Albemarle County Planning Commission
September 21, 2004

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, September 21, 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; Cal Morris; Marcia Joseph; Jo Higgins; and Pete Craddock, Vice-Chairman. Absent was David J. Neuman, FAIA, Architect for University of Virginia (non-voting).

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; David Benish, Chief of Planning & Community Development; Bill Fritz, Chief of Current Development; Glen Brooks, Senior Engineer; Francis MacCall, Senior Planner 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.

Recognition of Rodney Thomas for Five Years of Service to Albemarle County.

Mr. Cilimberg recognized Rodney Thomas for five years of service with Albemarle County and presented him with a Certificate of Appreciation. He thanked Mr. Thomas both personally and for the County. He stated that the County appreciates all that Mr. Thomas has done in his role as a Commissioner and Chairman.

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, he stated that there was one question that he needed to ask the audience. There is a Nextel tower for which a public hearing was originally scheduled for tonight, but subsequently was indefinitely deferred by the applicant before legal advertising was completed. However, notification of this change did not get out to the adjoining neighbors. He apologized for not knowing the location of the tower, but noted that if there was anybody present for the Nextel tower that the public hearing would not be held tonight. Notification letters will be sent to adjacent property owners noting the new public hearing dates once scheduled.

Consent Agenda:

SUB 2004-232 Starfield Preliminary Plat - Request for authorization to allow a private road to serve five (5) new lots. (Francis MacCall) (Tax Map 81, Parcel 51D)

Approval of Planning Commission Minutes – June 29, 2004 and August 10, 2004

Mr. Thomas stated that there were two items on the consent agenda. He asked if any Commissioner would like to pull either of the items for discussion.

Mr. Morris asked to pull SUB-2004-232, Starfield Preliminary Plat, for further examination.

Mr. Thomas stated that the two items would be separated. He asked if there was a motion regarding the approval of the minutes.

Mr. Rieley moved for approval of the minutes of August 10 and June 29, 2004.

Mr. Craddock seconded the motion.

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

Mr. Thomas stated that the Commission would now pull SUB-2004-232, Starfield Preliminary Plat, and ask for a staff report from Mr. MacCall.

Mr. MacCall stated that the Commission has the staff report in front of them, and it was his understanding that the concern that had been raised with this particular application that was involved with this subdivision for the five lots has to do with the construction of the dam and the potential effects it will have on the downstream properties. The County Engineering staff is present to answer any questions. The applicant is here along with his surveyor and engineer and can speak to any questions the Commission might have regarding that. Staff has posted the original subdivision plat along with another subdivision plat provided by the applicant of a potential alternative location. The applicant can provide information on the potential alternative location.

Mr. Thomas asked if the Commission had any more questions or comments for staff.

Ms. Joseph stated that throughout the report staff talked about justification because it would serve the public because it was going to have only one entrance. She asked if that meant that the existing house would use this road.

Mr. MacCall stated that there was a note on the plat that says that all lots will access the new private road. He stated yes, that would mean that the other entrance would be closed off and a new driveway would be created to that existing driveway on lot one.

Ms. Joseph asked when the staff report was written if what staff had available was information concerning cuts and fills with the total volume that was going to be disturbed on the site. The justification for looking at this driveway was the fact that it went over the dam and that a public road would not be accepted by VDOT. Therefore, the public good would be served more by a private road going over the dam than a public road. She asked if that was staff's justification. In other words, the applicant would be unable to get a road up there unless it was a private road or unless the applicant gets rid of whatever pond that was there.

Mr. MacCall stated that was correct.

Mr. Morris asked if there was an alternative route that would be discussed by the applicant.

Mr. MacCall stated that the applicant had just submitted the alternative plan prior to the meeting and asked to discuss it.

Mr. Thomas asked Mr. Kamptner if the public hearing should be opened.

Mr. Kamptner stated that it was not a public hearing item, but the Commission could allow the public to speak since to do so was a common practice on site plans and subdivisions.

Mr. Thomas asked the applicant to address the Commission.

Roger Ray, surveyor, stated that his firm prepared the plan along with a local engineer, Tom Muncaster's help of doing the preliminary subdivision plat. He stated that six years ago they were here before the Commission in January with the basic same plan. At that time they had asked for an indefinite deferral because of the situation with the dam and whether or not they could accommodate the 100-year flood plain without inundating the road. Then the applicant did other things for the last six years. They thought that the indefinite deferral meant indefinite, but it did not and was good for only six months. The entire plan has been redone and now they were back again. Three assessments were done. One was for putting the private road where they have shown on their plan that was submitted. Next was putting the

private road as the alternative approach that he gave to Mr. MacCall to put on the board today, which is shown in the blue. That alternative would not cross the dam, but would cross at the upper region. The third assessment was just to take the dam out. There is not much width on the property. Therefore, they can do much with shortening the length of the dam or controlling the amount. Their thoughts were that they would just take the dam out, build a public road and do the preferred division. Then after weighing all of those concerns, they believe that the environment would be better served if they replaced the dam or left the dam for the environmental impacts of that. That led them to the design that they currently have. They cannot move the entrance on the public road because they were right near the minimum site distance with VDOT in its current location. Therefore, the entrance needs to stay where it was currently located. If they do their preferred approach, which was to reconstruct the dam then that was a straight shot right into the property. Otherwise, their alternative approach with the private road would be to leave the public road at the same place, but then go behind the existing house and to the left of the lake or pond and then cross at the upper reaches and make their crossing there. That would be fairly challenging, but still maybe not as challenging as reconstructing the entire dam. They would like for the Commission to consider both of them. They would not be opposed to moving the road to where it is shown in the blue. The percent of grade and earth work of road would be relatively the same percentage, but about 300 feet of road would be added to do that. But, the existing pond could serve more or less as their sediment pond while they were doing the construction, and then hopefully any maintenance that the pond needs today. Anyone who has looked at the pond indicates that it may need some maintenance. He stated that they would try to do that maintenance without completely constructing the pond. Hopefully, that would help alleviate some of the concerns of the downstream property owners. He stated that they received the package with the letter, and then they received an email today. After reading both of those, he sat down this afternoon and came up with a drawing of one of the approaches that they have for the development of this property. He noted that they had submitted the data for the yardage calculations. They had two regions with one being greater than 30, but somewhere in the process it did not get reviewed. He pointed out that they do have greater than the 30 percent environmental degradation in cubic yards of dirt. There are three approaches being shown in the green, the blue or to take it all out and try to do the public road. He pointed out that they would prefer not to do the public road. They would prefer to make it private and to keep the pond and either reconstruct it or leave it as it is. They would probably have to lower the elevation of the pond somewhat to build their road across the top, and then raise it back up some. They don't know how much that would be until they get into the actual design. Mr. Muncaster and the property owner are here if there are any questions.

