Albemarle County Planning Commission
May 25, 2004

The Albemarle County Planning Commission held a work session on Tuesday, May 25, 2004 at 4:00 p.m., at the County Office Building, Room 235, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley; Rodney Thomas, Chairman; Bill Edgerton; Jo Higgins; Cal Morris; Marcia Joseph and Pete Craddock, Vice-Chairman. Mr. Craddock arrived at 4:09 p.m. Mr. Rieley and Mr. Edgerton arrived at 4:12 p.m.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; David Benish, Chief of Planning & Community Development; Joan McDowell, Principal Planner; Scott Clark, Senior Planner; Rebecca Ragsdale, Senior Planner; John Shepherd, Manager of Zoning; Mark Graham, Director of Community Development; Lee Catlin, Facilitator and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Thomas called the regular meeting to order at 4:00 p.m. He stated that the meeting would begin with the work session on the Rural Areas.

Rural Areas - The Planning Commission will conduct a work session to continue their consideration of the draft Rural Areas element of the Comprehensive Plan. (Joan McDowell)

Ms. Catlin facilitated the work session and summarized the Commission's comments.

In summary, the Commission reviewed and discussed the updated version of the Rural Areas section of the Comprehensive Plan based on the input received from the April 6 meeting. The Commission provided comments and suggestions for changes to the document, and asked staff to schedule a public hearing to obtain comments from the public. Staff scheduled the public hearing for June 29.

The Commission made the following comments for revisions to be made to the document:

- The strategy related to clustering is going to say require clustering of all subdivisions in the Rural Area and then something about consider some sort of possible tier approach for clustering implementation.
- On time release, it is going to remain a stand alone item and is going to say adopting time release program. . .
- Although they are removing some of the tier language, they are going to leave in the conservation statement as maintaining the highest preferred land use with conservation as the first item of that section.
- Make sure that the goals of the Stability Council are somehow referenced correctly.
- Reorder the table of contents so that the first thing that comes up is the preferred Rural Area Land Uses, Agricultural, Forestal, Conservation and then residential after that. Add a statement in the residential section introduction and in the rural commercial section that says something about how these are supplemental uses or something that this is not the preferred use just in order to reestablish that.

The Commission requested the following:

- That staff work on the language regarding the tier question and provide the revised document to the Commission at least two weeks prior to the public hearing.
- That no action be taken at the public hearing, but that staff reschedule another work session for the Commission to incorporate the public comments into the document.

The meeting adjourned at 5:30 p.m. to the regular meeting at 6:00 p.m. in Room # 241.

The meeting convened at 6:05 p.m. in meeting room # 241.

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, May 25, 2004 at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley; Rodney Thomas, Chairman; Bill Edgerton; Jo Higgins; Cal Morris; Marcia Joseph and Pete Craddock, Vice-Chairman.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Yadira Amarante, Planner; Bill Fritz, Development Process Manager and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Thomas called the regular meeting to order at 6:05 p.m. and established a quorum.

Other Matters Not Listed on the Agenda from the Public:

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

Neil Williamson, representative for the Free Enterprise Forum, commended the Commission's work on the Rural Areas Plan. He stated that this afternoon's work session was very productive in that the Rural Areas process is now moving on to public hearing. The Commission has a great deal of work ahead prior to that public hearing. It has been the Board's preference if something moves to another meeting to place that as the first item. The last time that a public input session was held on the Rural Areas, 35 to 40 farmers sat through two rezoning applications. He requested that the public hearing on the Rural Areas Plan be put first on the agenda for that evening. Right now that is the only item on the agenda, but they all know all quickly agendas fill. He also applauded the idea of having the document two weeks ahead of time for the Planning Commission meeting. He would assume that the document would be made available to the public at that time as well so that they can propagate it and get it out for public input. Again, he thanked the Planning Commission for their hard work on the Rural Areas Plan.

Mr. Thomas asked if there was any one else present who would like to speak. There being none, he stated that the meeting would move on to the consent agenda.

Consent Agenda:

Approval of Planning Commission Minutes - March 16, 2004

Mr. Thomas asked if any Commissioner would like to pull an item from the consent agenda for discussion or if there is an action.

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

Mr. Rieley seconded the motion, which carried unanimously by a vote of (7:0).

Items Requesting Deferral:

ZMA 2004-003 Avon Park (Sign # 81) - Request to rezone 9.976 acres from R1, Residential to R6, Residential to allow 16 single family and 43 townhouse units. The property, described as Tax Map 90 Parcel 32 is located in the Scottsville Magisterial District on Rt. 742 (Avon Street Ext.), approximately one-half mile south of the intersection of Avon Street Ext. and Stony Creek Drive. The Comprehensive Plan designates this property as Neighborhood Density, recommended for 3-6 dwelling units per acre, in Neighborhood 4. (Margaret Doherty) ***APPLICANT REQUESTS DEFERRAL TO JUNE 22, 2004.***

Mr. Thomas stated the applicant has requested a deferral to June 22. He opened the public hearing and asked if there was any one present who would like to speak regarding this application. There being no one, he closed the public hearing to bring the matter back before the Commission for discussion and possible action.

Mr. Rieley moved to accept the applicant's request for deferral on ZMA-2004-003, Avon Park, to June 22.

Mr. Morris seconded the motion, which carried unanimously by a vote of (7:0).

ZMA 2004-002 Townhouses Fontaine Avenue (Sign # 80) - Request to rezone 12.606 acres from Highway Commercial (HC) to Residential (R-15) to allow 52 townhouses. The property, described as Tax Map 76, Parcels 12A and 12G are located in the Samuel Miller Magisterial District on the north side of Rt. 702 (Fontaine Avenue), approximately .25 miles west of the intersection of Fontaine Avenue and Route 29. The Comprehensive Plan designates this property as Neighborhood Service, in Neighborhood 6. (Margaret Doherty) ***APPLICANT REQUESTS DEFERRAL TO JUNE 22, 2004.***

Mr. Thomas stated that the applicant for ZMA-2004-002, Townhouses Fontaine Avenue, has requested a deferral to June 22. He opened the public hearing and asked if there was any one present who would like to speak on this application. There being no one, he closed the public hearing to bring the matter back before the Commission for discussion and possible action.

