Albemarle County Planning Commission
May 23, 2000

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, May 23, 2000 at 6:00 p.m. at the County Office Building – Charlottesville, Virginia. Members attending were: Mr. William Finley, Chairman; Mr. Dennis Rooker, Vice-Chairman; Mr. William Rieley; Ms. Tracy Hopper, Mr. Rodney Thomas; Mr. Pete Anderson. Other officials present were: Mr. David Benish, Chief of Planning and Community Development; Mr. Greg Kamptner, County Attorney, and Mr. Eric Morrisette. Absent: Mr. Pete Craddock; Mr. Jared Loewenstein.

Approval of Minutes – May 2, 2000
The Commission moved, seconded, and unanimously approved the minutes of May 2, 2000 as amended.

Review of Board of Supervisors Meeting
Mr. Benish presented a review of the Board's May 17th meeting, noting that there were 6 items that the Commission had seen previously: **SP 00-003** (Charlottesville Broadcasting), which was approved with 8 conditions as amended by the Board, including no limitations on the number of structures. **SP 99-74** (Townwood Mobile Home Park) was deferred to the Board's June 7th Consent Agenda to allow for modifications of several conditions, including relocation of the entrance to intersect with one of the existing intersections in the Townwood Townhome development, closer to Hydraulic Road. The Board is also requesting that staff draft a condition regarding the establishment of storage facilities for each mobile home. **SP 99-77** (Evergreen Baptist Church) was approved by the Board with conditions as recommended by the Commission; **SP 00-002** (Unity Church) was also approved. The Board also approved **SP 00-006** (University of Virginia Credit Union) on Route 250 East. The Board denied **SP 00-008** and **SP 00-009** for Blue Ridge Garden Market with the agreement of the applicant based on discussions of the precedent that would be set for general stores in the area; the applicant will probably go back to nonconformity and operate under that.

Other Matters Not Listed on the Agenda
Mr. Bob Watson addressed the Commission. He mentioned that the Commission will consider the county's Historic Preservation Plan at their May 30th meeting; the plan references statistics taken from a needs survey done in Albemarle County six years ago. Mr. Watson said that he examined the survey, found some other statistics within it, and wrote an article for a builder magazine regarding what he found. Mr. Watson distributed copies of his article (Attachment A).

Deferred Items:

SP 00-005 Trinity Presbyterian Church – Request for special use permit to request a change in conditions for clearing and screening for a church on 17 acres. The property, described as Tax Map Parcel 76-17C & 17C1, is located in the Samuel Miller Magisterial District at 3101 Fontaine Avenue. The property is zoned R1 Residential. The Land Use Plan shows this property as Neighborhood Residential (3-6 units per acre) in Neighborhood 5. *Staff requests deferral to June 6, 2000.*

MOTION: Mr. Rooker moved, Mr. Thomas seconded approval of deferral of SP 00-005 to June 6, 2000 at staff's request. The motion passed unanimously.

ZMA 00-001 Covenant Church – Applicant seeks approval to rezone a 0.35 acre strip of land and a .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 154 C 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. *Deferred from the May 16, 2000 Planning Commission meeting*.

Mr. Morrisette presented the staff report, noting that the Covenant Church purchased .6 acres currently zoned R-4; they are currently seeking CO zoning, with proffers that would make it consistent with the rest of the church property, also zoned CO. Mr. Morrisette said that the proposal would allow the church to expand their parking and locate a storage facility, while cleaning up a lot of nonconformities on the site. He noted that staff is recommending approval of the rezoning.

Mr. Morrisette emphasized that the potential alignment of the Meadowcreek Parkway will limit the church's future expansion possibilities; also, an adjacent property owner has purchased property that may preclude the church from any additional expansion. He added that the church's pastor has indicated that the church does not plan any future addition/expansion. Mr. Morrisette pointed out that one portion of the property was "mis-zoned" C-1 several years ago, and staff would like it to be properly zoned CO as originally requested. Mr. Morrisette added that he has signed proffers (Attachment B) as explained in the staff report.

Ms. Hopper asked about Mr. Morrisette's comment in his staff report that approval is not recommended for the site plan amendment.

Mr. Morrisette clarified that staff is not recommending the major amendment that adds the parking, as there are issues with the second entrance that need to be resolved, as well as stormwater drainage issues. He emphasized that staff does recommend approval of the rezoning.

Mr. Rooker asked if there were school or daycare facilities operating on the church property, as there is another structure shown on the property.

Mr. Morrisette responded that he is not aware of school or daycare use on the property, pointing out that the building in question is a gymnasium used for activities.

Noting permitted by-right uses, Mr. Rooker asked if establishing a private school would require a special use permit.

Mr. Benish confirmed that it would.

Public comment was invited.

The applicant addressed the Commission. He stated that he did not have anything to add to what Mr. Morrisette has already said.

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

MOTION: Mr. Rooker moved, Mr. Thomas seconded approval of ZMA 00-001 with the proffers submitted. The motion passed unanimously.

Work Sessions:

Mr. Benish stated that the applicant for CPA 98-03 cannot arrive until 7:15 p.m., and suggested that the Commission hold the Conservation Easements worksession first. Commissioners agreed.

Acquisition of Conservation Easements (ACE)
Mr. Kamptner presented the staff report, referencing the Executive Summary he prepared, and the proposed ordinance. He added that the Engineering Department had e-mailed comments to the Commissioners, noting that he found out from David Hirschmann that Engineering had not participated in the preparation of the Ordinance. Mr. Kamptner said that he also received input with Sherry Buttrick, who chaired the ACE Committee; he noted that Ms. Buttrick had further comments to Engineering's statements.

Mr. Rooker asked if the language in the proposed ordinance could be changed at this point.

Mr. Kamptner replied that it could be changed.

Mr. Kamptner suggested that he make copies of Engineering's comments, and Ms. Buttrick's response to them.

