Albemarle County Planning Commission
June 6, 2000

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, June 6, 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. Pete Craddock; Ms. Tracey Hopper, Mr. Rodney Thomas; Mr. Jared Loewenstein. Other officials present were: Mr. Wayne Cilimberg, Director of Planning and Community Development; Mr. Greg Kamptner, County Attorney; Ms. Elaine Echols, Senior Planner; Mr. Steven Waller, Planner; Mr. Mark Graham, County Engineering; Mr. Glenn Brooks, County Engineering. Absent: Mr. William Rieley.

Approval of Minutes – May 23, 2000
The Commission moved, seconded and unanimously approved the minutes of May 23, 2000 as amended.

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

Consent Agenda:

Addition to Kinloch Agricultural/Forestall District -- Proposal to add 8.85 acres in two (2) parcels to the Kinloch Agricultural/Forestall District. The properties described as Tax Map 65, Parcels 95 and 95A, are located on the southeast side of Rt. 231, approximately 1.3 miles northeast of the Rt. 600/Rt. 231 intersection in Cismont.

Addition to Batesville Agricultural/Forestall District -- Proposal to 38.499 acres in one (1) parcel to the Batesville Agricultural/Forestall District. The property described as Tax Map 85, Parcel 3, is located approximately one quarter mile northwest of Rt. 635, 1.5 miles southwest of Rt. 635's intersection with Rt. 692.

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

Deferred Item:

SP-00-005 Trinity Presbyterian Church (Sign #40 & 41) - 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 TMP 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.

Ms. Echols presented the staff report, which included a Power Point presentation of site photos. She reported that in May 1999, Trinity received approval from the Board of Supervisors for expansion for a gym, classroom, and parking addition at the rear of the church building, as well as approval for a parking lot at the front of the church closest to Fontaine Avenue extended. Ms. Echols said that while preparing the final drawings, the applicants realized they had excess fill material that needed to be moved, and also decided to create a playfield at the rear of the church, which would expand the limits of clearing that were previously approved by the Commission. Zoning then told the applicant that before they could approve an ENS plan and site plan, they would have to get a change to their special use permit

Ms. Echols reported that a request was made for the SP to expand the limits of clearing, do some grading, and work on critical slopes in the rear of the church, and when staff went out to do some inspections, they found out that the applicant had already done 80% of the work required for the

special use permit. She mentioned that staff based their analysis on the existing plan and its limits of expansion, rather than the work that had already been done.

Ms. Echols presented the existing plan that was approved, adding that it is towards the rear that the expansion area is proposed. She noted the areas in critical slopes proposed to be disturbed, with about 20% of the area in critical slopes. Ms. Echols added that Trinity now wants to put the fill material out and grade a large, fairly flat area for a recreational field, and has agreed to use 3 to 1 slopes going down to a detention pond. Ms. Echols reported that the Engineering Department has reviewed the request for the critical slopes waiver and the limits of clearing.

She emphasized that there has been a fairly large loss of environmental resource which happened before staff had completed their analysis, adding that staff has gone back out to the site for further review. Ms. Echols stated that staff feels the critical slopes issues can be addressed with some additional re-grading to 3 to 1 slopes down to detention pond, as well as some replanting of the original vegetative material. She said that Engineering staff can recommend approval of the critical slopes waiver as well as the proposed change in screening with the conditions that are proposed in the staff report.

Zoning was concerned that the limits of clearing had been exceeded, and sent a letter of violation to the applicant. The applicant has stopped work, and is awaiting decision of the Board before continuing. Ms. Echols said that staff is concerned about extending the limits of clearing and losing environmental resources for the primary reason of using fill material.

She said that staff is also concerned that a large outdoor play area is not an activity that has typically been associated with churches. Trinity has indicated that they have a very active youth program and would like to have a place inside the gym as well as an outdoor field. She said that staff discussed other opportunities for use of that field, hoping that there might be a public benefit to having the field since the applicant is going to fill it anyway. Ms. Echols said that staff talked to the applicant about additional uses for the field, and agreed to make the field available for their members' team uses.

Ms. Echols explained that the closest property is UREF to the north, which is currently undeveloped, and staff feels that the 55-foot screen with its existing trees is appropriate. She added that staff also feels that having the 2 to 1 slopes become 3 to 1 is appropriate. Ms. Echols concluded that after significant analysis, staff has recommend approval with conditions listed in the staff report. She noted that staff recommends approval of the current SP with the amended plan, and also recommends approval of the critical slopes waivers with two conditions: approval by engineering of a modified grading, erosion, and sediment control plan; and a replanting of 50 trees in area of 3 to 1 slopes near the detention pond for the purpose of stabilizing the slopes and replanting some of the lost vegetation. Ms. Echols added that staff recommends replanting with native species, with no more than 40% of a single species, and planting at a size of 1" dbh in the locations approved by Engineering. She indicated that the engineering has ENS inspectors who will see if the planting is properly done, which staff believes is an appropriate condition for the critical slopes waiver.

Ms. Hopper asked how much of the area was cleared without authorization.

Ms. Echols estimated the total cleared area at about 80%.

Ms. Hopper asked if most of it was wooded.

Ms. Echols indicated that it had been.

Mr. Finley asked why staff is recommending a 3 to 1 slope at the pond.

Ms. Echols responded that they have enough room at 3 to 1, and it would be more stable than a 2 to 1. She added that it would not be more clearing to make a 3 to 1 slope.

Ms. Hopper asked if the civil penalties ordinance was in effect at the time this happened.

Mr. Cilimberg responded that that has not yet been passed by the Board.

Mr. Loewenstein asked about the size of Trinity's youth program.

Ms. Echols responded that the congregation has between1200-1300, and includes a youth program for about 200 high schoolers.

Mr. Cilimberg corrected his previous comment, indicating that the civil penalties ordinance went to the Board in May.

Ms. Hopper asked if there was a way to apply civil penalties now.

Mr. Cilimberg replied that it would be up to the Zoning Department.

Ms. Hopper commented, "It really concerns me that such a blatant zoning violation was done – there were critical slopes disturbed, there was this wooded area flattened without getting a special use permit first." She added that she is looking for creative ways to make it more of a penalty situation when there is such a blatant violation.

Mr. Cilimberg said, "I don't know that you can set a punitive set of conditions, but you certainly can address all the affects that are associated with the Special Use Permit, which involve the clearing that has taken place…I think Engineering and our staff have attempted to do that."

Mr. Loewenstein commented that trees of 1" designed for replanting seem "very substantially less than what was removed…it's not at all an even trade. It's going to take some years at best for anything planted at that size to begin to equate what was lost." He noted that he has both environmental and aesthetics considerations, and wondered if it might be possible to change that condition to make it come closer to what was taken out.

