Albemarle County Planning Commission

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, September 17, 2002 at 6:00 p.m., at the County Office Building, Room 241, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Vice-Chairman; Rodney Thomas; Bill Edgerton; Pete Craddock; Tracey Hopper and Jared Loewenstein, Chairman. Absent from the meeting was William Finley.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Scott Clark, Planner; Stephen Waller, Senior Planner; Frances MacCall, Senior Planner; Susan Thomas, Senior Planner; and Joan McDowell, Rural Areas Planner.

Review of Board of Supervisors Meeting - September 4, 2002 and September 11, 2002 -

Mr. Cilimberg reviewed the Board of Supervisors actions for September 4, 2002 and September 11, 2002. He stated that the Board took the following actions:

- Denied SP-02-021, SP-02-030 and SDP-02-045 regarding the request for auto sales from Carmichael Motors for the special use permits and site plan. Their concern was that it was not an appropriate use in such a physical location near the Rivanna River.
- The South Kitchen home occupation, class B was approved.
- SP-2002-031, Puopolo Cottage, was approved.
- SP-2002-033, Bentivar Subdivision – Reconfiguration, was approved.
- On September 11th, the Board approved the special use permit for Snow's Center.
- In the last two meetings, the Board got into a discussion of reconsidering the Mountain Protection Ordinance. They are going to have a work session at their November day meeting to decide how they want to proceed.

Mr. Rieley asked that if there was any suggestion made to send the Mountain Protection Ordinance back to the Planning Commission for further consideration that staff would do everything in his power to see that does not happen.

Mr. Cilimberg stated that Mr. Rooker felt that it did not need to go back through that process again.

Other Matters Not Listed on the Agenda from the Public:

Mr. Loewenstein invited comment from the public on other matters not listed on the agenda. There being none, the meeting proceeded.

Consent Agenda:

Approval of Planning Commission Minutes – August 6, 2002.

Mr. Rieley moved for approval of the consent agenda as presented.

Mr. Edgerton seconded the motion, which carried unanimously.

Items Requesting Deferral:

SP-02-012: Plank Road Driveway - Request for special use permit to allow construction of a driveway in the floodway fringe in accordance with Section 30.3.05.2.2 of the Zoning Ordinance which allows for landfill in the floodway fringe. The property, described as Tax Map 99 Parcel 10, contains 3.65 acres, and is located in the Samuel Miller Magisterial District on Route 692 (Plank Road) approximately 0.4 miles from the intersection of what Route 692 and US 29. The property is zoned RA, Rural Areas. The Comprehensive Plan designates this property as Rural Area.

(Scott Clark) ***DEFERRED FROM THE JULY 9, 2002 PLANNING COMMISSION MEETING. APPLICANT REQUESTS DEFERRAL TO NOVEMBER 19, 2002.***

Mr. Loewenstein opened the public hearing for SP-02-12 and invited comment from the public. There being none, the public hearing was closed and the matter placed before the Commission for action.

Mr. Thomas moved to defer SP-02-12, 4749 Plank Road Driveway, to November 19, 2002 as per the applicant's request.

Mr. Edgerton seconded the motion, which carried unanimously.

Mr. Loewenstein stated that SP-02-12 was deferred to November 19, 2002.

Public Hearing Items:

SP-2002-035 Korean Community Church – Expansion (Sign #6) - Request to extend an existing special permit (SP 97-003) for an additional five years, to allow development of a church in accordance with Section 10.2.2(35) of the Zoning Ordinance which allows for churches in an RA, Rural Areas, district. The property, described as Tax Map 32 Parcel 22K1, contains approximately 5.22 acres, and is located in the Rivanna Magisterial District on the East Side of Route 29 North (Seminole Trail), approximately 1/10 mile south of the bridge over the North Fork of the Rivanna River. The property is zoned RA, Rural Areas, and recommended for Neighborhood Density Residential (3 - 6 dwelling units per acre) in the Comprehensive Plan. (Susan Thomas)

AND

SP-2002-047 Korean Community Church (Sign #38) - Request to expand an existing for special use permit (SP-97-46) for an additional five years, to allow crossing of the floodplain by a church access road in accordance with Section 30.3.6 of the Zoning Ordinance, which allows for landfill permits for flood plain alteration. The property, described as Tax Map 32 Parcel 22K1, contains approximately 5.22 acres, is zoned RA, Rural Areas, and is located in the Rivanna Magisterial District on the east side of Route 29 North (Seminole Trail), approximately 1.5 miles north of Proffit Road. The property is designated Neighborhood Density Residential in the Comprehensive Plan in the Community of Piney Mountain. (Susan Thomas)

Ms. Thomas presented the staff report. (See the attached copy of the staff report.)
She stated that this is a request for the extension of two previously approved special use permits, which will expire on October 15th. She noted that the original approval was longer than the standard term. It is a church with a small congregation. They knew at the time that they would need time to raise funds to build their church and make the site improvements. The applicant is hopeful that they will be able to work with the Towers development, which is to the south and was currently under review. She noted that it makes sense for the church to work with that applicant on improving the entrance because transportation improvements are the most expensive and most difficult part of this site development. There have been some slight changes to the original conditions simply because time has changed. She noted that the spirit of the recommended conditions were very much the same. She stated that this is a use with a small impact and it makes sense for them to work with their larger neighbor to the south in improving that entrance that needs to be relocated to be opposite the Research Park. Therefore, from that standpoint, she felt that a recommendation for approval was approximate.

