**Albemarle County Planning Commission**
**September 2, 2003**

The Albemarle County Planning Commission held a work session on Tuesday, September 2, 2003 at 4:00 p.m., at the County Office Building, Room 235, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Chairman; Rodney Thomas; William Finley; Jared Loewenstein; Pete Craddock and Bill Edgerton. Absent from the meeting was Tracey Hopper, Vice-Chairman.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; David Benish, Chief of Planning & Community Development; Greg Kamptner, Assistant County Attorney; Stephen Biel, Planner; Scott Clark, Planner; David Hirschman, Water Resource Manager; Stephen Bowler, Watershed Manager; Mark Graham, Director of Engineering; and Joan McDowell, Principal Planner.

Mr. Rieley called the meeting to order at 4:05 p.m. He stated that they would begin with the work session on the Rural Area Comprehensive Plan.

**4:00 P.M. MEETING ROOM # 235**:

**4:00 – 5:30 Rural Area Comprehensive Plan Work Session** – Discuss the draft of the Rural Areas Chapter of the Comprehensive Plan. The Comprehensive Plan establishes government policy to help guide public and private activities as they relate to land use and resource utilization. It is the basis for land development regulations and development regulations. The draft Rural Areas Chapter includes sections regarding the history of the rural Areas; Trends in Development, a Vision for the Rural Albemarle County; Guiding Principles; Land Use Patterns, Density, and Residential Development; Land Preservation and Conservation, Critical Resources, Fiscal and Tax Tools; Water and Sewage Disposal; and Land Uses, including Agricultural, Forestal, Rural Preservation Developments, Crossroads Communities, and Alternative Uses. (Joan McDowell)

Ms. McDowell stated that the draft of the Rural Areas Comprehensive Plan had been distributed and she hoped that everyone had a chance to look through it. The process currently has two work sessions scheduled for tonight and again on September 16th at 4:00 p.m. Staff is anticipating more work sessions, but thus far they have not been scheduled. They are working towards public hearings and a facilitated session so that they can bring consensus to any issues that may be a little more controversial. Staff is not necessarily looking for consensus tonight or at the next work session. Staff will give you a summarized list of the comments and suggestions at the next work session, so the Commission will know what staff heard and then changes can be made if necessary. A list of the "hot topics" was sent in the packet. Staff suggests that they start working on those issues tonight. Because the hot topics are likely to be more controversial than some of the other things that are in the Comprehensive Plan, they may want to take them to the Board ahead of the rest of the plan. Staff suggests that the Commission take the last 15 minutes of the work session to switch from the hot topics to more of a generalized discussion. She pointed out that there were some maps included in the document.

Scott Clark, Planner, explained the maps in the draft Comprehensive Plan.

Mr. Rieley stated just for clarity, Map B shows the existing small rural parcels and does not show all the parcels that can be subdivided by right.

Mr. Clark stated that was correct. He explained some of the details of the maps.

Ms. McDowell explained the process and research staff did to produce the draft Plan. She pointed out the directions that staff had received from the Board of Supervisors and the Planning Commission from their last work session when they reached their consensus on the issues contained in the draft Plan.

Mr. Rieley stated that the reason that he asked was that the issue of placing agriculture and forestry relative to conservation has come up at least four times in our work sessions. He felt that the current version that they have now does not reflect the consensus of the Planning Commission.

Ms. McDowell said that they were going to discuss those topics later in the work sessions. Staff used all of the documents and research to come down to a few fairly simple concepts that she wanted to share. Our research showed that that a great deal of land in the Rural Areas was being used for residential despite what the existing Comprehensive Plan policies are. This proposed Comprehensive Plan would reverse that. The idea is to use the least amount of land for residential, thereby conserving the greatest amount of land for agricultural, open space, forestal uses or other uses. Throughout the document you will see maximum acres for residential rather than minimum acres for residential. That is the main deviation from the existing policies in the Comprehensive Plan and the Zoning Ordinance. Staff is also suggesting that the Commission look at changing one of the minimum acres for land divisions from 21 acres to 50 acres. She pointed out that they explained that quite a lot in the document, and therefore she would not go over in detail the concepts behind that. She noted that there were a couple of things that she wanted to go over that led them to that big change. The trends stated in the draft Plan were discussed.

Mr. Rieley asked if staff had the numbers that were generated by the five (5) – 2-acre lots in the County as opposed to those that are generated by the 21-acre residue. He asked if staff had those total numbers anywhere.

Mr. Clark stated that the estimate of 54,867 more housing units was the only estimate that they had which was from the TJPDC Study.

Mr. Rieley stated that the reason that he asked was relative to the statistic that 76 percent are less than 21 acres where in fact they are making provisions for many lots smaller than 21 acres through our existing ordinance. He stated that it would be interesting to know what that proportion was.

Mr. Clark stated that would be a matter of going back through the existing study and seeing if at some point when they laid out their process if they say what the percentage was.

Mr. Rieley stated that he brings this up as a caveat that the Board has made it very clear that they want to take five (5) - 2-acre division rights off the table as an issue to discuss. Nevertheless, the proportion he felt is pertinent to our consideration of the larger acreage.

Mr. Benish pointed out they did an estimate in 1996 based on the PEC and that was a rough estimate on divisions that he felt they could use.

Mr. Rieley stated that a good guess would be helpful.

Ms. McDowell noted that if staff could find it, they would include it in the materials for the next meeting.

Mr. Finley asked what the density per acre would be if they went to the projected build out. He asked if staff had any idea what it would be now.

Mr. Benish stated that he did not know that off of the top of his head, but they do have a general density number for the Rural Areas. If they were not changing the small lot number of units, then the gross density would not change. The policy change would be the 50-acre lot that does not change a significant proportion of the total building, and therefore the density would not change significantly.

Mr. Finley stated that comparisons are often made of the urban or growth area growth versus rural growth. Since 95 percent of the County was rural, you have to realize that the growth was in 5 percent of the County.

Ms. McDowell stated that was correct. Staff has seen that development right lots have been created at higher densities within the designated water supply protection areas than outside those areas. This is a significant concern. There is a long term and continuing problem with water supply protection. If the Commission has any specific questions, both David Hirschman, Water Resource Manager and Steve Bowler, Watershed Manager were present.

Mr. Thomas asked if the minimum lot size was 50 acres how much savings in ground water would they actually show.

Ms. McDowell asked if they could hold off on that question until they get to the 50-acre question. She stated that from 1993 to 2000, the Rural Areas population growth at 1.49 percent annually was only slightly lower than that of the development areas at 1.94 percent, which was not as good as the County had hoped when they rezoned in 1980. Certainly as they progress through time in the development areas in using the Neighborhood Model, they certainly hope for better progress, but they are still very concerned that the Rural Areas are being subdivided in to residential lots leaving not enough for what it was intended for. Therefore, they would like to reverse that trend through the policies in this plan. She stated that staff has identified six topics to discuss at this work session. The first one is development right lot sizes and maximum lot sizes. The other ones are the timing of development right usage phasing, large lot sizes 21 acres to 50 acres, mountains, limit development in debris flow hazard areas and avoiding erosion impacts through driveway standards. Another topic is critical resources and residential development impacts. The last topic is rural preservation development. She pointed out that the Commission has an opportunity to add to that list.

Mr. Benish emphasized that staff does not believe that this draft is done and that they were at a point in time that they can continue to mull over what the issues are. But, staff had to put something on the table to give the public something to start with to reach a consensus. He felt that they were at the point that they have enough major issues that need to be resolved to get the Commission's direction. He noted that they do have a particular focus on some of these issues because of the impacts if they set on the table too long. Therefore, staff wants to know if the issue was something that they could reach a consensus and then move forward with it. He noted that with general conversation and answering some questions, it should give us some ideas.

Mr. Rieley stated that was very helpful and felt it was correct to put it in that framework. He stated that his expectation was that these are issues that they will discuss, but as Ms. McDowell said not to try to arrive at a consensus tonight because they were really significant issues and he felt it was important to hear what everybody had to say about them. He noted that they did not have to come to a conclusion during this first work session.

Ms. McDowell opened the discussion of the first topic, Development Rights/Lot Sizes. The main focus is to use as little for residential as possible, thereby having as much for open space, agricultural and forestal as possible.

Mr. Rieley stated that was conservation and preservation.

Ms. McDowell agreed.

Mr. Benish stated that it does not change their right of development. The lot would still have to meet the performance requirements for a building site, but it would be focused on minimizing the excess area beyond that.

Mr. Finley stated that on page 17 you talked about the current 31 acre total. He asked if that was what they were talking about.

Ms. McDowell stated that in 1980 the Board gave properties of record of a certain size five development rights, and you can only use 31 acres of that now with a 2-acre minimum. Staff was saying that there might be possibilities of using less of that land for residential lots by using the maximum rather than the minimum use. She pointed out that they did not recommend reducing the number of development rights.

Mr. Edgerton asked if the maximum that they would recommend was 2 acres

Ms. McDowell stated that they would propose using 2 acres or less if they could manage.

Mr. Rieley stated that they have not arrived at the number yet.

Mr. Benish stated that staff had not worked on this to the point that they have a specific ordinance or regulation in mind, but that this sort of sets the tone for that next step of the ordinance change. They want to do something less than 31 acres because that is an average of 5 acres per lot, and that seems a bit much. They know what they need for a residential unit to sustain itself. But if they want something beyond that and if it is an ordinance that is performance driven, then you need your building site, and well and septic approval. He noted that if that was what you need, then that was what you would get.

Ms. McDowell suggested that they keep in mind that the Village Residential zoning has a 1.5-acre lot size.

Mr. Benish stated that the VR zone currently has that regulation in place.

Mr. Finley asked if an ordinance would come out saying the maximum lot size would be 2 acres.

Ms. McDowell discussed the differences between division rights with larger lots and development rights with smaller lots and advised they understood that flexibility would need to be built into the system.

Mr. Benish discussed the flexibility needed for lot sizes and the residue that would be created by a lot size formula.

Mr. Edgerton stated that this would effectively reduce the amount of land used for residential development by 60 percent.

Mr. Benish stated that it could theoretically.

Mr. Edgerton stated that the 30,000 square foot building site is considered by the Health Department to be large enough to support the primary and secondary septic field.

Ms. McDowell agreed.

Mr. Edgerton stated that there was some concern about the water, which nobody wants to take a stand on.

Mr. Finley asked what the maximum lot size was in the Neighborhood Model.

Mr. Benish stated that they don't have a maximum lot size in the urban area. He pointed out that there was a market dynamic in the urban area that tends to work in some areas that create an incentive to maximize your development potential and minimize the lots. He pointed out that they

were struggling with that same issue in the development areas. He stated that he did not think that they were quite there yet.

Mr. Finley expressed concern over the maximum lot size restrictions on landowners and their ability to be enforced.

Ms. McDowell stated that the regulations in the Zoning Ordinance and the Subdivision Ordinance could be enforced.

Mr. Rieley stated that it says in utilizing these five development rights that is the place in which it applies, and it does not apply uniformly across the board. In fact, if you adopted all of these provisions you could make a 50-acre or larger parcel of land.

Mr. Edgerton stated that it would probably not affect the family division. He asked if that was State mandated.

Mr. Rieley noted that was something that they should look at because it has been widely abused.

Mr. Finley asked if the maximum size would apply to cluster development, and Ms. McDowell stated that it would.

Ms. McDowell stated that there was already a maximum, but what they were doing was lowering that.

Mr. Finley stated that the farmland is all that a lot of farmers have in their old age for their retirement. He noted that the objective was to preserve the land, but he felt that they also have the people to think about.

Mr. Rieley stated that this was one of the two issues that he heard the most. People support a maximum lot size because if you are trying to conserve land, you don't want to have lots of houses on big lots because that was very easy to do. The second thing is that everybody says that the 21-acre unit of land does not work. He pointed out that he was happy that both of those issues were being addressed.

Mr. Edgerton stated that in his experience with Real Estate that he had heard many people say that anything greater than two acres was more than they needed for a house site and they would like to live next to a farm on a smaller lot. If you reduce it, one of the problems that make it different than the urban development was that there are no services available. You would have to provide for sewage treatment and a well on the property. There is a reasonable minimum size that could be supported without services. He found that people who used the 21-acre parcel, which was intended to preserve land, actually have used up more land. Due to the shortage of smaller lots people buy the 21-acre lot and put one house on the lot. He supported pushing this as far as they could reasonably. He felt that the development community would not be against it and it would be a capital benefit to real estate holders.

Mr. Thomas agreed with Mr. Edgerton.

Mr. Craddock pointed out that they would not be cutting out the lots, but only reconfiguring the lots.

Ms. McDowell noted that the one thing staff heard at the joint Commission/Board meeting was that you could not reduce development right lots. They did not recommend changes to the number of them, but the size of them.