Mr. Loewenstein said he would like the use of the playfield by members of the church for non-church activities be a condition, although acknowledging that may be difficult to enforce.

Ms. Echols replied that monitoring would be difficult, and staff would like to trust the church to keep tabs on it. She added that staff has no problem making that a condition of approval.

Ms. Hopper suggested that the condition could state that the church would include at least 10 games per year, and then provide written certification to the county that that had happened.

Mr. Finley asked, "Why put the burden on the church. If people want to use it, they'll come and ask, I presume."

Mr. Thomas said, "Make it available for people to ask for."

Ms. Hopper said that her intent was to put the burden on the church for the reporting.

Mr. Finley stated it would be a burden on the church to try to fill a set number.

Mr. Thomas suggested making it available for non-church activities.

Mr. Loewenstein commented that there have been a number of applications over the years that involve approval after the fact. "I don't think this is the right way to do this, in general. For somebody to

come back in here after a mistake of this magnitude has been made [seeking a Band-Aid for their mistake] is wrong." He asked what the civil penalties ordinance means for the future. "I just think sends the wrong message to the community at large."

Mr. Cilimberg said that by having civil penalties in place, the violation can then be penalized fairly, noting that the penalties are assessed daily. He added that in each case, the applicant still needs to get a special use permit….it's how you handle the violation once it occurs that's most important."

Mr. Thomas asked, "What makes the applicant think that they have the right to go ahead and disturb all of the critical slopes [and begin clearing]?"

Mr. Cilimberg emphasized that staff never tells an applicant to begin work. "You'd have to ask the people that do it."

Ms. Echols said that Trinity had a soil erosion control plan, and went out of their area slightly for the plan that was approved. The engineering reviewed the ENS plan in accordance with the special use permit limits of clearing, and approved something slightly larger, but it was viewed as being expected with what was on the plan. She explained that staff was in the process of completing final site plan for what had been seen previously, then a request came by fax asking if the applicant could exceed limits of clearing and still keep within the SP. The Zoning Administrator reviewed the request, and stated emphatically that they must not exceed the approved limits of clearing. The site plan approved was one that did not overly exceed limits of clearing, but not as it is proposed on this plan.

Ms. Echols stated, "There is some question about what they were given permission to do, because they knew from Zoning that they couldn't do one thing, and seemed to have understood something [slightly different] from Engineering." She added that there may have been a slight misunderstanding about what they could do, but not about the limits of clearing.

Ms. Hopper asked if Engineering could speak to what was approved for the plantings.

Mr. Graham addressed the Commission, stating that although he is not a forester, the inspector from Engineering who looked at the site is. "I relied upon his recommendations for the appropriate density of trees…I feel like he used his best professional judgement in coming up with the species and density of trees needed for that site."

Mr. Loewenstein asked if the Commission had approved trees of larger calipers.

Ms. Echols responded that staff has recommended tree heights of 4 – 5 feet tall for landscaping, but this is a different type of thing.

Mr. Loewenstein asked how much additional clearing was done relative to the amount originally approved, and asked how much additional site development is needed for the expanded playing fields over what was originally requested.

Ms. Echols referenced Attachments A & B in the staff report, which provides an estimate of 55 feet from the furthest area cleared to property line.

Mr. Loewenstein asked if you could situate the expanded playing field within that.

Ms. Echols responded that the first plan did not include the playing field, adding that 30 feet beyond the marked clearing to the north remains to be done to accommodate the field.

Mr. Finley asked for clarification as to whether the applicant had exceeded the disturbed area under the original plan.

Ms. Echols replied that the ENS plan was generally in keeping with the special use permit, but the construction plan done was not in keeping with the approved ENS plan or the special use permit.

Mr. Loewenstein asked if the extended playing field would require additional parking beyond the 105 originally approved.

Ms. Echols replied that it would not.

Public comment was invited.

Mr. Tom Muncaster addressed the Commission. He explained that the church originally wanted to add another parking lot in the early 1990's. He said that he had done a plan for the lot, and for filling in a ravine. Mr. Muncaster said that at that time, UREF offered their fill material to the church, which accepted it. He said that the board approved the special use permit to allow them to do what they are doing now, but an architect doing a master plan for the church recommended that an addition go more toward the east side of the church.

Mr. Muncaster said that two years ago, a building committee was formed to plan the addition, and it was discovered that there was a major water line close to the planned addition, so it was decided to move it where it is presently located. He explained that Cox Company did not know they wanted to get rid of the dirt pile, so when they amended the SP last year, they did not reflect the fill material going back there.

Mr. Muncaster said that all the stormwater from the church goes by that pile, and the pipes were not designed to handle the load, so the dirt really needs to be moved. He said that the approved plan showed a silt trap, so the true erosion control plan extends beyond what is shown. Mr. Muncaster suggested moving the silt trap down the ravine, and said that the erosion control officer thought that was a good idea. He said that a lot of extra clearing took place to plan for the silt trap. "It was an accident, really." Mr. Muncaster mentioned that he noticed that the contractor had gone to far – 50 more feet than what the plan showed.

Mr. Thomas asked Mr. Muncaster to clarify who told him to move the silt trap.

Mr. Muncaster said that Max Green said it was OK to move it.

Mr. Thomas asked him if he assumed it was OK to do the clearing.

Mr. Muncaster said he did not ask for the clearing.

Mr. Loewenstein asked what plans were looked at by the contractor during the site clearing.

Mr. Muncaster responded that he was at the pre-construction meeting, at which time the applicant is given the approved erosion control plans.

Mr. Thomas asked if there has been any effect from the weight of the big dirt pile on the church's drain system.

Mr. Muncaster said nothing adverse has happened yet, but there eventually will be an effect on the drain system, as it is a single pipe that carries all the parking lot runoff. "We won't know about it until it is too late…there will be a lake down there."

Mr. Loewenstein asked if he had any comment on the size of the replacement trees.

Mr. Muncaster said the design planner had originally put in cedar seedlings, and smaller trees were recommended because of the slope. "Tree survival is going to be better with smaller trees. We don't intend to cut the slope that goes down, just the field."

Mr. Finley asked if there were any additional trees would be removed by going to a 3 to 1 slope.

Mr. Muncaster said that there would need to be clearing for another 30 feet for the athletic field.

Mr. Thomas asked if the athletic facility was needed.

Mr. Muncaster responded that the church has almost 200 kids between 7 and 12th grades, adding that there is no place for the youth to play on their own facilities.

Ms. Hopper asked if the could current cleared area could be used for athletic facilities.

Mr. Muncaster replied that it worries him that the pile would still need to be taken care of.

Ms. Hopper asked how the church would feel about other groups using the fields. She also asked if there were other options for using the dirt.

