Albemarle County Planning Commission
May 16, 2000

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, May 16, 2000 in the County Office Building. Members attending were: Mr. William Finley, Chairman; Mr. Dennis Rooker, Vice-Chairman; Mr. Rodney Thomas; Ms. Tracy Hopper; Mr. Pete Craddock; Mr. Jared Loewenstein; Mr. William Rieley. Other officials present were: Mr. Wayne Cilimberg, Director of Planning & Community Development; Mr. David Benish, Chief of Planning & Community Development; Ms. Amelia McCulley, Department of Zoning; Ms. Jan Sprinkle, Department of Zoning; Mr. Greg Kamptner, Assistant County Attorney.

Approval of Minutes – April 25, 2000

The Commission moved, seconded, and unanimously approved the minutes of April 25, 2000 as amended.

Review of Board of Supervisors Meeting – May 3, 2000.

Mr. Cilimberg presented a review of the Board of Supervisors meeting, noting that the Board has authorized staff to establish a groundwater committee, which was a follow up to the Commission's recommendations to create such a group. Mr. Cilimberg mentioned that the committee will be pulled together by engineering and public works staff, although no time frame for appointments to the group has been established. Mr. Loewenstein asked Mr. Cilimberg if he was aware of the group's proposed composition – in numbers and interests represented. Mr. Cilimberg responded that he would find out and let the Commission know, adding that it would be up to the Board to appoint members. Mr. Rooker suggested that a Planning Commissioner be on the committee.

Mr. Cilimberg reported that there was an authorization to begin a process for truck restriction on Earlysville Road between the Rock Store intersection and Route 606, as there have been concerns about truck traffic on that section. Mr. Cilimberg stated that the Board adopted a Resolution regarding the 250 West Corridor Study, which essentially did not accept the recommendations of the VDOT consultant to widen the route from the bypass west. The Board did acknowledge that there might be local improvements necessary on 250.

Mr. Cilimberg noted that there is going to be a standing committee created to review road improvement issues along Route 250, as a follow up to the task force that has been in existence during the study. The Board of Supervisors will appoint the new committee.

Mr. Cilimberg reported that the Board approved the Charlottesville Catholic School's additional enrollment in their temporary facility. He mentioned that the Board also accepted a process recommendation for the DISC study review; the Board received recommendations based on discussions from a meeting – which Ms. Hopper attended – that considered the DISC report. Mr. Cilimberg announced that there would be a June 7th worksession with the Board, during which information regarding the DISC model and public comment will be presented. He added that he would bring a timetable for DISC-related information to the Commission 5/23/00.

Mr. Cilimberg explained that there would be a public hearing on June 14th for the Conservation Easements program, which would have the county begin a Purchase of Development Rights program.

He added that the Board also approved the Charlottesville First Assembly of God rezoning and Special Use Permit on their Consent Agenda.

Mr. Cilimberg explained that the Board also executed a proffer for land in the Forest Lakes area. He explained that in the Forest Lakes rezoning in the 1990's, there was a proffer of 5 acres of land at Route 29/Ashwood Boulevard for public use; the county is now proceeding to obtain that land, as there are potential uses for the land, including possible alignment for the Western Bypass.

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

Consent Agenda:

a. **SDP 00-024 North Fork Research Park, Phase 2 Buildings 1 & 2 Preliminary Site Plan Waivers** – The applicant is requesting a waiver of Section 4.2.3.2 of the Zoning Ordinance which prohibits disturbance of critical slopes; a waiver of Section 4.12.6.5(C) of the Zoning Ordinance which prohibits curvilinear parking; and a modification of Section 4.12.7.2(B) of the Zoning Ordinance which requires one(1) loading space for every 8,000 square feet of office space.

b. **Addition to Hardware River Agricultural/Forestal District** – Proposal to add 153.48 acres in five (5) parcels to the Hardware River Agricultural/Forestal District.

MOTION: Mr. Loewenstein moved for approval of the Consent Agenda as presented.

Mr. Rieley observed that the Research Park was touted as being designed on principles of new urbanism; however the site plan showing plans for Buildings 1 and 2 is "enormously disappointing," and points out how badly a new set of criteria to judge such applications needs to be adopted. "It's easy to sell things on general principles, and it comes back to us only needing waivers for critical slopes, curvilinear parking, and loading areas – none of which I have a problem with – but…I just think this is a very clear example of why the DISC study and our attention to it is so important."

Mr. Rooker commented that there is a lot of parking in front indicated on the site plan.

Mr. Rieley commented that there is a sea of parking, and the site "might as well be a K-Mart."

Mr. Thomas seconded the motion for approval of the Consent Agenda, which passed unanimously

Items Requesting Deferral:

ZMA-99-12 Airport Road Office Complex (Sign 55 & 56) – Request to rezone 1.637 acres from R-4 Residential to CO Commercial Office to allow for commercial offices. The property, described as Tax Map 32C Parcel 3-1 is located in the Rivanna Magisterial District on Airport Road [Route #649] at the intersection of Airport Road and Deerwood Drive. The Comprehensive Plan designates this property as Neighborhood Density, recommended for 3 - 6 dwelling units per acre in the Hollymead Community. *Applicant requests indefinite deferral.*

MOTION: Mr. Rooker moved for approval of deferral of ZMA 99-12 as requested by the applicant. Mr. Rieley seconded the motion, which passed unanimously.