Mr. Rieley moved to accept the applicant's request for deferral on ZMA-2004-002, Townhouses Fontaine Avenue, to June 22.

Ms. Higgins seconded the motion, which carried unanimously.

Public Hearing Item:

SP 2003-079 The Rocks Amendment (Sign #49, 52, 53) - Request to amend an existing special use permit for a rural preservation development of more than 20 lots to: (1) amend the boundaries of the Rural Preservation Tract (Tax Map 74, Parcel 18); (2) amend the boundaries of Tax Map 74, Parcels 18C, 18C1, 18C2 and 18C3; (3) amend access to Tax Map 74, Parcels 18, 18C, 18C1, 18C2 and 18C3; and (4) allot development rights not used in the original proposal. This request is made in accordance with Section 10.2.2.28 of the Zoning Ordinance, which allows for 20 or more Development Lots in a Rural Preservation Development. The property, described as Tax Map 74, Parcels 18, 18C, 18C1, 18C2, 18C3, 18D, 18D1, 18D4, 18D7, 18D8, 18D9, 18E, 18E1, 18E2, 18E3, 18E4, 18E5, 18E8, 18E9, 18F, 18F1, 18F2, 18F3, 18F9, 18G, 18G1, 18G3, 18G4, 18G5, 18G6, 18G7, 18G8, contains approximately 645 acres, and is zoned RA - Rural Area. The proposal is located off Rt. 637 (Dick Woods Road), at its intersection with Interstate Route 64 in the Samuel Miller Magisterial District. The Comprehensive Plan designates this property as Rural Areas in Rural Area 3. (Yadira Amarante)

Ms. Amrante stated that the Commission heard this request previously on April 27. Due to an incorrect advertising being published, the special use permit is going to come back before the Commission for a new public hearing. As a reminder to the Commission of the previous action, there are four amendments that the applicant is requesting with this special use permit. One request is to amend the boundaries of the Rural Preservation Tract. The second is to amend the boundaries of existing lots 18C, 18C1, 18C2 and 18C3 on top of Bear Den Mountain. They would like to amend the access to those four mountain lots and allot the three development lots that currently exist on the property to lot 1, which is a lot in The Rocks Rural Preservation Development. At that time the Planning Commission voted to approve items 1 and 3, which are the Rural Preservation Tract boundary changes and the change to the road access, and to deny items 3 and 4, which are to amend the boundary of the four mountain lots and allot development rights to lot 1. Included in the packet are the minutes of the April 27 meeting and the

Commission's amended recommendations for conditions of approval. At the last meeting there was some confusion in terms of what the applicant was requesting, but she had tried to clarify it within the staff report. Staff has amended the recommended conditions, but is still recommending approval of all four of the requests. If the Commission has any questions, she would be happy to answer them.

Mr. Thomas asked if there were any questions for Ms. Amarante.

Ms. Joseph stated that she wanted to be clear that the reason that they were hearing the special use permit is because the application was not advertised correctly, and Ms. Amarante stated that was correct.

There being no questions, Mr. Thomas opened the public hearing and invited the applicant to come forward and address the Commission.

Steve Blaine, representative for the applicant, stated that usually when an application is reheard due to a defect in the notice that the applicant views it as an annoyance. But, in this case the applicant views this as an opportunity since they agree that there might have been some confusion. Some of the confusion was due to the large of amount of history on this property, which staff had gone over. He suggested that the history was perhaps more complicated than the actual action that they were asking for. He noted that he would go directly to the two points that remain an issue. The one issue deals with the reconfiguration of the lots**.** He pointed out that the other thing the Commission should be made aware of was the amount of effort that was involved in reaching an accord with Rosemont to accommodate the access through the Rosemont Subdivision. The applicant did not merely make an application to change boundaries and relocate the lots. Soon after the approval of the subdivision plat in 2002, the applicant began working with the developer of Rosemont and the Rosemont owners to address this next phase of the project for the four rural preservation lots. It really was not until an accord was reached with the Rosemont Subdivision that the applicant came to the County. As part of that accord there has been an agreement as to the boundary between the Rosemont property and the rural preservation tract. That is the reason why the special use permit is being amended to adjust the boundary of the rural preservation tract. The four lots that are being adjusted will become a part of the Rosemont Subdivision for contributing to maintenance of the road and the covenants and restrictions.

Mr. Rieley asked if he was talking about the lots that were up on top of the mountain.

Mr. Blaine stated that was correct. He pointed out the diagram on the bulletin board to illustrate another point regarding the reconfiguration of the lots. The former or existing platted configuration is shown there in red. The blue line that comes up the property that looks like a snake identifies a perennial stream, which actually continues up along the boundary of all three of those red lots that you see as an intermittent stream. The blue line represents a perennial stream and they would possibly draw a blue dotted line to indicate the intermittent stream that comes up along the boundary of all of those lots. By moving the lots up to the other side of the access road it actually moves those building lots further from the perennial stream. Therefore, there is a benefit to that location. The lots are also being moved further away from the Rosemont Subdivision and the adjoining lot, which is viewed as a plus, and is a part of their accord with the Rosemont Subdivision. There may have been, in the abstract, concerns about the fact that on these relocated lots that the building heights will be at higher elevation than the existing lots. In their previous packet they had included site line diagrams, which they had not gotten to in their previous presentation. He stated that they took five locations around the highest lot, which is identified as D on the cross sections. Three points were taken from I-64 from eastbound, westbound and one looking straight up the side of the mountain. Those are indicated with the colored cars labeled a, b and c. The green line indicates the hill side. The straight line indicates the line of sight. You can see from each of those instances from I-64 that the line of sight intersects the side of the hill before you get to the building lot location. That indicates that location