Mr. Muncaster said that contractors are not interested in the dirt because it is so rocky.

Mr. Loewenstein asked how the rock would be useful for the play area, but not for contractors.

Mr. Muncaster said that if the soil would drop on a playground, that's one thing, but if there is a building on top of it, there are safety concerns.

Mr. Loewenstein stated that there would probably be other uses for the fill.

Mr. Muncaster said that they were able to give away approximately 5,000 cubic yards of fill out of the original 25,000 yards.

Ms. Hopper commented that it causes her concern to clear more trees just to accommodate this dirt.

Mr. Terry Burns, the Trinity administrator, addressed the Commission.

He said that current clearing is adequate, except for getting rid of the pile of dirt.

Mr. Loewenstein asked about the size of the pile.

Mr. Muncaster said that it's 20,000 cubic yards, with a large percentage of rock.

Mr. Finley asked if compaction could be achieved.

Mr. Muncaster replied that it probably could not be sufficiently compacted.

Ms. Hopper asked about the church offering its facility for other uses.

Mr. Burns said that the church leadership doesn't have a problem with associated use (by members for non-church activities), but would be averse to allowing the county to have an open scheduling of that field.

Mr. Craddock asked if the field would be irrigated.

Mr. Burns and Mr. Muncaster responded that they have no plans to do that at this time.

Mr. Loewenstein asked them if they would have a problem with making the field use a condition.

Mr. Burns agreed that that would be acceptable.

Ms. Hopper asked about the monitoring of the field's associated uses.

Mr. Burns said that they don't know how many times it will be used for associated use, but he could foresee much activity just from church members.

Mr. Loewenstein asked if the playfield would be lighted.

Mr. Burns said the only illuminated area would be the parking lot.

Mr. Finley asked if the events would be scheduled far in advance.

Mr. Burns responded that they will not schedule more than 60 days in advance.

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

Ms. Echols mentioned that staff has told the applicant they could leave the dirt pile out in front, if the drainage issue could be resolved, but they felt like they needed the additional parking.

Mr. Thomas asked where the pile of dirt is.

Ms. Echols referenced Attachment B, pointing out the location of the dirt pile.

Mr. Rooker asked about the planting requirement, noting that the 1-inch dbh seems small.

Mr. Cilimberg indicated that Mr. Graham had stated that a forester in the Engineering department had recommended the 1-inch, as this is considered more of a reforestation plan than a landscaping plan.

Mr. Thomas pointed out that the tree size also takes the slope into consideration.

Mr. Rooker asked about the condition opening up the use of the playfield for other groups or just associated groups. "I just wondered about the propriety of our imposing conditions that in effect requires the church internally to open their property up for use to only people within their church. It seems to me to be no condition at all."

Mr. Thomas said that he would like to see the dirt go somewhere else, and have no more trees cleared. He acknowledged that the church needs to accommodate their great youth program and the parking. "Is there anything they could do with the storm drain problem, and the dirt stay there."

Ms. Hopper agreed that she would like to see no more clearing done. "I guess the pile of dirt is a problem that they have internally to work out."

Mr. Finley asked about her concern for clearing.

Ms. Hopper said that her concern has to do with the fact that the church has indicated they don't really need additional clearing, and what's driving the need to clear more land is the dirt problem.

Mr. Loewenstein wondered if an approach to resolve the drain problem might be as inexpensive as doing additional clearing, suggesting that they might find a way to recreate the drainage that's under the dirt pile, and reorganize that system so that it wasn't further threatened by the weight of the pile. "It would certainly be a more environmentally sensitive solution, and I don't think it would be a significant additional fiscal penalty for the church."

Mr. Graham re-addressed the Commission. He agreed with Mr. Muncaster that the pile should be moved off of the storm system, so the condition of the drainage can be determined.

Mr. Thomas asked who maintains the drainage system.

Mr. Graham responded that he church maintains it.

Mr. Loewenstein asked if it would be feasible to modify the drainage system in some way without moving the dirt pile.

Mr. Graham replied that a storm system could be routed around it, but he is not sure what he fiscal impact would be. "If we're going to do something with it, let's do something and get it stabilized. The pile is stable now. Unsightly, maybe."

Mr. Rooker asked if the approval of Condition #1 would cover the moving of the dirt, if they move the dirt requiring that it be properly stabilized.

Mr. Graham responded, "That's definitely one of the things we're looking for."

Mr. Rooker commented that the creation of 105 new parking spaces is also driving the need to move the dirt. "Is this vastly in excess of what we would normally see associated with a church of this size?"

Ms. Echols replied that they have a sanctuary that seats 684, and have between 1200 – 1300 members in attendance in 3 services each Sunday, with 300+ existing parking spaces, and an additional 105 in the SP the Commission and Board previously approved. Ms. Echols added that the Zoning requirement for churches is 1 space for every four seats, but the county is getting applications for 1 space for every two seats.

Ms. Echols clarified that the dirt mound is on an area that has already been approved for parking.

Mr. Finley commented, "To get full parking…they've got to move that dirt."

Mr. Thomas mentioned that to accommodate the parking and the playing field, they will have to clear some more trees unless the pile is moved.

Mr. Rooker asked if it would be possible for a condition stating that the applicant would work with staff to minimize the extent of the cleared area. He noted that the church has stated they do not want additional clearing.

Mr. Loewenstein said there needs to be some benchmark for staff to work with.

Mr. Rooker suggested having the applicant bring back a grading plan to staff, who could then judge if it was minimizing clearing.

Commissioners agreed that it should be part of the Special Use Permit.

Ms. Echols suggested consulting with Mr. Graham on the enforceability of such a condition.

Mr. Graham said he did not now how definitive this can be. "Even if we did a very precise plan, when you get out there in the field, the realities will change….it's very difficult to come back in after you place fill and put additional fill. You're supposed to be laying your fill in horizontal layers, rather than having to come back in after the fact."

Mr. Rooker asked if the suggested condition could be handled by Engineering.

Mr. Graham asked "What do we do during construction if we find out that it is actually going to be more material than was originally anticipated."

Mr. Rooker said that it would have to come back to Engineering.

Mr. Graham said he was hoping for enough flexibility to work with the applicant. "I think we understand the intent of the Planning Commission. I think we can honor that intent.

MOTION: Mr. Rooker moved, Ms. Hopper seconded approval of SP 00-005 with conditions modified as follows:

2. Clearing of trees shall be limited to that necessary to install the improvements shown on the plan entitled: Trinity Presbyterian Church Proposed Building Expansion dated 5/15/00. **Applicant will present a clearing and grading plan to the Engineering Department that minimizes clearing to the greatest extent possible.**

The motion passed unanimously.

