that I ... ahhh ... I said you were saying that is or it is not?

Chomel: You are assuming that it is not ... I am saying that I don't agree with that assumption ...

White: No, I said, I said that especially that ahh ... after the testimony of two of the attorneys last night that this is part of a comprehensive planning process ... and therefore I'm saying that we don't have the data ... we have not gotten enough information to make this a reasonable planning process ... therefore, I'm saying that rather than proceed upon this approach ... that it is more appropriate for us to simply stop at this point.

Chomel: Well, I think a more appropriate characterization would be to say that this is a comprehensive relook at the comprehensive plan ... and the data you had for the comprehensive plan that was recently adopted by the board of county commissioners ... you have ... you've been through that process for a while ... you don't need to have that ...

Forrence: Ah, can I interrupt here? ... I'm looking at the April 8th 2011 memo from John Mathias and you to the board of county commissioners and I reading ... and on page 5 at the top it says that "if the BOCC desires to revisit 2010 comprehensive zoning ... it should conduct another comprehensive zoning. There is nothing in here about comprehensive changing of the comprehensive rezoning ... there is nothing county commissioners can initiate without the planning commission being involved ... they can go ahead and initiate rezoning, but they can't compel the planning commission to ... and I'm not telling ... you are making my point, because I'm disagreeing with what you are saying ... based on what you stated on this memo ... to the board of county commissioners... Ummmm ... this was not ... if this were a comprehensive plan rewrite, it would have started with one of these (holding up the binder containing the approved 2010 Comprehensive Plan). Obviously there is nothing in article 66B that defines what the planning commission has to do in undertaking a comprehensive plan review ... haaa ... but the Maryland Department of Planning would not look highly on a planning commission, especially one of the county just arbitrarily making decisions without

supporting data. So, I'm arguing that what the Board of County Commissioners were doing was a comprehensive zoning change ... and I only think that because of what I have read in the staff reports and memos from the county attorney's office. It was never my understanding ... which is why we had arguments last night and misunderstandings with other land use attorney's about whether the ... ahh ... text of the you know, of the comprehensive plan was going to change, because I kept saying ... or I tried to ... say to people last night ... I tried to, heh ... you know ... in words ...and I failed ... that the planning commission changing the land use designation on your property is ... not compatible with the language of our comprehensive plan. And then I heard, well, we're just going to change all that language in the comprehensive plan ... are you saying now that this was a comprehensive plan ... rewrite?

McClurkin: Are you saying the process that we are in at the moment?

Forrence: Right.

Chomel: Are you finished? Because I don't want to interrupt.

Forrence: Thanks ... Yes, I had a lot to say.

Chomel: As we have talked about before, land use regulation is like a 3 legged stool. The 3 legs are the comprehensive plan, which sets out the aspirational goals for growth over an extended period of time. Those aspirational goals are implemented through zoning and subdivision. So when you are looking at zoning, you are also looking at the comprehensive plan. And it can be done sequentially or it can be done in parallel. The process that is occurring presently in the county ... of which you're a part ... is a look at those to as different layers. One is the bun and one is the hamburger. But they are different creatures. And in looking at the zoning requires a look at the comprehensive plan ... to see whether it can result in changes to both.

White: Which I will interpret to both ... is saying that yes, this is comprehensive planning ... in part because the zoning is ...

Forrence: But it's not! It's not because ... there's nothing comprehensive ...

White: ... supposed to follow ... because what we are doing is not comprehensive planning ...

Forrence: it's a farce!

White: Alright

Forrence: Heh Heh Heh

McClurkin: So, alright according to our attorney then, this is reasonably or unreasonable comprehensive planning that we are in at the moment. And so the options we have are top proceed with it, or to end it now and simply put a recommendation out not to change anything ...

Forrence: Yep

McClurkin: but the motion that was put earlier on the floor is simply to suspend what we are doing with no recommendation at all ...

Forrence: ... suspend the rezoning hearings ... perhaps ... because under the ...

White: You can always undertake a ah a comprehensive plan that is more appropriate, if it is done on a cyclical basis, which the planning is normally done on, which is about a six year basis. We have a relatively very new comprehensive plan ... in effect right now, we are going well outside the ... the context of normal procedure by doing this ... and I'm saying that this is inappropriate and I'm saying that these people who feel aggrieved have other recourses as well ... therefore I feel that it is appropriate for us to ... ah ... cease and desist at this time.

