Albemarle County Planning Commission
October 12, 2004

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, October 12, 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 David Benish, Chief of Planning & Community Development; Bill Fritz, Chief of Current Development; Steve Tugwell, Planner; Rebecca Ragsdale, Planner; and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Thomas called the regular meeting to order at 6:00 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.

Roger Schweikert, resident of 6209 Spring Hill Road in Ruckersville, stated that basically he knew that the State and County had an understanding about the development along Route 29 and that the localities have the ability to plan how Route 29 is developed. He stated that his concern is that with the continued stoplights that are being put up from here as far north as Warrenton that Route 29 is becoming more and more like a parking lot. He recommended that as many intersections as possible, including Frays Mill Road intersection, have an overpass with a deceleration lane put in at some point. This should be a requirement in the Comprehensive Plan for the future of the County. He felt that something similar to that should be put in at Forest Lakes South as well because there is a deep bend in the road as you are coming down Route 29. As a former auto/plane representative, he knew that there have been some accidents in those areas as well. He encouraged that there be an over-ramp put in over that lower area with an underpass underneath in the natural area where a bridge can be placed. Any places that can be constructed in that manner should be done. He suggested that the County try to not develop this area commercially, but rather try to keep Route 29 as the main artery and as open as possible, particularly with the problems of getting by-passes built in this area. He reiterated that interchanges should be placed on Route 29 North, at Frays Mill Road and at Forest Lakes South.

Mr. Thomas invited further public comment on items not listed on the agenda.

Neil Williamson, representative for the Free Enterprise Forum, extended an invitation to all Commissioners who can attend the Blue Ridge Home Builder's presentation on Thursday at 9:00 a.m. at the Double Tree Hotel on the Subdivision Ordinance. It is an interesting presentation, which will raise a lot of questions. It has been presented to staff and the Board and he wanted to make sure that the Planning Commission received an invitation.

Mr. Rieley asked if that was the same presentation that DISC II saw.

Mr. Williamson stated that it was the same presentation, which had not changed significantly since then. The other item that he wanted to bring to the Commission's attention regarded the citizen's survey. He stated that he had only had a brief opportunity to review the results from the Albemarle County survey. He asked to draw a couple of things out that jumped out during his second reading of it. The first quote was, to evaluate the general population's opinions about growth management policies. The citizens of Albemarle were asked, "The County Policy attempts to concentrate growth in areas designated for urbanization. Do you favor or oppose efforts to direct growth in these areas of the County while restricting development in the Rural Areas." This policy continues to enjoy the solid support of 70 percent with Albemarle residents saying that they are in favor of such development policies. However, this is a significant decline from support in the 2002 survey where almost 80 percent favored concentrated growth

in designated areas. He stated that a similar question was asked in 1994, but he had not had a chance to go back and check it. He pointed out that he thought that the result was 90 percent in 1994. It was probably not the exact same question, but that he finds that trend to be interesting. In addition, again quoting from the report, "According to the current residents of Albemarle County, poor infrastructure services are key to increasing the likelihood of someone preferring to live in the urban area as opposed to a rural area of the County. The least supported item was the development of space that would house a combination of commercial, residential, and office real estate with less than 40 percent (38.1 percent), indicating that this would be very important in drawing residents to live in the designated urban areas." He pointed out that he found this to be interesting and that some of it may be education and they might not know what that would look like. But, he just wanted to draw it out for their attention particularly because they now have ten years of results to provide some interesting barometers for what the community is thinking.

Mr. Thomas asked if there was anyone else in the audience who would like to speak on matters not listed on the agenda. There being none, the Commission moved to the next item on the agenda.

Review of the Board of Supervisors Meeting – October 6, 2004

Mr. Benish reviewed the actions taken by the Board of Supervisors on October 6.

Consent Agenda:

Approval of Planning Commission Minutes – July 20, 2004

Mr. Thomas stated that there was one item on the consent agenda. He asked if any Commissioner would like to pull it for discussion.

Mr. Morris moved for approval of the July 20, 2004 minutes as submitted.

