Albemarle County Planning Commission
October 28, 2003

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, October 28, 2003 at 6:00 p.m. at the County Office Building, Room # 241, 401 McIntire Road, Charlottesville, Virginia. Members attending were Rodney Thomas, Vice-Chairman; Pete Craddock; William Rieley, Chairman; William Finley and Jared Loewenstein. Absent was Bill Edgerton.

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

Call to Order And Establish Quorum

Mr. Rieley called the meeting to order at 6:10 p.m. and established that a quorum was present.

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. There being none, the meeting proceeded.

Review of Board of Supervisors Agenda from the Public

Mr. Cilimberg summarized the actions of the Board of Supervisors on October 15, 2003 and October 22, 2003.

Presentation of Service Award

Mr. Cilimberg presented a plaque to Mr. Rieley as a service award for his five years of service with the Planning Commission. He thanked Mr. Rieley for his contributions and wished him the best of luck in continuing his service with the County.

Consent Agenda

SUB-02-242: Stillhouse Ridge Rural Preservation Development Preliminary Plat - Request to create a Rural Preservation Development of 10 lots, 9 development lots ranging in size from 2 to 5.3 acres and one preservation tract of 40.1 acres. The plat has been revised to show the changes requested by the Planning Commission at their December 17th hearing. (Tax Map 85, Parcels 29A, 29B, 29C, 29D, 29E, 29F, 29G, 51H, 51J, 51K) (Margaret Doherty)

SDP 03-0741 SAINT JOHN'S BAPTIST CHURCH SITE PLAN WAIVER: Request for a site plan waiver for a 13,923 S.F. expansion of an existing church on 6.1 acres zoned RA, Rural Areas. (Tax Map 66, Parcels 77 & 78) (Yadira Amarante)

Mr. Rieley asked if any Commissioner would like to pull any item off the consent agenda for discussion. There being none, he asked for a motion on the consent agenda.

Mr. Thomas moved to approve the consent agenda as presented.

Mr. Loewenstein seconded the motion.

The motion carried by a vote of (5:0). (Edgerton – Absent)

Deferred Item

ZMA 000-009 North Pointe PD-MC (Sign #97, 98, 99)- Request to rezone 269.4 acres in the Entrance Corridor (EC) zone from RA Rural Areas to PD-MC with special use to allow a mixture of commercial and residential uses with a maximum of 893 residential units, approximately 664,000 square feet of commercial and office space, a 250 room hotel, and approximately 177,000 square feet of public/semi-public uses. The proposed residential density allowed by this rezoning would be approximately 3.31 dwelling units per acre (gross). The property, described as Tax Map 32 Parcels 20, 20a, 20a1, 20a2, 20a3, 22h 22k, 23, 23a, 23b, 23c, 23d, 23e, 23f, 23g, 23h, 23j and 29i is located in the Rivanna Magisterial District north of Proffit Road, east of Route 29 North, west of Pritchett Lane and south of the Rivanna River. The Comprehensive Plan designates this property as Regional Service, Office Service, Urban Density (6 - 34 dwelling units per acre) and Neighborhood Density (3 - 6 dwelling units per acre) in the Hollymead Community. (Elaine Echols)

AND

SP 02-072 North Pointe Residential Uses Request for special use permit to allow residential uses in accordance with Section 25A.2.2.1 of the Zoning Ordinance which allows for residential uses in a PD-MC Planned Development Mixed Commercial zoning district. (Elaine Echols) ***DEFERRED FROM THE OCTOBER 14, 2003 PLANNING COMMISSION MEETING.***

Mr. Rieley stated that the Commission reviewed the two applications a couple of weeks ago and asked for additional information. Staff has received some of the requested information that Ms. Echols would address. He pointed out that the Commission did not receive a staff report.

Ms. Echols stated that the applicant submitted the additional information last week and staff began the review last Wednesday. Staff has not had quite a week to put into this review. There are four primary reviewers on this that includes Zoning, Engineering, Legal and Planning. Also, VDOT has not given staff any comments yet. Representatives from all four departments got together this afternoon, excluding VDOT, to go over what they know today in terms of being able to report to the Commission on their review of this project. Staff has not had sufficient time to do a comprehensive review. Some of the representatives have had a cursory review and some have started the detailed review. VDOT is still looking at this. There are some verbal indications from VDOT of some things that are in need of change, which Mr. Graham can talk to us more about. There are some unresolved issues of which she would give the Commission some examples of that relate to the following: the setbacks, the open space legend and application, missing information on the plan and lack of correlation between items on the plan and in the proffers. One of the things that the Commission talked about was the regional transportation study, of which they wanted the applicant to have a greater participation in that has not happened. There is no comprehensive list that staff can give the Commission tonight that shows everything that has changed and how it affects everything else. She stated that both she and Mark Graham would be glad to try to answer any questions that the Commission might have if they have done that part of the review. If they have not finished that part of the review, then they will tell them that.

Mr. Rieley asked if there were any questions from the Commissioners.

Mr. Loewenstein asked how they could be expected to act responsibly under these circumstances since he did not think it was possible. He pointed out that they have the responsibility to act in the best interest of all the citizens of the community. The applicant expecting approval for a project of this scale under these conditions is contrary to what the Commission does for other applications and he was baffled as to how to proceed.

Mr. Thomas concurred with Mr. Loewenstein. He stated that he had read the information they had received as a staff report, pulled the staff report from two weeks ago, and could not figure out

what had changed. Basically, the Commission does not have the answers to the questions that they asked for two weeks ago. Therefore, he would suggest that they defer the applications.

Mr. Rieley asked that they give the applicant an opportunity to address the issues as well as anybody from the public. He felt that both of Mr. Thomas' points were excellent. He asked if anybody would like to direct questions to either Ms. Echols or Mr. Graham. He asked Mr. Graham to address the transportation issues relative to VDOT since that information was not in the packet.

Mr. Graham stated that the comments that he had received from VDOT do not relate to the latest plan. As of last Friday, VDOT had not looked at the latest plan. Since then he has tried to talk with VDOT, but had not been able to make contact. The issues relate more to older issues that have been discussed for quite some time. Verbally VDOT has gone back and forth on whether they want two or four lanes for the main streets in this development for North Pointe Boulevard and Northwest Passage. As of the end of last week, VDOT was saying that they really would prefer four lanes. Additionally, VDOT is still expressing a lot of concern about the Leake Road intersection with Proffit Road. He stated that in fairness to the applicant, he would like to say that the applicant's traffic engineer performed the analysis that was requested of them by VDOT for the roundabout and showed a very good level of service with that. But, VDOT seems to be relying on the model, but at the same time not really trusting the model and still expressing concerns on whether they are going to have the level of service that the model is predicting. VDOT has promised that staff would receive all of the approvals in writing, but that has not happened yet.

Mr. Rieley asked if there were any questions for Mr. Graham. He asked that if the Commission agreed to the model that is being used for the roundabout and VDOT was incredulous about the results, then what do they expect the applicant to do.

Mr. Graham stated that he felt the same way because the applicant has done what was requested of them in that regard and the results came out good. He stated that it works as far as he could tell.

Mr. Rieley stated there are many concerns about the project, but the roundabout was not one of them.

Mr. Graham stated that in fairness to VDOT, he thought that one of their concerns is that there really is not a lot of experience with the roundabouts yet. Everybody is talking about them. Everybody wants to try them. Everybody is planning to use them. He noted that VDOT has not seen them on the ground.

Mr. Rieley stated that you would have to go to Maryland in order to see the roundabouts.

Mr. Graham pointed out that the problem was that you would see the ones that have failed and everybody says do not look at that one, but look at this one. He stated that was where VDOT was concerning the roundabouts, and they have to live with the consequences if the roundabout does not work.

Mr. Rieley stated that was a good point. He asked if there were any other questions for Mr. Graham.

