

Council Chambers, 25 West Market Street, 7:30 p.m. Mayor Kristen C. Umstattd presiding.

Council Members Present: Kelly Burk, Dave Butler, Thomas Dunn, II, Suzanne Fox, Katie Sheldon Hammler, Marty Martinez and Mayor Umstattd.

Council Members Absent: Council Member Dunn arrived at 7:47 p.m.

Staff Present: Town Manager Kaj Dentler, Deputy Town Manager Keith Markel, Town Attorney Barbara Notar, Assistant Town Manager Scott Parker, Director of Parks and Recreation Rich Williams, Director of Utilities Amy Wyks, Director of Capital Projects and Public Works Renee Lafollette, Director of Finance and Administrative Services Clark Case, Director of Plan Review Bill Ackman, Director of Planning and Zoning Susan Berry Hill, Senior Planner Mike Watkins, Operations Manager Mike Goodrich, Customer Service Supervisor Sherri Jackson, and Executive Associate I Tara Belote.

AGENDA

ITEMS

1. **Items for Discussion**

a. Town Utility Billing Process Modifications

Kaj Dentler stated that staff has looked into the issue of the utility billing process.

Key Points:

- Staff surveyed a variety of jurisdictions with regards to the use of postmarks, late payment fee waiver, and grace period for late payments.
- Staff does not recommend using postmarks.
- Online bill pay checks do not have postmarks which makes using postmarks not applicable across all customers.
- Small cost would be charged by the payment processing center to scan the envelopes.
- Grace period is currently four calendar days of the due date – staff recommends making it four business days in case the due date falls on a holiday or a weekend.
- Currently, late fees can be waived once within the lifetime of your account – staff recommends allowing a waiver once every two years.
- Staff recommended changes will cost between \$69,000-70,000 to implement based on historical trends of customer payment habits.
- Changes will require a Town Code amendment.

Council Questions/Comments:

- Mayor: If you pay online, is there a record of when you paid, when you posted that payment?
Staff answer: The exact date and time. If you paid online (town's website) with a credit card or with a debit card, we know the exact time you did it.

- Burk: Why two years? Why did you select two years when things clear off and you can have a late payment without a fee?
Staff answer: That was our comfort zone with doing that. Some of the survey information was all over the place. There was no set pattern or industry standard. That was our comfort zone. It doesn't mean it has to be two years. It can be further out. Some of the feedback that we have received – even your feedback informally has been to try to be more customer service friendly in different areas, so that's the target that we picked. You are welcome to give us further direction.
- Burk: It just seems like that is a pretty small period of time. It just seems odd to me to do it every two years as opposed to like every five years.
Staff answer: We are not opposed. Staff is not going to oppose that. We are comfortable with the two, but if you would like more, there is no problem. I don't have a rhyme or reason that's exactly why we did it.
- Martinez: My only question is waive the late fees every two years, even though I'd kind of like to see that for instance, let you decide whether or not there is an exceptional situation and we should waiver the late fees. It could be a banking situation that they are trying to clear up and it could happen two or three months in a row – I don't know, but I'd like you to make that determination than instead of just saying you've already had one, you're done. There could be exceptions to that. That's my only concern. I'd let you make the decision.
- Hammler: Thank you, Kaj and Clark. [inaudible] our online bill pay. We certainly have several options for getting a bill in on time from an automatic perspective. I certainly don't think we promote, but probably should that you could automatically have the bills deducted from your checking account, whether you are a business or residential. I did that and I didn't realize I was paying twice – oh, that's right I signed up for that thing when I was at Town Hall so I do think we should promote that because there are many options for finding solutions for paying on time. So, one quick question, which is – is our rate consultant on retainer or is it going to cost us more to then hire them to figure out what impact this cost is going to have on all of the rate payers?
Kaj: It will cost us to use them. We have not done that. We know where we are....
- Hammler: So, how much will it cost just to analyze this situation if we decide to implement it?
Kaj: I don't know how much we need for them. We have not gone into a scope of work with that. It does cost us money to talk with them. We know how the rate structure was set up – there will be some fee program, so we are comfortable with that, but we would want to confirm our numbers if you are interested in proceeding further.

- Hammler: I would want to get to what maybe the root of the problem. I am not saying this is the root of the problem, but when it is an unpredictable cycle – like it is not a monthly bill that you know you have to pay on a certain date, that oh yeah I forgot it comes every quarter. Sometimes you pay in personal property taxes twice a year. To me, that gets confusing, which is why it is important to sort of figure out this more automatic way of paying so, I don't want to open scope, but we certainly – the URAC committee had looked at having monthly bills for instance, if that might be the core of the problem, but I guess at this point I would promote promoting as many of these other options for making sure that the bills are in on time and most banks in this day and age, if you program a bill, they tell you this is – you are picking a date that the bill will arrive – at least my bank does it that way. Maybe not all banks do. So, bottom line for me is these increased costs means it is not friendly to the people who pay on time because everybody else's rates are going to go up.
- Fox: Just a few things. I agree with Marty. Staff should have discretion. I feel like you know, if there is a common sense decision to be made, staff should be able to make it. At the same time, I was listening to Katie's comments and I feel like when I get my water bill, the due dates are all over the place. You know every quarter it is not a steady date. I think maybe we could look perhaps into a solid due date. Maybe the 30th, maybe the 29th instead of all over the place so if people have that in their mind that might help somewhat as well. The third thing I wanted to address is why is it one of the issues that came up is one of the customers felt like their bill went to Maryland and then came back here. Is that an issue? Do bills go to Maryland and then come back here?
Staff answer: The issue that brought this before you – there was a comment that was made that the bills go to a post office box or an address in Maryland. That is inaccurate. That is not true. We do use a company out of Maryland, but the town has a P.O. Box right here in town that Council wanted to keep for that reason. So, that is not accurate.
- Fox: Okay. That was just a question that I had because I feel like once you put something in the mail you really don't have control over it anymore. So, I just wanted to clarify that.
- Burk: My concern with leaving it to the discretion of staff, is you have no policy there so it is going to be unfair to certain people and I think it's really important that we maintain a system that is fair to everyone. So, if I am somebody that is well known within the community and I didn't pay my bill and I come in, I might be more likely to get it taken care of than if I am just Joe Schmo some place and I come in and I say I didn't get my bill in. I am concerned that they may not get the same attention and reaction. So, for me, leaving it to the discretion of staff is

probably not a very fair thing to do if we want to make sure that everybody gets equal treatment.

Staff answer: There is always going to be some level of decision made by staff. There is always extenuating circumstances. The staff will tell you that I will challenge and I will push them – did we do everything we are supposed to do correctly? What is the rest of the story, etc., etc., etc. These policies help us to try to have some level of fair and equitableness across the board as best we can. Even in the case that was brought forward that you describe, Council Member Fox, about Maryland there was also in that particular organization had received a fee waiver twice in four years, but our policy is once in a lifetime. So, there were certain extenuating circumstances and staff will make decisions that are outside the policy because we feel like there has to be some level of decision making or Council needs to set the rules and that's exactly the rules but when those rules are set, it is not fair to criticize staff or ask that things to be adjusted. I think these policies do give us the guidelines that we need and if we make mistakes or there are really extenuating circumstances, we will make adjustments, but we need as much guidance as possible to be fair and equitable to as many people as we possibly can for the very reason that you mention, Vice Mayor Burk, just because you are well known, etc., doesn't mean that you should get a significant advantage over someone that no one knows. That's the balance that we trod upon. So, whatever direction or guidance you give us, we will follow. If you want us to leave it exactly as is or if you want us to move towards these or something else, we will follow your lead.

- Mayor: When this particular payment was made in Leesburg, theoretically to our PO Box, did town staff pick it up that day or the next day and immediately credit that payment to the account?
Staff answer: Town Staff does not pick it up. Our vendor picks it up.

- Mayor: And who is our vendor?
Staff answer: Merkel.

- Mayor: And they are in Maryland?
Staff answer: Hagerstown. But they come to town every business day and they pick up that mail that is in that box and what is picked up on that day is then posted that day.

- Mayor: So they would have posted that payment as received on that day?

Staff answer: The day that they picked it up, it was posted. Once they picked it up, it was already late. So, once they pick it up, they will post it, but from the time it was mailed to the time it gets to the box is not the customer's – the customer can't control that. We can't control that. No different from our cable bills, our Verizon bills, whatever. But there is a due date and we have to plan accordingly, and there is a process, but it is posted on that day.

- Mayor: But it is possible that the customer mailed the bill on day 1 and then the post office may not have processed it in town – may have taken it let's say to Dulles, which is fairly regular for them and then it would have come back to the PO Box in Leesburg potentially and then Merkel would have picked it up.