Mr. Craddock seconded the motion.

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

Mr. Thomas stated that the consent agenda was approved.

Deferred Items:

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) ***DEFERRED FROM SEPTEMBER 21, 2004.***

Ms. Ragsdale summarized the staff report. The Agricultural and Forestal Districts program is an important voluntary protection measure utilized in the County. It is enabled by the State Code. As part of the enabling legislation it is required that agricultural and forestal districts be reviewed. Keswick Agricultural/Forestal District is on the ten-year review cycle. The district is located along Route 22 in the Keswick area of the County. It was last reviewed in October, 1994. The district was created in September of 1986 and originally had approximately 5,200 acres. Since that time the district has increased in acreage to approximately 6,584 acres. During these review periods it is the property owner's time to withdraw by right. Property owners can make a withdrawal request up until the time that the Board of Supervisors acts to renew the district. There have been three requests to withdraw from the district totally 120 acres. This includes tax map 63, parcel 24, which is at the end of Hammock's Gap Lane. The Gentry

family has requested to withdraw 2 parcels of 14 acres and 134 acres. According to land records, this represents approximately 63 acres in agricultural use and 68 acres in forestry use. Mr. Baker has requested to withdraw tax map 79, parcel 46A, which is a 43 acre parcel located south of Hammock's Gap Lane near Springdale Lane off of Route 22. Given these withdrawals, the district would decrease in acreage to 6,391 acres. About 4,466 of the 6,584 total acres in the district are under easement. According to Albemarle County real estate records, 3,375 acres of the district are used for forestry and 2,639 acres are used for agricultural use, which is a land protection measure that compliments the Rural Area policy goal of promoting agricultural and forestal land uses. Also, the district helps preserve scenic resources such as the Scenic By-Way of Route 22. The Keswick District includes a large portion of the Southwest Mountains Rural Historic District. There are some historic properties such as *East Belmont* and *Grace Church* in the vicinity of the district. The Agricultural and Forestal Advisory Committee reviewed this District at their September meeting and recommended renewal of the District, with the requested withdrawals of TM 63, parcels 24, 43 and Tax Map 79, parcel 46A.

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

Mr. Rieley stated that the Commission reviews these districts so sporadically that it was hard to get a sense of the general pattern. He stated that one district had a small decrease in acreage and the other district had a slight increase in acreage. He asked if staff saw a trend.

Ms. Ragsdale stated that she had not looked at that aspect. She suggested that Mr. Benish might be able to answer that question since she had only been working with these districts for a couple of months.

Mr. Benish stated that the current trend is slightly at a decline. There was a period that the County had a high peak of activity when there were public projects out in the Rural Areas that were not defined by location. That can spur some interest for the districts to be created. During the period in the 90's when the By-Pass issues were being discussed there was a real spike of activity. It seems to run in cycles and is very individualistic to the needs of the property owners. He pointed out that it is pretty typical to see slight declines and slight increases, but he would guess that the County over time was in a slight decline.

Ms. Higgins stated that in the withdrawal letter for Mr. Watkins, it says that at the time they are exploring the possibility of placing it into a permanent conservation easement. She asked what would be inconsistent with having the property included in the agricultural/forestal district and then placing a permanent conservation easement on it. It makes it sound like he is withdrawing the property from this designation and he was considering doing something else.

Mr. Thomas asked if that property was in the Kinloch District Agricultural/Forestal District.

Ms. Joseph stated that property was in the Kinloch District. She stated that the reason that people do that is because when it is in an agricultural/forestal district you can only make 21-acre parcels. When it is not in an agricultural/forestal district you can make smaller parcels and there was a potential to get more money and more tax incentive or tax credits for the permanent conservation easement.

Ms. Higgins stated that it was a little bit confusing, but it ends up not being developed more intensely if it is done either way.

Mr. Rieley stated that the conservation easement was a lot more permanent and a lot more restrictive.

Mr. Edgerton stated that there was a substantial tax benefit for doing a permanent conservation easement.

Ms. Higgins stated that it would be more of an incentive than the threat of a road project.