Mr. Rieley stated that the 100-foot dedication on the greenway was being requested for the previous special use permit. He asked if today they would ask for anything in addition to that.

Ms. Thomas stated that they might, but she thought as they consider the site development plan that staff would get very specific about it. She noted that generally 100 feet is still a common request. She stated that it could be fine-tuned at the site plan stage.

Mr. Rieley stated that the Commission would see this plan again.

Ms. Thomas pointed out that this was a very rough concept plan, and staff would not want it developed as such. She noted that the applicant is willing to dedicate greenway.

Mr. Rieley asked if there had been any discussion of inclusion of the tributary stream that forms the northern boundary of the property. He hoped that they would look at that because in both cases this was a situation that the benefit to the public would greatly outweigh the loss because critical slopes cut it off anyway.

Ms. Thomas stated that the property owner has always been willing to do whatever staff would want in that way.

Mr. Rieley stated that the other thing was the alignment of the access easement is currently shown as a 60-degree bend as it gets to the parking lot. It is not an alignment that the Engineering Department would be very comfortable with. He asked if that was something that would come up later or should they condition it as part of the special use permit.

Ms. Thomas stated that both the Engineering and Planning Departments have looked at the rough outdated concept plan. She noted that staff did not ask for an elaborate plan because the church has not gone very far in the development of their plans. She noted that now they would look at the area as a whole, particularly because they were involved with the Towers Land Trust review. She stated that it was hard to know exactly how this access road from Route 29 would turn out, but that would have a lot to do with how this site would end up being laid out.

Mr. Loewenstein stated that due to the complexities of the site and the tie in to the larger development to the south, the Commission would want the site plan to come back before them. He asked if there were further questions for staff. Since there were none, he opened the public hearing on these two items and asked if the applicant would like to make a statement.

Dr. Yong Kim, Editor and Trustee of Korean Community Church, stated that he worked as a professor at the University of Virginia. He noted that the church was not only for Koreans, but more for the Korean Americans. He stated that over one-half of their congregation were American citizens. He noted that the small size of the church, currently 125 persons, would not harm or disturb the nature and harmony of the neighborhood. He stated that the reason that they were asking for the five-year extension was the problems associated with the requirements of the Virginia Department of Transportation. He pointed out that they have received one estimate of $300,000 for realigning the entrance and putting in a ramp and turning lane, which did not include the turn lane from the other side. He stated that this cost is too high for their church to raise funds for it. Within the next five years, they will jointly improve the access with the Tower Land Company. He noted that they have raised about $250,000 in the last three or four years and they plan to build a nice Korean Church on the site.

Mr. Loewenstein asked if there was any further public comment. There being none, he closed the public hearing and brought the matter back before the Commission for action.

Ms. Thomas noted that there was one correction to condition number 1 that the County Attorney had suggested. She stated that instead of the capacity of the church facility will not exceed 150 members, Mr. Kamptner suggested that they say people or individuals rather than members.

Mr. Kamptner asked that condition # 4 be modified to clarify the location of the dedication by inserting a couple of clauses so that the condition would read, “The final site plan shall include a greenway dedication of one hundred (100) feet minimum in width for that area necessary for the establishment of a greenway trail on that portion of the property along the North Fork Rivanna River.”

Mr. Rieley stated that he wanted to make sure that their language does not preclude additional dedication should that be desirable at the site plan level.

Mr. Cilimberg suggested the condition read that 100-foot minimum in width or that area necessary.

Ms. Thomas stated that you are talking about a different area and not just the Rivanna River frontage, but also the tributary.

Mr. Rieley suggested that the Rivanna River and its tributary to the north be added. He noted that he did not know the name of that stream.

Mr. Loewenstein asked for two separate actions.

Mr. Edgerton moved for approval of SP-2002-035, Korean Community Church Extension, with the conditions as outlined by staff as modified.

Mr. Rieley seconded the motion, which carried unanimously.