Mr. Loewenstein stated that there would be people who own land in the Rural Areas that will say you have not taken away my development rights, but you have lowered the value. He noted that it

might be a small number of people, but they need to be prepared to deal with that issue. If they tie this to time release of development right usage, it will probably have more of an impact. He pointed out that they need to be prepared to discuss the potential reduction of value of those rights.

Ms. McDowell stated that she talked with several people about the same issue in what is the market and what is the assessment. There is a wide range of ideas. Some of those are just what Mr. Edgerton was saying that somebody would be more eager to pay money for 2-acres. She felt that the market would be the ultimate judge of that. There is another philosophy that if the lot was next to something that is open space and giving the illusion of living on a larger lot but not the responsibility for the taxes, that may increase the marketability. It also addresses in some ways something that has come up from the public and the joint session of not wanting to price out the land in the Rural Areas so that they are not affordable by all except the very rich.

Mr. Loewenstein agreed that might be a positive step because there seems to be people who are willing to pay whatever it costs for 6 acres or 21 acres. He felt that would definitely help, but was something that they would hear about.

Mr. Rieley stated if one took the approach that they were looking at the aggregate of these five lots rather than an individual lot, then they could look at the maximum that aggregate could be.

Ms. McDowell asked if that was like the 31 acres now.

Mr. Rieley stated that was correct. He noted that 10 would be the multiplier, and obviously there would have to be some flexibility in that. Therefore, he suggested using 12 or 15. He noted that it would be interesting to see some examples at the next work session of what the implications of one were relevant to the other. It seems that just from an administrative perspective that it might be easier to do that than to try to fit every lot within exactly the same umbrella and it might achieve basically the same thing.

Mr. Benish stated that was a conclusion. The reason staff came up with the first 31 acres was because given their topography of the lot, the building site location becomes problematic with the 2 acres because some lots may have to be larger just to get a lot drawn to where the building site was. He pointed out that could be compensated by a smaller lot somewhere else

Ms. McDowell stated that staff looked at what they could do to make the Rural Areas utilize its land better for the things that they wanted it to be used for such as conservation, preservation, open space, agricultural and forestal.

Mr. Finley stated that he did not see much about the people in any of these topics.

Ms. McDowell stated that even though people were not directly mentioned in these topics, everything affects people in the Rural Areas. She pointed out that they would see later in the discussions about the Comprehensive Plan some of the things that staff had added that provides limited services for people. She pointed out that would be discussed at the next work session.

Mr. Finley stated that it would affect the people who have their life savings tied up in their farmland.

Mr. Finley stated that the implication in the staff report on page 18 mentions back up wells in connection with reducing the size. He stated that staff has not used back up wells previously. He asked if this was something new.

Mr. Benish stated that it was new, but that the septic is required to have 100 percent back up. He noted that they would see the glaring effects on this when they get to central systems, which was a way again, based on the merits of this property being able to support itself by private utilities, to

allow for a central system to provide a more effective way. Before moving to the next topic, he asked to make some comments. During the Comp Plan review or when they talk about the specifics of that ordinance, he wanted to make sure that they understood that staff has not drafted an ordinance yet. He pointed out that this sets a direction for us in taking that step. Staff has certainly looked at what is feasible from an ordinance standpoint. Staff recognizes that there are some complexities in the sections that they talked about that includes the building locations, the mathematics of residues, subdivisions for financing purposes that farmers and forestry people need to deal with sometimes and conservation easements as well. He noted that there are some details in this that makes writing this difficult.

Ms. McDowell stated that the next issue was the timing of development right usage. Currently, you can subdivide just as easily and quickly in the Rural Areas as you can in development areas. Staff has not determined how many or what length of time. Staff is advocating a policy that would have a certain number of development rights or subdivisions to be phased in over a certain amount of time. This would slow down development and allow for a development in the Rural Areas to occur much more slowly.

Mr. Rieley asked if she could give an example of something she had in mind.

Ms. McDowell stated she did not have any specifics. She noted that staff could come up with some data for next time.

Mr. Rieley asked if other places do this.

Mr. Benish stated that because of the number of lots that they were talking about, the land use is not that significant because it would have to be less than 5 acres, which was what they do right now. With the increments of one or two per year it would probably be within the range that they envision.

Mr. Rieley stated that if you do it by the entire parcel rather than simply by division rights, you do have subdivisions that have 21-acre lots and he would presume that they would be subject to this just as well as the smaller lots.

Mr. Benish stated that it was conceivable that it could. Staff had envisioned it more for the development of residential lots assuming that the 50-acre lot was for conservation purposes.

Mr. Edgerton stated that he would love to see an example of where this has worked and what type of reactions they had. He felt that they would be discouraging people from doing a real plan at all, if they restricted the timing of development.

Mr. Benish stated that under the provisions, the proposed rural preservation development would be able to subdivide, which does provide some incentive for rural preservation.

Mr. Loewenstein stated that they were only talking about the Rural Areas. There are several jurisdictions within the Commonwealth that are applying this too much larger portions of land. He noted that now there was enabling legislation that will allow you to subdivide by right. This may be something that they might want to bring up again when they discuss other types of development rights in other areas of the County.

Ms. McDowell pointed out that time release would not apply to rural preservation developments.

Mr. Rieley stated that within the context of a rural preservation development, it would become by-right next summer. He felt that put this in a different light and that the Commission should look at it both ways with the rural preservation development having the same time restriction as other lots. The kind of development that this is most likely to prohibit is suburban subdivisions, which is the type of development that they were most trying to limit. The suburban road being paid for by

selling 20 lots in two years becomes less likely. They should discuss the other side to that coin which is that more and more of these smaller lots will appear on existing roads. The aggregate effect would be more development the way it has traditionally occurred in the Rural Areas. That development would include large lots where there was something that they could do with the land and small lots when all they wanted to do was live on them and typically be closely associated with existing roads. He noted that it had a lot of appeal to him.

Mr. Finley asked if they increase the minimum residue, then wouldn't it knock out division rights.

Ms. McDowell pointed out that the number of development rights would remain the same.

Mr. Finley stated that they would still have to have 21 acres right now and they were proposing 50 acres.

Ms. McDowell stated that was correct. She noted that they have talked a lot about large lots of 21 to 50 acres integrated with what they talked about earlier. She reminded the Commission of the maps in the back of the draft Plan book. She pointed out that Maps B and C showed that there were scattered and fewer 0 to 21 acre lots, but there were more lots 50 to 100 acres.

Mr. Finley voiced concern about those people who have planned all their lives to sell their property and will now be told no.

Mr. Benish stated that it depends on the drafting of the ordinance.

Mr. Finley stated that it would be complicated for those people.

Mr. Benish pointed out that they would have to work on how to deal with those parcels caught in between.

Ms. McDowell pointed out that the fifth development-right lot, if you had less than 50 acres residue, would be larger than 2 acres.

Mr. Rieley stated that certain circumstances could not be avoided. He pointed out that this would be a huge issue.

Mr. Craddock asked if this had worked for other counties such as Loundon County.

Ms. McDowell stated that Loundon County does this in a portion of their County. Loudoun looked at how their County was divided and recognized that various areas leaned towards different specialties. They chose the area with equestrian use for the 50 acres. They looked at how it had been subdivided in the past and found that 50 acres was easily divisible.

Mr. Thomas stated that Goochland has two tax bases with one in the western area and another in the eastern area. He asked staff how they dealt with their Rural Areas.

Ms. McDowell stated that she was not familiar with it. She asked Mr. Biel if he knew.

Mr. Biel stated that they set a maximum, but that there was no difference in the five acres.

Mr. Thomas stated that there was a higher tax base towards Richmond, which was used to pay for the infrastructure costs.

Mr. Edgerton asked how viable it was to have a 50-acre tract and really be able to farm it.

Ms. McDowell stated that it depends on how large the farm was. The research shows that there are certain types of farm activities that actually can use less acreage. It also lends itself for those

50 acres to rental. A few years ago there was some discussion about 42 acres and the Forestry Department said that in order to have viable forestry operation that they needed at least 40 acres. The new thinking on that is that they cannot tell you an exact number of acres, but they need at least 40 acres.

Mr. Benish stated that the state average vineyard is 27 acres. There is an indication that size needs to be larger to provide flexibility for a commercially viable vineyard.

Mr. Rieley asked if there were other thoughts about pages 21 through 50.

Mr. Edgerton stated that they were going in the right direction to achieve what they were trying to do.

Mr. Finley stated that this means that there are a lot of people in the County that are very rich.

Mr. Rieley pointed out that they were not bringing in any 50-acre parcels into the County, but just discussing how they could be subdivided. He stated that the next topic was Hazard Areas.

Ms. McDowell stated that staff has had a lot of recent discussions about the Mountain Overlay District. The County has appointed a committee that has not started meeting yet. She pointed out that they need to be further along in this process before the meetings would begin. Some new information came out after the first Mountain Overlay that addresses debris flows. Staff wanted to get what the Commission thought about adding protection throughout the Rural Areas for debris flows. She pointed out that David Hirschman would answer any of the Commissioner's questions.

Mr. Finley asked if this would be an area that was identified by geologists and others and how they could say that area could not be built in without being identified.

Mr. Cilimberg arrived at 4:12 p.m.

David Hirschman, Water Resource Manager, stated that those areas have been historically debris flow areas and was backed by the US Geological Survey in Albemarle. This was done after 1995 after the landslides in Madison County. Staff worked on this and identified the resources that they were able to map. Staff graphed and mapped those areas, which was not a large area that included most of the mountainsides. A lot of those areas were called the debris flow fan because the debris flow itself starts high on the mountainside and then where the land becomes a little less steep the debris flow tends to consolidate and fan out. That is the area where people like to build because it has good views.

Mr. Rieley stated that he did not see how you could argue in favor of building in hazardous areas that require letting the mountain erode.

Mr. Loewenstein stated that it seemed to be a pretty simple subject because you would not want to do that.

Ms. McDowell stated that the next issue was Critical Resources and Residential Development Impacts including the protection of resources, critical slopes, and floodplains. There are a number of ways to address this and staff wanted to bring it to the table and get the Commission's thoughts. She asked Mr. Clark to provide some comments.

Scott Clark stated that an example of an overlay zone was in Loundon County where they have a stream and floodplain overlay zone in a certain district, which includes the stream, the floodplain and the critical slopes next to it. The idea was to combine the flood hazard overlay and the natural resources to protect the riparian habitat, wetland corridors, and the streams, which all intend to be connected systems.

Ms. McDowell stated that one of the things that the building site avoids is the critical slope of 25 percent. Therefore, if you had overlay zones then one of the things that you could do was to add other resources as avoidance areas.

Mr. Rieley questioned the degree to which these kinds of overlay of regional protection will apply to agricultural and forestry as well as to other uses. He pointed out an example of viticulture was how close vines can be sprayed routinely next to steams. He stated that he was in favor of this and would like to extend it to all land activities.

Mr. Loewenstein supported better protection of water quality and water resources.

Mr. Benish stated that this was really a system type of approach, but with overlays. So while the boundaries might not be as clear, it was very important.

Mr. Edgerton stated that he was very enthusiastic about this, but that people will complain about losing their rights. He pointed out that he would like to see the Commission enforce the critical slopes more.

Mr. Benish stated that to the extent that this will be applicable to the agricultural and forestal areas that they will have to look at it again.

Mr. Rieley stated that they talked about allowing additional uses in the Rural Areas to supplement holding parcels together, which has to be balanced with the long term resource management. He noted that there were certain limitations that were statutory.

Ms. McDowell stated that the last topic was Rural Preservation Development. Limiting the land area used for residential in order to maximize the land area for the conservation parcel is the focus. Unfortunately, rural preservations are not being taken advantage of as much as staff had hoped when the ordinance was changed to allow them. The by-right legislation will allow this next year to be by right rather than by special use permit, but State law would allow standards. Therefore, staff has suggested some standards in this section. As mentioned earlier, RPD's would not be subject to phasing. Therefore, you could build a smaller road than perhaps you would need for conventional development, which is a cost savings in your infrastructure and it is even smaller because you clustered your houses on smaller lots and left much more land for open space.

Mr. Edgerton noted that he had worked on several of these with larger lots and was able to achieve 85 percent in the Rural Areas. Therefore, he did not think this was unrealistic.

Ms. McDowell pointed out that one of the possibilities to allow these small lots was to give a separate lot towards the secondary drainfields. She pointed out that Hickory Ridge had an extra lot that was turned into a lot for secondary drainfields. This lends itself toward having central well and central septic system so you can use the minimum acreage for residential. She stated that some type of authority rather than a homeowner's association would need to manage it.

Mr. Finley stated that under ACE it states worth of the land without division rights versus worth. He stated that if they go with the two acres, he would presume that the payment would be far less where as now you could use your division rights to have all sizes of lots. Under ACE you get paid for allowing the land to be turned into a conservation easement. Under cluster development you would get penalized and get nothing. He noted that a lot of people want to keep their land and they are forced to turn it into a conservation easement.