ZMA 00-001 Covenant Church (Sign #48) –Applicant seeks approval to rezone a 0.35 acre strip of land and a 0.25 acre strip of land designated as Tax Map 61, Parcel 156 from R-4, Residential, to CO, Commercial Office and a 0.611 acre portion of Tax Map 61, Parcel 154C from C-1, Commercial to CO, Commercial Office. Property is located on the north side of Rio Road East, east of the existing railroad. The subject site is the existing Covenant Church. This property is located in the Rivanna Magisterial District and is designated for Neighborhood Service in Urban Neighborhood 2 of the Comprehensive Plan. *Staff requests deferral to May 23, 2000.*

MOTION: Ms. Hopper moved for approval of deferral of ZMA 00-001 to May 23, 2000 at staff's request. Mr. Craddock seconded the motion, which passed unanimously.

Public Hearing Items:

ZTA-00-005 Nonconformities - Public hearing on an ordinance to amend Chapter 18, Zoning, of the Albemarle County Code, by repealing existing section 6.0, Nonconformities; by adding new section 6.0, Nonconformities; by amending section 3.1, Definitions, section 10.3, Application of regulations for development by right, section 10.3.1, Conventional development, section 30.6.6.2, Repair and maintenance of structures, and section 30.6.6.3, Exemptions. This amendment pertains to the regulation of nonconforming uses, structures and lots.

Ms. Sprinkle presented the staff report, explaining that the Board of Zoning Appeals had asked zoning staff to revise the ordinance to address some recurring variances, mostly on existing nonconforming dwellings. Ms. Sprinkle said that upon review, the ordinance needed some cleaning up and clarification. She added that the primary changes separate uses, structures, and lots, and tried to clarify the differences in how the ordinance pertains to them. Ms. Sprinkle noted that staff has recommended a basic front setback of 25 feet from the road for homes that want to expand. "They can get no closer to the road, but they will be permitted to [add on] without asking for a variance." She added that staff has recommended a basic side setback of 6 feet. Ms. Sprinkle added that staff changed the nonconforming lots section to clarify what setbacks they have to follow.

Mr. Rooker asked if the language presented was identical to that presented at the worksession on this item. Ms. Sprinkle answered that it is the same.

Mr. Rooker asked if the terms "re-divided" and "re-developed" were defined in the Ordinance, as their meaning was not exactly clear.

Ms. Sprinkle explained that there are some small nonconforming lots that were established before the Zoning Ordinance, and the only way to use them effectively is to change their division lines. "We've set up certain criteria where the Zoning Administrator has some discretion if we think the new division was better in terms of the general regulations."

Mr. Rooker asked if the terms re-divided and re-developed are the same circumstance, or if there are two different cases.

Mr. Kamptner replied that they are two different things – with re-division being to readjust the boundary lines, and re-development being to make a new use on the nonconforming lot. "We want to be certain that they can re-divide, so they're not always stuck with a nonconforming lot…we also

wanted to make it clear that they would also not be stuck with whatever use or structure is on the nonconforming lot."

Mr. Rooker asked why there wouldn't be some conditions attached to the re-development.

Mr. Kamptner responded that the development aspect deals with the use of the property, and should be addressed by current zoning requirements.

Mr. Rooker said, "There's no implication here that the re-development doesn't have to comply with existing zoning requirements." He suggested that defining the terms a little more clearly would be helpful.

Mr. Kamptner suggested that staff clarify the language.

Mr. Rieley commented that the term re-divided seems to imply "divided again," as in subdividing. He suggested that the language be clear enough to convey that re-division means adjusting an existing boundary line.

Mr. Craddock asked if all three conditions in the nonconforming structure section have to apply simultaneously.

Ms. Sprinkle and Ms. McCulley responded that you would need a variance if any of the conditions were not met.

Mr. Finley asked how land for cemeteries is treated in the case of nonconformities.

Ms. Sprinkle replied that if it is a new piece of property that has come into the cemetery's hands since 1980, then a special use permit would be required.

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

Mr. Loewenstein stated that any motion should include the request for clarification of the language as previously discussed.

Mr. Rooker suggested that the language come back as a Consent Agenda item.

MOTION: Mr. Loewenstein moved, Mr. Rieley seconded approval of deferral of ZTA 00-005 to their May 30th Consent Agenda with instruction that staff and the county attorney come back with new language to reflect definition of the terms "re-divided" and "re-developed."

ZTA-00-006 Noise - Public hearing on an ordinance to amend Chapter 18, Zoning, of the Albemarle County Code by repealing section 4.14.1.1, Method of measurement, and section 4.14.1.2, Meaning of terms; by adding section 4.18, Noise; and by amending section 4.14.1, Noise, section 5.1.02, Clubs, lodges, section 5.1.09, Fire, ambulance, rescue squad station (volunteer), section 5.1.11, Commercial kennel, veterinary, animal hospital, section 5.1.16, Swimming, golf, tennis clubs, section 5.1.37, Outdoor amphitheater, and section 30.4.14, Performance standards. This amendment pertains to the regulation of noise.

Ms. McCulley presented the staff report, noting that the first amendments in the county code related to people noise, and several public purposes will be served by this amendment also. She explained that this amendment will institute day and night maximum sound levels, and establish procedures for measuring sound, including how to consider background sound. Ms. McCulley mentioned that the amendment considers exemptions such as animals, emergency operations, etc.,

Ms. McCulley said that this proposed change is the result of several years of work with many different people in an attempt to address sections of the noise ordinance that are lacking and impractical. She noted that there are currently only five uses that are specified under supplementary regulations for maximum sound levels, and industrial uses. Ms. McCulley emphasized that the old ordinance language included just one standard maximum sound level, regardless of whether it is day or night; staff is now proposing a lower nighttime level. Ms. McCulley added that it is also necessary to list standard procedures for measuring sound, and address the problem of background sound. Ms. McCulley said that the new language also addresses the situation where existing equipment doesn't comply with the noise ordinance.