Mr. Thomas asked if there were any questions for Mr. Ray.

Mr. Rieley asked if he recalled how long the pond has been there.

Mr. Ray stated that he did not have that information.

Mr. Morris stated that Mr. Ray had talked about exactly what he was concerned about being the road, the dam, and so on. He asked if engineering had looked at this proposal.

Mr. Rieley suggested that the Commission hear from the neighbors who had the concerns.

Mr. Thomas invited the neighbors to address the Commission.

Mike Daredane, counsel for Jane Ashley Skinner, stated that Ms. Skinner was the adjacent landowner. He stated that Mr. Morris has echoed the concerns that the adjacent property owner has, which is certainly the integrity of her pond. David Pettit, of his firm, had sent a letter that was attached to the Commission's materials. Also, Nick Evans with Virginia Groundwater, LLC, had emailed a letter based on his review of the actual site conditions and his concerns about what could happen if there were construction of a road over that dam. In particular, even with whatever kind of erosion and sediment control measures would be implemented in connection with that construction that would still not protect the downstream pond with potentially catastrophic effects. That was his actual language. Nick Evans did

suggest perhaps going at the headwaters of the applicant's pond, which seems to make some sense in terms of fairness. If you are going to imperil somebody's pond, then perhaps one should imperil one's own as opposed to your neighbor's. He applauds and appreciates their response to those concerns by coming up with an alternative road plan. He stated that based on his understanding that the dam was not in good condition. He stated that he had not gone to the property to look at it. It seems that just from the brief comments that he had heard, that putting the road over the dam carries with it much more significant concerns. VDOT would not approve the road if it went over the dam. The applicant themselves got this proposal approved some six years ago. If he understood the comments, the applicant asked for an indefinite deferral in order to figure out how to put this road over the dam. It seems that all fingers are pointing away from the dam and it just does not sound like a good idea. He stated that they appreciate the applicant taking that into consideration and proposing an alternate route, which appears to satisfy their concerns. Again, if they were going to imperil the integrity of a pond, then they should imperil their own dam. He stated that based on the circumstances it seems that would fair.

Ms. Higgins asked if the alternative before them would be a satisfactory resolution.

Mr. Daredane stated that he represented the adjacent property owner and their concerns were in putting this road over the existing dam. Therefore, this alternative route, which does not have a road going over the dam, would satisfy their concerns in that regard. As he understands, the applicant has also suggested doing certain maintenance things on the dam. There are some existing problems with the spillway and otherwise that do need to repair. He asked that the Planning Commission take into account that the existing dam needs some work even if they were not putting a road over it. That work would not involve removing it entirely, and therefore creating the same threat to his client's property.

Mr. Thomas asked if there were any other questions for the adjacent property owner's representative. He asked if he understood correctly that the repairs to the dam would still be made even if the road does not cross the dam.

Ms. Higgins stated that was what Roger Ray was saying that under using this dam for purposes of controlling the construction operation of building the road that typically at the end of that operation as part of the E & S procedures they would have to restore damage that was done at that time. She suggested that possibly Glen Brooks or someone from engineering could speak to that, but typically at the end of project engineering does an inspection. Hopefully, they would protect the dam to the extent possible, but there would be some restoration required at that time. It definitely does not imply the reconstruction of the dam.

Mr. Thomas asked Mr. Brooks to advise the Commission about that matter.

Glen Brooks, Senior Engineer stated that Ms. Higgins had answered that question very well. He asked what other information that the Commission needed.

Mr. Rieley asked what the nature of the repair work would be that is necessary for the dam. He asked if the dam needed new pipe or what else done for maintenance.

Mr. Brooks stated that if it was just for erosion control, then they would probably modify the riser structure so that you don't let out as much water during the construction operation, but then come back later and try to take out the sediment deposit that may have been put into the pond.

Mr. Rieley stated that he was not looking at it as a temporary measure quite so much as if the dam needs some long term management

Mr. Brooks stated that if they purpose it as storm water management for the site, which they probably will do.

Mr. Rieley asked if storm water detention was required for five subdivision lots in a rural area on a private road.

Mr. Brooks stated that in this case the water was not going to the water supply. Therefore, it does not have a buffer and it was not a permanent stream in terms of the Water Protection Ordinance. Therefore, it was not protected. But, there is still the rural areas calculation that they would do in the simple method to come out with some percentage in the 20 percent range. Therefore, a small water quality facility would not be out the realm of possibilities. If it was already there, they could make use of it if they could direct the road drainage to it, which was likely. With all of that said, if they do use it as a storm water management facility, they would not want a deteriorating outlet structure that would they would leave with a subdivision in a maintenance agreement that they know is not going to last long. Therefore, they would want it preferably brought up to standard and at least improved so that they can predict that it will last for the foreseeable future.