Mr. Loewenstein stated that he had a question for staff about the Pritchett Lane buffer. He asked that they explain to him exactly where that stands now and what the precise terminology is.

Ms. Echols stated that she did not know since she had not looked through the proffers on that item in particular. She deferred the question to Mr. Kamptner to see if he had looked at that proffer.

Mr. Kamptner stated that was proffer 7.3, which now establishes by proffer a 50 foot building setback and that 50 foot setback will include a 30 foot strip of common area.

Mr. Loewenstein asked if he could describe the difference in the status of land in common land as opposed to a setback or a buffer so that they could distinguish that for the record.

Mr. Kamptner stated that land that was just in a setback is most likely going to be on individual lots under individual owner control. The land that is within the common area would be under the control presumably of a homeowner's association that would take care of its management and maintenance. He pointed out that staff had a concern with just having a buffer within each individual lot as time goes on.

Ms. Echols pointed out that the applicant has tried to do what staff has asked them to do as it relates to that area. Staff gave the applicant the language for how to create a rural looking area that would now be in common open space along Pritchett Lane.

Mr. Loewenstein asked if it would be under the responsibility of the homeowner's association, and Mr. Echols agreed.

Mr. Craddock asked if the 30 feet was included in the 50 feet, and Mr. Kamptner stated that it was.

Mr. Loewenstein noted that they would talk about the numbers later.

Ms. Echols noted that was something that staff needed to be clarified because of the way it was written right now.

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

Mr. Chuck Rotgin, with Great Eastern Management Company, stated that at the last Planning Commission meeting there were seven questions that were raised by Commissioners. They have addressed each of those seven issues that were asked. He noted that he had provided each of the Commissioners with an email. He asked if there was anybody who has not seen that email that lists what they have done. He stated that he would be happy to provide a copy if anyone needs one. The first issue was to provide more interconnectivity. Staff and the Commission agrees that with respect to the northeast portion of the property the topography is such that there are no opportunities for interconnections. There was one opportunity where the staff had suggested in the road, which Mr. Thomas had asked for that at the last meeting. They have made that interconnection. They believe that is the only interconnection that is available to be made given the topography, the critical slopes and the wetlands. The second question was to provide a greater percentage of affordable housing. That has been a difficult one, but they did agree to an increase from 3 percent to 4 percent for the allocation of affordable housing. As he said at the last meeting, to his knowledge they were the first and the only people in this business that have ever suggested in their proffers or their plans that there be affordable housing. The County has just recently approved two other big plans for which there was no affordable housing. The third was to quantify the open space, and a table has been provided to staff with respect to that. The fourth question was to provide a 20-year sunset on the school proffer, which they have done. The fifth one was to participate in the community development authority in the same way that other applicants have proffered. As they indicated to them before, they were the ones that were responsible for bringing up the idea of CDA. They believe in them, but they believe that the way that the County is using them today may not be the best way, but that was something that they certainly would have an open mind on. They have talked with the County Attorney's Office and with the County Executive and they will talk with the Board members. They have made the suggestion that maybe even the two developments that have been approved recently with consistent CDA language may not be the best way for the County. But if it turns out that the

County does feel that it is the best way that they would obviously have to fall in line, but they think that their way is better that it would be better for the County if the other two projects also make that change. The sixth item was to participate in the study for regional transportation that was recommended by staff. They have $25,000 in there and staff wants $110,000. He pointed out that they have actually proffered in addition to the $25,000 an additional $54,200 to design the Proffit Road improvements that are in the County's six-year plan, but for which there is no money available. VDOT and staff have asked us to do that and they have agreed. In addition, they have proffered another $150,000 to fix the intersection of Leake and Proffitt Roads and would have additional money left over which would probably add a lane on Proffit between Leake and Route 29. The combination of what they are proffering for those kinds of road improvements is not the $110,000 that the staff has asked for, but is more like $225,000. He stated that all of their proffers far excess the proffers that were offered by the other two recently approved projects. The seventh item was to relook at the housing mix, of which Mr. Thomas and Mr. Craddock were interested. At the first reiteration of this plan three years ago, they had a lot more single-family lots on the plans than they show now. However, as they attempted to incorporate some of the principles of the Neighborhood Model to achieve the higher density that was anticipated, they ended up having more attached and more zero lot line housing. They have gone back in one area and added additional single-family houses and tried to accommodate the Commissioner's desires in that regard. The question was raised about VDOT and Mr. Graham indicated that VDOT has told him that they wanted a four-lane highway at North Pointe Boulevard and Northwest Passage. He stated that the Commission would acknowledge readily that you could not have a four-lane boulevard through anything that resembles the Neighborhood Model. He pointed out that was what they were trying not to do here and the County has been fairly supportive of that. He noted that he has received a written email from the highway department that they will accept our design that was four lanes, but two of the lanes were used for parking. That was something that they would have to iron out. He suggested that at least in the Albemarle Place approval that the road issues were not resolved and staff has actually suggested to them that they might not want to get everything resolved at this point and that is really a site plan/subdivision issue. He stated that he was not sure how important that issue was right now. He pointed out that they have made proffers that address everything that VDOT has asked for and more including completing the three lanes on Route 29 from Proffit Road to the intersection of Lewis and Clark. When you add that to what Hollymead has proffered, eventually the private sector is going to end up fixing Route 29 in that area. He stated that he would be happy to answer any questions.

Mr. Rieley asked if there were any questions for Mr. Rotgin. Since there was none, he stated that there were several people who had signed up to speak. He asked that the first person signed up, Mr. Gercke, to please come forward and address the Commission.

Fred Gercke, President of the Proffit Community Association, stated that he would not address the details of the proposed development since others have done so, but would like to raise some legitimate questions. He stated that his comments would be mainly limited to traffic. Those of us down the road from North Pointe will be at the receiving end of a lot more traffic going past their homes, churches and schools. He noted that it was North Pointe, but also Hollymead Town Center, UREF and the developments to the east of Pantops. They hear often about their infrastructure needs for schools, water and sewer systems. He felt that the most neglected infrastructure problems are transportation problems dealing mainly with roads, but also public transportation, bike lanes and sidewalks. He stated that we pass the buck and blame between citizens, local government, VDOT, developers and anyone else that we can pass the finger at. Often partial solutions are proposed and then they end up studying and talking about them until they cannot be built or the costs have doubled or tripled. It is good to get the developers to help with good site plans and proffers, but these are public roads and so this is mainly a problem for the public sector. On Proffit Road they already see what he calls avoidance traffic. People will drive Polo Grounds Road and Profit Road and end up going three miles out of their way to avoid the traffic on Route 29 between the South Rivanna and Airport Road. He pointed out that he was sure the Earlysville Road has the same situation on the West Side of Route 29. This is before the

developments of Hollymead Town Center, North Pointe and Albemarle Place. He stated that they could not continue in this direction even if Berkmar Extended is extended or some act of divine intervention builds the Meadow Creek Parkway some day. It will be too little too late. The transportation problems predate North Pointe and will get worse with or without North Pointe. He stated that they must do something to address the transportation problems if they are to continue this course.

Ann Mallek, resident of Earlysville, thanked Mr. Rieley for going over the list, but pointed out that there were two other items that the Commission discussed at the hearing two weeks ago that have not been addressed. She hoped that the Commission could get some more information about those. One of the other items was going before the ARB for approval of the project since it was in the Entrance Corridor. The other issue was that there were many questions from the Commission about moving the housing away from the critical slopes on the river on the north end of the project, and that change has not been made so far. She continued to urge the Commission to hold their ground and try to get all of these answers before giving any approval.