MOTION: Mr. Rooker moved, Mr. Craddock seconded approval of the critical slopes waiver with two conditions as presented by staff.

Public Hearing Items:

SP-2000-13 Lisa Carter Floodplain Crossing (Sign #31)- Request for special use permit to allow fill in the floodplain to construct a driveway across Slate Quarry Creek in accordance with Section 30.3.05.2.1 (2) of the Zoning Ordinance which allows for construction in the floodplain. The property, described as Tax Map 103 Parcel 32A, contains 25.18acres, and is located in the Scottsville Magisterial District on Rolling Road [Route 620] approximately 2.5 miles from the intersection of Route 795 and Route 620. The property is zoned RA Rural Area. The Comprehensive Plan designates this property as Rural Area.

Ms. Echols reported that Ms. Carter is the applicant, and is proposing to construct a driveway over Slate Quarry Creek, off of Route 620 in the southern part of the county. Ms. Echols explained that most of the applicant's 25 acres is on the opposite side of floodplain, and she wants to put a house on other side of creek. In order to cross the creek, she has to get a special use permit for the fill in the floodplain. Ms. Echols noted that the applicant has already done some construction on the driveway. Ms. Echols noted that the 25.18-acre parcel has two development rights on it.

Ms. Echols explained that staff reviewed the proposal in the context of the impacts of the proposed driveway on the floodway, as well as public health, safety, and welfare. She presented slides of what has been constructed, noting that a building permit had been proposed, and work began before a Special Use Permit was approved.

Mr. Loewenstein noted that there is not significant supporting construction material between the two culverts.

Ms. Echols stated that Engineering believes this floodplain crossing would not cause any downstream damage. She noted that there are similar crossing over this stream, many of which are 30 – 40 years old, adding that there is evidence that other driveways have been repaired due to flooding. Ms. Echols said that this proposal would allow for water to pass through a culvert, and suggested that Mr. Graham further explain how it would work.

Mr. Graham explained that the culvert is installed with a reverse slope, and is not properly installed to flow in the direction of the stream. He said that in the annual storm model, the water is not going over the culvert; the two-year storm is approaching the top of the fill over the culvert; the ten-year storm would have ½ foot of water going over roadway. "Anything above about an annual storm, the

driveway is going to be impassable for some extended period of time due to flooding." He added that that seems to be the case with the other driveways on nearby properties as well.

Noting that there is one more division right on the property, Mr. Rooker asked if there is an access subject to this kind of flooding that would be approved.

Mr. Graham said that one of engineering's conditions limits the driveway to a single property, and there is another possible house site on the side of the stream that does not require a crossing. He added that Engineering feels that the applicant does understand the problems with flooding, adding that there has been no potential environmental damage detected.

Mr. Finley asked if Engineering and Planning had been involved with the existing culvert.

Mr. Graham said "No," adding that the culvert is going to have to be taken up and reconstructed. He noted that when the pipes were installed, they were installed so close together, it was impossible to compact fill material between pipes. Mr. Graham said that the Virginia Marine Resources Commission felt that one of the barrels of the culvert needs to be set lower, which would be part of their permitting process. Mr. Graham added that any VMRC conditions which are made part of their joint permit become part of the Special Use Permit also.

Mr. Loewenstein asked if a span bridge might have to be substituted.

Mr. Graham replied that the VMRC seems to indicate that sinking the culvert with the invert would be acceptable.

Ms. Hopper asked if the bridge over the culvert was built after the SP was applied for.

Mr. Graham clarified that when the building inspector went to the site, he discovered the floodplain crossing. Because you must have an SP to construct in the floodplain, the county instructed Ms. Carter to stop work.

Ms. Echols said that there should have been a zoning violation issued, but they were not aware of the discovery. "What has been applied for is to rectify the situation."

Mr. Finley asked if the applicant would have to provide an engineering plan to correct the problems, in addition to a stream buffer mitigation plan.

Mr. Graham responded that they would require that, as the stabilization is of concern. He added that there is no question that the pipes in their present configuration are not adequate for waterflow.

Mr. Loewenstein asked Mr. Graham felt that Condition #7 concerning the possibility of a bridge be eliminated.

Mr. Graham said he tried to write the condition as a fallback provision in case the joint permit required that the culverts be replaced with a bridge.

Ms. Echols noted that there was a word-processing glitch in the lettered conditions, but emphasized that they are the same as before. She added that there was concern as to whether future property owners needed to be alerted, but Mr. Kamptner has stated that the floodplain notice is sufficient to advise people in the future that they are buying a property with a driveway that crosses the floodplain.

Mr. Rooker stated that they are limited to one residence.

Public comment was invited.

Ms. Lisa Carter addressed the Commission with her husband, Preston Carter.

Mr. Rooker asked who had done the work on the stream crossing.

Mr. Carter said that he had done the work, after looking at what the neighbors had. He then put in something 10 times bigger, and figured it would be sufficient. Mr. Carter emphasized that he didn't deliberately put these in without permission; he didn't find out until they applied for the building permit that they couldn't cross the floodplain without a special use permit.

Ms. Carter said that it would have been nice to know about the floodplain located on the property when they purchased the land, adding that the attorneys and bank officials did not notice it.

Mr. Rooker said that a title search would have identified the floodplain if it was operating from a survey. He noted that the survey should identify the floodplain, but doesn't specify on the plat that there is an SP required in order to cross the stream.

Mr. Finley commented that if you are creating a parcel, you have to reveal if it is in the floodplain, and delineate where it is.

Mr. Kamptner mentioned that the county attorney's office is advising against a condition proposed by Engineering regarding a note in the deed, because Mr. Davis had encountered a situation where similar conditions caused some problems, as regulations change.

Mr. Rooker noted that the SP runs with the property, and all conditions imposed would also go with the property.

Ms. Hopper asked if a title search would pick it up.

Mr. Rooker said it would come up if the applicant were trying to subdivide and sell the property, then the SP would kick in.

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

MOTION: Mr. Rooker moved, Ms. Hopper seconded approval of SP 00-13 with conditions amended as follows:

4. The applicant shall provide stabilization of the culvert and adjoining stream banks. As part of this work, the applicant shall reconstruct the culvert stream crossing. The reconstruction shall include lowering one culvert pipe such that the pipe invert is at least six inches below the stream invert and shall include sufficient separation between the culvert pipes that proper compaction of the fill material can occur. These improvements shall be part of an Erosion Control Plan approved by Engineering and shall include additional measures determined necessary by Engineering for the purpose of stabilizing the proposed driveway. This plan must be approved by Engineering within 2 months of approval of this Special Use Permit. The plan shall be bonded by the applicant upon approval and all improvements shown on the plan must be implemented in the field within 3 months of receiving approval unless modified by Engineering due to the time of year.

