Albemarle County Planning Commission
June 1, 2004

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, June 1, 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; Jo Higgins, Marcia Joseph; Calvin Morris; Bill Edgerton and Pete Craddock, Vice-Chairman. Mr. Edgerton arrived at 6:14 p.m.

Other officials present were David Hirschman, Water Resources Manager; Wayne Cilimberg, Director of Planning & Community Development; Amelia McCulley, Director of Zoning & Current Development and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Thomas called the regular meeting to order at 6:10 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. There being none, the meeting proceeded to the consent agenda.

Consent Agenda:

Approval of Planning Commission Minutes – March 23, 2004 and March 30, 2004

Mr. Thomas asked if any Commissioner would like to pull any item from the consent agenda. There being none, he asked for a motion.

Mr. Morris moved to accept the minutes on the consent agenda as submitted.

Mr. Craddock seconded the motion.

The motion carried by a vote of (6:0). (Mr. Edgerton – Absent)

***Items Requesting Deferral*:**

SP 2004-004 Lewis & Clark Exploratory Center of VA (Sign #45, 47, 54) - Request for a special use permit to allow establishment of the Lewis and Clark Exploratory Center of Virginia, in accordance with Sections 10.2.2.1 and 13.2.2.1 of the Zoning Ordinance, which allows for a community center. The property, described as Tax Map 62 Parcel 23, contains 101.47 acres, and is zoned RA, Rural Areas, R-1, Residential and EC, Entrance Corridor. The proposed site is located at the northern end of Darden Towe Park, on the west side of Rt. 20N (Stony Point Road), approximately one-half mile north of the intersection with Rt. 250E (Richmond Road), in the Rivanna Magisterial District. The Comprehensive Plan Land Use Plan designates this area as Parks and Greenways, and Neighborhood Density Residential (3 - 6 dwelling units per acre) in Neighborhood Three. **(STAFF REQUESTS DEFERRAL TO JUNE 15, 2004.)**

AND

SP 2004-006 Lewis & Clark Exploratory Center of VA (Sign #45, 47, 54) - Request for a special use permit to allow fill in the flood hazard overlay district, for activities associated with the proposed Lewis and Clark Exploratory Center of Virginia, in accordance with Section 30.3.05.2.1(2) of the Zoning Ordinance, which allows for uses or activities in the floodway. . (Susan Thomas) **(STAFF REQUESTS DEFERRAL TO JUNE 15, 2004.)**

Mr. Thomas opened the public hearing and asked if there was anyone present who would like to speak regarding SP-2004-004, Lewis & Clark Exploratory Center of VA. There being none, he closed the public hearing to bring the request back to the Commission for action.

Mr. Rieley moved to accept the staff's request for deferral of SP-2004-004, Lewis & Clark Exploratory Center of VA, to June 15, 2004.

Mr. Morris seconded the motion.

The motion carried by a vote of (6:0). (Edgerton – Absent)

Mr. Edgerton arrived at 6:14 p.m.

Mr. Thomas stated that the motion carried for SP-2004-004 to be deferred to June 15, 2004. He stated that the next item was SP-2004-006, Lewis & Clark Exploratory Center of VA. He opened the public hearing and asked if there was anyone present who would like to speak regarding SP-2004-006. There being none, he closed the public hearing to bring the request back to the Commission for action.

Mr. Morris moved to accept the staff's request for deferral of SP-2004-006, Lewis & Clark Exploratory Center of VA, to June 15, 2004.

Mr. Rieley seconded the motion.

The motion carried by a vote of (7:0).

Mr. Thomas stated that the motion carried for SP-2004-006 to be deferred to June 15, 2004.

Public Hearing Items:

ZTA-04-04 Groundwater - Amend Section 31.2.2 and add Section 32.5.7, of Chapter 18, Zoning, of the Albemarle County Code. The amendment to section 31.2.2 would prohibit issuance of a building permit for any structure to be served by an individual well located on a lot of record less than twenty-one (21) acres in size existing prior to the effective date of Article IV of Chapter 17 of the Albemarle County Code, until the applicant complies with Albemarle County Code § 17-404. Section 32.5.7 would require that developers submit with each preliminary site plan the groundwater assessment information required by Article IV of Chapter 17 of the Albemarle County Code. The complete ordinance is available for examination by the public in Room #218, County Office Building. (David Hirschman)

Mr. Hirschman stated that the Commission had a brief work session on April 27. At that time he gave a power point presentation and distributed this publication along with all of the important documents that were generated over the course of a couple of years. It includes the Groundwater Standards that reflects the changes that the Groundwater Committee made after the Roundtable Meeting. The actual ordinance amendments were included in that packet. Most of the amendments are made to the Water Protection Ordinance that would add a new Article 4. Basically the changes to the Subdivision Ordinance and Zoning Ordinance were only to cross reference the changes made to the Water Protection Ordinance. Also, there is the proposed Groundwater Assessment Standards as recommended by the Groundwater Committee. The Assessment Standards would be in the Design Standards Manual so people would know that the Ordinance establishes the requirements. But, the real meat of that would be in the Assessment Standards. The Assessment Standards would be what we would actually do to comply with these Ordinances, the Groundwater Management Plan and so forth. Therefore, it is the nuts and bolts of it. The history and timeline of the Groundwater Committee is included. A summary of the issues that came up during the Roundtable Meeting and how those issues were addressed is also included. He called the Commission's attention to something that was in his power point

presentation in April, which was not specifically listed in the Ordinance. He asked that the Commission turn to page 31 in the blue book, which was about the fees and anticipated costs of complying with the program. This was something that he wanted to make sure that the Commission is cognizant of as they move forward. Staff was asked by the Board, when they adopted the Resolution of Intent back in September of last year, to develop a fee schedule based on the assumption of 100 percent cost recovery. As talked about at the April work session, 100 percent cost recovery is not something that happens with any of our programs. The County usually recovers only a certain percentage of costs. These numbers are making the assumption that the County could recover expenses so that this would be a revenue neutral program. It is going to be the Board's decision about whether they are going to want to proceed with that strategy or back off and try to recover 50 or 60 percent of the program costs. But, the numbers that you see under Section 4 are the anticipated costs for an applicant to prepare the necessary plans, but in addition there are also the County's fees. It is the County fees that make the assumption of 100 percent cost recovery for a full time employee to administer this program plus a surcharge for the monitoring well network that they propose to set up through this program. The Commission needs to be aware of this since it is an important part of the program. The Commission might want to discuss this issue further and possibly recommend a certain strategy to the Board. The assumption was for 100 percent cost recovery. Aside from that, he had conveyed all of the information in April. If the Commission has any specific questions, he would be happy to address them. There are several committee members present if the Commission has any questions.

Mr. Thomas asked if any Commissioner had any questions for Mr. Hirschman. He asked what the comments were on the structure of the expenses during their meetings.