Staff answer: I really don't know what their full process is at the post office. It is no different than the time I mail it from my house or drop it in the box. I don't know all the sequence that occurs. We do have – one of the things that we do offer customers when they know they are pushing that date is obviously town hall is open on business days and also we have a drop box here at town hall that is picked up the next morning, it is applied and posted. I didn't say this, but we are already in the process of adding another drop box at the police station on Plaza Street. It is the same process. We will pick that up. Bring it here to Town Hall and it is posted that day. It gives more options. Even though there is a lot of people who pay electronically, there are also a lot of customers who live pay check to pay check and they may not even be able to afford the stamp so there is a lot of nuances of our customers and what they can afford to pay. It is not all one process.

- Mayor: Some of us may not be all like us either.

Staff answer: We have to manage our things too, right? Understood.

- Mayor: I like the solution you have proposed. I appreciate your working on it. So, if Council wanted to move forward with implementing the changes that staff is recommending, could that be done tomorrow night?

Staff answer: I would like to have a little time. We have some other town code amendments we would like to do that I would like to see done in other areas – work with the town attorney and put those all in one initiation and we can move forward with these and others at the same time.

- Mayor: Do you need someone to request addition to a future Council meeting for all of this?

Staff answer: Probably a good idea, if these are the items you want to discuss. Again, you are not making a final decision tonight. You are just starting the process.

- Burk: The question I have is with these four recommendations, do we have to then still hire the consultant?

Staff answer: We just need to really have a conversation to confirm our estimates based on our pattern. We can have a conversation of how much that is going to cost before we start the work, but basically we just need a confirmation that we are on the right track. We are pretty confident that we are, but I think if I were in your shoes, you'd want to know what I am telling you is correct – beyond just our estimation.

- Mayor: So, you recommend the hiring of the consultant because it sounds to me like one is not necessary?

Staff answer: We will take care of that with our existing resources. You don't need to do anything. We are just telling you we are going to confirm through some level of conversation – not a full blown study of six months that is going to cost \$100,000. It's not going to cost anything like that.

b. Crescent Parke: Town Plan Amendment, Zoning Ordinance Text Amendment, and Rezoning

Michael Watkins stated this discussion would be on the proposed Town Plan Amendment to change the Town Plan land use for the Crescent Parke property from commercial mixed use to residential and open space, a proposed ordinance amendment to change the designation of Davis Avenue, and a rezoning application that changes some of the sub-districts in the Crescent Design District for the Crescent Parke property.

Council Comments/Questions:

- Butler: First, I would just like to say that there seemed to be an awful lot – there is a lot around the rezoning that would still have to need to be discussed. We are probably not going to get through all that tonight in any case. My understanding from the last meeting is that we would first find out – discuss the plan amendment and the text amendment, because if we can't get past those two things, then there really is no point in discussing the rezoning ad nauseum. Maybe if we can focus on those two things, see if we have four council members who would be willing to make that change tomorrow and then they can discuss what the significant changes might be with the rezoning, does that have to go to the planning commission, etc. and so forth, if we approve the first two things. So, in any case, I'll start. I am not sure I actually have a whole lot of questions. I would just assume looking at it, I see that compared to the by right use, I think the impact of what they proposed, in general, would be a fair amount less on the neighborhood and making the road smaller certainly would have much less of an impact on the neighborhood. Having residential next to residential certainly would have less of an impact than having a lot of commercial next to residential and since I think the financial impact to the town budget; however, is pretty much very similar and the economic impact to having more residential infill is going to be significantly higher than what would turn out to be mostly residential, I am fine with moving forward with the text amendment although I will say that there are significant issues I think still with the application itself, the rezoning, that we will need to discuss and that will probably take some time.
- Burk: I am not quite on the same page as Dave. I do have a number of questions, Mike. In regards to stormwater – well first off, the very first question I have is I don't understand why this is in front of us. I think it should go right back to the planning commission. This is a different application than the planning commission looked at.

- Mayor: Mike, was it your position that it would be helpful to you if Council – if they wanted to send it back to the planning commission, would give the planning commission some guidance as to what we wanted them to look at?

Staff answer: That is exactly the case. The planning commission stressed obviously some revisions to the lay out, but more importantly their opinion was does it comply with the vision of planned land use for the property. So, if there was going to be a change in the planned land use giving the planning commission, if it were to go back to them, direction regarding either the use itself, or the types of units, the density, would be all useful information as they consider the rezoning application. So, that was the intent on carrying it forward is that yes, there have been changes to the layout but regarding the planned land use, that is still the same. If the application is remanded back to the planning commission for further evaluation of the rezoning application, the additional feedback or guidance from Council would be beneficial.

- Burk: Are the TMDLs addressed in this? I read where they are doing some stream mediation on one side?

Ackman: Since this application was last before you, we met with Bowman Consulting and we have done a lot with the stormwater. We are now confident that there is a plan in place that will accommodate all the TMDLs, which includes a partial stream restoration. By partial, I mean it will be done where they control both sides of the stream. So, along their property line where they own both sides of the stream, that's where they are showing the stream restoration. So, essentially from where our projects lets off by Virginia Knolls, it will continue upstream to the point where they control both sides of the stream.

- Burk: And do we have that written?

Ackman: We asked that be put into the proffers.

- Burk: Okay. In the proffers, do we have the information about the commercial? Do we have commercial development written into the proffers at this point?

Staff answer: In terms of the uses themselves, the concept plan is proffered so in terms of the planned land use of the property including commercial, it is proffered via the concept plan, but in terms of I think maybe you are referring to phasing – there has been no change.

- Burk: No change in that. When the planning commission looked at this, they didn't have the Izaak Walton piece of it. What are the lease requirements and conditions that now apply to the town that I assume will go to the developer. Is there any change? Are we going to continue to pay the taxes on that property because it is not immediately coming to the town. So, what's the conditions on the lease? How is it different/ how is it the same?

Staff answer: The way the applicant has written the proffers, it is contingent on the site plan for a portion of the property. So, the details of the lease would still need to be refined. We have not specifically

spoken regarding the details of how the lease would be terminated, but that would need to be addressed via the proffers. In terms of the operational lease, right now, until the lease is changed we still have the right to use the property per the terms of the lease, which is the park. We are still obligated to pay the real estate taxes and the lease payments on the property, but in terms of executing a release of the lease, that has not been specifically discussed yet.

- Burk: So, conceivably, we could be continuing to pay the lease cost – the cost of leasing and the taxes but it will now be owned by the development – the developer or whoever.

Notar: I don't see that scenario, Vice Mayo Burk, because once the property – I think the vision is the property will be donated to the town and so the lessor, who is the owner of the property will have to agree to that and we have already gotten indication that they would.

- Burk: Yeah, but you don't know how long it is going to take before it is donated. There is nothing in there, so conceivably, the developer could be holding it for a couple of years and we are going to continue to pay the lease on it and pay the taxes for it?

Notar: Yes, so long as the lease is still in effect, we would have to be obligated under the terms, which is paying the taxes and the rent; however, I would think that if there is going to be an agreement in place for the park to be donated and given to the town that would be done quickly. I can't see what would hold it up. If the town is willing and the lessor is willing and it is part of the proffers. Proffers are enforceable. I don't see any reason for lag time.

- Burk: That is what I am trying to get to. So, I hope that will be something that the planning commission will look at. Making sure that proffer language is in there and that's clarified and we don't end up paying the taxes at the very least.

Staff answer: I was going to say that I think that the mechanism in which this is operating under is a proffered condition and I think there is opportunities to clarify this in the proffer language.

- Burk: Right, and we still have the same issue with the proffers and the school – school proffers, if I am not mistaken that the proffers – the school proffers will be deducted on the cost of the park so...

Staff answer: Right. One of the items that we itemized in the memo for you all this evening was the fact that you do have a resolution – the applicant has elected to do something differently that addresses capital facilities and not the school's resolution itself so that is a conversation that we need to have with the applicant.

- Burk: I am sure we need to have that conversation because that was something that we put in place for a particular reason and it seems like it is a discussion that definitely needs to be had. Either we do it or we don't. I mean we put it in place because we thought it was important enough to do and the county asked us to do it and then to have that be part of the bargaining process is...well anyway. Let me see – I would

hope that the planning commission would look at the density. I am concerned about the size and the amount. Also, do we have any traffic study that will deal with Gateway Drive? What will be the impact to that?

Staff answer: The traffic study addresses the site generated trips and there were specific intersections that were analyzed so in terms of a decrease in the density, if it went in that direction, the traffic study has sufficient analysis in it. Just to back track a second – you stated regarding the planning commission’s analysis of density – I think it would be beneficial for you to help the planning commission understand – I mean the term density has relativity to it. You can have good density and bad density. If it is a specific type of dwelling unit that you are looking for in terms of its proportionality on the property, that would be beneficial. If it is the amount of open space in terms of its relationship to units, that would be beneficial, but to use the generic term of density, I think we need a little bit more guidance from the Council.

- Burk: Well, open space was the next one I was getting to. On the question of open space, it is nice that there is a park there and it is accessible for the public, but I would hope that the planning commission will look at the lack of open space in that development. That is what I am talking about in regard to density – that there is so little recreational space, open space, that sort of thing for people to use that live there. That would be something I would want them to be looking at.