would not be visible from those points of view. Also, they took two line of sight cross sections. One is from the historic Smith house west of the property, which is labeled as letter E on the diagram. There is an historic St. Andrews Church, which is on the south side of the property. From that diagram you can see that this building site will not be visible from those locations. Given that the agreement with Rosemont contemplates moving the lots further away from the subdivision and from the perennial stream and they will be no more visible than the current locations. He noted that they did not do line of sights with the current locations. He urged the Commission to allow that condition in the special use permit amendment. The second point has to do with the development rights, which exist as a matter of zoning, which were not accounted for in the subdivision plat. There was a lot of confusion and concern about where these would be developed and what is the applicant's plan. The applicant has no plan for development for lot 1. This is an accounting that should have been done with the plat in 1992 and was not done. The action that the Commission is taking and the action that was taken in 1992 do not extinguish as a matter of law the development rights since they still exist. He pointed out that he had seen this in other instances where through error or an oversight that development rights are not accounted for and platted. They end up with almost a cottage industry of development rights determinations and they end up sometimes in absurd situations where there are two property owners who have a potential claim to the development rights and the solution is a race to the Court House and the first one to record the plat can secure the development rights. They know in this instance that the development rights cannot be exercised or developed until and unless this special use permit is further amended. All this condition says is what happened to them and where they would go if they were developed. At the last meeting there were a whole lot of what ifs if they were developed, where would they go and how would they regulate it. It is not an adequate opportunity to regulate it at this time. They are simply identifying where the development rights are going in terms of parcels, which was the action that was asked for. He noted that the applicant was amendable to the proposed conditions because they would be tied to the future development of those lots because there is no plan. Whatever plan would come before this locality would have to be reviewed by the Commission along with a special use permit amendment. He pointed out that they were available to answer questions, but hopefully this presentation sheds a little more light on the situation. He noted that was really all that they were here for and asked for the Commission's favorable consideration.

Ms. Joseph asked if there has there been a final plat recorded that reflects the special use permit that was approved in 1991.

Mr. Blaine stated yes that there has been a plat recorded.

Ms. Joseph asked if it was just showing these four family divisions or does it show all of the divisions that they see.

Mr. Blaine stated that it shows all of the lots that exist within the Rocks. As to lot 1, the plat just calls it lot 1.

Mr. Morris asked if all of the neighbors were canvassed about what was being planned and if there were other neighbors that were brought in.

Mr. Blaine stated that he understood that there was a neighborhood meeting that was sponsored by the Rosemont Homeowners Association. He pointed out that Supervisor Thomas facilitated that meeting and the public was made aware of it. He pointed out that this accord was discussed at that meeting.

Mr. Thomas asked if there was any one else present who would like to speak to this application.

Michael T. Boggs, representative for Haley, Chisholm and Morris, Inc. who were the developers of Rosemont, stated out that he serves on the Rosemont Board, was President of the Homeowners Association, and also was the Chairman of the Architectural Review Board. He

distributed a letter to the Commission dated May 25, 2004. (See Attachment) He read the letter as follows. "Haley, Chisholm & Morris, Inc.'s (HCM commitment to work with The Rocks on access goes back to when the 4 family lots were originally created. This was when the Ewalls still owned the property. The Rosemont Homeowners Association (RHA) unanimously approved an amendment to the Association CC&R's on October 14, 1991 to allow HCH, as the declarant, to grant access for up to four lots on The Rocks' property in conjunction with its development of Section Two of Rosemont. The proposed agreement between HCM and The Rocks, LLC involves a number of conditions that you need to be aware of. In addition joint maintenance agreements for the proposed Newcomb Mountain Lane and the existing Rosemont Drive, this access agreement is contingent upon the following conditions:

1. The Rocks shall quitclaim a 2.04 acre overlap of boundaries that was recognized during a boundary survey of Rosemont in 1977, to HCM.
2. The Rocks shall quitclaim a 0.359 acre gore area – an approximately 45' gap between the two properties that was recognized at the same time, to HCM.
3. The Rocks shall exchange equal sized parcels of 1.39 acres each between its Preservation Tract and our Lot 54 (these are shown as Parcels W & X).
4. The Rocks LLC shall remove its existing Family Division lots 1, 2 & 3 from the slope facing HCM's lot 54 to a location satisfactory to HCM.
5. The Rocks shall facilitate an access road design that will allow Newcomb Mountain Lane to be constructed so as to minimize its visual and environmental impact to the sole satisfaction of HCM.

These conditions are all inclusive and failure of The Rocks to meet any one of these gives HCM the option to deny access through Rosemont. It is all or none. These five conditions all provide benefits to the present and future Rosemont residents, the purchasers of the four lots of The Rocks – and to the general public. At present the access road to Lot 54 and most of its house site would have to be constructed on critical slopes along the side of the ridge just below the ridge top. Just the access road alone would require clearing a swath of trees almost 100' wide to put the road into that last lot. That would require using nonconforming slopes. Even with considerable aesthetic measures the house would be quite visible to residents and visitors to the west and north of Newcomb Mountain. The top of this ridge above Lot 54 offers a broad gently sloping – almost flat building site amongst towering hardwoods. Conditions 1, 2 and 3 add this area to Lot 54 so this alternative house site can be moved up into this flatter area. With minimal tree removal and limited trimming, this site will still afford great views while the house remains virtually invisible from off the mountain. These conditions along with condition No. 5 will result in the access road being constructed on the ridge where it will only require clearing to a 20' width. One of the greatest assets the present Lot 54 has to offer is privacy. By putting this house site back onto this flat ridge top it is suddenly exposed to the rear house sites on The Rocks lots, and as now proposed will have 40 vehicles per day traveling along its frontage. In order to diminish some of these negative impacts, I have insisted that those three lots be relocated from the slope facing our new house site. When analyzed closely, using field run topography data, instead of the County 10' topo, the actual changes to these house site locations are very minimal. Existing Lot 3 house site moved 770' east onto the broad ridge top at an elevation about 2' lower on revised Lot 3. Existing Lot 4 house site moves 80' west at the same elevation on Lot 1. Existing Lot 2 house site moved 80' south to a broad ridge top at an elevation 12' higher on revised lot 2. Existing Lot 4 house site moves 100' south to a broad ridge top at an elevation 12' higher on revised Lot 4. These four revised lots are paired on two gently rounded knolls which are surrounded by other mountains. They will be no more visible to the outside world than they are at present – and they will be a whole lot less visible to our Lot 54. As proposed these four lots along with the three existing Rosemont lots will be subject to the Rosemont Architectural Review Board approval of any tree over 6" D.B.H. that the owners want to remove. As a result of this shift of existing Lots 1, 2, and 3; three house sites and their associated septic systems will be removed from locations on a slope – portions of which are critical – about 150 feet from a headwater to Ivy Creek. While this portion of the stream is not mapped as perennial, I have never seen it dry – not even in the drought two years ago. All of these slopes supported a mountain top orchard at least as late as 1937 and have now recovered from past neglect to once again support a hardwood forest. As evidenced by rock outcrops and the stream bottom, the soils on these slopes appear to

be fairly shallow. Of course, the overwhelming benefit to approving these land exchanges and minimal shift in lot locations, is that it allows an agreement to move forward that will eliminate well over 7,000 feet of road construction on The Rocks Mountainous Preservation Tract – and greatly reduce the visual and environmental impact of the 4,830 feet of road that is proposed to serve as joint assess to these seven lots. Thank you for you time and consideration.