Mr. Hirschman stated that there were no comments on that because they did not have this information when they had the Roundtable Meeting in February. Therefore, there was no formal way for people to comment on the fees, but he had not received any informal comments during that time. He pointed out that he was sure that it was something that people would comment on.

Mr. Thomas opened the public hearing and asked if there was anyone else present to speak. He stated that two people were signed up to speak with the first being Mr. Neil Williamson.

Neil Williamson, representative for the Free Enterprise Forum, complimented staff for taking a large numbers of the comments and concerns that have come up in the roundtable sessions. The Ordinance in front of the Commission is a solid Ordinance that shifts costs and makes an adjustment in the timing of costs for putting the wells in. It seems to make some good common sense to do so prior to the building permit. There have been some questions with regard to how quickly the County is going to be able to move on these expedited wells because they would be waiting for building permits as they now wait for the CO. In this day and age of just in time deliveries that may complicate matters, he would assume that the County will do all in its power to be expedient in that manner. One question that was raised in their April 27 work session that is not in the Ordinance, which he would prefer that it did not go in the Ordinance, was the concern raised by Mr. Edgerton with regard to drilling a well prior to a plat being created. There are a number of legalistic and very reasonable reasons why that will not work as an Ordinance. He understood the concerns, however he believed that it was a solid measure before the Commission and hoped that they would seek for its approval.

Mr. Lanny Moore, the owner of a local well drilling business, stated that he has been in operation since 1930. He stated that the proposed Ordinance was going to be a very good one for the public. The main thing was to have anyone building a house to at least know that they must have a well before they start building their house. The only problem that he would foresee is the time frame. At this time there is a cost to get a well permit of $127.50 with $75 of that going to the State and the additional amount going to the County. If there was some way that the County could put some pressure on the State employees to move a little faster, it would be helpful to the homeowner and the well drilling industry. At this time it takes as much as a month to get a well

drilling permit, and by adding this time frame might be increased. He asked that the County look into it and see if they could possibly expedite these permits. There are certain parameters that have to be fulfilled, but if the process could be made to move along a little faster that it would be very helpful.

Mr. Thomas asked if there was anyone else present who would like to speak on this application. There being none, he closed the public hearing to bring the matter back to the Commission for discussion and a possible action.

Ms. Higgins asked Mr. Hirschman if he could explain in which cases the well drilling would be done prior to plat approval and how it relates to the building permit process. She asked how the final wording of this addresses the well drilling being done prior to the building permit.

Mr. Hirschman stated that basically across the board it requires that the well be drilled prior to receiving a building permit for lots 21 acres or less.

Ms. Higgins asked if that was changing it from what was going on right now.

Mr. Hirschman stated that right now the well does not have to be drilled before getting the building permit. Currently the County only requires that the septic permit has to be obtained from the State. Most of the time the well and septic permits are obtained at the same time, but it does not mean that something is actually constructed in the field. The well and septic permits are only pieces of paper authorizing that the soils are adequate for locating the septic drainfields and that there is a spot to drill a well. But, the well is not actually drilled in most cases.

Ms. Higgins asked how the State is holding up action on building permits at this time.

Mr. Hirschman stated that delay occurred because of the time frame that it took the State to complete their review and process the paper work to issue the well and septic permits. The State does some on site investigations in some cases, but in other cases it is a private investigation regarding the soils. He pointed out that Mr. Moore knows more about that process than he did.

Ms. Higgins stated that she understood why someone getting a building permit would look at both the well and septic permits because of the clearance, the layout, the way the house was sited with the clearance between the well and the septic and all of those types of things. They would not want one to be issued and then find out later that there was a complication with the other.

Ms. Joseph stated that the way it stands right now you could go ahead and build a house without ever having tested to see if there is a well and that there is water available.

Mr. Hirschman stated that was correct. He pointed out that before someone drilled the well they would need the permit from the Health Department, but they could drill the well anytime they wanted. He noted that a lot of people probably wait to drill the well until after they have power in order to install the pump. But, it ranges across the board. Currently, a lot of the lending institutions want to see the well as part of the financing plan. The drought has caused many more lending institutions to require this information on the well.

Mr. Thomas asked when the well is dug if the electricity was needed to pump the water so the well driller could measure the water.

Mr. Hirschman stated that the well driller does not install a pump to measure the flow. They would fill out a GW-2 form. There are two well drillers in the audience who could provide a more detailed explanation of this. He pointed out that the well driller approximates the flow at that time by blowing air down the shaft and measuring the water flow that is coming out.

Mr. Edgerton asked Mr. Hirschman if he agreed with Mr. Williamson's statement that it was impractical to require the location of a viable well before the platting. He noted that staff had chosen not to make that part of this change.

Mr. Hirschman stated that he did agree in terms of developing a program that was fair and reasonable that is geared towards protecting the resource that they have out there. He stated that what they have here is a fair and reasonable program. Obviously, they could require all kinds of things before platting including drilling of wells, but there would be quite a few legalistic issues. For instance, to get into the property to drill all of the wells you would need to basically have all of the roads built to get the well rigs into the property. Then, they would have the construction of roads prior to platting. But, that is only one issue. He suggested that they ask Mr. Williamson what he had in mind in terms of the other issues, and then possibly Mr. Cilimberg could weigh in since he knows that process better. Obviously, there are many ways that someone could construct such a program. But, staff feels that the main issue being addressed is the goal of promoting the sustainable use of groundwater or promoting the verification of groundwater before development. The Groundwater Committee wanted to come up with a technically based program that was fair and reasonable for accomplishing that task. Obviously, there will be a range of opinions about how to accomplish this task.

Mr. Edgerton stated that the committee could not come up with a fair and reasonable way to protect the potential purchaser of a lot. The purchaser is protected as far as the septic is concerned by the law because it was required in order to plat the land. But, the purchaser is not protected under the Virginia law concerning the well. The unsuspecting public comes in, buys a lot and then finds out there is no water there. He pointed out that the proposal makes it better because at least the owner would not be building a house until they have determined that they have water. But, they would not in any way be discouraging people from developing plans on property that perhaps cannot support the development plan, which is ultimately what the Commission's concerns are. He stated that he was curious on what justice lies there. He questioned if they should continue to approve plats without any knowledge about whether there is an opportunity to support the plat with water.

Mr. Hirschman stated that the plats would require a Groundwater Management Plan, which is obviously not as aggressive as requiring the drilling of each well. That would obviously verify whether each lot has a viable well. This is really a two-stage process. In private platting there would be a Groundwater Management Plan, which would require a professional going in and developing some groundwater information that hopefully informs the plat process. The professional would provide that in his best professional judgment that the platted land would have water resources or that it was designed in a way that protects the water resources. But, it does not go as far as what Mr. Edgerton was suggesting.