Liz Palmer, resident of Albemarle County, stated that she did not speak last time because she did not think that this project was actually going to get approved or that there was any chance of it. She pointed out that the Planning staff has done an excellent job evaluating this project and has said that they cannot recommend approval at this time. Two weeks ago, Mr. Rieley explained very clearly his problems with the present plan and recommended not approving it. The PEC and the SELC and others have done an excellent job of voicing citizen's concerns so she would not repeat any of that. There were several things that she wanted to say about the need for this project. Albemarle Place and Hollymead Town Center have already been approved that will add 1.7 million square feet of retail space to this area. The County staff has said that we can only absorb about 1 million square feet minus the elusive leakage figure. Mr. Rotgin's argues that we are losing tax dollars to the shopping leak, but thinking that there is a leak that we can plug with more shopping centers is very misguided. People are shopping today for different reasons. She pointed out that when she asked her co-workers if they had more shopping malls if they would still go to Richmond to shop, and they all said that they would still go because it was entertainment and a day out with the girls, etc. Shopping has become a national pass time and people look for new shopping places like she looks for new trails to hike. She pointed out that Albemarle Place and Hollymead Town Center should add more than sufficient shopping space to plug this leak. She stated that the additional retail space may be needed in ten to fifteen years, but we do not know. She suggested that they wait and revisit this issue when everyone will benefit from it.

Jeff Werner, representative for Piedmont Environmental Council, stated that he found it fascinating that the private sector will be fixing Route 29 because it was because the private sector was developing Route 29 that we will have traffic on Route 29. He stated that we hear so much about the subdivision ordinance and affordable housing. Loundoun County had unfettered development and still has 50,000 residential lots to be built on and they did not resolve affordable housing. The affordable housing issue is such a red herring. We hear that the Neighborhood Model will limit affordable housing, but his proposal in no way, shape or form reflects the Neighborhood Model yet. He stated that here we still have business as usual and it does not appear to be resolving the affordable housing issue either. In the County regulations, there is an affordable housing density bonus, which has been on the books for some time. This past spring he contacted Mr. Cilimberg and asked if this density bonus has ever been used and he did some homework and found it had never been used. He suggested that the bonus density be applied here to get the additional density to have the affordable housing. There is something on the books that the development community has never taken advantage of. Finally, they were looking at about 3+ million square feet of retail coming through the County review process in the next couple of months. With Hollymead Town Center and Albemarle Place, they were already up to 2.2 million square feet approved. The County's Fiscal Planner Economist projected that over the next decade that we may be able to absorb another 1 million square feet. Now interesting in that report he fails to include the 2.3 million square feet of retail that exists in the city. He pointed out

that when you add the 2 million in the city that means that we already have the excess of another 1 million there. Therefore, when we add this one into the mix we would be up around 2.2 million square feet of retail in excess of what the economists are saying that this community can absorb. He asked what store would be left vacant in Barracks Road or on the downtown mall. He noted that this was a rezoning and the Commission's ability to approve or deny a rezoning allows the County to regulate the pace of development, but not to say no to it but to control that rate that is beneficial to the entire community and not just to the developer.

Mr. Rieley asked if anyone else would like to speak. Since there was none, he asked if Mr. Rotgin had anything to add.

Mr. Rotgin stated that he did not realize that public comment would be taken tonight. He stated that with respect to the retail, he thought that there was a pretty good discussion in what he sent out in the email. He stated that they were not operating in a vacuum and they are designing this because retailers have come to them and this is what we want and this is where we want to be since they have done their market analysis. They are not going to build speculative space. He pointed out that this project was not going to be built tomorrow and neither will Albemarle Place or Hollymead Town Center. The first one of these projects that will be up and running will be sometime in 2005, which would be the earliest and then they will go beyond. There are emotional arguments that can be made and they appreciate everybody's right to have their own opinion, but they do have some questions about everybody's right to their own facts. He asked the Commissioners to look at the information that they have provided and if there is some factual things in there that you have questions about he suggested that they ask and they would give them the answer. He asked that they go back to what was said at one of the work sessions. A couple of the Commissioners stated that maybe it was not the Planning Commission's preview to make decisions based on what they think the market is going to be. He stated that he would be happy to answer any questions. With respect to the ARB approval, they certainly talked about it at the last public hearing and it was the question of the chicken or the egg. Everybody knows that we have to go through the public hearing process and all the retailers that are coming here understand that, but they are all reluctant to spend tens of thousands of dollars or more to design a building when they don't know that they can build it. He felt that was the question of the cart and the horse and the proper time for that is the site plan review process. As far as moving the houses away from the river, Ms. Echols might differ and they need to tell us but he thought that his people had worked with staff and they had moved things away from the river. They have added the green space and the common area so that it would be maintained by the homeowner's association to protect those areas. Again, he thought that they had done that.

Mr. Rieley closed the public hearing to bring the matter back before the Commission for discussion and possible action.

Mr. Loewenstein clarified that the ARB has not weighed in on this.

Mr. Rieley stated that he was not sure of the 7 or 9 issues that were addressed or what led to the inclusion or exclusion of the things on that list, but he recalled saying that he agreed with the staff's assessment because this project needed a major redesign and that the housing needed to be better incorporated with the commercial development. There were issues relative to the scale of the commercial development. He stated that he had not seen any of those addressed. There is the issue of what is on the list. He agreed that things have been checked off it. Mr. Loewenstein and Mr. Thomas both expressed some misgivings about having a package before us that staff has not had time to evaluate and get back to us with. He concurred with them on that concern. The Commission previously asked Mr. Rotgin to defer for a longer period of time because they anticipated this being a problem. He asked Mr. Kamptner if the Commission feels that they would like more time specifically to give staff time to fully evaluate this and to vet some of the issues that have been raised with VDOT. He asked if the Commission wants to extend the review process what legal footing are they on.

Mr. Kamptner stated that the State law and County Ordinance require that the Board take action within twelve months from the date of the application. Based upon staff's calculations, they are probably over that time. What you have before you is a project that has a number of issues that need to be resolved so they could either take an action tonight or you can defer for a limited period of time. Staff has been talking about November 18th, which would give them time to evaluate the new plans that came in last Wednesday and for us to go through the proffers so that you can fulfill your duty as a Planning Commission to make a meaningful recommendation to the Board of Supervisors. What happened the first time you took action was that the record was not as fully developed as the Board of Supervisors wished so when you recommended denial the Board ended up referring it back to you to more fully develop the record. If you do take action tonight, that risk exists again that the Board will ask that you look at it again.

Mr. Rieley stated that either positively or negatively it could very easily come back to us. He stated that the more pertinent aspect of that was do they have enough information to make a responsible decision without staff having time to review and even sensitize the issues for us. They have a package with no staff report at all.

Mr. Thomas stated that he would prefer for the project to come back to the Commission in a better shape so that they could look at it in a more educated manner and they could treat the project a whole lot fairer than they could tonight. He looked at this project as not quite an infill but a needed County resource of building lots, which was dwindling in Albemarle County. He stated that he would rather see this project treated in a manner to get the most out of it so that they could make it the best that they could. If they could defer the request to give the staff a little bit longer to work on it, then the Commission could review it properly. It would give the applicant more time to conform to all of the needs of the County to make it a better project.

Mr. Loewenstein stated that a deferral would be in the best interest of the applicant and would be the preferable road to take tonight. He would rather have something that he felt really good about, which he thought was possible to achieve on this site. There are so many questions marks that he would not feel that he was acting responsibly if he voted to approve or deny at this point. There are simply too many things that he was not comfortable about because they have not had the benefit of the full review.

Mr. Craddock stated that he did not think that staff has had enough time to review the project. Therefore, he was of the opinion that if they could get a delay so that staff could look at this more thoroughly that he was for that. However, if they wanted the Commission to take a vote tonight that he could do that too.

Mr. Finley stated that he went down the list item by item and the applicant basically has said if you want that then he would do it. There are several items that he held back on but he really wondered since they keep hearing redesign, redesign and wondered if this project would ever go through. He asked what must this group do in order to get the Commission to agree that this is a viable, feasible, workable and desired project. He asked if it would ever happen. The other question is if they delay tonight to November 18th, what does that do to the schedule of the Board of Supervisor's public hearing.