Mr. Benish pointed out that the property owner could apply and come back into the district the next time around, which was not uncommon.

Mr. Edgerton stated that he had a question for Mr. Kamptner. In the third paragraph, second sentence on page 1 it says, "The District may have no effect on adjacent development by-right . . ." He asked if Mr. Kamptner could provide the legal definition and provide an explanation on why it should not be "shall" instead of "may".

Mr. Kamptner stated that is outside of the quotation marks. Therefore, that is not reiterating the State Code section.

Mr. Edgerton asked what the word "may" means in that context.

Mr. Kamptner stated that in this context it could be read to mean two different things. One, it could be mandatory in nature, and it may have no effect or "may" could mean yes or no.

Ms. Higgins stated that it means not shall.

Mr. Benish stated that he believed that there is little that they can do in a by right development proposal based on its adjacency to agricultural/forestal districts. In special use permits, staff will look at the adjacency of the use and its impacts to the agricultural/forestal district. Staff typically does that for cell towers, which is an example. In those legislative reviews if there are impacts to those proposals that would impact the character of the agricultural/forestal district that he thought that under those legislative acts that they have the latitude to consider that. The "may" is probably their terminology to short handedly explain in quick terms what this district means. It has some strength, but they were limited by essentially ministerial acts on how they can apply it.

Mr. Kamptner stated that it was really not a factor and not available for use for site plans and subdivision plats for parcels outside of the district. The example that Mr. Benish gave was about the special use permit and the criteria that the Commission looks at in determining whether it was a substantial detriment to the adjacent property and whether it changes the character of the district. That district means the neighborhood and the surrounding area. Therefore, in that sense it does have an effect.

Mr. Edgerton stated that the State Code stipulation, if he was reading it correctly, says that land use planning decisions, administrative decisions and procedures affecting parcels of land adjacent to any district shall take into account such existence of such district. The interpretation of that is only occurring for special use permits. He asked if that was decided on the local level.

Mr. Kamptner stated that it was decided on the local level, but it was also consistent with State law. If the County wants to consider agricultural/forestal district lands in subdivision and site plan reviews, they need to adopt regulations, for example, that require additional buffering and different setback regulations when the agricultural/forestal district boundary is the border of that parcel. He stated that he did not think that the current development staff can decide to deny the site plan because it was going to allow some type of development next to an agricultural/forestal parcel absent a specific regulation that the site plan is contrary to.

Ms. Joseph stated that on page 4 of the staff report it quotes, "Relation to Other Comprehensive Plan Policies." She asked if this was wording from the adopted Comp Plan or the proposed Comp Plan.

Ms. Ragsdale stated that this was the language in the agricultural and forestal district sections of the existing Comprehensive Plan.

Mr. Thomas asked if there were any more questions for staff. There being none, he opened the public hearing. Since the applicant had previously spoken, he asked if there was any further public comment. There being no one, he closed the public hearing to bring the matter back to the Commission for discussion and possible action.

Mr. Rieley made a motion to recommend approval for the review of the Keswick Agricultural/Forestal District.

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 Keswick Agricultural/Forestal District, which would be heard by the Board on November 3, 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) ***DEFERRED FROM SEPTEMBER 21, 2004.***

Ms. Ragsdale summarized the staff report. Just north of the Keswick Agricultural/Forestal District is the Kinloch Agricultural/Forestal District, which is on the same review cycle as Keswick that was created at the same time in September, 1986. It was also reviewed in October of 1994. It was originally 1,586 acres and also increased in acreage to its current 2,085 acres. Staff distributed an update to the Commission. Since the staff report was prepared there were two requests to withdraw from the district. Keswick Winery has requested to withdraw from the district, which is 393 acres with the majority being forestry and the rest in vineyards. Across the road the Holly Fork property, which is owned by the Watkins, is also requesting withdrawal of 193 acres. There is one requested addition of 11 acres by Ms. Sergeant who is in horse boarding and training. Those are the requested changes to the district. That would bring the total withdrawal from the district to 500 acres. There would be 1,500 acres remaining in the district. A large portion of this district is also under easement. About one-half of this district is under easement. The properties that are not under easement will remain in the district. This is also in the vicinity of the Southwest Mountains and is just north of Keswick. It is consistent with the Rural Area Policy as mentioned before in supporting agricultural and forestal industries. It also includes the Scenic By-Way on Route 231 and a portion of Route 22 along through the district. The Agricultural/Forestal Advisory Committee reviewed this request at their September meeting. The Advisory Committee has not been updated as far as the requested withdrawals, but recommended renewal in the same ten-year review period.