Mr. Thomas suggested that they could look at it in another way since the building permit was going to stop any house from being built on the property anyway. But, the platting can be done and then for the future there would be a resource of water that they would find or maybe public water would come. But, it would already have been platted for that.

Mr. Hirschman pointed out that there was a lot of discussion at the committee level and with the County Attorney's Office regarding who the County was trying to protect. There was a lot of discussion that it was the potential buyer of the property. There are some systems in place to protect them, but they questioned whether that is really the County's role in this. Really what staff stuck to was promoting more orderly development and more sustainable use of groundwater. He asked Mr. Kamptner if he recalled that conversation. He pointed out that it was very much laid out that protecting the potential buyers of property is really not the function of the County in doing this program.

Ms. Higgins stated that one perspective that they had discussion on years ago was that there have not been a lot of cases where there was no water available on small lots. She noted that

five acres was the cut off for identifying and surveying locations for septic fields. Another issue regarded giving cause for someone to go in and construct farm roads to get to farm sites and that sort of things. Then there is the other perspective of having a drilled well that sits out in a rural area unmonitored because that is a direct line down into the groundwater. She asked if that was a way to potentially allow contaminants. Not knowing the closure rules she did not know how much having an uncovered well could open up another can of worms. She asked if he could shed any light on that issue.

Mr. Hirschman stated that a well cap or a lock could be put on the well, which would hopefully prevent that kind of tampering.

Ms. Higgins noted that it was a direct shoot into the groundwater if someone put something down into, whether it was intentional or not, that could affect the groundwater. There could be subdivisions created where the wells are drilled left sitting for sometime before the lots are purchased. She questioned if that was opening up something that could provide a conduit down to an asset that is important to protect. She pointed out that when someone lives there it is closely monitored.

Ms. Joseph asked if she was saying that if they go out and drill all these wells that there is a potential for contamination.

Ms. Higgins stated that she was saying that an unmonitored well not properly protected created a situation where anybody could go put anything down the well that they want to and then it goes right into the groundwater. There are old wells out there that over time have not been closed properly and there has always been a potential for that. She noted that she was not saying that it would happen, but if someone sees a well cap out it could happen, it being children or anyone. It is just something that might not invite it, but it was another way to affect the groundwater if someone was looking for a way to do that.

Ms. Joseph pointed out that one of the things asked for on wells are the coordinates for the wells so that they know where they are located and then can do some testing. She noted that there are lots of well caps with locks out in the County.

Ms. Joseph stated that on page 2 under Section 17-400 on the second line, it says serving as the primary source of portable water and not having more than two connections. She asked if the committee talked about agricultural use and whether there is some exemption for more than two connections since more than two might be needed for some agricultural uses.

Mr. Hirschman stated that two connections meant residential connections.

Ms. Joseph stated that on page 6 that it talked about the Subdivision Ordinance amendment. She asked if there was any chance that this will get some sort of connection to the Subdivision Ordinance that is currently going to the Board of Supervisors or will this go separately if this is approved.

Mr. Cilimberg stated that the Commission was only reviewing ZTA-04-04 regarding the Groundwater tonight and not the Subdivision Ordinance. There were a couple schools of thought on this that were discussed. But, the conclusion was that the Water Protection Ordinance, Section 17 which goes through page 4, will be going to the Board at some point in the near future for an action. It needs to be in place to make the Subdivision Ordinance change relevant. Therefore, the Subdivision Ordinance change would not occur until the Water Protection changes have occurred. Since the subdivision text is currently before the Board and it was anticipated that action might occur on that first, then this Subdivision Text change noted here would occur as a follow up to that under the new Subdivision Ordinance. It is a little confusing, but that is the way he felt that they had concluded on the process. The Zoning Text Amendment can move forward independently and can be in place because it was simply talking about when you need to have

the well approved. The Subdivision Text Amendment is more intricately tied to the Water Resource Ordinance changes.

Mr. Rieley asked to go back to an issue which they touched on earlier, which was the cost recovery through fees. As he understood it, there are a couple of aspects to this. One aspect is the administration of the assurance that it is an adequate part of the building permit. The other aspect is the well monitoring issue. It seems that there are two different kinds of entities. One is that the cost of that administration can be justified because it was for the benefit for a specific group of people that are paying for it. The other one is a County wide benefit. There is a question of fairness to subject a small group of people who have to pay fees for a specific action to pay for this County wide benefit. This is something that the Board will ultimately decide, but he wondered if they should consider that for an alternative recommendation.

Mr. Hirschman stated that was a very good point because as he previously stated the well monitoring system is of benefit to all of the County's citizens. The Committee's recommendation was to attach a surcharge to the building permit because that would at least spread it out as wide as you could possibly spread it over a course of a year. But, the Committee did say that the more equitable way to do it was through the general fund or some other type of way to generalize it. The people who already have wells in the County who have been pumping them for ten to fifteen years are equally served by having the well monitoring and even more so than the people who are drilling this year. It is a very good point because staff was concerned about the general fund being unpredictable. But, in terms of equity he felt that Mr. Rieley was absolutely correct.

Ms. Higgins asked if staff has a break down of the fee as proposed.

Mr. Hirschman stated that information was on page 31. For the building permit the administrative part would be $50 and the monitoring well part would be $45. Adding $95 to the building permit really bothered him. He stated that he was directed to do the 100 percent cost recovery, but the numbers were not something that he felt good about. If the Commission wants to discuss another way of doing it that he would certainly be open to it.

Mr. Thomas stated that the Commission's recommendation was to pursue that a little further in depth.

Mr. Hirschman suggested that the Commission make a recommendation to the Board. He stated that it was pretty fair that they wanted to cover the administrative part of it because that was the fee directed to the service provided for that permit theoretically. The other part of the fee is a surcharge.

Mr. Thomas asked if there were any other comments along those same lines.

Ms. Joseph asked Mr. Cilimberg if he had any idea of the recovery cost of site plan applications as a percentage.

Mr. Cilimberg stated that he did not know any longer what percentage of the cost was being recovered. At one point they were trying to structure it at 100 percent, but that was about 12 years ago at least. Those amounts have not been adjusted in the intervening time to keep up with the cost that they experience.

Mr. Thomas asked if each of the Commissioners would be comfortable with the recommendation that Mr. Rieley suggested to pursue something more equitable.

Ms. Higgins stated that as this proceeds to the Board the Commission should make it clear that if they chose to go for a total fee of the $95 that the monitoring of wells was a component that maybe should be looked at individually.

Mr. Rieley stated that he would phrase it a little stronger than that. He pointed out that he would be in favor of a recommendation to the Board that the monitoring well component of that be funded out of the general fund and not as an additional burden for the applicant.

Mr. Thomas agreed.

Mr. Hirschman stated that the other issue was that even though they had recommended $45 that based on the average number of building permits in the rural areas that may only get us two wells a year. Therefore, it does not really get a lot of wells in the ground. In ten years that would include 20 wells. But, it depends on how quickly the County wants to build that program.

