Albemarle County Planning Commission
February 8, 2000

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, February 8, 2000 in the County Office Building. Members attending were: Mr. William Finley, Chairman; Mr. Dennis Rooker, Vice-Chairman; Mr. William Rieley; Mr. Jared Loewenstein; Mr. Rodney Thomas; Ms. Tracey Hopper; Mr. Pete Craddock. Other officials present were: Mr. Wayne Cilimberg, Director of Planning and Community Development; Mr. David Benish, Chief of Planning & Community Development; Mr. Ron Keeler, Chief of Research & Special Projects; Ms. Elaine Echols, Senior Planner; Mr. Daniel Mahon, Planner; Mr. Mark Graham, County Engineering; Mr. Greg Kamptner, Assistant County Attorney.

Mr. Finley announced that Regular Item #6a (SUB 99-318) would be considered after Public Hearing Item #5b (SP 99-76).

Other Matters Not Listed on the Agenda from the Public
None were offered, and the meeting proceeded.

Consent Agenda

SUB 99-220 Northwoods Preliminary Plat - Request for preliminary plat approval to create two (2) lots and a residence on an internal private road.

The Commission moved, seconded and unanimously approved the Consent Agenda as presented.

Item Requesting Deferral:

SP 99-77 Evergreen Baptist Church (Proffit) - Request for a special use permit to allow for the conversion of an existing farm building to a church on 10.65 acres zoned RA, Rural Areas. The property, described as Tax Map 46, Parcel 38C is located on the eastern side of Proffit Road (Route 649), approximately 1,200 feet north of the railroad crossing. This property is located in the Rivanna Magisterial District and is not located within a designated development area.

Mr. Loewenstein announced he would not participate in discussions and votes on item SP 99-77, as he owns and resides on the adjoining parcel within fair proximity to the property under application.

Public comment was invited. None was offered, and the matter was placed before the Commission.

MOTION: Mr. Rieley moved, Mr. Rooker seconded approval of deferral of SP 99-77 to February 22, 2000. The motion passed unanimously.

SP 99-72 Mary Ruane - Request for special use permit in accordance with Section [10.2.2.31] of the Zoning Ordinance which allows for a home office Class B. The property, described as Tax Map 123 Parcel 18C, contains 63.95 acres, and is located in the Scottsville Magisterial District off of route 618 (Jefferson Mill Road) at the end of Full Moon Lane. The property is zoned RA (Rural Area). The property is not located within a designated development area (Rural Area 4).

Mr. Mahon presented the staff report, noting that the applicant is proposing to establish a business in a dwelling currently under construction, to provide wholesale insurance programs on a nationwide basis. All business is generated by phone, fax, mail and internet; the business will be made up of two owners and one

full-time employee. The office hours will be Monday through Friday, 9:00 a.m. to 4:30 p.m. Staff recommends approval with conditions that were offered by and agreeable to the applicant.

Mr. Thomas asked what normally anticipated traffic would be in a rural residential area.

Mr. Cilimberg responded that the standard used is 10 trips per day per dwelling unit; the number of dwelling units is based on how much is by-right. He said that in this case the owner is staying home instead of coming and going to work, which reduces commuting trips; the traffic the employee will generate makes the balance the same.

Mr. Rooker asked what the floor area of the dwelling unit devoted to the business is.

Mr. Ron Ruane, the applicant's son and representative, addressed the Commission, stating that the floor space is 750 square feet total.

Mr. Rooker asked what is on the balance of the 63.95-acre parcel.

Mr. Ruane replied that it is woods an open pasture, and the plan is to keep that open. He said that the one acre parcel used for the business is part of the entire parcel; it has not been divided.

Ms. Hopper asked if the statement in the staff report regarding no retail traffic was correct.

Mr. Ruane confirmed this, stating that his insurance business is wholesale, with no business done within the state of Virginia. He emphasized that his entire business is run from fax, phone, computer, etc. Mr. Ruane said this is a family business that has been operated for 22 years, and they have no reason to go into anything but wholesale insurance.

Mr. Ruane said that the business is run by his mother, and they are building a house there to house their home office. He said that he learned when he moved to the county, that he needed to get a special use permit in order to have a full-time employee. Mr. Ruane added that his business causes "zero impact" to the community.

Mr. Loewenstein asked if other than the employee would there be any other trips to and from the house associated with the business.

Mr. Ruane replied that he makes a few trips a day to Scottsville, but there are no customers at all coming to and from the site.

Mr. Ronald Wyncod addressed the Commission, stating that he and his wife sold the property to Mr. Ruane, and said the property is configured so it will not disturb surrounding neighbors and will keep its rural nature. He said he has no objection to the Ruane business. Mr. Wyncod added that the road he designed for the Ruane property follows along the tree line so it would conceal traffic to the site.

There being no further public comment, the matter was placed before the Commission.

Mr. Rooker suggested adding a 5th condition that states "no retail business shall be conducted on the site." Mr. Loewenstein and fellow Commissioners agreed.

MOTION: Mr. Rooker moved, Mr. Craddock seconded approval of SP 99-72 with the conditions presented by staff and an additional condition #5 stating that "no retail business shall be conducted on the site." The motion passed unanimously.

SP 99-76 Starlight Farm Bridge - Request for approval of a bridge crossing the South Branch of the Hardware River on the above referenced 103-acre farm, zoned RA, Rural Areas. The property, described as Tax Map 99, Parcel 61 and Tax Map 88, Parcel 7B, is located on the southern side of Route 760, 1/2 mile south of Route 29 South. This property is located in the Samuel Miller Magisterial District and is not located within a designated development area.

Mr. Morrisette presented the staff report, explaining that the owner Starlight Farm is petitioning the county to allow for bridge construction within the floodway of the South Branch – a tributary of the North Fork Hardware River. Staff has noted that the bridge and its associated fill have been constructed without county approval; the bridge was constructed approximately 6 months ago, and a violation letter was sent out to the applicant on December 10, 1999. The SP application seeks to remedy the violation.

Mr. Morrisette explained that prior to the bridge construction, vehicles used to ford the stream on some property located to the west, which the applicant subsequently sold, giving up his ownership of the ford. The applicant installed the bridge with the intent of linking his north and south parcels for agricultural purposes. Mr. Morrisette said that the Open Space and Critical Resource plans define this area as a major stream valley; since the fill and the bridge placement are located in an area of open pasture land and no additional trees are destroyed, the intrusion into the stream valley appears to be minimal from a loss of aesthetic resources.

Mr. Morrisette said his main concerns are the environmental impact on the floodplain of this stream valley; Engineering has reviewed the situation, and first determined that the FIRM maps show a floodplain of 600 feet above sea level. The Engineering Department then required the applicant to provide a more detailed study as to the impact on the floodplain; the detailed study showed that the actual floodplain is actually 595 feet above sea level, 4 ½ feet below what the FIRM map shows. He added that this fill only raised the flood plain elevation up about ½ foot. Engineering did not feel the bridge and fill were a "grave detriment" to downstream flooding. Mr. Morrisette noted that a mitigation plan will be required for approval of the SP; the water resources manager will review and approve the plan.

Mr. Morrisette indicated he would be adding a sixth condition (Attachment "A") as drafted by engineering, which is standard with most applications, simply stating that the applicant will submit a joint permit application to the Virginia Marine Resources Commission for a permit to disturb state waters.

Mr. Morrisette said that there was not a road prior to the bridge construction, and emphasized that it is by-right to build a driveway/gravel road on a farm, as long as it's not serving residential traffic. He stated that an erosion control plan is required when 10,000 square feet or more is disturbed; Engineering has visited the site. Mr. Morrisette noted that some replanting needs to occur along the edge of the newly constructed road.