Mr. Rieley asked what kind of pipe was in it now and what kind of condition was it in.

Mr. Brooks stated that he could not answer that because it has been six years since he has been out to the site. He stated that he thought that it was just a small metal pipe.

Mr. Muncaster stated that it had been six years since he had been out on the site.

Mr. Rieley stated that the reason that he was asking this question was that it certainly seemed to be
He stated that he was not skittish about having a road serving four lots going over dams. There seems to be that they should exploring a) whether the concerns of the neighbors can be satisfied with the road in its current location because there seemed to be some advantage to that as a shorter roadway. Then secondly, if the dam is going to require extensive work anyway it may be just as much of a disruption to the top of that dam as putting a road over the top of it. He stated that he was just trying to get a sense of that and what is at stake here.

Mr. Brooks stated that there would have to be some widening, which would not take place with just modifying the outward structures and repairing it as the case may be for refurbishing the dam.

Mr. Rieley asked if he had any recollections about what the side slopes are.

Mr. Brooks stated that they were fairly steep on the downhill side and on the uphill side the water was close to the dam's surface, which was not as much of a concern.

Mr. Rieley stated that if it was a road put it that it would probably be 2:1 or 3:1.

Mr. Brooks stated that there would probably need to be some additional fill and they would need to put in some guardrail along the water. He stated that it would involve some widening.

Ms. Higgins stated that potentially there might be more restoration and corrective measures if the road does cross the dam.

Mr. Brooks stated that was correct.

Mr. MacCall asked to make one point about what they were discussing previously and what Mr. Morris had brought up was that one of the conditions was that in the road maintenance agreement adding the dam to that agreement and also making it a part of the deeds and covenants. If the road goes in another location, the dam would still be in existence and be kind of shared on lot one and two. Then staff would not have any way of assuring that if the dam does not get crossed by the road that there is some sort of insurance of maintenance and stability. He pointed out that no one knows if the dam could get washed out. If that occurred, then it would be an argument between those two property owners and the

downstream owner as far as that goes. That is just a point as far as being able to make sure that there is some sort of responsibility of the lot owners to the maintenance and the upkeep of the dam.

Ms. Joseph asked if Mr. Brooks had reviewed the calculations on the new plan.

Mr. Brooks stated no that he had not reviewed the new plan, but that he believed Mr. Ray's calculations and his would probably not be too much different. Most of the earth work difference along this road way came from the width regarding the 14 foot width versus the 18 foot width for a public road. He pointed out that the longer the road gets the more that small difference in width builds up in volume along the road. Therefore, the longer road would have more of a difference. The earth work over the dam was just not that long to make that much of a difference in the overall volume.

Mr. Thomas stated that the Commission was looking for a recommendation of some sort.

Mr. Edgerton pointed out that the County Engineer has not had a chance to evaluate this, but he acknowledged that Mr. Ray's calculations were probably pretty close. The Commission has heard from the neighbors from the south, but not from the neighbors to the north. If they think that the road is going to go along the southern end of the property, then maybe they need to look at it before going that route.

Mr. Thomas asked if there was any other member of the public present to speak regarding this application.

Jeff Werner, representative for the Piedmont Environmental Council, stated that as they know the southwest mountains is an extremely special and important area to the PEC where almost 30 percent of the rural historic district is under conservation easement. Furthermore, they believe that land that is under conservation easement must be regarded extremely high when reviewing a land use decision. Mr. Rieley said it best by saying what is stake here. He felt that what that was at stake here was the stewardship of the land that was downstream from this proposal. PEC offers no comment regarding the owner's by right subdivision. The item of concern to PEC is the proposed dam necessary to facilitate these new small lots. Several years ago the Planning Commission reviewed the Chimney Rocks Subdivision where the construction of a dam caused significant concern with adjacent landowners. Currently the Board of Supervisors is reviewing a request from Key West Subdivision residents that a private dam that is used for lot access be repaired at taxpayer expense. Earlier this year Ms. Skinner, the owner of the parcel downstream, placed her land under conservation easement. Ms. Skinner land adds to the approximately 10,000 acres currently under easement in the Southwest Mountain areas of Albemarle County. They respectfully suggest that Ms. Skinner's stewardship of this adjacent parcel deserves from the County the review of this proposal at the highest standard possible.

Mr. Thomas asked if there was any other member of the public present that would like to speak regarding this application.

Larry McElwain stated that he was present on behalf of the applicant. They have looked at this in great detail and think that the first plan, shown in green, is the best for a number of reasons. One reason is that it will require significant upgrade of the dam. Secondly, there would be a lot less road. There is 300 feet less road in the green plan than it is in the blue plan. That is obviously impervious surface that would create a lot of water runoff and they were going to have problems. In addition to that, on the blue plan they were going to have to build something across the stream up north. Therefore, they were going to have to impact that stream in one manner whether it was to the south or the north. He pointed out that they think that the green plan is the best plan for the neighborhood. Obviously, engineering staff was going to be sitting on top of them every step of the way to make sure that it was done in an appropriate and careful manner. Mention was made by the last speaker about the Key West Subdivision problem. In this situation that concern will be taken care of by virtue of the restricted covenant, which would be in the chain of title. Unlike Key West, they were going to have directed obligations to the lot owners prior to the time that they buy the lot. Therefore, that was not going to be an issue. The taxpayers were not going to

have to come back in at a later point to rescue that subdivision like the County is potentially facing with the Key West Subdivision. From their point of view, they were impacting the stream in one spot as opposed to two. With their proposal there would be less impervious surface in that area, it would be more direct and would be less environmentally intrusive. Therefore, they think that is by far the superior plan. He pointed out that the people on the north side have not had an opportunity to have any kind of study to come in here and say that this might impact them in a different manner as well. All things considered, they feel that their original submission is the preferable solution and they hope that the Commission will agree with them.