Mr. Rieley stated that it does not work either way. It is not fair for the people who are paying for it. Also, it was limiting the program itself from generating the desired information.

Ms. Higgins asked if it could be done like the storm water fund where there is some seed money put in for a certain number of wells. Whether it was through a surcharge or some other mechanism, the replacement would then be for a program amount in the general fund to replace the money. She asked if staff had figured out a base number of wells that would be reasonable.

Mr. Hirschman stated that was more or less a wide open question because the notion in here is that when they have the staff position filled that they would develop a monitoring plan. For monitoring wells you might have the theory that the more the better, but it is a limited universe and they have to be strategic and pick certain parts of the County where they know the geology is limiting and that growth is happening. Staff would do some type of prioritized or targeted plan, but his idea was to bring in that specialized professional and let that person develop the plan. Staff does not have a target number now, but certainly more than two a year would probably be good. The way this program was originally set up was that the developer or the applicant would drill the well on the property that is being developed with the assumption that they would get a monitored well for every subdivision plat. He noted that the committee thought, based on some public input, that there ought to be more of a strategic approach to it because they don't even know if one person could monitor that number of wells. He stated that they might have gone too far over in the opposite direction when they really want something more in the middle. The range of options is to have the applicant drill the well and put some kind of surcharge on it and then put it in the general fund or the CIP and have it be a County function. He noted that was the range of options they had for doing it.

Ms. Higgins stated that one thing that was clear through the focused groups and Mr. Hirschman's involvement as far as the ZTA part of this is concerned was that she did not see any part of it to pick at or to change. She noted that a lot of thought and input has gone into this and maybe some of the committee members could reinforce that, but she felt that it was fair and reasonable based on the information that she has seen. She suggested that the Commission make a recommendation and forward it on to the Board because the money issue is really a Board issue.

Mr. Cilimberg suggested that the Commission take the action on the ZTA since that was the matter before them, particularly the legislative process. Then, any other comments or recommendations that they want to make regarding other aspects of what was delivered to you, such as the fees, could be done separately.

Mr. Craddock asked Mr. Kamptner if they were asking for a recommendation on the Chapter 17 part of this.

Mr. Kamptner stated yes that a recommendation was needed either tonight or some later time depending on when this is scheduled before the Board. The Board will be expecting to have some comments from the Planning Commission.

Mr. Hirschman stated that the Board will be looking for some type of recommendation on the Water Protection Ordinance.

Mr. Cilimberg stated that if the Commission feels comfortable in doing that tonight that they could make those recommendations as well.

Mr. Rieley asked when the Board was going to be acting on this.

Mr. Hirschman stated that the Board potentially would be hearing this in August.

Mr. Rieley stated that the Commission has a little more time if they wanted to look at Chapter 17 a little more.

Mr. Thomas asked if all of the Commissioners were comfortable with Chapter 17.

Mr. Rieley stated that he had not studied Chapter 17 enough to say he was comfortable.

Mr. Thomas asked if there was any more discussion about the ZTA at this time.

Mr. Craddock stated that one of the speakers had some comments about the timing and the expediting of well permits by the State. He asked if there was any influence that the County would have with the State or does the State just go at its own speed.

Mr. Hirschman stated that if the County was willing to pay for a staff position that they would be willing to expedite it. He pointed out that in Piedmont County the County has funded a staff position that resides at the Health Department. But, they have not done that. He pointed out that if they received the Groundwater position that he felt that person would have their hands full with the County requirements. But also involved in that position is keeping our Groundwater database updated, which involves working with the Health Department. That position would be in close contact with the Health Department, but they would not be supplemental staff.

Ms. Higgins pointed out that they would actually be increasing the workload, which would have the opposite effect.

Mr. Hirschman stated that at the beginning that position would have to verify that the well is drilled.

Ms. Joseph asked about feedback on Chapter 17.

Mr. Kamptner stated that the Commission was taking action on Chapter 18 of the zoning ordinance tonight.

Mr. Rieley pointed out that there was discussion about giving feedback on Chapter 17, and Ms. Joseph was asking what about Chapter 18.

Mr. Cilimberg stated that Chapter 18 was the only one formally moving forward.

Mr. Thomas asked if they feel comfortable as a Commission to move this along at this time. He asked how the Commissioners feel about acting on Chapter 17 tonight.

Mr. Morris stated that he felt that Chapter 17 was well done, but Mr. Rieley had stated that he was not comfortable with it.

Mr. Rieley stated that he did not have any specific reservation, but it was just that he had not reviewed it in depth enough to feel comfortable about it. He pointed out that the ZTA was the focus of their action tonight.

Mr. Rieley moved that the Planning Commission forward the recommendation for approval of ZTA-04-04 to the Board of Supervisors.

Mr. Morris seconded the motion.

Mr. Thomas asked Mr. Kamptner if they would have to take action separately on Chapter 17.

Mr. Kamptner agreed.

Ms. Higgins stated that the only question she had about that was that in Section 31.2.2 concerning building permits that it says that no permit shall be issued until the applicant complies with 17-401 that would be following this.

Mr. Cilimberg pointed out that it would be arriving at the Board at the same time. He pointed out that was a good point because he had said that they were not connected, but actually they are. It is more of a matter of the Subdivision Text Amendment currently before the Board getting done before they amend it.

Ms. Higgins noted that the ZTA was just a few sentences and deletions whereas Section 4.01 really puts the meat into what they must comply with. Then 17-405 deals with the fees, but the amounts are not actually filled in. That was what something that the Commission could comment on, particularly with the Tier One.

Ms. Joseph stated that they talked about and outlined the best management practices. Another implication here is that you are suggesting another staff person is needed. She asked if that was correct.

Mr. Hirschman stated that position has already been funded by the Board, but they have not filled it until staff knows what this program is going to be adopted.

Mr. Thomas asked Mr. Kamptner if the motion needs to be altered since the two sections are tied together.

Mr. Kamptner pointed out that the Zoning Ordinance that connects to Section 17-401 will have no effect until that section is adopted. The concern was that the Subdivision Ordinance team had including similar language in the Subdivision Ordinance.

Ms. Higgins stated that the only question that she would have is that it references Section 17-401 and say that the applicant must comply with 17-401, but the fees are in 17-405. She asked if it should just say Section 17.

Mr. Hirschman stated that it could say Article 4 more generally.

Ms. Higgins stated that it only says that they have to do what 17-401 says, which is Tier One that applies directly to the lots. But, it could go into the others as needed if you wanted to pay.

Mr. Kamptner stated that Section 17-405 stands on its own. When it is adopted it will apply and the fees will have to be paid. It is a good point, but when it is adopted it will apply.

Mr. Thomas asked for a roll call.