Mr. Morrisette noted that the southern parcel of the farm accesses off of Route 813, while the northern parcel accesses off of Route 760; this provides a clear connection between the two routes. However, the applicant has indicated that the sole purpose of this bridge is for agricultural purposes. Mr. Morrisette said that he has included a condition limiting the traffic to agricultural, and gating may be an option.

Mr. Thomas asked if the road could be used as a shortcut.

Mr. Morrisette said that it certainly could be, although the applicant has posting "no trespassing" signs to deter other area residents from using the cut-through.

Mr. Finley asked if the Virginia Marine Resources Commission still included the Department of Game and Inland Fisheries and Army Corps of Engineers.

Mr. Morrisette responded that it is a joint application, and the applicant has already received the application.

Mr. Rieley said he was confused about the benchmark for measuring the 100-year flood and its relationship to the 100-year floodplain. He said that the more detailed hydrologic study done establishes that the FIRM maps are off by 4 ½ feet, and there is some damming up and increase of impounded areas as a result of the structure. Mr. Rieley expressed concern about using the FIRM maps in evaluating the impact of the bridge.

Mr. Morrisette responded that the FIRM maps are approximate, and wondered if the ½-foot increase is that significant in this area, with a fairly wide (300 foot) floodplain area. "It's Engineering's analysis that it's not that significant of an increase."

Mr. Rieley commented, "So the fact that it is 4 feet below the FIRM map is really not that significant? Because it seems to figure fairly prominently in the report."

Mr. Cilimberg suggested that Engineering speak to that.

Mr. Mark Graham of the Engineering Department addressed the Commission, stating that he was directing the applicant and their engineer on the flood study. Mr. Graham said that Engineering took the FIRM maps and overlaid them with the USGS maps to approximate – as well as possible – and use that as a starting assumption on a floodplain. Mr. Graham emphasized that the FIRM has a 600-foot wide floodplain in the area; from the cross-sections that the engineer ran, the floodplain was determined to be 300 feet wide within the 100-year flood. "Through that, I felt fairly confident that the floodplain was much smaller than what was estimated in the [FIRM] map, and second that, based on the analysis looking at three cross-sections – one 100 feet below the bridge, one at the bridge, and one 100 feet above the bridge – that within 100 to 200 feet upstream of the bridge, any effect of the bridge had diminished to an immeasurable level."

Mr. Graham added, "In other words, the impact of the bridge is fairly localized right there at the bridge, and as you go further upstream – because we have a pretty good slope on this stream, that effect drops out."

Mr. Graham mentioned that the FIRM maps are done through approximated floodplains; there was no study done. When the Corps of Engineers prepared the maps, they carried their study up to a point, then used the USGS and quad maps to estimate where the floodplain is.

Mr. Rieley said, "It seems to me the pertinent information is what effect does this have on the 100-year storm….once you have a more detailed study, what the FIRM maps said is meaningless, because we know they're less accurate than the site-specific maps."

Mr. Graham said his biggest concern is that when surveyors prepare boundary surveys they will delineate the floodplain limit based on the FIRMS, and he wanted to make sure that the actual floodplain was smaller than what someone may assume that their floodplain was on their property.

Mr. Rieley asked if the impoundment of the 100-year storm causes any additional rise in water off of the property of the applicant, or if it's all confined to the applicant's property.

Mr. Graham replied that it does produce a small increase upstream, but it is diminished to a very small level by the time it reaches the applicant's upstream property line. He said that his rationale for deciding it was acceptable was that the floodplain width shown from the study was still much less than what was assumed from the FIRMs.

Mr. Rieley asked if this were a fresh application, with no existing bridge and a proper application in place, and the bridge was causing upstream flooding on adjacent property, if Mr. Graham would advise the applicant to raise the elevation of the bridge.

Mr. Graham responded, "No…even though you could conceivably build the bridge higher, so that the bridge itself was above the 100-year flood, on each end of the bridge…you would have had to put a substantial amount more of fill into the floodplain, further restricting the flow."

Mr. Rieley commented that there was no reference to the structural integrity of the bridge with water damming up on it, and asked if the applicant supplied information about the strength of the bridge in the event of the flood.

Mr. Graham replied that in the event of a 100-year flood, the railings would probably come off. "The bridge itself is an extremely well-built bridge. It's got very deep steel I-beams set on very large concrete abutments that are set back from the stream…even if a tree catches on those steel beams, nothing's moving there….I'd anticipate [damage to the deck and the railing]. We did try to anticipate that with the conditions that any repair or upgrading of the bridge, he'd have to consult with Engineering before he undertook that effort."

Mr. Rieley asked if there was something that needed to be done to protect people downstream from things such as the railings.

Mr. Graham responded that the railings are fairly small timbers, and he would rather have them break off in a big flood than cause an additional constriction on the flow.

Mr. Rieley asked why the condition for Engineering approval of replacement railings was stipulated.

Mr. Graham said he is more concerned that when the railings are replaced, they are not a "solid wall" which would cause constriction of water.

Mr. Rieley asked about the elevation of the I-beam in relation to the elevation of the top of the water in a 100-year storm in that location.

Mr. Graham replied that Engineering is assuming approximately 591-592, with the bridge deck at 594, and the 100-year flood at 596. "There's about two foot of water coming over the top of the bridge deck."

Mr. Rieley noted that all the girders would be completely submerged.

Mr. Rieley asked about the extent of the disturbance for the road and the bridge.

Mr. Graham responded that the total disturbance is about 1/3 of a mile at 20-25 feet wide. "If it was coming in in the proper way, as a submission before the [bridge] was built, it would definitely have required an erosion control plan…because it is an agricultural road, they could have been exempted from having to do anything."

Mr. Finely asked if the FIRM maps showed the location of USGS benchmarks.

Mr. Graham said that they did, but the closest one shown was at 29 where the Hardware River at North Garden crosses, which is over 1 mile away from this site.

Mr. Finley commented that a 4-foot difference could make a big difference to any home in the floodplain at the 600 elevation. "They will not give you a building permit for a house within the floodplain." He asked, "would [your study] be sufficient if there are homes in that area?"

Mr. Graham said that it would be, adding that there is a "large factor of safety here" with the flood maps indicating a 600-foot plain, when in fact it is probably 300 feet.

Mr. Finley asked if the study would be acceptable for FEMA.

Mr. Graham replied that it would not, and FEMA would require a detailed study for the whole section of the river. "That's quite an extensive effort. We're talking tens of thousands of dollars in engineering to perform that kind of analysis."

Mr. Graham said for one single home, a "map amendment" could be done, which is much simpler to get through FEMA.

Mr. Finley asked if Engineering's study would be adequate for a map amendment.

Mr. Graham responded that it would, adding that he looked for structures upstream that could be impacted, and did not find any.

Public comment was invited.

The applicant, Roy Coggin, addressed the Commission.

Ms. Hopper asked about the three dwellings on the two parcels.

Mr. Coggin explained that the and his wife initially bought the entire farm, and have now sold one parcel to a family that have built a house with an entrance on Route 760, far from the stream; the other parcel was sold and now also has a house on it which is on top of a hill, 40 or 50 feet above the river. "There are no other homes on my property or the property that I used to own anywhere near it." He stated that his house is ½ mile from the river.

Mr. Loewenstein asked how easy it would be for Mr. Coggin to monitor traffic through the parcels if people choose to use the bridge as a cut-through.

Mr. Coggin responded that he keeps a chain on the bridge now, because curious onlookers come to see "what's back there." He noted that the entrance is bigger than the average entrance, and people have assumed there is a development going in back there. "I'm just reassuring everybody that I have no plans of ever putting a development there."

Mr. Loewenstein asked if he had considered chaining the entrance.

Mr. Coggin replied that he would have to put a substantial amount of fencing up to block the entrance, adding that he does plan to keep the chain on the bridge.

Mr. Loewenstein asked if he objected to having that made a condition of approval.