The Commission took a brief recess while Mr. Kamptner made copies.

Referencing Ms. Buttrick's comments, Mr. Kamptner explained that the ACE Committee wanted to keep the plan and the ordinance itself simple, as Committee members expressed concern that the plan will be unsuccessful if it seems too burdensome.

Mr. Kamptner proceeded by explaining the response he and Ms. Buttrick had to Engineering's comments:

1. The Committee took quite a bit of time in determining who should be on the ongoing Conservation Easement Committee, set forth in Section 1.05 of the Ordinance.

2. Other Protected Open Space – other protected Open Space may need to be defined; however, the language does have meaning to the Board of Supervisors, and allows flexibility for individual circumstances.

3. Reference to Plant & Animal Species – Ms. Buttrick suggested using the term occurrence, which would include plant & animal species as well as natural communities.

4. Entering into an Easement – this draft of the ordinance protects a mountain resource, but that is the only resource expressly protected by the easement. Other resources are anticipated to be protected simply through reduction of density. Engineering suggested that other resources be expressly protected by the easement; however, the ACE Committee is not in favor of an ordinance that will across the board expressly protect the resources that allow the property to be eligible for the easement.

   Ms. Hopper asked why additional stipulations for protecting resources was viewed negatively. Mr. Kamptner responded that the Committee wants to keep the ordinance simple, and regulations put in place to protect some of these resources were seen by the committee as being a deterrent to possible applicants.

   Mr. Rieley noted that if the point system works in such a way that the presence of a plant or animal species is what qualifies it for the easement, there is nothing within the easement itself that prevents the destruction of the species as long as the density is low. Mr. Kamtpner responded that the Committee felt that "going into this kind of detail would be too much for this particular ordinance."

5/6 Mr. Kamptner stated that the Committee attempted to identify the major riparian streams contributing to the public water supply, acknowledging that every stream is not included.

Mr. Rooker mentioned that frontage directly on the reservoir is not listed. "If that's the case, that certainly seems to me to be an omission perhaps."

Mr. Finley pointed out that there is no credit given for tributaries, just the main streams.

Mr. Kamptner responded that there is credit given for property in the watershed, but credit is only given for frontage if you are in a "main stream."

7/8 Regarding Engineering's question about "double-counting" for overlapping criteria, Mr. Kamptner explained that it is possible for a piece of property to gain that benefit. He added that it is also possible for a property to have double frontage credits if the stream happens to run through the middle of the parcel.

9. Mr. Kamptner said that this particular provision is in the ordinance, recognizing that all of the studies for identifying the sensitive groundwater recharging areas have not been completed. He added that as the areas are better identified, different point criteria may be assigned.

10. Mr. Kamptner said that the "other restrictions" described by Engineering as very generic will be part of a model deed of easement that will be prepared by the County Attorney's office. Some of these provisions will be taken from Conservation Easements and Open Space Easements that the County, the Virginia Outdoors Foundation, etc. are including now. "They do have meaning." Mr. Kamptner added that the Committee did not want to include requirements that adhere to programs and policies that other entities may be imposing.

11. Adding the Thomas Jefferson Soil and Water Conservation District to the list – Mr. Kamptner said that the county is only expressly identifying the public recreational facilities authority and the Virginia Outdoors Foundation; other entities may later be qualified to be easement holders.

Mr. Rooker asked if each time an entity was added as an easement holder if the ordinance would half to be amended. Mr. Kamptner replied that the language in the ordinance is broad enough that it would not have to be changed as other holders are qualified. "As long as they're qualified, they will satisfy the ordinance."

Mr. Finley asked what happens in situations where an easement is given, then the ordinance is amended. Mr. Kamptner replied that the landowner will be subject to the terms of the easement itself that they entered into. "In most cases, any amendments that take place will be procedural…the substance of the easement will be an easement document itself." Mr. Kamptner added that restrictions that operate independently of the easement – such as the Water Protection Ordinance – would apply because they apply across the board, but the easement itself would stay as it is.

12. Monitoring – Mr. Kamptner stated that the Program Administrator's duties will be clarified so that the role of conducting the periodic inspections and enforcement will originate from an appropriate office/easement holder.

13. Non-negotiable deeds of easement – Mr. Kamptner explained that it is possible for deeds to be non-negotiable, but the goal is to have the easement documents in model form, so that each applicant did not have to be dealt with separately. Mr. Kamptner emphasized that separately negotiating terms

would make it difficult to ensure fairness, get the process completed in a timely matter, and ensure that the document satisfies IRS requirements.

Mr. Kamptner emphasized that landowners will have available the terms they will be entering into. "They know from the start what they are getting into."

Ms. Hopper expressed concern about the impact the program would have on county staff.

Mr. Benish stated that Planning has made a request for additional staff based on the anticipation of this project moving forward. He explained that Planning asked for four staff, and two have been budgeted, with the other two contingent on future needs/additional projects as they are approved and developed.

Mr. Kamptner introduced Sherry Buttrick and Stephen Boller.

Mr. Rooker asked about Section 5 – 108.B., noting that the ordinance seems to award quite a few points for parcels being threatened with hardship, forced sale, etc., without really defining what those terms mean. "It seems to me to be a very vague concept."

Mr. Kamptner responded that forced sale is basically the threat of foreclosure.

Mr. Rooker suggested defining the terms hardship, forced sale, etc.

Mr. Rooker also asked about Section 5 – 108.C.4., which awards points for being in the Monticello viewshed. He said that the discussion of the Monticello viewshed has been raised many times before, as much of the county can be seen from Monticello. "Is there an area that has more of an impact on the view from Monticello than other areas…and can you define that with a radius."

Ms. Buttrick explained that there are maps that define the radius in terms of primary, secondary, etc.