Ms. McCulley said that zoning staff surveyed other localities, read trade technical reports, and sampled sound levels from different sources within Albemarle to arrive at a new regulation that will expand and improve the control of noise. She added that the new regulations may slightly increase the review and submittal requirements for land uses that may have noise impacts, but stated that the fact that the new regulations are so clear will make it fairly easy to get through a reasonable review procedure. Ms. McCulley mentioned that it is difficult to assess whether the new ordinance language will require additional manpower to implement.

Ms. McCulley continued by presenting the proposed regulations as outlined in her staff report. She mentioned that daytime is defined in the new language as the hours between 7 am and 10 p.m., with nighttime being more of a protected time, with lower permissible sound levels, from 10 p.m. to 7 am.

She indicated that the procedures for measuring sound consider every conceivable factor – calibration of the sound meter, weather conditions, the DBA scale, placement of the equipment, the duration of testing, ambient sound measurement. Ms. McCulley described 4.18.0.4 as the heart of the regulation, as it reviews the four different receiving zone types and the maximum noise levels based on daytime or nighttime. She mentioned that it ranges from most restrictive – such as rural areas, residential, and public spaces/institutions which would have a nighttime maximum of 55 decibels, daytime maximum of 60, to least restrictive – such as industrial districts – with a daytime and nighttime maximum of 70 decibels.

Ms. McCulley noted that existing sound sources must comply when they're changed out.

Ms. McCulley mentioned that 4.18.0.7 lists a provision for a modification, waiver or variation, which would come to the Commission, and would require notification of neighbors. She added that the Commission could impose conditions with their action on such an item.

Ms. McCulley stated that 30.4.14 relates to natural resource extraction activities, and staff has taken language from the Department of Mines, Minerals, Resources guidelines and incorporated it into the ordinance.

Mr. Thomas asked what industrial site in Albemarle County would generate 70 decibels, and wondered if a sawmill would create that level of noise.

Mr. Rooker noted that it would depend on where the "receiver" of the noise would be.

Ms. McCulley said that the distance considered would be from the property line, noting that industrial sites require a 50 or 100-foot setback, so sound would be received from at least that distance out.

Mr. Rieley asked what category portable sawmills would fall under.

Ms. McCulley responded that temporary and permanent sawmills fall into same category as far as sound compliance – industrial uses.

Mr. Loewenstein asked if chainsaws would fall under the yard maintenance category.

Ms. McCulley replied that they would, as long as they were being used for non-commercial purposes.

Mr. Rooker asked, "Do we believe that we have so many nonconformities that we have to basically say that existing sounds don't have to comply? It seems to me that you run into a perpetual situation where somebody complains about noise, and you come out to measure it, and the defense says, 'I've always made this much noise.' So how do you ever apply the ordinance to any [noise] that's in existence prior to the ordinance being passed?"

Mr. Kamptner responded that the noise would have to fall under the other noise ordinance under the county code that has retroactive application; under that ordinance, the complaining person would have to call the police, and there would have to be a determination made if the noise meets the nuisance criteria.

Mr. Kamptner mentioned that under the ordinance the Commission is now considering, the county can deal with existing noise as a nonconforming use, and put a cap on it so that it can't get worse than what it currently is. He added that over time, technology will hopefully reduce the noise, as equipment becomes better and less noise producing.

Mr. Rooker asked if there was any way to improve upon this language so that the "giant loophole" can be closed, so that existing sound sources are also governed.

Mr. Kamptner replied that the county is applying it as far as possible requiring that an offender bring the noise more into compliance each time there is an equipment change.

Ms. Hopper asked if the burden could be placed on the person who is creating the sound to prove that they were in conformity with the old ordinance at the time it was changed.

Mr. Kamptner responded that once this is adopted, the county will want to have it included under the civil penalties schedule, because in civil enforcement the burden is on the violator to establish the nonconformity.

Mr. Rooker noted that clubs and lodges are mentioned in the ordinance, and are somewhat restricted by the language stating that no fundraising activities shall be conducted between 11 p.m. and 8 a.m. He suggested changing the time restrictions and the requirement that the activities be only in enclosed buildings, as clubs typically have activities that last from midnight and beyond, many of which are held outside.

Ms. Hopper pointed out that if they are outside or inside, and last until 2 a.m., they still have to conform to the nighttime noise regulation.

Mr. Thomas recalled that the North Garden Fire Department was not required to be inside, and was limited to 60 decibels of noise.

Mr. Rooker commented that the general noise ordinance will apply, regardless of the timing of events. "Given that, I don't know that there's a necessity for leaving these time restrictions in this, and also the restriction against outside activities, which is continually violated in the county."

Mr. Craddock mentioned that several local fire companies have held all-night "Bingo" as well as dances that last until 1 a.m.

Mr. Loewenstein said, "What about picnics, which would typically be outdoors."

Mr. Rooker stated that he would be in favor of eliminating "b" in the proposed language, and perhaps putting a limit on the time period for outdoor activities.

Mr. Loewenstein asked if this section only addresses clubs and lodges, stating that other organizations – churches, neighborhood associations, etc. – might also hold such events.

Ms. McCulley replied that this particular section is specific to club and lodge uses.

Mr. Rieley commented that Mr. Loewenstein brought up a good point. "If the issue is noise, then who cares what the source is?"

Mr. Finley asked Commissioners if they agreed that section "b" of the proposed language be eliminated.

Mr. Kamptner mentioned that because this language has been advertised as is, it may be better for staff to draft a Resolution of Intent with new language to deal with the 5.0 classes of uses.

Mr. Finley asked if there is a kennel located within 5 feet of a property line, would it be a nonconforming structure.

Ms. McCulley responded that this part of the noise ordinance would apply to a commercial kennel, which is only allowed in a few zones by special permit only, and in commercial districts. She added that the maximum sound level requirements have always existed in the ordinance for kennels, and most facilities have acoustical restrictions before they're approved. "I don't think we're going to be lessening any standards for any existing kennels."

