Albemarle County Planning Commission
July 10, 2001

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, July 10, 2001 at 6:00 p.m. at the County Office Building, 401 McIntire Road, Charlottesville, Virginia. Members attending were: Dennis Rooker, Chairman; William Rieley, Vice-Chairman; Jared Loewenstein, William Finley, Tracey Hopper, Rodney Thomas; and Pete Craddock. Other officials present were Michael Barnes, Scott Clark, David Benish, and Greg Kamptner.

Call to order and establish quorum.

Mr. Rooker called the meeting to order.

Other Matters Not Listed on the Agenda from the Public

Mr. Rooker asked for other matters not listed on the agenda from the public. There being none, the meeting proceeded.

Consent Agenda

a. **SDP 2001-041 Humagen Fertility Diagnostic, Inc. Major Site Plan Amendment – Critical Slope Waiver** – Request in association with a site plan amendment for the construction of a 3,150 square foot storage addition to an existing building that is currently 4,813 square feet in area. (Stephen Waller)

b. **SDP 01-015 Albemarle Winery Preliminary Site Plan – Curvilinear Parking Waiver Request** – A waiver is required in order to construct curvilinear parking (Section 4.12.6.5.c of the Zoning Ordinance). (Yadira Amarante)

c. **SUB-2001-111 Earlysville Heights Extended Private Road and Access Waiver Request** – Request to build a private road pursuant to Section 14-232(a) and a request to waive Section 14-505, pursuant to Section 14-505(c). (Francis MacCall)

Mr. Rooker asked if any of the commissioners wished to pull an item from the agenda.

Mr. Thomas requested pulling SDP-01-044 Carlton Court Preliminary Site Plan – Critical Slopes Waiver.

Ms. Hopper asked if the commission needed to approve the minutes from May 22nd and May 29th tonight.

Mr. Rooker replied that those were the second drafts.

Mr. Loewenstein moved approval of the first three items on the consent agenda.

Ms. Hopper seconded the motion, which passed unanimously.

Pulled Item

a. **SDP-01-044 Carlton Court Preliminary Site Plan – Critical Slopes Waiver** - Request for preliminary site plan approval with a critical slopes waiver for three buildings for contractors offices/warehouse/shop and general industrial use on 2.14 acres. (Francis MacCall)

Mr. Rooker asked if the staff person was present tonight.

Mr. Benish replied that she was not, but that the staff report was included in the packets.
Mr. Thomas stated that there is a gentleman in the audience who is concerned about the buffer along the road during the construction.

Mr. Rooker opened the public hearing.

Mr. Kurt Schlegel, the applicant, stated that he was happy to answer any questions.

Mr. Thomas asked Mr. Schlegel about the buffering of the road during construction and erosion control.

Mr. Schlegel replied that those issues would be addressed in the erosion control plan.

Mr. Alex Jansen, who works on an adjoining site, does not have many concerns about the construction, but during the construction phase Mr. Schlegel will cut down 6-8 feet along his property line. Removing earth directly on the other side of the property line could cause damage to our property. The road that runs along the line on our side of the property was placed at the request of the County for fire access. Heavy vehicles drive on the road. Heavy rain would soften the earth and hasten failure of the ground if it is cut right up to the property line. Some amount of setback should be maintained to prevent structural failure. Enough should be set aside to allow for planting a green barrier between the properties. Care should be taken to maintain the trees and shrubs.

Mr. Rooker asked if the cut would take place in the area of the critical slope disturbance.

Mr. Jansen replied that the preliminary site plan showed a cut right at the site line.

Mr. Rooker asked if his concern was what was going on during construction.

Mr. Jansen replied he was, but after construction there was nothing left to allow for plantings on his side of the line.

Mr. Rooker stated that he is not sure that a buffer between property lines is required in an industrial zoned area.

Mr. Jansen said that it was pointed out to him that the planning commission may consider that a request.

Mr. Rooker pointed out that what is before the commission is a waiver of critical slopes. He asked if there was any relation between the waiver request and his request.

Mr. Jansen stated that he thought he could express his concerns about the building that was going to occur. The cut right along the fire trail could soften the earth and cause the road to cave.

Mr. Rieley asked if that was to be retained by a retaining wall.

Mr. Benish replied that retaining wall construction to the end of the building was required. He is not sure if the building would include a retaining wall as its back wall. He believes there might be enough area to address that issue.

Mr. Rooker asked what the ordinance required in terms of a buffer between the properties.