7. Should be renumbered a., b., c. to replace e., f., g. (mis-numbered).

The motion passed unanimously.

SP-2000-14 The Hawksbill Pottery (Sign #29) - Request for a special use permit to allow a home occupation for a pottery making business in accordance with Section 10.2.2.31 of the Zoning Ordinance which allows for home occupations. The property, described as Tax Map 62 B1, Block C, Parcel 12 in the Key West Subdivision, contains 1.918 acres, and is located in the Rivanna Magisterial District on Key West Road [Route 1445] . The property is zoned RA, Rural Areas. The Comprehensive Plan designates this property as Rural Area in Rural Area 2.

Mr. Wade presented the staff report, noting that the Board unanimously approved the SP last year with a condition that it would come back to them in one year. There were several concerns expressed at the Planning Commission and Board of Supervisors public hearings regarding traffic, safety, and noise, which is why the Board wanted the re-review.

Mr. Wade noted that during the trial year, there have been no complaints. When the new SP request went up, the county did receive some calls asking if last year was a typical year. Staff determined in discussions with the applicant that it was a typical year. He added that last year, they received one letter of opposition from a next-door neighbor.

Mr. Wade concluded that staff is recommending approval of the SP without the condition that it come back in one year.

Mr. Rooker asked about the comment in the staff report about 14 retail shows.

Mr. Wade answered that the retail shows were held in other locations around the state, and in other states.

Mr. Rooker asked if this was an approval for retail sales.

Mr. Wade responded that the applicant is not planning to have retail sales from the home.

Mr. Rooker asked, "Is there anything that prevents this from being used as a general retail site for the sale of pottery."

Mr. Kamptner said that the regulations applied to home occupations state: "There shall be no sales on the premises, other than items handcrafted on the premises, in connection with the home occupation." He stated that the regulations allow for retail sales on the site. Mr. Kamptner emphasized that another part of the ordinance states that the home occupation cannot generate more traffic "in greater volumes than would normally be expected in a residential neighborhood."

Mr. Rooker asked if the neighbors found out that they were operating a retail business, the existing ordinance would kick in.

Mr. Kamptner acknowledged that he has only had to deal with it once before, and zoning struggles with making that determination.

Mr. Cilimberg said that traffic normally associated with a house is 10 trips per day, which includes trips for work purposes, etc.

Mr. Wade pointed out that the applicant working from home would have four trips cut out.

Mr. Rooker commented that if there began to be a lot of traffic, the Zoning Administrator could begin to take action.

Mr. Loewenstein said that last time, there were Commission-imposed conditions limiting the applicant to no more than 3 open house events per year. He noted that staff found an unfavorable factor in that

"traffic associated with open houses three times a year would be greater than normally anticipated in a residential neighborhood, however it would not be dissimilar to traffic normally associated with a yard sale."

Mr. Loewenstein asked, "Where do we draw the line, in terms of traffic volume. How does zoning look at this when there is an enforcement issue….is there some sort of frequency that allows this to be somewhat limited?"

Mr. Cilimberg said, "If it was every weekend, you'd be getting into more than anticipated."

Mr. Cilimberg emphasized that the issue was discussed at length by the Commission and the Board last time, and the Board removed that condition.

Mr. Loewenstein wondered if zoning were going to look at violation, what type of measurement they would they use,

Mr. Kamptner said he was not sure how zoning would apply that, whether it would be assessed daily or weekly.

Mr. Rooker said he preferred the condition last time that the Commission had passed, noting that the applicant agreed with it.

Mr. Wade emphasized that the applicant's intent is to train apprentices in pottery, and sales would continue to occur at roadshows.

Mr. Cilimberg noted that there have been 6 sales at the home during the period of August 11, 1999 to March 20, 2000.

Mr. Wade said that that was mentioned in the staff report so that there is some means to define what a "typical year" is.

Mr. Rooker said his concern is not what this applicant is doing, but the fact that the SP runs with the land. He added that he is also concerned that comparable applications, with comparable lack of restrictions might turn a residential area into a service area for businesses. Mr. Rooker suggested that there be a condition that prevents the use from becoming too intense.

Mr. Cilimberg recalled that the original limiting condition was dropped by the Board at the applicant's request.

Mr. Finley asked about defining a typical year.

Mr. Wade said that the past year gives some idea what is typical.

Mr. Rooker noted that without conditions, there would be no restrictions from preventing one year to have a lot more sales, and one year to have less.

Public comment was invited.

Mr. Scott Supraner, the applicant, addressed the Commission. He emphasized that retail sales are not even an issue addressed in this SP, so it doesn't set precedents in any way. Mr. Supraner explained that retail sales are covered under a Class A Home Occupation in which there is a limitation of 5-7 customer visits per week. He said it doesn't state anything about traffic flow, but speaks specifically to the number of times customers come visit.

Mr. Supraner said that the reason the open houses have been dropped is they seemed to be the primary focus of the neighbors' concerns. He said that the Board wanted to satisfy community interests by eliminating that clause, and he is fine with that. Mr. Supraner noted that the six pottery sales he had in the past year fall under the Class A Home Occupation permit. He emphasized that he does not make sales from his home; it is done as a service to local customers who need something when he is not doing a local show. Mr. Supraner added that he does four shows in the Charlottesville area – two in Lee Park, and two in Crozet. He said that he also shows at the Downtown Mall during Christmas, and at the Farmers Market that meets every Saturday. "The need for people to come visit me at my home is minimal."

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

Mr. Loewenstein said that the applicant has effectively responded to Commissioners' concerns, noting that a Class A Home Occupation does permit some activity in connection with it. He added that the applicant has also worked to address concerns from the neighbors also.

MOTION: Mr. Loewenstein recommended approval of SP-0014 with six conditions recommended by staff.

Mr. Rooker asked about the applicant's reference of 5-7 customer visit per week limitation, noting that it is not in the zoning ordinance.

Mr. Kamptner said that sales from things that are created from the home are allowed.

Mr. Rooker noted that his concern is that the only limitation on retail sales activity is a "somewhat nebulous traffic standard."

Mr. Kamptner said, "That's how you will measure whether you're complying with the regulations if you're selling."

Mr. Rooker said, "Unless you impose some other limit on retail sales, as we had done previously."

Mr. Loewenstein wondered how that would be enforced, agreeing with Mr. Rooker's concern about what might happen under different ownership.

Ms. Hopper seconded Mr. Loewenstein's motion.

Ms. Hopper noted that the Board seemed to get rid of the limitation the Commission suggested because they might have thought it would open the door to more retail sales.

Mr. Rooker said that taking the condition out means there is no limitation other than the general traffic limitation.

Ms. Hopper suggested putting it back in.

Mr. Loewenstein commented, "It didn't fly the last time with the Board."