Ms. McDowell noted that this was a subdivision option.

Mr. Edgerton stated that the market would support this. He noted that once it was explained that the lots became much more valuable because of the permanent easement.

Mr. Finley stated that personally being a Rural Areas dweller; he felt that the noose was tightening with considerable County control over the land.

Mr. Clark pointed out the differences between ACE and RPDs.

Mr. Rieley stated that one surprise he had from being on the Planning Commission when seeing the RPD's coming through the process was how small the preservation tracts have been and how large the lots were. In many cases the RPD's does not look like what it was intended to foster, which was using less land and leaving more open. He stated that he was in favor of the 75 percent.

Mr. Finley asked if currently the minimum was 40 acres and Ms. McDowell stated that was correct.

Mr. Clark stated that with a 6-acre average, the preservation tract would increase from the minimum 40-acres.

Mr. Finley stated that they were talking about 75 percent of the whole parcel.

Mr. Clark stated that Albemarle County was the only jurisdiction with this that does not have a percentage.

Mr. Finley asked if it was as high in the other areas.

Mr. Biel stated that it goes as high as 80 percent.

Mr. Rieley stated that revising the timing requirements for family divisions was overdue. He felt that they should scrutinize family divisions more comprehensively to make it less easy to abuse it. He noted that it was clearly being used in some cases as a mechanism to avoid the Subdivision Ordinance. He stated that if the County was not going to enforce it, then they needed to change the ordinance so that it was not so easy to do. One thing about this was that he had a concern about talking about this under time release to make an exception for rural preservation developments. He felt that they needed to think long and hard about that. He stated that staff mentioned making an incentive to do rural preservation developments. He stated that they don't need an incentive particularly when they become administrative approval only. He felt that if they trade off all of these other things that they are substantially losing weight in the right direction and would end up with the small rural preservation developments springing up like mushrooms all over the County because they have made it so attractive to do that. He stated that his inclination would be to continue to scrutinize the timing of development rights for all developments including the rural preservation tracts.

Mr. Clark stated that staff could look into that.

Mr. Edgerton suggested the implementation of requiring a build out with a schematic of the ultimate development that you could do.

Mr. Rieley stated that his concern was a general one and he did not have a solution. He felt that they should scrutinize it. He suggested that possibly there was a timing sequence that was not the same as for conventional.

Mr. Benish stated that was something that staff would look into and follow up with the Commission at the next work session. He noted that it would be important to set the direction.

Mr. Rieley stated that if the only place in the County that you could cash in quickly was in the rural preservation developments, he worried if that would have a negative effect.
Mr. Benish stated that it was 5:35 p.m. and the Planning Commission needed to break for dinner before the regular meeting at 6:00 p.m.

Mr. Rieley stated that the Commission needs to take a dinner break. He complimented staff on the good job done on the packet.

Ms. McDowell asked the Commission to bring their notebooks to the next work session.

Mr. Benish stated that staff would summarize the comments made even though no consensus was obtained. He announced that Steven Biel would be leaving our group because he had taken the position of Planning Director of Fluvanna County.

Mr. Rieley congratulated Mr. Biel on his new position.

In summary, the Planning Commission held the first work session on the Rural Area Comprehensive Plan. Staff discussed the steps involved in the process of developing the Rural Area chapter of the Comprehensive Plan with public participation. The process will include several work sessions. Following the meetings there will be a facilitated session to obtain consensus. Staff gave an overview of the draft of the Rural Areas Chapter of the Comprehensive Plan on the following sections: Trends in Development; a Vision for the Rural Albemarle County; Guiding Principles; Land Use Patterns, Density, and Residential Development; land preservation and conservation, Critical Resources, Fiscal and Tax Tools; Water and Sewage Disposal; and Land Uses, including Agricultural, Forestal, Rural Preservation Developments, Crossroads Communities, and Alternative Uses. The Commission held a discussion on these issues and provided comments and suggestions, but took no formal action. The next work session will be held on September 16th.

**The meeting adjourned at 5:40 p.m. for a dinner break.**

**The meeting reconvened at 6:00 p.m. for the regular meeting in Room # 241.**

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, September 2, 2003 at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Chairman; Rodney Thomas; Bill Edgerton; Jared Loewenstein; William Finley and Pete Craddock. Absent from the meeting was Tracey Hopper, Vice-Chairman.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; David Benish, Chief of Planning & Community Development; Michael Barnes, Senior Planner; Margaret Doherty, Principal Planner; and Greg Kamptner, Assistant County Attorney.

**Call to Order and Establish Quorum:**

Mr. Rieley called the regular meeting to order at 6:10 p.m.

**Other Matters Not Listed on the Agenda from the Public:**

Mr. Rieley invited comment from the public on other matters not listed on the agenda.

Jack Marshall, President of Advocates for Sustainable Albemarle Population (ASAP), stated that as part of the ASAP's educational mission they were pleased to give each member of the Commission and staff this book by Edwin Stennick, "In Growth We Trust". He pointed out that the book was just published last year and was a thoughtful study of population growth in the Washington, D.C. area. The book is based on data and not just ideology. The author looks at

the impact of growth on communities much like ours and reviews forces behind the pressures for localities to develop. Stennick argues persuasively that even with smart growth our quality of life will worsen with each generation if we don't curve the growth itself. Second, he invited the Commission and staff to the annual ASAP Conference to be held in the main auditorium of this building on Saturday morning, September 13th. It will be a one-half day forum and will focus on reexamining some of the myths about growth that have paralyzed our community from looking objectively at the impacts of growth and taking responsible steps. Edwin Stennick, the author of this book will debunk the widespread myth that population growth is good. Many communities, including Albemarle, have reached the point where the cost of growth outweighs the benefits in terms of quality of life, environmental issues and tax revenue to pay for the infrastructure. The next speaker will be Kenneth Townsend, a nationally known economic professor at Hampton Sydney College. He will respond to the myth that population growth is necessary for economic prosperity. Finally, Julie Pastor, Director of Planning of Loundon County, will address the myth that growth cannot be slowed or stopped. She will show us that with citizen support and political courage that a community can take meaningful steps towards controlling its demographic fate. The conference described on the green sheet is free and open to all, and he hoped that everyone could join them.

Mr. Rieley asked if anyone else would like to speak under the category of matters not listed on tonight's agenda. There being no one, Mr. Rieley stated that the meeting would move on to the two public hearing items.

***Public Hearing Items:***

**SP-03-049 Glenwood Station (Sign # 1)** – Request for special use permit to allow professional offices as part of a mixed-use development, pursuant to Section 18.2.2.11 of the Zoning ordinance which allows for professional offices by special use permit in the R-15 Zoning District. The property, described as Tax Map 61, Parcel 129F, contains 9.31 acres, and is zoned R-15, Residential. The proposal is located on East Rio Road (Route 631), approximately one mile from the intersection of East Rio Road and Route 29N, between Fashion Square Mall and Squire Hill Apartments, in the Rio Magisterial District. The Comprehensive Plan designates this property as Office Service and Neighborhood Service in the Neighborhood 2. (Margaret Doherty)

Ms. Doherty stated that this was a mixed-use development of 62 dwelling units and 4,000 square feet of general office. The office use requires a special use permit in the R-15 zoning district. The applicant proposes three office buildings along Rio Road with the remainder of the site being developed with 28 townhomes and 5 condominium buildings. The concept plan, which is included in your packet, along with a post elevation of the office building have been reviewed for compliance with the recommendations of the Comprehensive Plan, the twelve principles of the Neighborhood Model and the Zoning Ordinance. Staff recommends approval of the office use with conditions. She noted that the revised conditions of approval handed out were minor revisions for clarification in the enforcement of the conditions and were recommended by the Zoning Department.

Mr. Rieley asked if there were any questions for Ms. Doherty.

Mr. Edgerton stated that the critical slopes that are shown on this drawing seem to be pretty substantial. He asked if the critical slopes have been addressed.

Mr. Doherty pointed out that the critical slopes waiver would come with the first site plan because she wanted to wait until there was a plan that specified how many critical slopes there were. The slopes are going into a drainage swale that is not identified on the open space map. In reviewing the special use permit, staff looked into if there were any scenic resources or natural resources that could be protected here and found that this was not a drainage swale or stream or anything worth protecting. The standard critical slope waiver will be done at the time of the first site plan.

Mr. Edgerton asked if that would be coming back before the Commission, and Ms. Doherty stated that it would.

Mr. Rieley noted that from the configuration of the slopes that he might have made the misassumption that they were manmade because that area looks like it has been flattened above it. He asked if that was true.

Ms. Doherty stated that it was actually an old farm and was probably flattened for that, but the land has not been flattened for building.

Mr. Rieley asked if the sketch was one of the office buildings, which were all the same.

Mr. Finley asked if there was affordable housing in this development.

Ms. Doherty stated that there was none except for any offered by the applicant later. There is no enforcement on staff's part on affordable housing in this project.

Mr. Rieley noted that they would ask the applicant about that.

Mr. Thomas asked if there has ever been a connection to the Mall Road.

Ms. Doherty stated that she did not think so.

Mr. Cilimberg stated that he was not aware of any.

Mr. Rieley asked if there were other questions for Ms. Doherty. There being none, he opened the public hearing and asked if the applicant would like to address the Commission.

Mark Keeler, with Terra Partners, stated that he would start off by answering the question that was outstanding right now about the dedication of the Mall access road as a state road. He pointed out that was offered to the state at some point in time and then they refused to accept it into their system. He noted that he was not sure what the reason was. He stated Mr. Ray researched that before he took ownership of the property. As far as the question about affordable housing, he would touch on that in a moment. He pointed out that the property was once named Glenwood Farm and therefore the name Glenwood came from that. The vision was to create a mixed-use development of both housing and commercial office, which requires a special use permit. When you look at the context of the site between a large regional mall and a fairly dense apartment complex, this site like the one you will speak on later tonight is considered significant infill property at a very important intersection. The site itself is also challenging, which was one of the reasons why this site has not developed before this time. The shape of the property made it difficult to come up with a winning solution that gets the type of density that they would like out of the resources that they have in the County. They have been able to achieve a density of 14 dwelling units per acre on the residential acreage. Within the context of the residential development, they would like to create some opportunity for affordable housing. The condominiums are their venue for doing that. The starting prices right now target for the residential units will begin around $140,000 and they will cap out somewhere around the mid $200,000 range. Similar development to this has occurred just east on Rio Road where they mixed an office building with some townhouse condominiums, which has been quite successful. Directly across the street there is Alltel Building and other medical offices, which are beginning to develop there. Therefore, they do have an office present along Rio Road in this Corridor. That is why they felt fairly comfortable coming to you with a proposal of this sort. In terms of infrastructure, Rio Road is a 5-lane road with additional decel lanes on each side. They have initiated a traffic study, but the limits of that study due to the small volume of traffic they have compared to that currently on Rio Road is really limited to our proposed intersection. The capacity and delays that may be caused by our development were discussed in a meeting with staff. Will Smith Associates is going to be proceeding with that study. The main entrance to their

site was going to be directly opposite Rio East whish serves that particular development where the Alltel Building is located. Although they would love to have a traffic signal at this location, staff is probably aware that there is a traffic signal being considered in the future for Putt Putt Lane. They feel that the installation of that at the proper time is going to make traffic ingress and egress from their site that much easier because of the platooning of traffic. They are pursuing a secondary connection with Fashion Square and have spoke with the Fashion Square Managers and the Simon executives out of Indianapolis. They have expressed a willingness to provide that secondary entrance. In addition, they went to the owner of the property, who would actually be the one granting the access easement. They too have expressed a willingness to do so long as Simon's future building plans are not compromised by anything that they may propose. That analysis and review are underway at this time. He called their attention to the revised recommended actions that Ms. Doherty brought to your attention. It suggests that a small connection would be made a mandatory part of this proposal. They understand that after they once reach 50 residential units that they must have a secondary means of egress or ingress to the site. He noted that they foresaw being able to get an emergency entrance, but they might be stopped short on full time ingress and egress depending on what expansion plans the mall may have. He asked that the Commission consider whether or not an emergency ingress and egress location onto that mall access road would suffice. He pointed out that he lives in Forest Lakes and knows that it has been done there, and he also knew of other places that have been acceptable. If that is possible then that is what they would like the Commission to consider. Both utilities and sanitary sewer are available. They will jack and bore under Rio Road near their main entrance in order to get water from an existing main. Storm water management they hope to handle in two separate ways by qualitatively in underground pipe storage facilities separately for the residential and offices. Then they would use the natural basin that is already on the southern tip of the property for qualitative purposes. They plan to remove little or no vegetative growth in that area. Other utilities run along Rio Road either overhead or underground. From an infrastructure point of view they are in pretty good shape. All of the buildings are three or less stories above grade. With the buildings tucked back in the property, it should not obstruct the view of the Blue Ridge Mountains for the adjoining residents. Other members of his team that were present included George Ray, Suzanne Staton, and Mike Gaffney, contractor for residential units. Jerry Dixon, architect for the commercial buildings, was not present. He stated that they have devised a development proposal for the property that is in conformance with the Zoning Ordinance that was responsive to the growth plan set forth in the Comprehensive Plan. It was in harmony with the uses that are permitted by right in this district as well as those that have developed around it. He hoped that the Commission would agree and recommend approval for their special use permit to the Board.