The Planning Commission recommends approval of SP 2002-035, a request to extend the existing approval for the church use for an additional five (5) years, with the following conditions:

1. The Korean Community Church shall be operated in general accord with the justification provided with the application submitted for SP-2002-035, included herein as Attachment B. The capacity of the church facility will not exceed 150 individuals. No daycare or church school activities are intended with this special permit. Changes to this plan of operation may require an amendment to this special use permit.
2. At the time of site development, all requirements of the Virginia Department of Transportation regarding relocation of the access road to align with the North Fork Research Park entrance across Route 29, furnishing of signal components for the eastern side of the existing intersection shared with the research park, installation of a turn and taper lane along Route 29, and other requirements described in correspondence from VDOT dated August 1, 1997, February 10, 1997, and June 26, 2002, shall be met. It is anticipated that the applicant will work with the Towers Land Trust and other property owners to the south to equitably share in the cost of the necessary improvements to the eastern side of the above-described intersection.
3. At the time of issuance of a building permit, the Director of Planning and Community Development shall make determination of the availability of public water and sewer. If water and sewer are determined to be reasonably available, the church shall be required to connect to these utilities.
4. The final site plan shall include a greenway dedication of one hundred (100) feet minimum in width for that area necessary for the establishment of a greenway trail on that portion of the property along the North Fork Rivanna River and its tributary to the north.
5. The use, structure or activity for which this permit is issued shall commence within five (5) years from the date this permit is issued. The term "commenced" shall mean commencement of any structure necessary for the use of the permit or the issuance of the VDOT entrance permit.
6. At the time of site plan submittal, the applicant shall work with the Engineering Department to locate the road access out of the critical slopes, to the extent practical.

Mr. Loewenstein asked that the record show that the Commission would like that site plan to come back for review.

Mr. Edgerton moved for the approval of SP-2002-047, Korean Community Church Floodplain Crossing, with the four conditions as modified.

Mr. Rieley seconded the motion, which carried unanimously.

The Planning Commission recommends approval of SP 2002-047, Korean Community Church, a request to permit crossing of the Flat Branch floodplain for an additional five (5) years, with the following conditions:

1. The Flat Branch crossing shall be used for the remainder of the property (Tax Map 32 Parcel 22K). It is recommended that the crossing of Flat Branch be wide enough to accommodate any future development of the property beyond the proposed church site.
2. The site construction shall not disturb the natural water quality buffer of stream and river valley wooded slopes.
3. Grading within the floodplain shall occur only in association with the relocation of the entrance road from Route 29, and such grading shall comply with all requirements of the Department of Engineering and Public Works, included here as Attachments G and H.
4. The use, structure or activity for which this permit is issued shall commence within five (5) years from the date this permit is issued. The term "commenced" shall mean commencement of any structure necessary for the use of the permit or the issuance of the VDOT entrance permit.

Mr. Loewenstein stated that these matters will be heard by the Board of Supervisors on October 9th.

SP-2002-040 Central Telephone Company of Virginia – Alltel (Sign #89) - Request for approval to allow the replacement of a microwave dish on an existing personal wireless service facility by amending a special use permit condition (SP 98-21) that prohibits the attachment of additional dishes. This application is being submitted in accordance with Section 23.2.2.3, which allows microwave transmission towers and their appurtenances, by special use permit. The property, described as Tax Map 61, Parcel 129C contains approximately 1.366 acres, zoned CO. This site is located on the south side of Route 631 (Rio Road East), approximately 1/8 mile east of the intersection with Route 29 North, and near Fashion Square Mall. This property is located in the Rio Magisterial District, within the area designated as Neighborhood 2 by the Comprehensive Plan. (Stephen Waller)

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Mr. Waller presented the staff report. (See the attached copy of the staff report.) He stated that the applicant is proposing to replace an existing microwave dish, which is mounted at 120 feet high on an existing 250-foot self-supporting tower with a new high performance dish at a lower height of 100 feet. Both the existing dish and the proposed new one are 6 feet in diameter. However, the new dish is also larger in width and depth than the existing dish. With this proposal the applicant has proposed a change in the language of condition 2c of an existing special use permit, SP-98-21 which originally stated that additional satellite and microwave antennas are prohibited. With that condition the Zoning Department determined that means no microwave dish antennas are even allowed to be replaced on this antenna. Staff has recognized this as a request for a tier 3 personal wireless service facility at the existing site and has recommended approval with the understanding that it would allow for changes in technology but also require that any further changes in dishes or replacement of dishes would also be required at lower heights

than the existing dishes that they would intend to change. The recommended conditions of approval are included in the staff report, but there are also some changes in those conditions that staff has worked on and also some changes in those conditions that the applicant is requesting. He passed out the recommended conditions by the staff and the applicant. In addition to the previous suggestion of lowering the height, staff would also recommend the addition of an unlimited number of panel antennas and directional antennas, but require any future addition of panel antennas to be flush mounted on to the pole in accordance with our tier one requirements for a personal wireless service facility.

Mr. Loewenstein asked staff to explain precisely what it means when the directional and panel antennas shall be of a color that matches the tower. He asked what color the tower was.

Mr. Waller stated that currently the tower was a gray color.

Mr. Loewenstein stated that for discussion they should decide if that was specific enough and if gray was what they were aiming for here.

Mr. Waller noted that the language of the color of the antenna was what was there in 1998 and staff could not come up with anything to change the color.