Mr. Coggin said he has no objection to that, and has told his neighbors that they can use the bridge to transport farm supplies to their properties.

Mr. Finley commented, "It's a good looking bridge."

Mr. Rieley asked what the width of the bridge is.

Mr. Coggin responded that the bridge is 14 feet wide (inside dimension) and 39 feet long; the beams are 21", and the bridge will hold 6,000 lbs. per wheel.

Mr. Nimrod Clarke, the adjoining property owner, addressed the Commission. He said that if procedures had been properly followed, he would not be objecting. Mr. Clarke said that he got the impression the bridge had been approved. Mr. Clarke said that the applicant has had no delays or inspections in the building of his bridge, and has had no bonds placed. "He's now in a preferred position because he's already built it, and in my book, that's wrong." Mr. Clarke said that the precedent set is poor, because going without a permit seems to be an advantage.

Mr. Kamptner said that once in a while, applications are received when the applicant has already completed the act and then applies for a permit. He said that the permit should be evaluated on its own merits.

Mr. Rooker noted that the party has been cited for a violation, and whatever penalty is assessed with respect to the citation has or will be assessed. He asked about the county penalties for these types of citations.

Mr. Kamptner replied that with the Water Protection Ordinance, the county has sought civil penalties informally; the ordinance itself allows the county to impose a civil fine, which can be dispensed of without court. He noted that the county has had some Zoning Ordinance violations where the enforcement was delayed or never pursued because the applicant was seeking a permit that would allow the use.

Mr. Rooker asked what bonds would normally be attached to this type of building activity.

Mr. Graham said that typically on a project like this that is non-exempted (which is in this case is debatable), an applicant would have to apply for a plan, with a $350 application fee; a plan would have to be approved.

Mr. Rooker asked if this case would have been exempted or not.

Mr. Graham said that conceivably, this applicant could have built a road right down to the bridge as an exempted activity, and then come to the county for an SP to build a bridge across the stream. The bridge across the stream would have disturbed less than 10,000 square feet, and therefore would have been exempted from erosion and sediment control. "I honestly don't believe [the applicant] is aware of all these ordinances were…"

Mr. Graham said that once a plan was approved, the applicant would have had to post a bond for the re-stabilization of all the vegetation and any kind of control measures for the sediment. "There could have been a requirement for a plan…unless it was exempted to start with. If it's strictly for an agricultural purpose, the state law is very explicit that they're exempted."

Mr. Graham confirmed that the road itself and bridge itself could have been exempted. He added that if the applicant had claimed the whole thing was an agricultural activity, he could have exempted the whole thing in one shot.

Mr. Finley commented, "The reason it's before us is it's a special use permit because it was in the floodplain."

Mr. Rieley noted that one issue that has surfaced with private bridges for agricultural purposes is the width of the bridge to allow for farm vehicles to cross. "It's a very convenient width for potential future use as a subdivision road."

Mr. Graham emphasized that if this ever came back as a subdivision road, Engineering would have serious concerns about the load capacity. "We would want to demonstrate it's capable of holding a loaded fire truck…it's probably right on the borderline there…"

Mr. George Stevens, who owns a home nearby and rents out a cottage on Route 813, addressed the Commission. He said that the reason he is concerned is the possibility of connection Route 813 to 760. Mr. Stevens noted that the bridge is higher quality than most bridges, and is close to residential standards. He added that Mr. Coggin's entrance is better than many State Route entrances. Mr. Stevens said that if the bridge and road were ever opened up to through traffic, the cut-through would provide a shortcut of about 2.7 miles. He said that his concern is that the applicant is getting a bridge and road through the "back door," which could be a stepping stone to a thoroughfare.

Mr. Finley said, "I'm sure you would know it long before it became anything else."

Mr. Cilimberg stated that anything beyond the conditions imposed by the Commission or Board would require an amendment to the special use permit, and would require a public hearing process.

Mr. Thomas asked what the penalty would be for using it as a through-road.

Mr. Kamptner said that the permit would be revoked, and the applicant would lose all right to the bridge.

There being no further public comment, the matter was placed before the Commission.

Mr. Loewenstein said that one way to discourage use of the bridge for any other purpose than agricultural is to add a condition about the chaining of the bridge. He said that that it is important to consider Engineering's concerns that the bridge might not meet weight requirements if the road were upgraded for a different use.

Mr. Rooker suggested that Condition #1 not specify parcels, and should have an added sentence that the road on at least one side of the bridge shall remain chained or gated with a lock. Mr. Rooker also mentioned that there is a missing word in Condition #6.

Mr. Graham said that the missing word is "conditions," and should read "this permit's conditions."

Mr. Rieley asked Mr. Kamptner if approval by the Commission precludes civil action in the event neighboring property owners incur flooding/property damage as a result of the construction of this bridge.

Mr. Kamptner said that their action would not affect adjacent landowners' rights against the property owner if that were to occur.

Mr. Rieley asked about additional seeding and vegetative stabilization that needed to be taken care of as part of the bridge construction. He asked if there is anything that precludes the Commission from requiring that that type of work be bonded.

Mr. Graham said that for a typical road, no, but if the road is claimed as agricultural it is exempt.

Mr. Rooker asked if Conditions #2 and #5 could have bonding requirements.

Mr. Kamptner said, "As part of the condition, engineering can require as part of the Special Use Permit…that the work be done and that it be bonded."

Mr. Cilimberg said that normally, conditions such as these are subject to bonding without writing those words in.

Mr. Kamptner noted that stabilization is something that should be done immediately.

Mr. Loewenstein said that the question of compliance is important because they are already in violation, and added that he would feel better if the bonding were addressed in the language of the conditions.

Mr. Rooker asked if there were unpaid fees that the applicant needed to pay.

Mr. Graham said that there would not be an erosion control fee because it is an exempted agricultural activity.

Mr. Cilimberg said that Zoning accepted full fee for the Special Use Permit.

Mr. Rieley said that a joint permit application is normally done before a project is built, and the Condition #6 only states that the permit would be applied for. He asked if the applicant would have use of the bridge throughout the permitting process, and asked if he would have the Special Use Permit use until the Board acts on it. "Should we make the Special Use Permit active only when the permit is actually granted and in hand?"

Mr. Rooker said that was a good point. "I think we want to avoid circumstances where a person is in effect put in a better position because he avoided the procedures. I think one way of getting around that here would be to make this Special Use Permit only become effective after he's obtained the permit required by Condition #6."

Mr. Finley asked where he was fording the creek before he built the bridge.

Mr. Morrisette said it was upstream to the west, but he can no longer do that because he sold that property.

Mr. Finley said not granting the SP would essentially cut him off, but he could drive around.

Mr. Cilimberg said that after Planning issues the letter after Board approval of an SP, the letter states that the SP is not enacted until all conditions are met. In Condition #6, a condition of the SP being in effect is that Engineering has a copy of any permit issued.

Mr. Graham emphasized that the joint permit applications are often never responded to, and the applicant has the right to make a presumption that they have a permit. The federal government has 30 days to respond to the applicant as to whether they need additional review time or the permit application is unacceptable. If there is no response within the 30 days, the applicant may presume that they have a permit. "There's a very high probability in this case that the applicant will never receive a piece of paper back from the government saying "here is your permit."

Mr. Rieley said that that is a different thing, and the joint permit submitted to the VMRC and DGIF generates a piece of paper, and the Army Corps process is an entirely different review process. "I think we're perfectly within our rights in insisting that that paper be in hand, because there's no reason not to get it unless they have a reason not to issue it."

Mr. Graham stated that if no response is received within 30 days, the county or the applicant could request something from the VMRC.

Mr. Kamptner asked if the applicant would get the standard conditions in a general permit to know what they needed to comply with.

Mr. Graham said they would typically not get a copy of that, but those conditions are published conditions available through the Nationwide 14 permit; with the implementation of other conditions, he's already complying with all the requirements of that permit.