Staff: If I can interrupt you for just a second – the open space – are you looking for more active recreation and not just open space? But active recreation on site?

- Burk: For the people that are there to be able to recreate rather than just be building upon building and there is very little space. I know that there are little tiny areas, but it is very small. I would hope that the planning commission will look at the tree saves. That is an old forest – old growth forest and we know that with all these issues we have with the TMDLs, taking down all of the trees is not beneficial to the town. We will end up having to assume the cost for making those corrections further down the line. The flood plain – has that been changed to accept the 100 year flood plain or is it still at the...

Ackman: I knew I forgot to mention something. Yes, also in our work with Bowman over the last week and a half, they have agreed to contain the 100 year storm coming off of their site.

- Burk: Okay. I think I am going to stop there. I think I have given you quite a bit to look at and take back to the planning commission. I might think of a couple more.

Staff answer: I do have one follow-up for you. In terms of the tree save, is there a bench mark that you envisioned? Our ordinance has

specific ratios for tree canopy coverage on the property and they have to meet that. Are you looking for something above and beyond?

- Burk: I am looking for – because that’s a special site and it most certainly is one of the last sites that we have the old growth forest and there is some really magnificent trees in there that the effort should be made to save them.
- Martinez: My turn. The trees themselves – have we asked the tree commission to look into this and what issues they might have with it – with the green space or the active recreational space and how much of the tree canopy we should be trying to save.
Staff answer: Right now, our legislative applications are not referred to the Tree Commission, so in terms of their opining on this application, that has not been afforded. If the applicant were remanded back to the Planning Commission, we can certainly, through your direction, let the Tree Commission see and advise the revisions and have them opine.
- Martinez: On something like this, I really would like the tree commission, and the parks and recs since we are bringing that in there too. These are two commissions that deal with the tree canopy and the open space recreational area. I really would like to see what kind of passive activities we could have there like trails and other things and so forth. Now, Kelly already talked about density. How many comments did we have left to resolve a couple of weeks ago? Do you remember? I think it was 57.
Staff answer: I think I generated a list of 57.
- Martinez: 57. How many have been resolved since then?
Staff answer: I have to say I received a plan submission that I have yet been able to review. I was out for a week, but I didn’t have enough time to review the revisions.
- Martinez: So, that’s a ding against Kaj for letting you go for a week.
Staff answer: I will have to say that we have had a few fruitful meetings with the applicant and making progress on reducing the number of comments. So, we are working in the right direction.
- Martinez: How significant?
Staff answer: We have made some headway.
- Martinez: Okay. Good. I am going to go in another direction even though I am still concerned about the density. Kelly asked a lot of the questions that I was concerned with. I am going to go with the Greenway extension. Now, I understand that VDOT is not going to allow us to do anything. That VDOT extension is there until they decide they don’t want it there. Is that correct?
Staff answer: I am glad you asked the question because I think it is going to be worth our while to talk about this. As you well know, a lot of elements were put on prior planning documents and they are subject to change. You can certainly go back and have a conversation with VDOT. What it will entail is to remove that element to the town plan would be a town plan amendment. You would need to do a traffic

study. The traffic study is reviewed jointly by VDOT and the town of Leesburg. Typically those are started with a scoping meeting so in terms of initial feedback, that could be facilitated through a scoping meeting, which indirectly doesn't result in the necessity of an outside consultant. Town staff and VDOT staff could meet to discuss the likelihood of those results, but that would be the mechanism by which we would need to operate under is a town plan amendment which would include a traffic study scoping with VDOT.

- Martinez: Okay, so now – VDOT says that if they don't build the extension some time in the future, traffic on King Street is going to increase to 60 percent, versus when we do build it, 15 percent. When will this happen? I mean what is the time – 20 years from now? 10 years from now? What is that 60 percent? Is that just continuing to increase until they build it?

Staff answer: To answer your question, I don't know that there is a horizon date specifically. We typically use traffic studies to analyze and update either our model or use them as snapshots in time to find out what are the efficiencies of our transportation network. In this particular instance, we are seeing a snapshot in time for the Crescent Parke potential impact on the transportation network.

- Martinez: So, those numbers could be fairly recent or fairly close.

Staff answer: They could be. A lot has to deal with background development. Any improvements in other infrastructure outside the town would affect that as well.

- Martinez: So, how many lanes are they looking at? Is it just going to be an exit or is it going to be an entrance too?

Staff answer: When the town looked at updating the 1986 Town Plan, there was a conceptual alignment that brought traffic into town and out of town. The number of lanes was conceptual one in and out, but we never finalized a complete engineering traffic study for that. It was a conceptual alignment for horizontal purposes only.

- Martinez: And that extension is going to stop at Davis and stop at Catocin, or is it going to go through?

Staff answer: There were two alternatives. One actually took it – the Greenway extension directly to Catocin Circle and then Harrison Street would tee into the Greenway extension. The other was to bring the Greenway extension into tee into existing Harrison Street. Those were the two alternatives that were proposed at that time. Could there be a different alignment? I don't think so. I think those are the two logical choices.

- Martinez: It won't cross Davis, then?

Staff answer: There is a third component of that alignment and that was the east/west connection and that is something that we have stressed in our staff report since there is a vertical component to the Greenway extension. We don't know what the impact of that vertical alignment is on the Greenway. So, could there be at grade intersections

with Gateway? Potentially. Would it need to be a flyover crossover? Potentially.

- Martinez: Now, is 90 feet enough?
Staff answer: That's a good question.
- Martinez: For those that don't know what I meant – 90 feet wide buffer. 90 feet wide swath that covers the extension.
Staff answer: It really depends on, in our opinion, the vertical element of the extension. If you need to go vertical, there could be a necessity to flare the entrance onto the Crescent Parke property and then it funnels into the middle of the property without having vertical information, it is hard to tell the road [inaudible] for the extension to accommodate the 90 feet. The other element to this is you get on a vertical component buffering horizontal placement...
- Martinez: That was my next question – buffering. Noise buffering. You know, I am assuming this is all on VDOT's [inaudible] when they put that extension in – are they putting in any kind of noise buffering?
Staff answer: The way the agreement was done with the Toll Road Corporation was that anything that was within their right of way would be on their dime. Anything outside of their right of way, would be other public monies.
- Martinez: Ours – could be ours.
Staff answer: Potentially.
- Martinez: And we would be kind of mandated to do it.
Staff answer: Potentially.
- Martinez: So, I think I covered all that. The other thing that I was looking at – again talking about traffic and the bypass. Will there be a need for buffers for the properties that are going to be near the bypass and has any accommodations for that made?
Staff answer: The way the applicant has addressed some of the revisions – they have moved the dwelling units a little bit further away from the transmission lines, so there is additional opportunities for some vegetative screening. I think that is one of the things we can examine further during the rezoning part of the application.
- Martinez: Well, my concern was what kind of noise buffering. I sure don't want to see a bunch of slab of concrete going along 15 bypass, but rather a bunch of trees used as both visual and noise buffering. That would be something I would like to look at.
Staff answer: One of the tweaks that the applicant has made was the reorienting the buildings so that the front actually faced the bypass. What that does – they are able to use sound attenuating materials on the front facades and windows that have proper noise insulation/attenuation to them as well so that the usable part of the property – the back side is outside the noise impact area. That was one of the tweaks that they made.

- Martinez: Okay, so then my last comment or my last question would be about Davis Avenue. Right now, in our plan it is four lane and we are going to take it to two lanes. Why was it four laned?
Staff answer: It was four lanes based on the scenario that the planned use as commercial generating a higher traffic volume. It was four lanes for a number of reasons – one, the Crescent District had codified street sections. Again, based on the planned land use for the properties it would handle the traffic volumes associated with commercially zoned properties. Secondly, the type of designation – the urban boulevard had a treed median component to it, so it served as a [inaudible]. So, for those reasons, it was classified as an urban boulevard.
- Martinez: So, if we were to go to the requested densities – the number of trips versus if we kept the same zoning. How different are they?
Staff answer: The residential aspect of this versus commercial – you have less trips with residential than you do commercial. It would impact the peak hours as well.
- Martinez: That’s just for that neighborhood. You have nothing about cut through traffic on either side? Any idea on how much that would grow? Because I was looking at it and I’ve got family that lives on the other side and that would be a good short cut to Sycolin.
Staff answer: Driver behavior is...
- Martinez: So, you have to take that into account, I guess is what I am saying. Okay. That’s it for now. I am still leaning towards moving this back to the planning commission because I think there is a lot of questions to still ask. I know Kelly had a lot of the same kind of questions I had. You see what I have as far as traffic and trying to mediate that – especially the Greenway extension. What I would hate is that we have for ten years – a great component of residential there and all of a sudden, we have an extension being built right in their back and front yards. I am going to make sure that is mediated. I mean I would love for us to go to VDOT and say, look we don’t need that extension. Can we do away with it, but I think that’s going to be a long and drawn out process if we try to do that, correct?
Staff answer: It could be – it has been – the conversation that will happen again, I think could be useful for all parties in terms of the town opining on its destiny and then coordinating with VDOT who have a significant stake in the transportation network that surrounds the town. I think both parties – the last time we talked about this was when we updated the Crescent Design District and the impact – maybe it is time that we did go back to VDOT and have a conversation and check in with each other and find out you know what the game plan is – not only with monies but planned infrastructure improvements.
- Martinez: I think this might be an incentive to do that. One last comment. I personally would like that area as an open land. We have very few pieces of property – I don’t know if I am really excited about the density, but we will see what the rest of the Council says.