Mr. Loewenstein stated that they have used language that was descriptive in a slightly different way such as earthtone or being specific about browns or greens. He suggested that they consider those types of options and whether the pole would need to be painted.

Mr. Rieley stated that if this were located in a more natural setting with more vegetation around it that it would certainly be better painted all dark brown. He stated that he was not sure in this case if that was necessary.

Mr. Edgerton stated that the significant difference was that they were taking down a dish and putting up a dish with a different profile, but the dish would be lower. He stated that the one being taken down was a grid dish, which was opaque. He asked if both dishes were opaque.

Mr. Waller stated that was what was in the applicant's request, but from looking at the photos he thought the one that they actually wanted to replace was the 6-foot dish. He asked that they look at attachment A on page 16, they called it a grid dish, but it did not look like the others referenced on page 17. He noted that the replacement dish looked like the drum one at the lower level.

Mr. Loewenstein suggested that they ask the applicant to respond to that question. He asked if there were other questions for staff. There being none, he opened the public hearing on SP-02-040 and asked if the applicant would like to make a statement.

Peter J. Caramanis, Attorney with Tremblay & Smith, LLP, stated that he was present representing Alltel. He stated that Mr. Waller has laid out the application very well. To answer the question about the grid dish, grid does mean that it is put together like a screen depending on the type of grid noting that some are more opaque than others. He stated that he could not tell them how much that you could see through this one. He noted that the concept of microwave dishes and the way the system works is very different than the way panel antennas work. He felt it was important to understand the distinction. First of all panel antennas are the ones that provide the signal to your phone when you are using it. The higher up they are the more they can provide your signal. That is why you have carriers requesting those types of antennas to be as high as possible generally. That is not the case for microwave dishes. A microwave dish does not provide the signal to your phone. He referred to a map that was attached to their application on page 14 that shows how the microwave system works. When you see a microwave dish, it basically points directly at another microwave dish on another tower somewhere. That system is all connected down to a switch in Lynchburg. That switch is the brains of the entire operation and knows where everybody is at a given time. If I take my phone to northern Virginia and someone

calls me, it is through this microwave system that the entire operation will know where to find my phone. It will project from the panel antenna tower, whichever one is closest to him, in order for him to be able to answer that call. Because the microwave dishes are basically just communicating to each other, it only has to be in a position so that it can send out a laser beam straight to the other microwave dish. There would be no desire on the part of the carrier to just put a microwave dish up higher on the tower for no reason. He noted that they don't work like panel antennas. So with that being said, this particular dish that they are replacing is for a couple of reasons. Number one, the FCC strongly discourages the use of grid dishes anymore basically because they use a different frequency and they are trying to free up that frequency. In the future you will not be seeing grid dishes put on towers and if one is being replaced it will not be replaced by another grid dish. In addition, the benefits of this new dish include a greater capacity so that they will be able to handle more calls and make the system more efficient. It also has a greater technology capacity as far as digital services that are now on the market and entering the market. As with the height limitation, they have talked with staff about a couple of those conditions and you will see in the ones they propose 2c and 3c that they were able to come to agreement on so the proposals on their sheet that the Commission could ignore because they were in agreement to the ones staff has resubmitted. He noted that conditions 3a and 3b were the conditions that they would want to address. As written by staff, the final sentence of each of those two sections involves some limitation on the height when you are replacing a dish. This one is clearly being based on this specific proposal where they were able to move the dish down 20 feet. The height is determined by a number of factors. The first is the frequency that is also determined by the type of dish. Because this is a different type of dish and the frequency is different, the frequency interacts with the ground differently. The fewer interactions you get, the lower you can put it and reach its target without getting interrupted. They were able to move it down further and still have it work. But because it depends on the type of frequency, it does affect the height that these things can work at. By putting in a limitation on the height or saying that it has to be moved down, in essence it very well could prevent another dish from working if you need to replace another dish. Eventually, these dishes like anything else won't last forever and ten years from now there will new technology. When it does need to be replaced, it may need to be higher or lower depending on the other factors involved. The height could possibly have to be changed if the trees grow higher or a building is built in between. Speaking for Alltel, their philosophy is to use the smallest dish possible and it is the best for them because it is the cheapest and the easiest as far as the tower being able to handle it and to be as low as possible. He requested that the application be approved as the applicant has revised the conditions 3a and 3b. They have tried to address the fear concerning the height limitation, but not make a new dish not function.

Mr. Edgerton stated that on page 15, attachment a, there is a schematic of the existing dish and the replacement. On the left-hand side of the schematic there are three more grid dishes. He asked if it was a reasonable expectation that at some future date there is going to be a desire to replace them with these microwave dishes.

Mr. Caramanis stated that they were not all Alltel dishes. There are no plans to replace the other Alltel dishes on the tower. He stated if the other dishes were replaced, that this same type of dish might not replace them because each carrier has a different amount of traffic.