Mr. Rieley stated that he was curious on why a vineyard and winery would withdraw from an agricultural/forestal district. He asked staff if they knew why they were withdrawing.

Ms. Ragsdale stated that there were no specific reasons other than they were not interested in participating in the County program any longer. She pointed out that was all that their attorney could offer as far as their reasons for withdrawing.

Mr. Rieley asked if there were winery uses prohibited by being in the district.

Ms. Ragsdale stated that any uses allowed by right in the Rural Areas would be allowed, and she was unaware of any use that would not be allowed relating to the winery operation.

Mr. Thomas opened the public hearing and invited the applicant to address the Commission. Since the Commission has already spoken to the applicant, he invited public comment on the application. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and possible action.

Ms. Higgins made a motion to recommend approval of the Kinloch Agricultural/Forestal District with the two deletions of parcels 93 and 93A and one addition of parcel 10G1.

Mr. Morris seconded the motion.

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

Mr. Thomas stated that the motion carries and would be heard by the Board of Supervisors on November 3.

Regular Items:

SUB-2004-0265 James Rollins Resubdivison - Request for a waiver from Section 14-505(c) in order to allow a parcel fronting on private road to have direct access to State Route # 622 (Albevanna Spring Road). The property is zoned RA, Rural Areas. The property, described as Tax Map 131, Parcel 47B and 47B1, is located in the Scottsville Magisterial District on the south side of Albevanna Spring Road (Route # 622), and east of its intersection with Pat Dennis Road (Route #733). The Comprehensive Plan designates this property as Rural Area 4. (Steve Tugwell)

Mr. Fritz introduced Steve Tugwell who is a new Planner.

Mr. Tugwell stated that he would briefly outline the request. There is an existing access easement, which is shaded in orange on the illustration. It is a single point of access for both parcels 47B and 47B1. The applicant is proposing to vacate the hatched portion and create a new 30 foot access or right-of-way off of Albevanna Spring Road back to 47B1. Thus, they would have two points of ingress and egress for these two parcels. Basically, this would be creating a separate access easement for 47B1.

Mr. Edgerton asked if they wanted to retain the use of the driveway, and Mr. Tugwell stated that was correct.

Ms. Higgins asked if the right-of-way would be vacated.

Mr. Tugwell stated that a portion of the right-of-way would be vacated. Staff has reviewed this request based on Sections 14-233 and 14-237(c) in the Subdivision Ordinance. Based on staff's review, the modification does not satisfy the criteria of Section 14-233 for approval. Therefore, the request does not meet the criteria for approval. However, it would take away the orange colored access running through 47B, which would be one positive aspect to this waiver request. Staff is recommending denial based on that the request is primarily for the convenience and the proprietary interest of the applicant. Therefore, staff is recommending denial of the waiver request.

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

Ms. Joseph asked if there were two different owners to this property, and Mr. Tugwell stated that was correct.

Ms. Joseph asked if he had talked with the owners of parcel A.

Mr. Tugwell stated that the subdivision for parcel A was created in 1987, which is now known as parcel 47B1. He noted that staff has not spoken with the owners of parcel A.

Ms. Joseph stated that if this happens, then these owners have to create a brand new driveway.

Mr. Fritz pointed out that the adjacent owners were notified and were present this evening. If in the event that the Commission chooses to approve the application, staff included some language.

Ms. Joseph stated that there were four development rights on parcel 47B. Therefore, that property could be subdivided into three other parcels.

Mr. Fritz stated that was correct.