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

Mr. Thomas stated that ZTA-04-04 would be heard by the Board in August.

Mr. Rieley asked if it would be appropriate for the Commission to attach a suggestion that the costs that are associated with the well monitoring be funded out of general revenues rather than out of the fees.

Ms. Higgins asked if they need to attach that to 17.

Mr. Cilimberg stated that the practical effect of all of this is that there is going to be a recommendation going to the Board regarding the zoning text amendment from you that reflects what you just did. Any additional comments that the Commission makes about fees either tonight or later or any other aspect of 17 or 14 tonight or later will all go to the Board together. Therefore, if the Commission wants to make the comment on fees tonight, then it will be in the record and staff will forward that on.

Ms. Joseph stated that since they have some unity here that they should make sure to let the Board know that the Commission feels strongly about this.

Mr. Rieley made a motion to forward a suggestion or recommendation to the Board that the costs that are associated with the well monitoring be funded out of general revenues rather than out of the fees.

Ms. Higgins seconded the motion.

The motion carried (7:0).

Mr. Thomas stated that the motion carried for the Commission's recommendation that would tag along with the ZTA-04-04.

Ms. Higgins asked if the Commission should make a motion this evening about the recommendations for acceptance of the ordinance amendment Chapter 17 to follow with this. She noted that she did not see this coming back for another work session because they have already had a public hearing. She asked why this would not follow with the ZTA.

Mr. Cilimberg stated that will come to the Commission for a separate public hearing. He apologized that he was getting the sections mixed up. Section 17 will include the Commission's comments in addition to what they had already said about the fees. He asked if the Commission had said that they want another work session on Section 17.

Ms. Higgins stated that they wanted to make a recommendation about the fees and forward Section 17 along with it.

Mr. Rieley pointed out that was not what he had said, but he would defer to the sentiment of the group.

Mr. Kamptner stated that the Commission would just be making an advisory recommendation for Chapter 17 because it does not have to come before the Commission for public hearing. The Commission is only acting in an advisory capacity.

Ms. Higgins made a motion that the Planning Commission supports and recommends for approval the Ordinance to amend Chapter 17, Water Protection of the Code of the County in the format before us with our previous motion that affects Section 17-405 fees taken into account.
She noted that the fees were not inserted on their document, but she felt that it has had significant review and input by the committee. Therefore, the motion is to send it forward as is.

Mr. Morris seconded the motion.

The motion carried by a vote of (7:0).

Mr. Thomas stated that the motion carries and will go along with the ZTA.

Mr. Cilimberg stated that for clarification for the record, Section 14 will come before the Commission for a public hearing at a later date.

Work Session:

STA-04-01 Signs – Work session to discuss recommendation on four specific sign topics – Neon, Advertising Vehicle, Commercial Flags and Window Advertisement. (Amelia McCulley)

In summary, the Planning Commission held a work session to discuss recommendations on four specific sign topics – Neon, Advertising Vehicle, Commercial Flags and Window Advertisement. The Commission held a discussion and made the following comments and recommendations:

Ms. McCulley, Zoning Administrator, summarized the staff report. This is a somewhat unique item in that it is not a regular item for the Planning Commission. The Commission does not typically review sign permits, but staff would like to receive their input on the Zoning Ordinance regulations. The other thing that is a little bit atypical in terms of process here is that they were doing the work session without giving them the draft ordinance language. Staff wanted to talk about it in terms of sort of basic concepts before they got into the details of dealing with ordinance text. Therefore, staff was stepping back a little bit more than they normally do in a work session. First she would give a little bit of back ground and some context as to how they got here. Then she would provide some history of the process to date because a lot of work has been done with the committee and others. Next, she would go into detail on the four specific topics and the process from there. Sign history in Albemarle is discussed in great length in Attachment D. You will note that 12 years ago in July of 1992 the County adopted a comprehensive rewrite of the sign regulations. Marcia Joseph worked very hard and carefully with several others through a very long process to solicit input. Staff sent out hundreds of surveys and met with business groups. They also reviewed other regulations. It was a very long process that really had them ask what it was that they were really trying to accomplish and what are the community values in terms of signage. What is the balance in terms of providing proper identification, but also to try to protect the things that are really special about Albemarle County because they don't want to be Anyplace, U.S.A. A lot of good ground work was set 12 years ago and they made significant changes to the sign regulations. They brought them down in size, in height and got more monuments signs. Roof signs were eliminated. Balloon signs were eliminated. A lot of those changes have really helped. One of the big changes in 1992 that has really helped is the section about nonconforming signs. A lot of ordinances leave that out. What happens is that when people make changes to their sign that they lost it. Therefore, people would not make any changes to their sign. Staff wanted to encourage the applicant to make changes to their sign, but not lose all of their rights that they have gained with being nonconforming. Therefore, the sign had to become 25 percent more conforming, but not scaled back all the way to the existing regulations. They have made changes all the way up and down their Entrance Corridors to bring signs down in size, height and number, which has really made a big difference. She asked why they were here with this particular effort. About a year and a half ago while the Zoning Department was enforcing a couple of sign violations at Arby's Restaurant on Route 29 North that there was a lot of community disfavor with a couple of things such as the Arby's flag being flown. Also, there was an advertising vehicle. They had temporary signs on their windows. There were multiple sign violations that Zoning had gotten to the point of taking legal action. Zoning was going to serve them with civil penalties because they did not comply. They heard through many different sources in the community both directly and indirectly with letters to the editor and so forth that maybe our regulations are not where they want them. Since it was questioned whether the regulations might be too restrictive, staff decided to review them again. Why are commercial flags totally prohibited is an example. So what happened was that the Board of Supervisors heard that and they passed a resolution of intent and asked staff to focus on these four very specific topics and do a review in an expedited fashion as regulatory changes go. She noted

that it was still a year and a half later. They were requested to do a very focused review and get input from relevant business and community interest folk and come back with something that reflects the community values and something that is workable, which will strike that balance that they are looking for. That is what brought us here. Included in the packet are the existing Zoning regulations, the recommendations from the Sign Committee, ARB and staff. She noted that she would go through each item. After staff received input from this work session, staff will go to the drawing board and actually start drafting the ordinance language and then start the public hearing process with the ordinance language. Staff is not sure if a work session will be held with the Board of Supervisors. The four topics include neon, commercial flags, advertising vehicles and window advertising. As previously stated, there has been a pretty significant effort on this process to date and it has taken a year and a half for good reason. The Board chartered this Committee that met seven times with staff over the course of six months. She recognized John Foster, representative for PEC, who was sitting in the back as a member of the Sign Committee. Katie Hobbs, with Citizens for Albemarle, also gave input through the ARB. Many others gave a lot of time pouring over these regulations to try to understand what they are. In addition they reviewed the research from other localities. Then they came up with what they thought were good recommendations on where to go with these topics. In the listing of the Committee's recommendations you will find that staff has listed the comments in chart form. She noted that the majority opinion had been listed. In the attachment it goes into the full summary of the Committee input. In addition, staff has included the minority opinion. Attachment H has the explanation and an email from John Foster to staff which provides further explanation of the PEC input on these four topics. A Roundtable Discussion was held on February 25 and then they solicited community comments through March 12. All of that information is attached. There were two work sessions with the ARB on April 19 and May 3. She stated that she would go into detail on each topic.