Mr. Loewenstein stated that they have a lot of conditions to get straight. He closed the public hearing.

Mr. Edgerton stated that he was confused by the multiple pieces of paper with the various conditions. He asked staff for some clarification and reaction to the recommendations from Alltel's two pages of changes and staff's one page addition.

Mr. Cilimberg stated that the real difference between what staff has recommended and what the applicant wants is in 3a and 3b in bold. He stated that Mr. Waller could speak to staff's view of those conditions.

Mr. Waller stated that the conditions recommended by staff was in order to try to limit any future changes in the new type of micro-wave dish or satellite dish antennas. Any future ones would be required at lower heights because there was a possibility of having a future situation like this one where you may be replacing a dish with a new dish of the same diameter, but if you view it from the side it may look larger. The only time you will know it is the same size is if you are looking at it straight ahead. There was some concern if you were going to allow something that was larger than what is being replaced at a height that was the same height or higher, it should be some trade off in height should it decrease in the visibility from certain vantage points. If it is higher than the original, then it should not be any larger than the original one. The applicant's recommendation is to remove the height limitation without the knowledge of whether or not they can accomplish their needs with any future replacements by coming down to lower heights.

Mr. Rieley stated that he was very uncomfortable with the proposed language for 3a and 3b simply because they were forever in the position of not being able to determine the elevation in which a tower would be able to accomplish its intended purpose. They don't have the expertise and they were at the mercy of everybody that walks in the door and says it has to be at this elevation or it will not work. He asked staff about 3c. He noted that he liked the specificity of the old 3c in saying that the space was 6 inches between the pole and the dish. He asked what the reason was that they now advocate somewhat more general language.

Mr. Waller stated that the applicant was not sure if the 6 inches would allow them to attach it.

Mr. Rieley stated that possibly they could get different mounting equipment.

Mr. Loewenstein stated that he would be interested to know how much difference that they were talking about. He asked if they were talking about 8 inches or 26 inches.

Mr. Rieley asked what structurally or mechanically possible mean. Does it mean what is available on the market?

Ms. Hopper stated that applies to 2c as well while 3a. It states that the same type of dish may replace the current dishes on the tower, but it does not impose any type of condition for mounting. She asked if existing satellite and microwave dishes are the same as existing omni-directional or whip antennas. She stated that she did not think it was and that it was not clear. She noted that means that 2c does not have any conditions on it whatsoever.

Mr. Craddock stated that it says that it shall not be subject to the condition.

Mr. Waller stated that staff's recommended change would add additional language under 2c where it says the replacement of omni-directional whip or directional or panel antennas and existing arrays shall not be subject to this condition.

Ms. Hopper stated that she thought it says that it is not subject to any condition whatsoever because omni-directional, directional and whip are not addressed anywhere else in any of the other conditions.

Mr. Loewenstein noted that they were addressed in 2a.

Ms. Hopper stated that is true.

Mr. Cilimberg stated that was intended to only apply to the existing ones and if the array has changed in the mounting that exists. It is not if you are putting new antenna arrays up. It is only in the existing one.

Mr. Waller stated that it was intended to say if there were some new technology that allows the new panel and antenna to fall under these same conditions that are set in 2b with the 7 feet in

height and 2 feet in width. But it might be a different type of antenna that it could be replaced on a different array without having to do the flush mounting. So it would allow them to replace the antennas that they have where they are provided that they look the same, the same color as the old without having to remove the mounting structure that they already have.

Mr. Loewenstein stated so if the mounting structure of some existing antenna were to put the antenna further out on the pole then a new mounting structure would, then would it not be more desirable to mount that closer to the pole if we could. It seems that would be one of the goals that they would be after.

Mr. Cilimberg asked that they look at those on page 17 that are projecting more than the condition would allow out from the pole. The idea is that you could replace the antennas only in the array at the same distance. That is what the condition means.

Ms. Hopper noted that it does not say at the same distance.

Mr. Loewenstein stated that it only says it is not subject to this condition.

Ms. Hopper stated that she would agree with it if it had that language in it. She stated that the replacement of the omni-directional, whip, directional or panel antennas in existing antenna arrays shall not be subject to this condition but shall be the same distance or no greater.

Mr. Loewenstein suggested that it match the language in 2b that it shall not project from the structure beyond and then fill in the amount. He asked if Mr. Kamptner has any recommendations on condition 2c. Staff's version says the replacement shall not be subject and Alltel's version says that the existing and the replacement shall not be subject.

Mr. Cilimberg stated that if the intent of the Commission would be that you would not want on the existing arrays for the replacements to be any further out than they currently are. Then rather than word the condition if that is the intent, may be you could include that in the motion and then staff would work out the condition's language.

Mr. Loewenstein stated that maybe 2c could come out altogether and be replaced.

Ms. Hopper noted that there was a similar problem in 3c.

Mr. Kamptner stated that the Commission also wants to recognize that the existing arrays can remain as they are.