Mr. Thomas asked what impact the construction would have on the stream coming into the pond. He asked if that was the stream he was speaking of crossing.

Mr. McElwain stated that they would have to cross that stream at the headwaters. There was no question that there is going to have to be some sort of structure built there, which would have an impact on the stream. He noted that were going to have to work on the dam in any event whether they build the road or not. Apparently, it is not in a very good situation down there. They feel that this will kill two birds with one stone.

Mr. Thomas asked if there were any questions for Mr. McElwain.

Mr. Rieley stated that he would like to request Mr. Muncaster to come forward and an answer a couple of questions. He asked what the size was of the drainage area.

Tom Muncaster stated that it was 110 acres.

Mr. Rieley asked if he had done a 10-year or 100-year CFS.

Mr. Muncaster stated that he had done it, but he could not tell him what the 100-year CFS is. He noted that they had to pass the 100-year storm, which was a County requirement for a subdivision with a single access. He pointed out that he had looked at it at number of different ways using the TR-55 modify ration methods and what not. Actually, it took three 72-inch risers with barrels going underneath to be able to control a 100-year storm without being over top of the road. He noted that was using the worse case of all of the methods that he had looked at.

Mr. Rieley asked what the size of the culvert that would be needed if they went the blue route.

Mr. Muncaster stated that he was not sure, but it would probably be the same size as the dam.

Mr. Rieley stated that it would probably be the same as the two barrels put together.

Mr. Muncaster stated that the risers were 72 inches. He estimated that the barrels were probably 48 inches barrels, but he was not sure. If the road went on the northern route, they would not have the risers but would still have the three pipes underneath.

Mr. Rieley stated that in that case there is no obligation to control even the 10-year storm with the existing pond because it would be built just like a farm pond, which would trickle to them in an emergency spillway.

Mr. Muncaster stated that was the way it is with a small pipe, but that it has been six years since he has been out there.

Mr. Rieley asked if it had an emergency spillway.

Mr. Muncaster stated that he thought it had sort of an emergency spillway. He noted that the existing pond was not in good shape. He stated that he had really not looked at it that close because he just assumed that they were going to rebuild it and put the road across it.

Mr. Thomas asked if any Commissioner had any more questions. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and possible action.

Mr. Craddock asked if this was not being subdivided and the owner of the land wanted to redo that dam for agricultural purposes could they just go and do it and build it up for a road and then come back for a subdivision approval.

Mr. Edgerton asked if it depends on the size of the drainage area.

Mr. Rieley stated that it depends on the size of the dam.

Mr. Brooks stated that the DCR regulation is dependent on the size of the dam and this would probably not meet it. The Army Corps regulation is the 100 acres, and they would want to come in and evaluate the wetlands and water courses and give it a joint application permit. Most likely they would grant it because it the refurbishment of an existing facility. Usually, they like to stop new construction on existing streams. They might want to talk with the Commission about the new proposal, which is a new disturbance on the stream more than they would want to talk about improving the existing disturbance on a stream. If you look at it on a long term standpoint that it might be better protection for the skinners to have that collection in the upstream pond for a long duration. He stated that he was sure that it had been protected for how many years it has been there now by that upstream pond. He stated that he would not say that there is not going to be a significant impact from construction such as muddy waters and such. The Army Corps would have to come and look at that.

Ms. Joseph pointed out that on page 1 it staff quotes from the ordinance which says developed in a manner that is harmonious with its surrounding land. She asked staff if they ever look to see if anything is next to a piece of easement property when they make that determination.

Mr. MacCall stated that those are private easements and staff usually does not take a look at that. It is easements such as agricultural district that staff would have access to. It is too difficult to go and do research on every single adjacent property that may be and it is just not standard operating procedure. He pointed out that he did not know if that would even be possible given the time frame necessary to review the plans.

Mr. Fritz pointed out that staff looks for three types of protected properties. Those would be properties in AF Districts, properties under easement as a rural preservation tract or some other easement with the Recreation Facilities Authorities, and properties associated with the ACE Program. Those would be the limitations of the properties that staff looks at.

Mr. Thomas stated that he was not totally convinced that it needs to be changed from going across the dam. He felt that it would be killing two birds with one stone. He noted that he has not been convinced that it was going to be better to put it on the upper side environmentally because it was creating a longer road and it was crossing the stream and would impact the pond eventually anyway. He stated that they should just take it across the dam like planned and get the dam redone and don't mess with the water upstream from the pond. He stated that he had not heard anything from any of the speakers that has convinced him that it would be a bad decision.

Mr. Rieley stated that he shared some of those considerations. There is a fairly long list of advantages to it current location. One is as Mr. Thomas mentioned for the longer road and the additional impervious surface. Not that this is necessarily the Commission's concern, but it does split lot 1 and separates the house from the pond with the blue scheme. It looks like the road goes up a steeper grade. As Mr.

Edgerton pointed out that scheme has not been seen by the neighbors on that side yet, and there are two construction sites on the stream instead of one. All of those are significant concerns. On the other side there is potential jeopardy to the adjacent property, which is under easement. He felt that they should pay special attention to that as they have in the past. The persuaveness of the simple logic that if there is going to be a disruption that it should be a disruption to your pond and not somebody else's pond. Those are effective arguments, too. He noted that he found himself wishing that they had a little more information. He stated that he wished that they had a better way of evaluating both of these so that they would know better what the tradeoff is between the two. He stated that he was not sure what the best mechanism would be for this. He asked if there was a way that Mr. Muncaster and our Engineering staff could take a preliminary look at both of these to get a sense of what is at stake and a full assessment from Engineering about the potential jeopardy and the potential mechanisms if the road was left on the southern side to assure the adjacent property owner that there is not going to be a catastrophic problem. The worse thing that he could think of happening was a big storm happening while the pipe work is underway. Most of the other things he felt that they could take care of.