Mr. Kamptner stated that the Board of Supervisors public hearing date would have to be changed. This item is scheduled to go to the Board on November 12th. There is a night meeting in December that is available for this. It was not available when they reviewed it two weeks ago. He pointed out that the work session was scheduled for November 5th.

Mr. Rotgin stated Mr. Chairman, we wanted to go on the December Board of Supervisors meeting.

Mr. Rieley asked Mr. Rotgin to take a seat.

Mr. Rotgin stated that this was important and that he was not going to take a seat. He pointed out that they had asked the Planning staff for the December Board date.

The Planning Commission took a 5-minute recess at 6:56 p.m.

The meeting convened at 6:59 p.m.

Mr. Rieley called the meeting back to order. He stated that they were discussing the issue of a deferral to November 18th. He asked Mr. Rotgin if he would like to address the Commission on the issue of taking a voluntary deferral.

Mr. Rotgin stated that for the record they had requested December 10th for the Board of Supervisors public hearing date to begin with months ago, but that was taken up with the Kluge Vineyard plan. The only other alternative date that they were given was November 12th, which they agreed to. They had asked staff to advise them if the Kluge plan was pulled so that they could go to the 12th of December. He stated that they would be happy to do that. He asked to talk about schedules a little bit. He asked if there would be any utility in having a work session with the Planning Commission between now and November 18th.

Ms. Echols stated that it would not.

Mr. Rotgin asked when the information that they turned in would be available for the Planning Commission.

Ms. Echols stated that the information would be available to the Commission a week before the Planning Commission meeting.

Mr. Rotgin stated that one of the things that the Commission had been consistent about was talking about redesign, redesign, and redesign. He stated that with the proffers that they have made and with the market that they have identified, they cannot redesign given the topography and the limitations on Pritchett Lane and so forth. He requested a deferral until November 18th.

Mr. Loewenstein moved to accept the applicant's request for deferral to November 18, 2003.

Mr. Craddock seconded the motion.

Mr. Cilimberg stated that staff would be able to provide comments on the various things that the applicant has addressed, which are essentially the issues that are somewhat unaddressed tonight.

The motion carried by a vote of (5:0). (Edgerton – Absent)

Mr. Rieley stated that the matter was deferred until November 18th.

Mr. Loewenstein stated that he had a question about that meeting. He asked if there would be another public hearing at that date and if additional comment would be taken.

Mr. Rieley stated that he preferred that there would be another public hearing in order to receive additional public comment. He pointed out that they were not legally obliged to hold the public hearing.

Mr. Kamptner stated that they had satisfied the minimum legal requirements, but he thought that members of the public might wish to comment based upon their reading of staff's analysis.

Mr. Rieley stated that he would like to have staff's analysis available not only to the Commission, but also to the public. He noted that was the difficulty with these kinds of things. For example,

like Mr. Rotgin sending the Commission emails directly. He pointed out that he did not read emails or anything that did not get staff review and could not be scrutinized by the public. He stated that it was really important for this information to get to staff, for staff to review it and for it to be a public record so that anybody can come in and look at it and come in and comment on it. He stated that he was very much inclined to reopen the public hearing.

Mr. Cilimberg apologized to the applicant regarding that December date because staff had just found out within the last 24 hours that date was available, but understood that the applicant was out of town so the communication did not take place. Staff had intended for it to take place before tonight's meeting so that he was aware of it. He stated that it was very late when they found out and staff does apologize for that.

Public Hearing Items:

CPA-03-03 Affordable Housing Policy – This is a proposal to amend the Albemarle County Comprehensive Plan to include an Affordable Housing Policy as a new section of the Plan and to amend other sections of the Plan to reflect this policy. (David Benish)

Mr. Benish summarized the staff report.

BACKGROUND: The Planning Commission held a work session on August 19, 2003 to discuss the proposed Affordable Housing Policy. The Commission directed staff to move forward to public hearing on the Policy as an amendment to the Comprehensive Plan. The Commission also requested that staff hold a focus group discussion opportunity to receive comments and answer questions from the interested parties on the proposed Policy prior to the public hearing.

DISCUSSION:
The initial Affordable Housing Policy, as developed by the Affordable Housing Committee - The committee did hold some focus group discussion opportunities at that point in time, but there has not been one on this final draft. Staff held the focus group discussion on September 19, 2003. There was a total of eight (8) attendees, not including staff and the Chairman of the Housing Committee. They had a good discussion on the policy and the amendments for the Comprehensive Plan. Attachment A is a summary of the comments from that focus group discussion, and responses by staff where appropriate. Most of the comments centered on the overall impact of, and the specific procedures for, applying the recommendation in the Policy that a minimum of 15 percent of all units in a proposed development be provided as affordable units. Many of the comments tended to be oriented to technical aspects of how this recommendation would be applied/implemented in the development review process. Staff recognizes from these comments that systematic processes and procedures will need to be developed and put in place prior to implementing this recommendation (with the review and approval of development proposals). There was also some policy questions about the impact of that. Recommendations were received from the group. If the Policy is adopted with this recommendation, the next step will be for the Housing Office and Planning Department staff to develop these processes/procedures.

To summarize where they are to date, staff has recommended two changes to the language for this Policy in the Land Use Plan Text Amendments since the Commission saw it last. One is in effect, a relatively minor adjustment, but they did add to the Land Use Text an additional sentence to indicate some flexibility in the provision of the 15 percent minimum; but that number was already in the overall policy found on page 2. So that is not new language or any substantive difference from where the policy was before; but it was making the language in the Land Use Text Amendment consistent with what is in the overall policy. The second change was based on State Code requirements that call for affordable housing policies to address the location and geography for where affordable housing should be provided. Staff has provided an amended language to be added to the Policy, which they feel is consistent with our growth management policy.

The purpose of the public hearing is to give them an opportunity to hear public comment, but staff will be happy to answer any questions on the changes that they have suggested or comments from the focus group discussion. Ron White from the Housing Office is here to help answer any questions.

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

Mr. Thomas stated that on the 15 percent minimum on the rezoning, etc., how were they going to keep the price of the property down if you require minimum affordable housing. He asked if they were going to build up the density in those areas

Ron White, Chief of Housing, stated that density was one way of doing that. He stated that the Commission would probably agree that within the Neighborhood Model that there may not be much of a way to increase the density given the other principles that are in there. Every project is going to have to be looked at individually. They would hope that the combination of additional density and possibly the use of some alternative unit type such as auxiliary apartments, English basements or granny flats would help. The alternative unit type could only be used if the land allows a rental unit. There are a number of things that they could look at to try to create some affordable housing options, but he did not think that it was a surprise to anyone that it was going to have to be on a development basis. This policy sets out some general guidelines to do that, which was where Mr. Benish mentioned that there is going to have to be some flexibility.

Mr. Benish stated that there are units in the market that are actually being built that would meet the threshold that we call for to be defined as Affordable Housing. Sometimes the question would be to make sure that the units are available to the target market. That was an issue that was raised at the focus group by some of the developers who are actually building units that could be available for a certain price, but then the market demand and who is purchasing those properties might not be what the target population is. Part of our program may be getting the stream of eligible clients into the units that are already being built.

Mr. Finley asked if housing for the elderly was included in the affordable housing policy.

Mr. White stated that it was certainly included.

Mr. Finley asked if that would also be for a $175,000 house.

Mr. White stated that it would depend on whether it was ownership or rental. Obviously, when they are talking about affordable housing, the policy is for all segments of the population and it would be inclusive of rental opportunities as well as home ownership opportunities. The other component that relates to the elderly is the need for services, which is a big-ticket item. When you are talking about the housing side, particularly for assisted living type facilities, this policy does not address anything about services.