- Hammler: I certainly would support staff meeting with VDOT and getting moving on that discussion. What would be required? Is that just a new business item that we would bring up and Council would approve moving forward and asking staff to do that? What is the actual action item?

Staff answer: [inaudible]

- Hammler: I am sure Marty will. So, that is, I think a great idea. I am glad Marty brought it up. Mike, just in terms of your professional opinion given that I appreciate that all of the petitioner comments were catalogued and you have been keeping track of them. You also mentioned that you are making great progress on them. Given that we all have the same end goal which is to resolve all of them, what do you recommend? Should staff keep that momentum going and bring this back to Council say the first work session of December or do you recommend that this go on the planning commission to resolve those issues with the applicant?

Staff answer: It is the discretion of the Council. If you all come to consensus on the change of land use, I think there is opportunities for us to continue detailed discussion of the concept lay out between applicant, staff and the council. You know, I don't know that – and thank you for the courtesy of asking for my opinion, but I think it is your discretion in terms of how you want to address rezonings. The nature of some of the comments are detailed and my time here we have not really got into details with the council. It is issue resolution. It is the council's desire one way or the other to either keep it here or remand it back to planning commission.

- Hammler: Again, I think it is fair to say if it quote unquote stays here, it means you are really driving the details from the staff perspective, which of course we have full faith that you are obviously making great progress, so to your earlier point, I certainly think that is really important that the Council provides direction on the two plan amendments, so I completely support that and then we will see where Council is relative to staff taking the lead on those 57 items or planning commission. I had a phone call from Gem from the Piedmont Environmental Council. Kelly has already addressed those issues. Thank you, Gem, for your email and I had two phone conversations with Hobie Mitchell. I clarified just relative to that that the Council did in fact because of the direction of the county, we were kind of forced into, for lack of a better word, putting it into lowering our capital intensity factors for schools, which quite frankly dropped the proffer requirement down by \$1.9 million. My understanding is that the applicant will actually keep their proffer at the original amount. So, that was good to know. I understand that they also increased the buffer on the pond and pushed the houses back so could you just at least for public record state that change because that was a very specific thing that I know that my planning commissioner was very concerned about.

Staff answer: In looking at the cursory review of the changes that they have made, they increased the vegetative component. Where it was just canopy trees before, they have interspersed evergreen trees to create a year round screen. They also moved some of the units further back from the surface of the pond so there was a change in the location of the units.

- Hammler: Thank you. And, one question that came up last time that I didn't see in the staff report, but would appreciate netting out was we know the town has been renting Izaak Walton Park for x number of years, contributing money and all that is listed is the potential future cost, but you were also going to address all of the money that we have already sunk into the park, again given how popular that park is – again this is going by right or are we ultimately trying to create an opportunity to get that park for the town and own it and take the \$140k off the general fund rolls as well as the tax. Could you at least highlight the number of years and the amount of money that we have been, from a general fund perspective – what is the aggregate amount of all of that money?

Staff answer: Actually, I did get numbers for you. We have itemized lease payments and the tax payment. To date, per the terms of agreement, which started December 29, 1999, was when the lease was executed. The payments actually started July 1 of 2000. We have paid in lease payments \$1.5 million and in tax payments, it is roughly \$465,000 – in ball park terms, \$2 million in past payments.

- Hammler: So, in summary I agree with Dave's assessment relative to the by right impacts and certainly would look forward to the council's direction on the town plan amendments and where council would like the issues resolved.
- Fox: I was listening earlier and you were talking about the phasing for the road – that there was no change in the phasing for the road. Could you explain that real quick for me?

Staff answer: I think the question was commercial phasing. What the applicant's response has been is that they are looking at phasing in terms of transportation improvements, so their phase one includes the full build out of Gateway Drive from its existing terminus all the way to South King Street. In terms of commercial phasing, that is not going to be put in the proffers and still is excluded from the proffers.

- Fox: That was my next question. So, it hasn't been proffered, so there is absolutely no phasing plan there whatsoever, so if we had – if commercial was supposed to be in this application, there is no guarantee that we will get that at this point, correct?

Staff answer: What the applicant's opinion is that the market will dictate when that comes on line.

- Fox: We also alluded to some of the stream restoration issues. I believe Mr. Ackman stated that we would be taking care of one side of

the stream or both? I don't think I understood that very well. Or the applicant would be doing that.

Ackman: It would be the responsibility of the applicant to maintain it. It is entirely on their property. What happens is where the property line is – it sort of juts around where they own the property on both sides. That is where the stream restoration would be. A portion of it, they own – where the commercial is – they own one side but the other side is Izaak Walton or in places the entire stream is in Izaak Walton. That area, they are not going to touch. So, just where they control both sides of the stream today...that's the part of the stream restoration.

- Fox: But that doesn't seem like a best management practice to me.
- Burk: That wasn't clear in what you explained before. I didn't get that. I understand what you are saying now, but that's not what I understood you to say before.

- Fox: So, in some places both sides will be taken care of and in some places one side will be taken care of by the applicant.

Ackman: Stream restoration requires control of both sides of the stream. So, for example – if you could imagine two binders where – maybe one place to start is what does stream restoration mean. Stream restoration is actually creating wetlands, pools of water where the banks are highly eroded. The banks would be laid back, they would be stabilized so that the erosion and steep banks are eliminated. In order to be able to do a true stream restoration, you have to be able to control both sides of the stream. If you just laid back one side, then that doesn't count as stream restoration. The way the state looks at it right now is because of all the nutrients that are in the soils, they go floating down stream every time it rains and the creek gets a little bit of run off. That is the erosion that is going down the stream. Because of that, when we are able to create pools – what is called riffles – I call it a babbling brook type of a scenario, you get huge credits for TMDLs for that. That is one of the reasons why we are doing our project on Tuscarora Creek. This will just sort of take what we are doing and escalate it further upstream, so it will almost be one contiguous stream restoration.

- Burk: But the gist of it is that there is property they own on both sides. They will take care of the stream restoration on those two sides, but when they only own property on one side, it will be the town's responsibility to mitigate the other side?

Ackman: At some point – should we choose. The point where the applicant owns on both sides, that's the limits of stream restoration. Then, from that point upstream, that would not be touched as part of this project.

- Burk: Are there parts of the stream that part of it is in their property one side and the other side is not?

Ackman: Yes.

- Burk: And so at some point in time, the town would have to take that...
Ackman: If you would so choose. Currently there are no regulations that say we have to go in and do that. But at some point, if we wanted to partner with the land owner and go in and do that for a future TMDL project within the corporate limits, we may be able to do that. Much like we are doing on the other part of Tuscarora Creek – we are partnering with Virginia Knolls. Does that make sense?
- Fox: It does make sense. Somewhat. So, while I have you up here, I just wanted to ask about the TMDL issue that Kelly brought up. I have been hearing rumblings that there are some issues – some new things that are coming down the pike in Richmond. Have those things been considered in this application, or is that something totally separate from this application?
Ackman: That is something totally separate from this application and I actually asked somebody from DEQ that same question a few weeks ago and basically what they said was yes they are looking at the storm regulations again, but they don't see anything major coming out of them – just some [inaudible] based on some comments they have gotten from various applicants and jurisdictions since it has been under way over the last year or so.
- Fox: Because my main concern of it is that there is significant change in some of the requirements and if the applicant is not responsible, then of course it would fall back on the town and that is a concern of mine. Just for the record. I know that the high density was addressed. I, too, am concerned with that. I don't feel that, even though there have been traffic studies, that there has been much mitigation and as we crowd people in on top of one another – which this is – this is a high density area, we will see more traffic. I just don't think that our streets have been addressed yet. Schools – I think while – I understand that it probably would not cause an increase in cost for the town, I do believe that the town's people are still county tax payers and it is still going to affect the people of the town anyway as those costs go up for the county. That is a concern of mine as well – that is just in the high density area. I also have some concerns about the park, but I think that is probably a separate issue down the road just a little bit. Because of the apparent changes in the concept plan and in the proffers with some of these new TMDL regulations coming down the pike, I really feel like it needs to be vetted properly so I would say it needs to go back to the planning commission.
- Dunn: You may have alluded to it right at the beginning. I didn't catch all of your comment about going back to the planning commission. What do you expect to have happen going back to the planning commission? One, I would like to know what the time frame would be for the planning commission review. What would be, if it does go back to planning, what type of request – because you have been

there for the planning meetings so far and they have denied it. Are we going to get a different result? Are we going to get something different back from the developer? Are we going to get something different back from planning or is this just an exercise to take up people's time?