Ms. Hopper noted that was because of public outcry.

Mr. Loewenstein said, "If that's the case, then putting it back in should be more satisfactory to the public than taking it out because it provides further limitation than is possible otherwise."

Mr. Rooker commented that when the Commission held their public hearing, the complaints were regarding having a retail business at all. "There were some pretty vociferous objections to this special use permit…and we imposed that condition as a way to try to assure the public that the [activity]

would not be expanded beyond the parameters represented by the applicant." He added, "You don't know what you're going to get, eventually down the road."

Mr. Finley remarked, "No one so far has come forward tonight with any concerns from the public."

Mr. Thomas said, "Last time we really tried to protect the residential atmosphere of Key West, and I would like to see the recommendation put back in there."

Mr. Cilimberg recalled that the reason the Board took it out was that they found that open houses associated with a home occupation would not be normally considered as an activity within the parameters of home occupations, because of traffic generated. He added that the county has permitted open houses for home occupations in the past because it was thought they couldn't do it otherwise. Mr. Cilimberg mentioned that not having them listed was essentially saying you couldn't do them.

Mr. Loewenstein stated that there wasn't any mention in the previous application of any other kind of limiting condition on the SP as it was approved for that first year.

Ms. Hopper asked if there should be some limitation on retail activity.

Mr. Loewenstein wondered if existing traffic parameters in the ordinance take care of it.

Mr. Kamptner said, "Zoning will have to look on it on an individual basis when they get a complaints."

Mr. Cilimberg said, "It hasn't been an issue, and I do think that if you start having regular open houses in home occupation, you will be in violation of your Home Occupation."

Mr. Rooker stated he is comfortable with the six conditions.

The motion for approval of SP 00-014 with six conditions passed unanimously.

The Commission took a brief recess.

CPA –00 -03 Public Facilities - Proposal to consider amending the Community Facilities Plan section of the Land Use Plan, page 136 General Principles for Community Facilities in the Comprehensive Plan to allow for the possible location of certain larger scale public facilities in the designated Rural Areas.

Mr. Cilimberg presented the staff report, noting that the language advertised for this hearing is the result of previous Commission worksessions on the item. Mr. Cilimberg said that the amendment would essentially add words to the existing Comprehensive Plan language regarding public facilities in the rural area. He noted that the emphasis is still on putting those facilities in county development areas to support county land use policy, but the wording says public facilities may be allowed in the Rural Areas only in cases when it is not reasonably possible to locate such facilities in the development area due to physical constraints, the nature of the facilities, or services to be provided. Mr. Cilimberg reminded the Commission that they had also added, "in the case of such allowance for a school, public water and sewer may be provided as necessary.

Public comment was invited.

Mr. Jeff Werner of the Piedmont Environmental Council addressed the Commission. He read from a prepared statement (Attachment "D").

Mr. Bob Wack addressed the Commission. He presented a statement from a group of area citizens which had originally been presented to the Board and the Commission during the Value America project (Attachment "E"). Mr. Wack stated that the growth area is too expansive to begin with, and allowing public facilities adjacent to a growth area will exacerbate this problem. He said that while they can appreciate the need for additional public facilities, the road and other infrastructure requirements would destroy the rural setting. Mr. Wack said that the citizens do not feel that the economics of a decision on placing a public facility should override the broader planning and managed growth considerations.

Mr. Ed Meyers said he is worried that putting sewer/water in the rural area will encourage additional development. He added that allowing facilities to go into Comprehensive Plan this way removes public comment from zoning changes for the property.

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

Mr. Rooker said his conclusion was that language from the Comprehensive Plan as presently written permitted the location of public facilities in the Rural Areas under certain conditions. He stated that concerns expressed by speakers are the reasons why the Commission substantially changed what they had originally recommended, noting that the previous wording would prevent a library, fire station, or park from being located in the rural areas, "I don't consider this to be a site-specific proposal…what we're trying to do here is clarify what the existing Comprehensive Plan says."

Mr. Rooker further noted that there are currently [14 schools] in the rural areas, and this proposed language doesn't really change the status of whether or not a school can be located in a rural area. "I think that previously existed, and currently exists under this proposal….you have to show that's it's not reasonably possible to locate in a development area, given all the circumstances."

Ms. Hopper mentioned that even when site specific public facilities were considered, there would be public hearings, along with any rezoning.

Mr. Rooker pointed out that there is not a rezoning requirement for schools.

Mr. Cilimberg noted, "What you would have before you is a compliance with the Comprehensive Plan review, which is actually a state code requirement for any facility of the types mentioned here. You make that finding, and you can, in doing that receive public comment, and you do – that's been your record. That decision is conveyed to the Board, they don't have to take it up, sometimes they will."

Mr. Loewenstein commented that the proposed language allows some flexibility, and may slightly tighten the way in which the facilities are considered. But he also indicated that with the existing land use plan or the proposed language change, he is not sure that either supports the DISC recommendations. "I still have concerns about creating a more likely environment for expanding existing development."

Mr. Loewenstein added that behind all this, there is a potential matter developing, and that possible facility may be located too far from existing development areas to really serve the public. " I don't think that economic fears should take precedence over sensible planning. I'm still very much troubled…by the language in the existing land use plan, and I'm troubled by this as well."

Mr. Thomas said that it is "untying hands" so that the decision can be made to put facilities in an area that is not in the development boundaries. "I think it makes a better situation for the public facilities that we [now] have in the county."

Mr. Craddock commented that he feels once an area in the Rural Area is approved for a school, it's just a matter of time before the area around it will be approved for growth.

Ms. Hopper said that there are a lot of schools currently in the Rural Areas, and the growth area has not over time grown out to them. "I think making the public/private distinction protects against that." She added that the DISC model is a great model, but it's not the only model, and it's not going to fit at all times. "I think we have to have some room for flexibility."

Mr. Loewenstein said, "I don't think some of those [schools] would be located where they are today if we were using appropriate land use planning principles. I think many of them existed before some of the thinking that we presently use when into effect." He added that many students and their families suffer because of the immensely long trips required to be taken now for students attending those schools.

Mr. Rooker stated, "I'm not sure that minimizing bus routes means you place every school in the development area because if you said that, there would be no schools in southern Albemarle."

Mr. Rooker emphasized, "There has to be that finding [that it is not reasonably possible to meet the service needs] first before you could look into the non-growth areas as a potential location."

Mr. Finley added that this proposal is not site specific, and no one on the Commission had any one site in mind in their discussions. He stated that if you locate a public facility in the growth area, you dislocate potential homesites.

Mr. Rooker noted that this was sent to the Commission as a specific request from the Board of Supervisors. "I think we have done the best we can do at this point…we have substantially wrestled with the language…I think that this simply restates the existing state of affairs in the Comprehensive Plan."