Mr. Finley asked if affordable housing was subsidized and if so by whom?

Mr. White stated that it could be subsidized. Rental may be subsidized with the Rental Assistance Section 8 Program, which is a federal subsidy that they get from HUD and utilize in the County. It could be subsidized through grants available to nonprofit organizations through the state or federal government where they can offer down payment or closing cost assistance. The reality is, when you look at the price of houses that are being built now, that there is some level of subsidy that is going to be needed to make any product affordable. When we are talking about $172,000 we are talking about a four person household and a $50,000 annual income. To drop down further for example, a schoolteacher with a $30,000 or $35,000 income in a single income family, could afford less than $140,000. Many variables are in affordability such as interest rates. We are in a good interest rate climate now, but it is increasing. The higher the interest rate then the

lower, or the lesser the amount, of mortgage that people will be able to afford. We are dealing with one variable here and that is the supply. There are a number of other market variables that this policy may not touch, but this is a step to at least put in writing what they have been trying to develop over the last couple of years.

Mr. Finley asked in Albemarle County what would the median income be.

Mr. White stated that 100 percent median income is around $63,000 or $64,000, which would be for a family of four.

Mr. Finley asked, to qualify for affordable housing, what is the typical salary range?

Mr. White stated that this Policy states that it would be the policy of Albemarle County to seek assistance and provide assistance to those households at or below 80 percent of the area median income. That is the reason that he had used the $50,000 figure. That was roughly 80 percent of the median income for a family of four.

Mr. Finley stated that there was a lot of people making it on less than that.

Mr. White stated that would include many people.

Mr. Thomas asked what the percentage was for the family of four who was making $40,000 per year.

Mr. White stated that if it were distributed equally, you would probably be talking about 25 to 30 percent of the population. What they see from looking at the census data is that there is an awful lot of people or a great number or a pretty good percentage of the population between the 0 and 30 percent category. We have a good number with the percentage above the 100 percent category, but when you start talking about whether it is equally distributed that 30 to 80 percent is where it is not quite as even.

Mr. Craddock asked him to refresh his memory where the 15 percent came from.

Mr. White stated that the 15 percent was the standard that has been used around the nation for various affordable housing programs. He stated that it was mentioned in the work session that the most talked about one was Montgomery County, Maryland, which had about 25 to 26 years of experience doing this. That was a figure that they used. Some of the Housing Committee wanted higher percentages and some wanted it lower at 10 to 12 percent, but the Housing Committee finally concurred that they wanted to put forward the goal of 15 percent.

Mr. Rieley asked if there were other questions for staff.

Mr. Loewenstein stated that in the objective section they already talked in the Plan about creating and preserving safe, high quality and sustainable neighborhoods; and that was one of the things that has been added in our draft. In talking about the mixture of housing types and preservation of this policy there is a discussion in here about the preservation of all the existing affordable housing units in our neighborhood as a way of maintaining that balance. He noted that was sort of a question. When it says encourage the preservation of all existing affordable housing units and development of new housing in a manner consistent with the County's growth management policy, etc. What specifically would that be if he were a developer that was looking at that? He stated that if he had a neighborhood that he wanted to redevelop taking the Affordable Housing Policy into account; and he looked at the strategy of the encouragement of all existing affordable housing units, what does that mean exactly? He was interested in part because if they were looking at buildings that were old enough then this abuts with the HP Plan and the Land Use Plan that are in the Comp Plan. He stated that he was trying to get a feel for what that means.

Mr. Benish stated, to answer that specific question, he thought that the language that speaks to the flexibility of interpreting the 15 percent would give us the ability to determine the amount of redevelopment and to maintain a certain percentage for retaining those existing dwelling units in some way.

Mr. Loewenstein stated that in any case they wanted to maintain the balance.

Mr. Benish stated that he thought that the intent here was more in a general approach to have an inventory of affordable housing. They don't want to be encouraging the construction of new housing while they were allowing the elimination of others. The language that you are referring to here was trying to speak very globally.

Mr. Loewenstein stated that he knew that was not part of the amendment language.

Mr. Benish stated that AHIP had a program that rehabilitates homes in our rural areas, which he thought they were very supportive of because it retains that inventory and that was a very specific program that they would want to support. In terms of a new development, he thought that was where they would have to use flexibility and good judgement in the creativity of the development community. They needed to do the right thing and determine whether it was to retain some of it or redevelop it to something better, but overall to maintain the integrity of the mix. He stated that other policies help to kick that in, which are already in the Comp Plan, which will help address that.

Mr. Loewenstein said that the language does point out that it was the mix that they were trying to protect. He stated that in a neighborhood development or redevelopment, that there are other agencies such as AHIP that would be able, under its existing guidelines, to participate in redevelopment if it was involved.

Mr. Benish stated that the potential was there because he was not aware of anything that would preclude that necessarily.

Mr. Rieley stated that the Affordable Housing Policy itself says that the County Housing Committee approved it March 2003 and the format was revised in the summer and it was revised again this month. He presumed that all of those revisions were by the Housing Committee. He asked if that was correct.

Mr. Benish stated that the only revision that the Housing Committee staff has not been involved with is this latest regarding this geography and they have not had a chance to see that. The Housing Policy should encourage the preservation of all affordable housing units. The Housing staff has seen that, but the Housing Committee has not had a chance to see that. That was something that he was made aware of at the end of last month that was an upcoming change that was going to be necessary as part of this Affordable Housing Policy. He pointed out that they went ahead and tried to address it and get it to the Commission for their input, but they will make sure that the Housing Committee sees it as well.

Mr. Loewenstein stated that the last sentence in that particular document says that affordable housing may be provided in the designated rural areas consistent with rural area policy regulations. It seems that AHIP has done a lot of work in those areas. He stated that he just wanted to see what the crossover would be in this case. He noted that it would not go away, because he would be reluctant to see any abandonment of encouragement to preserve existing affordable housing in some areas outside of growth areas as well. There have been some notable successes along those lines and he knew that agencies like AHIP have participated in them.

Mr. Benish pointed out that the Habitat for Humanity has as well. In most of those cases, they have used by-right development potential to the extent that by-right development is available. It

is irrelevant whether it is affordable housing to us. They are glad that there is affordable housing being provided.

Mr. Loewenstein pointed out that has occurred in his neighborhood and it was a good thing.

Mr. Rieley asked if there were other questions for staff. He stated that regarding the summary comments in the first one concerning rural preservation developments, as whether they would be subject to the 15 percent of affordable unit standard - the response was because RPD's over 20 lots require a special use permit, but they can be evaluated relative to that recommendation. As a reminder, he stated, that runs out in July of next year. The ones that require special use permits absolutely run out because that law is no longer allowable because it is unconstitutional or illegal after July 2004. He stated that there should be a mechanism to encourage affordable housing. He asked if there were other questions about this. There being none, he opened the public hearing and asked if there was anybody else who would like to speak on affordable housing.

Ann Mallek, resident of Earlysville, stated that she had heard that the durability of affordable housing staying affordable is an issue brought up by developers recently. She pointed out that she had read something about other places where it was put into the deed restriction that certain income brackets of people are the only ones that could buy this type of a particular property. So she would propose that the staff investigate whether that is doable in Virginia and if that is something that they could use so that affordable housing built in a neighborhood, such as this for example, would remain available to the people who really need them.

Ron Keeney, of Keeney and Company Architects, stated that he would like to remind them that all affordable housing is subsidized. Whether we as individuals in the audience pay taxes to the Federal Government who then turns and gives out grants, so Mr. White gets a grant from the Federal Government. We still subsidize it whether we gave it to the State Government or whether we push developers like this to do it. One way or the other it is all coming out of the individuals' pockets of those that are around. So if you have 100 homes in a community and you ask for 3 percent subsidized housing, then the price of the 97 homes just went up a little bit. If you ask for 15 percent, then the other 85 house prices just went up a little bit. However, one way or the other it is all subsidized by the remainder of the community. So there is no magic pool out there that it comes from, but it is coming out of our pockets, and we all have just so much. To me the solution for subsidized housing is to figure out how to keep the costs of the development and the housing itself down, so that they could therefore afford to spend more, to give more to our fellow people that don't have as much.