Mr. Edgerton stated that he was struggling a little bit, but if the intent of staff was to limit it to not more than 6 inches and the applicant wants to say that they will do the best that we can and don't want to be specific about it. He suggested that they ask the applicant to be specific about that and put that language in if it was 6 inches or 26 inches. He stated that there was no way for the Commission to know. The other point was if they did approve this substitution or trade of a dish that was higher for one that was lower, he did not think it was a significant change from 120 feet to 100 feet. The size of the microwave dish or the impact visually is a lot more significant and if they agree to this now they best be prepared to agree to future changes in the name of fairness. They might be looking at three or four more of these on this tower in the future. He felt that it would come back as a precedent in the future. He suggested that the applicant request a deferral to provide additional information.

Mr. Loewenstein stated that it was difficult to grapple with the proposed changes to the conditions on a several pieces of paper simultaneously and with possible conflicting recommendations between the staff and the applicant. He suggested that they work this out before they take action. He stated that it sounds like that type of dialogue might be possible. He suggested that staff provide one list of conditions to the Commission.

Mr. Edgerton stated that he would be more comfortable with that approach.

Mr. Rieley suggested that they have several things to be investigated. He stated that it appears from the photographs that the existing microwave dish is in the same configuration as the proposed one. He noted that the proposed one at 95 feet looks like the back of it is at least closer to six inches to the base of the pole. He asked that the applicants verify and provide the actual measurement. He noted that he was struck by the fact that the photo simulation shows the proposed new dish adjacent to the same elevation as the 95 foot one. He noted that if he imagined that 5 feet higher, that he felt it would look a lot worse. He noted that it looks better because they are lined up. He stated that it was hard for him to believe that the signal from Earlysville could not make it 5 feet lower. He asked if there was an engineering reason why that was not true. He asked to see what the proposed attachment mechanism is and whether it was acceptable or not. If it was acceptable, then they could fashion the conditions to be consistent. He noted that they would have to figure out what is reasonable and how to make it work.

Mr. Loewenstin asked if there were other comments.

Mr. Craddock stated that they usually get a mechanical drawing of the pole and attachments so that we can see that.

Mr. Loewenstein asked what kind of time frame they had on this application.

Mr. Waller stated that the application date is June 24th.

Mr. Cilimberg noted that if the applicant requested a deferral, then time is not a factor. He noted that he did not think that they could get all of this information in one week.

Mr. Loewenstein asked the applicant to come back up for a moment. He asked if he would consider deferring voluntarily for enough time to allow staff to get together with his client to work these issues out.

Mr. Caramanis stated that he would agree to that for as brief a time as possible. He stated that they tried to work a lot of this out, but staff wants a concession that if it has to be bigger then it has to be lower. He noted that did not work for them. He pointed out that the mounting was the same as what was existing. He noted that it as very close to 6 inches, but it might be 6.5 inches. He pointed out that all dishes were located as close to the tower as possible in order to be the safest.

Mr. Edgerton asked if it there would be a standard detail for the mounting bracket that Alltel would have in their engineering department.

Mr. Loewenstein noted that it would be helpful for the ARB to have a mechanical drawing showing the bracket. He pointed out that this type of information is routine with other applications. He asked that the conditions be all in one text. He asked if there were other things that they did not mention. He stated that they wanted the lowest height to accomplish the dish's intended use.

Ms. Cilimberg noted that if they indefinite defer the request, then they have to readvertise.
He suggested that they build in enough time so that the applicant can submit the information that staff needs, and work with the applicant towards developing the conditions in advance. He noted that does not happen in one week's time.

Mr. Caramanis stated that if they were strictly asking for a drawing of the bracket that it would be no problem.

Mr. Edgerton stated that the photo simulation couldn't be accurate because on the left side of the pole it shows 95 feet and the right side of the pole shows 100 feet. As Mr. Rieley pointed out, the photo simulation shows them at the same height.

Mr. Caramanis stated that the photo simulation was not what they were applying for. He noted that they have applied for 100 feet on the centerline, which is what it will be.

Mr. Rieley stated that it would be very difficult to support this application. He suggested that they be at or lower than the elevation of the existing one of the similar appearance.

Mr. Caramanis stated that since they work like lasers, they couldn't lower them without also lowering the one on the Ruckersville tower.

Ms. Hopper stated that the issue is the language concerning future replacement.

Mr. Rieley stated that he did not think that this one should be at 100 feet, but actually should be at 90 or 95 feet.

Mr. Cilimberg suggested a deferral of a minimum of three weeks, but noting that four would be safer.

Mr. Loewenstein suggested that they defer to October 22nd.

Mr. Rieley moved to accept the applicant's request for deferral to October 22nd.

Mr. Edgerton seconded the motion, which carried unanimously.

Mr. Loewenstein stated that the Board of Supervisors hearing would be delayed and would not be heard on October 9th. He stated that applicant needs to provide additional specific information prior to the next hearing.

The Commission took a ten-minute break at 7:20 p.m.