The first item was Neon which was allowed now as long as it is covered. Neon lighting in signs has been used and is allowed as long as there is some kind of covering over the neon tubing. What is prohibited is bare or exposed neon. The question was whether it should be prohibited anymore. Staff found that historically that there were a couple of reasons why neon has been prohibited. One is that in the past it was really was not as safe for many reasons including how it was manufactured. There was not as tight of control over the installation and things like that. There were concerns about it exploding because it either has a neon or argon gas in there as well as an electrical current. That could produce some unsafe situations. Therefore, there was partly a safety concern in the past that lead to the prohibition of neon. This is the best that staff knows because nothing was found in the files since 1969 when they first starting prohibited it. The other thing is that it creates an effect, particularly with flashing neon, which is not pleasing aesthetically and should be avoided. Therefore, staff wanted to first understand possibly why it was prohibited. In terms of the recommendation, staff has agreed with the Focused Sign Committee and recommends that they recommend bare or exposed neon as long as they deal with some of the concerns that they have about it. For example, the neon can't be flashing, moving or blinking and things like that, which they don't allow other lighting to do. Then there was a concern that neon can be extremely bright if it has a high enough transformer charge and if they use certain types of tubes that area frosted or something like that. It could produce an extremely bright glow that can become distracting. It can become a glare. So to deal with that staff went all over looking for some sign experts to help give us some advice about how to limit the brightness in a practical way that they could enforce. Staff did not want to get out there next to a sign that was already installed and have to put a light meter to it to see if it met the meter test or not. That is too late. They need something that people would know going into the design on whether or not it is going to meet the regulations. The recommendation from a local sign maker is that we stick with 30 milliamp transformer as the maximum size because that is directly related to the brightness. That should meet most of the standard neon lighting and not be excessive. In terms of neon, staff would recommend that it be permitted subject to maximum brightness standards and some of the other standards listed in the chart that don't create the effective movement and forth.

Mr. Edgerton asked why they would want to have neon signs. He asked if there was an advantage to it that he missed.

Ms. McCulley stated that some people find that neon is an effective way of lighting a sign. Their argument would be that there is not a good reason to prevent people from using that type of lighting versus other lighting, which can be equally offensive. The question is out there. To note in our minority opinion the question is why change and why allow neon that is bare.

Mr. Edgerton suggested allowing a minimal transformer size. He asked if that was something that was going to be easy to regulate.

Ms. McCulley stated that it was going to be a new regulation and anything new was an added burden, which was not easy.

Mr. Edgerton asked if she would be able to drive back and know whether it met the requirements for a neon sign.

Ms. McCulley stated that she would not be able to do that just by driving by.

Mr. Edgerton stated that basically when the sign becomes offensive, then he would have to find out if in fact it did meet the requirements of the ordinance if they went this route.

Ms. Higgins pointed out that in the sign permit process the applicant would have to submit details of the sign design, which would have to be inspected. She noted that it would already have been enforced before the sign was turned on versus something that they would drive by later to review.

Mr. Edgerton stated that he could not figure out why they would start allowing neon since it was currently forbidden. He stated that this made him to start worrying about the lighting ordinance since they had been working on reducing the amount of light that is spilling out. He asked if a neon sign could be controlled from light spillage. He asked if anyone had talked about that. It is going to be sending light in every direction since it would not be shielded.

Ms. McCulley stated that was a good question. It would not be directly regulated through the lighting ordinance. Staff has that concern if they could not limit the brightness. That is why staff is glad to have found something like the 30 milliamp maximum.

Mr. Rieley asked what type of regulation was on signs that were not neon.

Ms. McCulley stated that there were no regulations in the Zoning Ordinance; however the ARB has very thorough guidelines that deal with whether it is internally or externally illuminated. She pointed out that she did not recall exactly how they address the lighting.

Ms. Joseph stated that as far as maximum lighting the ARB had no regulations. But, the ARB tries to encourage external lighting, but there is no maximum.

Mr. Rieley asked if neon would be subjected to the same criteria.

Ms. Joseph stated that it would come under the same criteria, but it would make the ARB's review much harder. People will be coming in with neon signs and saying that the ordinance allows it. Then the ARB is going to say that they are on an Entrance Corridor. Therefore, she felt that would make the ARB's job much more difficult. By prohibiting neon in the ordinance, it made it a lot easier for the ARB just to say no. Most of the channel letters are lit by neon that is behind the translucent face. The only thing visible would be the block letter, and not the neon tube.

Ms. Higgins pointed out that with neon lighting only the letters would be lit. She suggested that they have a sign expert answer some of their questions. She pointed out that the spillover might

be better served with a tube that glows versus a bright light that shines through a surface. She suggested that the ARB be given some examples of neon signs, and then make a decision. She asked if the ordinance would have one standard for Entrance Corridor and another standard for non-Entrance Corridor. She asked if that has ever been considered.

Ms. McCulley stated that has been considered as long you can articulate the reason that you would have a difference. If it was a basis for that which would apply throughout the County that is not just related to protecting the Entrance Corridor, then you would not have that distinction and you would apply it throughout the County.

Ms. Higgins suggested that staff have a sign manufacturer provide a sheet listing the advantages and disadvantages of considering it.

Mr. Thomas pointed out that Ben Foster of High Tech Signs spoke to the Commission a couple of years ago about the signs. He provided some different ways that neon lighting could used which would be less glaring.

Ms. McCulley asked if the Commissioner's concern about making the change and allowing bare neon is related to the brightness. Therefore, if there was a way to address the brightness, then that concern goes away. Or, does the concern stand and staff needs to recognize that and perhaps the consensus is that they don't support that recommendation.

Mr. Rieley stated that personally he was more comfortable with regulations based on standards which are transformable from one material or one technology to another. He pointed out that he was much more comfortable regulating brightness and scale than in saying that this technology is tacky and they don't want it or that technology is in good taste and they are in favor of it. He agreed with Mr. Foster that neon can be a wonderful art form if it was done well and letters that are cut out exactly according to our ordinance could look awful if they are done badly. From a regulatory perspective he would feel more comfortable by talking about the brightness and scale and then leaving the specific implementation of that for the people who are executing it.

Mr. Craddock asked if that would include the Virginia State Lottery signs in store windows. If it was offensive, then those were probably the biggest ones. Also, the large open signs were offensive, which almost every business has.