Mr. Rieley emphasized that the Nationwide 14 permit is different from the Virginia agencies permit.

Mr. Kamptner said because this is a situation where the bridge is already there, in case there are some environmental issues that may be covered by the joint permit, it may be helpful to require that the applicant submit an application quickly so that whatever conditions might be imposed could be addressed quickly.

Mr. Rieley suggested that within 30 days of when the Board hears this, the application should be made, and the Special Use Permit should only become active when the permit is granted or notification that the permit is not required is received. He said that adding that language makes it more explicit.

MOTION: Mr. Rooker moved, Mr. Loewenstein seconded approval of SP 99-76 with the conditions as modified:

1) The bridge is for agricultural purposes only, and shall not serve as access for any residential development, nor shall it serve through traffic between Route 760 and Route 813. The road on at least one side of the bridge shall remain chained or gated with a lock at all times.
2) The applicant shall stabilize the bare ground along the entire roadway that this bridge serves by vegetating the area as soon as possible, but no later than June 1, 2000. This work will be bonded as required by the Engineering Department.
3) No modification to the bridge or roadway within the floodplain may be started until a determination has been made by Engineering that the modification would not impair the stream's ability to convey the 100-year flood. This requirement does not include routine maintenance such as regrading the roadway surface, cleaning roadway ditches, or replacement of damaged bridge members;
4) Should the bridge need repair or modification in the future, the applicant will notify the County Engineer and consult on any proposed work. No disturbance is allowed within the stream, except for removing debris, and any other disturbance in the immediate stream buffer is limited to that work necessary to restore the bride to its current level of operation.
5) The applicant shall submit, and have approved by the Engineering Department, a stream buffer mitigation plan that will provide consistency with Section 17.317 of the Albemarle County Code. Upon approval of the stream buffer mitigation plan, the applicant shall implement the mitigation measures in the plan without delay and no later than June 1, 2000. This work will be bonded as required by the Engineering Department.
6) Within 30 days of the granting of the special use permit, the applicant shall submit a Joint Permit Application to the Virginia Marine Resources Commission for a permit to disturb State waters associated with this bridge and shall comply with any requirements related to a permit issued for this bridge. Applicant shall provide the County's Department of Engineering and Public Works a copy of any permit issued and shall coordinate through the Department of Engineering and Public Works to assure this permit's conditions are implemented. The special use permit only becomes active when the permit is granted.

The motion passed unanimously.

SUB 99-318 Quail Hollow Final Plat - Request to remove landscaping requirement for double frontage lots in the Quail Hollow subdivision on property described as Tax Map 43 Parcel 23E, located in the Samuel Miller Magisterial District, on the south side of Garth Road (Route 676), near Walnut Side Lane. Section 14-500 D of the subdivision ordinance requires Planning Commission approval. Landscaping on one-side of double frontage lots is required, unless waived by the Planning Commission. Quail Hollow was a 15.10 acre rural subdivision approved with a private road by the Planning Commission in August 1999. The applicant seeks to remove the landscaping requirement because of the existence of vegetation that will not be disturbed and the location of an access easement near to, but not adjacent to, another lot in the development.

Ms. Echols presented the staff report, noting that the Commission approved the subdivision plat in 1999; there were two sets of roads put in that created double-frontage lots; for consistency between the subdivisions, staff recommended that the applicant provide landscaping in both subdivisions where double-frontage lots were created. Ms. Echols explained that the applicant does not like that condition and has asked that the condition of the plat approval for Quail Hollow for the screening be removed. She said that staff thought that there was a right-of-way on one side because the tax map showed it; however, additional survey information shows that the right of way on the adjoining property on the east does not actually abut the lot. The applicant has asked that the required screening in that location be removed. On the other side of Walnut Side Lane, the double frontage lot screening was required along Lot 5, and a lot of vegetation is there right now. The applicant has asked that the screening requirement be dropped there also.

Ms. Echols noted that staff has reviewed the reason for the screening requirements for double frontage lots, and determined that the primary intent was to create a yard for people putting in a house. "That needs to be used judiciously." She said that the reason why adjoining property owners wanted the screening requirement was to screen the houses from their view; however, staff considers single-family residential properties as being compatible, and providing screening to shield one property from another is not supported by staff because they are viewed as compatible. Ms. Echols said that staff supports the applicant's request, adding that given the rural character of the area, there is a lot more opportunity to create a yard on these larger lots.

Mr. Rooker asked about the existing vegetation mentioned on one of the lots, and asked why that wouldn't already provide a visual screen.

Ms. Echols said that it does provide screening; the applicant just wanted the requirement removed. She added that she has heard from two adjoining property owners, who both now understand the rationale for removing the screening requirement.

Public comment was invited.

The applicant, Kelly Strickland of Weatherhill Homes, addressed the Commission. He pointed out that Lot #2 has a landscape easement, and the property line to the adjacent right-of-way is 20-30 feet; that property owner has 20-30 feet of his own property where he could create a buffer. Mr. Strickland said that on Lot #5, the entire lot is wooded with the exception of the home site, the septic field, and a BMP structure.

There being no further comment, the matter was placed before the Commission.

Mr. Rieley said it seems like a reasonable request.

MOTION: Mr. Rieley moved, Mr. Thomas seconded approval of SUB 99-318 as presented. The motion passed unanimously.

CPA 2000-01 Wireless Design Manual - Proposal to adopt the Design Manual for Personal Wireless Service Facilities as a component of the Albemarle County Comprehensive Plan and to amend the utilities section of the Land Use Plan chapter of the Comprehensive Plan to note/reference adoption of the above-noted design manual.

Mr. Fritz presented the staff report. He reviewed the history of the design manual, noting that staff used the term "design manual" as a working title and should really be called a "policy for personal wireless service facilities." Mr. Fritz said that in a May 1999 worksession, the Planning Commission made recommendations for revisions in that draft, including limiting the tier system to three instead of the four originally proposed. He added that Mr. Kamptner had prepared a summary of requirements from the 1996 Telecommunications Act, because some of that has changed based on actions since such a document was last prepared. Mr. Fritz emphasized that the document's intent is to allow for the provision of personal wireless service facilities, to encourage wireless carriers to follow the ideas in the document, and to provide a guideline for Commissioners, Supervisors and staff during their evaluations of such facilities.

Mr. Fritz explained that the guiding principle behind the manual is the visibility of wireless facilities. He said that staff and consultant Ted Kreines have identified avoidance areas, opportunity sites, and some siting and design standards.

Mr. Kreines addressed the Commission, using overheads to highlight key points in the manual. Mr. Kreines emphasized that there are no prohibitions proposed in the manual, but there are standards and proposed policies by which applications would be reviewed. He then illustrated some do's and don'ts for tower siting, as explained in the manual. Mr. Kreines' demonstration showed that wireless facilities can be concealed and "don't have to become a blight on the landscape." He said that the guidelines involve a three-pronged approach: location (where in county); siting (where on that property); and design (what it will look like).

Mr. Kreines said it is not the intent of the manual to create significant gaps by imposing limitations on siting and design, but rather to keep them in places where they fit in, and to keep them out of places where they don't fit in. He said that in terms of location, there are two types of areas – avoidance areas (where facilities are discouraged) and opportunity sites (where facilities are encouraged). Mr. Kreines said that avoidance areas have been mapped, with the assistance of the Piedmont Environmental Council.

Mr. Fritz commented that the map is subject to change constantly as additional lands are taken into conservation easements and boundaries of agricultural/forestal areas are subject to change.

Mr. Kreines said that part of the manual's intent is to outline opportunity sites, such as churches and rooftops. He added that poles within trees are also encouraged, noting that antennas can extend 10 feet above tree height. Mr. Kreines emphasized that avoidance areas do not prohibit location, and facility siting can be mitigated through camouflage, concealment and disguise.