That's what I don't want to have happen. If communication with planning commissioners are that it needs to go back to planning, but we don't really expect a different result, then why – why should it go back to planning just to be denied again. I would like to know if you can elaborate a little bit about what you would expect to see going back through the planning process and the substantial changes that would come out of that and the time.

Staff answer: Time frame, I think is dependent upon Council's resolution of the land use change. For instance, at the meeting tomorrow you all decide that there is consensus to change the land use, I think we roll the dialogue that we have been having with the applicant into our formalized comment letter to the applicant, which can then be expedited to a public hearing with the planning commission. So, in terms of time frame, I think it is not a six or nine month process. I think we pick up where I generated the comments in response to changes we have seen when we were bringing that forward to the planning commission. In terms of expectations, it is staff's desire to solicit as much constructive feedback and direction from Council as we possibly can. Again, there has been a lot of concern with density. I think a little bit more direction in terms of how to deal with that – one component I am hearing is the relationship of units to open space, but unit types – how they are arranged on the blocks, those types of things would help the planning commission in terms of their response. Not to speak for the planning commission, but reading their reaction to the application and the recommendation of denial, it was based on inconsistency with the planned land use. That major obstacle goes away if the council opines that there is a new planned land use for the property. The planning commissioners will have to really digest the ordinance requirements and focus their attention on the lay out and not necessarily the planned land use, so in terms of a difference in terms of the planning commission's reaction to this, I can't speak for an approval, but their focus from planned land use goes away and they are able to specifically look at the ordinance requirements that are placed upon the applicant in the Crescent Design District. As far as the developer's response – again, we are heading in the right direction in resolving some of the issues we have had. One, I have not returned to look at the revisions that they have submitted. I can opine better, but at this point in time, I know there were some changes I need to look at. I don't know if they have addressed all of the items or not. That's the best I have for you right now.

- Dunn: Two things from what you just said – you said it wouldn't be six to nine months or did you just say six months?

Staff answer: No, six to nine to months. It would not be.

- Dunn: Okay, it would not, so what would it potentially be?

Staff answer: I think if we fell into ...

- Dunn: Are you talking about two months or do you see it getting done in two months?

Staff answer: I think we could probably generate a staff report in under two months and then initiate the public hearing process with the planning commission.

- Dunn: Assuming time out for meals, right? As long as you are taking time out for meals. I haven't heard anything from Council about one other issue that you mentioned. We spoken about density for density's sake, but I think you addressed it more specifically to what do we want as far as building types and I don't think – have you gotten that answer tonight? I haven't heard it.

Staff answer: No, I can pull the document back up, but the planning commission had a series of suggestions for the Council to look at. If the rezoning application stays here, I think that is an opportunity for you and staff to work with the applicant to resolve the issue, but one of the items that came to the top of my mind was the number and types of units in each building. The planning commission stressed a concern with just buildings that have the same unit width throughout. Their desire was to include building units that have variations in width. That is one thing that would affect density – one thing that would be beneficial if the application were remanded back to the commission is a response or feedback or direction on that particular issue.

- Dunn: And going back to the density – you brought up a good plan in referencing density as compared to open space. We have got this issue of the park being there and if this were – if the applicant were purchasing the park and convert that to just a use for the project, the HOA, then I would think that would be more than enough open space. Staff answer: For open space purposes, yes.

- Dunn: So, when we are talking about density, are we talking about – the real issue is we are just not thrilled with the fact that it is increasing the total number of units. Really, it is going from commercial mixed use to residential which by the way is how many total unit increase? If it was truly mixed use, what would be the maximum number of residential we would have in there under current zoning?

Staff answer: You would have to give me a couple of minutes. I don't have the number off the top of my head. I apologize, but I think just to back track for a second – I think one of the issues that complicates this is the planned land use when in the Crescent District when we were looking at high density, we weren't looking at large tract subdivisions – suburban style neighborhoods. If you look at the area that we designated for our residential high density, it was adjacent to the historic core, so the way we drafted and Council adopted the Crescent District was in our residential high density, you have amenity spaces.

You don't have significant recreational areas and I think that is a big difference between the planned land use of the property and the rezoning application is that the Crescent Design District residential high density did not anticipate the recreation demands for this amount of density on this property. So, that's the dynamic that you all are faced with in directing staff regarding recreational amenities. One could opine that the amenity spaces meet the Crescent District standards. Check the box. They meet the ordinance requirements, but we are in a legislative application process and staff is signifying that based on the amount of density, the active recreation needs for this amount of density may be inadequate.

- Dunn: You mentioned – so you are just talking about recreation but you are not talking about amenities that could also be met through other types of commercial use or are you considering that too?
Staff answer: The amenity spaces were one an aesthetic. It is a place making opportunity – where can we sandwich in different areas that may have a passive element – may have an active. It was primarily Crescent Design, design. It is all focused on design. That is not to say that all amenity spaces need to have active recreation. Again, the difference between our residential high and say for instance a planned zoning district. You have got different mechanisms that capture the active recreation needs of the residents that would live there. So, in terms of amenity spaces, in the Crescent Design District, they were supposed to be small and interspersed throughout the community. That has been incorporated here. If you look at the open space – the amenity spaces, one could say that they have met the ordinance requirements, but again bigger picture when we were dealing with residential high density zoning classification, we weren't thinking about a land area this big and missed opportunities for active recreation.
- Dunn: And if I am correct, the area that is closer to the interchange with the Greenway, that is all residential? Where the interchange for the Greenway – where the Greenway cloverleaf for lack of a better term, that's all residential in that area and then there is commercial in the red roof.
Staff answer: Commercial mixed use to the north of the creek, correct.
- Dunn: The only thing I would possibly throw out to Hobie and your team is in fact at the County level we are working on mixed use definition at the county level right now and I think I mentioned it when we were first talking about this a couple of weeks ago is looking at what they have done in Camden, New Jersey and the types of development that have made that city turn around and it is looking at how the current marketplace is changing in that you have the millennials looking for different things than what the baby boomers were looking for. When you have an area like this that is not affected or not affecting the downtown – it is not going to hurt the historic area, but the things that the millennials are looking for is much like the mosaic

development that they have over in Merrifield, I would encourage that if there is an issue and it sounds like it very well maybe going back to planning that you may consider something like that that you could possibly bring in a little bit more commercial because the folks that may be looking to move in this area, they are looking for – one, millennials aren't really buying cars. They don't even take cabs. They get Uber. They like to be able to walk or ride their bikes to amenities that are close by. They like open entertainment much like – you talk about splash pads or movie screens on the sides of the building. These are the kinds of things they have done in Camden, which was in really rough shape. And I think in an area like this – that could be something if it does get to that point with planning that they just really have issues with the amount of residential that is in one area, you might want to consider mixing that up a little bit. Just an idea. The other thing, too, is we talked a little about the park. As I have said, I would rather almost keep that as a separate discussion from this. I think that to use that as a reason for wanting to move forward, I've got pros and cons about that. I think that the idea for us going forward, should you purchase it, looking at a new lease agreement that we can both live with – one that may not have the town having to pay as much as it is paying currently for the lease. That could represent a savings of almost \$2 million to the town taxpayers over the next 14 years. I think looking at renegotiating the lease so that the town may not be on the hook for improvements that are over a certain amount, whatever that amount be. Five thousand might be too low. Fifty thousand might be too high – that the town has first right of refusal to acquire the property in whatever form that might be once the current lease is expired. Then those are some things that might be of consideration should we go forward with the Izaak Walton, but I think that is all. We have had so many comments that are really overlapping at this point, I think you have enough direction so far. Is there anything else from what you are looking for and what you think the planning commission might be looking for that we need to address for you tonight. I still don't think we have really addressed the type of housing. Are we willing to accept two over twos for example. I know that some planning commissioners they don't want to see it anywhere in the northern hemisphere. So, definitely not here in Leesburg. You know, if that is a reality. So, is there anything else that you really need from us to go forward or the applicant?

Staff answer: I personally don't. In terms of trying to help the planning commissioner, that phasing is important. I would communicate that back to the planning commission. I think a little bit more refining the housing styles might be beneficial and maybe specific direction on recreational amenities – maybe the placement. The applicant has included recreational amenities on site. Staff is not enamored of them, but they are provided. So, maybe if there is dialogue from the council –

maybe you are fine with the types of active recreation they have included. That would be helpful. Location is important, I think.