Ms. Higgins pointed out that neon signs were visible during the day as opposed to just at night. If that was a plain light bulb behind the sign, then it does not show up as much.

Mr. Craddock agreed with Mr. Rieley on the substantial measurements as opposed to just throwing neon out the window so to speak.

Mr. Thomas asked if everybody else agrees with Mr. Rieley's statement.

Mr. Edgerton and Ms. Joseph disagreed.

Mr. Edgerton stated that there was no advantage in allowing neon because it was opening the door for more light pollution.

Ms. Higgins suggested that since there was that concern that they request a work session to receive additional information from someone on the technology side. If it was a different word being used other than neon, she felt that they would not have such an aversion to it.

Mr. Thomas asked for the next question.

Ms. McCulley stated that commercial flags are not permitted. It was strongly suggested by many that the Committee's recommendation could potentially end up in nine commercial flags, which is

excessive. It was even suggested by the Arby's Business Center that was excessive since all he wanted was his one commercial flag. Staff's recommendation is to permit one commercial flag with a maximum of 25 square feet per lot. The Committee has gone further and talked about some requirements that discussed the size relative to the governmental flag. While they may have some strong feelings about that, staff felt that it was really not appropriate from a land use regulation standpoint for the County to get into flag protocol. Therefore, staff did not carry forward that Committee recommendation. Not going into all of the details, she noted in that same heading staff addresses noncommercial flags. Right now even the Cavalier, Hokier or seasonal banner hanging from your front porch is not permitted in the sign ordinance. Therefore, at the same time staff has made provisions for noncommercial expression for flags and banners.

Ms. Higgins stated that the way this reads that the banners have to be installed by being staked out versus on a pole that flaps. She asked if that was correct.

Ms. McCulley stated that was for the noncommercial banners that are exempt and the ones that are not limited in terms of numbers and size. That is something that staff found in several other localities' ordinances. She pointed out that by installing with the holders it prevents it from being a distraction from noise and the movement.

Ms. Higgins asked how this proposal would affect the seasonal banners used at shopping centers.

Ms. McCulley stated that the proposal would allow those banners, which currently is not allowed.

Mr. Rieley agreed with the Committee's recommendation on the American flag protocol. He stated that the American flag should be flown properly and a commercial flag should not be flown above it.

Ms. Higgins stated that those things were already regulated. She pointed out that while working on a project in Carolina County she found that the order, placement, height and the relationship of the American flag is all regulated by the government. A general from the military passed by that site on I-95 and saw the flag and there was a letter sent. But, there is a military regulation on the relationship between federal, state and other flags.

Mr. Rieley stated that it would not hurt a thing to have that standard reiterated and made a part of the County's ordinance. He stated that an American flag should not be used out of scale on a flag pole as a commercial advertisement, which is done very often. The length of the flag should be one-fifth of the length of the flag pole and you see them one-half the length of the flag pole. That is certainly done as an attention getter and was appalling and unpatriotic. Therefore, he suggested that they find out what the national regulations were and make them known by putting them into the ordinance.

Mr. Kamptner pointed out that they have the section from the U.S. Code, which was told by the Rutherford Institute that it is guidance and establishes some of those requirements.

Mr. Rieley asked if it was regulatory.

Mr. Kamptner stated that they had been told that it was simply guidance and that people would not be charged with a crime if they do not follow it.

Mr. Rieley suggested that they find out more about that because it was an important issue. He stated that the commercialization of the National flag was not something that they should allow. If they were regulating these seasonal banners, then they should take charge of the American flag.

Ms. Higgins pointed out that the school sites also have those regulation because they have the flag poles located at each school.

Mr. Morris stated that they would find that there are guidelines in that this is the proper way to handle anything dealing with the National emblem. If you want to screw that up, then that is anybody's right because it is not law and only guidance.

Mr. Craddock stated that Mr. Rieley has a good point, but he felt that the huge American flag seen coming down Pantops Mountain was fine. He agreed that it was wrong for a commercial flag to be the same size as the American flag. He pointed out that the Arby's flag did not bother him because it was smaller than the American flag.

Mr. Thomas stated that the Commission's recommendation was that staff pursues the guidance on the proper protocol for the American flag and if that was proper to put that in.

Ms. Joseph stated that she felt that the commercial flag was a freestanding sign and that it ought to be counted as part of the square footage allowed for freestanding signage.

Mr. Craddock disagreed with counting the commercial flag as freestanding signage because it is not always visible.

Ms. McCulley asked if the consensus on the commercial flag was what Ms. Joseph said in that the 24 square feet would be a bonus and a new area of commercial signage. If this were approved it should be factored in to the total amount of signage allowed on the site and not be a bonus.

Mr. Thomas disagreed since he felt that they should receive the 24 square feet plus the bonus.

Mr. Rieley agreed with Ms. Joseph.

Ms. Higgins agreed with Mr. Craddock.

Ms. McCulley pointed out that staff will look up the information on the American flag and provide it to the Commission. She suggested that before making the decision to include that information that they must find a general public purpose in it and that it was their place and not some other agency enforcing it. That information will be brought back to the Commission.

Mr. Thomas stated that the next topic was the advertising vehicles.

Ms. McCulley stated that there were a few hot new things being used for advertising vehicles such as getting a vehicle wrapped. This would be done by selling your vehicle space to an advertiser and you drive it around and park it in different places along the road. This is intended to address vehicles that are parked in plain public view for the expressed purpose of being an advertisement. Staff is trying to take out vehicles that are truly used for that business in its transportation. They want to not allow vehicles that are just set up at a parking place that are not in operating conditions with no license and tags. Staff is trying to come up with better language. The Committee spent a lot of time talking about how much use is an appropriate amount of use. What if they only use that delivery van once a month? That may just be the nature of the business if they only use the van only once a month. Therefore, the ACAC van and the other vans that people might complain about would be exempt and would not be advertising vehicles. Staff felt that it would be a real nightmare to try to administer a regulation about where and how a business could park their vehicles. She stated that this was the best that they could do, but that a lot of localities struggle with this issue. She asked for any suggestions on how this could be done.

Mr. Thomas stated that it seemed that everything was covered for that issue.

Ms. McCulley stated that the last topic was probably the hardest and she was going to try to explain it as clearly as possible. There are temporary and permanent signs. There are signs that are inside the glass and outside of the glass. The glass could be any glass space in the building such as a door or window. There are signs in the Entrance Corridor and outside the Entrance Corridor. One of the big disconnects right now is that window signs are really and truly only regulated by the ARB. There is no sign permit required by Zoning, but a Certificate of Appropriateness is needed from the ARB.

Ms. Joseph pointed out that was required for new construction. For anything old the only way that people find out about that is when they receive approval from the ARB and Ms. Maliszewski writes the letter and says by the way we want you to know that no window signs are allowed without approval from the ARB. Therefore, anybody with an existing business out there does not know about this regulation.