Mr. Benish replied that the ordinance did not require any buffer or green space. The request can be taken up during the site plan review.

Mr. Rooker asked if the applicant had any room to move the building forward.

Mr. Benish stated that he did not think he could say at this time.

Mr. Rooker asked who the holder of the easement was.

Mr. Jansen replied that he owned it.

Mr. Benish showed where the property line ran.

Mr. Jansen stated that he is not sure about accuracy of the depiction of the fire road.

Mr. Benish said the actual easement could be worked out in the final site plan.

Mr. Jansen said his concern was just the cutting of the earth.

Mr. Benish stated that staff could come back with further information at a later time.

Mr. Kamptner asked Mr. Benish to point out where critical slopes were.

Mr. Benish showed the area on the diagram.

Ms. Ginger Ascomb, also an adjacent property owner, voiced the same opinion. She asked how could you build right on the line without touching the adjacent property. She suggested this item be examined with a hard physical survey.

Mr. Schlegel stated that he does not anticipate any excavation adjacent to the property line being open for very long or in inclement weather. He does not anticipate the wall being deeper than 4 or 5 feet. He has had a survey done, the corners are staked at this time. He is currently having a topo done. As far as the buffer is concerned, he averages as many voluntary setbacks from the property line as exists on the adjacent parcel. He pointed out that the adjacent parcel violates the property line in several spots.

Mr. Rooker asked what he meant by that.

Mr. Schlegel replied that there is a parking lot that goes over the property line, as does the access road.

Mr. Benish stated that this would be resolved during the final site plan review.

Mr. Schlegel pointed out that he is going to the property line for a distance of 30 feet. This is not within the critical slopes area.

Mr. Loewenstein asked what the timeframe was on this application.

Mr. Benish replied that it was submitted May 7.

Mr. Kamptner replied the County had 60 days unless there was state agency review.

Mr. Benish pointed out that we did have state agency review, but those comments have already arrived.

Mr. Rooker stated that some of the issues raised are really issues of private property rights. He is not sure it is really within the parameters of the commission's decision-making process. The issue of the potential structural integrity is something our engineering department should take a look at.

Ms. Hopper said this was a site plan issue, not a critical slopes issue.

Mr. Rieley stated that these issues are not associated with the critical slopes waiver. He asked if there was any reason we couldn't call up the final site plan at this time.

Mr. Kamptner replied that was possible.

Mr. Rooker suggested that might be the best approach. Perhaps engineering could look at it before it came to the commission.

Mr. Rieley said it would be another public forum, and would give the public another opportunity to express their concerns.

Mr. Rooker asked if everyone agreed with that approach.

Ms. Hopper agreed, with a vote on the critical slopes tonight.

Mr. Finley moved approval of the critical slopes waiver, including a request for review of the site plan.

Ms. Hopper seconded the motion, which passed unanimously.

Deferred Item

a. **ZMA-200-001 Redfields Phase 4 (Gaylon Beights) (Sign #54, 55)** – Request to rezone 9.4 acres from Residential R-1 to Planned Residential District (PRD) to allow for 14 additional homes. The applicant has also requested a rezoning of part of Redfields Open Space to Planned Residential District (PRD) to allow for 10 large lots and a water tower. The property, described as Tax Map 76 Parcels 22B, 22D and Tax Map 76R1 Parcel 1, is located in the Samuel Miller Magisterial District on Redfields Road [Route #1270] approximately 1 mile from the intersection of Redfields Road and Sunset Avenue Extended. The Comprehensive Plan designates this property as Neighborhood Density in Neighborhood 5. (Michael Barnes) ***DEFERRED FROM THE JUNE 5, 2001 PLANNING COMMISSION MEETING.***

Mr. Barnes presented the staff report.

Mr. Thomas asked what percentage of the land was in open space.

Mr. Barnes replied that it was 34% currently.

Mr. Thomas asked what the required percentage was.

Mr. Barnes replied 30%.

Mr. Craddock asked what it was before the revised plan.

Mr. Barnes replied that it was about 36%.

Mr. Rooker asked where the 30% requirement came from.

Mr. Barnes replied that it was a ruling made by zoning.

Mr. Rooker asked where that requirement appeared in the application.

Mr. Barnes replied that it was used from the application plan.

Mr. Rooker asked what is it that imposes a requirement of 30% open space.

Mr. Barnes replied the application plan that was proffered totals up to 30%.