- Dunn: Well, is it the types or the location or both?
Staff answer: Both.
- Dunn: I mean, look at me. I am not a big recreation guy. I'm a big guy, but not a recreation – not the person in the back row over there. We are all in the same boat. That is one of those things where I would be open to suggestions from maybe people on the planning commission or other council members who might have a good idea, but I don't know if any of us have a degree in recreational design. I would have to defer maybe to our parks and recs people or Hobie, if you've got some people. Shoot, I wouldn't know what to tell you to put in. Give me a see-saw. I don't know or where to put it. So, I guess if you have some suggestions for us tonight that you think that either you or the planning commission is looking for and if Council is desirous of going along with that – housing types, I guess we can try to hammer that out tonight or do you want that at some other point?

Staff answer: I think definitely direction on unit type. That was one of the things that the planning commission raised. I would say that there was certain planning commissioners who have a certain preference for unit type, but as the commission as a whole, I don't think they were adverse to having two over twos on the property. They did not specifically opine that should be not in the plan but in terms of the list of planning commission recommendations – again we have got the Davis Avenue issue – the two versus four. I have an indication that there might be some direction that you are going to give us on that this evening. Buffering for the Greenway. Again, staff's opined that there is a lot of information that has not been provided so in terms of trying to anticipate additional width for the vertical component to a future extension, it has an impact not only on the proposed development, but the existing development. So, does that mean we need a wider reservation area potentially so that we can incorporate buffering in the interim? That would be good direction.

- Dunn: Reading the notes that you provided on that, it doesn't look like – and please correct me – it doesn't look that would be our decision solely. That VDOT has a play on that.

Staff answer: You can certainly anticipate would this application meet its safeguards. We could put it that way. Whether or not VDOT opines that the Greenway extension could be removed, that is a whole separate process and a dialogue that is going to take multiple meetings. But in terms of anticipating potential negative impacts to the property, with this application, regardless of whether or not the extension is retained or eliminated, there is mechanisms that you can deal with with this application to provide any necessary safeguards for buffering if you so desire.

- Dunn: But that sounds like it could be a major impact for something that may never happen.
Staff answer: Certainly.
- Dunn: What else?
Staff answer: The variation in unit width was included. The planning commission requested that stronger fiscal impacts that generates the need for more residential dwellings, but if you already opined on the fact that the land use change is fine, then that is not necessary. The planning commission suggested that the appropriate buffers be located outside the Greenway reservation area, not within it. The applicant should proffer a phasing program. I think that would be – that is a question that staff and the planning commission have had on numerous applications of late is that when we are talking about a mixed use application – when is it appropriate? How is it appropriate? So, some guidance regarding commercial phasing, if that is the desire of the council, would be appropriate.
- Dunn: You don't have to go [inaudible] because it sounds like we are now overlapping again. We have a planning commission for a reason. They are supposed to be the planning body for the town. Why are they not able to make these decisions on their own?
Staff answer: I think the planning commission's initial recommendation of denial was based on consistency with the planned land use. When that – if you change that planned land use designation, that element of their consideration goes away.
- Dunn: Alright. So, we change that and they are able to wrap their heads around all these other issues and go forward in a manner which they think would be best for the town.
Staff answer: Right. Another bullet that was included was decreasing the residential along Tuscarora Creek to accommodate more usable space. Here I will say this is an opportunity for good density versus bad density. Different types of dwelling units style. For instance, multi-family or two over two would still achieve a unit count that may be desirable for the applicant but affords more opportunity for land area for active recreation. So, I don't know that a decrease for the sake of numbers was actually communicated here. I think there are opportunities to do different dwelling unit styles to still get a density threshold that is marketable and feasible for the applicant yet provides more usable open space.
- Dunn: And who didn't adequately communicate that?
Staff answer: Probably staff. That's it in a nutshell in terms of looking over and pulling out the bullet points.
- Dunn: Okay, I think that's all I have. It sounds like we have got to decide for you tonight which direction we want to move forward rather than just kicking this down the road.
- Mayor: We have a major problem. There is a lot of vagueness. This is, I think, the most vague application and staff report I have ever seen.

You are being very vague and I am not being critical of you, because I think you are stuck with an application that really is not ready for any decision, but you are being vague in what you are asking us to do. Now, I can either take your question for direction to planning commission as do you approve of this land use change and that is the only question we are dealing with or I can take it as we have got to deal with about 20 different smaller questions in addition to that. There are a lot of problems with this application as I see it and I think it should go back to planning commission, but we really haven't dealt with all of them, so let me get started. First of all, let's talk about our definition of cut through traffic, because I think it is inadequate. We are defining cut through traffic as traffic that does not begin and end in the town of Leesburg. That is not what cut through traffic means to the neighborhood. When I live in Foxridge, but in order to get to Dave's neighborhood, I cut through Virginia Knolls, to them that is cut through traffic. We are saying it is not because I start and end in Leesburg. That is an irrelevant definition to the neighborhood. So, as far as I can tell, this application in its current form, if approved will generate a whole lot of cut through traffic, yet we are saying nope, none at all. So, I have a real problem with the way we are defining cut through traffic here. We haven't even talked about why there is no proffer – as far as I can tell – to save the trees in the 90 foot right of way that we are reserving for the Greenway extension. Why isn't there a proffer – we have discussed this before with the applicant and thus far it appears to be the applicant is not saying anything other than if I want to clear cut a 90 foot wide swath, I am going to do it. I don't think that is appropriate and I don't that is in the best interest of the residents of Virginia Knolls and the Townes of Vanderbilt and the folks in the condos along Gateway. So, I am very puzzled by the applicant's refusal to preserve those trees, because the 90 feet are not needed unless the Greenway is going to be extended. We have absolutely – we have no staff discussion really of the fire department proffer, which appears to be very well crafted to protect the applicant because what it says is as long as our fire department is predominantly volunteer, then the proffer applies, but if not, then it doesn't. Well, we know that fire departments in this county are transitioning from all volunteer to largely professional, so at what point is the applicant going to say okay, I am not giving you any money for fire department and yet from a public safety standpoint, there is no difference in the need for a fire proffer today when we have a mixed volunteer/professional fire department and that point at which it is 80 percent professional or 100 percent professional, so I don't understand why we haven't tried to do a better job of persuading the applicant that we need a more solid fire proffer. Then we get into the whole thing with the school proffer and according to the memo from Sam Adamo, this project is going to generate over \$8 million in necessary school capital facilities and over \$2 million a year

in school operating costs and we are getting a pittance of that, if anything in these proffers, so I think those are completely inadequate. Then I am a little nervous about the way the proffers read when it comes to reservation of right of way for the streets that will need to be built. If I read these proffers one way, it looks like all the applicant intends to do is reserve right of way and not build anything. Well, I don't think that's adequate. So, we've got some major problems with those proffers as well. You know, I worry very much about the level of density up against the pond, up against the Greenway because basically what you are doing is saying well the townhouses that are right around the Greenway, they are going to be the noise barrier for the townhouses behind them. And I don't see it as a big plus to have your front door looking at the Greenway. I understand where the applicant is coming from – well you will have your back yard with your own townhouse acting as a sound barrier, so maybe you won't hear as much noise, but quite frankly I'd rather have a thicker buffer around the bypass where the Greenway enters it and a thicker buffer on the southwest corner of this near the pond and then if the Greenway ever is extended, my concern is if those townhouses on the eastern end are permitted to be built that close to that 90 foot right of way, they are going to be right up against the Greenway, of course, as will some of the townhouses in Virginia Knolls. So, I just see a whole slew of problems with this at this time. I know I agree with other council members that these are some of the problems the planning commission is there to try to resolve before it gets to us, but there are just so many problems with this at this point, I just don't see how Council can vote on it one way or another unless to just disapprove it, but to go back to your question, it seems to me the only thing that you could logically could really be asking us is do you think it is a good idea to scrap the Crescent District Plan and replace it with residential? I mean that is the fundamental question of the evening, so if that is the only question you need answered, I mean we could probably answer that either tonight or tomorrow night, but I frankly would not be able to support it tomorrow night at all in its current state. But, that's where I am coming from, but I know that Dave has other questions.

- Butler: One question I have is you said that the layout has changed since the planning commission dealt with this application the first time because that is one of the primary thing that the planning commission should deal with. They shouldn't be dealing with whether the houses are 16 feet wide or 18 feet wide or 20 feet wide. That is either up to the BAR if it is appropriate for the BAR to be discussing that or it is up to the developer to decide what he can sell. I mean, one of the problems that we tend to have some times with the planning commission, or on Council, we are trying to do the developer's job for them, when it is not our job. But, layout is certainly a planning commission issue and I wondered what has changed.

Staff answer: The most significant change was the addition of a street here that broke this building up. They lost five units. The amenity areas based on the creek improvements to capture their BMP reduced the need to have all the collocated BMP facilities, for the most part most of the interior amenity areas are all now active. There is no BMP there whatsoever. Those are the big ones that come to the top in terms of significant changes that I have had time to look over. Other than that, again the density was decreased a little bit. They addressed some of the access issues that we had. For the most part, I think that is the biggest changes that were made to the plan.