Mr. Thomas suggested that possibly the price of land could come down a little bit too.

Mr. Keeney stated that potentially it could.

Jeff Werner stated that he was speaking as a private citizen right now. He stated that he lived in the city and made a choice to live downtown. He pointed out that he found a house for $142,000. He pointed out that he and his wife do not drive a whole lot and in fact drive very little. Some of that money saved goes into being able to live downtown and have a quality of life. He stated that Mr. Benish has a an excellent point and something that they need to think about is to make sure that housing that is put in an affordable bracket gets to the people who need it. A couple of weeks ago he was talking to a realtor in town and he said that anything under $200,000 in the city that he buys it up as investment property. Therefore, these houses are there, but are these people getting them. There is a lot of substandard houses in the County, so maybe in lieu of 7 new houses in a subdivision, maybe someone needs 7 new furnaces in a substandard house or 7 new water heaters. Maybe those things need to be matched up so that we don't just resolve it by building new houses. Sometimes people already have a house that needs assistance. He stated that he was a little concerned that they have a density bonus that has never been used before. As a builder for 12 years, he gets a kick out of arguments from the development community about

whether we build sidewalks if the house is unaffordable. Well if you put in streets and trees, the house is unaffordable. If you do a grid street, the house is unaffordable. You can't do smart growth because that would make housing unaffordable. He pointed out that they have already proven in Loundon County unfettered sprawl has not resolved the issue. He stated that they needed to get down to brass tacks here and be serious. He agreed with what was written here and thought that it was fine. It uses language like "encourage" which was great. Again, they already have an ordinance that is not used. When he talked to the director of the realtor association, he did not even know that it was on the books. He had a conversation a few years ago in the DISC meeting when a counter part in the development community said that if he knew anything about construction that he would understand that to take a foot print of a single-family house and make a duplex or a triplex, would make it unaffordable. The grading costs alone would preclude that from being an affordable house. That is the most ridiculous thing that he had every heard. When he told him that he knew a lot about construction, he whispered to him that he knew what the real problem was, that the lenders are very uncomfortable with mixed-income housing. He asked why he would not say that and why does he keep pointing a finger at streets, trees and concrete sidewalks? Why don't they get down to the facts? He stated that it was time to sit down and put the facts on the table and figure out how to do it. It is about subsidy. It is about us being a society and making choices. To sit here and smoke screen this issue is a waste of their time. He hoped that they did not come up with another plan language in another ordinance that just sits on the books for another 20 years and never gets used.

Bob Hauser, a builder in the area, asked that the Commission be cautious in their actions. He stated that he was a free market person and he championed the free market. Therefore, he was against this type of legislation. His perspective is from someone trying to build homes for 21 years in the community, and certainly, he has built over 1,000 homes. He thought that he had some real life experience to share with them. If they were here talking about this 15 years ago, he would tell them that he would compete against a gated-community, with a golf course and clubhouse, with 4,000 lots that are selling for $4,000. That community was Lake Monticello, and it ate him up when he tried to produce affordable housing. The notion that Albemarle County has an issue is one that he holds near and dear. He tried to provide those homes, but you can't ignore the regional aspect of the market. The reason people have not taken advantage of an affordable housing ordinance is that product is not what the market wants and is prepared to jump into Fluvanna or Louisa or Madison or Goochland or Greene to get it. No amount of legislation in Albemarle is going to change where the market goes. It is like water. It is going to seek its own level. He cautioned them to force him as a developer to produce a product that apparently is not good enough to sell to one group, but that he had to find a separate group that may or may not want it. Now his perspective on government is that maybe it doesn't belong in this business. He stated that he comes to work everyday to try to meet a market. He has tough competitors to keep him honest and keep his profit margin in line and he really does wonder if that is something that the government feels that they are equipped to deal with. The Montgomery County example he appreciates, but that has no bearing here because they were situated between two major markets of Washington and Baltimore. Charlottesville, as a city, has a number of homes that are well within an affordable price range. Again, the market was going to be very difficult for him as a builder to try to produce in Albemarle County and compete. When that customer in Fluvanna may just lower his price until he gets that customer, that wants 2 acres. He pointed out that he had not studied the ordinance and therefore would rely on the Planning Commission's expertise. He asked them to be deliberate, thorough, and challenge staff to make sure that this was something that will actually accomplish their goal. He asked if they just picked the 15 percent out of the air. He stated that it was difficult for him to understand because he would not figure out the market from week to week and was not sure how they could arrive at a number for however many years.

John Stack, a resident of Earlysville, stated that they have his sentiment about what they were talking about because he happens to be on a task force that is studying affordable housing. They have spent several weeks trying to identify the issues. He felt that affordable housing was beyond the scope of the local government. He stated that they were on a slippery slope because next time it might be 20 percent. He asked that they make sure that they know how much it is

going to cost the public before they implement the policy and suggested that it be put in the Daily Progress. (See the attached statement from John Stack dated 1/27/03 on affordable housing.)

Dave Phillips, CEO of the Charlottesville Area Association of Realtors, stated that as John mentioned they were studying affordable housing in great detail with a task force. There were many people on the task force that included some people from the Piedmont Housing Alliance on down to lenders. He stated that they thought that there was more that could be done on affordable housing. He stated that Albemarle County has little-no affordable housing for the people. He provided information to the Commission on the local market and suggested that they provide for a lot of flexibility and speed to provide fast track approval. (See the attached Price Range Statistics Report submitted by Mr. Phillips.)

Josh Goldsmithe stated that he served on the Housing Committee and also was a local developer and a builder. He stated that he had been involved in this process and had been serving on the Housing Committee since August and he saw the Comp Plan Amendment sent forward. He stated that he attended the Focus Group meeting. He stated that this process was incomplete at this point. He would hope this goes to a work session, however, the application was incomplete because the Housing Group never saw the comments that came from the Focus Group. Although, he might not agree with this 15 percent moving forward he accepted the fact that it probably will. In order for it to be successful, he thought that many the details that the Focus Group brought up should be discussed. It would be very well to bring the Focus Group and some of the people that are going to be providing this housing back to the table to implement those details before this Comp Plan Amendment is moved forward.

Neil Williamson stated that he was with the Free Enterprise Forum in Albemarle County. The Housing Committee has worked long and hard on this proposal and some of the questions that were raised by the Focus Group were answered. He stated that he still had some questions and did not have the answers. He was hopeful that the Planning Commission in their deliberations and work sessions could answer these. Question one, was why there was a lack of Affordable Housing in Albemarle County? He stated that they were really looking at land and regulations. The question for the County was, if Affordable Housing is important, would the County consider expanding the growth area to include more land in the development areas? Is the County willing to waive the resident proffers that they have been receiving over the past few rezonings? Such a waiver could lower the cost of a home by anywhere from $3,000 to $4,000. Would the community be willing to accept these trade-offs if it provided more affordable housing? These are not easy questions and there are no easy answers. The costs of regulation are significantly higher in Albemarle County. After this public hearing, the Planning Commission will hold a public hearing on the Subdivision Ordinance. You will be discussing new ways to increase the cost of development by mandating streetscapes throughout the development areas. First they will talk about how the government can mandate affordable housing and then discuss how the government can mandate making housing less affordable. One idea that has come up is could the County develop an affordability impact statement on any regulation that they propose. It seems like a reasonable thing to say okay, this is what is going to happen. Affordable housing is important and this regulation is important and here is the impact that it is going to have. The big question too has been raised. How is affordable housing going to stay affordable? He stated that there were many unanswered questions regarding this policy. He asked that the Commission take this into account before approving this policy. He asked how much tax money the County was willing to give to provide affordable housing. He stated that based on their research any affordable housing plan must include significant density bonuses that work and increase application processing speed. When presented valuable incentives to get the government out of the way, the market will provide for different levels of need.