Mr. Rooker suggested including those definitions in the ordinance for enforceability, or even include the actual map in the ordinance.

Mr. Rieley and Mr. Benish mentioned that those maps are not in the public domain.

Mr. Rieley agreed with Mr. Rooker's concern that the ordinance is referring to something that is not defined.

Referencing 5.1 – 111.B.9, Mr. Rooker stated that he did not understand why what the county would pay for the property would depend on the income of the person who owns the property. He added that that seems to add another complication to the process, while opening the door to manipulation.

Ms. Buttrick responded that the "income grid" is an important part of the process, and is the result of a great deal of wrestling with several question. Ms. Buttrick explained that the Committee wanted to assure that they would not create a program where they would be paying people who will give easements for free if guided in that direction. She noted that some people will give easements because they love their land, some will give because there are federal tax benefits and state income tax credits, and significant estate planning benefits. In order for tax benefits to be of any interest, the owner has to have tax liability; if landowners will give easements in order to get needed tax benefits, it is more efficient for the county to encourage the gift of easements.

She added that there is an inequality in the availability of easement programs in Virginia and the rest of the U.S. where landowners of modest means disproportionately have no options. "There are very few programs and very little money available for landowners of modest means to be able to gain the benefit of their development rights without selling the land for development purposes." Ms. Buttrick emphasized that the point of this program is to try to "equal the playing field," offering more monetary incentive for those with limited means, and less incentive for those with ample means. Ms. Buttrick noted that the model was created by Nancy McGlothlin of McGuire, Woods, Battle & Booth.

Mr. Rooker asked if any other counties doing these programs have a similar model.

Ms. Buttrick responded that the only other county in Virginia with a program is Virginia Beach, which is allocating $3 - $4 million annually; they have only 20,000 acres left to save, and it is their intent to save it all.

Mr. Rooker asked if Virginia Beach has a sliding scale, adding that he thinks this "cuts against the county's interest in buying the land that is most worthy of being protected" because of the elaborate point system. "Somebody [who has] the piece of property that might be far and away the best place for the county to spend its money to acquire development rights happens to be held by somebody making $200,000 a year, so you're going to say that he can get 4% of the appraised of the value. Not a very reasonable option for that person to probably consider, if he's not motivated by other things to create an easement."

Mr. Buttrick added that the staff person in charge of the program would also be well versed in all of the other options having to do with land gifts, bargain sales, etc., and hopefully that staff person would show such a landowner that there are potentially more benefits simply financially to a very wealthy landowner giving an easement than to selling an easement so that the landowner could learn that the gift of an easement or bargain sale of an easement could be very benficial to him.

Mr. Finley asked how payment would be made.

Mr. Kamptner replied that the payment would be made in a taxable lump sum during the fiscal year.

Ms. Buttrick said that staff and the Committee examined ways to make the payment more attractive from a landowner's point of view, but did not come up with anything that worked from a legal standpoint.

Mr. Finley asked if appraisal would be made on the basis of existing development rights.

Ms. Buttrick responded that it would.

Mr. Rooker asked if there were other easements/ordinances in the country that have a sliding scale approach.

Ms. Buttrick replied that the scale was entirely invented for this program, and other localities have expressed interest in possibly picking it up from Albemarle. She emphasized that programs with a good deal of funding, such as Virginia Beach, don't need the sliding scale. Ms. Buttrick indicated that the Maryland program does not have a financial need component, but officials with that program have stated that they wish they had put that component in. She said that the Maryland program offers points for discounting, so that you get points if you offer to accept 60% or so for the value. "The properties near Baltimore are able to discount and still get more money than the real farmer out further in the countryside who has a low fair market value."

Mr. Rooker said, “Maybe we’re making it very difficult for the county [Albemarle] to acquire the most desirable easements.”

Mr. Benish emphasized that this particular ordinance explains the operation, and there will be an implementation program that establishes policies and procedures. He noted that the staff person for the program will be working with the landowner to use all existing easement programs find the best advantage for the property owner and the county.

Ms. Hopper said that the ordinance seems to try to create the broadest possible pool by creating incentives that are broad for all landowners.

Mr. Kamptner noted that there is a “safety valve” built into the ordinance that allows the board to waive any requirement or deadline under certain circumstances to allow an easement to be purchased.

Mr. Rooker asked if they could waive the purchase price in the formula. “I’m just looking for the most flexibility for the county to require the best and highest use of easements from the county’s standpoint.”

Mr. Kamptner mentioned that if a prime piece of property came up, the Board could waive the price formula table, or any other requirement, if they find there is an exigent circumstance.

Mr. Finley commented that unless there is a sliding scale, “you certainly couldn’t buy many farms in Albemarle County, if you begin trying to pay appraised price for some of these large farms.”

Mr. Rieley asked about the appraised value terminology, and asked staff to clarify that the value is the appraised value of the easement, not the property itself.

Staff emphasized that it is the appraised value of the easement, not the property.

Mr. Rooker asked about the state tax credit for donation of easements.

Ms. Buttrick replied that the credit is $50,000 in the year 2000, $75,000 in 2001, and $100,000 in 2002 - where it’s capped. That amount must represent no more than 50% of the value of the gift of easement.

Mr. Finley asked for clarification of the appraisal process.

Ms. Buttrick explained that a two-part appraisal is done: the first part gives the fair market value of the property, similar to the assessed value; the second part gives the value of the property restricted with proposed conservation easement. The difference between those two appraisal parts is the value of the conservation easement, which is what’s described in the ordinance as the appraised value of the conservation easement. “That’s the figure that one would be paid, or paid a percentage thereof.”

Mr. Rooker asked if the Committee felt that without the sliding scale, contributions of easements presently made locally by high-income landowners would dry up.