MOTION: Mr. Rooker moved, Mr. Thomas seconded approval of adoption of the new language for Community Facilities presented by staff in a 4-2 vote, with Mr. Loewenstein and Mr. Craddock dissenting.

Regular Item:

SDP 00- 042 Riverbend Garden Apartments Preliminary Site Plan- Request for preliminary site plan approval to allow an approximately 48,000 square foot, 124-unit apartment complex on property zoned C-1, Commercial with R-15 standards, as allowed by special use permit (SP 99-044), and EC, Entrance Corridor. The property, described as Tax Map 78, Parcel 17A (portion) and tax Map 78, Parcel 15C-1, contains approximately 27.43 acres, and is located in the Rivanna Magisterial District on Riverbend Drive [Route #1116], south of and adjacent to the Pantops Shopping Center. The Comprehensive Plan designates this property as Community Service in Neighborhood Three.

Mr. Waller presented the staff report, noting that a Special Use Permit allowing this use was approved in September 1999, and staff has found that this proposed site plan is in general accord with the conceptual plan for the special use permit. He stated that the applicant is requesting approval of: waiver of the requirement for two public street connections for a development with more than 50 dwelling units; a critical slopes waiver; a waiver to allow parking spaces to be located more than 100 feet from the dwelling units they serve; a modification to allow curvilinear parking configurations; and approval of recreational facilities alternate to those expressed in the Zoning Ordinance.

Mr. Waller added that an adjacent property owner has also submitted a request that this proposal be reviewed by the Planning Commission. Mr. Waller noted that staff recommends approval with conditions as outlined in the staff report.

Mr. Craddock asked if anyone has gone through the property for historical value.

Mr. Waller said he is not sure if the property owner has gone through the property to look for items.

Mr. Cilimberg said that would have potentially been a matter of discussion when the special use permit was before the county.

Mr. Loewenstein mentioned that staff does have copy of an archeological report, but doesn't recall anything of significance discovered.

Mr. Rooker asked if there is a complete list of archeological sites.

Mr. Cilimberg said some study has been done, and in special use permit situations where there are known archeological sites, they have been a consideration.

Mr. Loewenstein commented, "There are quite a few that have been identified."

Mr. Cilimberg noted that the river areas are often identified.

Mr. Rieley asked about the waiver of requirement for two public entrances, and asked Mr. Waller to point out on a map presented how access would be provided.

Mr. Cilimberg mentioned that for the parking areas, and the apartment areas themselves, there is only one point of access. "There are alternatives that get you to that point, but there is no possibility for second access into the shopping center because of topography."

Mr. Waller noted that the finished grade for the apartments will be much lower than the grade for Roses, and a small valley will be created. He mentioned that there would be a retaining wall, and adding another entrance would cause "massive disturbance in the floodplain."

Mr. Loewenstein asked Mr. Waller if he had received comments from the City of Charlottesville on this application.

Mr. Waller replied that he has met with the neighborhood planner for the properties directly across the river, and two neighbors there.

Mr. Rooker mentioned that his concern is that there is just a single point of access, with the shopping center, Carriage Hill apartments, and South Pantops Drive all emptying into that spot. He strongly suggested that the county study ways to improve the traffic movements and possible improvements, as mentioned in previous discussions regarding this plan.

Mr. Waller stated that the applicant is required to do some improvements at the intersection of South Pantops Drive and Riverbend Drive, including the widening of the road into the private part of Riverbend.

Mr. Rooker mentioned that the addition of a light at the four-way stop there will help the situation.

Mr. Finley asked Mr. Waller if he had dealt with proposals before that recommended recreation areas instead of tot lots.

Mr. Waller said, "Only Westminster Canterbury."

Mr. Cilimberg noted that there has been substituting done in the past based on the resident characteristics anticipated.

Mr. Loewenstein asked if it was possible to summarize briefly the changes to the roadways required by the approval of the special use permit.

Mr. Waller directed him to Attachment C in the staff report. "The plan that we reviewed showed that there will be an addition of a left-turn lane into the Pantops Shopping Center."

Mr. Rooker noted that the June 24, 1999 letter from VDOT incorporates those changes.

Public comment was invited.

Ms. Kay Slaughter addressed the Commission. She said she is speaking for herself and Susan McKinnon, another adjacent landowner. Ms. Slaughter stated that her neighborhood has been interested in this property, as they have previously opposed two proposals in the past. She said that they approve of this project. Ms. Slaughter noted that there are often "unintended consequences," and encouraged Commissioners to look carefully at this plan.

Ms. Slaughter said that they want their views of the river to continue, and to protect the river. She said they are very pleased about the public path dedication, and would like to see that the setback of 100 feet is honored. She stated that they want to preserve as much existing vegetation as possible, and want to see that new plantings around the pool and the parking lot will buffer sights and sounds. She thanked Mr. Waller for meeting with the neighbors.

The applicant, Nathan Metzger, addressed the Commission. He commented that the complex will allow 125 units, not 124 as stated.

Mr. Rooker asked him to comment on Ms. Slaughter's concerns regarding screening.

Mr. Metzger said that the buildings have been carefully oriented so that they are away from the neighborhood across the river; the parking lot is screened by the buildings themselves and the club facility/swimming pool. He said that there is not a lot of planting room left on the building site itself, so the planting will have to go into buffer areas. Mr. Metzger noted that it is in his interest to make the site ambient, adding that the river will help with the marketability of the apartments. "Only if the area between the property presents the right appearance will it work for us. We have a vested interest in doing a good job there."

Mr. Waller commented that staff recognizes that within the floodplain, in areas that were disturbed by the dredging activities that have gone on in the past, there are large stands of mature trees along the outer edges of where the applicant is intending to disturb. "There are mechanisms that will be applied with the final site plan as far as a conservation plan, making sure that none of this activity is allowed to go outside the limits of disturbances he's showing right now."

Mr. Metzger emphasized than only 4 acres of 27 total will be developed.

Mr. Loewenstein asked if there were slight intrusions into the 100-foot buffer by the project.

Mr. Waller responded that there is a handicapped-accessible sidewalk that is shown going into the floodplain, which will have to be addressed with a mitigation plan.

Mr. Craddock asked if that 100 feet is measured from the center of the river or the edges.

Mr. Cilimberg replied that it is measured from the top of the bank.

Mr. Craddock asked if it would be gated.

Mr. Metzger responded that it will be gated from vehicular traffic. "There's no way that we can fence the property and maintain the ambience of the river, but we'd like to control the vehicle access."