Mr. Rieley closed the public hearing to bring the matter back before the Commission. He stated that the Commission did not necessarily have to take any action tonight because they basically wanted to hear public comment tonight. He suggested that the Commission have a discussion on these matters and schedule another meeting to deal with this.

Mr. Cilimberg stated that the question was, if there was anything in particular that the Commission would like to see addressed before they take this up again. He pointed out that staff was looking for some guidance.

Mr. Rieley stated that they have heard many good comments tonight. He pointed out that he felt comfortable sending this ahead with a recommendation to the Board of Supervisors. He asked if the Commission would like to forward this on to the Board for a possible hearing date on December 3rd.

Mr. Thomas stated that they needed to find a solution to this problem. He stated that he had a problem with the 15 percent.

Mr. Finley stated that he had problems because he felt that more jobs should be created so that people could afford to purchase their homes from their own income. He suggested that the County bring more jobs to the area.

Mr. White stated that the Housing Committee would meet on November 12th and this information can be provided to them. He pointed out that he could provide the Committee with whatever information that the Commission desired. He stated that if there was a work session with the Board they would have some of the members of the committee participate in it. He pointed out that there were some state regulations that had to be incorporated into the policy and that he would make sure the committee was aware of them.

Mr. Benish stated that staff would make sure that this information gets to the Housing Committee and that their comments will get to the Board of Supervisors.

Mr. Loewenstein stated that if there was any question about the 15 percent that it would come up then, but he was not sure it is would. He stated that there was no reason why it couldn't. He stated that he realized that the Housing Committee and the focus group have discussed the point.

Mr. Benish stated that staff would be forwarding whatever action the Planning Commission takes tonight to the Housing Committee so that they are aware of it. It might be useful if they have the minutes from this meeting.

Mr. Rieley asked that the Housing Committee have the record of the minutes so that Mr. Finley's concerns and others would all make it before them.

Mr. Loewenstein pointed out that explicating how that was arrived at would be a helpful thing.

Mr. Benish stated that staff could certainly make an effort to do that.

Mr. Rieley asked with those caveats, would someone like to frame a motion?

Mr. Loewenstein moved for approval of CPA-03-03 with the proviso that the language in this draft will be looked at again by the Housing Committee and discussed hopefully in a work session by the Board of Supervisors. He asked for input from staff on how to word the motion.

Mr. Cilimberg suggested that the Commission would want to make sure that the Board receives input from the Housing Committee based on what the language is here, what comments were made in the Focus Group's discussion and review of the Planning Commission's minutes of this meeting. He stated that staff would more than likely schedule a work session with the Board after they have had a chance for the Housing Committee to see that information.

Mr. Loewenstein moved to recommend approval of CPA-03-03, Affordable Housing Policy under the conditions just expressed by Mr. Cilimberg.

Mr. Craddock seconded the motion.

Mr. Rieley stated that the minutes of this meeting will reflect all of the discussion among all of the Commissioners and it will go to the Housing Committee.

The motion passed by a vote of (4:1). (Finley – No) (Edgerton – Absent)

STA 01-08 - Comprehensive revision of the Subdivision Ordinance – Amend Chapter 14, Subdivision of Land, of the Albemarle County Code, to comprehensively revise the subdivision regulations by amending most existing regulations, repealing or adding other regulations, and reorganizing Chapter 14 and renumbering many existing regulations. The regulations being amended and added pertain to general provisions including, but not limited to, definitions; administration and procedure; minimum plat requirements and the documents required to be submitted with a plat for review; and minimum improvements required and their design. The proposed amendment will also impose a ninety-five dollar ($95.00) fee for the review of plats for family divisions, resubdivisions, easements and boundary line adjustments. The purpose of this fee is to reimburse the County for its services in reviewing the plats. This is the same fee presently imposed for the review of plats for rural divisions. The proposed imposition of this fee is authorized by Virginia Code § 15.2-2241(9). The complete ordinance and information concerning the documentation and justification for the imposition of the fee are available for examination by the public in the office of the Department of Planning and Community Development at 401 McIntire Road, Room 218. (Margaret Doherty)

Ms. Doherty summarized the report as follows:

Origin and Description of Request

Over the past several years, staff from the development departments has been reviewing the entire Subdivision Ordinance, Chapter 14 of the Albemarle County Code. We propose a comprehensive amendment of this chapter with the intent of providing subdivision regulations that are consistent with the Neighborhood Model recommendations, reflect current practice, and correct unintended omissions and inconsistencies of previous amendments. The changes proposed are summarized in Attachment A, which notes the code section and page number of the proposed ordinance. The proposed ordinance, showing the old and new language, is included as Attachment C. The resolution of intent is included as Attachment D.

Roundtable Discussion Held July 10, 2003

Staff held a Roundtable Discussion on July 10, 2003. Approximately one hundred members of the public were sent a copy of the summary of changes and were asked to participate in the meeting and/or send comments to staff. The proposed changes have been posted on the County website since late June. Approximately 30 people (including 6 staff members) attended the meeting, and 7 written comments were received prior to the writing of this report. All of the written comments, and staff's notes from the Roundtable Discussion have been included as Attachment B. Following is a summary of the policy issues raised at the roundtable discussion, which we offer for the Commission's review and comment.

Sidewalks

Staff recommends replacing Section 400 with Section 411, which requires sidewalks for subdivisions in the Development Area. Currently, Section 400 requires sidewalks in subdivisions of two or more units per acre and in commercial developments wherever determined by the agent to be necessary. Developers are concerned about the costs of these improvements and prefer that sidewalks/pedestrian pathways be optional.

With density being measured on a "gross" rather than "net" basis, subdivisions with one-quarter and one-third acre lots can avoid providing sidewalks. Making sidewalks requirement rather than option implements goals established in the 1989 Comprehensive Plan, the 1996 Comprehensive Plan Update and reaffirmed with adoption of the Neighborhood Model. If the Development Areas are truly to provide for pedestrian accessibility, the sidewalk network must be constructed with new development. Recognizing that there will be the need for exceptions, the proposed subdivision ordinance includes the ability to ask for a waiver of this requirement from the Planning Commission.

Curb and Gutter

Staff recommends replacing old Sections 400 and 513, with the new Section 411 which requires that all streets located in the Development Areas be constructed with curb and/or gutter and planting strips for street trees. Section 513 requires that roads be built to VDOT standards. Where it can, VDOT has been requiring and staff has been recommending curb and gutter and sidewalks and street trees for subdivisions in the Development Areas. Developers are concerned about the cost of these improvements.

An urban streetscape, in the form of curb and gutter and sidewalks with tree plantings, provides safe and convenient access to the residents of the Development Area. It is one of the most important implementation recommendations from the DISC Committee. It would be irresponsible to continue to encourage density without the infrastructure to create livable spaces. Many developers have resisted providing curb and gutter and persisted in developing with a rural shoulder and ditch cross-section. The increasing density of developments and working with terrain that is more difficult have resulted in drainage problems, an inability to accommodate pedestrians, and a suburban sprawl pattern. The Planning Commission may grant modifications.

Interconnections

Staff is proposing to amend old Section 510 with new Section 409 to allow for the continuation of streets into adjoining areas by dedication or reservation of right of way. The old language required that all streets be coordinated with existing or planned streets. The new language takes this requirement one step further to require the "continuation" by dedication or reservation of right of way. We are currently requiring applicants to show easements for the construction of future connections. It is often difficult to enforce these private easements. Staff believes it is more responsible to require reservations and/or dedications that we can enforce. Members of the roundtable requested clarification of who would make this decision, the Agent or the Planning Commission. Additionally, they wanted to know what criteria would guide these decisions; would a road need to be shown on the Comprehensive Plan? Discussion attendees were concerned that this section would obligate access to adjacent property without common covenant controls.