Ms. Buttrick responded that there was a concern that there would be fewer gifts, and more applications to purchase, which would be bad from a fiscal resources standpoint. She said that there was also growing criticism that the program was going to be “a rich man’s program.” Ms. Buttrick said that the grid satisfies that criticism without making wealthy property owners totally ineligible.

Mr. Finley asked if the tax benefit was a continuous benefit.

Ms. Buttrick replied that the federal tax code makes provision for qualified conservation contribution.

Ms. Buttrick reported that the Committee ran 7 parcels through the point score to see if the model was working, and also ran several median income levels through the grid, to ensure equity in the program.

Mr. Rooker asked if the Committee is convinced that the sliding scale will help to increase the overall pool of conservation easements.

Ms. Buttrick responded that the Committee does feel the scale will do that, adding that they spent an inordinate amount of time trying to accomplish equity, and the grid seemed like exactly the right tool to do so.

Mr. Rieley asked about the loophole whereby property could be put in the name of a child, who has very little income.

Ms. Buttrick stated that federal tax forms for the past three years must be submitted.

Mr. Rooker said that simply giving the property away would allow the child to apply for the easements. "Maybe there ought to be something in here that aggregates family income. Otherwise, you could even do a husband/wife situation…with separate returns."

Ms. Buttrick explained that the state program, which uses a high-medium-low ranking, has not seen that kind of problem.

Mr. Rooker suggested putting some measures in to prevent that situation from happening.

Ms. Hopper mentioned that the IRS creates regulations to thwart tax fraud.

Ms. Hopper asked about Land Trusts, and figuring out what the adjusted gross income is.

Ms. Buttrick responded that for LLC's, every partner submits their tax forms, with the percentage of ownership as well as income factored in.

Mr. Rooker said that putting the land into ownership by a corporation could create a loophole whereby the corporation hasn't had any income for the last several years.

Ms. Buttrick said that for an S corporation, the partners submit their return, and the income is added and then prorated based on percentages of ownership.

Ms. Buttrick added that it is not advantageous to contemplate a gift under C corporate ownership.

Mr. Rieley noted that it might be perfectly plausible for a corporation who may own critical property to contemplate selling an easement, and this might preclude that.

Ms. Buttrick stated that the Committee tried to create a "conceptual mousetrap" that worked, acknowledging that there may be ways to circumvent a logical system. Ms. Buttrick asked that "we try not to so complicate the provisions to deal with an elaborate case that we complicate and make difficult

the average landowner's experience in the program." She cited the Mountain Protection Ordinance as an example of one that started out simple and became quite Byzantine.

Mr. Rooker said that some of the details – including aggregation of income – need to be dealt with in the ordinance.

Mr. Rieley stated that Engineering brought up important issues that need to be addressed.

Mr. Rieley asked if there is any provision to delete points in cases where the property might have detrimental factors as well.

Ms. Buttrick commented that there may need to be a factor within eligibility that would kick out something that was not a customary rural use. "This is an Open Space program. We conceive it to be one tool among many tools that there are – both regulatory and volunteer, for the preservation of open space…we didn't intend that this ordinance should be all things to all programs, and if we try to make it that, it will fail."

Mr. Rieley commented that Engineering's comments seem to help clarify the ordinance, not complicate it.

Ms. Buttrick said that the Committee wanted to avoid creating segments in the easement that dictate management of the property – such as requiring that in cases of properties with historic structures, the easement must have restrictions upon that structure.

Mr. Finley asked if the Committee's work is done, or if they would still be working on the language.

Ms. Buttrick said that the third draft of the document will be sent to the Committee, which will include substantive changes made by Committee members and the County Attorney's office. She added that the Committee did not feel more meetings involving them were necessary.

Mr. Finley asked if landowners of properties with permanent conservation easements already on the property would be able to apply for these.

Ms. Buttrick responded, "No."

Mr. Rooker asked if issues in Item #6 raised by Engineering were being addressed.

Mr. Kamptner replied that those issues are being addressed.

Mr. Rooker noted Mr. Hirschmann's concern regarding the one point assignment for parcels within sensitive recharge areas, as part of the parcel may be in the area, and part may not be.

Ms. Buttrick explained that one point was assigned as recommended by Larry Davis, just to "bookmark" the recharge criteria as a factor, with a more specific point structure to be developed later, as better information on recharge areas is available from the county water resources study currently underway. Ms. Buttrick added that it is questionable as to whether the information on recharge areas will ever be available.

Mr. Rooker mentioned Engineering's 11th comment, regarding the holding of easements.

Ms. Buttrick explained that the Committee recommended that the Public Recreational Facilities Authority be THE holder of the easements; the county attorney recommended that the county itself hold the easements. The Committee feels that some other holder that is independent, with experience as a holder of Open Space easements, be the holder of the easements – either the Authority or the Virginia Outdoors Foundation, in addition to the County. "I would be very nervous about having lots of other holders." She added that state statute mandates that VOF be one of the two holders if public monies from the Open Space Preservation Trust Fund is used for acquisition of easements.

Mr. Kamptner mentioned that the reason the county wants to hold the easement is because it is their money. "We are authorized to gift money [or budget money] in certain limited circumstances."

Ms. Buttrick said there are decisions that can be made by holders along the way, including release and substitution of land. "You want to be sure that you're not simply having a holder who may be subject to political pressure."

Mr. Rieley stated that upon review of Engineering's comments, they all seem to relate to the point system, not property management. "I think the points raised are valid, and I'll hope they'll be taken seriously."

Mr. Finley asked if there would be another draft of the ordinance.

Mr. Kamptner replied that there will be another revision prepared for the Board when they hold their public hearing June 14th, incorporating any changes made tonight.

Mr. Finley asked if Engineering's comments will be given consideration.

Mr. Kamptner responded that there will be one more discussion prior to the Board meeting, so that an ordinance is crafted that addresses everyone's concerns to a reasonable extent.