The minutes reconvened at 7:30 p.m.

Regular Items:

SUB-02-199 Connor's Ridge Preliminary Plat – Request for preliminary plat approval to create six (6) lots on 48.22 acres. The property is zoned RA, Rural Areas. The property described as Tax Map 8, Parcel 34 is located in the White Hall Magisterial District on Route 664and Route Route 663. The Comprehensive Plan designates this property as Rural Areas. (Francis MacCall)

Mr. MacCall presented the staff report. He stated that the reason that this item was before the Commission was that an adjacent property owner had made a formal request for a hearing due to concerns about water and traffic impacts. Both the Subdivision and Zoning Ordinance regulations are being met. He noted that there were no current regulations about the number of wells in the rural areas. Also, the Virginia Department of Transportation has not raised any concerns about the impact that the six lots would have on the existing roads. He stated that he had a telephone conversation with the adjacent property owner explaining this. As a result of that the adjacent property owner still made a formal request that the Planning Commission take some type of action on this. At that time they told me that they would not be able to attend this meeting. Since the request is meeting the technical aspects of the Ordinances, staff recommends approval of the subdivision.

Mr. Edgerton stated that the site plan shows a fairly significant easement running through the

large lot. He asked if that was being proposed to allow the land to be divided.

Mr. MacCall stated that easement was from a previous subdivision. He suggested that the applicant might be able to address that.

Mr. Loewenstein opened the public hearing and asked the applicant to come forward to speak.

Brian Ray, of Roger Ray & Associates, stated that he prepared the preliminary plat. He stated that he understood the neighbor's concerns, but pointed out that they had met all of the conditions of the Subdivision Ordinance. As Mr. MacCall previously stated, the Virginia Department of Transportation approved the site distance for the entrances. Also, the applicant has preliminary soils work done on the site to make sure the soils were suitable for the septic fields. He stated that the right-of-way use to serve some of the parcels in the rear. When they did some boundary line adjustments, the owner at that time created this new access easement that runs through the parcel which they plan to divide. That easement would allow them to come perpendicular off the road that they are proposing. He noted that part of that includes the building setback lines. The actual width of that right-of-way is 50 feet. He noted that it was just an access easement and was not a fee simple ownership.

Mr. Edgerton asked if someone could extend a new road along that easement.

Mr. Ray stated that if it were a public road, then it would have to be a deeded simple ownership. That would require the applicant to have to deed that portion of the land.

Roger Ray stated that he could not deed that because that in effect would subdivide lot one into two lots, and they have exhausted all of the development rights. The only perceived subdivision that he could see is if one of the owners elected to do a family division. This right-of-way was moved. Parish Road uses to serve four or five parcels in the rear of this. One person bought all of these parcels and elected to have better access to the rear parcels by creating his own private road.

Mr. Rieley asked how many parcels this road served?

Mr. Ray stated that he believed the road served four parcels of 100 plus acres.

Mr. Loewenstein closed the public hearing to bring the matter before the Commission for action. Due to the current water crisis, he noted that they were all going to have to begin thinking about ways to tie land use patterns to water use.

Mr. Cilimberg stated that the Engineering Department was working on some requirements that would require testing for adequate water before obtaining a new plat or building permit. That has been discussed at the Board level.

Mr. Thomas moved for approval of SUB-02-199, Connor's Ridge Preliminary Plat, with the conditions as outlined by staff:

The Planning Department shall not accept submittal of the final subdivision plat for signature until tentative final approval for the following condition has been obtained. The final subdivision plat shall not be signed until the following condition have been met:

1. The following items must reviewed and approved by the Engineering Department before the final plat can be recommended for approval. A completed submittal form and application, available at the Engineering Department, must accompany all submittals. The required number of copies and the required fees are indicated on the form and application.

a. A stormwater management/BMP plan, computations, and maintenance agreement;
b. All drainage easements must be shown on the final plat;
c. An erosion and sediment control plan, narrative and computations;
d. Road plans and computations.

Ms. Hopper seconded the motion, which carried unanimously.

SUB-02-195 Gilmore Emerson Waldman Estate Waiver - The applicant is proposing to create two (2) lots on 56.65 acres and have the standards from Section 14-514 Table A, for a three (3) to five (5) lot private road, be waived by the Planning Commission. The property is zoned RA, Rural Area. The property, described as Tax Map 59 Parcel 29 is located in the Samuel Miller Magisterial District on Old Route 677 (Ballard Road) approximately three (3) miles from the intersection of Route 677 and US Route 250 West. The Comprehensive Plan designates this property as Rural Area. (Francis MacCall)

Mr. MacCall presented the staff report.

Mr. Cilimberg stated that the conditions as listed are conditions that if you granted a waiver would still would be greater than what is currently applied to two lots on a road, but less that what would be required for a three to five lots on a road.

Mr. Rieley stated that since the request was for two lots, why were the three to five lots on a road condition applied.