Ms. Higgins agreed with what Mr. Rieley was saying. She stated that if it is truly the concern of the adjacent property owner to the downstream that the activity associated with the corrections to the dam might be damaging to their pond, what she would suggest if that property owner would consider cooperation because of the proximity of the dam to the property line so that during the design that the downstream can be more fully protected. She pointed out that she has seen it happen several times where when an activity is very close to a property line and the adjacent property owner is not in agreement with whatever is going on that they have to tow the line there. In this particular case, with another pond in the immediate downstream there might be a way to better protect it if there is adequate area there. They cannot move the dam now, but if it was designed to move back then maybe that could be accommodated. Personally she felt that crossing the trail waters of this pond had not added benefit. The way to share responsibility with all of these five lots is to have the dam reconstructed to standards that are in effect now, not a farm pond standard, but something that would be reviewed by Engineering and by the appropriate permit authority to reconstruct it, which will better protect them for the long term. Under that scenario there could be an appropriate storm water management agreement or at least a notation on the plat that shares the responsibility for all of the lot owners. If it ever washes out then they have more responsible parties, which has been stated. She felt that it was going to be difficult to do that close to that property line and having the whole road up against that property line will not be as nice as what the adjacent property owner would like. She felt that the same concern would be raised by the other property owners on the upstream side, too. She felt that the first alternative was still the best one. For those reasons if the adjacent property owner truly wants to protect their pond, then they should work with that property owner to allow maybe whatever measures need to be taken on that downstream side and maybe the outcome will be more successful.

Ms. Joseph stated that was a lot to ask of the adjacent property owner.

Ms. Higgins agreed that it was, but that if the true concern is to have the dam constructed to the best standard and to protect it. There are ways to protect downstream above their pond, too. But, if they are trying to squeeze it between the property lines they might not be able to do as good of a job. The dam is existing and to the condition alluded to it could be that there is a minor amount of erosion occurring now and this could correct that.

Mr. Rieley stated that those were the types of things that he would like to see evaluated by Engineering along with the northern route so that they have a little bit more technical information to go on. For very understandable reasons this is at the sketch plan level and it has been six years since anybody looked at the hydrology or anything else.

Mr. Morris pointed out that it could also give the neighbors on the northern side a chance to give some input.

Ms. Joseph stated on page 8, which was Mr. Brooks' memo, it indicates that his justification was based on the fact that it was going over the dam. She pointed out that there was no justification based on anything else. His comment is that it is not in the public's interest to be responsible for this aging dam for the benefit of five lot owners. Therefore, the general welfare is better served by a private road with private maintenance of the dam. She pointed out that she did not agree with him.

Mr. Rieley stated that concern could also be addressed if they look at these routes on equal terms because the upper one does not have a dam, but it is also a private road request. He agreed with Ms. Joseph that it muddied the waters a little bit.

Ms. Higgins stated that the basis in the ordinance for approval of a private road could be the 30 percent comparative grading. As Mr. Brooks' explained, the width of the road in itself offers a significant difference in those calculations. Mr. Brooks probably did not have the full package to review, but she would suggest that Mr. Ray and Mr. Muncaster did provide calculations with some basis. She stated that they could support it on that basis.

Mr. Rieley stated that the 40 percent is a minimum standard that has to be met before they could consider a private road.

Mr. Kamptner agreed that was one of the requirements.

Mr. Thomas asked if the Commission would like to get a consensus on asking for more information as Mr. Rieley and Ms. Higgins has discussed. Obviously, they don't have enough information on the proposed route and they don't have anything in hand on the other proposal. He asked if that was something that the Commission would like to see.

Mr. Rieley stated that he would like the Engineering staff to have a chance to evaluate the total package of both of those. He noted that they don't expect the applicant to engineer two different structures. He stated that they know that the drainage will more or less be the same for both of them. He asked that they receive some engineering assistance on the relative impacts of both of those. He stated that the blue line was new to everybody. That would help the Commission and broaden the public awareness of it as well because there are things at stake on both sides.

Mr. Fritz stated that there was one thing that he wanted to point out to the Commission so that staff could get the right piece of information to them. This particular modification request was not done under the 30 percent degradation. It was done under the other provision c, which was the general welfare provision. When they were doing the analysis of the green versus the blue, staff can provide the Commission with a rough analysis of those two roadways, but it was not based on versus a public road.

Mr. Thomas stated that they were not asking for that.

Mr. Rieley stated that the blue line had to meet the criteria. He pointed out that the Commission could not evaluate the blue line without the analysis of the public road.

Mr. Brooks stated that the blue line would have to demonstrate it using that particular section with the 30 percent rule. The green one did not, which was why he really did not go into the calculations because he felt that it would be overkill and they already had it under the general provisions. He questioned why staff should pick on the applicant about the calculations when it does not matter.

Mr. Rieley stated that they understood that, but for this one they did need that.

Mr. Brooks stated that staff could compare all of them just to say that the blue line is this much greater than the green line.

Mr. Rieley stated that if they are going to seriously consider the blue line, then they need to evaluate that against the public road because that is the standard. Therefore, they need that information as well. He noted that a comparison between the two would also be useful.

Mr. Brooks pointed out that it was a lot more work that would have to be done.

Mr. Fritz stated that was why he asked the question because he wanted to make sure staff would be giving them what they wanted.

Mr. Morris stated that they need an evaluation of the current dam and what is it really going to take to bring the dam up to speed.

Mr. Thomas stated that he thought that was something that would take care of itself. He pointed out that he still liked the other route better in the way it was currently laid out.