Mr. Rieley said that it is important prior to the public hearing to let everyone know what it is that public money is going toward spending, and what it restricts, and what it doesn't restrict.

Ms. Buttrick mentioned that she would like for the other restrictions to be named in the document, rather than just alluding to them. "We're quite specific in this ordinance anyway, and I think it would be fair and constructive to include [them]."

Mr. Finley commented that most people are oblivioius to the restrictions, and asked if there was a place where they could look at them prior to the public hearing.

Mr. Kamptner and Ms. Buttrick noted that the Committee for this ordinance used the VOF form with a few changes, and also submitted a sample easement in the back of their report. Mr. Kamptner noted that what the county adopts as the model will be quite similar.

Mr. Kamptner mentioned that some of the other restrictions are: no accumulation of trash or dumping on the property; billboards and other signs are restricted; subdivision is prohibited; management of forest resources must be in accord with a forest management plan approved by the easement holder, and best management practices will apply; grading, blasting, or earth removal cannot materially alter the topography of the property, excepted in limited circumstances; mining is prohibited; only single-family dwellings and non-residential outbuildings common and appropriate and incidental thereto are the only permanent structures allowed; industrial or commercial activities are prohibited except for ones related for

agriculture, sylvaculture, and horticulture, and certain seasonal activities. He added that there are also limitations to the size of buildings and farm structures.

Mr. Rieley asked how these would be enforced.

Ms. Buttrick responded that monitoring would determine whether the restrictions were violated.

Mr. Rieley asked how they could monitor these, with just two VOF staff.

Ms. Buttrick replied, "It's worked pretty well on the gift program, and we have 700 of them." She mentioned that there have been six violations that she knows of.

Mr. Rooker said that anyone going into a conservation easement situation is probably motivated by wanting to preserve the land, and/or by recognizing the financial potential.

Mr. Finley asked if the restrictions would be in writing for the landowner selling the easement.

Ms. Buttrick replied that they will be in the ordinance.

Mr. Kamptner said that at best, they will be summarized.

Mr. Rooker stated that at the time the deal is signed, the person would have to read all the restrictions.

Mr. Kamptner said that his understanding is that a landowner will be given all necessary information at the time of requesting an application, so they know prior to applying what they are agreeing to do when entering into a conservation easement.

Mr. Rooker noted that this is the last time the Commission will see the ordinance before the Board public hearing.

Mr. Kamptner offered to provide copies of the revisions prior to the Board hearing. Mr. Kamptner pointed out that the Committee is interested in revising the wording of the restrictions of development rights, as it speaks to "hundred-acre parcels." Ms. Buttrick explained that hundred-acre minimum lot size is different than hundred-acre density. She said that the VOF will probably not agree to the hundred-acre minimum lot size, but instead will prefer the stipulation of hundred-acre density. Ms. Buttrick clarified that it would be better to divide a property without forcing a split of a minimum hundred acres.

Mr. Rooker again mentioned that he would like something done to address the aggregation of husband/wife, parents/minor children and also to address possible loopholes for corporations. Mr. Kamptner agreed that he would try to develop language to prevent those situations.

Mr. Finley asked if there would be further building allowed if a conservation easement is put on a property.

Ms. Buttrick replied that it depends on the easement. If the parcel has enough acreage, there could be several properties on the site.

Ms. Hopper asked about incorporating the term "occurrence" as recommended by Engineering.

Mr. Kamptner agreed to incorporate it.

Ms. Hopper asked if the term family farm was the appropriate wording to use in the ordinance.

Everyone agreed that the term should be parcel instead, so that it refers to a specific piece, not the entire farm.

Mr. Rooker recalled that the terms forced sale, hardship, and Monticello viewshed would also need to be defined.

Referencing Section 5.1.08, Mr. Finley asked for clarification of the description of a parcel adjoining "existing permanent conservation easement or other protected open space." He asked if an agricultural/forestal district would apply.

Ms. Buttrick responded that that section was intended to apply to parcels adjacent to land in public ownership – such as the Shenandoah National Park, etc. She added that she discussed with Mr. Davis giving points for adjoining or being within an A/F district, as the Committee recommended.

Mr. Rooker said that the question is what is included in the term "other" open space.

Ms. Buttrick suggested adding the word "permanently" so that it reads "existing permanent conservation easement or other permanently protected open space."

Mr. Finley asked about putting a guest house on a property that has a conservation easement.

Ms. Buttrick replied that the question of secondary houses needs to be addressed with the county attorney's office, adding that there is usually a size limit on the additional structure, as well as a limit to allow just the one structure.

Mr. Kamptner said that any additional comments could be given to the county attorney's office, or Planning staff, prior to the Board hearing. Mr. Benish noted that the Supervisors will also get the minutes from this meeting.

Mr. Rooker commented, "This is a lot of hard work by the Committee, and it's certainly a real service to the community."

Mr. Finley thanked Ms. Buttrick for answering questions.

Mr. Kamptner said he made notes of all the recommended changes, and will incorporate them into the ordinance draft for the Board.

CPA 98-03 Post Office Land Trust/Theater – Request to study and amend the Comprehensive Plan designation for approximately 641 acres within the Community of Hollymead (an existing development area), located on the west side of Route 29 North (Seminole Trail), south of Route 649 (Airport Road), east of Route 606 (Dickerson Road), and north of the South Fork of the Rivanna River. The applicant originally requested a change in land use designation from Industrial Service to Commercial designation to permit a movie theater complex and other commercial/offices uses.

Mr. Benish presented the staff report, reviewing the history of the project. He noted that if the Commission moves toward establishing a single Town Center designation for the Hollymead area, staff

will probably look towards a more general amendment to the Comprehensive Plan for Town Center so it could apply to other areas. Mr. Benish stated that his staff report includes comments from staff to VDOT during the development of the parallel road system concept, emphasizing that it is not necessarily the county's position.