- Butler: Okay, so it doesn't seem to be too significant. Who made the change to the road?

Staff answer: The DCSM and the Zoning Ordinance necessitated this change. So, the list of 57 were based on ordinance requirements. This was one that they were able to address.

- Butler: Did the planning commission address that road?

Staff answer: No.

- Butler: So, that is a brand new thing. It still seems to be pretty minor, so if Council decides that they want to send to the planning commission, I think that is find, but I am not sure I am seeing any reason why it would have to go back to the planning commission. Certainly, there is one point in sending it back to the planning commission as long as it is the same town plan without it being amended, because to Tom's point, I am not sure if I was the planning commission and I got this again, I would say why is it coming back here again, nothing has changed, so what is the point. So, just a couple of other quick things – we can deal with them later. I don't care. We are not ever going to get four lanes of a Greenway extension. The cost of doing that would be a zillion dollars and it doesn't change much. Just to give you one example, it says here potentially 60 percent increase on – did it actually say King Street? I forget. Anyway, King Street north of the bypass. Well, if it is dumping off into Catoctin Circle, then the 60 percent increase is only going to be between the bypass and Catoctin Circle. It is going to be the same amount of traffic that is north of Catoctin Circle. So, I am not sure if the traffic increases between the bypass and Catoctin Circle – basically who cares? That is a pretty short stretch. So, there are things like that that just sound a lot worse than they are. The two lanes of the road as opposed to the four lanes is actually a very good thing for the neighborhood because the two lanes – especially if there is parking on both sides of the two lanes, then provides a natural traffic calming through the neighborhood and reduces the incentive for people to cut through. We have the same issue we are trying to deal with on Hope Parkway. If you make it a four lane super highway all the way from King Street to Gateway Drive, then it is going to encourage more cut through, which is what we don't want. So, the two lanes, as opposed to four, is a much better

thing for the neighborhood. I hope that is clear to everybody. Two lanes, much better than four for the neighborhood. It is going to produce much less cut through traffic. It is going to produce slower speeds and the residential generates much less traffic than commercial would, so all those things are better for the neighborhood. But I think, my recommendation for what we do tomorrow night is to vote on the plan amendment and the text amendment and whether we want to send this back to the planning commission, yes or no. I think if we don't do those three things, I am not sure what is the point of doing anything further.

- Burk: You said BMPs have changed. Is there any maintenance requirements within that, Mike?
Staff answer: For the stream restoration – none that I am aware of.
Ackman: Every type of BMP has its own unique type of maintenance responsibility. So, there are maintenance requirements for the stream restoration and that would be up to the HOA unless the Council were to decide to take that on for them. But, typically the types of things that need to be done are the little pools that are there need to be cleaned out from time to time. It needs to be where the brush is growing up just a little bit just to kind of help with the velocity – it sometimes catches trash and that will need to be cleaned out from time to time. Every type of BMP is a little different. If you have a structural or manufactured BMP, then what happens is they have to be cleaned out with a vactor truck or something of that nature because the same type of thing happens – silt build up, phosphorus build up, trash build up, so each individual type of BMP has it's very own unit and distinct type of maintenance responsibility and when the plans are approved, the plans have to include that maintenance responsibility – who maintains it, what the maintenance program is, and then it has to be maintained yearly with the certification sent to the town from a professional engineer stating that it is functioning as designed.
- Burk: So, the town doesn't take on the cost of it.
Ackman: We wouldn't have to because it is their BMP to maintain. It is on their property. It would be up to the homeowners to do that – the homeowner's association but in this particular case it would probably be more of a community owner's association because it is commercial and residential development.
- Burk: Okay. One of the guiding questions that I keep trying to figure out is we spent 10 years creating the Crescent District Plan. We worked on it. We created what we wanted on it and then the first application that comes down, we are going to change it. What is the justification from changing that from commercial, which is something that we all had talked about that we needed commercial – that we needed to preserve commercial and then the first application that comes from the Crescent District changes it from commercial to residential? Where is the justification? Where is the reason why?

Staff answer: The zoning ordinance has five approval criteria for approving rezoning applications. It is staff's opinion that none of the criteria have been met. The applicant's justification – I will let them explain it, but they believe it is a more compatible land use.

- Burk: But the five things that the town has said are the reasons why we accept changes, none of those are met?

Staff answer: In staff's opinion, no.

- Burk: Will that road, Davis Avenue – will it ever have to be four lanes? Most certainly in the future at some point will there ever be demand for it to be four lanes?

Staff answer: I don't know that I can answer that question. Is there the likelihood for any piece of infrastructure to be widened? Time will tell. We anticipated there being commercial development and anticipated a connection to the Greenway. Could there be the necessity to widen it in the future? Potentially, yes.

- Burk: And who would have to take on that cost?

Staff answer: It would be the town. We would have to condemn the right of way and build the infrastructure.

- Burk: So, there is no right of way even reserved?

Staff answer: No ma'am.

- Burk: You all [the applicant] are going to answer questions. You are not going to show a presentation?

Gleckner: I was just going to briefly – one of the questions was why are we proposing the plan amendment. I was going back...

- Burk: The only reason I was asking is this isn't a public hearing and so I don't want a presentation when we don't have the public.

Gleckner: I understand that. I was just going to use the slides to talk about why we were proposing the plan amendment. And then I have other slides if we needed to refer to them. But that is not a presentation. Then I was going to try to address some of the comments that were asked of staff, if that is appropriate.

Briefly, this slide is where we are presenting our justification for the land use change in the plan amendment. It is basically two fold. We believe that the residential is a more compatible land use given what is around it. The whole gold area is residential and we are proposing to change this area to the residential designation. We are keeping a significant amount of commercial in the northern neighborhood. The other factor for the planned land use amendment is based on our studies, as the land owner, we don't believe that commercial uses are a viable use of the property there – that there isn't a market there for commercial use, so we want to make a viable commercial area in the pink areas. Again, that is an extension of where the pink is – that designates commercial elsewhere and then provide more residential to help support those commercial areas and in terms of the comment about making a whole sale change to the Crescent District plan – it is

one land bay that we are asking to change. The Town planned and zoned 100s of acres and this is just a 25 acre portion of the Crescent District. We are applying a Crescent district sub district to the land bay and we do meet those criteria, so we are well within the Crescent Design District. We are changing one land bay designation. Then in terms of the road plan amendment, because of our traffic studies, we are showing that the traffic generation through here, and again a traffic study takes background traffic into account, not just site generated traffic and we are well below the thresholds for a four lane roadway. Therefore, there just doesn't seem to be a point in building a four lane roadway where a two lane roadway is sufficient to serve the traffic. The Crescent Design District specifies a road section and we will be following the Crescent District road section design completely for the two lane road rather than the four lane urban boulevard. Additionally this is more compatible with the Gateway Drive, which it will be connecting with. Again, because of the concerns mentioned by the residents, we also think it will be more compatible with what they want to see in terms of traffic going by them. Now, in terms of the other comments that were made tonight by town council members, staff generated that list of roughly 57 comments that was referred to at the town council public hearing. We did submit responses to all 57 comments. We believe we have addressed those comments. It is clear that we made significant progress on the stormwater management/BMP comments with the Department of Plan Review. Because of Mike's well deserved vacation, he just hasn't had a chance to review those other comments that we responded to. So, we did; however, make an effort and came up with solutions to all of those comments. In terms of the proffers, we have not revised the proffers because some of the other elements need to come into play before we revise the proffers; however, we are prepared since we had our signed proffers submitted, the town council did adopt the new school proffer policy, so we are prepared to keep our same proffer contribution amount, but we will make sure that the new school proffer money gets that full proffer contribution. Then we will use what that balance was from the former amount and the new amount towards the purchase of Old Izaak Walton Park if that is what the Town Council wants. We thought that would be something that the Town Council would want to have. We would also add the \$390,000 or the \$1,000 per unit park contribution towards the purchase of Old Izaak Walton Park. So, school proffer money will go to schools, proffer monies would go to purchase of Old Izaak Walton park and then that delta would also go towards the purchase of Old Izaak Walton park. In terms of the timing, again we can meet with the staff and work out the details of it, but we do need to create the parcel that needs to get dedicated to the town, so there just has to be some town approvals, applications and approvals – to create the park dedication parcel. So, we can't do it the day after the