Interconnections are not only an essential component of the Neighborhood Model but they enable disperse traffic flow and reduce the need for road widening for local traffic. It has been our practice to require connections to adjacent parcels where it was deemed reasonable by the agent. The proposed language is simply a clarification of this requirement. Regarding the appropriate location of connections, as is our practice today, the Comprehensive Plan will be our guide, and as master plans are completed throughout the Development Area, locations for future roads will become clearer. Where master plans have not been completed, staff anticipates requiring the connections, as the agent deems reasonable. This requirement may be waived or modified by the Commission.

Recommendation

Staff asks the Commission to review in detail the proposed ordinance and bring comments and suggested wording changes to the meeting.

Staff recommends adoption of a resolution of intent to amend the Subdivision Ordinance, included as Attachment D, and scheduling of a public hearing for October 28, 2003. The public hearing will allow for more public comment that will enrich the process. Future work-sessions may be scheduled after the public hearing, as necessary.

Ms. Doherty stated that tonight they were here to hold a public hearing on the subdivision text amendment, STA 01-08. This is the same ordinance that they talked about in a work session in September. The ordinance that they bring to the Commission tonight is the same ordinance that they talked about then, but staff has been working on it. Staff decided to stay with the same ordinance so as not to confuse the matter. She pointed out that their job tonight was to take notes, answer questions and hear public comment. Just in the last four or five days, staff has received many good comments from the public, but has not been able to go through them because the comments were so detailed. Staff will go back and work on those changes along with whatever they hear tonight and then bring those suggested changes back to the Commission on November 18th for a work session. Staff hopes to obtain an action from the Commission on December 3rd and then go to the Board of Supervisors in January.

Mr. Rieley stated that the County once again was the applicant. He asked if there were questions for staff.

Mr. Finley stated that he would like to ask some questions and noted that all of his questions were adjustments. On page 24 under Section 14.2.10, staff underlines "each plat for a family division." He asked if every division has to have one plat to cover one family division. He asked if you wanted to make three family divisions if you could do it all on one plat.

Ms. Doherty stated that you would be able to do that on one plat.

Mr. Finley stated that on page 25, it states including the residue which you have added and plus a person other than the immediate family of the subdivision for a period of two years. He asked if you make a family division if you could not make any other division other than a family division for a period of two years. He asked if that was what that means.

Ms. Doherty stated no, because that means that the lots that were created in that a member of the family must hold family division for a two years. She pointed out that would include all of the resulting lots, including the remainder of the parent parcel, which would have to be held by either the grantor or a member of the immediate family. She noted that this is how staff interprets this today and actually was not new language.

Mr. Kamptner stated that this particular paragraph is dealing with the ability to convey or to hold. He pointed out that this language was to clarify that the residue parcel is treated as a family division parcel.

Mr. Rieley opened the public hearing and asked if there was anyone present who would like to speak concerning this matter.

Neil Williamson, Executive Director of the Free Enterprise Forum, stated that he had written the Planning Commission a couple of letters that have been a matter of the public record and part of their work session documents and he appreciated their consideration of those comments. The comments that were prepared this evening were based on the document that they in front of us and not that was being worked on through staff because he did not have access to that document. He noted that he remains concerned that the Planning Commission and the Planning Department by the direction of the Planning Commission are basically legislating the Neighborhood Model as "The Model". In an answer to Mr. Loewenstein's question, Mr. Cilimberg said, "this is the way to make it the rule and not the exception." He pointed out that what he heard sitting in the back of the room was that this was the model for future development in Albemarle County. The Free Enterprise Forum is concerned that placing such tight dictates on

form within the development will hinder creativity, tightens the housing market and provides fewer choices for home buyers in the future. In addition, such restrictions within the development area will result in increased prices and make place more development pressure on the Rural Areas that they seek to protect. When the Neighborhood Model is fully developed with concurrent infrastructure investment by the County and sells well, the County may be flooded with applications. Even then somebody is going to want something else and the County should not preclude him or her from being able to get a new product that looks different. Based on all of the above, he believed that the directive of staff should have been changed to change the subdivision ordinance to allow for the creation of the Neighborhood Model specific requirements to those properties requesting Neighborhood Model development rezoning. Right now they have a number of Neighborhood Model projects moving forward and that is exciting. He stated that he wanted to make certain that they don't legislate themselves out of the market system and allow the market system to determine the very details of the program. (See the attached letter addressed to the Planning Commission dated October 21, 2003 from Neil Williamson, Executive Director of Free Enterprise Forum.)

Mr. Rieley asked if there was any further public comment. There being none, he closed the public hearing to bring the matter back before the Commission for discussion because this issue really does not require any action tonight.

Mr. Finley asked on page 60 where it talks about the X and Y control points if the County has monuments where you can pick these up or do you use it with hand held instruments to get your own coordinates.

Mr. Kamptner stated that information had been received from Tex Weaver that addressed the regulatory components of the practical implementation of this.

Mr. Rieley pointed out that he had previously raised the concern that this should be more specific and should be something like NAD 27, Virginia State Plane Coordinate System or something specific rather than just X and Y.

Mr. Kamptner pointed out that Mr. Weaver's group suggested using the Virginia State Plane System and staff was incorporating that into the draft.

Mr. Rieley pointed out that was using the USGS monuments that are all over the places that surveyors can survey into are keyed into the Virginia State Plane Coordinate System. He stated that was real solvent data that could be converted back and forth with other systems and agreed that it was a good system to use.

Mr. Thomas stated that in response to Mr. Williamson's comments regarding the Neighborhood Model. He noted that his recollection from the DISC Committee that the Neighborhood Model was always "a way" with a recommendation of using as many of the twelve principles as possible. He asked to have more clarity in that to make sure that the Neighborhood Model goes forth as "the way" instead of "a way".

Mr. Loewenstein suggested that staff carefully articulate the exact meaning that the Neighborhood Model will have since that still remains with some doubt for the members of the public at large. He stated that it was very important that this issue is fully understood. He stated that the DISC Committee never mandated the Neighborhood Model as the only form of development, but had never articulated what this will do. He noted that he would love to see staff articulate exactly what the Neighborhood Model will do before it was voted on.

Mr. Rieley stated that they should scrutinize this document and try to identify those areas where problems will arise. In a more general sense, he thought when this came up that Mr. Cilimberg

did a really wonderful job of articulating what the crux was of this issue and it was not the issue of "a model" versus "the model". He suggested that they ask Mr. Cilimberg to do that again.

Mr. Benish stated that staff would try to respond to this issue for the next work session.

Ms. Doherty stated that staff has worked on this so that an applicant would not have to go through a big rezoning process to get the Neighborhood Model District to do what they want them to do because they would be able to do the development by right so that it was faster and cheaper.

Mr. Loewenstein asked that staff to make sure that the articulation of what they were doing stays in this process because there has been some fogginess.

Mr. Rieley stated that there would be some more discussion about this issue.

In summary:
The Planning Commission held a public hearing on the subdivision text amendment, STA 01-08 for the comprehensive revision of the Subdivision Ordinance. The Commission discussed the issue, asked questions of staff, took public comment and provided comments and suggestions, but took no formal action. Staff will bring back all of the changes to the Commission for a work session on November 18th in order to hopefully obtain an action on December 3rd to send the request on to the Board in January.

***Old Business**:*

Mr. Rieley asked if there was any other 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 business, the meeting adjourned at 8:42 p.m. to the next meeting on November 4, 2003.

V. Wayne Cilimberg, Secretary

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