Mr. Benish pointed out that in CPA's, there is a tendency to look at specific applicant proposals, as in the case of Brass, Inc. Mr. Benish emphasized that there is not a specific proposal from anyone at this time; the applicant has requested a land use change in order to enable them in the future to use the property.

He noted that in February, there were recommendations broken down into sub-areas based on colors on the map presented of the area. Mr. Benish stated that the breakdown as such s now gone, although most of the plan's previous content remains.

In an effort to provide more specifics for road improvements, Mr. Benish said that staff emphasized use of neighborhood streets to highlight the "multi-modal" purpose of the roads, and has tried to use the DISC findings as a guiding document.

Mr. Benish asked Commissioners to provide some direction specifically to the language developed for the CPA in this worksession. He suggested that recommendations can be supplied to staff via e-mail, or through subcommittees of the Commission working with staff.

Ms. Hopper asked if this proposal is premature, given what has come out of DISC and the possibility of master planning in Hollymead.

Mr. Benish responded that that issue arose earlier in discussions of this CPA, but added that if too much time elapses, "there won't be anything to plan for." He emphasized that this is an area of high activity and inquiry. "[In] the perfect world…particularly as DISC recommends it, you'd be doing the neighborhood planning process first." Mr. Benish added that the issue of a possible parallel road is driving a lot of activity in the Route 29 corridor, and said this area gets multiple daily discussion about how certain areas could be developed and how applications for development are going to be submitted.

Mr. Rooker noted that there is a great likelihood that there will be piecemeal rezoning requests for this area, and the Comprehensive Plan for that area is currently piecemeal also. "We're trying to create something that is more unified, that more closely reflects the DISC report….the period of implementation of the various factors of that report may take quite a while." He added that Neighborhood studies might take a long, long time. "I feel like we ought to try to move forward with this process and take it to a logical conclusion." Mr. Rooker mentioned that this is an opportunity to reflect some of the recommendations and concepts contained in the DISC report.

Mr. Finley asked what the time frame needs to be for the CPA.

Mr. Benish replied that there is no legal obligation to move forward with the CPA. He explained that staff brings an initial overview of the proposal to the Commission, then recommends whether to consider the amendment to the Plan or not. Once the Commission decides whether to consider, staff goes into more detail on the Plan.

Ms. Hopper asked if the CPA designation would apply to a broader area.

Mr. Benish said that staff initially hesitated to create a new designation, and wanted to wait for DISC to come out with its findings. He stated that if the Commission and Board want to accept the concept and designation of Town Center for Hollymead, the designation could be used elsewhere.

Mr. Benish said, "What this does at this point of time as its drafted is say [this specific] area that…we call Town Center is subject to these recommendations."

Mr. Rooker recalled that the Commission has considered larger and smaller areas in the proposal, and has agreed with staff and the applicant to consider a parcel of approximately 130 acres of the property as a candidate for the Town Center designation.

Mr. Finley asked if one landowner would have to come forth and offer to build the beginning of a Town Center.

Mr. Benish replied that what has been laid out for the area is a mix of uses to be called Town Center, which would host a variety of services. He added that the proposal would have to come in as a Planned Development to be reviewed for its consistency with these recommendations.

Mr. Rooker complimented staff on an excellent job in incorporating what the Commission set forth at the last worksession.

Mr. Rooker asked how, with multiple owners, a real Town Center with public square, traffic circles, etc. is achieved if the property is developed in a piecemeal basis.

Mr. Benish said that that presents a challenge on this site, although two property owners own 80 acres of the site.

Mr. Rieley commented that an application for a rezoning might design beyond an applicant's boundary.

Mr. Rooker stated that his biggest concern is making sure this is workable on a larger scale so there are not six separate little developments that don't fit together or provide a central theme to a Town Center concept. He added that the applicant has provided sketches that seem to indicate the heart of a Town Center, and reassurance is needed to see that there actually is a center to the Town Center.

Mr. Benish commented that an important component in deciding how the Town Center works is the issue of marketing. "It's difficult at this point in time at a plan level to indicate how much visibility is necessary regardless of the multi-modal opportunities, and the design, and the neighborhood concepts we're trying to institute. There are some market forces that need to be adhered to. We haven't done the type of marketing analysis to see what sort of uses, what sort of scales, and what sort of orientation all play into the design component."

Mr. Finley asked if there was a specific location for the Office Service designation, or if it could go anywhere. "If the center is lagging, and someone wants to go ahead with Office Services on his property, will there have to be some coordination so that…the pattern you're wanting is evolving?"

Mr. Benish responded that in a rezoning process, phasing of development and the schedules of certain projects coming on line are going to be important. He noted that in Brass, Inc., a threshold was set for when the residential component had to be in place, and that was the incentive to ensure that there was planning that the developer would actively move forward to implement. "Hopefully, in a Planned

Development, you have a unified plan, and multiple property owners would still be subject to adhere to it."

Ms. Hopper said, "We don't have to approve any projects until we have a more comprehensive [development] plan in front of us."

Mr. Benish noted that staff has recommended language that states "the approval of development plans for a portion of the Town Center may be necessary and appropriate in certain situations." He said that there could be an advantage to approving a small part of the total because that could set in place a plan that dictates how the rest of it feeds in.

Mr. Rooker commented that that scenario is more likely to be the way it will happen.

Mr. Benish mentioned that staff is encouraging developers who come in for rezonings to set up a worksession early in the process, so that the feedback from Commissioners can be factored in before the proposal gets too far along.

Mr. Finley asked at what point Regional Service will be deemed "compatible."

Mr. Rooker responded that the rezoning application process would establish a forum for determining its compatibility.

Mr. Benish mentioned that Regional Service is factored into the plan, in the context of Community Service.

Mr. Rieley asked, "That's the kind of Regional Service that you have in mind for this?"