Mr. Kreines presented the three-tiered approach, explaining that carriers can apply within any one of three tiers. Tier One specifies locating a wireless service facility *within* an existing structure; Tier Two specifies locating a wireless service facility attached *to* an existing structure no more than 10 feet taller than the tallest tree within 25 feet; Tier Three is anything that can't fit within tiers one and two.

Mr. Rooker commented that the tiered approval system says nothing about avoidance areas and opportunity sites.

Mr. Fritz said that it is possible that a Tier One could be located in an avoidance area, adding that there is no way to actually map the precise boundaries of any avoidance areas, so instead they are defined by what they consist of (conservation easements, AF districts, etc.)

Mr. Kreines noted that there is room for discretion with every application.

Mr. Kreines said that every time a new application comes forward, if it wants to collocate, it becomes subject to the same set of policies. He explained that personal wireless service facilities are defined by statutory language from the Telecommunications Act of 1996. Mr. Kreines noted that the facilities usually consist of antennas, the mount, and the equipment at the base.

Ms. Hopper commented that there are legal questions which are not answered in the manual.

Mr. Kreines said, "We're not trying to be attorneys. That's why [Mr. Kamptner] is here, and if there are questions about this policy that you have regarding the legality of it or legal issues raised, he's the perfect man to answer. But I don't think that we can satisfy all the legal questions within a policy document. It's meant to be simple, and it's meant to be something that the applicants can understand and use to shape their applications so they're more readily approvable by you."

Mr. Fritz noted that a Zoning Text Amendment would need to be pursued to adopt the tier system. Items such as notification, fees, etc. would be addressed at the time the ZTA was considered. He explained that the Tier One facilities would require a building permit, and approval from the ARB for Entrance Corridor locations. A Tier Two facility would require a similar process, and would be able to be appealed to the Board of Supervisors. A Tier Three facility would be a special use permit application, just as all are now.

Mr. Loewenstein commented, "It's really conceptual, not precisely regulatory….the key to this is it doesn't actually say no specifically to anything." He added, "These are guidelines to use in making a determination as to whether or not it should be approved."

Ms. Hopper asked if there was a need to adopt the guidelines quickly.

Mr. Rooker responded, "We have really been requesting to staff to move this along for quite a period of time, because we have been faced with many applications without a policy manual to set forth some criteria to rely on."

Mr. Kreines said that the typical planning approach would be to do a Comprehensive Plan amendment first to lay a foundation for a basis upon which the Zoning Ordinance would be built. "This is really the foundation upon which staff and I are asking you to lay another layer that will be the actual language."

Mr. Finley said he would like assurance from the county attorney that the foundation is acceptable.

Mr. Thomas commented that prior to the manual, the Commission had no real tools to evaluate the cellular applications presented.

Mr. Kamptner said that the Comprehensive Plan has been in place, as well as special use permit criteria for evaluating facility locations.

Mr. Rooker mentioned that every time the Commission has made a decision, they have relied upon those policies, but the manual provides some additional detail with respect to wireless service.

Mr. Finley noted that the name "design manual" is somewhat misplaced.

Mr. Fritz agreed, adding that it will be renamed to reflect its identity as a policy guideline.

Mr. Loewenstein mentioned that his name is spelled wrong, and he is no longer Vice-Chairman. He also mentioned that Mr. Nitchmann's name is misspelled, as is the word "Acknowledgements" on the second page.

Public comment was invited.

Mr. David Van Royen addressed the Commission. He stated that there should be review by the Agricultural/Forestal Committee if a proposed location affects an A/F or Conservation District.

Mr. Dale Fennokie of Crown Communications, representing Sun Com and AT & T in this market, addressed the Commission. He said that in reading the manual, it is difficult to extrapolate a clear direction for wireless companies to understand what the county wants. Mr. Fennokie added that this does not give him the ability to convey to real estate agents who look for locations what to look for. He said that Crown has already worked with the county to redesign their entire network to accommodate treetop-type locations. "Something that is a bit clearer would help us so…we can accommodate your desires." Mr. Fennokie pointed out that on Page 40 there is a comment regarding "easement radius"; if this verbage is adopted it could create a situation where their clients would have to lease several parcels of land to accommodate the facility, because to obtain an easement on adjacent parcels would involve entering into an agreement with each property owner. He also wondered if they would have to seek an easement if they locate close to a county or state road. Mr. Fennokie suggested just having applicants provide the county with a letter from an engineer that will assure that if the tower falls, it will fall on the property that it's located on.

Mr. Rooker said that there is a setback requirement from adjoining property equal to the height of the tower unless the Commission waives it.

Mr. Fritz said that this verbiage changes it from a setback that has to be waived into an easement situation, which may be something the Commission could also waive. He said that Page 40 also recommends that the Ordinance be changed to allow the Commission – not the Board of Zoning appeals – to modify the setback in a particular case. Mr. Fritz added that VDOT reviews the applications, and has the opportunity to make comments.

Mr. Rooker commented, "I don't see that as materially different than the current waiver process, because in fact we can deny an application when the tower is taller than the distance to the nearest property line."

Mr. Fritz said that the language attempts to address Commission concerns about setback waivers and a mechanism to deal with them.

Mr. Rooker said the new policy is more permissive than the current policy because it enables the applicant to get around the setback problem by acquiring an easement.

Mr. Keeler commented that a property owner could grant an easement outside the actual lease area.

Mr. Jeff Werner of the Piedmont Environmental Council said that it makes more sense to consider the document as a policy manual than a design manual. He read from a prepared statement (Attachment "B").

Ms. Valerie Long, on behalf of Triton PCS/SunCom, addressed the Commission. She noted her appreciation for the county's efforts to address each wireless facility application on a case-by-case basis,

and to analyze each in a multi-dimensional approach. Ms. Long suggested incorporating more flexible language in the document, and suggested having the design standards summarized and made more user-friendly. She added that clarification on collocation is needed, as the manual is a "little bit confusing" because examples in the document are not necessarily consistent with the definition for collocation. Ms. Long suggested focusing more on landscaping and fences to meet the goal of reducing visibility of cabinets, rather than requiring they be buried.

Ms. Heidi Parker, representing Dick Gibson and Alltell, addressed the Commission. She re-emphasized the points in Mr. Gibson's letter to Bill Fritz dated December 29th, 1999. Ms. Parker said that the comment in the design manual that aesthetics does not equal visibility "is insulting," as the whole premise of the manual is an "aesthetic, subjective decision that all towers are ugly and should therefore not be visible." She stated that another problem with the design manual is there needs to be an RF engineer involved in the process, adding that there is no evidence that the consultant's examples are feasible in Albemarle County. Ms. Parker noted that the manual discriminates in favor of digital providers; the examples of the "do's" in the manual are almost always digital sites. She explained that because digital companies do operate at higher frequencies, they are able to have shorter towers closer together, adding that analog equipment requires more space in "shelters" not cabinets. Ms. Parker agreed with Ms. Long that the focus should be on the landscaping of the facilities.

There being no further public comment, the matter was placed before the Commission.

Mr. Finley asked how the manual would be implemented.

Mr. Fritz responded that the manual will become a component of the Comprehensive Plan through amendment, similar to the Airport Master Plan, Open Space Plan, etc. He said that it will become a "guiding part" of any application, through special use permit review procedures or language included in any Zoning Text Amendment. The document will be a policy document that will guide the Commission in deliberations of the Zoning Text Amendments and again in the review of any individual applications.

Mr. Rooker commented, "There may or may not ever be a Zoning Ordinance adopted that deals with this. And in that case, as I understand it, this would serve as a Comprehensive Plan guideline for applicants to follow and for us to follow in reviewing applications as they come forward."

Mr. Fritz said that in the interim, the facilities will still be coming to the Commission as special use permits. The manual would provide additional parameters to review the SPs.