Mr. Rieley asked if there were any questions for Mr. Keeler.

Mr. Thomas asked if they would be able to use shared parking.

Mark Keeler stated that yes that they have actually devised the plan where they got all the parking required under the normal ordinance and then they were asked to pursue a sharing or a reduction in parking with fewer spaces but in a configuration where they could share some. They have come up that with just about 10 percent. The problem is the small interface between where the offices would be and the neck of the property where the residential part begins. Currently they have been able to get roughly 10 percent shared parking, which the plan reflects.

Mr. Rieley stated that there was one person signed up to speak, Mathew Jones.

Mathew Jones, Pastor of Aldersgate United Methodist Church, stated that the church was a growing church with a 750-member congregation. He noted that Mr. Ray did come and meet with the church to explain his project and they were delighted by it. The church would have liked to buy that piece of property, but they did not have the financial resources. They feel that Mr. Ray's project is the best use of that property and they fully support this project.

George Ray stated that he would like to amplify something that Mr. Keeler said as it relates to that second access point. They have met with Mr. Montague who is one of the owners of the ground underneath Fashion Square Mall and he has been very supportive of the project. They have also met with the Mall Manager, Terry Beaver, who has also been supportive. They have discussed this on the telephone with the people of Indianapolis and they are supportive, but they are concerned because they have plans in the mill to do some changes at Fashion Square Mall. They don't want to grant them permission to do something that might negatively impact their project. What they were asking for tonight was to have the Planning Commission consider allowing them to go ahead beyond the 50th building permit and put in the emergency exit. The access would be for emergency vehicles only, but they very much want that second permanent entrance. He noted that they would continue to pursue the second entrance, but did not want their hands tied because they could not control what happens with Fashion Square Mall.

Mr. Rieley asked if anyone else would like to discuss Glenmore Stations. There being none, he closed the public hearing to bring the request back to the Commission for discussion and possible action. He asked if there was a consensus that the Commission would like to see staff work cooperatively with the applicant and the Mall to find a resolution that this can, in fact, be what everybody wants this to be as a permanent connection from the beginning.

All of the Commissioners agreed with Mr. Rieley's statement.

Ms. Doherty stated that if this was a ministerial act of less than 50 units that it would not be required, but only recommended. If it was 50 units or more it would be required as an emergency exit for a minimum. She pointed out that staff was trying to draft a condition on how to enforce this. Staff would like to see this as an interconnection to provide more access between the mall and Rio Road. There are other reasons besides the number of units because it was a good interconnection.

Mr. Loewenstein agreed in principle, but thought that the timing is probably one of the critical elements. If this was a situation that could be resolved by the Mall people from their respective on a date in the near future, then that would make a lot of sense. He noted that their timetable sounded a little bit vague at this point and he doubted if it would be possible to achieve anything of real significance. He stated that they have done this in the past as has been pointed out. This situation is a little bit different from some of the others because it was in a somewhat more built up area and that East Rio Road was a major road. He stated that if they can craft this in a way that the emergency entrance can be upgraded, then this was feasible.

Mr. Edgerton stated that if this was a private road, then it was controlled by the landowner. He asked if they have the right to require them to allow an emergency vehicle to go across it.

Mr. Rieley stated that it was something that they have to agree to.

Mr. Edgerton stated that if they allow this there was no incentive for the Mall people to allow an emergency egress with the hope that some day it would become permanent. He stated that he was uncomfortable with this kind of dead ending in this way because the interconnectivity was pretty critical to the success of the project. He asked if they have the right to go across their private road for emergency access.

Mr. Rieley stated that they would not, but it was something that the landowner has to negotiate. He stated that if they think that this is that important then they are going to have to build in a mechanism to assure that it happens. It seems that the recommendations in the staff report do that better than anything that he could come up with. The difficulty as they have all seen with projects that get built without an interconnection is that it is almost impossible to get it later because it creates through traffic that nobody who lives there wants. It is a very difficult thing to get after the fact. He stated that he was not arguing either way on it except that if they think that is something important for the long run, then they better make a provision to get it now.

Mr. Kamptner stated that if it was approved as a private road under the Subdivision Ordinance, which he doubted, then it was open to public traffic. Private road status just means that the owners of the property, or whoever, in the agreement have the obligation to maintain the road. Generally those roads are open for public traffic, except in cases where at the time of the approval restrictive access is approved. An example of that is Glenmore. He stated that this was a travelway on a piece of commercial property. They have control over this.

Mr. Loewenstein stated that it could be closed in theory, and Mr. Kamptner agreed.

Mr. Kamptner stated that the applicant needs to provide emergency access and there is no guarantee that this mall access road will stay as an assess road.

Mr. Rieley asked what happens if the Mall decided that they want to put a building where that emergency access location was located.

Mr. Kamptner stated that they would need to come in for an amended site plan. Parts of the site plan regulations currently require that under certain circumstances that interconnectivity be provided to adjoining properties. It is possible that it can be preserved that way.

Mr. Loewenstein asked if there was something that they could do before it reaches the point that the Mall access road might go away. If it was not an official road is it something that they could condition an access road to on this application. He asked if it would moot this condition altogether.

Mr. Kamptner stated that from a practical standpoint it is hard to imagine as long as the Mall access road exists that they are going to refuse access. He stated that technically they could close it. Under the site plan are they obligated to keep it open? Can they put up concrete barriers if they decide they want to control access on this road without amending their site plan?

Ms. Doherty stated that they probably could not because they have required parking on that side of the mall that you have to have access to.

Mr. Cilimberg stated that there were two levels of consideration with this. One is the physical act of connection, which could be a requirement. If a physical connection were being made, you would imagine that the owner would want to make sure that they have the necessary easements to get the traffic through the property that they are connecting to a public road. But nothing in this condition could actually require that connection to the street, which was really all that was being required. He stated that theoretically the Mall could block their access if they wanted to without affecting the rest of the plan. The only surety that you would have that they meet the condition was that they not only have a connection but they also have the necessary easements.

Mr. Thomas noted that goes back to the question that if they stay under 50 units then they would not have to have the emergency access. He asked the applicant if they stay under 50 units if they would still be able to provide affordable housing.

Mr. Rieley pointed out that emergency access was advisable even under 50 units. He stated that was the question of whether they wanted to require the permanent access as well. He stated that Mr. Ray wanted to say something.

Mr. Thomas stated that he would like to ask Mr. Ray a question about affordable housing.

Mr. Ray asked if the question was what would happen if they had to reduce the density. He pointed out that there was some simple economics involved. He pointed out that if they reduced it by 12 units he would have to take a look at it to see if that would be 12 units at $140,000 a piece or 12 units at $250,000 a piece. He stated that he frankly did not know. He stated that they

would be happy to build a full service road to their property line where they don't have any control over any more and post a bond for the balance to make that connection. He stated that it was going to be the County's decision on whether or not that road gets done. If the County will take the position today that granting them that access would not negatively impact what the shopping center wants to do the day after tomorrow or two years from now, then they would grant us that access. He noted that was the position that they have taken. He stated that he did not think that they could close that access road without coming back to the County for site plan approval. He noted that it was a condition for the shopping center being built. He stated that they wanted that entrance because it made it a better project. He felt that the Mall wants it but does not want to do something shortsighted and grant that permission now and then come back later and say that they have not lined this up with the new buildings across the street.

Mr. Edgerton asked how the County could give the Mall the assurance that they are looking for without having any idea of what they are looking for or what their future plans are.

Mr. Rieley suggested that rather than altering the third condition as it was currently written that they vote on this with the recommended action as it was given. Then they could encourage staff to work cooperatively with both the applicant and the owners of the Mall to make this connection happen and give whatever assurances they reasonably can give.

Mr. Cilimberg pointed out that there is a month before the Board of Supervisors meeting and staff would work towards having that clarified as much as possible for the Board.

Mr. Loewenstein asked about the specific wording of condition # 3, the final site plan shall show a vehicular connection, but that is all that it actually says. He stated that could be an emergency type of connection or something more elaborate since it was not specified. He asked if that was an accurate statement. Vehicular connection does not necessarily give it a certain level rating.

Ms. Dowell pointed out that if it had of been emergency access that she would have specified that.

Mr. Loewenstein stated that the issue was not clear.

Mr. Cilimberg stated that the issue was clear for resolution before the Board meeting.

Mr. Loewenstein suggested that the condition might need a word or two more of a specific descriptive.

Mr. Rieley asked if there was a consensus that the Commission would like to see staff work cooperatively with the applicant and the Mall to find a resolution that this can in fact be what everybody wants this to be as a permanent connection from the beginning.

All of the Commissioners agreed with Mr. Rieley's statement.

Mr. Rieley asked if there were any other comments or suggestions.

Mr. Finley asked if a motion on this request was needed.

Mr. Rieley stated that the minutes should reflect that they have this consensus and they can then act on the application as it is before them.

Mr. Loewenstein recommended the approval of SP-03-049, Glenwood Station, subject to the five conditions as revised.

1. The site shall be developed in general accord with the concept plan entitled, *Conceptual Development Plan Glenwood Station/Place*, dated July 11, 2003 with minor changes allowed to accommodate the required parking when approved by the Zoning Administrator.
2. Final elevations of the office buildings shall be reviewed and approved by the Director of Planning prior to final site plan approval to ensure consistency with the elevations provided herein, dated August 25, 2003.
3. The final site plan shall show a vehicular connection to the Mall Access Road. The connection shall be constructed prior to issuance of the 50th building permit. Sidewalks shall be provided along the entire Mall Access Road frontage.
4. The office buildings shall have a 30' front setback and a 10' parking setback from Rio Road, as well as a 50' structure, 20' parking and 20' undisturbed buffer adjoining the Squire Hill development to the south; and
5. Prior to final site plan approval of the first office building, the applicant shall submit, for VDOT review and approval, a highway capacity manual analysis of the entrance on Rio Road.

Mr. Thomas seconded the motion.

The motion passed unanimously (6:0). (Hopper – absent)

Mr. Rieley stated that SP-03-049, Glenwood Station, would go to the Board of Supervisors on October 8th.

**ZMA-01-07 Albemarle Place (Sign #43, 57, 66)** – Request to rezone 63.7 acres from HC (Highway Commercial) and LI (Light Industry) to NMD (Neighborhood Model District) to allow a 1.8 million square foot mixed-use development. The properties, described as Tax Map 61W, Section 3, Parcels 19A, 19B, 23, and 24, are located in the Jack Jouett Magisterial District at the corner of Rt. 743 (Hydraulic Road) and Route 29 North. The Comprehensive Plan designates this property as Regional Service in Neighborhood 1. (Michael Barnes)

Mr. Barnes summarized the staff report. The applicant submitted both the rezoning and the comprehensive plan amendment applications back in April 2001. The Board approved the comprehensive plan amendment in December of last year. The applicant resubmitted the rezoning application last April. The applicant has provided an application plan that meets most of the principles of the comprehensive plan amendment, which is in your packet, as well as the Neighborhood Model principles. The comprehensive plan map is located behind Mr. Finley and represents the ground floor and the application plan map represents the upper floors of the project. The project is a pedestrian friendly mixed-use project that mixes the use both vertically and horizontally. About 4/5 of the project's parking is located in structured garages. It provides a series of interconnections with adjacent parcels and this will allow for the eventual expansion of the bridge network that is already found in the project. The other major streets surround the Hydraulic Block, which is defined by Hydraulic Road on the south, Commonwealth Drive, Greenbrier Drive to the north and Route 29. The major features of the project include a 121-room hotel, restaurants, multi-screened cinemas, two-story department store, a series of smaller retail stores, several large single-story retail users that includes a grocery store, on-street and structured parking, public open spaces and between 700 to 800 residential units. However, you may note in the Code that it is 450 dwelling units, but the applicant projects much higher than that. The majority of these residential units would be apartments provided over the top of the retail use. The applicant's application plan along with the Code of Development was received in your package that will more stringently commit the applicant to perform development that they propose. The Code gives a lot of details, which regulates and actually forms the regulations for the zoning district and they will be using it with the application plan. The Code enumerates the permitted uses by block and regulates the density and the intensity of those uses and ensures the mixture of uses within those blocks. The way that the block plan works is that there are seven blocks (A-G), which are blocked in three block groups.