Mr. Benish replied that it was because the plan was proffered. There is no statement that says that, but the proffered plan calculates out to that total.

Mr. Rooker verified that the original plan had 30% open space, but there was no proffer that there would never be a change to the plan.

Mr. Loewenstein said that what he is hearing is that the plan as presented calculated to 30% open space, and it was the plan that was approved by the action.

Mr. Rooker said he was trying to determine if there was ever a proffer, it appears that was just what the plan was. He asked if any significant change in the PRD original application plan requires a rezoning.

Mr. Barnes replied that the agent could approve moderate variation.

Mr. Benish said those changes would need to be consistent with the intent of the approved plan. In this case, it was determined that the proposed lots were not consistent with the prior plan so the plan would need to be amended.

Mr. Rooker said that there was some question raised about other changes that were made to this plan. He presumes that staff made the determination that the changes were within the scope of the application plan.

Mr. Barnes asked which changes he was referring to.

Mr. Rooker said that some of the paperwork has pointed out that there have been some changes of lot lines and additional lots that were approved administratively. He asked staff to verify that that was the case.

Mr. Barnes replied that there were.

Mr. Rooker said that there was apparently a staff determination that they were not significant variations from the original application plan.

Mr. Benish replied that was correct.

Mr. Rieley asked what the comprehensive plan called for in terms of density in this area.

Mr. Barnes replied 3-6 dwelling units per acre.

Mr. Rieley verified that when it came through in 1990 the requirement was 1-4.

Mr. Rooker asked for the overall density today.

Mr. Gaylon Beights, the applicant, replied that it was less than 2 units per acre.

Mr. Rooker stated that when he read the minutes of the past meetings, there was some discussion of the importance of the open space and its location. The only lots that have significant variation are 117 and 118. The commission would likely not have approved those lots in the original plan. 121 and 122 do not border Sherwood Farms closely. 123-125 is completely away from Sherwood Farms, that space is not reasonably usable by the existing residents of Redfields as open space. The Bowen Tract is a completely new piece of property and we have to determine if that property should be included in the rezoning. He would support this application if 117 and 118 were removed.

Mr. Thomas asked for the acreage of those lots.

Mr. Rooker replied that they look to be about twice the size of the average lots.

Mr. Thomas asked how close they are to the property lines and the residences.

Mr. Barnes replied they were 30’ from the property line and 100’ from the nearest residence. Lot 119 is 50’ away from the property line.

Mr. Rooker stated that the home looks to be much further away from 119

Mr. Finley asked Mr. Rooker if it were because those lots were close to the other house or because of the elevation that he would not support their inclusion.

Mr. Rooker stated that he was trying to discern what the original approval hinged upon. There was significant concern about a buffer for the residents of Sherwood Farms. There were also concerns about building above a certain elevation. He does not think 117 and 118 would have been approved originally, based upon the discussion in the minutes. We have it within our power to recommend a zoning change, which does not incorporate 117 and 118.

Mr. Thomas asked what the elevation of the two lots would be.

Mr. Rooker said it was his understanding that it was a higher area.

Mr. Thomas stated that then the people at Sherwood Farms would be looking at their back door.

Mr. Barnes replied that lot 116 is much lower in elevation. Lot 117 is approximately the same elevation as the lots around it. Lots 119 and 120 drop steeply down to the creek and sharply rise to the other parcels. It looks like they would probably be slightly below the homes in Sherwood Farms.

Mr. Finley asked if seeing a house from your house was a problem.

Mr. Rooker replied that it seemed that there were some concerns addressed about the buffering when it was originally discussed.

Mr. Loewenstein asked if the phase we were looking at was inside the growth area.

Mr. Rooker said it was.

Mr. Rieley said he thought there were a couple of ways of looking at this item. We are all the victims of a certain amount of ambiguity from the previous discussion. He thinks we should take those boundaries seriously because there was a representation there. We should honor the original plot lines as closely as possible. His inclination would be to say that 117 through 122 are not consistent with the representations that were made at that time. The other thing he is trying to figure is out what the benchmark should be. He is really concerned about adding additional lots in the development areas with private driveways in designated open space. He is troubled about adding additional development on an extremely long cul-de-sac. We cannot say we are honoring interconnectivity. We would be essentially closing off the one way in which access could be generated out to Route 29. He is very reluctant to support this without at least leaving the door open to a better connection to Route 29 South.