Mr. Thomas asked if inspectors ride around checking for window signs.

Ms. McCulley stated that the inspectors do not. She stated that one of the things that staff wanted to do with this is to have a later effective date because a lot of the signs that are not true permanent signs have a changeable message. These changeable messages are used by many businesses, such as grocery stores for their weekly special. They are not vesting the right to continue using signs in that window space. Therefore, by having a later effective date they would like to bring them into compliance and reduce the amount of window space that they are covering with signs with a new regulation like this. She noted that they don't need to take too much time on temporary signs because true lawful temporary signs are allowed for a maximum of 15 days, 4 times per year. Temporary signs are not typically placed on the window. Staff is really mostly talking about permanent signs and window signs. Staff came to the conclusion that if there is no practical land use impact difference between the sign that sets on the outside of that glass and the inside, then they can't regulate it differently. Therefore, staff decided to treat them the same. Even though they want to minimize the amount of window signage, staff does not have the manpower to go and measure all of these things. Staff has to find a way to be able to easily drive by and tell if someone is meeting the regulations or not. That is the way that staff came up with the 25 percent coverage.

Mr. Rieley stated that he thought that this was exactly right because he did not see any reason to regulate signs differently based on which side of the glass they were on.

Ms. Higgins stated that she could see this as an enforcement nightmare. If you are saying that these window signs are unattractive, then are you saying that you want to exclude them entirely or make them by permit? She stated that there was more effort by the ARB to ask for more window type of things because windows are better than blank walls. By doing that they are asking for the opportunity of having more window signs. She asked if someone put the back of a display case in the window if that would be better.

Ms. Joseph pointed out that if an applicant comes before the ARB with that request that they would be asked to put in opaque glass.

Ms. McCulley pointed out that it was not just that it was unattractive, but that it was free sign area and a sign band.

Ms. Higgins asked if that was bad if they were permitted.

Ms. McCulley stated that there was a reason to limit the number and size of signage on lots based on clutter, distractions and things like that. She stated that it would follow that they would also want to limit the amount of signs people slap on a window.

Mr. Rieley stated that every example applies equally to a sign out in the yard anywhere else. He felt that the point is that they want to treat them the same.

Ms. McCulley stated that the recommendation was that they could occupy 25 percent of their window and door glass area with signage.

Ms. Higgins asked if the 25 percent had a maximum square footage limit.

Ms. McCulley stated that it did not.

Mr. Morris stated that what he was hearing was that the 25 percent was for the ease of judging and if it was in compliance.

Ms. McCulley stated that was correct.

Ms. Joseph pointed out that the definition of a sign says that it has to be visible off site.

Ms. McCulley stated that she would bring back information on neon and commercial flags as requested by the Commission.

In summary, the Planning Commission held a work session to discuss recommendations on four specific sign topics – Neon, Advertising Vehicle, Commercial Flags and Window Advertisement. Ms. McCulley presented the background and history regarding the basic concepts of the four focused sign topics. She asked for the Commission's input before staff drafts the proposed Ordinance text. The Commission held a discussion on each sign topic and provided comments and suggestions. The Commission requested staff to schedule another work session to provide additional information on the noncommercial expression of flags and banners, the protocol of the American Flag in relation to other commercial flags and details on neon lighting.

Old Business:

Mr. Thomas asked if there was any old business.

Ms. Joseph stated that she had passed out an official determination that was made by Ms. McCulley on May 19. She pointed out that if anyone was aggrieved by the determination they have the right to appeal within thirty days of the notice. She stated that she did not agree with the determination and had talked with Mr. Kamptner and she could appeal it. She asked if anyone else agreed if they wanted to consider appealing the determination by the entire Planning Commission.

Mr. Morris stated that he did not like the idea of a community center charging admission and this does.

Mr. Rieley stated that he agreed that the Commission should send this along for clarification by the Board of Zoning Appeals since that was what they were there for. He pointed out that he did not think it was a museum and that the entrance off the road was also an issue.

Ms. Higgins asked what the next step would be. She asked if the Board or Commission could amend the ordinance to provide a more fitting category of use. She suggested that they ask Mr. Kamptner's opinion.

Ms. Joseph stated that this group would be appealing this determination to the Board of Zoning Appeals in that they disagree with the determination that the Lewis and Clark Center is a community center as defined by our Zoning Ordinance. She pointed out that it was the applicant's responsibility if they wanted to change the Zoning Ordinance and not the Planning Commission's. The applicant can apply for a zoning text amendment.

Mr. Edgerton stated that he did not think what was being proposed was a community center. Under the current zoning he understood that was not allowed except with the determination that it was a community center.

Mr. Rieley stated that his difficulty was that if their charge was to review an application according to the uses within the Zoning Ordinance and they think it is something else, then it put them in an untenable position in the review process. Therefore, since there is a review process for that then they should get it clarified.

Ms. Joseph stated that when you look in Webster's Dictionary and how this is defined that it is clearly not a community center because it is bounded geographically in the terms of the ordinance. In the application it states that they are looking for tourists and they are not limiting the tourists to Virginia or to Albemarle County.

Mr. Thomas stated that the Commission could ask for this to go to the Board of Zoning Appeals so that they could decide which way it needs to go.

Ms. Higgins asked if the County Attorney had any insight on this.

Mr. Kamptner stated that his insight is that they won't be representing both sides. He stated that his office's recommendation if this does go to the BZA is that a ZTA should be pursued so that the County is not forced into a hearing before the BZA. He stated that the Board of Supervisors would advise them as to how to proceed. He stated that his office usually represents the Zoning Administrator on matters that go in front of the BZA.

Mr. Cilimberg pointed out that he would be in an awkward situation because he was the Secretary of the Planning Commission. Therefore, he may have to represent the Planning Commission in front of the Board of Zoning Appeals for their appeal.

Ms. Higgins stated that she would prefer that the Planning Commission not appeal this determination.

Ms. Joseph moved to appeal the Official Determination of Use for the Lewis and Clark Center from Amelia McCulley dated May 19, 2004.

Mr. Rieley seconded the motion.

The motion carried by a vote of (5:2). (Nay – Higgins, Thomas)

Mr. Thomas stated that the appeal would go before the Board of Zoning Appeals.

Mr. Cilimberg stated that he would need a justification from the Commissioners to file with the appeal action letter.

Mr. Kamptner suggested that the justification be written and distributed before next week's meeting when the Commission could discuss and authorize the final document.

Mr. Thomas asked if there was any other old business. There being no further old business, the meeting proceeded.

New Business:

Mr. Thomas pointed out that he had received about ten emails on a site plan that was located across from Lowe's. He noted that it was going to be a tight site. He asked if there was any more new business. There being none, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 8:20 p.m. to the next meeting on June 8, 2004.

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V. Wayne Cilimberg, Secretary

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