Mr. Nick Smith, neighbor of Ms. Slaughter, addressed the Commission. Mr. Smith said that he has supported this project, and likes the concept, but continues to be concerned with the details. Mr. Smith asked the Commission to look carefully at the issues of lighting and noise, because given the nature of the area with river, there are problems with sound and light reflection. He added that neighbors are concerned with preserving the river as much as possible, stating that there should be a mitigation plan.

Mr. Rooker mentioned that there are now a noise and lighting ordinances, and there may not be anything that the county can do beyond that.

Mr. Loewenstein said that both ordinances developed really help minimize those problems.

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

MOTION: Mr. Loewenstein moved, Mr. Rooker seconded approval of SDP 00-042 with conditions, waivers and modifications as recommended by staff. The motion passed unanimously.

Old Business:

SDP-00-045 Crutchfield Corporation Major Amendment – Waiver Requests – Proposal to construct additional parking and building which requires a waiver to allow building on critical slopes [4.2.3.2], a waiver to allow grade in parking areas to exceed 2% cross-slope [4.12.6.3.b], and a waiver to allow cooperative parking [4.12.4].

Mr. Loewenstein mentioned that it was Mr. Rieley who asked that this item be reviewed, and he is absent. Ms. Hopper said that Mr. Rieley spoke to her regarding his concerns, which she would share with the Commission after the staff report.

Mr. Cilimberg presented the staff report, noting that there was discussion of the proposed BMP facility as a utility. "I don't really think it's looked at as a utility. It's looked at as a stormwater management facility." He stated that the facility would be located in the "new wet pond," which is an expansion of an existing pond in that location – which included some intrusion into critical slopes.

Mr. Cilimberg emphasized that there are other critical slopes on the site that would be disturbed, and those are the ones being recommended for waiver. "The facility itself does not require a waiver."

Mr. Kamptner noted, "If the finding is made that there are no other reasonable alternative locations."

Mr. Rooker commented that part of the reason for the Commission not acting on the waivers was lack of a legible plan.

Mr. Kamptner said that Mr. Rieley had observed the critical slopes disturbed around the stormwater management facility, and wondered why they were not before the Commission for discussion and vote.

Mr. Cilimberg stated that the critical slopes associated with the parking for the building are those under review. He mentioned that engineering is here to clarify why the slopes near the stormwater facility do not require a waiver.

Mr. Rooker added that Mr. Rieley also expressed concern that it seemed difficult to make the finding that the site intended for the facility is the only reasonable location for stormwater management.

Ms. Hopper added that Mr. Rieley thought there might be other locations, and therefore there should have been a critical slopes waiver.

Mr. Loewenstein said Engineering had concluded there was no other reasonable location.

Mr. Cilimberg said, "When you realize there's already a pond there, and all the drainage is headed in that direction and its an expansion of that pond, it only makes sense that you utilize it, even with critical slopes there."

Mr. Kamptner explained, "We infer from the [exception provision] that it's the county engineer that makes the determination. [The regulations] exempt access ways, public utility lines, other pertinences, stormwater management facilities, and similar types of facilities where there's no reasonable alternative location or alignment."

Mr. Brooks explained that when engineering gets a plan into their office, they look at where the stormwater management facilities are in the context of the overall plan, zoning, and comprehensive plan. "We make the reasonable or unreasonable judgement of [whether] it's in the right location or not. If it's not…we would work that out with the applicant, and suggest they move it or change it. Usually that happens, so a waiver is never necessary. In cases where they convince us that it is indeed a reasonable location and…our suggested alternative is not as reasonable as we thought, then we do make the judgement that it doesn't need a waiver."

Mr. Kamptner added, "The determination is made in the context of not only what's on the land right now, but what's on the plan that's submitted so that engineering does not come in and review the piece of property, wipe it clean and redesign the parcel, and look at the thousands of possible alternative locations….they're looking at [both the existing development and the plan that is submitted], and they work from that plan."

Mr. Brooks noted, "There's nothing to prohibit a Commissioner or Board member from looking at the same plan and [disagreeing with Engineering's judgement]." He added that they could still ask to review it.

Mr. Finley commented that the Commission has seen several applications where critical slopes were disturbed in the stormwater areas, and then asked to review the waivers.

Mr. Cilimberg said that the interpretation of the ordinance has to be viewed in a practical way, so engineering has taken the approach, "does this make sense as the location based on the plans."

Ms. Hopper noted that the ordinance is inaccurate.

Mr. Cilimberg mentioned that it is on the list of items for discussion with the ZTA team.

Ms. Hopper suggested that the ordinance should state that the most reasonable location is chosen, especially to protect engineering.

Mr. Cilimberg stated that the Zoning Administrator can make a determination that what engineering is doing is in accord with the Zoning Ordinance.

Ms. Hopper said that perhaps stormwater management facilities should not be excluded from critical slopes waivers.

Mr. Cilimberg responded that that is a policy issue, and that would require a zoning ordinance change.

Mr. Finley stated, "I think it would be impractical."

Mr. Rooker commented, "I don't know that it's any more impractical to make a determination of whether or not to grant a waiver of a request for a stormwater management facility than it is for the location of a building." He suggested including language in the staff reports that indicates engineering has made the finding there is not a reasonable alternative location.

Mr. Brooks briefly reviewed the specific Crutchfield plan. He explained that there is an existing basin, and the existing site drains into it. Mr. Brooks said that the improvements now being proposed still drain in that general direction. "It made sense to enhance that existing pond there." Mr. Brooks emphasized that ponds themselves are made of critical slopes. "When you change the facility, you change the slope." He added that expanding the facility seemed like the best choice, since it was already there, and said that engineering found that changing the site and the drainage would be unreasonable."

Ms. Hopper asked why it would be impractical to bring the stormwater management facilities in front of the Commission.

Mr. Brooks responded that in speaking with Water Resources Manager David Hirschmann, Engineering decided that as most stormwater management facilities are built in areas of critical slopes, with a dam impoundment on steeper banks of a ravine, it is part of the BMP design process anyway. He added that larger facilities are comprised of berms and backslopes which are in excess of 4 to 1, noting that a requirement for reviewing all critical slopes would mean every facility would have to be re-reviewed every time there is a change to a plan.

Mr. Cilimberg noted, "It would become a weekly item of a [long] list of waivers…it would be numerous."

Mr. Cilimberg mentioned that there are three actions to be taken for the Crutchfield plan: waiver for critical slopes, modification for parking on cross-slope grade in excess of 2%, and modification to allow cooperative parking.

MOTION: Mr. Loewenstein moved, Mr. Craddock seconded approval of SDP 00-045 including the waiver and modifications.

New Business

There was no new business presented.

The Commission adjourned their meeting at 10:00 p.m. to a joint meeting with the Board of Supervisors regarding DISC on Wednesday, June 7, 2:30 p.m.

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V. Wayne Cilimberg

Secretary