Ms. Higgins stated that this was a by right subdivision. Therefore, was the adjacent property owners notified?

Mr. Fritz stated that they were notified.

Ms. Higgins asked if there was any response from the other side.

Mr. MacCall stated that there was none.

Mr. Rieley pointed out that they have not seen the blue line yet.

Mr. Fritz asked if the Commission wanted the adjacent owner renotified about this.

Mr. Thomas stated that the Commission did want the adjacent owners renotified.

Mr. Ray asked if it would make the Commission's decision easier if he just withdrew the blue line. He pointed out that he did the blue line to demonstrate that they did have some concerns when they did the design. The blue line was one of their initial choices of where to put the road. They wanted to show the Commission and the public that they had concerns when they did the design. But, their preference is the green line. He asked if it would make their decision easier if he just asked to take the blue line out of consideration that is was only here to demonstrate to the Commission that they did have another approach to this, but they believe that their green line plan is the superior approach.

Mr. Rieley stated that he would have a hard time supporting going over the dam with their being an adjacent property owner that was concerned about it and they don't have any information that explores any other alternatives in any level of detail.

Mr. Ray pointed out that if they do nothing that they still have a dam there that may have a greater chance of failure than if they do proceed and do something.

Mr. Rieley stated that he understood that argument.

Mr. Higgins stated that with all of this being said in the discussion of having the dam reconstructed to a better standard, she asked if there is any idea that the adjacent property owner might have listened to this and had any different concern. She felt that one point that Mr. MacCall made had to do with if the dam stays and it straddles two properties and for some reason it detreriates over time and gets into a failure mode it is property owner against property owner and there are only two people involved and it is usually a very unhappy situation. But, if it is an alternative before us for a shared responsibility as far as a subdivision, they have more responsible parties and there is documentation on each plat before they buy

the parcel and they understand what they are getting into. That might be more beneficial other than having avoided this situation. She stated that reconstructing a dam is more beneficial than picking another place to cross.

Mike Daredane, representative for the adjacent property owner stated that the primary concern that the downstream property owner has with the proposed plan is the danger of sedimentation in connection with the construction of this roadway. His understanding is that what they were talking about in terms of making maintenance repairs to this existing dam is quite different than what they were talking about in terms of putting this thing together to put a road on it. Therefore, he felt that was a difference. In terms of what he adjacent property owner thinks, the adjacent property owner would prefer the blue route proposal. They felt that was made in good faith and that responds to their concerns. They appreciate the Commission taking that seriously. He pointed out that the adjacent property owner would prefer the blue route.

Mr. Edgerton stated that there were enough issues that need to be addressed here that it would be appropriate to ask for further evaluation on this process. He stated that consideration of the alternative to go along the northern edge of the subdivision does warrant the notification of the adjoining property owners. He stated that the Commission cannot ignore the concerns that have been expressed for the potential failure of the dam, the erosion or the impact on the property that has been placed under easement. Therefore, he requested before the Commission makes a decision that they receive further information.

Mr. Thomas stated that it was the consensus of the Commission to request that a further evaluation be done as previously discussed.

Mr. Fritz pointed out that the application was coming upon the 60 day period. Therefore, the Commission needs to discuss this issue with the applicant.

Mr. Thomas asked Mr. Ray if he was the speaker for the applicant.

Mr. McElwain stated that on behalf of the applicant they would be delighted to go along with a deferral and waive their rights under the 60-day rule for a relatively short period of time. He stated that they were not that pressed on the project and would rather get it right.

Ms. Higgins moved for approval of the applicant's request to defer SUB-2004-232, Starfield Preliminary Plat, to November 9.

Mr. Morris seconded the motion.

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

Mr. Thomas stated that the motion carries to allow a deferral for SP-2004-00029 to November 9.

It was the consensus of the Commission that the abutting owners are re-notified on this request and that staff provides the Commission with the additional information as requested concerning the exploration of the other alternatives.

Items Requesting Deferral:

SP-2004-00029 Holy Cross Episcopal Church Expansion (Sign #10) - Request for special use permit amendment to allow expansion to an existing, non-conforming church in accordance with Section 10.2.2.35 of the Zoning Ordinance which allows for "church building and adjunct cemetery." The property, described as Tax Map 84 Parcel 61, contains 2.376 acres, and is zoned RA Rural Areas. The

proposal is located on Rt. 635 (Craigs Store Road), approximately 3.5 miles south of Batesville in the Samuel Miller Magisterial District. The Comprehensive Plan designates this property as Rural Areas in Rural Area 3. (Scott Clark) ***APPLICANT REQUESTS INDEFINITE DEFERRAL.***

Mr. Thomas stated that the applicant requested indefinite deferral of SP-2004-00029. He opened the public hearing and asked if there was any public comment on this application. There being none, he closed the public hearing to bring the matter back before the Commission discussion and a possible action.

Ms. Higgins moved to accept the applicant's request for indefinite deferral of the review of SP-2004-00029, Holy Cross Episcopal Church Expansion.

Mr. Edgerton seconded the motion.

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

Mr. Thomas stated that the motion carried for SP-2004-00029 to be indefinitely deferred.