Mr. Benish responded, "That's the one use where we felt it was possible they could meet the intent of a Town Center concept if they were to build in…65,000 square foot footprints, multi-story. A department store isn't necessarily incompatible with a Town Center concept, but we wanted it to be based on a concept of design. We didn't want individual free-standing uses with large parking." Mr. Benish said that staff removed auto dealerships, self-storage yards, etc. that are allowed by Regional Service.

Mr. Rooker said that the language seems to imply that there will be exceptions made for such businesses. "I don't see how any of those uses fit into the concept of the Town Center…that language…needs some work." He suggested eliminating all reference to those uses that are deemed inappropriate.

Mr. Rieley asked if the reason those uses were eliminated is because they would not necessarily serve the Hollymead community.

Mr. Benish responded that staff considered how those types of uses took up land. He added that Hollymead serves the northern quadrant of the county, and it may not be inappropriate to have stores that serve that range of area.

Mr. Rooker mentioned that downtown businesses draw people from all over the community, not just downtown.

Mr. Benish said that staff has found that in other communities, in order to make Town Centers work, there have to be activities – such as theaters – to draw people in. "I think it's the balance of how much, and how it fits."

Ms. Hopper asked what would happen if it was later determined that the Town Center would be better located on the other side of Route 29. "How many Town Centers can you have in a given area?"

Mr. Benish acknowledged that that issue is of great concern. "We do have that right now in the Comprehensive Plan, with the North Fork Research Park, as it is more focused… a typical corporate park type of Town Center….that supports up to 3 million square feet of office space." He added that the Towers Land Trust quadrant has 30 acres of land designated for Regional Service. "It's in the right corridor for shopping center development."

Mr. Benish mentioned that all four quadrants immediately around the intersection of Airport/Proffit Road and 29 are all designated for Regional Service.

He added that staff feels that the road system can be taken advantage of to serve the Hollymead Town Center facilities.

Mr. Rieley asked Mr. Benish to discuss the road system.

Mr. Benish explained that the Town Center will be very supportive of transit. He stated that for the north/south quadrant, staff has emphasized – as recommended by the Commission – that this road has a county purpose. "Right now it is proposed as a VDOT project in the six-year [primary] road plan, and would be subject to funding by VDOT…they would use primary funds to build this as part of the Route 29 North primary system. It is not subject to our review and inclusion in the six-year secondary road plan."

Mr. Rooker commented, "It is subject to the MPO including it in the six-year plan."

Mr. Rieley asked to what extent the building of that road would allow the kind of boulevard set forth in the DISC report.

Mr. Benish responded that VDOT is expecting funding and constructing of a two-lane section of this roadway; depending on the timing, it is customary for VDOT to expect the developer to construct the roads. "I think there will be latitude in the development review processes to allow for the road to be developed as it fits the development being reviewed in the rezoning."

Mr. Rooker stated, "If we articulate what we want in our Comprehensive Plan, we have a lot better chance of getting it. The MPO does have some veto power over what is built in the MPO region."

Mr. Rieley added that it would be better to be specific in this articulation. "Generalities in the hands of people with a different agenda can come back to you in a form you didn't recognize."

Mr. Thomas asked about the parallel road planned for west of Route 29, and asked if it would connect with the bypass.

Mr. Benish replied that the VDOT proposal for the parallel road system indicates that the road will be built abutting the backs of all the properties that front on Route 29, so that they can eliminate direct access from those frontage properties to Route 29. "It has two planned intersections with Route 29 – at Hollymead Drive and at Timberwood Boulevard." Planning staff has proposed a midpoint access. Mr. Benish mentioned that the road will dead ends in a cul-de-sac.

Mr. Rooker noted that Berkmar dead-ends into Sam's, but is still a highly functional parallel road. He added that when the 29 interchanges were planned at Rio, Greenbrier, Hydraulic, VDOT refused to plan for those interchanges when they widened 29, despite recommendations from the Commonwealth Transportation Board. "One of the arguments that they gave then for not building the interchanges was 'we'd have to tear up all these improvements we've made on 29." !

Mr. Benish asked the Commission how much specificity they wanted to include in the plan regarding the boulevard, especially concerning the median.

Mr. Rooker said that a boulevard generally has a median, and asked if the width of lanes should be discussed.

Mr. Rieley said that while he thinks it should be discussed, "I'm not sure we're there yet…I think we need to put it within the context of traffic generation and connection to other roadways and the potential for vehicle trips, and also to weigh that against the scale of the cross section of the street as well." He added, "There's a point at which you simply put up an upper limit and say that's going to be what this street is, and the traffic will have to accommodate it or go somewhere else."

Mr. Rieley asked if VDOT would fund the second tier of the streets.

Mr. Benish said that VDOT is expecting to acquire the minimum amount of right-of-way, and build the minimum amount of road and expect for the county to enforce the standards that VDOT would recommend in future development proposals. He said that staff has taken the approach, "If it's going to be something, get the right-of-way now."

Mr. Rooker asked if the county really wants to pressure VDOT to acquire the right-of-way for a four-lane road if what we envision through here is a two-lane road.

Mr. Rieley commented, "We certainly need to come to terms with that."

Mr. Benish said that Planning would like for the roads to be as small as possible, but knows that VDOT is planning for the roads to be multi-lane roadways.

Mr. Rieley stated, "We have to be realistic about the functional requirements of an area that we want to be a thriving, healthy, urbane community…we've got to get people in and out of it."

Mr. Rooker asked if the north/south parallel road would be the main road serving the Town Center. "If so, is a four-lane main street something that we envision as creating the kind of atmosphere, the kind of nexus to the community that we are trying to create here."

Mr. Benish said, "I think we envision an integrated road system that's going to be more than this road. I think you could still [use] this road…[but] it may not be the main street that we want for a lot of pedestrian activity and 20-foot sidewalks with cafes on them…it can be part of that entrance and be built into the fabric, but not be the key road. It's just one of the multiple roads that serve the area."