Mr. Kamptner stated, "At a minimum, if this policy is adopted, there will be Zoning Text Amendments to deal with the procedural issues….to accommodate the procedural changes."

Mr. Rooker commented that there needs to be something early in the document that explains what the manual does – how the various parameters of design, location, camouflage, etc. all work together.

Mr. Fritz suggested having an Executive Summary.

Mr. Rooker presented suggested changes on the following pages:

1. Eliminate words "redesign manual."
3. Make second two bullets part of the text after the first sentence.
6. Change word "who" to "which" on second to the last line.
8. Change word "will" to "may".
9. Picture should be of Crozet, and caption should say "…has successfully blended the development of…"

12. Personal Wireless Service definition – paging is left out of diagram.
13. First line should say "an accessible location may have…"
14. Second sentence should say "Albemarle County is engaged in regulating the location of personal wireless facilities. Fourth sentence – "s" should be left off of "deals".
15. Last sentence on the page should say "This policy manual applies to all three."
20. Eliminate first sentence. (Mr. Fritz noted that a better photograph will be used).
23. Last sentence should say "map on this page," not "map below."
26. Omit last sentence on page.
28. The information here should appear in the Executive Summary. Last item should state "siting and design standards should be used for reviewing all personal wireless service facility sites."
30. Second sentence, second line should say "…which may reduce the appropriateness of such opportunity sites."
33. Should say "This building under construction may be a candidate….if the facility is properly designed to minimize visibility."
38. Design blurb should be moved to the design section.
39. Material should be included in the design section instead.
40. Language is not clear regarding waiving of setback requirements; seems to imply only the BZA has the authority to grant setbacks. Will add words "front, side and yard setbacks."
41. Replace word "perfectly" with "properly."
43. Rephrase to "generally do not meet" and change word standards to policy.
46. References design standards on Page 44; should actually refer to Page 39.
48. Second to last line, add after the word in the words "or near."
50. Page should be included in siting section, not design section.
60. Strike example with reference to tree.
63. Regulatory concepts needs to be moved toward the front of the document; section should be moved and language should also be included in Executive Summary. Tiered process should also be moved toward the front.
64. Language is not clear regarding review of Tier Two applications. Change first sentence to stop before comma. Restate wording to clarify order of reviews. First sentence should be second sentence. (Mr. Fritz agreed to include references to other review boards such as ARB, AF Advisory Committee, etc.)
67. Item C – wording should say "evidence that the applicant's proposed antenna will not cause electromagnetic interference." Needs to specify "another facility", i.e. alternative sites. Paragraph 15 should say within "five miles of its borders." Include reference of Zoning Ordinance amendment in the Executive Summary, not here.

Ms. Hopper agreed that it would help to have a summary at the beginning of the document, and said that the minimum standards described in the back of the manual would be helpful to have up front. She added that the collocation definition appears inconsistent within the manual. Ms. Hopper suggested making it clear in the summary what factors other than visibility that are considered in the approval process, such as height, bulk, and location of structures.

Mr. Rieley commented that he was not totally in agreement that the example on Page 5, which characterizes the pole that has "Carrier A" written by it as the kind of facility supported by the county.

Mr. Loewenstein suggested finding a better example, as this one is confusing.

Mr. Rieley said he is not comfortable with a few pieces of the manual, but is even more uncomfortable implementing the tiered approach now. He suggested considering adopting the manual in draft form, realizing that it would continue to be revised. "Let it be as clear a guide as we can make it for providers as well as for staff and ourselves, but at the same time, when these come before us, they could be designated that this would be a Tier One application, so we can see in actuality what these are while we keep exactly

the same review process that we have now." He suggested "trying the system out" first, without the tiered approach, and then fine-tuning it.

Mr. Thomas asked, "What would happen if we would work with this manual now until six months from now? What's going to happen in the interim of those six months, if this person gets his tower under one condition, and four months later, the next one gets his tower or cell antennas under another condition."

Ms. Hopper said there is some guidance in the Comprehensive Plan.

Mr. Kamptner clarified that the policies would be in place, but the only thing that wouldn't be done would be going through the Zoning Text Amendment process to adopt the three-tier process.

Mr. Benish suggested making that a strategy to specify how the tiering process would be evaluated.

Mr. Loewenstein said that these are design standards that are going to have to be revisited in an ongoing way, because of the nature of technology and its rapid changes. "I think we're going to need to look at this a little bit differently and a little bit more frequently in terms of review and revision than we do with some other sections of the Comp. Plan." He added, "I don't want this to become a static policy document."

Mr. Cilimberg said, "I do think you want to be comfortable with what you start with to the extent you can be." He noted that in a normal process, different aspects of the Comp. Plan would be examined every year.

Mr. Loewenstein suggested that in this particular case, it needs more frequent review.

Mr. Rooker said he would like to see a final draft of the manual before voting on it.

Mr. Craddock commented that the wireless communications technology is rapidly changing, and this manual should be reviewed more often. He asked if every tower has a cabinet or shelter.

Mr. Fritz replied that there is always some ground-based equipment. He said that there are none underground in the county, and many of the equipment shelters/cabinets have not been fenced because it draws attention to them.

Mr. Rooker noted that where appropriate, screening is required.

Mr. Thomas complimented Mr. Fritz and Mr. Kreines on putting the manual together. He agreed with fellow Commissioners that it should be an evolving document.

Mr. Loewenstein agreed it was a good idea to see another draft, and seeing the material rearranged as suggested would be helpful. "I hesitate to say we need one more look at this. I know the Board is anxious to have it. I think we've spent so much time on it already over the last four years, that it would be kind of silly to send it forward without one more quick look at a draft."

Mr. Rooker asked when staff might have it back.

Mr. Fritz said he was not sure, and staff would need to determine who would do the work – staff or the consultant.

Mr. Finley said he thought the language should be more definitive – instead of "may" and "should." He suggested removing the footnote on Page 63. Mr. Finley said that the language in some parts of the manual

seemed ambiguous regarding whether or not aesthetic features could be regulated. He suggested that Mr. Kamptner and Mr. Davis review the manual again, and wondered about the letter from Dick Gibson.

Mr. Kamptner responded that the manual can work for both types of technology as the examples in the manual are based on real-life examples and do evidently work. Regarding the comment from Mr. Gibson that an RF Engineer is needed, Mr. Kamptner emphasized that there are real examples in the manual that support their effectiveness. "I can tell you that a car works by turning on the ignition even though I'm not an automobile engineer. We have a real-life example that these do work." He noted that the County Attorney's office reviews each application on a case-by-case basis to assist the Planning staff in their analysis. Regarding the aesthetics issue, which is still an issue in the pending case, it is the County Attorney's position that Virginia Law expressly allows the county to regulate the height, bulk, and location of structures. Mr. Kamptner emphasized that the aesthetic qualities that were struck down by the Virginia Supreme Court were of a completely different nature – touching on types of building materials, colors, and architectural features.

Mr. Finley asked if the County Attorney's office has reviewed it to a point that the manual can be used without leading the county down a path that would conflict with what is permitted or not.

Mr. Kamptner said that the two main issues under the Telecommunications Act are: (A)if it discriminates between cellular and PCS, does it favor one over the other, and (B) prohibition of service. Mr. Kamptner emphasized that the manual is (1) flexible, (2) subject to a case-by-case application, and (3) doesn't set aside any part of the county from being possible locations for wireless facility.

Ms. Hopper thanked Mr. Kamptner for the detailed legal summary.

Mr. Finley said he felt the comments from the public were very pertinent.

Mr. Cilimberg clarified that he understood the Commission to want their comments and some of the issues from the speakers incorporated into the manual. Then, a revised draft would be presented to the Commission prior to their action to forward it to the Board.

The Commission agreed to review at least one more draft prior to voting on the adoption of the manual.