Public comment was invited.

Mr. John Ornoff addressed the Commission, stating that he has been following this for five years, and each time he comes it's "better." He expressed concern that clubs and lodges have activities outside at the defined "nighttime," and suggested those activities be proscribed. He stated that he lives next to a club, and calls the police a few times a month because of excessive noise. Mr. Ornoff also expressed concern that noise from public facility uses on private land is exempt under the new ordinance. "I

think that's a loophole that really should be cleaned up by better specifying what in fact is intended by public use and public facilities."

Mr. Rieley agreed that there seem to be a loophole by allowing exemption even if the events held by public entities occur on private land.

Mr. Ornoff said, "I think this is a way around the basic restrictions that were introduced."

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

Mr. Rooker said he is comfortable with the way the language is worded now, except for Section 5.0 as previously mentioned. He brought up the issues raised by the speaker regarding exemption for public activities on private property, and asked fellow Commissioners how the felt about it.

Mr. Rieley said that when the other exemptions are considered, many of them have a temporary nature that are not a part of the ongoing use of the land – parades, fire alarms, etc. "I'm not terribly uncomfortable with the distinction between a public activity that's taking place on a piece of property that is not owned by a public facility being treated the same way as if it were on public property."

Mr. Rooker agreed.

Mr. Thomas said, "I feel like we would handcuff the school activities too much if we tried to put a damper on it. I like the wording the way it is."

Mr. Rooker commented that public activities do not generally extend late into the night; athletic events are usually over by 11:00 p.m. or so.

Mr. Thomas asked if Scott Stadium was a public facility.

Mr. Rooker said, "We don't regulate it."

Mr. Rieley said that he would like to "take a crack at those lights."

Mr. Kamptner mentioned that in Section 4.18.6 B, the word "variance" should be changed to "variation."

MOTION: Mr. Rooker moved for approval of ZTA 00-006 with correction of Section 4.18.06 (B) to change the term "variance" to "variation."

Mr. Rieley asked for clarification of 5.01.02 (B), 5.1.09 (C), and asked if they would be dealt with in the other ordinance if they are left in.

Mr. Kamptner responded that these sections, and others in Section 5, put time restrictions on activities, need to be reviewed comprehensively and dealt with separately, along with restrictions on outdoor activities.

Mr. Thomas seconded Mr. Rooker's motion, which passed unanimously.

Mr. Kamptner announced that he would prepare a Resolution of Intent on the Section 5 issues for the Commission's next meeting.

ZTA-00-007 Civil Penalties - Public hearing on an ordinance to amend Chapter 18, Zoning, of the Albemarle County Code by repealing existing section 37.0, Penalties; and by adding new section 37.0, Penalties and remedies. This amendment pertains to establishing authority to enforce certain identified zoning violations by civil penalties, and continuing existing authority to enforce zoning violations by criminal penalties or by seeking injunctive relief or other remedies.

Ms. McCulley reported that the ZTA is before the Commission at the recommendation of the County Attorney's office and Zoning staff, who believe it will be an effective tool for enforcing zoning regulations. She explained that the amendment will reduce staff time required for each specific investigation, and should provide a deterrent for further violations. Ms. McCulley said that this amendment will amend the existing penalty section by adding the provision for imposition for civil penalties. She added that Section 37.2 would establish a schedule of civil violations in two classes – one for an initial $50 fine, and one for an initial $100 fine; under both classes, for continuing violations beyond an initial 10 day period, a $150 fine is imposed to a maximum of a $3,000 fine. Ms. McCulley explained that a violator could choose to go to court and not pay the fine, and at any time the county could go to court via an injunction for serious violations.

Ms. McCulley added that because of FOI rules, the county will now take anonymous complaints. She noted that this may lead to more complaints, as complainants realize they don't have to leave their name; also, if it is recognized that situations are improving, it may spur on more complaints in an attempt to yield similar results.

Ms. McCulley reviewed some commonly occurring violations in the $100 class: use violations - conducting a use not permitted in that zoning district; disturbing critical slopes; cutting trees without approval; sign violations; inappropriate outdoor lighting; site plan violations; and violations of a proffer, SP, variance, certificate of appropriateness, etc.

Ms. McCulley reviewed some commonly occurring violations in the $50 class: violation in which someone has located structure in a required yard; non-compliance with noise regulations.

Mr. Finley asked if each violation would be penalized and assessed as a separate offense.

Ms. McCulley replied that each separate violation is subject to a penalty, which will be administered with an element of discretion, to make sure that an offender is given adequate notice to correct the situation.

Mr. Finley asked if that is something that could be negotiated on site when the visit from zoning happens.

Ms. McCulley responded that if it is a simple violation that can be corrected fairly easily, then the fine and penalty could be waived; however, if it is a situation that can't be corrected – such as cutting trees – then the offender will have to be fined.

Mr. Finley commented that some offenders may continue to violate the ordinance and just pay the fines.

Ms. McCulley stated that Mr. Finley raises a very good point, as one of the difficulties in enforcing the ordinance is getting someone to court. She mentioned that an offender could continue to mount up fines, up to the $3,000 cap, adding that it is possible to get an injunction from a judge in extreme cases.

Mr. Kamptner stated that an injunction can be sought on the civil side, not just the criminal side.

Mr. Rooker commented that an offender who violates ordinances over a period of several months should be treated the same as an offender who violates ordinances simultaneously.

Ms. Hopper asked if the noise violations are subject to civil penalties.

Mr. Kamptner replied that staff will amend the civil penalties section to expressly refer to section 4.18.

Ms. McCulley suggested changing B. (5) to refer to 4.18 instead of 4.14.

Mr. Kamptner agreed that that would be acceptable.