Mr. Thomas pointed out that the normal time for public input is three minutes, but he allowed additional time for Mr. Boggs because he felt that the information was something the Commission needed to hear. He asked if there was anyone else present who would like to speak.

Anabel S. Bowen, owner in Rosemont, stated that she was speaking in her capacity as Secretary/Treasurer of the Rosemont Homeowners' Association Board of Directors. She passed around copies of the same letter that was distributed to the Commission at the last meeting. (See Attachment of Letter dated April 26, 2004 addressed to the Planning Commission from the Rosemont Homeowners' Association, Inc.) In lieu of reading the letter, she asked to re-express the Board's unanimous support for the subdivision request and the special use permit. It is based on the fact that they believe that the road and the house sites as being proposed would be a whole lot less visible not just to the 20 lots in Rosemont Subdivision, but the entire neighborhood and Ivy Entrance Corridor. If this is not done, they feel that they would be adding scars to the hillsides. In addition, our Homeowner's Association annual meeting was last Thursday, May 20. They did not seek nor was any vote taken because the Board felt it was premature since they were still waiting for the Planning Commission and the Board of Supervisors on both the subdivision request and special use permit to act. There were many questions and answers given at that meeting. There was no opposition voiced to either the subdivision request or the special use permit. She pointed out that at the right time when all the various County approvals are in place, their Board was prepared to move forward with taking this to a vote to our homeowners as they would be required to incorporate the four Rocks lots into Rosemont as full members of the Homeowners' Association and to be subject to all of their by-laws, covenants and restrictions.

Harry Bowen, lot owner and husband of Anabel Bowen, stated that they have a critical lot in this equation. He pointed out that they owned the lot on the corner of Newcomb Mountain Lane and Rosemont. He assured the Commission that if there was an alternative way to avoid having the increased traffic that they would do it except for one thing, which is the environmental impact over the entire Ivy Entrance Corridor. He noted that at the last meeting one of the Commissioners had said that it was a no brainer to approve this entrance through Newcomb Mountain Lane. He urged the Commission to consider and approve all of these requests in order for Newcomb Mountain Lane to be utilized. (See Attachment of Letter dated April 26, 2004 to the Planning Commission from Anabel S. and Harry Bowen, Jr.)

Susan McKinnon, owner of two lots in Rosemont Subdivision, stated that she was a little confused. She pointed out that at the previous meeting that Mr. Blaine had stated that he had communicated with the Rosemont homeowners, but she has had no communications. She pointed out that there has been no agreement made with the Rosemont homeowners. She noted that she had heard that there has been an accord and a lot of communications since 2002 and that an agreement has been reached. There was a question and answer period last Thursday night, but it has not really been presented to the homeowners. She pointed out that she has not personally heard from anyone from The Rocks about what this proposal would do to her development. There has been no agreement to allow the four lots into Rosemont Subdivision. She asked if the homeowners had to vote to allow them to be part of the subdivision. The few emails that she saw when this came up about a month ago were opposing the additional 40 automobiles that might go by. She noted that she was not that concerned about that, but the couple of emails that she read were not positive. She pointed out that nobody wants to see a scar across the mountain, but that was approved by the Planning Commission in 1991. She stated that she needed clarification on how this communication happened that she owns two lots and has not heard anything.

Jeff Suburwich stated that he was one of the first residents at The Rocks and pointed out that he just received a letter last week from the lawyer. He asked for additional information about the fourth amendment concerning the development rights since he did not know anything about that and how it might impact the people who live in The Rocks. He pointed out that there were only a couple of residents in The Rocks so far. He stated that he would appreciate some clarification on this matter.

Dr. David Adel, owner of the residue farm at The Rocks, pointed out that he was involved with the potential transfer of the division rights to lot 1, which he owns. He stated that he would like to understand if there were any time requirements or restraints in bringing a proposal to the Planning Commission for potential future development of these division rights.

Mr. Thomas asked if there was anyone else present to speak on this application. There being none, he closed the public hearing to bring the matter back before the Commission for discussion. He suggested that they try to answer some of these questions.

Mr. Rieley stated that it looks like when the Rural Preservation Development was platted there was a clear note on the drawing that says no more division of any of these lots. He pointed out that he was having a hard time understanding why there was a recommendation for approval that would essentially add three development rights to a previously approved plan.

Ms. Amarante stated that he was absolutely right that as a function of the original special use permit those three development rights went unutilized. But, she thought that the best example that she had heard on what really happened to those development rights is that if the special use permit did not exist and if they decided not to use the special use permit that those development rights have to be accounted for somehow. Then at that point they would be able to use the development rights. She stated that she just looked at whether or not the density requirements for this development would change. If they had come originally with the 46 lots, she did not see where the County would have disapproved that. In all fairness to whoever owns lot 1 now or to The Rocks LLC that those development rights potentially do exist on their property and they are asking to have the opportunity to utilize them.

Mr. Edgerton noted that he continues to be confused about this. He agreed with Mr. Rieley's concern that the permit was granted that specifically states no further development. There is a note on the plat that was just circulated. The gentleman who spoke just a minute ago said that he was the owner of lot 1, which would tell him that not only was the special use permit recorded but it has been acted on since some of the property has transferred. He asked if that was correct.

Ms. Amarante stated that was correct because the special use permit was being used.

Mr. Edgerton stated that the special use permit was being used as approved in 1991 for 43 lots.