Review of the Keswick Agricultural/Forestal District - Required 10-year review of the Keswick Agricultural/Forestal District. The district includes the properties described as Tax Map 63, parcels 24, 39, 39A, 39B, 40, 42A, 43; Tax Map 64, Parcels 5, 7, 7A, 8, 8A, 9, 10, 10A, 10B, 10C, 10D, 11, 12, 13, 13A, 14; Tax Map 65, parcel 13; Tax Map 79, parcels 46, 46A; Tax Map 80, parcels 1, 2, 2A, 3A, 3A1, 3G, 3H, 3I, 4, 61D,88, 114A, 115, 164, 169, 169A, 169C, 169C1, 174, 176, 176A, 182, 182A, 183, 183A, 190, 192, 194; Tax Map 81, parcels 1, 8A, 15A6, 15B, 63. The district comprises a total of 6584.831 acres and is located in the vicinity of Keswick, with portions of the district bordering the Southwest Mountains and Route 22 (Louisa Road).The area is designated as Rural Area in the Comprehensive Plan and is zoned RA Rural Areas. (Rebecca Ragsdale) ***STAFF REQUESTS DEFERRAL TO OCTOBER 12, 2004.***

Mr. Thomas stated that staff has requested a deferral of this review to October 12. He opened the public hearing and asked if there was any public comment on this application. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and a possible action.

Ms. Higgins asked why staff was requesting a deferral for this item.

Mr. Fritz stated that in this particular case they were unable to get a quorum for the Agricultural Advisory Committee.

Ms. Higgins made a motion for deferral of the review of the Keswick Agricultural/Forestal District to October 12, 2004.

Mr. Rieley seconded the motion.

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

Mr. Thomas stated that the motion carried for the Review of Keswick Agricultural/Forestal District to be deferred to October 12, 2004.

Review of the Kinloch Agricultural/Forestal District - Required 10-year review of the Kinloch Agricultural/Forestal District. The district includes the properties described as Tax map 65, parcels 7, 7A, 8, 84A, 86, 89, 90, 91, 91A, 92, 93, 93A, 93A1, 94, 94A, 95, 95A, 100, 121; Tax Map 66, parcels 2, 3A, 3C, 32, 32D, 32E, 34, 34B. The district comprises a total of 2085.97 acres and is located in the vicinity of Cismont, with portions of the district bordering Route 231 (Gordonsville Road), Route 740 (Zion Hill Road), Route 22 (Louisa Road) and Route 640 (St. John Road). The area is designated as Rural Area in the Comprehensive Plan and is zoned RA Rural Areas. (Rebecca Ragsdale) ***STAFF REQUESTS***

DEFERRAL TO OCTOBER 12, 2004.

Mr. Thomas stated that staff has requested a deferral of this review to October 12. He opened the public hearing and asked if there was any public comment on this application. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and a possible action.

Mr. Rieley moved to defer the review of the Kinloch Agricultural/Forestal District to October 12, 2004.

Mr. Morris seconded the motion.

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

Mr. Thomas stated that the motion carried for the Review of Kinloch Agricultural/Forestal District to be deferred to October 12, 2004.

Regular Items:

SP-2004-00026 Mission Link Project / Calvary Baptist Church Amendment (Sign #9) - Request for special use permit approval, in accordance with Section 13.2.2(10) of the Zoning Ordinance, for the modification of the conditions of a prior special use permit (SP 2001 -59) to permit the construction of an accessory structure at an existing church on 2.997 acres zoned R1, Residential. The driveway is to be aligned with the Southern Parkway. The property, described as Tax Map 77, Parcel 43, is located in the Scottsville Magisterial District on Avon Street Extended across from the Southern Parkway. The Comprehensive Plan designates this property as Neighborhood 4. (Bill Fritz)

Mr. Fritz stated that this request was for an amendment to a prior special use permit. This church is located on Avon Street across from the Mill Creek Industrial Park and adjacent to the Southside Shopping Center. This particular project was reviewed in 2001/2002 as a special use permit. It was a nonconforming church and they built an addition onto the back. That was all done under a site plan. The church currently wants to build a 1,600 square foot addition, which is used as part of their outreach program. The church wants to use the addition to store the materials that they collect and form into packages, which are then used for their missions typically overseas. But the materials sometimes are used both inside and outside of the community. The church needs a place to store these materials. The packages are created in their own church and other locations, and then the packages are stored in this building until they are shipped out. Staff has reviewed the special use permit and the site plan amendment, which was submitted in support of it. The site plan amendment can actually be signed as soon as the special use permit is approved. Staff has recommended approval and found no unfavorable factors with the special use permit. The conditions are outlined in the staff report. The conditions will basically stay the same with two relatively minor changes. One was the reference to a particular plan, and the other was the limitation on the size, which had to be increased.

Mr. Thomas asked if the Commission had any questions for Mr. Fritz.

Ms. Joseph asked if the storm water detention area was located at the edge of the parking area.

Mr. Fritz stated that the storm water area had been looked at for pre-construction and during the construction to make sure that area would work and function as designed. Mark Chambers was actually out there in the field as it was being constructed and signed off on it as being done properly.

Ms. Joseph asked if the area in the back was flat.

Mr. Fritz stated that the area in the back was actually flat and there was no grading that needs to be done to support this at all. He stated that the only earth work that the church will have to do is for the footing.

Ms. Joseph asked if staff talked with the applicant about how these goods were going to get from the parking area to the building and what was the answer.

Mr. Fritz stated that there were stairs with a walk that could be used in the rear and a door that could be used. The applicant would walk across the lawn to get to that area.

Ms. Joseph asked if they would have to walk across a grassy area, and Mr. Fritz stated that was correct and that he had discussed that with the applicant.

Ms. Higgins asked if the realignment had been done.

Mr. Fritz stated that the applicant has already realigned the entrance and done all of the work.

Mr. Thomas opened the public hearing and invited the applicant to address the Commission.

Cindy Newsome stated that she was present to answer any questions that the Commission might have.

Ms. Joseph asked why the church has not proposed any kind of hard surface to get these materials to the storage building and then back out again.

Ms. Newsome stated that since it was not that great of a distance they did not feel that it was necessary. The church was going to be moving more from the church to the building than from the parking lot to the building.

Ms. Joseph stated that there was no pavement between the church and the building.