Mr. Rooker commented that the Civil Penalties Amendment is a very helpful provision to add to the ordinance, by allowing the Zoning Administrator to proceed without bringing a criminal action every time the ordinance is violated.

Mr. Thomas said, "It gives the offender a chance to make amends."

Mr. Loewenstein stated, "I hope it will act as an effective deterrent to, or at least improve the situation. That would be a wonderful result of this."

Mr. Rieley asked if $3,000 is high enough, as it may be regarded by some as a cost of doing business.

Mr. Kamptner replied that that is the statutory maximum, but added that the county does have the remedy of injunctive relief.

Mr. Finley commented that some Health Department violations bring a $10,000 fine.

Mr. Finley asked if civil penalties are common in other localities.

Mr. Kamptner responded that they are becoming more common, as the legislation was adopted several years ago.

Ms. McCulley mentioned that Manassas, Roanoke, Chesterfield, Charlottesville, James City County, Arlington, etc. all have a civil penalty structure.

Public comment was invited.

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

MOTION: Mr. Loewenstein moved for approval of adoption of ZTA 00-007 amended so that Section 37.2.B.5 refers to section 4.18, instead of 4.14.

Mr. Rooker seconded the motion, which passed unanimously.

Regarding the noise ordinance previously discussed, Mr. Rooker asked if there is an existing ordinance to prevent discharge of firearms in rural areas at certain times of day.

Mr. Kamptner said that it is not covered by the Zoning Ordinance.

Ms. McCulley noted that she is not aware of any restriction on hours for discharging a firearm in rural areas, although it is prohibited in village/residential and other residential districts.

Mr. Rooker expressed concern that firearms could be used at any time under the present ordinance.

Ms. McCulley asked if this could be considered a nuisance noise under the county code noise regulations.

Mr. Rooker said that it would be a nuisance, although evidently would not be something prohibited by the civil noise ordinance.

Ms. Hopper stated that if it falls under the public nuisance ordinances, it could be regulated and enforced.

Mr. Kamptner commented that that may be the reason it falls under public nuisance, as it is not a land use activity. He added that firing ranges require a special use permit.

Mr. Rooker clarified that his concern is primarily for backyard target shooting that may be offensive to neighbors, not organized firing at ranges.

Mr. Kamptner said that occasional backyard shooting is going to be hard for staff to go out and measure, especially if it is occurring late at night. He suggested that the nuisance ordinance may be the best way to get at the problem.

Mr. Rooker agreed.

Work Session:

CPA –00 -03 Public Facilities - Proposal to consider amending the Comprehensive Plan to allow for the possible location of certain larger scale public facilities in the designated Rural Areas.

Mr. Benish reported that since the Commission last discussed the CPA at their May 2nd meeting, staff has proposed draft language for consideration prior to scheduling the public hearing; staff is tentatively shooting for a June 6th Public Hearing. He explained that staff is proposing language as included in the earlier (May 2nd) staff report, and corrected several typographical errors.

Mr. Cilimberg commented that staff focused on the second paragraph that introduces the bullets in trying to represent the Commission's discussions.

Ms. Hopper asked if the last sentence in the first paragraph, which states "only in cases where it is not possible to locate facilities…" allow for the Northern Elementary School.

Mr. Cilimberg responded that staff didn't consider the existing language to be broad enough to allow for the school.

Mr. Finley asked about the origin of Item One under General Principles.

Mr. Cilimberg replied that that already existed, and was furnished to Commissioners last time.

Mr. Thomas asked if the third bullet stating "the site should be located contiguous to existing development areas" pertained to this particular site, or any site.

Mr. Cilimberg stated that the language would apply to any site that's qualified under this exception. "You don't really have a site before you."

Mr. Rooker commented, "This is of general applicability."

Mr. Rooker said, "These are the suggested principles that would go in the Comprehensive Plan." He asked staff if this is the language that they are recommending.

Mr. Benish replied that the wording in bold-type italics on the first page is what staff is recommending.

Mr. Cilimberg mentioned that at the May 2nd meeting, Mr. Loewenstein suggested removing reference to the 1996 Land Use Plan because it is only used as a guideline, and is not something that actually exists as an adopted future planning tool.

Mr. Cilimberg mentioned that Mr. Benish came up with some language that is intended to further talk about the exceptions regarding the practical availability of development areas for a school site.

Mr. Benish stated that there are issues of physical constraint, and market demands that may warrant a situation where an exception needs to be made.

Mr. Cilimberg suggested that the language could be changed to "such exceptions should be based on the following siting **restrictions,**" as the bullets pertain to how the sites might be approved.

Mr. Rooker commented that the last sentence of the first paragraph – which is in the existing plan – should be deleted or changed in some way so it does not conflict with conditions in that sentence and those below it. He suggested that the last sentence of the first paragraph be eliminated.

Mr. Cilimberg stated that there are smaller sites that might be necessary that may not be contiguous to Rural Areas. He cited Walnut Creek Park as an example. "We want to be careful that we don't remove language that allows for those other considerations as well." He mentioned the Scottsville Rescue Squad as another example of a site not contiguous to a development area.

Mr. Kamptner suggested that the last sentence of the first paragraph be restated to say "a public facility may be permitted in the Rural Area in cases where it is not possible to locate facilities due to physical constraints, or nature of the facility, and/or services provided."

Mr. Rooker expressed concern that availability is not mentioned in the first sentence.

Ms. Hopper commented that availability is restricted in special ways, where the other exceptions are not.

Mr. Rooker stated that he wants to be sure that the language proposed to be added does not serve to restrict what is already permitted. "I'm somewhat bothered intuitively by a restriction against parks being in rural areas. It seems to me to be kind of contrary to reasonable planning."

Mr. Rieley commented, "Particularly parks like Walnut Creek Park."