Mr. Rieley stated that typically the parcel itself with Kirk Hughes' stamp on it refers to a 30 foot access easement. Lum's survey has a 40 foot right-of-way. He asked if it was actually an access easement. He asked if it is not a conveyance of fee simple ownership.

Mr. Fritz stated that was correct because it is simply an easement and not a fee simple conveyance.

Mr. Rieley asked if this was to serve parcel A.

Mr. Tugwell stated that the new right-of-way is to specifically serve parcel 47B1.

Mr. Fritz pointed out that parcel 47B1 was also shown as parcel A on the plat.

Mr. Rieley stated that this shift would have to be with mutual agreement of the owner of parcel 47B.

Mr. Fritz stated that if it were approved that is correct. Staff has a proposed condition to make sure that occurs in the event that the Commission approves the request. The applicant would not be able to do it until the revised plat was approved and recorded.

Ms. Higgins stated that was true unless there was some language at some point that said if a separate driveway is provided that they pre-agreed to vacate, which happens in a lot of instances.

Mr. Fritz stated that staff was recommending that in the event that the Commission disagrees with their recommendation and are recommending approval, staff has five conditions recommended. The fifth condition requires the signature of both property owners. It requires the plat to actually be amended to construct the entrance as proposed on the blue line shown on the illustration. Without amending the plat it would technically be a violation of the Subdivision Ordinance. The proposed language would require that the various property owners would agree to the division and what private agreements that they might work out between the two of the property owners as to who is going to construct, how it is going to be constructed, the timing and so forth.

Mr. Rieley stated that it would seem by its own nature that it would be required because you can't shift an easement on to somebody else's property.

Mr. Fritz agreed and noted that it was simply a way for staff to verify that both property owners are aware of what is going on and agree to it. Even if the Commission approves this application and either one of the two property owners does not want this to occur, then they simply fail to sign the plat and it does not happen.

Mr. Rieley stated that he was a little unclear why staff feels it cannot support this because it seems to be something that would be mutually beneficial to both of these parcels.

Mr. Fritz stated that he could provide some additional comments. Parcel A could not have been approved without the joint access easement. The property has only about 450 or 460 feet of frontage. The minimum frontage requirement in this district is 250 feet of frontage. Therefore, the parcel does not have enough frontage for the creation of two parcels with immediate access onto Route 622, Albevanna Spring Road.

Ms. Higgins stated that VDOT's approval of a second entrance is that after you have 250 feet you can have a second entrance.

Mr. Fritz stated that VDOT will actually approve entrances with the minimum separation of 12 ½ feet.

Ms. Higgins stated that it was not about separation, but you cannot have a second entrance even on a single parcel if you don't have at least 250 feet of road frontage.

Mr. Fritz stated that in terms of giving entrances to new parcels that VDOT would base their approval on what the County was approving. He stated that he would not confirm that if you have 1,000 feet of frontage on a single parcel that you could get four separate entrances from VDOT. He noted that he was not sure how many they would approve.

Ms. Higgins stated that after 250 feet you could have a second entrance.

Mr. Fritz stated that the County will not approve a separate parcel until you have 250 feet of frontage.

Mr. Rieley stated that it appears that what is being proposed is the vacation of the existing driveway so that there would still only be one point of access. He asked if that was correct.

Mr. Tugwell stated that there would be one point of access for the existing house and a separate point of access for parcel 47B1.

Mr. Rieley stated that they were not including in that the vacation of the existing driveway onto the state road.

Mr. Tugwell stated that was correct.

Mr. Fritz stated that they were aware that it was a second entrance.

Mr. Rieley asked if the site distance was adequate, and Mr. Fritz stated that it was.

There being no further questions for staff, Mr. Thomas opened the public hearing and invited the applicant to come forward.