Mr. Rieley commented that there are a number of urban streets that are pretty wide. "It's the little side streets that have the character, the slow traffic. The faster traffic moves in between them."

Mr. Benish presented some sketches of the new proposed development, provided by Steve Runkle of the Kessler Group. One of the sketches illustrated a traffic circle. Mr. Runkle commented that the traffic circle is envisioned to be part of the Town Center.

Mr. Rieley commented, "This is an awful lot more in the direction that I would like to see this go than most of the proposals we have seen, [but] I don't think a traffic circle can be a Town Center. And I don't think it's nearly dense enough for a Town Center….there need to be more buildings, they need to be closer to the street…more urbane."

Mr. Runkle responded that the traffic circle would be one end of the Town Center, the edge, joining two main streets. He added that they are not wed to having a circle there, it just seemed like a good way to move traffic around.

Mr. Benish also presented some photos of Addison, Texas, a community with similar developments.

Mr. Finley ask what the time frame is for putting roads in.

Mr. Benish replied that this is only the first step towards rezoning, and the entire process would have to happen before that could be determined.

Mr. Rieley asked what VDOT's time table is for acquisition of right-of-way.

Mr. Benish responded that VDOT's acquisition plan goes five-years out. "There is no construction time frame in the six-year primary road plan now…toward the end of the six-year process – the fourth or fifth year – they show possible funding for right-of-way."

Mr. Rooker asked, "Aren't they going to require that the private developer build a road within the development area that somewhat meets their criteria."

Mr. Benish replied, "The basis for their review of that development proposal will be based on the approved state plans for road improvement and the standard of design for that road."

Mr. Rooker noted, "I don't think the developers of this property have in mind…..waiting on VDOT to acquire the right-of-way. I think VDOT already has a pretty good idea of where they think that road is going to go, and if that property is developing, they're going to make certain that the road network is developed in the [locations] they have in mind for the road to go."

Mr. Rieley commented, "I'm not sure their notions are the same as ours."

Mr. Benish stated, "I think they would probably be accommodating to shifts of the roadway based on the development proposal. I don't think that their vested to the actual location of the road if the development proposal can provide the access needed to limit access to 29 North."

Mr. Rooker said, "I think if the development of the property is out in front of VDOT, then we are likely to get more of what we would like to see on that property…if you sit and wait for VDOT to acquire the right-of-way, then they've dictated where the road goes, and probably how it's going to be built."

Mr. Rooker added, "If we have a vision for how we think this quadrant ought to be developed, I think it's to our advantage to move forward and put that into effect."

Mr. Finley asked, “What can we do about moving forward?”

Mr. Benish asked Commissioners to let him know what they like about the proposed language, and what they want to change. He stated that the next step would be public hearing, then presentation to the Board.

Mr. Rieley said, “The more we can refine it and continue to be specific, the better off we will be.”

Commissioners mentioned some minor grammatical errors in the staff report.

Mr. Thomas asked if there would be a 100-foot x 100-foot vegetative buffer, and asked if that would be in the right-of-way.

Mr. Benish responded that it would be outside of the right-of-way. He added that there was a question raised as to whether that 100-foot buffer is enough to screen the Town Center from 29 North, and also was a concern about whether it should be screened at all from 29.

Mr. Rieley mentioned that parts of Petersburg looks horrible from the interstate, because the backs of the buildings face the road.

Mr. Rooker said that the same is true of the Hampton Roads area along I-64.

Mr. Benish stated that the intent of the buffer was to obscure the view of the Town Center through the stretch south of Timberwood so that there is still a tree line effect along 29.

Mr. Rieley said that the notion is a good one to preserve, but the reality during the development process may be something different, and can be changed later.

Ms. Hopper suggested making the language general enough to allow a smaller or larger buffer along Route 29.

Mr. Rooker commented that it would be very difficult to impose more of a buffer than that, especially given the fact that there are multiple property owners.

Mr. Finley asked what the next step is in this process.

Mr. Benish replied that staff will schedule a public hearing, and will run the changes to the proposed language by the Commissioners, possibly through e-mail, as soon as possible.

Ms. Hopper expressed concern about the practical implementation of a Town Center, and wondered how Planning could work to make sure a “mess” was not created along 29.

Mr. Rooker said, “This may or may not ever be implemented in ordinances. This may or may not become part of the Comprehensive Plan. What we’re seeing in the absence of some reasonable articulation of what we expect in this quadrant, I think you’re going to see the quadrant develop piecemeal with a 29 orientation, parking in front, et cetera, and we’re going to lose the opportunity to master plan (to an extent) this area.” He added that this is an opportunity “to make sure that the development that occurs out in this area is done in a way that implements a number of the concepts we’ve seen in DISC.”

Mr. Thomas stated that this is a great chance to plan for the future through action, not reaction.

Mr. Rooker added that he is concerned that VDOT will set the tone for what happens in the area if Planning does not.

Mr. Benish said that while this doesn't fit exactly into the DISC model, it does incorporate many of the DISC principles. "In the perfect world, if we could control the development review, that would be the best way to go….I think we have to recognize our regional context and move forward."

Mr. Rooker stated, "I think it's going to be very difficult in the growth areas to implement DISC in a bigger scale than 130 – 200 acres. Just recognizing that the development areas already have a significant amount of development that's not going to be moved just because good planning might have said that they shouldn't have been there in the first place."

Mr. Rieley complimented Mr. Benish for his work on this.

Mr. Benish said he would make revisions as recommended, and circulate the new language to the Commission via e-mail.

Old Business
There was no old business presented.

New Business
There was no new business presented.

There being no further business, the meeting adjourned at 10:00 p.m.

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V. Wayne Cilimberg
Secretary