STA 2000-01 Subdivision Ordinance - The Planning Commission has a adopted a Resolution of Intent to amend the Subdivision Ordinance to make numerous substantive and procedural changes recommended by staff including, but not limited to: amending the following sections: definitions (Albemarle County Code 14-106); fees (Albemarle County Code 14-203); information to be included in a preliminary schematic master plan (Albemarle County Code 14-215); contents of preliminary and final plats (Albemarle County Code 14-302, 14-303); information submitted pertaining to water supplies and septic systems (Albemarle County Code 14-310); permissible access from lots onto streets and roads (Albemarle County Code 14-505); coordination of streets and roads (Albemarle County Code 14-510); requirements pertaining to water, sewer and drainage improvements (Albemarle County Code 14-517, 14-518, 14-519, 14-520); and fire protection (Albemarle County Code 14-521).

Mr. Keeler noted that there are two amendments regarding fees and the disposition of central water and sewer systems, and referenced another page with changes (Attachment "C"). Mr. Keeler explained that the Code of Virginia allows localities to recoup actual expenses involved in review; the road bond renewal feel is greater than the road re-inspection fee because it involves a re-inspection to determine what is still outstanding in completion of a road. Regarding the change regarding central water and sewer systems, the Board determined in the last revision of the Comprehensive Plan that they did not want to have villages not served by public utilities. The only village currently in the Comp. Plan is Rivanna; the village zoning

remains in place, and the way the ordinance currently operates encourages establishment of central water and sewer systems to get a smaller lot size in those situations, which Planning feels is contrary to the Board's intent.

Mr. Keeler asked the Commission to adopt a Resolution of Intent so it can be brought to public hearing. He also mentioned a "quarterly roundtable," available to the general public, developers, citizen groups, etc., where items are presented prior to coming to the Commission, to obtain feedback. This ordinance was presented to the roundtable in November.

Mr. Rooker mentioned that the Commission had discussed requiring on plats for subdivisions not in the jurisdictional area that are going to be served by wells or septic systems that they contain some kind of notation that discloses the site is not in the jurisdictional area to receive water and sewer service.

Other Commissioners agreed that would be a good idea.

Mr. Cilimberg said that would be an enhancement to 14-39 Q.

Mr. Keeler commented, "That's kind of what Q was intended to do, but I think you want more of a positive statement that if a property is not within a jurisdictional area, public water and sewer will not be available to this property."

Mr. Kamptner mentioned that in the next few weeks, the Commission will be receiving a groundwater testing report that David Hirschmann, County Water Resources Manager, has prepared. Mr. Hirschmann surveyed five localities that require groundwater testing for wells and septic – Fauquier, Loudoun, Clarke, Orange, and Roanoke – and will provide a summary of what their ordinances require, and what the result has been. Mr. Kamptner said in some of those localities, it's really just changed the number of lots created so the water testing requirement could be avoided.

Mr. Cilimberg commented that the lot sizes that they require testing on are smaller than Albemarle's rural area lot size.

Mr. Rooker said that in 14-59, item "A" is an existing requirement, and asked what is typically done by the agent to make that determination now. "Do we rely on VDOT to provide traffic information that the roads will be adequate to serve the development?" He mentioned that every time there is a rezoning or a development near other neighborhoods, there is a lot of public comment about the increased traffic on roads, and the roads aren't adequate to handle the additional traffic.

Mr. Cilimberg said in the case of Parkside, VDOT made comment about improvements to the existing streets serving that; residents in that area did not really want to have those improvements. He added that VDOT wanted to see Hilltop with urban cross-section at 32 feet wide with onstreet parking, and ended up accepting a widening of the existing rural cross-section. "We do rely a lot on VDOT and Engineering in that regard."

Mr. Kamptner commented that Section 5.15 is pretty narrowly drawn – subdivision of land that surrounds an existing public street or directly abutting to the subdivision, a public street serving some of the lots in the subdivision, or a public street providing the principal means of access to the subdivision or otherwise serving as an entrance. For streets outside the subdivision, it generally has to be abutting the subdivision; the need for the improvement has to be substantially generated, which is pretty difficult to establish. "It seems like most of the cases we have you already have a bad traffic situation…it's already at level of service 'F' and so you can't necessarily say that the need for improvement is substantially generated."

Mr. Rooker commented, "This seems to me to empower the agent to require offsite improvements if the criteria are met, and it seems to require kind of a proactive determination at the preliminary plat stage of the agent as to whether or not that's the case." He wondered if that procedure is adequate or could be supplemented in some way because "it is one of the major concerns of the people that surround every subdivision."

Mr. Cilimberg responded, "We are doing to the extent we've construed we can under Virginia law and based on court cases…Virginia code has some much more explicit limitation as to how far that can be applied."

Mr. Kamptner commented that a substantial increase in and of itself may not persuade a court that the need was substantially generated by a particular development alone. He cited a Stafford County example where traffic on a county road tripled, but the county had slated that entire area for development.

Mr. Rooker noted, "We have the power in a rezoning to consider the proffers that are made with respect to the impacts that the development may have on streets, etc….and under the special conditions provisions there are certain circumstances under which we could impose conditions that might involve offsite improvements if they were directly related to the granting of the condition." He said that Section 5.15 seems to grant the agent the ability for every subdivision to take a look at that issue, although there may be limited ability as to what can be done after the impacts are discovered. Mr. Rooker said his interpretation is that at the point of preliminary plat approval, the agent can consider whether there will be impacts generated on the internal and external streets, and may require that the streets be improved so as to accommodate traffic resulting from the development of the subdivision.

Mr. Kamptner said a typical example would be requiring a turn lane. He said what is not seen is the "wholesale redesign" of roads leading up to a particular property.

Mr. Rooker said that often VDOT recommendations for improvements are adopted. "I'm just suggesting that we do take a hard look at traffic generated by subdivisions we approve and make certain that to the extent we have the power, where it's clear there's going to be impact, that we address it and make certain that we get the [improvements] that this may entitle us to."

Mr. Kamptner said he gets frequent calls asking what the need substantially generated is by a particular development.

Mr. Cilimberg said, "I think in reality, we really are doing it."

Mr. Kamptner commented that it is a very difficult finding to make, adding that this particular provision goes as far as possible.

Mr. Rooker mentioned 14-60, item #2 stating "cost of connecting to the public water and/or sewage system exclusive of connection fees exceeds the cost of installing onsite well and/or septic systems." He asked if that finding is made, even in the jurisdictional area, "we can't require that they provide public water and sewer?"

Mr. Keeler said that is correct.

Mr. Rooker suggested that applying a standard of a higher threshold might be in the county's interest.

Mr. Cilimberg commented that this language is also what the Board adopted for individual properties that are not subdivisions. "If we're looking at making it a higher test…that's something that would not only change here, but have to change in another part of the County [Code]."

Mr. Keeler mentioned it is also part of the Service Authority policy.

Mr. Loewenstein said that it also raises other issues, such as hardship.

Mr. Rooker said, "As a policy matter, if an area is in the jurisdictional area and the property is being subdivided, the bottom line test should not be whether or not it's going to cost one dollar more to hook onto the jurisdictional services being provided for that area. It should be a higher threshold."

Mr. Loewenstein agreed that in subdivisions, the standard possibly should be higher.

Mr. Rooker commented, "If we can impose a higher standard, I personally would like to recommend that we do that." He recommended 300%.

Mr. Loewenstein said one way it could be reworded would be to add the word "substantially" before "exceeds"; however, substantially is not defined.

Ms. Hopper said that using the word substantially would allow flexibility.

Mr. Loewenstein and Mr. Finley said they would like more flexibility than a specific percentage.

Mr. Loewenstein stated, "I think maybe the differential wouldn't have to be that great, or there might be other mitigating factors which would affect the cost of one more than it would affect the cost of another."