Mr. Rooker said that the interconnectivity issue was raised before. He is not certain that the developer has the rights to that access. A number of people in Sherwood Farms were opposed to that with the original plan.

Mr. Rieley said he is not certain that it is impossibility now and he did not say he would require that as a condition. He is concerned about approving a plan that precludes it in the future.

Mr. Rooker pointed out that there is a further hurdle here in that the easement rights don't exist.

Mr. Rieley said he is not talking about access through Sherwood Farms, but via Teal Lane.

Mr. Percy Montague, a principal in the development corporation, said they looked long and hard at trying to connect it to Route 29 in the original plan. There were a number of problems; there are setback requirements that require that the entrance would need to go either over or under the railroad. The curvature necessary would not meet public road standards.

Mr. Rooker asked Mr. Montague if he would have preferred to come in off of Route 29.

Mr. Montague replied that he would have.

Mr. Loewenstein stated that he would agree with Mr. Rieley that it appears that there was a certain amount of ambiguity, but it seems pretty clear that there was an understanding by both parties that there would be a significant buffer between the two properties. Lots 117 through 122 create a major impact. He would rather see those six lots removed.

Mr. Rooker asked how the land in lots 121 and 122 provided a buffer for Sherwood Farms.

Mr. Loewenstein said that it is an encroachment on the green space.

Mr. Rooker stated that he thought the important thing in the original plan was the buffer between Redfields and Sherwood Farm.

Ms. Hopper said she agreed, she thinks that 117 through 120 encroach on the buffer between Redfields and Sherwood Farm, 121 and 122 do not. She finds problems with lots 117 through 120.

Mr. Rooker asked how the road in comparison with lots 71 and 72 was serving lots 119 and 120.

Mr. Barnes replied that there is a private road that goes back between 72 and 73. The hill drops away there, to create lots you would have to do a significant amount of fill to meet the state requirements.

Mr. Thomas asked what was between lots 117/118 and lots 116, is it a valley?

Mr. Barnes replied that it was a pretty significant valley with critical slopes and a stream.

Mr. Craddock said it was confusing to read the information this weekend. He concurs with Mr. Rooker that 117 and 118 are the two lots the effect the buffer the most.

Mr. Finley stated that 118 to the nearest house in Redfields are not very much different to the nearest house within Sherwood Farms. We are trying to direct building into the growth areas. He does not understand why 117 and 118 would be offensive to the people on the other side of the line.

Mr. Rooker pointed out that the houses in Sherwood Farms are substantially further apart than the houses in Redfields. Originally they wanted to make certain they had a buffer between the two.

Ms. Hopper said it is the past negotiations and discussions that she is relying on.

Mr. Rooker asked if the applicant was willing to amend the proffers at all.

Mr. Montague replied that the primary concern for this particular area was that it be in keeping with what was in Sherwood Farms, those two lots are significantly larger than the average lot in Redfields. Where we had the opportunity to increase density we thought we were doing something good. The original plan called for 1 unit per acre, we were turned down and told to come back requesting more density. Given the topography and the market we ended up with about 1.7 units per acre. This is an attempt to increase the density a little bit. One of the issues raised had to do with the elevation of these homesites. There are other sites within Redfields that are the same or higher elevation.

Mr. Rooker asked if he would be willing to amend the application in any way.

Mr. Montague replied that he would prefer not to.

Mr. Rooker said that it is clear that this plan is not going to pass. We can deal with the plan as presented or you can make an amendment to the plan at this time.

Mr. Montague said that his understanding was that you could also modify it.

Mr. Kamptner pointed out that the commission could make its recommendation to the Board to approve with the removal of 117 and 118.

Mr. Rooker said that ultimately, the board could not make the changes without the applicant tendering the changed plan.

Mr. Kamptner replied that they can require changes be made to the plan as part of their approval.

Mr. Thomas said he believes that the applicant has utilized the topography very well. They are conforming to the densities. Both Redfields and Sherwood Farms are residential sections. He likes the way it is configured right now.

Mr. Rieley said there seems to be almost unanimous agreement that 117 and 118 are a mistake, and there is also some concern about 119 and 120. Lots 121 and 122 are served by private driveways, on steep slopes and in direct view of the Route 29-entrance corridor.

Mr. Rooker does not know that he would find that offensive.

Mr. Rieley pointed out that what you would see would be the backs of houses on steep slopes.

Mr. Rooker said that we have made a decision in the County that residential development is not something we want to aesthetically control in the entrance corridors, the way we do commercial development.