The Code also regulates the built form of the project, the architecture, landscaping them along its exterior, artscaping which includes things like street lighting, and street designs. Staff has grouped the project's issues into three major categories. Those were being the design regulations, which would be the Code, the proffers and the application plan, and the transportation issues. Staff brought to the Planning Commission on June 5th for a work session several issues that related to the internal design of the project and its layout. As you will recall, they discussed a lot of things that included the design, changes from the CPA plan, the current plan on Hydraulic Road, the environmental impacts, and the cap of 70,000 square feet on a single user per floor. The Commission allowed that to go to 75,000 square feet for a two-story building. Once again, that is something that is related in the Code of Development. Staff discussed the layout in the northern third of the site. They discussed the ARB's concerns and staff passed out a handout of concerns that came from the ARB's meeting of today on this project. They were trying to have some coordination to try to incorporate those thoughts on July 10th into the Code. The Code of Development has images of buildings in it. Staff is interested in creating a built form that is successful for pedestrians and it does not create overbearing architecture and breaks up the façade and brings quality architecture, whereas the ARB is going to be concerned over the color of the bricks and other fine details. The ARB wanted to make sure that it was clearly understood that the images in the Code would not be considered proffered or something that the applicant had to follow so that they would have to come back to the ARB if they changed certain uses. At the time the project goes for site plan approval they would still have to get a Certificate of Appropriateness from the ARB. Staff wants to make sure that the Commission understands the points 3 through 6. The ARB basically was saying that they wanted diversity in the architecture and it needs to have a harmonious theme since diversity could be too much of a good thing. There were some other comments on the building materials and other things which he had already discussed with the applicant this evening of things that he thought they could accommodate in the Code without too much input and incorporate the ARB's comments.

In the staff report comments were made about the hardscape concerns that they had with some of the language in the Code. Again, relatively minor concerns that need some wordsmithing and the applicant's need to make precise locations for hardscape features such as lighting, adding benches, etc. Staff has not had a chance to actually work that out with the applicant. Staff feels that they are relatively minor and believes that they can come to an agreement on those outstanding matters in the Code.

Staff covered the interior design of the project and the regulation of the project, which was the Code and the application plan which staff was 99 percent comfortable with. The transportation issues were primarily dealt with in the proffers. The proffers sort of dealt with about five or six major areas. The first one is the interparcel connections between their property and surrounding properties. They are essentially providing interparcel connections of three to four to the Sperry site, which would complete the grid network that they have been working on getting if Sperry is ever redeveloped. The other ones extend the other streets, First, Second and Third Streets, up to Commonwealth Drive. The other ones are extensions of Cedar Hill through to the Comdial Plant and an unnamed street over to the Comdial Plant and eventually they see that extending all the way over to Greenbrier Drive. The applicant has either proffered to commit to the interparcel connections in the future or they are actually offering some money for a connection between this and Commonwealth Drive if they have some easements provided.

Mr. Rieley asked if that was controlled by the Comdial property, and Mr. Barnes agreed.

Mr. Barnes continued summarizing the staff report. He pointed out that the proffer negotiations have been extraordinarily complex. There are a lot of different concerns involved in these negotiations. The next point was signalization on Hydraulic Road at Cedar Hill and again across from the Post Office on Route 29. There have been questions about getting the right-of-ways and some right-of-way improvements that are along in front of the post office. Some of the mass

will have to sit over in the City. The improvements in front of the Post Office have to be worked out. These are items that get into a higher degree of engineering and would probably take place at the time of the site plan. Some of these decisions, staff realizes that it has been pushed off into the site plan at the appropriate time for the investor to go into final engineering. Some of the concerns relate back to VDOT. There is a paragraph in the staff report that noted that VDOT is not so sure now whether or not they want this signal here. He noted that he received an email from them today that said they wouldn't make a decision on that until the site plan. He noted that maybe after the site was put into place, then they will make the decision whether they want the stop light to go in or not. He stated that the County's point of view and he would let Mr. Graham speak to that, was that we support the signal and see it as a way of diffusing the traffic as you move northbound on Route 29 and turn left into the site. There is one at Greenbrier, in here and at Hydraulic Road. He pointed out that staff was waiting for VDOT to make their determinations on that.

The next area that they had been discussing with the applicant was the long-range solution of the traffic in this area. One is the funding. The other component of it is the suggested improvements that are coming out of the MPO Task Force for Route 29. The monetary ones the applicant is proffering to just make a CDA for the commercial properties. There is some confusion and some clarity that still needs to be worked out between the County Attorney's Office and the applicant's proffer and exactly how that can be done. Basically the CDA taxes a parcel or parcels and in the Hollymead one the Board more or less was targeting the commercial one. The question is if you have a parcel that has mixed verticals and try to tax that parcel just on its commercial and not the residential portions, how do you do that. That is some of the legal stuff that they need to work through, which has been slow in being resolved. Staff does not know at what point that they could get the Planning Commission's input or if it is necessary for their input on the more technical aspects like that.

Then the applicants must provide a contribution on a per unit basis for their residential use for long-term road improvements and/or other capital improvements such as improvements to green spaces or purchase of green spaces. He noted that was $2,000 per unit. At the low end range of 450 units would be about $900,000. He stated that the high range was about 1.6 million. Those monies, the CDA and the residential one, would go towards paying for a portion of these longer-range improvements. The second thing was actually providing the right-of-way. In Attachment L on page 60 of the packet you can see that the darker lines and the red lines represent Route 29 and the MPO study. The preliminary study was based on a weeklong work session. The concept design has two roundabouts with the grade intersection at the intersection of Hydraulic and Route 29 with Hydraulic Road going under and two roundabouts on either sides of Route 29. That project moves significantly into this project. The proffers are being worked on. The County out right would dedicate area A as shown in yellow, which was something that the applicant wants to put a sunset clause on it. Area B is another area that would allow for the MPO design to be put into the place. There has been considerable discussion on how that MPO design needs to be refined and that line clearly defined or potentially the MPO design will work into something else that uses less right-of-way. The purpose of the B zone (shown in blue) is that the applicant really has two choices. The first was to wait until this has been resolved, which could take a year or more, or reserve that area and once they have that nailed down, they would dedicate the remainder of Area D as necessary. He pointed out that possibly none of that area would be necessary. This would allow us some time to work on that solution.

The final thing, which he refers to as the Band-Aid solution, was for the interim improvements to keep Hydraulic Road/Route 29 functioning until they get to the final solution. Those are provided in your packet in Attachment J on page 58. In that diagram you can see in green and yellow what they were talking about as the interim solutions. The yellow portion displays what would ultimately be put in if VDOT ultimately allows the signal. The portion in green is somewhat complicated because some of them are located on the applicant's property and some are not. The ones in front of the Comdial and the Sperry plant are potentially a right-turn lane on the southbound of Route 29. There appears to be enough right-of-way to accommodate that, but it

was not completely clear. A more problematic one is when you get down to the corner of Hydraulic and where the Seven-Eleven Store is located. This plan is proposing at the end of Hydraulic on the western side of that intersection another left turn lane out of Hydraulic to the northbound on Route 29 and then another right turn lane on Hydraulic. There is a question whether there is enough room there. It is something that they are trying to work through. The applicant is offering some of the money that comes from their per unit contribution to go towards the purchase of right-of-way. That would be through condemnation that VDOT or the County would undertake to make these improvements. He noted that was a big step for the County to do something like that to condemn the land for improvements for a development. Some of the ones on the North bound lane on Route 29 are in the City and it was not clear at all whether the City is interested in those types of improvements. The ones that are on their frontage, they will provide. The ones that are not on their frontage but in the County, they will provide or perhaps the proffers will provide money for the condemnation of right-of-way for those improvements. Then the ones on the City side they will provide if the City will allow them to provide. The final set of proffers deal with a side issue here that has been before the Commission which is the impact of the Meadows neighborhood to the south. There is a list of improvements that the City thought would be necessary to help mitigate the impacts of their neighborhoods. Staff has talked with the applicant about providing a median on Hydraulic Road that would prevent through movement from the project site south into the neighborhood at Cedar Hill. The applicant has proffered $10,000 for traffic improvements in the City to provide a combination of speed bumps and stop signs. In some respects, he thought that the City's figure came out to $50,000. Staff was figuring that the $10,000 plus the turning movement controls coming out of the site will meet them half way with respect to some of the other development that was going on in that neighborhood on the City side. That basically covers most of the proffers. The County staff believes that this application meets the goals set forth in the CPA and actually represents one of the stronger proposals that they have seen to date that showed the commercial, mixed use and very urbanized project to be put into place and it meets the Neighborhood Model. Staff is still working on the proffers and there is a lot of work to be done on that. The issues that need to be discussed are on the table at least and staff is working with the applicant to do that. The other concerns staff has with the Development Code are relatively minor and he thought that a lot of the wordsmithing could be nailed down. The applicant has been talking about the timetable that they are on and the time restraints that they are under. Staff is trying to work to bring the best product that they can to the County.

Mr. Rieley asked if there were any questions for Mr. Barnes.

Mr. Craddock asked if the median cut on Route 29 into the gateway was proposed or was that a stoplight.

Mr. Barnes stated that was an idea that had been pushed around. As you recall back during the CPA plan, they extended their main street straight down to Route 29 and they split the two entrances that were on the other side of the City. He pointed out that they doglegged that last bit of the road through there and lined it up with Sand Road on the other side. What that would allow for was a signal in the future, but was not being proposed at this time.

Mr. Rieley stated that the Planning District Committee showed an underpass at that location. He asked if the grades would work so that would be a possibility.

Mr. Barnes pointed out that was the next one up. There was a grade separation and a roundabout going under Route 29 and popping up.

Mr. Rieley stated that he had been corrected. He asked if there were other questions.

Mr. Thomas asked if the applicant has defined to the satisfaction of the Planning Director or has the applicant proven that the hardscape design would be adequate.

Mr. Barnes stated that on a big project like this you have a lot of input and are under a deadline. There was still internal debate from staff about how best that they could use some of the language to explain those features such as lighting and benches. They were working on setting forth guidelines so that when someone applies for a site plan they would be able to look at it and know what they are suppose to see on that plan.

Mr. Thomas asked if he felt confidently that they could adequately show that big improvement.

Mr. Barnes stated that he had not had a chance to discuss that with the applicant, but he felt that they were relatively minor in the grand scheme of things.

Mr. Loewenstein asked about the hardscape details. He asked if staff was closer to achieving that than they were at the time that the staff report was written.

Mr. Barnes stated that on page 17 of the Code, the first paragraph they were talking about a hierarchy of lighting. The direction coming out of their group was that they would not be defining exactly what a hierarchy is. He felt that they were clear in its definition. He noted that they would ask for a bare bones condition that they should meet the Albemarle County Lighting Ordinance.

Mr. Rieley asked if staff had a list of these that they could go over later. It seems that it would be helpful if they could either endorse or take issue with the staff's recommendation on these things so that they could pass them on to the Board.

Mr. Barnes stated that this was where the fork in the road comes. He suggested that the Commission view these things as minor and let staff handle them. He stated that there were things to be taken care of and then staff could bring these books and the minor things on a punch list for you to incorporate. He stated that he did not have a list of those things. Some of the items are from the ARB and include minor editing suggestions.

Mr. Rieley stated that staff has convinced him that they don't want to go there.

Mr. Finley stated that under the Regional Transportation Study, would you rather have full cash than something else.

Mr. Barnes stated that they had been working on splitting the amount into thirds with one-third coming from the local jurisdiction, one-third from the private sector and then you take that $300,000 and split that again into three parts with one for Hollymead, one for North Pointe and one for this area. That would result in this project being $110,000. Staff has approached the applicant with that amount and what they have offered to do is to give one-third of that in cash and the balance in design services. The study came up with a conceptual plan under Phase 1. Phase 2 will be a process when they go through and refine that even further and come up with one or two designs that they actually want to propose to be more definitive. Staff's strategy is to nail down where that definite area is by basically doing an engineering study that would define the right-of-way. That document could then be incorporated into the Comprehensive Plan using the official map enabling legislation. The applicant wants to give $33,000 for Phase 2 study and then they will do the engineering and take that conceptual design on to the official map stage for their engineer drawings. Staff has some reservation about the applicant being the one who does the design. There are certain positives and negatives to that. Staff has said that if they were going to give some type of contributions, then why don't they make that a cash contribution.

Mr. Cilimberg stated that in reality in working with a case like this there is going to be a contract using State money. Under the State procurement requirement with a consultant for the study of this 29 Corridor, they will be able to add to add on to that contract. He pointed out that they were trying to keep it as local as possible in terms of the control and the actual tracking. That is the effort of the Planning District and MPO now to do that in the second phase so that it is really being scoped locally to be contracted with local control, but there is going to be State money in

the project of $250,000 for the upcoming fiscal year. The monies that they will be able to add to can expand the scope of the work that is done. But adding in another consultant will not be something that is reasonable under that kind of setup.