Mr. Rooker pointed out that there is an objective standard used right now. "One dollar more and they have to provide it, one dollar less and they don't…The agent could look at this objective standard and make an objective determination. I just question whether we should provide a more definitive standard for the agent to follow."

Mr. Cilimberg commented, "Subdivision served by public water and sewer is exclusively in our urban areas, and [virtually] any subdivision we're getting is creating lots that require public water and sewer under the zoning ordinance because of their size."

Mr. Keeler said the standard has been recently used primarily in Crozet, because a lot of properties there are remote from utilities. He added that those cases are usually just a one or two lot subdivision, and in subdivisions of any size, adding ten wells and ten septic systems, "that gets you a lot of pipe." Mr. Keeler said that VDOT does not like to permit cutting of pavement for installing utilities, and the cost of boring under the road can be significant. "It's not just where you're remote from the utilities it takes into consideration under cost and the like."

Mr. Rooker pointed out that typically when water and sewer are brought into a subdivision, the developer incurs the expense, and individual lots may pay a hook up fee.

Mr. Finley asked what his reason was for wanting the 300% figure.

Mr. Rooker replied, "Where we have provided water and sewer, and we've defined something as being in the jurisdictional area, that we should encourage the use of the services, and not encourage building houses on wells and septic systems in relatively densely populated areas."

Mr. Cilimberg noted that the current standard is also in the Zoning Ordinance under general regulations. He said the ordinance requires that if you're under 40,000, you provide both public water and sewer; there is no test of reasonable availability. He added that if the Commission wanted to make it a percentage higher, it's probably not going to be much of an issue.

Mr. Cilimberg suggested that staff take a look at the issue, and discuss it with the Service Authority, then let the Commission know what they find out.

Mr. Rooker clarified for Mr. Finley that this is setting forth what is required on plats, and this statement regarding services would only be required on plats not in the jurisdictional area. "We're simply suggesting there ought to be a disclosure on plats to that affect."

Mr. Craddock asked at what point a proposed road gets noted on a plat.

Mr. Cilimberg replied that in the case of Dunlora, the Commission required that there be notes on the plat in effect of reserving land for that road. That stipulation was later removed.

Mr. Keeler commented that the road notations are placed "generally when the plans are far enough along to be able to identify the center line of the road." He noted that in the Dunlora case, the developer agreed not to pursue certain lots that could be affected by the alignment, although there is still work being done on the alignment. "There wasn't a whole lot of area there for the road to go."

Mr. Finley mentioned that there are people who would like to hook up to public water and sewer, but can't afford to.

Mr. Thomas said he lives in Carrsbrook on Indian Springs Road, and there is public water, but no public sewer. "And I'm sitting right smack dab in the middle of the urban area!"

Mr. Cilimberg mentioned the Resolution of Intent.
Mr. Rieley said that on Page 14-55, under alleyways, the new proposed sentence says that "the design specifications shall be determined by the county engineer." Mr. Rieley said, "That's it? I hope you catch him on a good day."

Mr. Keeler said that that's it for now, noting that the definition of alley has been changed. "There was some question as to whether or not it had to receive the same type of approval by the Planning Commission as a private road…until the DISC Committee makes its recommendation, this is about the best we can do."

Mr. Rieley hoped that the Design Standards Manual committee would be "on top of it."

Mr. Rieley said that on Page 14-53, the immediate vehicular access onto public streets or private roads precludes having sidewalks and tree lawns if those sidewalks and tree lawns are in common space, and not on a public street. "That's something I hope we'll come back to and deal with in a substantive way."

Mr. Rooker asked if that required vehicular access to a public street.

Mr. Rieley said that it has been enforced in that way.

Mr. Kamptner said that in Section 505a, the language had been clarified to "not more than one."

Mr. Loewenstein said the language was still a little confusing.

Mr. Rooker, "The way this is presently worded, are we still prohibiting lots that do not front on a public road. Do we prohibit common space between [yards and roads]?"

Mr. Kamptner said that it needs clarification.

Mr. Rooker suggested a specific statement that this would not prohibit the described configuration.

Mr. Rieley noted that in 14-37, under topography, the only thing required is that the source of the topography be given, and said "I think if we're going to require 5-foot contour interval, we should require that it meet [United States National Mapping Standards] for 5-foot contour interval." He mentioned that usually what is presented is 20-foot contour maps interpolated to 5-foot contour. Mr. Rieley said that the [United States National Mapping Standards] require that any elevation on a map be within ½ of 1 contour interval +/-. "It's a substantially different standard." [Attached are United States National Mapping Standards].

Mr. Finley asked, "Are the engineers in the Engineering Department going to verify that?"

Mr. Rieley said that just a statement on the map by whoever prepares it stating that it meets national mapping standards would be acceptable. "It's just an objective benchmark."

Mr. Finley wondered how whoever reviews the map would verify the information.

Mr. Rooker said they would verify it the same way they do now.

Mr. Cilimberg said that currently, the rural area is being submitted as 10-foot contour; the urban area as 5-foot contour.

Mr. Rieley said he would be inclined not to require something that's not readily available.

Mr. Keeler said a lot of this requires funding by the Board, and mentioned that the topography section may be brought up again after further discussions with engineering and the development community.

Mr. Loewenstein and Mr. Rooker said it's a good point to be raised.

Mr. Cilimberg clarified, "You want language that refers to the standards that these contour intervals are based on."

Mr. Finley asked about 14-41, regarding Health Department certification. He asked if the Health Department Director is looking primarily from a quality standpoint in determining whether a well is suitable.

Mr. Keeler responded that the Health Department is not certifying that the water is there, and the language is intended to reflect the relationship of the well to the septic system. He added that the only provision that speaks to wells is Section c.

Mr. Kamptner said the inspector is looking for design and location, swails, etc.

Mr. Thomas pointed out that they are certifying the use, not the well itself.

Mr. Keeler mentioned that the Health Department is becoming somewhat privatized, and now consultants called "approved onsite evaluators" go out and determine the suitability of soils for a septic system; the Health Department is requiring to accept that for subdivision approval. He added that the consultant provides the approval for the subdivision of the property, but the Health Department still has to come out and issue permits at the time of building permit. If the consultant has certified a lot that doesn't meet Health Department approval, the lot owner has the opportunity to go back to the consultant.

Mr. Cilimberg clarified that what the section is saying is that the Health Director is signing off on the soils for the septic system at the time of final platting, and signing off on the use of private wells and septic systems. Section D covers how the septic systems relate to the drainage, and E relates to the location of the wells as they relate to the septic system. "None of this is actually saying they've given final approval for the drainfields locations on the lots….that comes at the individual building permit stage."

MOTION: Mr. Rooker moved, Mr. Loewenstein seconded that the Commission adopt a Resolution of Intent to amend the Subdivision Ordinance to make numerous substantive and procedural changes recommended by staff including, but not limited to: amending the following sections: definitions (Albemarle County Code 14-106); fees (Albemarle County Code 14-203); information to be included in a preliminary schematic master plan (Albemarle County Code 14-215); contents of preliminary and final plats (Albemarle County Code 14-302, 14-303); information submitted pertaining to water supplies and septic systems (Albemarle County Code 14-310); permissible access from lots onto streets and roads (Albemarle County Code 14-505); coordination of streets and roads (Albemarle County Code 14-510); requirements pertaining to water, sewer and drainage improvements (Albemarle County Code 14-517, 14-518, 14-519, 14-520); and fire protection (Albemarle County Code 14-521).

The motion passed unanimously.

Old Business

Mr. Cilimberg reported that the previous week, the Board considered the Calvet Site Plan, which was appealed by the applicant for five conditions. The Board upheld four of the five conditions as imposed by the Commission's action; they did not uphold the hours of operation.

New Business

There was no new business presented.

There being no further business, the meeting adjourned at 10:30 p.m.