James Rollins stated that he was the owner of parcel 47B. The main reason that they want to do this is because that road goes through his property and previously there have been renters that have been there. There was no problem with the renters, but the problem was that they drove through where his boys ride their bicycles. That is part of the problem. They are also trying to sell this house and they also want to make sure that they can put their own driveway in. Many people don't want to buy a piece of property with an easement running across it. They want to make sure that they can get rid of that easement. That is basically what he is trying to do. He stated that he was trying to get rid of the property and the house. That easement going through the property is causing problems. As far as environmentally, his children were very environmental and he wanted to make sure that nothing happens to them. There have been a few instances where there have been cars going through there a little too fast. It is a dirt and grass road. They would like to move it over to the end of the property. He stated that they would move the whole driveway, and then take their driveway to their house. Therefore, that orange colored section would be gone and their point of entrance would be at the end of the property. If there is a problem with the owners of 47B1, they would be glad to just move the whole entrance all of the way to the end of the property. Therefore, there would not be any other cars going down their road. They want their driveway to be their own driveway.

Mr. Fritz stated that they would not need to approve a waiver, but would have to approve a modified plat to relocate the easement. That could be done administratively.

Mr. Rieley stated that the applicant would not have to come to the Planning Commission for that.

Mr. Rollins stated that the problem that he had was the signing of the papers. The people will not sign the papers with him for some reason.

Mr. Fritz stated that both property owners would have to sign the plat. Staff would not be able to approve it administratively.

Ms. Higgins asked if that was a legal issue between the property owners.

Mr. Fritz stated that the position that staff would take in terms of enforcement of the subdivision is the plat that was approved shows the easement in its current location and to move it would be a deviation from the approved plat. Therefore, they would go back to the party holders of the easement and have them remove the easement.

Mr. Rieley asked if that would be the case either way, and Mr. Fritz stated that was correct.

Ms. Higgins stated that he had noted in his letter that he has not had any conversation with the property owners.

Mr. Rollins stated that he went to her house and talked to her, but she would not talk.

Ms. Higgins asked if since this letter if there had been any change.

Mr. Rollins stated that there has not been any change.

Ms. Higgins pointed out that the photographs mentioned in the staff report were not in their package.

Mr. Fritz stated that the photographs would not reproduce, but they could pass them around.

Ms. Higgins stated that if the photographs were pertinent to the issue that the Commission ought to look at them.

Mr. Fritz passed around the photographs. (See Attachment – Photographs)

Mr. Rollins stated that he did not know what else to do.

Mr. Edgerton stated that if they approve this it would be contingent upon the adjacent property owner agreeing to it.

Mr. Rollins asked if it would be required if he moved the entrance to the other end.

Mr. Craddock stated that it seemed if he was going to sell the property that it would be best to have separate entrances.

Mr. Rollins stated that he agreed. He stated that he would like to find out what he had to do so he could get it done. If he cannot do anything, then he would keep doing it the way he was currently doing it. It seems that it would be advantageous for both parties to have their own driveway.

Mr. Thomas stated that this sounds like something that needs to be agreed upon before it comes to the Commission.

Mr. Rollins pointed out that he could not get anybody to talk to him. Therefore, he did not know what else to do to make things to start working well.

Mr. Edgerton stated that the problem in this situation is that the Commission can't sign the easement off.

Mr. Rollins stated that if he moved the right-of-way to move his driveway that it would have to be a legal thing.

Mr. Edgerton stated that it would have to be signed by both parties.

Mr. Rollins stated that means that is the end of it.

Mr. Thomas opened the public hearing and asked if there was anyone else present who would like to speak on this application.

Patricia Vaughan stated that she was the adjoining property owner as shown on the map that was provided by Mr. Tugwell. She felt that the proposed access road would have a negative impact on the sale value of her property. Therefore, she would oppose the waiver. She stated that it was proposed to be right on the property line, which was her understanding.

Ms. Joseph pointed out that a portion of it already is on the property line.

Ms. Vaughan stated that her concern about moving the access from its current position over to the property line itself was that eventually there would be a spillover of gravel and debris, which would create possible drainage problems. It would have a negative impact on the sale value of her property to have an access road right on the property line.

Mr. Thomas asked that the next speaker come forward.