Mr. Rieley stated that he agreed with that with the caveat that it was locally controlled and contracted.

Mr. Finley asked about the trolley because the staff report stated that a tremendous amount of work would be required by the County to establish the service. He asked if that would be in the mill some time soon.

Mr. Barnes stated that it was something that our staff, Juan Wade, Transportation Planner, was working on to try to find if there was any way that they could supplement this thing and get transit going into this area, maybe even if it was supported by the private sector. He stated that it would help circulate shoppers and reduce the traffic impact. He stated that there might not be enough interest out there, and if not then it will not go anywhere.

Mr. Cilimberg stated that ultimately it would be with CPS who already provides public transportation to provide transportation service through contracting in the County.

Mr. Finley asked about the cash proffer for capital improvements and if staff was saying that they don't want $2,000 per building permit, but want it all up front. He asked if that was what happened at Hollymead.

Mr. Barnes stated that at Hollymead they estimated how many residential units were in there and the dollar figure was closer to $3,000. But what they ended up doing was saying give us ½ of the funds up front now and then after that it is a pro-rata share for each unit coming for the building permit. This would take away their disincentive if they did not build out their total number of units and save in the end by not putting those in. Secondly, it enables some of that money from the front load to take care of some the impacts that are going to be generated by the project in its early phases.

Mr. Cilimberg stated that as they discussed the dollars with the two rezonings that were offering cash proffers for Hollymead Town Center Areas C & D, which were residential areas that were not to be covered by the CDA, they worked along the lines of a per unit cash proffer. Then there were questions of whether of not it was enough. What the applicants actually came up with was the idea of simply figuring out the cash that they were willing to put up for the capital improvements associated with their projects. In both cases they proffered ½ of that cash that they were willing to put up front and the other half to be paid based on the development of the units with a horizon date out there that it would be paid by. He noted that was essentially the way that was done.

Mr. Thomas asked if the per unit cost was $3,000.

Mr. Cilimberg stated that the per unit cost could not be determined because they have not determined the exact number of units. Therefore, they essentially proffered a dollar amount and not per unit. It would depend on how many units they actually develop as to what that amount would be.

Mr. Finley stated that they wanted to proffer Area A and some of Area B and you say that you want it for ten years only. He asked if anything is going to happen within ten years.

Mr. Barnes stated that they were dealing with several different issues. The first one is how much right-of-way are they going to give you for the ultimate improvements and how much right-of-way are you going to need for your interim improvements. The Seven Eleven Store would be a factor in both cases. For an interim one, if you need to put in another left turn lane and a right turn lane

around the corner, it will be tight in there. He pointed out if they moved into Seven Eleven's parking lot then they might end up having to take the whole business. That is the condemnation angle of it.

Mr. Rieley stated that was just for the short term.

Mr. Barnes stated that for the longer term one staff has discussed several options with VDOT back during the CPA process that basically involved taking Area A as the minimum area needed. Then the Route 29 fifth design comes in which called for even more area to include Area A plus Area B. Staff is not sure what that ultimately needs to be and that is why the reservation aspect comes in. Staff's comment is that what they are saying about of Area A in the proffers right now is that they are going to put a sunset clause on the dedication of only 10 years. He felt that in part that is to motivate them to move more quickly, but he felt that the prudent reading of our history locally is that we probably should reserve that portion for a little longer term. He stated that maybe Area B is a little more negotiable. This issue needs to be taken by the political leadership of the County. He stated that they were trying to be fair to the applicant. When you take that land out for 20 years and don't develop it that is land that is lost for taxing and it was land involving a land use goal. He noted that it was a fine balance in that.

Mr. Rieley asked if there were other questions for staff. There being none, he opened the public hearing and asked if the applicant would like to address the Commission.

Frank Cox, of the Cox Company, stated that they were one of the master planners for this project. With us tonight is Bruce McCloud, principle partner in managing this development from the developer standpoint; Ron Ferrum, one of the principle owners; Erick Strohacker, of the firm of Renney Kemp who has been doing traffic studies and Mike Fenner, whose one responsibility has been working with the parking impact studies to share parking analysis. He stated that they wanted to comment on a few of the things that Mr. Barnes brought up. He stated that they have been working with a New York firm, White and Turner, who is their cost consultants over the last year who has helped them put this together. They feel that since they made the last resurrection of this application back in March and have gone through a handful of revisions that very few items remain left to resolve relative to the nuts and bolts on this. Mr. Barnes called him today and acknowledged that the County Attorney had another session on reviewing the proffers and there were some problems in the wording. He felt that the staff report very clearly emphasizes the spirit of what the staff has looked to us for relative to proffers and the actual content there was in substance and he would hope that they could move forward in that vein. Since they initially submitted the proffers, 6 out of 14 are brand new. The CDA participation was not on the table in March when they first started discussing this. When there was a move towards regionalism and transportation, a commitment that they thought was in hand with VDOT last year was put on a pause because VDOT was interested in having all surface transportation improvements. Then the regionalism movement came into play, which deferred the CPA approval until December. The notions towards proper regional transportation leaned towards the idea of having split grade interchanges at various spots up and down Route 29. The initial proffer reflected a contribution in cash of $2,000 a unit that could be used for that purpose. They took the at-grade improvements off the table when they met with the staff about 2-½ week ago. Mr. Cilimberg brought the at grade improvements back into the scenario. There is no assurance from anyone that they have spoken to that a regional solution can be arrived at within a reasonable point in time. There is a very reflective and proper recognition that certain at grade improvements are needed now. They have added back those interim at grade improvements that they were initially talking to VDOT about as being profferable items sixteen months ago. They include not only frontage improvements on the Albemarle Place project, but also off-site improvements that as Mr. Barnes properly pointed out that some of them are in the City of Charlottesville. Speaking just briefly to the right-of-way reservation dedication, those proffers are made with some degree of trepidation. They have to take out of commission a property that is valued at roughly a million and half-dollars just to reserve it. The A areas of the piece of property would be needed for a reasonable grade separated interchange at that location, and they have explored three or four options as to how

that might work. He noted that he has gone through a very detailed grading analysis to assure them that it could work. Then along came the MPO roundabout proposal and they were advised that they should not bring that into major contention with you. He stated that they were opposing it as much as it would continue to delay the deliberations. So with great reluctance they were proposing a reservation of that B area. What they have introduced into the proffer is the $100,000 shared cash and in kind contribution, $33,000 of which would go to the MPO study that is being scoped right now. Then $67,000 of it would go to an owner provided effort that would assure us that in fact that our site with a proper right-of-way for a regional interchange at that location could in fact work with the proposal for an interchange. He stated that he has talked with very few people who knew anything about transportation that will put their thumbprint on the double roundabout idea, although they don't feel that either at the County or the VDOT level that anyone is in the position to reject that now. What they were in a catch-22 on is that the land that they were reserving has high economic value to it. They would like to work as heartily as they can in concert with the MPO study to which they will contribute $33,000 in cash. But it was going to take about a $70,000 project to ascertain the grading and the utilities and the precise right-of-way alignment, which would be sufficient to compliment that study. That would allow you to in fact adopt an official map to take the actual right-of-way that would be required to implement that interchange. At some point in time or another somebody has to grab the right-of-way. What they were proposing was that they would work parallel with and adjunct to the MPO study as they attempt to refine their design for this interchange and whatever else they were intending to do. But our level of confidence based on what they have seen produced to date by the MPO and what they have tried to carefully analysis in an unbiased way that they could do it, which was not totally unbiased.

He stated that he has little confidence that their study will be scoped to give you the right-of-way to adopt an official map for what you need in the County to compliment what the City needs to take and adopt on the City side. He stated that was the reason for the unkind piece. They were doing it to protect themselves and also to accelerate the process of us all understanding the particular land that is going to be needed for the improvement. Obviously, they would like to get affirmation from those who will not speak in public as to the unfeasibility of the MPO proposal that is over your left shoulder, but he thought during that process that it could be done. He felt that their proffers were thorough. During the next period of work sessions as they move on towards the affirmation from the Board, he hoped that the issue of hardscape was one that their cost consultants have put a number on. They have about 2 ½ million dollars in benches and specialty street lighting, specialty pavers, gazebos and fountains and things of that sort that are already in our project budget. They have worked through a number of value engineering efforts as they have gone along. In as much that they have not been totally successful in coming up with a definition in a numerical quantification of what hardscape is for a proffer, he could assure you that the applicant and the applicant's architects understand the importance of hardscape in a new urbanism proposal. They like the idea of being able to participate in a CDA. He encouraged the Commission to move this forward to the Board so that they would have the opportunity to begin the project in early spring.

Mr. Rieley asked if there were any questions for Mr. Cox. There being none, he asked that Kay Slaughter come forward to speak.

Kay Slaughter, representative for the Southern Environmental Law Center, commended staff and the applicant for the work that has been done on this project and the applicant's willingness to be part of the solution to some of the transportation problems. Our biggest concern, however, remains that there are so many projects occurring along Route 29 North that you are looking at them separately, but cumulatively there are a lot of impacts. Without Albemarle Place, the intersection at Hydraulic/250 and Hydraulic/29 are going to experience unsatisfactory levels of service by 2006. With the improvements proffered in # 7 and # 8, the intersection is still going to fail in the level of service. They are concerned that the traffic modeling does not consider the "downstream" impacts of the recently approved Hollymead Town Center and North Pointe now under consideration. Much of the interconnectedness of the grid system within Albemarle Place, while commendable, will depend on future development of the Comdial site and the

redevelopment of Commonwealth Avenue in order to make the connections. But to help with the transportation problems, we recommend that the Planning Commission make several changes to the proffers and the reports before moving this rezoning to the Board of Supervisors. First, they would recommend that the proffers specifically state that any light or median cut at Fourth Street, if approved by VDOT, be temporary until a connection at Seminole Square light could be made in the future. Because of the increased transit can help mitigate traffic impacts, the proffer for a shuttle service is especially commendable. As Mr. Finley noted and the staff advised, the County would need to do a significant amount of work to establish the service. They would recommend that the Planning Commission ask that information on the total cost of the shuttle be part of the report to the Supervisors, and she was sure that CTS could provide this. A related issue is whether not bus and transit centers and parking for such would be provided within the site. They applaud Albemarle Place for its agreement to contribute to the MPO Task Force Study of Hydraulic/29/250 bypass. However, they agree with the staff and Mr. Finley's question that the larger cash proffer of $100,000 to this body should be included instead of the in-kind services. Likewise, they appreciate the proffer of the land for the intersection right-of-way, but agree with the staff recommendation that the requirement of construction within ten years be struck. Hopefully the project will be constructed within this time. They remain concerned that no mitigation has been identified for the elimination of the two head water streams of the Meadow Creek which runs through a residential neighborhood and into the Rivanna. Although the project is before the Corps of Engineers and DEQ, they are likely to require only monetary contributions to a fund that will not be spent in the watersheds of Meadow Creek or Rivanna. The County's fiscal analysis ought to be amended to reflect all the costs of the project to the County, including storm water impacts, transportation costs, study and construction of intersection improvements at 29/Hydraulic and Hydraulic/250 and capital/operating costs for a shuttle service.

Mr. Rieley asked if there were any questions for Ms. Slaughter. He asked if anyone else would like to address this application.

Dale Chadwick, resident of 101 Inglewood Court, stated that he lived just south of the project in the County. He stated that he had great concern that they were talking about the possibility of ten years of bad roads in his neighborhood in trying to get out onto Hydraulic and Route 29. He hoped that the Commission would take strong consideration to make sure that the transportation issue there is resolved before you approve this project.

Mr. Rieley asked if anyone else would like to address this application. There being none, he closed the public hearing to bring the matter back to the Commission.