zoning. I believe our purchase contract has us doing it by the end of December 2016, so we have a year in which to work on that. Again, we want to do it up front, but we can't do it on day one just because we have to prepare the plan. In terms of timing of the commercial, again, we thought that the completion and construction of Davis Drive including the bridge over the flood plain – that is a road connection called for in the town plan – we thought it was a significant connection. We know some of the concept behind the Crescent Design District is to have interconnected grid road pattern, so this is contributing to that. We have proffered to do it up front, so that is a very significant up front cost for us. Therefore, we will just build whatever we can build when we can build it to help support that up front proffer. We did have a business come to the town council public hearing. They are interested in locating in Crescent Parke – so we think we will be successful in recruiting businesses and getting that going, particularly with something like that beer garden as the catalyst for others. So, we are not favoring the residential over the commercial, but because of that road proffer, which we thought was being done for the town, that has to drive everything. In terms of the questions about the stream reservation, just to clarify we have 800 linear feet of stream where we can provide stream restoration on both sides of the property and also speaking to stormwater management and BMPs, because of what this new strategy is, we can take the BMPs out of our pocket parks and open space amenities within the community, which we were previously providing BMPs. Mike hasn't had a chance to review it yet, but I think that certainly addresses the comment that staff had made about our open space. Additionally, the Crescent Design District is a very prescriptive district. It sets forth all kinds of regulations – more so than in your other districts and in particular, the P district, so we are following those regulations, so we do meet the open space requirements for the CDRH district anywhere that we are developing. So, we are following those regulations and meeting them, but I would like to point out in terms of open space, our land bay that we are zoning CDRH is approximately 26 acres. If you take the Old Izaak Walton park and the stream valley park on our property and all that area that is shaded green, that is roughly 26 acres, so we have a lot of open space here and some we are providing amenities in the open space area, so we do feel that we are not deficient in that area and no one has pointed to a standard and said where are we falling short. They are just saying it is not enough, but it is hard to say we don't have enough. Again, taking BMPs out of our pocket parks, goes a long way to addressing staff comments. The comment about trying to address TMDLs coming down the pike. We cannot anticipate every ordinance requirement that could possibly change in the future. The state just went through a very comprehensive re-write of their regulations and we are meeting those and so there is just not a way to anticipate those. In terms of removing trees in the

right of way reservation, we can commit to reserving trees in certain areas but we do have to grade in portions of the right of way reservations to meet flood plain requirements and I would have to call the engineers up if you want a further explanation of that. But, regardless of saving trees or not, we are prepared to replant with significant trees, if we can't save trees. In terms of the fire department proffer, that has been a standard proffer for a very long time. I think part of the justification for fire and rescue proffers were that they were volunteer organizations, but if that is an issue, I am sure we can revisit the wording of that proffer. That is not significant. Finally, in terms of going back to the planning commission, we did spend nearly the full 100 days at the planning commission. So, we did not bypass them. The way the process went, we ended up having to make revisions to the plans based on their final meeting and comments and that is what came forward to the town council public hearing. Obviously, we did not meet every one of their recommendations, but we did make revisions based on that, but we did spend a long time at the planning commission level and we would respectfully request that we work with staff and the town council to try to resolve the remaining issues with regard to that. That is my best for answering those questions now, but we are prepared to continue to work with you on this.

- Hammler: Chris, could you just clarify that point that you made about the requirement to actually cut down trees for flood plain requirements. I guess I missed the logic there because it strikes me that preserving the trees would support issues of that regard.

Hobie Mitchell: The question is – we don't want to clear more than we have to. We talked to the residents about not doing it. There is a CLOMR approved for the bridge crossing at the flood plain and the CLOMR requires clearing at the top end of the – I'll call it the stream channel and that is what we have to clear because of the CLOMR requirements for grading. What we told the residents over there, because it was important we talk to them about what we are going to do in the buffer. We don't want to clear any more of the buffer. In fact, we took things out of the buffer to make sure that we preserve, so the goal is not to do anymore than is absolutely necessary. We think it is positive to do it that way. We will even enhance that buffer. We will transplant hopefully with some larger trees, like we do with tree saves and replant that whole area where we do have to clear. We have made that clear to the residents. We are sorry we have to do that, but it is a requirement of the engineering. So, that is the area that we are talking about. We are going to try to transplant some large trees. We are talking about this area up in here where we have to clear because of the CLOMR because of the bridge crossing. This is the area that we are talking about. Everything else here we want to preserve. In fact, we want to enhance it. We told that to the residents, but this particular area in here, we have to change. It has to be graded. We talked about

if the opportunity exists, we have a 90 inch spade truck that we use – in fact we are using it down at Crescent Place right now and we are going to move some big trees in there to enhance the landscape that is in there. Okay? You know your question about the fire and rescue – frankly it is pretty old and outdated. Frankly, we could change that because I understand what you are saying. The other request – assuming that you move forward tomorrow with the concept plan and the text amendment – we are pretty close to a lot of things. We have done a lot of work. My suggestion is, allow us to have one work session with you on say December 7 and I bet we will hammer out most of the things you've heard. We have heard some other things here tonight and we will address those during that time period with the staff. I am guessing in a work session with you - one work session, if we can't make it work with that, then you can go back to the planning commission, but I am guessing if we work on it on the 7th of December, we will have resolved many of the things that you talked about. But, I want you to consider that.

Gleckner: Your comments about the right of way reservation. The way – and my understanding – planning such as it is, rights of way reservations are to allow a planned road to go through that hasn't been designed yet. You referenced how the county does its planning. In its county wide transportation plan it has designated every road type and within that road type, it says what the right of way width needs to be. An applicant then knows what the right of way width needs to be. We thought this was a four lane roadway. We reserved the 90 feet. It can't be a guessing game for applicants. The jurisdiction has some responsibilities to say what these need to be so we have provided the right of way reservation for a 90 foot right of way – a four lane roadway, so we were basing that on county plans for four lane roads.

- Dunn: What percentage will the HOA go over to the owners? What percentage of sales? The HOA will remain in the developer's hands for a certain period of time, I assume. That is traditionally how it is done. Is it going to be 75 percent, 90 percent. When would you estimate that would happen, time wise?

Mitchell: What we try to do generally is get the residents involved sooner, rather than later. So, there is a place where we lose our declarant rights. It usually happens about 90 percent, but what we try to do early on is get the residents....

- Dunn: Well, the residents are involved, but they usually have one vote and you have 20 votes. It is usually designed because the developer has spent the money and they need to be making the decisions to continue to get the project completed, so I understand that. I am just asking that question for anticipated issues that might come up and how we structure the lease with Izaak Walton.

Mitchell: Well, early on if there was a lease, it would be mandatory and we will have to work it out with your council – that it be

mandatory that it be turned over at the request of the town. So, it would be held by a trustee, so it would become automatic. At the very minimum, at the end of the term of lease, we would dedicate that property to you no matter what. So, we would build it into an agreement that it would be automatic turn over to the town. You could ask for it day 1 or you could ask for it – well, you wouldn't even ask for it at the end of the term of lease – our proposal would be you get it. It is your property. During that time period too, our structure would have been that you pay almost next to nothing. All we want to do is cover the taxes. Frankly, the taxes could be reduced significantly, especially if an HOA owned it because assessment on HOA property is minimal. So, there is a potential there for the town to save literally 95% of what they are paying now towards it in the long term or the short term. But that is the kind of things we can – you know we are there about how you want to structure it. We checked our other HOA counsel and know that we can do it. We will have to work with the town's attorney to make sure that it all happens properly.

- Butler: Just a quick question for staff – out of the 57 issues, the applicant has said they have at least given a response to all 57, is there any chance that by tomorrow night, you might be able to tell us and say theoretically if we passed the text and plan amendments and with the response from the applicant, how many of those issues would be left or is that too much to do in 24 hours?

Staff answer: I can do my best.

- Butler: Okay, because an estimate would kind of be nice because obviously if we are at 54, then more chance it goes back to the planning commission. If we are at 3, okay then it probably doesn't need to go back to the planning commission, although I suspect it will be somewhere between 3 and 54.
- Burk: I am concerned. I don't want you to come back here with having partially looked at it because you didn't have enough time and come back and say well 10 of those that I read were okay because we don't know what the rest of it is. Be very careful with that. If you can't do it, then don't do it.

2. Additions to Future Council Meetings

Vice Mayor Burk: I would like to add town utility billing amendment initiation.

There was consensus to add this to the November 23 agenda.

Council Member Butler: I would like to add the plan amendment, text amendment and the planning commission questions on Crescent Parke to tomorrow night's agenda.

There was consensus to add this to tomorrow night's agenda.

Council Member Martinez: On information items, we have this predatory towing. I want to bring it up that I was at an event a week ago and there was some people talking about predatory towing in Lansdowne. I thought it was really ironic that we have somebody else in this part of the county talking about it.

Council Member Hammler: I will officially see if there is support to have staff begin discussions with VDOT about the Greenway extension and its status with the town.

There was consensus to direct staff to initiate discussions with VDOT regarding removal of the Greenway extension from planning documents.

Council Member Hammler: Madam Mayor, since the last time we were all together, you have been elected to new office. So, congratulations. That certainly begs the question from a new business perspective of when you will officially resign so Council can determine – we have like 45 days to figure out the methodology for filling the seat, so do you have guidance on when that will take place.

Mayor: The end of December.

Hammler: So, the letter will come at the end of December, so we should initiate as a council determining how within 45 days of that.

On a motion by Council Member Butler, seconded by Vice Mayor Burk, the meeting was adjourned at 9:45 p.m.

Clerk of Council

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