Ms. Amarante stated that was exactly correct.

Mr. Edgerton pointed out that he got an email last night, which was why he had not had a chance to discuss this with the Commission, from the previous owner who told him that they have been notified of this request for additional development rights. He indicated that those development rights did not exist because when they were originally calculated back in 1990 they were only able to get those development rights off of slopes that were too steep to develop. He asked if staff could enlighten them on this.

Ms. Amarante stated that she had looked back at the previous plan and the past history and found that there are building sites on lot 1 where those development rights could be utilized.

William Fritz, Development Process Manager, stated that he did that review in 1991. What they did was that The Rocks was created from four or five separate parcels. What they were required to do was to bring before the County a conceptual layout that would show how they would develop the property by right and not in a rural preservation development showing how those lots would lay out. He pointed out that he worked with a couple people back then on the applicant's side and they came up with a 43 lot configuration that was relatively easy to do. The applicant said that was the number of lots that they wanted to do, but they knew they had 46 rights because mathematically that was the number. The applicants came up with 43 lots because it was the number that they wanted to do. He pointed out that he agreed with Ms. Amarante from going back in his memory that if they really wanted to push for it they could have found additional building sites in there, but they were out for a specific number of 43. They drew up a plan which had 43 lots and the conversation stopped. Staff never said that the other three development lots could not be utilized or could be utilized. There was no further analysis.

Mr. Edgerton quoted the message that he got as follows, "We determined with the County that these unaccounted for by-right rights did not exist because they were pulled from 21-acre lots on terrain on which it was too steep to build."

Mr. Fritz stated that was not his memory, but that was the previous owner's memory. He noted that the previous owner may have gone back and looked at the files in much more detail than he had.

Ms. Higgins asked if there were any items related to the special use permit that put the statement in that no further subdivision of the lots could be done or if that is just standard language for a plat. She asked if it was a condition of the plat, but not a condition of the special use permit.

Mr. Fritz stated yes it was because the preliminary plat was a part of the special use permit back in 1991, which showed no further development because they had demonstrated they could get 43 lots. Therefore, that was the number that staff went with at that particular point in time that they could get 43 lots.

Ms. Higgins asked when the 21 acres comes into play.

Mr. Fritz stated that you have to calculate the number of development right lots you can do plus the number of 21 acre lots you can do. Therefore, if you have a huge parcel you may have had five 2-acre lots and then ten 21-acre lots.

Ms. Higgins stated that the point is that you could have gotten three more 30,000 square feet of less than 25 percent slopes on lot 1.

Mr. Fritz stated that was correct.

Ms. Joseph stated that was nebulous.

Ms. Higgins stated that it does not matter because it needs to be done under a special use permit anyway.

Mr. Fritz pointed out that the original calculations had nothing to do with lot 1. The original calculations had everything to do with the lots that were in existence on December 10, 1980. The development potential was calculated by how the property could be divided on plats that existed on December 10, 1980. Essentially you do that calculation across the entirety of the property, and then for purposes for the Rural Preservation Development you erase all of those old lines and say now you have 43 lots sort of meshed around in this area and stop worrying about parcel boundaries. He pointed out that staff just never calculated anything more than 43 lots and he was not going to dispute that they can't.

Mr. Edgerton asked if he has gone back now and looked at what existed at 1980 and then recalculated the numbers and now came up with 46 lots.

Mr. Fritz stated yes that staff knows mathematically that it was 46 lots.

Mr. Rieley questioned if it was done mathematically if he had a plat with all of the lots laid out on it.

Mr. Fritz stated that he has not gone and taken a plat of the original parcels or gone back to the 1991 original feasibility analysis, for a lack of a better term to call it, and said there are the other 3 and how it worked out and what parcels that are coming from. It is very difficult to tell where the parcels are coming from now because of the other actions. Therefore, they would have to redo the calculation across the entirety of the original property. The plat that they brought in had 43 lots.

Ms. Amarante pointed out that she did not go back to look and see if they could physically get the 46 lots. When the 2002 subdivision plat came in she had gone back to look at that, but for this most recent one she did not go back to see if they could actually get the 46 lots.

Mr. Blaine asked if he could make a point.

Mr. Thomas asked if she said that she did not go back and verify it.

Ms. Amarante stated that she looked at it in 2002, but for this most recent application she did not think about making the distinction between the 46 lots. When she got the statement that they were allowed 46 lots and that those 3 development rights existed out there, she just assumed that they had shown those 46 lots on the by right plan, but she did not confirm that.

Mr. Blaine stated that this is a legal matter and he was surprised that the County Attorney has not been asked for an opinion or has not chimed in. If there is a parcel determination needed to establish that 46 development rights exist then we should have to produce that. We are not trying to create something that does not exist as a matter of density; we are just trying to account for it. He noted that there is a policy if you have a RPD plan that you have to show this information.

Mr. Thomas stated that if the Commission has questions for Mr. Blaine that they will request for him to come back up to speak.

Mr. Thomas asked Mr. Kamptner if he could enlighten the Commission on the legality of the 43 lots versus the 46 lots. He asked which was the correct amount.

Mr. Kamptner stated that there was an official determination done in 1991 that determined that these five parcels have a total of 46 development rights.

Mr. Fritz pointed out that when the original RPD was done they had to go back and recreate the 1980 maps to determine how many development rights existed and then complete a mathematical formula to calculate the development lots and how many 21 acres lots there were and it came out at 46 lots.

Mr. Rieley pointed out that the special use permit is not based on 46 lots. The number that is allowable under the special use permit is not based on a mathematical calculation, but based on the actual number that the applicant could get out of the lots, which the applicant has to demonstrate.

Mr. Fritz stated that the application was for 43 lots. He stated that The Rocks is not different than any other Rural Preservation Development. There have been some other RPD's that have

demonstrated that they could get X, but they apply for Y that was actually less than what they could do.

Mr. Kamptner stated that the applicant could demonstrate any number of lots up to 46 if the developer wished to have that amount.

Mr. Edgerton stated that if the property would not support 46 lots and if it was all in critical slopes, as a theoretical argument, does that mean you can do 46 lots anyhow and then come back 13 years later and say let's put them here.