Mr. Kamptner stated that before the Commission starts discussing this, he did not know if Mr. Graham would like to speak, but they did spend some time working on the proffers today. He stated that it might be helpful to tell you where they were. He pointed out that the proffers were in the staff report beginning on page 29. Beginning with proffer # 2 with respect to the community development authority, the most substantive change that they would like to see happen to that would be that the scope of the CDA that they are proffering would be expanded so that it would include, but not be limited to, the area of Route 29 between Greenbrier Drive and the by-pass. As you may recall the Hollymead Town Center proffers allowed for more than just the linear improvements right along Route 29, but expanded outward into more of a regional scope. They also recommend that the last paragraph of proffer # 2 be deleted since that was not a proffer. He asked that the last sentence in the second paragraph be stricken since it limits the CDA's application only to commercial parcels. That will ultimately be a decision of the Board as to which properties are ultimately included in the Community Development Authority. For proffer # 3, it was their recommendation that the inkind services be stricken from the proffer. They have several concerns. One is simply that cash is more appropriate in lieu of the services because of the procurement requirement that exists under State law. Also they don't think that these kinds of services are actually a proffer. The applicant is free to submit a proposal for an official map and have staff consider it. But for the applicant to step into the shoes of the County's consultants, they feel that there needs to be some separation between who is providing the services. With

respect to proffer # 4, dealing with the City's traffic calming measures, there has been some discussion about the amount. He noted that he would not discuss that, but that the language itself leaves it open that the design cost could exceed $10,000 and that would satisfy the proffer without any traffic calming measures being put into place. He pointed out that their recommendation would be a simpler proffer of cash to the City, to be applied for traffic calming measures in a designated area. If the City does not use the money within a reasonable period of time, ten years or whatever, the money would be returned to the owners. The jitney service really just needs some language changes. What they were really looking at was up to $20,000 per year, or 20 percent of jitney service's operating costs not to exceed $20,000 a year for a five year period. They were still working out when that period would start and understanding the significance of this January 1, 2007 date. With respect to proffer # 6, there were a couple of things that they wanted to point out. First, this is different than the areas in Hollymead Town Center where they proffered a lump sum cash payment with one-half of the amount up front with one-half being paid on a more pro-rated basis as the final site plans were approved. The other difference was that the value of this cash proffer can go away, as the applicant has noted, depending upon the amount that is needed to require off-site right-of-way. It may be that the expenses that may be incurred in proffer # 8 will make this proffer completely go away. The other thing is that this proffer has no escalator clause for inflation as the years go by. Proffer # 7 needs some wordsmithing in the first paragraph that they could work out. In the second paragraph, there had some uncertainty as to whether or not this needs to be proffered or if it is a proffer. Does the County care when their plans are actually submitted? Proffer # 8 is probably the one that is most unresolved in understanding how it was going to work. One way that the County looks at it was whether this was obligating the County to acquire this off-site right-of-way, which greatly exceeds $500,000. The $500,000 was just for the land acquisition and there was nothing that addresses the engineering design, attorney's fees and whether or not the Board wants to do that. The Board's policy up until now was that they don't aggressively pursue condemnation of land.

Mr. Rieley asked if staff has an opinion about what they number should be?

Mr. Kamptner stated that the County Attorney's Office does not.

Mr. Graham, Director of Engineering, stated that the bottom line answer is that they don't. Staff has debated and talked about it quite a bit. The issue is that they were really trying to find equity with the other major rezonings that have been going through with Hollymead being the first. What they have done in that case was that the off-site improvements that had to be provided were given by the applicant without any stipulation about reimbursement through the offers that they have made on the per unit residential. It really was a question of are we really providing equity between these developers, which was something that they always seemed to get concerned about. The applicants were concerned if A was getting ahead of B or getting a market advantage. Therefore, staff was really trying to take that interest to heart to make sure that these things are being fairly consistent as they go through from development to development.

Mr. Rieley asked if there was a parallel at Hollymead in which off-site land had to be acquired.

Mr. Graham stated that it did not appear that off-site land had to be acquired for Hollymead, but it was still questionable whether off-site land needs to be acquired for this one. The one situation that they were struggling with the most is the Seven-Eleven Store located on the corner. There was an extensive meeting in Culpeper a week ago Friday with VDOT. It appears that down in front of the Comdial and the Sperry property that they were probably okay and can probably fit things in. Across the street in the City there are some City's properties in front of the Import Car Store and along Route 29 where there was some question on whether those improvements were really necessary. Those improvements would be appropriate and help address the traffic impacts. Then the question becomes what happens because the County has no rights of condemnation there because it is in the City and what happens if the City chooses not to exercise its rights of condemnation. Staff does not want to put this applicant in the position where they have a proffer

that says that they have to do something that would be nice to have, but it was not absolutely essential and then have their hands tied.

Mr. Rieley stated that the big issue was the double left at the Seven-Eleven Store.

Mr. Graham pointed out that staff was still working with VDOT because there are a number of alternatives being considered. He pointed out that these issues might not all get worked out until they get into the site plan process to find what the ultimate short-term solution was going to be.

Mr. Rieley asked how you could draft the proffers at the rezoning level when you don't have enough details.

Mr. Graham stated that he did not think that you could to be honest. He stated that was one of the things that they were proffering was the improvements that need to take place. If there was a need to condemn land, then that was something that would have to be worked out. He pointed out that Mr. Kamptner could correct him, but he had seen nothing here that obligates the Board to condemn land.

Mr. Kamptner stated that all of the off-site improvements are tied to the County doing certain things and part of that could be addressed by revising the language of the proffer.

Mr. Graham pointed out that there was still a lot to be worked out in that regard.

Mr. Edgerton stated that Mr. Graham mentioned that there might not be a need to acquire land because of the uncertainty of this transportation resolution. He pointed out there were several connections proposed that would require the acquisition of land or an easement across that land. One of those proposed connections went through the Comdial property. In addition, there were as many as three connections proposed going up to Commonwealth Drive, which would probably include taking out a few of those residential units. As he reads the proffers, the applicant is willing to work with the County on that as long as it does not cost them anything. He pointed out that the only way to do that would be through condemnation, which would cost the County something unless he was mistaken.

Mr. Barnes stated that there was certainly a lot of condemnation that may or may not have to happen at the corner of Route 29/Hydraulic Road. That corner has always been the hot spot. The townhomes that are along Commonwealth Drive would be opening up the possibilities in the future if that redeveloped. He stated that he did not think anybody sees those being punched through at this time, but it was a redevelopment opportunity. Regarding the proposed connections at the Comdial Plant, they have a rezoning application in for that property now. Therefore, that option may be feasible.

Mr. Edgerton stated that he would hate for the County to be in a position to have to negotiate with the developer of that property to grant this easement because we were counting on that easement being granted. He pointed out that he was specifically speaking about the one going from the northwest corner to Commonwealth Drive that has been there all along.

Mr. Barnes stated that there was no doubt that on one level they were trying to get all of this infill development tied together, which was not the neatest thing to do. He stated that Mr. Edgerton was correct that the applicant has made a proffer that says that they will build a two-lane road and provide a sidewalk on the south side of that if they have the easement.

Mr. Edgerton stated that he was surprised to find out that the applicant did not have that easement when the owner of Comdial came in and told them. He noted that the applicant has been assuring the Commission all along that the connection was going to be made.

Mr. Cox stated that he did not know where he got that information because it was certainly not true.

Mr. Rieley asked if there were other changes for Mr. Graham.

Mr. Graham asked if they would like to continue on with the proffers.

Mr. Rieley stated that they would.

Mr. Kamptner stated that for proffer # 9 there was one other solution, but the uncertainty of what was going to happen in Area A might be that the applicant simply reserves all of that land. That would allow them to continue to maintain it and to do certain things. The dedication would be upon the request of the County at a certain time if the plans were specific enough for a dedication to be requested.

Mr. Rieley asked if that would be for A plus B.

Mr. Barnes stated that it would be just for A straight out.

Mr. Kamptner stated that it would be A or A plus B.

Mr. Barnes stated that he thought what Mr. Kamptner was trying to say was that it was on A. He stated let's say that the developer says that he was just going to reserve it until such time in the future that they want to take the land and have it. In the meantime they could put a temporary parking lot on there or have it as green space and maintain it. That is one of the items being discussed among the many here.

Mr. Rieley stated that clearly the MPO proposal requires B as well as A.

Mr. Barnes agreed.

Mr. Rieley stated that the only public plan that they had on record was the one that they should use as a model.

Mr. Barnes pointed out that was kind of where their logic stands right now with the A and the B portion of it. He noted that he had tried to stay focused on the bigger issues here.

Mr. Kamptner stated that proffer # 10 had some similar issues that he would not go into because they were more language related. He asked Mr. Graham if he had any comments about proffer # 11.

Mr. Graham stated no because he thought that they could live with that one.

Mr. Kamptner pointed out that there was just some language changes.

Mr. Rieley asked if there were just some minor language changes in proffer # 10.

Mr. Kamptner stated that was correct.

Mr. Graham stated that the one thing that they had said about proffer # 12 was that both the County Attorney and staff was saying that they would like to strike the designation that it was necessarily a private facility since it might very well be public. He noted that they did not see a need or an appropriateness to limit us to it being only a private connection at this point.

Mr. Cilimberg stated that regarding proffer # 12 from the staff's standpoint, they had looked at that as an opportunity where there would be a contribution towards a connection. They had not

anticipated that connection was a given. It was not in the same status as the improvements that they felt needed to be proffered along Hydraulic and Route 29 as part of the development of this project. That is from the staff's standpoint, but there may be other Commissioners that may have understood it differently.

Mr. Rieley stated that the current staff recommendation was to strike private and otherwise that stands.

Mr. Graham stated that was correct.

Mr. Kamptner stated that the second paragraph of proffer # 12 just needs to be nailed down as to who does what and when, dealing with these various acts and the deadlines that are in place. He pointed out that those could be worked out. He asked Mr. Graham if he had any comments on proffer # 13.

Mr. Graham stated that proffer # 13 was okay with them since it was just sort of a long range wish list item that they would like to have the ability to make a connection there if the opportunity arises in the future.

Mr. Kamptner stated that they recommended that proffer # 14 be deleted.

Mr. Graham pointed out that was an issue to be resolved at the time the site plan or subdivision. If the applicant came in for private streets, then staff could handle that through conditions of upgrading the private streets.

Mr. Cilimberg stated that the reality is that was a decision that you make and was not a proffer.

Mr. Rieley stated that he would like to ask a question that may be a site plan level question or it may be something that they should go on record about at this stage. In looking at the plans it is hard to tell what the grades are, but it looked like in a couple of places there might have to be some really substantial retaining walls. He asked if that was something that they can address later because he was concerned about it both on the aesthetic grounds and on the grounds of safety. He pointed out that it looked like there were places like at Monticello High School where they required a huge grade change. He suggested that it be tiered retaining walls. He asked if there was a regulation that covers that so that he does not need to worry about it. He asked if it was something that could be dealt with at the site plan level or is it something that they should on record about now.

Mr. Graham stated that the retaining walls were something that they could definitely handle at the site plan level since they have standing policies on that to handle all of the safety issues.

Mr. Barnes asked to pick up on that point a little bit. He pointed out that was something that they have been pushing with the applicant for a long time. In the Code of Development there is a grading plan right after page 26 which was very small and hard to read. He pointed out that there were some big retaining walls in there. The biggest retaining wall in there was at the southwestern corner of Hydraulic and backed up to the Village Green Shopping Center. There was a significant grade change coming up Route 29 and moving along Hydraulic. He pointed out that Hydraulic was even steeper in that portion back there after Inglewood Drive. With the big building footprints and the grades being stepped up as you move back on the site, by the time you get there you have a 30-foot retaining wall. He noted that it was not visible from the road because it was facing away from the road and dropping away from it.

Mr. Rieley stated that it retains only on the down side.

Mr. Barnes stated that they could landscape the backside of it.

Mr. Graham stated that it was essentially a hidden wall.

Mr. Barnes pointed out that you would be able to see it from the parking lot behind the movie theatre that was on the second floor.

Mr. Rieley stated that the retaining wall would turn the corner along the Greenbrier side and go behind the shopping center.

Mr. Barnes stated that the retaining wall would have a visual impact and that the Commission's guidance would be appreciated.

Mr. Rieley stated that he did not think it was a killer issue, but he felt that it was something that he would not like their action tonight to preclude further work on that to make it better.

Mr. Graham stated that the comparable site that he thought of was the site some of the Commissioners saw in West Palm Beach at the backside of the grocery store where they had tucked the grocery store parking in. He felt that it would be somewhat similar to that situation. Personally, he felt that one worked fairly well. He noted that it was not that the people driving down the street are looking at a 30-foot wall staring them in the face since he felt that it was the opposite.

Mr. Barnes pointed out that there were other retaining walls located on this site that were facing away from the townhouses as well as in other locations, which was why staff has been working with that language. He stated that the townhouses would be looking at the walls. Staff has suggested some plantings and trees to be provided to soften the wall. There is language in the Code of Development that addresses that.

Mr. Rieley asked if they need to add some language to provide some flexibility to be able to work with this because it was a pretty specific plan that they were adopting. He pointed out that it appeared that was an issue that needs some additional work and he did not want their action to preclude continued work on it.

Mr. Barnes stated that he would defer to the applicant to speak to the way that they want to tackle it and what other ways that they could meet with staff half way.

Mr. Rieley asked Mr. Graham if they adopt this without any qualifying language, would they still have some flexibility to deal with those issues at the site plan stage. He suggested that instead of having one huge retaining wall that it be broken into sections which would address both the aesthetic and safety issues.

Mr. Graham stated that he could speak pretty firmly on the safety issues, but the aesthetics was a littler harder to regulate at the site plan level. If there were specific aesthetic concerns, then they need to be addressed now.

