

Questions Regarding Calfee Proposal

1. The RFP, which was drafted prior to the MAC repeal, directs that the winning bidder follow the Comp Plan. In light of the subsequent repeal of the MAC, a large portion of the Comp Plan – the portion that sets forth most of the goals and objectives for Vienna’s commercial district – is no longer operational.
 - a. How is the winning bidder going to fulfill the terms of the contract, given the disconnect between the Comp Plan and the town’s zoning ordinance? Does this term of the RFP need to be revised and rebid?
 - b. Alternatively, if we do not rebid, can the Town ask for an MOU or written statement from the winning bidder which recognizes the fluidity in the Maple Avenue commercial district vision, and a commitment to work with Council to clarify that vision as the project proceeds?

Staff and Town Attorney Response: “The comprehensive plan itself is not an instrument of land use control. Rather, the plan serves as a guideline for the development and implementation of a zoning ordinance. The zoning ordinance implements the comprehensive plan by classifying specific parcels of property.” *Board of Supervisors v. Safeco*, 226 Va. 329, 335 (1983). The Supreme Court has described the comprehensive plan as an "advisory guide" that does not bind the locality. Since the comprehensive plan is only an advisory guide, a local governing body can make zoning decisions that are inconsistent with the comprehensive plan. However, and that being said, the land use goals in Vienna’s comprehensive plan do not include specific references to the MAC Zone (pg. 19). They include the following: “maintain the balance of land uses; encourage a vibrant central business district; encourage housing for residents of all age groups; protect and preserve the natural environment; create a more walkable and bikeable Vienna; and ensure that Vienna retains its unique single-family residential character and quality of life.”

2. In light of the fact that the Comp Plan informs the Town’s zoning and subdivision ordinances, shouldn’t the Comp Plan revision be completed first. If not, how will the update of the Comp Plan and the redrafting of the zoning and subdivision codes be carried on simultaneously? How will the two projects be coordinated?

Staff Response: Please see previous response. Specific to the comprehensive plan, Virginia Code §15.2-2230 requires that, “At least once every five years the comprehensive plan shall be reviewed by the local planning commission to determine whether it is advisable to amend the plan.” Vienna’s comprehensive plan was approved by Town Council on May 23, 2016. The Planning Commission will be conducting a review of the comprehensive plan in 2021.

Town Attorney response: If any proposed Zoning Ordinance amendments clearly suggest zoning goals that are contrary to the Comprehensive Plan, such goals of the adopted amendments can and should be included in subsequent Comprehensive Plan amendments. However, unless the Town Council wishes to do an “out of turn CP amendment” (other jurisdictions do from time to time), and unless there is a fundamental change in zoning goals suggested by the specific Zoning Code amendment, such an amendment may not be necessary. In short, the adopted zoning ordinance of a locality should strive to be consistent with the goals of the CP, but the CP does not have the specifics found in the zoning code provisions to achieve the goals.

3. If the consultants are going to be presenting the Town with various options for commercial zoning along Maple, how do we ensure that:

a. The consultants have a grasp of all of the framework options available in Virginia?

Staff Response: The Calfee Zoning team includes Venable LLP land use attorneys located in Tysons who are knowledgeable of Virginia land use law. In addition, the scope of work for RFP 20-05, Clarify, Simplify, Reorganize and Update the Subdivision and Zoning Ordinance, called out the desire to “explore the possibility of potential new processes, such as, but not limited to, special exceptions ... when reviewing and potentially revising the commercial zone districts.”

b. That options will be presented at an early stage, while still in concept form, for public input?

Staff Response: The detailed scope and budget provided by Calfee Zoning includes numerous opportunities for public input for each of their proposed process modules. Public engagement will be led by YARD & Company for the consultant team. Their efforts will be supplemented by DPZ staff. Our community engagement goals include 100% community awareness; community co-creation rather than community buy-in; and engaging the community with creative, out-of-the-box outreach and input efforts, along with traditional and required in the era of social distancing.

4. The scope of the project includes the subdivision code, which governs streets and roads in Vienna. Yet there is almost nothing in the RFP and the proposal itself regarding streets and roads. How can we ensure that these portions of the code are carefully assessed and updated?

Staff Response: The scope of work for RFP 20-05 states that the update of the subdivision ordinance must comply with State statutes, specifically Virginia Code §15.2-2240 through 2279.

5. In light of the delay in awarding this proposal, what steps can the town take to ensure that the consultant follows a revised schedule which allows for the same amount of time set forth in the original proposal?

Staff Response: The detailed scope and budget dated April 29, 2020 was provided during the early weeks of the pandemic when it was unclear when Virginia would be “reopening.” As a result, the project kick-off was planned for late summer. Calfee has indicated they only need a few months to conduct the existing information review/diagnostic. The final schedule will be determined upon contract award.

6. If Covid social distancing recommendations are still in place, how can we conduct meetings, work sessions, and citizen events related to this project?

Staff Response: YARD & Company has identified several ways to engage the community as shown in their Engagement Toolkit for Spatial Distance. Staff has also identified several innovative ways to engage the community including the following: community ambassadors - tap into collective knowledge and community connections of Town Councilmembers and Planning Commissioners to assist in spreading awareness of the update and collect information; online public presentations and forums which allow community members to participate from the comfort of their homes and businesses at times convenient to them; partnering with local businesses to provide information to customers of businesses, i.e. going through a carwash, waiting to pick up food, flyers included in deliveries; articles in the Town’s newsletter, flyers, postcards & posters that inform and educate community about the process and opportunities to share thoughts and provide input.

7. If, because of poor performance on the part of the consultant, or further, unanticipated pressures on the Town budget, does the town retain the right to suspend this project after any of the specific modules are completed? If so, what is the specific language in the contract that allows the town this right?

Staff Response: Yes. Section 10 – I. Cancellation of Contract: The Town of Vienna reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty upon ten (10) days written notice to the consultant. Any contract cancellation notice shall not relieve the consultant of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

Town Attorney Response: The Town has standardized its contract termination provisions and uses the same cancellation provisions for all of its Professional Services RFPs.

8. Describe the steps in the process where there will be the opportunity for citizens to present their ideas and reactions to the broad conceptual outlines of the new codes and the draft ordinances.

Staff Response: Please see the responses to questions 3.b and 6.

Town Attorney Response: Please see the Zoning Amendment Process memo provided by the Town Attorney.

9. Once the two ordinances are in draft form, what opportunities will the Planning Commission and Town Council have to propose amendments? In particular, will both bodies have full mark-up authority for the final draft ordinance?

Staff Response: Virginia Code §15.2-2285.A. states that, “The planning commission of each locality may, and at the direction of the governing body shall, prepare a proposed zoning ordinance including a map or maps showing the division of the territory into districts and a text setting forth the regulations applying in each district. The commission shall hold at least one public hearing on a proposed ordinance or any amendment of an ordinance, after notice as required by §15.2-2204, and may make appropriate changes in the proposed ordinance or amendment as a result of the hearing.” Virginia Code §15.2-2285.C. states that, “Before approving and adopting any zoning ordinance or amendment thereof, the governing body shall hold at least one public hearing thereon, pursuant to public notice as required by §15.2-2204, after which the governing body may make appropriate changes or corrections in the ordinance or proposed amendment.”

Town Attorney Response: Please see the Zoning Amendment Process memo provided by the Town Attorney.

10. How many sessions on public input are anticipated? In what forum and form? If more are needed, is the winning bidder willing to participate in those meetings?

Staff Response: Please see the responses to questions 3.b and 6.

Town Attorney Response: Please see the Zoning Amendment Process memo provided by the Town Attorney.