Mr. Fritz stated that the conditions were written so that if the church decided sometime in the future to put in a sidewalk in that area that staff would be able to approve that administratively because it would be in general accord.

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

Mr. Rieley moved for approval of SP-2004-00026, Mission Link Project/Calvary Baptist Church Amendment with the recommended conditions.

1. The church's improvements and the scale and location of the improvements shall be developed in general accord with the submitted preliminary site plan entitled, ~~"Site Plan, Calvary Baptist Church," prepared by David Wyant, P.E., and dated January 4, 2002~~ "Site Plan Calvary Baptist Church" received May 26, 2004 and initialed WDF 9/8/04;
2. The total square footage of the building including the proposed expansion shall not exceed ~~eleven thousand, five hundred (11,500)~~ thirteen thousand, one hundred (13,100) square feet;
3. Yards and setbacks for structures shall be in accord with the R-1 setbacks, as specified in Section 13.3 in the Zoning Ordinance, to be in effect on March 20, 2002. Parking areas shall be setback at least ten (10) feet from all property lines, except the southern portion of the property that abuts the Southside Shopping Center;
4. There shall be no day care center of private school on site without approval of a separate special use permit, or amendment to this permit;
5. VDOT approval of the proposed entrance aligning with the Southern Parkway must be granted prior to final site plan approval; and
6. A tree conservation plan for the rear forested area of critical slopes in accordance with Section 32.7.9.4(b) shall be submitted with the final site plan. It may only be disturbed under the conditions of connecting to the available public sewer in the rear of the property. Following such

activity, the slopes shall be reconstructed and replanted as deemed necessary to comply with Engineering requirements and the approved final site plan. The tree conservation plan shall be subject to review and approval by the Planning Director.

Ms. Higgins seconded the motion.

Mr. Thomas asked if there was any more discussion.

Ms. Joseph asked to add a condition that the applicant needs to make some sort of hard surface connection between either the parking or the church building to this building because they would expect that of anyone else that were doing this sort of thing. She stated that the church might have some erosion problems if they start a pathway there without any kind of hard surface.

Mr. Thomas asked Mr. Fritz to explain why staff did not recommend that condition.

Mr. Fritz stated that staff had discussed that with the applicant. The applicant had pointed out the infrequencies of the deliveries and the need for the actual access to the building. Therefore, staff did not feel that there was a need for it. Staff was also of the opinion that if at some time they did determine that they needed it that the conditions were written in such a way that they could install it themselves.

Mr. Thomas asked if any other Commissioner had any thoughts on that.

Mr. Craddock stated that he was satisfied with the motion as made.

Mr. Thomas stated that he would rather leave it up to the applicant to make that decision at the time that they feel like it is necessary. He asked for a roll call.

The motion carried vote of (7:0).

Mr. Thomas stated that the motion carries and that SP-2004-00026 would be heard by the Board on October 13.

Mr. Rieley stated that for the record that he felt that she was correct and that the church would end up putting in a sidewalk.

Old Business:

Mr. Thomas asked if there was any old business.

Mr. Rieley stated that he wanted to make sure when staff was talking about the information that they were assembling for the Starfield pond that one of the things which was significant is if you go the blue route that clearly they were going to need the equivalent of three big culverts because it has to carry the 100-year flood. He asked if they do that and little or nothing is done to the existing pond what would be the implications of that. He asked if the emergency spill way was adequate to deal with it now. In other words, Ms. Higgins raised the same point that they may be in a situation where they were making the situation worse for the neighbor. He requested that staff make sure that is explored. If two sets of pipes are needed with one at the dam and the other up at the other end in order to have an acceptable situation, then the Commission needs to know that too.

Mr. Fritz stated that staff appreciates the way that the comments are provided because it helps staff understand what it is to come back to the Commission with.

Ms. Higgins stated that the applicant was not going to do a complete analysis of the existing dam. She suggested that a non-technical narrative be done to understand how the dam could be modified to

accommodate the road. The reason she brought that up was that it could possibly be done on the upstream side. That means that it is not widened towards the neighbor, but that maybe a width could be thrown in there so they would know quantitatively that it is 5 feet wide at the top now, but it was going to end up being 15 feet wide. Therefore, they might have some feel about what it might involve.

Mr. Morris stated that he would really like to have that information.

Mr. Edgerton stated that one of the concerns that he had about that was that the dam appears to be so close to the property line.

Ms. Higgins suggested that it be widened on the upstream, which was the only way that it could be done because of the flatter slope. If the adjacent property owner would give them some lead way, they could possibly do another way to catch sediment that even migrates from disturbing that dam in a better method.

Mr. Craddock asked if they would need to repack it on that lower side.

Ms. Higgins stated that they usually do have to track it in on the downhill side. With the property line, it is going to be hard to do.

Mr. Kamptner stated that an appeal was filed last week on the Faulconer Construction Site Plan. There has not been a definite date set for the Board of Supervisors hearing, but October 20 is a possible date. To follow up on the discussion from last week concerning the Commission's discussion about the decision, the limitation period is actually 60 days and not 30 days. Therefore, the discussion needs to be held off until this matter runs its course. He pointed out that the 60 days would probably run from the date of the Board's action.

There being no further old business, the meeting proceeded.

New Business:

Mr. Thomas asked if there was any new business.

Ms. Higgins pointed out that there were five Tuesdays in November and asked if the Commission would meet on all five. She questioned if the Commission would meet on November 2, which was Election Day.

Mr. Craddock and Ms. Joseph stated that they would be absent on November 2.

Mr. Thomas stated that he really appreciates the hard work that staff does each week on the staff reports. He asked that staff pass along this compliment to the other staff members.

There was no further new business.

Adjournment:

With no further items, the meeting adjourned at 7:33 p.m. to the September 28, 2004 meeting.

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V. Wayne Cilimberg, Secretary

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