Lillian Spradlin, the other adjacent property owner, pointed out that Mr. Rollins says that he cannot talk to her. In the past Mr. Rollins put a drain field on her property and she had to hire an attorney. She pointed out that she had to hire an attorney when he messed up her driveway so that she could not get into the property. Therefore, her answer was no that she did not want the driveway moved and she wanted it as is like she signed it in 1987. She stated that she would go back to her attorney again.

Leo Spradlin, son of Lillian Spradlin, stated that if the driveway was moved all the way over against the property that when you exit the property there would be a blind spot. The existing driveway is in a little bend and you are able to see both ways. He stated that was the reason why he did not want the driveway moved over.

Sue Rollins, owner of the property, stated that they were really trying to delineate between the properties because of the condition of the recently abandoned lot, as shown in the photographs. They really just wanted to separate from the driveway because perspective buyers might want to see where that right-of-way goes. Actually, the driveway goes back to a big mess. When they had an open house for the realtors they recommended that they move the driveway or somehow separate from it. The realtor's proposal indicated that having a right-of-way through their property lowered their property value by as much as $100,000. Their proposal was to do some sort of tree line to make it obvious that lot was not part of their property.

Mr. Thomas asked if there was anyone else present to speak regarding this application. He asked Mr. Rollins if he would like to use his rebuttal time for any further comments.

Mr. Rollins stated that he did not have any further comments.

Mr. Thomas closed the public hearing to bring the request back to the Commission for discussion and a possible action. He stated that he understood that the road was not going to end up along the border, but would come down through the property. He asked if it would stay along the border.

Mr. Rieley pointed out that it was drawn along the border.

Ms. Higgins noted that does not mean that it could not be some place between those two points.

Mr. Edgerton asked staff if the road could be put in a different place.

Mr. Fritz stated that upon the agreement of the two property owners they could relocate the easement virtually anywhere provided that they meet the 25 foot setback from any structure.

Ms. Higgins noted that it would also require approval from VDOT's site distance requirements.

Mr. Fritz agreed. There is a minimum 25 foot yard requirement from the edge of the right-of-way. Also, it could not impact drain fields and wells.

Mr. Thomas stated that it would still be a requirement that the easement would have to be signed by both parties.

Mr. Fritz stated yes that it was routine to have the adjacent owner sign. But, either property owner could initiate the request for a waiver or modification.

Mr. Rieley stated that it seems that their action on this is almost irrelevant because if they approve this it means nothing without a mutual agreement. Also, if they don't grant this a mutual agreement could still solve the problem. Therefore, this is an issue between two neighbors. Therefore, it seems that approving this would just complicate the matter. He moved for denial of SP-2004-00265, James Rollins Resubdivision. He pointed out that there was a clear possibility of a resolution of this by mutual agreement of a location of a driveway in which both would come out at the same place. The issue for the County is two driveways entering into the road way as opposed to one. Beyond that, it is up to the neighbors to work it out amongst themselves.

Ms. Higgins seconded the motion.

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

Mr. Thomas stated that the motion for denial carries.

Mr. Craddock asked if there was a current zoning violation regarding the cars.

Mr. Fritz stated that it was currently being investigated. Staff has forwarded the pictures on to the zoning office so that they could investigate to determine if a violation exists.

Old Business:

Mr. Thomas asked if there was any old business.