Mr. Rieley stated that this is an attempt to increase the density a little bit. These are rural roads; this is the cheapest way you can build in Albemarle County. This is not the way to add additional development in the development areas. It is not fair to the surrounding communities. We need to establish and be serious about a different paradigm for development.

Mr. Rooker said this would not be approved today under the current Comprehensive Plan. The paradigm would be a higher density development with more homesites. The development is 90% planned out. He thinks that the invasion into the open space in the buffer with Sherwood Farms is the concern. Lots 117 and 118 are the concerns for him.

Mr. Rieley pointed out that there has been a gradual tendency to get closer to the property line.

Mr. Rooker said that we need to decide what kind of an action we want to take.

Mr. Rieley suggested said he would support this with the elimination of lots 117 through 122 and the widening of one of the right-of-ways on the west side of the property to allow for a connection to the west at some time in the future.

Mr. Loewenstein moved for approval with Mr. Rieley's suggested changes.

Mr. Rieley seconded the motion.

Mr. Rooker asked Mr. Rieley where he envisioned widening the right-of-way on the west side.

Mr. Rieley said he did not think we could determine that without topography, but the applicant is fully capable of doing that in an area that is feasible for meeting state highway standards.

Ms. Hopper agrees with that, but not with 121 and 122 being removed. There is a history, which talks about encroaching on Sherwood Farms and protecting open space. Lots 117 through 120 do that. She does not think that 121 and 122 cause the same problems.

Mr. Rooker asked Mr. Rieley to point out on the map how the reserved right-of-way would impact the plan.

Mr. Rieley pointed out the area.

Mr. Rooker said that we have an applicant that has already been through that, but was unable to do that for a number of reasons. He asked if there is anything to indicate that a road in that location is possible at this time.

Mr. Rieley said the Mr. Montague said they explored several alternatives and found them unfeasible for their purposes. Things can change dramatically over the years. If we have contiguous lots with no access provided, it shuts that door.

Ms. Hopper said she would be interested in staff looking into this a little bit and being able to talk to the board about the question.

Mr. Finley asked about crossing the railroad.

Mr. Rieley stated that there would need to be a crossing of some kind in order for there to be a connection. There are too many intangibles at this time to close the door.

Mr. Rooker said he could support the motion if 121 and 122 remain in the plan.

Mr. Finley voiced his opinion that eliminating lots is decreasing density, he does not see this as a problem.

Mr. Rooker replied that when the plan was originally approved the application plan included a buffer for Sherwood Farms. He would be willing to support the motion on the table with the removal of 121 and 122.

Mr. Loewenstein agrees that lots 117 through 120 are those which are of principal concern for the buffering between the two properties. 121 and 122 may play a role in a potential opening to the west and is therefore reluctant to remove those.

Mr. Rooker pointed out that if the right-of-way requirement is in the motion, it might impact the ability to develop those lots.

Mr. Loewenstein said with that in mind he would be willing to withdraw 121 and 122.

Mr. Rieley stated that this is not a clear-cut issue. Based on Mr. Rooker's statement, he is comfortable with removing 121 and 122.

Mr. Loewenstein and Mr. Rieley amended the motion.

Mr. Thomas added his support for the motion as amended.

The motion was passed 6-1 with Mr. Finley voting no.

Public Hearing Items:

a. **Addition to Blue Run Agricultural/Forestal District** – The Blue Run District is located in the vicinity of Batesville. This proposed addition, described as Tax Map 35 Parcel 28A and portions of Tax Map 35 Parcel 29, is located east of Route 641, approximately 1.25 miles southeast of the intersection with Route 20. The parcel is located in the Rivanna magisterial district, is designated as Rural Area in the Comprehensive Plan, and is zoned RA Rural Areas. (Scott Clark)

Mr. Clark presented the staff report.

Mr. Rooker verified that the addition was 174 acres.

Mr. Rooker asked for comment from the public, there being none, the hearing was closed.

Mr. Rieley moved for approval of the addition to the Blue Run Agricultural/Forestal District.

Mr. Craddock seconded the motion, which passed unanimously.

Old Business

Mr. Benish suggested that the request in the guidelines to turn off pagers and cell phones be highlighted.

New Business

There being none, the meeting was adjourned at 7:40 p.m.

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V. Wayne Cilimberg, Secretary

Recorded and transcribed by Lynda Myers, Recording Secretary.