Mr. Cilimberg stated that the reality is that if you don't have it as fine tuned grading in the site's development it might not be known until this gets into the site plan stage. They do know at this point that those walls are making up the grade and the only other way to make those walls shorter is to make up the grade through the site as you go back towards it.

Mr. Rieley stated that he was not suggesting anything quite that radical.

Mr. Cilimberg stated that to break the wall into sections would mean that you are working the other way and you are beginning to affect the design in the easterly direction. He noted that how that works for them he was not sure and he did not know exactly how this Code could be converted to deal with that.

Mr. Rieley stated that they were not going to be able to solve this tonight, but they might want to add a condition that leaves the issue open at the site plan level.

Mr. Cilimberg suggested that they include something as part of their action so that staff could work on getting that done before the Board meeting.

Mr. Barnes directed the Commission to page 26 of the Code where there was a section on grading. In the second paragraph it speaks to retaining walls that are along the Entrance Corridor. He noted that it speaks to the visual impact of the retaining walls planned on the western end of the property adjacent to the duplex residences on Commonwealth. The Code states that it will be mitigated by appropriate plantscaped trees and shrubs. He suggested that they might want to add to the extent possible or maybe shall be broken up so not to be over X number of feet in height. He stated that the Commission has some flexibility to do that. He stated that the grading plan shown on the next page shows Area E in the town home area. He noted that they either have to move the wall forward or get some type of grading easement from the properties behind it. Density can be sacrificed one way by reducing the impact of the wall.

Mr. Rieley suggested that they add some language that allows staff to keep working on it since they cannot solve the issue tonight.

Mr. Barnes stated that they would add something about the square feet and to work on the wall to try to get that point clearly noted.

Mr. Rieley stated that sounded like a good way to handle it.

Mr. Kamptner stated that the County Attorney's office and the development departments will be working together to put together a comprehensive set of comments for the proffers, raising all of those issues.

Mr. Rieley stated that one of the issues that Ms. Slaughter raised was one that they have talked about before that because of the fact that they would be piping two streams that they should be going beyond the minimum site plan requirements for water retention, detention and quality. He asked Mr. Graham if he was comfortable that they were where they would be allowed to do that or should they add language to their action tonight that strengthens their capacity to do that.

Mr. Graham stated that it was one of those things that he appreciates the concern that Ms. Slaughter has expressed and actually shares quite a bit of it. He stated that he found it a little frustrating that the applicant was being essentially required to pay into a fund that we as the local government have no say in how and where the State and Federal government are going to use that fund. Like her he would like to see that money being applied somewhere for the Meadow Creek drainage, but they have no say in that. At that point, he noted some reservations about how much above the ordinance requirements that they would ask the applicant to do as well as paying into some fund. He stated that he was not comfortable in asking them to do a considerable amount more. With that said, there are site measures that staff would like to see. There are a number of innovative BMP's that can be incorporated into this type of design fairly easily. Staff is certainly hopeful that the applicant will work with us on those at the time of site plan and any language that could be included to that effect staff would like to see that.

Mr. Barnes pointed out that David Hirschman had talked with the Corps about the concept of trying to take those funds, because they don't have a good mechanism for letting the money go back to the localities. They were trying to see if they can do something innovative in this case to take what is close to $400,000 and put it back into some kind of remediation for Meadow Creek drainage itself. He pointed out that staff does not know if they will be successful in doing that.

Mr. Graham stated that staff has spent a lot of time going back and forth on this, but there is not mechanism that exists for trying to do this.

Mr. Rieley asked short of the proffers if anybody had any problem with this moving ahead to the Board with a few caveats.

Mr. Loewenstein stated that this application needs to be moved ahead.

Mr. Edgerton stated that he continued to have some frustrations, but what he heard was that they were going to delegate the proffers to the Board and staff.

Mr. Rieley stated that they have some pretty specific recommendations from staff on recommendations for amendments to the proffers.

Mr. Kamptner asked if any of the Commissioners had any comments about specific proffers to please let them know so that they could be worked into their comments.

Mr. Loewenstein stated that since there was a month before the Board hears this that they could get the proffers worked out. He felt that the record would indicate their concerns.

Mr. Edgerton pointed out that he continues to be frustrated with the traditional shopping at the northern end of the property. He stated that he was disappointed that some mixture of affordable housing was not included in this request. The interconnectivity issues with the adjoining parcels were still an issue. He felt that it had been implied that the Comdial connection had been made and now he found that it has not, which was misleading. He welcomed the suggestion of using the trolleys for transit and working with the City on that. He stated that the bottom line on this was the transportation issues. No matter how hard he tried to listen and to find a way to make it work, he could not in good conscious support this project with so much of the impact of the transportation being unresolved. He felt that Route 29 was just going to get much worse. According to their studies, it was still going to a level F. He stated that some of these traffic issues need to be resolved before a project of this level was approved. He stated that he was not convinced by their discussions that they were any closer to resolving this issue than they were when they started.

Mr. Loewenstein stated that he agreed that the transportation issues need to be resolved.

Mr. Thomas stated that he felt comfortable with the proffers for this development with the changes as discussed. He stated that he agreed that the transportation issues need to be resolved.

Mr. Loewenstein stated that they really needed to start paying attention to infrastructure needs long range and at greater distances than 1,000 feet from a traffic light where this project comes into play. He noted that was just not resolving the problems.

Mr. Rieley stated that the Commissioners had a lot of good points that were on target. He stated that this project from the first time it came to the Commission was one of the best large-scale commercial projects that they have seen. This project does more in the way of adhering to the Neighborhood Model than anything that they have seen, particularly anything on a large scale. He noted that they took the applicant through the CPA process and required a level of detail at the CPA level that many argued was more appropriately handled at the rezoning level. He felt that in the process that this plan got better. They asked the applicant to take a fresh look at the Hydraulic Road frontage and make it more residential, and they did. They asked the applicant to take a harder look at some of the connections to make at least their portion of the interconnective system work better, and they did that. He felt that the result, while not perfect, is one that was one of the best proposals that they have seen. He felt that it was important for this project to move ahead. He suggested that they work on all of the proffers and the concerns that staff has raised. He felt that they have a certain obligation to move this project to the next level and in particular not raise new issues. He agreed that this would not solve the long term traffic impacts

in that area, but he did not think that it was fair for any applicant to be asked to solve all of the long term transportation problems in that area. He pointed out that at the CPA level they asked the applicant to wait until this traffic study was done. The Commission delayed their action on the CPA along time. One of the things that came out of it was this interchange idea, which has very specific ramifications and implications for how these proffers should be configured.

Mr. Kamptner pointed out that VDOT has not told them what off-site improvements would be required.

Mr. Rieley stated that since equity between other projects, Hollymead in specific, and this one are important in the sense that the actual acquisition of off-site property for improvements was not a part of the Hollymead agreement, he felt that an approach might be that the off-site improvements themselves are paid for by the applicant. But, if land has to be condemned that obviously only the County or the State could do that and that would become a public expense. He stated that would force the County to step up to the plate. He felt that the two-left turn lanes would not happen without that. He pointed out that he was talking about the solution for the short term and not about a massive area for two round-abouts and a bit overpass. Obviously, that is a project of its own scope that has to have acquisition as a part of the budget. He noted that was not development specific.

Mr. Graham stated that staff would like some guidance from the Commission on proffer # 8 in the second paragraph specifically where he notes that the owner shall make a cash contribution not to exceed $500,000 provided that the owner receives a credit for such contribution or gets the $2,000 per unit residential. He asked whether the Planning Commission believes that type of condition on that proffer is appropriate. As far as trying to come up the money for any off-site acquisition, there is a possible source. Staff and the County Attorney's office have struggled with that and whether that is an appropriate use of those funds. The other option is if the money should be used along with funds from a CDA for the commercial part of the property for longer-term solutions that are really addressing the ultimate transportation improvements.

Mr. Rieley stated that was his understanding on how the funds were used from Hollymead. He asked if that was correct.

M. Graham stated that was correct. He stated that was the intent for the funds for Hollymead for the CDA. The residential component was not necessarily limited to transportation, but also to address the things such as the fire station.

Mr. Rieley stated that the turn lanes that were immediately associated with the project were not accounted for out of the CDA money.

Mr. Graham stated that was correct.

Mr. Rieley stated that this seems to him to be in that category. He pointed out that was why he suggested that the County be responsible for the acquisition of the 20 feet from Seven-Eleven because the land acquisition was not included in the Hollymead project. He suggested that developer pay for the improvements.

Mr. Graham stated that the next question was does the money that they are applying up to $500,000 is an appropriate use of that money for the County.

Mr. Rieley stated no because that should go with the longer term. He stated that on proffer # 9 that Mr. Kamptner had suggested that rather than an immediate dedication that they treat this as a reservation until needed, which he felt was a good idea. He stated that it was important that Area A and Area B be included in that, and at such time that it was shown that the round-about solution was not feasible as Mr. Cox has suggested, that idea be dropped. Then immediately Area B could be dropped and freed up for development. He suggested that it only be reserved

as long as there was a reasonable expectation that it was going to be required for whatever the solution was going to be. He asked that their action stipulate that they encourage further study of the retaining walls and that their action was not an endorsement of the preliminary grading plan in that regard. They also encourage staff to pursue with the applicant innovative BMP methods to get the best mileage that they possibly can. He stated that their action should make it clear that the separation of the large building to the north be both functionally and visually be an ongoing part of the approval process so that it be two separate buildings. He opposed that turning into just a façade change or something else later. He suggested that the final concern was affordable housing and whether there should be a target in this. He asked if someone could put this in the form of a motion.

Mr. Finley moved to recommend approval of ZMA-01-07, Albemarle Place, with the conditions as revised and the proffers as revised.

Mr. Rieley asked if there needs to be any clarification on any additional conditions or on the proffer changes. He pointed out that staff would continue to look at the issues of the retaining walls and the grading, innovative BMP's and the continued separation of the building both functionally and visually. He pointed out that they left affordable housing out because they could not resolve the issue.

Mr. Thomas seconded the motion.

The motion carried (5:1). (Edgerton - No)

Mr. Rieley stated that ZMA-01-07, Albemarle Place, would go to the Board of Supervisors with a recommendation for approval with a number of suggestions as follows:

- The proffers should be revised to address staff concerns.
- The Code of Development should be revised to address the Architectural Review Board's and staff's concerns with language in the "built form" section and the Planning Commission's concerns related to storm water management and the visual impacts from retaining walls.

This item would go to the Board of Supervisors on October 8th.

**Waivers to Zoning Ordinance and Subdivision Ordinance**

Mr. Kamptner stated that there are findings that have to be made under the Subdivision Ordinance before those waivers can be granted. Our office's recommendation is that the Subdivision Ordinance waivers not be addressed tonight because the Commission does not have a plat.

Mr. Rieley pointed out that the Commission grants the waivers independent of the Board's action. He stated that a great majority of these are substituting provisions of the Zoning Ordinance in the Code of Development. He asked if the Commission could act on all of the waivers at once.

Mr. Kamptner stated that since the waivers are the Commission's action only that they can take care of them with one motion. He asked if everyone was comfortable with the waivers listed on page 26 through page 27 where it begins with the Subdivision Ordinance waivers at the bottom of the page.

Mr. Barnes stated that the Subdivision waivers start at the bottom of page 27 and continue to page 28. He apologized for not getting into those. He pointed out that the intent of those, as explained in the staff report, was that the Code of Development would take the place of these types of regulations to remove any conflicts as set forth in how the specific regulations in their district will govern how the buildings will be setback from the streets, etc. He pointed out that

they were not using building setbacks, but build to lines as an example. He stated that by waiving these, staff has gone through the Zoning Department, Engineering Department and Planning Department and come up with this punch list of things that probably need to be waived as the applicant started the process when we reviewed them. Staff proposed this language and the applicant agrees with the language. Therefore, staff would ask if the Commission were in agreement with what was listed that they would act on the waivers to the Zoning Ordinance.

Mr. Loewenstein moved for approval of the Zoning Ordinance waivers through 32.7.2.8.

Mr. Craddock seconded the motion.

The motion carried (5:1). (Edgerton – No)

Mr. Rieley stated that the waivers relative to the Zoning Ordinance are granted and the Commission will hear the ones related to the Subdivision Ordinance later.

Mr. Rieley asked if the Commission needed to take a formal action on the Subdivision waivers.

Mr. Kamptner stated that the Commission did not have to, but if there was an expectation of them coming back at a certain time they could defer action.

Mr. Rieley stated that the Commission would not take a formal action on the Subdivision waivers, but would address it when it comes back.

**Old Business:**

Mr. Rieley asked if there was any old business. There being none, the meeting proceeded.

**New Business:**

Mr. Rieley asked if there was any new business. There being none, the meeting proceeded.

**Adjournment:**

With no further items, the meeting adjourned at 9:45 p.m. to the September 9, 2003 meeting.

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V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon Taylor, Recording Secretary.)