Mr. Fritz stated that in Mr. Blaine's defense that he has a real good point. At the time that he goes to exercise those 3 lots that the County would require him to go back and recreate the 1980 map and show where he gets the development potential of 46 lots before he would be allowed to exercise those.

Mr. Edgerton asked why they could not ask for that now before the County gives those back to him.

Mr. Fritz pointed out that because of the language of the condition that he was not allowed to exercise the rights because he was doing a bookkeeping record. Whether you do that condition now or not, and Mr. Kamptner may want to comment on this, does not affect the number of development rights that existed in 1980. It regulates the usage of those development rights. He is limited right now to 43 by virtue of the 1991 approvals.

Mr. Cilimberg asked to note something that may or may not help as a statement in advance. First of all upon receipt of any RPD we are going to ask for a presentation of a conventional subdivision that shows building sites to determine how many lots should be in that RPD. Apparently in 1991/1992 they produced a conventional division of 43 lots which led to a RPD of 43 lots. If in fact there are any additional development rights outside of what they show us, since they still exist and float, then they may or may not ever be utilized, but they don't give you lots in the RPD. This request is to ask for the allocation of those three rights and it is not to ask for the lots themselves. The real effect is that until they produce, as Mr. Fritz said, a conventional division showing they could have gotten the 46 lots, they are not going to bring you three more lots to be approved as part of the special use permit amendment. Nothing forces them to do it now, but by the same token the Commission and Board does not even have to approve those, but it could come to you at a later point. He noted that what he was saying is that those 3 rights will continue to float rather than going with one particular parcel.

Mr. Edgerton asked if they could be transferred to any parcel in The Rocks.

Ms. Joseph asked why the rights would have to go with lot 1.

Mr. Edgerton asked why the rights need to be transferred to lot 1, and if the rights could be transferred to the rural preservation lot or to Rosemont.

Mr. Cilimberg stated that they could not transfer the development rights to Rosemont because that would be outside of the development. He pointed out that Mr. Kamptner would have to speak to how they could be transferred if they float because he was not sure of that answer.

Mr. Kamptner stated that this may resurrect the kernel rule, but if those three development rights exist they need to stay within The Rocks. He assumed that lot 1 was from a parent parcel which those three development rights spring from. He stated that Ms. Amarante was nodding her head that was correct.

Ms. Joseph stated that if it was a RPD the kernel does not have to stay on the parent parcel because you could put them anywhere.

Ms. Amarante stated that you can't have the conventional development in the Rural Preservation Development because the two cannot be mixed. Therefore, the development rights would have to stay within The Rocks.

Ms. Joseph stated that the rights could go on lot 47.

Ms. Amarante pointed out that the one distinction that she made in the staff report was that any one of the current owners of any lot within The Rocks that has the acreage to subdivide could be coming before us as the applicant to amend the special use permit to utilize one of those floating development rights. The way staff is looking at it is that if any lot should have them that it should be lot 1. Staff is not creating those lots now. She noted they were putting conditions on the allocation of those rights so that if the lots are going to be used that they can control where they are going to be and how they are going to be used.

Mr. Rieley noted that there are a lot of questions.

Mr. Cilimberg stated that probably the distinction here in how to handle this is that you feel like you want to have the allocation of those rights to a parcel where staff believes they would best be utilized if they ever come back before you, then the fourth request should be approved. If instead the Commission prefers that the three rights float and any particular property owner comes in and asks for an amendment to create one or more of those rights on their parcel, then the fourth request does not need to be approved.

Mr. Kamptner asked if they have lot 1 coming in now asking for these three development rights. Therefore, they may have somebody who is coming forward and asking for these rights.

Mr. Cilimberg stated that they could not utilize it if it is not approved, and then the rights still float and you could have any one of the others to come before you. What they don't have is any configuration of the new lots.

Ms. Higgins stated that if this is truly three development rights that are floating and lot 1 is 106 acres that the applicant would still have to demonstrate that they can achieve a build able lot of 30,000 square feet of less than 25 percent slopes. She noted that the applicant might not be able to get but one lot. She stated that she did not understand why this is a big issue because this is the kind of development that the Commission just discussed and supported under the Rural Areas Comp Plan Amendment.

Mr. Edgerton stated that the big deal was that in 1991 a special use permit was granted for 43 lots. The previous owner that put in that application said that the current number of lots was the maximum allowed. That is his statement. The staff is now recollecting something different. He noted that he was not sure who to blame, but frankly what happened publicly and what was recorded was a special use permit for 43 lots. They come back 13 years later and say just kidding we need to subdivide it further. That special use permit was granted, and in fact the plat that they saw last month showed lot one as open space. Now we are talking about dividing that into four lots, which was very different. That is the big deal. That is very different from what they agreed to 13 years ago.

Ms. Higgins stated that this was a very serious issue in that way, but it is going to be controlled because if the lots can be created they will still have to meet the criteria and come back to amend the special use permit. Therefore, they have control about their potential use. But if the development rights still float, and it was a legal decision whether they exist or not, she was not sure why they were having the back and forth discussion.

Mr. Edgerton asked why bother creating this theoretical thing to float the rights to one lot.

Ms. Higgins stated that it does not make this development any worse to have 46 lots versus 43 lots. They are not carving a great chunk of property out of the rural areas and putting it into conservation. She noted that there were some oversights and maybe some things that occurred in the chain of events, but she did not see penalizing the property owner in this case.

Mr. Rieley stated that he would like to ask Ms. Amarante a question. He noted that Ms. Amarante had said that she thought that the allocation of the development rights to lot 1 was the sensible place to put them. He asked if she would explain what went into her thinking.

Ms. Amarante stated that after further conversations with the Zoning Department, the applicant and the County Attorney's Office that it seemed like if those development rights are going to be used that lot 1 has the area to be able to utilize them. It has the building sites as far as she could tell. There have been two building sites verified by the applicant's surveyor. Also, it was just a great idea that maybe they could condition this allocation on lot 1 and make it like a mini RPD when they come back to amend the special use permit. She felt that if they conditioned the way it was written in the staff report that then they would be able to get a preservation tract out of lot 1 with an easement just like the 300 acre preservation tract.