Mr. Rooker said, "I don't know why we limit the location of parks."

Mr. Benish noted that the last sentence of the first paragraph attempts to address those exceptions.

Ms. Hopper suggested that the word "and" needs to be removed, as it makes it unclear as to whether all three criteria are required.

Mr. Rooker said, "Why do we prohibit the location of parks in Rural Areas as a general principle."

Mr. Rieley agreed that the current way of permitting such parks seems "very circuitous."

Mr. Finley asked about "fiscal" constraints as well as "physical," and asked if the driving force of this exception was to save development areas for residences and businesses. He commented that the bullets don't mention costs.

Mr. Benish said that staff was looking at availability of land as including cost issues.

Mr. Benish mentioned that there are 14 schools in the Rural Areas, including Crozet, many of which are older.

Mr. Cilimberg stated that the schools were created before this language was put in the Comprehensive Plan.

Mr. Finley asked if health facilities such as hospitals would be located outside development areas.

Mr. Cilimberg replied that hospitals are private facilities that come under special use permit provisions.

Mr. Loewenstein expressed concern that the disadvantages of approving the amendment as listed in the staff report are somewhat significant. "I don't want them just to get overlooked." He said that granting the exception will not be fully consistent with the pending Rural Areas study recommendations, nor will it be consistent with the principles recommended in the DISC report.

Mr. Loewenstein also expressed concern that some of the advantages listed seem to imply that schools, parks, and other public facilities are not a "primary land use purpose." He added, "To the degree that we're able to use that land for [those purposes], I think we should be doing it consistently and as often as we can."

Mr. Loewenstein stated, "I understand the immediate driving force behind this, but I have overall concerns that I'd like to see us discuss a little bit before we take any kind of action."

Mr. Rieley agreed. "I'm profoundly concerned about every one of the disadvantages…I'm also concerned about the distinction between community facilities…treating parks and schools and rescue squads and fire stations as if they're all one category…it seems to me that we are trying to adjust the Comprehensive Plan language to accommodate a particular pragmatic condition that is summed up under advantages by number 2 and number 3."

He added that he would like to see adjustment of this document or come up with a different mechanism so that the very real constraints can be addressed. "It seems to me we're tweaking around some very large principles for very short-term pragmatic concerns."

Mr. Finley commented that if a school takes up living space, won't that mean those houses will just go into the Rural Areas.

Mr. Rieley said that that very point brings up the issue of what a Development Area is all about, and what its composition should be. "It seems to me it's houses, businesses, churches and schools, and all of the things that make a community. By pulling a school out, and sticking it out in the Rural Area because the land's cheap, how does that distinguish us from a developer who wants to do exactly the same thing because it's a little cheaper to put the shopping center out there, or spread out housing."

Mr. Loewenstein stated, "It may increase enormously the infrastructure costs. I think it's very shortsighted. There may be one financial gain up front, to be followed by years and years of permanent financial drain caused by the location away from the Development Areas that it may be serving."

Mr. Rooker asked what happens in a situation where there is no reasonable site for a school or other public facility where is no reasonable site for one in a Development Area. "Do we force ourselves to increase the size of the development area as a whole in order to acquire a school site, or are we better off putting very limiting circumstances under which a site outside of a development area might take place."

Mr. Cilimberg said that the county didn't expand the Crozet Development Area boundary for the Crozet Elementary School.

Mr. Rieley commented that it seems contradictory to say want that we want to put facilities in a place where we're not occupying valuable Development Area land, but then have the facility contiguous to the Development Area, which may eventually expand to encompass the facility – thus making it land in the middle of a Development Area. "It seems to me that schools and houses and businesses should be thought of comprehensively, and that's what the whole DISC initiative is about."

Mr. Finley asked about the hundreds of houses that the school wipes out. "They have to go somewhere… all development areas at one time were rural land. Either way you're going into rural areas."

Mr. Thomas commented that he thinks it's a good planning scheme to be able to put the facilities in an area where we can plan for the future, rather than putting a wall up and saying "stop."

Ms. Hopper said that what is disturbing is that while there may be good reasons for the Comprehensive Plan Amendment, they are hard to see because of the issue behind it. "Because of that, it seems like

the presentation is disingenuous to some extent." She added that carving out a narrow exception for public facilities may indeed be warranted.

Mr. Loewenstein mentioned that at the time the schools now outside the development areas were created, there were different patterns of development of the county. "Today, the situation is very different….if we were siting all the schools in the county for the first time, probably some of them wouldn't end up precisely where they are now." He added, "When you get far beyond population, you start running into all sorts of difficulties with transportation [and] other kinds of infrastructure problems." Mr. Loewenstein commented that if you build a school or other public facility outside the Development Area, it will inevitably draw population near it.

While acknowledging that there is an underlying situation to this CPA, Mr. Loewenstein said, "I don't know that this is necessarily the way to address a specific situation, by opening up a much more general one, at least not without more constraint than…this text gives us."

Ms. Hopper suggested strengthening the last bullet of recommended language, and perhaps defining contiguous in a way that limits that somehow. She added that infrastructure costs themselves will help limit how far out the county goes.

Mr. Loewenstein said that he would be disappointed to see the restrictive rely heavily on cost. "I think there are other land use planning principles that shouldn't be discounted….we need to be able to strike a balance."

Mr. Craddock agreed, stating that "This seems to be just another chipping away at the Rural Area. It seems like such a broad swipe for a [small consideration] like the Northern School." He expressed concern that little chips can eliminate the Rural Areas, adding that "the disadvantages just are glaring to me."