Mr. MacCall stated that they were adding a third lot to an existing private road.

Mr. Cilimberg stated that in this case they had the addition of a lot to an existing road that was kicking in the requirement for an upgrade.

Mr. Craddock asked if these parcels could be subdivided further.

Mr. Cilimberg stated that any subdivision would kick in the additional road standards that would be necessary at that level of lots. Therefore, if they subdivided more than five lots on the road, then it would kick in full private road requirements.

Nelson Teague, an Attorney for Mr. Waldman's estate, stated that Ms. Emma Gene Poole was present. She is the executor of his estate. He asked that the Commission use some discretion and apply some general principles of equity here in approving this waiver. Mr. Waldman through his estate planning created a plat that was attached to our application whereby he tried to go through the family subdivision process whereby this land was being divided into multiple lots that would go to his daughters upon his death. The Commission in 1997 approved that plat, but he failed to put the plat to record. Obviously, the problem is that the County does not recognize the plat. Mr. Waldman passed away with that plat attached to his will. Now the County is saying that they cannot divide it up that way because that plat was not admitted to record. They were trying to honor the intentions of Mr. Waldman's will and allow his daughter to close out his estate by allowing a defacto family division of this property. The property was being willed to his daughters, Ms. Poole and Ms. Miles, who owned the third lot on this private road. The road would be serving the same individuals as it is today. The land would be divided into two lots instead of the previously divided six lots. Mr. Ray's office has acknowledged that the private road provides reasonable access. He asked that the Commission allow them to honor the intentions of Mr. Waldman's will.

Ms. Poole stated that they have no plans for developing the property at this time.

Roger Ray, of Roger Ray and Associates, spoke for the request. He pointed out that the

conditions make it impossible for them to know how to design the road for a two-lot subdivision if the request is granted.

Mr. MacCall stated that the Engineering Department recommended an alignment change be made to correct the sharp turn radius.

Mr. Loewenstein stated that the question was by how much.

Mr. MacCall stated that since they did not have a particular design for the standard of the road that they would have to work that out to accommodate any large vehicles that need to get up to the dwellings.

Mr. Ray stated that he felt that the road was adequate as it existed. He noted that if they approved it with these conditions that he was confused how they would design the road.

Mr. Loewenstein stated that it sounds like staff was saying that rather than specify the standards in the conditions that the applicant would simply work with the County's Engineering Department to produce the best design necessary to achieve the result that is being sought.

Mr. Ray stated that items a, b and c are not appropriate for a two lot subdivision. Item # 2 is uncommon to be placed on a plat and might preclude family divisions of these lots in the future and should be struck. Item # 3, numbered a and b are appropriate. Item number c asking for the applicant to post a bond for some road that they don't know what the design criteria is for should be struck. Item number d is confusing. He asked if the County was going to start reviewing the wording of deeds. He pointed out that there was a note on the plat that stated that the road was not maintained by the County or VDOT.

Mr. Loewenstein closed the public hearing and placed the matter before the Commission for action.

Mr. Edgerton stated that it was confusing because there were two daughters named and the will designates parcels that don't exist because they were never recorded. There are six parcels suggested in the will that should be distributed to two daughters, but yet the subdivision was represented to the County in 1997 as a family subdivision. There is something very wrong with that. He stated that the intent of the family subdivision was not being supported by this request.

Mr. Rieley stated that he could not find any justification for this waiver and supported staff's recommendation. He moved for the denial of SUB-02-195, Gilmore Emerson Estate Waiver.

Mr. Edgerton seconded the motion, which carried (6:1) (Hopper – No)

The Planning Commission found that the proposal does not meet the criteria of Section 14-237, and; therefore, recommends denial of the request for the waiver.

New Business:

Mr. Cilimberg stated that there would be a meeting at 2:30 p.m. on Friday with two Planning Commissioners (Ms. Hopper and Mr. Rieley), two Board of Supervisors' members and a consultant regarding telecommunications.

Old Business:

Rural Area Comprehensive Plan Public Input Process Schedule – To review and discuss the basic outline and schedule for the public process related to the review of the Rural Areas Section of the Comprehensive Plan.

Ms. McDowell presented the staff report that described the basic outline and schedule for the public process.

The Planning Commission discussed staff's revised schedule and outline and made comments and suggestions. At the next meeting, they will decide which two Commissioners will make up the committee to assist staff. Ms. Hopper volunteered to serve on the committee.

Blue Ridge Sanatorium

Mr. Loewenstein stated that the information booklet regarding Blue Ridge Sanatorium has been delayed due to the reproduction costs. The proofs will be sent to Mr. Cilimberg's office and he will have the copies made and distributed. He pointed out that an amazing web site has been set up with some interesting information at www.faculty.va.edu/blueridgesanitorium.

Adjournment:

With no further items, the meeting adjourned at 8:52 p.m.

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V. Wayne Cilimberg, Secretary

Recorded and transcribed by Sharon Taylor, Recording Secretary