Ms. Joseph stated that the restriction on lot 1 is that it is lot 1 with one development right. She pointed out that she did not feel any differently than she did the last time they reviewed this. She understood that they were here because it was an error in the advertising, but she felt no differently than she did last time. She supported the conditions that they approved it with the last time, but not with the original conditions.

Ms. Higgins stated that in order to move forward she would make a motion, and then they could further discuss and vote. She made a motion to approve the request as staff recommends with items 1 through 4 with the additional conditions the way they are rewritten in the staff report. She noted that her position was that it was either all or nothing for the applicant. She felt that they have lost sight of some of the other issues that are positives in this and that they would be back before us for a special use to create the lots. At that time they could possibly correct something that maybe should have happened in 1991, and if they do that they might lose the opportunity to actually achieve that. She felt that was an overriding benefit to something that they will have control over in the future. Therefore, she made a motion to approve SP-03-079 with staff's recommendations for approval on items one through four.

Mr. Thomas stated that there was a motion on the floor and asked if there was a second. He added to Ms. Higgins comment that they were probably losing sight of what the applicant is bringing forth to us. He pointed out that lot one is applying for a special use permit and that the three division rights do exist in The Rocks. There being no second, the motion failed.

Mr. Rieley asked to change the conversation just a little bit. He thought that Mr. Boggs and Mr. Blaine had raised pertinent and new information on the issue of the reconfiguration of the lots at the top. He pointed out that he had not visited the site, but that Mr. Thomas had and he would like to hear his observations about that. He noted that he wished that the cross sections had gone across I-64 because that is a valley and the site lines would have been different if they had been continued. Nevertheless, he thought that the relative visibility of these, the impact on the stream, the fact that they are averaging five feet higher in elevation and back some distance back from the road is pertinent. He suggested that the Commission should discuss it.

Mr. Thomas stated that he visited the site with Mr. Boggs. To get to this area the road has been reconfigured to be more workable with the contours of the mountains. When you get to the site area it just flattens right out. The left side, which would be the northwest, is where the lots were previously located. It is pretty much a mountain side and the lots are really on a down slope. It would be more visible because of the removal of some of the trees, the houses would be lower and you would probably be looking almost at the house sites, with one exception of the lot at the top that was tucked down into a little valley. There are two of the lots like that. The visibility in his

opinion is going to be less with the houses in the new configured lots. He felt that it was going to be very difficult to see the houses. In the winter time with no leaves on the trees you would probably be able to see a light in the window. He felt that the proposed location would really be the best location rather than putting them on the side of the mountain looking right into the house. He pointed out that Mr. and Mrs. Bowen live right at the beginning of the proposed road. He noted that one of his concerns was the fact that the lady that came and spoke that she was a property owner in Rosemont and has never heard a thing about. He noted that he was under the impression that Rosemont was going to accept all of the lots into their covenant and road maintenance.

Mr. Edgerton noted that concerned him also because it appears that the property owner association is still in control of the development.

Ms. Amarante stated that there was a condition that came about at the April 27 meeting that addressed that, but the change of those four lots is hinging on the Rosemont Association accepting those four lots into their covenant and into their homeowner's association.

Mr. Edgerton asked if that involved the other homeowners or does the developer still control that.

Mr. Thomas asked Ms. Bowen to please come forward.

Ms. Bowen asked to clarify a couple of lines in their covenant. Their covenant has a clause which was done in 1991 when Haley, Chisholm and Morris had most votes. But, there was a unanimous vote that incorporated this one clause that says that Haley Chisholm and Morris may provide the right of access, which was Verulam Farm, to those four family lots. But, those four family lots would have to pay our fees for road maintenance just as any other section 2 lots, being the lots on the private part of Rosemont and the side roads. What has occurred is that The Rocks has written Rosemont a letter asking that should an approval take place would we please vote them into Rosemont. Our Board has written a letter back to The Rocks saying our Board unanimously supports that action once all of the approvals are in place. She noted that they were almost in a chicken and egg situation.

Mr. Edgerton asked if the individual homeowners in Rosemont Subdivision have to take a vote. He asked if they have been notified.

Ms. Bowen stated yes that it would take a 60 percent vote of all of the homeowner's to change the covenant. She pointed out that they have sent a couple of emails, had an informational Board meeting in March and another Homeowner's meeting last Thursday. There were at least 35 lots represented at last Thursday's meeting, with some by proxy. At that meeting they distributed copies of those letters plus that letter that the Board wrote to the Commission. She noted that Rosemont Homeowner's Association was still waiting for the Commission and Board of Supervisors to take an action before they proceeded.

Mr. Thomas pointed out that condition 20 specifies that if there is no approval from the homeowner's association that it is not going to happen.

Mr. Rieley stated that if they decided they wanted to do this as a philosophical matter they would still need to agree that 1) there was 46 lots to begin with that has never been demonstrated, and 2) lot 1 is the right place to put the floating development rights, of which they have not even seen what the alternatives are. Therefore, that would be a very difficult thing to do at this stage. He noted that Mr. Thomas was the only Commissioner who visited the site, but he cannot make a motion. Therefore, he was willing on the basis of the of the information that Mr. Boggs and Mr. Blaine presented to make a motion for approval for the requests 1, 2 and 3, which is the two provisions that they approved last time in addition to the provision for rearrangement of the lots on the mountain, but not for the allocation of the development rights.

Mr. Cilimberg suggested that Ms. Amarante note the conditions that would need to be removed from the recommendations to cover his motion.

Mr. Higgins pointed out that Mr. Rieley brought up two really good points. She suggested that they allow the applicant to consider if he wants to defer so he can provide the additional information before the Planning Commission takes official action at this meeting. If the applicant provides the documentation, then the Commission could make a better informed decision.

Mr. Rieley suggested that he be allowed to complete his motion and see if it receives a second and then they could open it for discussion and consideration.

Ms. Amarante stated on page 4 under item I, delete the conditions 3, 4, 5, and 6 and then amend 7 to remove the words "including those permitted by condition 3." That would basically take away everything that deals with lot 1.

Mr. Rieley made a motion for approval of SP-2003-079 for requests 1, 2 and 3, which includes the two provisions that they approved last time in addition to the provision for rearrangement of the lots on the mountain, but excluding the allocation of the development rights, with the conditions as amended by staff.