Mr. Rooker said, "It seems to me that it is advisable to locate facilities in development areas... but I don't know that it is the only consideration, or that DISC is necessarily the only model." He added that every situation needs to be analyzed based on its merits, and the only merit is not whether it is in a development area. "If we craft something that is fairly limiting, I don't think it opens up the door to exploitation of huge parts of the Rural Area, any more than the location of Walton School exploits the Rural Area today."

Mr. Loewenstein commented, "Much of our growth has occurred because we have expanded contiguously over time. Every time there is a new expansion, naturally, it tends to be contiguous."

Mr. Rooker stated, "I think that the reason for growth in a lot of those areas is not just because it's contiguous." He mentioned that Route 29 has become a highly developed area because of the availability of the road and other factors, noting that schools in the 29 North area have been located after the fact. "It didn't drive the growth, it was a result of the growth."

Mr. Rieley said that there needs to be a distinction made between rural schools like Walton, and schools needed in the northern part of county to essentially serve the Development Areas and the growth that has occurred there. He expressed concern that the proposed language is so broad, it seems to preclude in a broad swipe all rural schools.

Ms. Hopper said that the first sentence in the proposed language "saves" the rural schools.

Mr. Rieley said that like parks, the schools are "saved" in a very roundabout way.

Mr. Rooker said, "If that first sentence allows schools to be located in Rural Areas, then why do you even need to amend the Comprehensive Plan."

Ms. Hopper said, "The criteria in the first sentence don't apply to the Northern Elementary School situation."

Mr. Rooker said, "It seems to me that they might."

Ms. Hopper said that she asked early on why the Northern Elementary School didn't fall under that exception.

Mr. Rooker responded that there is probably an interpretation that would say it did fall under the exception.

Mr. Cilimberg commented, "If the Northern Elementary School fell under the first sentence, then the whole discussion you've just had is moot." Mr. Cilimberg added that in their interpretation, staff would not have advised that a new elementary school that was beyond the development area and not in an existing school location was not compliant with the Plan.

Mr. Cilimberg said that if the Commission feels that such a school is compliant, then "we don't need to be doing this."

Mr. Rooker noted that the language stating "it is not possible to locate facilities due to physical constraints or nature of the facility and/or services provided" is broad enough that you could include the location of a public facility virtually anywhere.

Mr. Cilimberg commented that the northern school will have a large portion of its students from the Rural Area, adding that only 40 out of the county's 740 square miles are in Development Areas. "We're still pulling from an area that radiates far beyond into the Rural Area."

Mr. Rooker stated, "I don't read this language as prohibiting."

Mr. Cilimberg said that staff could advise the Board of that interpretation if the Commission agrees.

Ms. Hopper asked for the county attorney's office opinion.

Mr. Kamptner explained that the Board adopted a Resolution of Intent to amend the Comprehensive Plan to allow for the possible location of certain larger scale public facilities in the designated Rural Areas.

Mr. Rooker said that in reading the current CP language, there is no reference to larger scale facilities. "Why is the location of a one-acre park different from a twenty-acre school…we're only now talking about creating some kind of size distinction." Mr. Rooker concluded that in his opinion, the existing language permits the location of public facilities in the Rural Areas based upon the judgement of the criteria and their application.

Mr. Loewenstein commented that size restrictions are connected to potential impact, although it is not mentioned in the Plan.

Mr. Craddock noted that schools require more acreage than facilities such as rescue squads, etc.

Mr. Rooker emphasized that in the current Comprehensive Plan, size is not a point of distinction.

Mr. Loewenstein asked if size was equated with the nature of the facility in the current Comprehensive Plan.

Mr. Benish replied, "It's the physical constraints and the nature of the facility, and also the services provided was to give some guidance when you go through a compliance with the plan review on a particular site, why that site might merit being located in a Rural Area."

Mr. Rooker commented that the physical constraints for a large site are less in the Rural Areas than they are in the Development Areas.

Mr. Cilimberg mentioned that the provision of water and sewer would not be addressed by leaving the language the way it is. "You don't have anything that would support providing water & sewer to a school located in the Rural Areas."

Mr. Rooker commented, "But they can expand the jurisdictional area."

Mr. Cilimberg responded that jurisdictional area expansion requires that service be to development areas or be provided to health/safety issues.

Mr. Rooker replied that you could argue health/safety issues for a public school.

Mr. Cilimberg commented that argument could open up a Pandora's box for additional demands from the Rural Areas on public systems. "We would have to have some type of language that would say an allowance for jurisdictional area provision included the location of any public facility."

Mr. Rooker stated, "If you're not permitted to run water into the Rural Areas…I don't think there's anything in this suggested change to the Comprehensive plan that gives you that privilege, as the language states 'schools **should** be accompanied by…'"

Mr. Cilimberg suggested that staff try to figure out what it is that the Planning Commission is willing to do "to try to meet this need," whether this involves a language change or not. He emphasized that the Board is going to take this issue up in June, and is relying on the Commission to have their hearing on June 6th.

Mr. Finley expressed concern that placing schools in Rural Areas would take away land for potential residential development, which would also require more infrastructure. "I think the Resolution is a good idea, and I think it would possibly lead to better infill…"

Ms. Hopper stated that it is important to meet the June 6th public hearing goal to meet a public need, and she would be willing to meet more often to get the situation resolved.

Mr. Rieley said that Ms. Hopper's characterization of this proposal as disingenuous is accurate. "It smacks of taking public advantage of something that we would not allow a private individual or group to take advantage of, or to structure it in a way that makes it easy and cheap for us to do something that we would not otherwise regard in the public good." Mr. Rieley added that he is far less troubled by an interpretation of the existing language that allows some flexibility in an admittedly practically difficult situation. He stated that he would support minor adjustments in existing language rather than this "wholesale bulleted" approach, to make it clear that more flexibility exists. "Then let an individual proposal stand or fall on its own merit."