McClurkin: So your motion again was to ah cease and desist with no recommendation at all?

White: Correct and it may be interpreted however it may be.

McClurkin: Alright, so we have the motion on the floor ... we have a second. Is there any further discussion? ... from Mr. Floyd ...

Floyd: My only comment would be that as I read this ... it says that this is supposed to be a 2011 comprehensive planning and zoning review ... as I go through this, I have a

hard time tying the comprehensive plan into these documents and how it plays a part ...
ahhh ... in what we are going through at this point ... I, I would ...

Forrence: Okay, let's go!

Floyd: I would really think that we should add to the motion ... ahh ... sending this all forward to the County Commissioners with no recommendation, period.

Forrence: Right. That's what we said.

White: I would be willing to set that as part of the ...

Forrence: Yes!

McClurkin: Mr. Lawrence, do you have any comments?

Lawrence: Well, only that in reading what I got from ... as Mr. Floyd says ... you know, it's the Board of County Commissioners voted to initiate a comprehensive plan and zoning review, which includes the following components, etc. and ... ah ... any property owner will have the opportunity to request any change to the land use plan ... and the application period will be open from ... and that was the extent from the information that I HAVE ... Okay, from the staff. Short of having visually read the exact motion that was carried forward by the board of county commissioners ... that this is ... in theory it is initiating a comprehensive plan. So, that is what it is. It is not only a review of these cases tonight, but the entire ... it could, it could possibly, but doesn't necessarily have to include everything in the 2010 comprehensive plan that was passed. Just like when the 2010 comprehensive plan that was done, not everything that was in the previous plan was thrown out completely ... yeah, some of it was kept. So, it seems to me that we are in the same process. And it seems a little unfair also ... I will say this also ... to have this conversation tonight when we should have had it when we were gonna have it to initiate a cease and desist ... we should have had it at the beginning of our session last night. Whereas one quarter, I'll say a quarter, just because it is divided into four. One quarter of the community, so to speak, the developer community and the citizens have had a bite at the apple, whereas the other three quarters won't.

White: If the apple is taken off the table, and the bite does not count. I, before that ... I'd like to ...

Lawrence: they had their opportunity to be in public forum, whereas the other three quarters did not.

White: The ahh ...

Lawrence: I just, I just bring it up, so that the world knows.

White: I want to clarify that I had not realized the inconsistency quite so clearly until those tow land use attorneys last night said "We can't give you any facts and figures ... and won't give you and facts and figures, because this is a comprehensive planning," which essentially says you can't know anything, but you are still expected to vote on it, and at that point, I really started to balk at things. So I'm sorry it didn't occur earlier ... until that pretty well coalesced in my mind.

Lawrence: ... the lack of our information, or the lack of our data would, you know, could weigh on our decision whether to, ummm ... whether to send forward a positive or a negative recommendation, in a given case.

Forrence: Can I ask you (Mr. Lawrence) something?

Lawrence: You may ask anything you'd like.

Forrence: Do you think it is a good practice for ... ummm ... the county to use taxpayer money ... state money ... local money ... to go through this process again just to appease some landowners that may have had their land use changed and are unhappy about that? Do you think that that's good planning? 'Cause our role here is planning and I'm asking.

Lawrence: I understand. Our role is planning, here. Our role is not to decide how to use the taxpayer dollars.

White: Ha Ha Ha!

Forrence: It's not, but I'm asking ... Okay.

McClurkin: Alright, Ms. Wolf, would you like to pitch in, or would like to listen to the arguments going back and forth?

Wolf: I'll just listen to the arguments going back and forth.

White: He He, Poor thing, Ha Ha.

McClurkin: ... a wise course, then.

White: Ha Ha Ha!

McClurkin: Any further discussion? Motion ...

White: One other statement ... and Mr. Chomel can correct me if I'm wrong. The Board of County Commissioners can institute comprehensive rezoning. They can not institute comprehensive planning. Is that correct or not? They can request it ... but I don't believe ... but I think it has to be initiated here.