1. Except as otherwise provided herein development of The Rocks shall be in accord with the "Special Use Permit Plan…" prepared by Thomas B. Lincoln Land Surveyor, Inc. dated April 2, 2004. For purposes of these conditions the plan shall heretofore be referred to as "The Application Plan."
2. Except for minor boundary adjustments, (as determined by the Agent), the boundaries of Tax Map 74, Parcels 18C, 18C1, 18C2 and 18C3 may be modified only as shown on "The Application Plan."
3. ~~Within the boundaries of Revised Lot 1, there shall be allowed a total of 4 (four) dwelling units or 4 (four) lots. Before a building permit is issued for a second dwelling unit, or before a subdivision plat is approved creating a new lot(s) within the boundaries of Lot 1, this special use permit (SP-03-079) shall be amended and a new application plan shall be reviewed and approved by the County authorizing the dwelling units or lots. For purposes of these conditions the term "subdivision" shall also mean family divisions.~~
4. ~~All subdivisions within the boundaries of Revised Lot 1 shall meet the design standards and special provisions set forth in Section 10.3.3 of the Zoning Ordinance.~~
5. ~~All dwellings and development lots within the boundaries of Lot 1 shall be located east of the floodplain of Ivy Creek.~~
6. ~~All future development lots subdivided from Lot 1 shall be no larger than 3.26 acres in area, shall be located in a manner consistent with, and be integrated into the overall design of the other development lots in The Rocks.~~
7. A minimum of ten trees per acre shall be provided on the development lots~~, including those permitted by condition three (3),~~ in accordance with Section 32.7.9.5 of the Zoning Ordinance for the purpose of providing screening from Interstate 64 and Route 637. Trees shall be installed within two planting seasons of the date of issuance of a certificate of occupancy for the dwelling on the lots.
8. Clearing of land shall be limited to the minimum amount necessary for the construction of access roads, dwellings, and septic fields.
9. Building siding and trim shall be of colors and materials that blend with the surrounding natural environment as determined by the Director of Planning. Highly reflective colors or surfaces, or light colored roofs, as determined by the Director of Planning, are prohibited.
10. Concrete driveways visible from off-site shall be darkened to blend with the surrounding natural environment as determined by the Director of Planning.
11. The bridge shall not be constructed until the approvals in conditions 12 through 15 have been obtained;
12. Department of Engineering issuance of an erosion and sediment control permit;
13. Department of Engineering approval of bridge design;
14. Department of Engineering approval of hydro geologic and hydraulic calculations to

ensure compliance with Section 30.3. of the Zoning Ordinance;

15. Department of Engineering approval of private road plans and drainage calculations. Private roads shall be designed to Virginia Department of Transportation mountainous terrain standards. This condition is only applicable to the private roads constructed to access and provide frontage to all the lots in the Rocks development except the Rural Preservation Tract and revised Tax Map 74, Parcels 18C, 18C1, 18C2 and 18C3 as shown on "The Application Plan."
16. The extension of Newcomb Mountain Lane as a private road is subject to Planning Commission approval. The Planning Commission shall establish the standard of the private road extension at the time of review.
17. The existing road, shown entering from Rocks Farm Drive, parallel to Interstate 64 and meandering through the Preservation Tract shall not be improved or widened except for agricultural and/or forestry purposes. The need for such improvements shall be reviewed by the Public Recreational Facilities Authority. If the Public Recreational Facilities Authority deems that the improvements are warranted, construction shall not commence until a road plan and an erosion and sediment control plan has been reviewed and approved by the County Engineer.
18. Prior to the approval of any plat modifying the boundaries of the Rural Preservation Tract, the rural preservation easement shall be amended to allow the modification; amendment to the easement is subject to the review and approval of the County and the Albemarle County Public Recreational Facilities Authority. Approval of this special use permit in no way implies or guarantees approval of a modified easement by the County or the Albemarle County Public Recreational Facilities Authority.
19. Prior to the approval of any plat providing access to Newcomb Mountain Lane an amended road maintenance agreement shall be reviewed and approved by the County Attorney. This agreement shall be recorded with the plat.
20. Provide evidence to the County that the Rosemont Homeowner's Association consents to the Newcomb Mountain Lane extension to serve as access to Tax Map 74, Parcels 18C, 18C1, 18C2 and 18C3.

Mr. Edgerton seconded the motion.

Ms. Joseph stated that condition 15 talks about requirements for VDOT and private road standards using mountain terrain standards. She asked if they were not going to require those standards for that extension of the Rosemont Road.

Ms. Amarante stated that this was an old condition from 1990 that she had to rework to take into consideration these amendments. She noted that there is another condition 16 that gives us the authority to approve a private road with the standards as laid out in the Subdivision Ordinance for the preservation tract and the four mountain top lots.

Mr. Cilimberg pointed out that would require the Commission's approval.

Ms. Higgins asked if they want to ask the applicant if he wants to defer at this time before the vote on whether they want to provide the additional documentation.

Mr. Thomas asked the applicant to come forward.

Mr. Blaine stated that the applicant would support Mr. Rieley's motion.

The role was called and the motion carried by a vote of (7:0).

Mr. Thomas stated that the motion carried for SP-2003-079, The Rocks Amendment, which would be heard by the Board on June 9.

Mr. Thomas stated that the motion carries and the request would be heard by the Board of Supervisors on June 9.

Mr. Cilimberg stated that if it was appropriate that he would just like to answer one question that was asked. He stated that in the event of anything happening on the three rights on any lot that there is no time frame within which anyone would need to bring that to you. That question was asked specifically to lot 1, but in general there are no time frames for bringing that type of request to the Commission.

Old Business:

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

New Business:

Mr. Thomas asked if there was any new business. He pointed out that last week they had discussed their vacation plans.

Mr. Morris stated that he would not be present next week.

Mr. Cilimberg suggested that the Commissioners email their vacation schedules to Sharon Taylor.

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

Adjournment:

With no further items, the meeting adjourned at 7:25 p.m. to the June 1, 2004 meeting.

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V. Wayne Cilimberg, Secretary

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