Mr. Loewenstein agreed. "Under the circumstances, and given my serious reservations about the way this was headed, I think that might be for me at least a marginally acceptable way out." He added that the proposal seemed "opportunistic," adding that he does not feel comfortable putting public facilities in a completely different frame of reference. Mr. Loewenstein added that some minor adjusting of the existing language would probably be sufficient, and expressed his agreement that every application should rise and fall on its own merits.

Mr. Rooker agreed, adding that he interprets the existing language of the plan as allowing latitude anyway, but perhaps the county attorney's office would be able to suggest an adjustment to better clarify this flexibility. Mr. Rooker said that he would be in favor of going back to the original language with perhaps minor adjustments, and also minor adjustments to the Service Authority jurisdictional language if necessary.

Mr. Cilimberg stated that staff tried to provide language that could provide some predictability to considering these situations in the future. He suggested that Mr. Kamptner's recommendation to eliminate the "and" as previously discussed, and some additional language to address possible water and sewer service, may be sufficient alterations to the language to address Commission concerns.

Mr. Loewenstein asked if a parcel between an existing growth area and a school site were contemplated, would they be allowed to tap into the public water/sewer.

Mr. Cilimberg said, "No." He added that a public facility site adjacent to a Development Area would probably get its service through a line coming through the development.

Mr. Loewenstein asked what would happen if an owner of a property in between would request public water/sewer.

Mr. Cilimberg responded that that situation now occurs in the Crozet area, but the access will not be approved unless there is a demonstrated public health/safety issue. "But [those lines] are going to areas that have been designated to receive water and sewer in the Comprehensive Plan. What you're doing is saying 'the place that's getting that service was designated, you are not.'" Mr. Cilimberg added that there is not a school being built every year that will subject the county to those types of situations.

Mr. Cilimberg said he would just like to have something that the Board can use in making a jurisdictional area distinction between a school site – if it needs water & sewer – and other sites.

Mr. Rooker asked, "Doesn't a large school raise a public health/safety concern that is not raised by a single-family residence?"

Mr. Benish said that the policy that is practiced is that you have to document a health/safety issue, so typically the service is provided when there is contamination or water quantity problems.

Ms. Hopper asked why schools could not be added to the jurisdictional area.

Mr. Rooker said that something more than just the health/safety/welfare criteria may be needed.

Mr. Rieley suggested adjusting the language to allow for school water and sewer.

Mr. Cilimberg said that he interprets the Commission's opinion as not wanting to open up a set of criteria for expansion or continuous location of schools, and just adding a statement about water & sewer would prevent this.

Mr. Finley asked Commissioners if they had additional comments.

Mr. Thomas stated that he likes the idea of planning schools to be close to Development Areas, and is glad that the subject of the one school finally got onto the table.

Mr. Loewenstein said that he would much prefer to modify the current language with small changes, rather than try to replace the language entirely.

Mr. Rieley stated that he wants to make sure that parks, firehouses, etc. are differentiated, but added that if the language is deemed to be sufficiently broad to allow for schools, it is certainly broad enough to allow parks and the like.

Mr. Benish commented, "It's what we relied on to allow them out there now."

Mr. Rooker suggested adding the word "reasonably" in front of possible in the current language.

Mr. Loewenstein mentioned that the word "reasonably" could be somewhat gray.

Ms. Hopper said, "I think we're arguing for gray [area] in order to not have the restrictions under the second paragraph that could throw the door open accidentally."

Mr. Finley and Mr. Craddock agreed that modifying the existing language is preferable to creating new language.

Ms. Hopper asked what parks and fire stations are planned for the near future in the CIP.

Mr. Cilimberg said that fire stations are planned for the north, south and west, and there is a potential site south that was purchased when Monticello High School was purchased. He added that northern sites have been identified in considerations of rezoning decisions for development areas, and the western site cannot yet be disclosed. Mr. Cilimberg noted that the only new park is the one across from Yancey School.

Mr. Benish mentioned that there is a park planned for re-use of the landfill, which may have been found to be in compliance.

Mr. Cilimberg noted that there may also be field space in the Rural Areas.

Mr. Benish reminded Commissioners that they will be reviewing proposals as always, for their compliance with the Comprehensive Plan. "You do have the opportunity to find a particular case in compliance with the plan. Typically, that's going to be after an acquisition or option process."

Mr. Craddock stated that he agrees with the proposed changes to the existing language.

Ms. Hopper asked about the origin of the Resolution of Intent.

Mr. Cilimberg replied that in discussions of potential school sites outside of the development area, staff believed that there was not adequate language in the Comprehensive Plan to support that. With that, in their decision to consider such a site, the Board passed the Resolution of Intent.

Mr. Cilimberg said that once the Comprehensive Plan Amendment is advertised for public hearing, the language in the advertisement is what the public will respond to, and what the Commission will vote on.

Mr. Kamptner read the proposed language with changes mentioned in discussion.

The Commission unanimously recommended amendment to the language of the Comprehensive Plan as follows:

"A public facility may be allowed in the Rural Area, only in cases where it is not reasonably possible to locate facilities due to physical constraints, the nature of the facility, or the services to be provided. In the case of such allowance for a school, public water and sewer may be provided as necessary."

Mr. Cilimberg stated that the public hearing for the CPA will be advertised for June 6th, and the language will be ready for Commission review prior to that meeting.

Old Business
There was no old business presented.

New Business

Resolution of Intent to Establish Regulations for Sexually Oriented Businesses - Consider resolution of intent to amend the Zoning Ordinance to establish regulations for sexually oriented businesses.

MOTION: Mr. Rooker moved, Mr. Thomas seconded approval of the Resolution of Intent as presented.

The motion passed unanimously.

There being no further business, the meeting adjourned at 9:30 p.m.

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V. Wayne Cilimberg
Secretary