Chomel: The issue is not strictly speaking: "Who can compel whom to do what?" I mean, you are here ... you're part of a process. That process has been initiated by the Board of County Commissioners. In a perfect world you would participate in the that process to the best of your ability, which would be to comprehensively review the comprehensive plan, make a recommendation on any amendment or not that you feel is appropriate, and make a recommendation on the proposed comprehensive rezoning. If you want to make a statement by not undertaking what is properly your role in that process, that's not ... that goes beyond the scope of my advisory capacity ...

White: Ha Ha Ha

Chomel: ... to you.

White: So whether or not we believe it is taking something that it completely out of cycle ... and starting it all over again after we've just done it ... is a matter of our own judgment? ... as opposed to ...

Forrence: We just need to make a decision!

White: You're right ...

Forrence: Stop! Let's just ...

Chomel: Let me respond to that. It's not your role to make decisions as to the propriety of initiating the review or not. Your role is to accept the initiation and proceed with it.

Forrence: Which is why, I think our decision is ... you know ... there is nothing wrong with this comprehensive plan. If the Board of County Commissioners wants to undertake rezoning, that's their prerogative, but I don't think ... without ... I think it doesn't make sense to open this back up. We have the traff ... we spent a lot of money ... traffic studies ... you know ... transportation is a huge thing! The schools. Water resources ... water sewer service areas. You want to go back and start all that over after ONE year ... I just think it's crazy! I think it's nuts! And if the Board of County Commissioners wants to do that, that is theory prerogative, but I don't think we should.

McClurkin: Alright! Eric, do you have a copy of the motion, as it stands at the moment ... could you read it, please?

Soter: what I have is "Discontinue the proceedings of, he said, rezoning" ... and Commissioner Forrence seconded. You can correct me if I'm wrong, if that's ...

White: To be added to that: "and to forward a recommendation to the Board of County Commissioners to continue the current plan and zoning in effect without change." Was that not the ahhh ...

McClurkin: Yes ...

Forrence: ... and if it is necessary, the planning commissioner can have one more public hearing, you know ... in front of the public ... to ahh ... for your sake (Mr. Lawrence) ... I think we're required probably by law to have ... have a ... we've had a ... planning ... the one hearing, but ahh ... to say this is our comprehensive plan again (holding up the 2010 binder again) ... ummm, if that's necessary by law, certainly we would do that, but I think we should just move forward ... but ahhh, you know ... we'd be happy to do that, but ahhh, you know ... for now ...

White: Ha Ha Ha

Forrence: ... let's just!!!

McClurkin: Okay ... aaaah ... so we have a motion on the floor. We have a second. We have an amendment to it, we've read it back, and ...

White: Ha Ha Ha

McClurkin: We're going to take a vote on it at this point ... unless there is further discussion. Anyone want to make any last comments?

Lawrence: Call for a vote.

McClurkin: Alright ... then I will call for a vote. All those in favor of the vote and the amendment ...

Forrence: He He He ... Ha Ha Ha

McClurkin: ... signify by raising your hands.

White, Forrence, and Floyd raise their hands

McClurkin: All those opposed, please raise your hands.

Lawrence, McClurkin and Wolf raise their hands.

McClurkin: Alright, so the motion carried four – two ... with Ms. Wolf and Mr. Lawrence ...

Lawrence: How did you vote? (speaking to McClurkin)

Forrence: Are you for it or against it? (speaking to McClurkin)

McClurkin: ... ahh, I'm for it...

Forrence: Oh, he's for it!

McClurkin: Ha Ha Ha!

Forrence: Oh, you're for the vote?

McClurkin: Yeah. So ...

Forrence: Okay, can you do the vote again, please?

White: Ha!!!

McClurkin: Please raise your hands again ... if you are in favor of it ...

White, Forrence, McClurkin and Floyd raise their hands

McClurkin: One, two, three, four ... all those opposed, please raise your hands.

Lawrence and Wolf raise their hands.

McClurkin: Okay... Motion carries Four – two with Mr. Lawrence and Ms. Wolf in opposition. (*McClurkin strikes the gavel*) ... Okay, that having been done, where does that leave us for the evening?

White: That leaves us to apologize to these people ... all the people who came out ... He, He ... that we are sorry and have an early evening!

Small applause in the audience

McClurkin: Okay, before you go ... all those who wish to leave may but we will have public comment at this time...

Transcribed by MacRo, Ltd. from the Frederick County Government Live and Archived Media page of the [November 17, 2011 Planning Commission meeting](#).

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