Mr. Benish stated that at their last discussion regarding the ZTA for Lewis and Clark, the Planning Commission asked staff to contact the Board of Supervisors to obtain some direction regarding that type of ZTA to the Rural Areas District, which is primarily a district for Rural Areas. The Commission also raised the question for another alternative type of use that has been on hold for a number of years. He stated that staff would not be able to get that scheduled for a discussion with the Board of Supervisors until November. At the work session on October 6, staff had the opportunity to discuss with the Board of Supervisors their position on the Rural Areas section of the Comprehensive Plan regarding alternative uses that the Commission had forwarded to them. He distributed copies of the outcome of that from the Board of Supervisors. In the discussion of that section with the Board of Supervisors at that time staff let the Board know that the Commission is considering the ZTA for the Rural Areas District that would permit the historic interpretative use that is now being reviewed. He also mentioned that the Commission was interested in activating a ZTA request for special events in the Rural Areas. In that work session regarding the section on additional uses the Board did not request any changes. The Board indicated that it was a good section and the intent was useful. Therefore, staff anticipates their support for the alternative use section as the Commission has written it. One Board member pointed out, and the other members agreed, that any changes they make for the two additional uses to be considered in the Rural Areas shall be consistent with the intent of our guiding principles and the perimeters as outlined in that section of alternative uses, which discusses controlling the scale and having that scale and type of development consistent with Rural Area activities. He pointed out that was what staff has heard so far regarding the alternative use section. The Board did not discuss in any detail whatsoever the ZTA amendments because that matter was not before them. There was a brief question regarding the Lewis and Clark proposal. At that time he pointed out that the location for that proposal is actually in the urban

area and that they should try to make sure that their comments regarding the ZTA being proposed, which is to our Rural Areas zoning district, is really related to this section of the Rural Areas plan. He stated that he wanted to give the Commission this update so that they know what was discussed with the Board of Supervisors. Also, he wanted to know if that satisfies the Commission in terms of moving forward with both of those ZTA's or whether the Commission wants staff to discuss any further specificity at this point in time about those uses. He stated that he was just laying out what they have been able to do up to this date. He pointed out that he was able to dovetail into that already scheduled discussion. Again to summarize, the Board was very supportive of the alternative uses section and did not ask for any changes. The Board is aware of the proposal that the Commission would like to move forward on. He pointed out that is the update. What he was looking for is whether that is sufficient guidance in order for the Commission to continue on with the ZTA for Lewis and Clarke and their reactivation of the Althea Hurt proposal. If that is the case, then staff would come back with a resolution of intent that the Commission would adopt, which was the next technical step that they need to go through so that they could activate that ZTA. He pointed out that he was present just for guidance for the next step in the process and whether the Commission wants staff to schedule something with the Board for more a detailed discussion before they move forward. He pointed out that staff would be happy to do that.

Mr. Rieley stated that staff's update was very helpful and that the Commission appreciates it. He asked since one request has been on the runway for a very long period of time if both requests would come before the Commission simultaneously.

Mr. Benish stated that the resolution of intent could be done on the consent agenda. It is a technical step just to authorize staff to move forward. Staff could bring that back to the Commission the next time that they are ready for the next step for the Lewis and Clarke proposal. Staff is still stepping back and trying to work on some of the direction given by the Commission. One of the directions was to look at some of the urban area and residential districts and the potential for allowing some light type of uses there. Staff is still working on that. Staff does not know what the next date will be. But, staff can bring both issues up and talk about both issues at that meeting.

Mr. Rieley stated that it becomes less pertinent if Lewis and Clark takes a different route and goes for a rezoning under a different category that would make it fit better. If both requests are going to be ZTA's for the Rural Areas that it would make a lot of sense to deal with both of them at the same time.

Mr. Benish suggested that the Commission act on the resolution of intent on the consent agenda. Then staff will move forward with some substance and bring them back together for consideration. Just again to reiterate, staff did not discuss in any detail the ZTA because it was a very conceptual discussion.

Mr. Rieley stated that it was very helpful to have the Board of Supervisors' point of view on the alternative uses.

Ms. Higgins asked if there was any feedback on the timeframe regarding the Rural Areas. The Commission forwarded that to the Board in July and she feared that some large parcels might be lost before action was taken by the Board.

Mr. Benish stated that staff would continue to work on this and will schedule the hearings as soon as possible.

Mr. Edgerton stated that he had sent out three memorandums to the Commission for further discussion. He stated that no other Commissioner wanted to discuss these issues until action has been taken on the issues.

It was the consensus of the Commission to table discussion on the three memorandums until action has been taken on all of the items.

New Business:

Mr. Thomas asked if there was any new business.

Mr. Fritz discussed the transmittal of the 1980 Zoning Ordinance to the Commission in preparation for the Gazebo Plaza project. He pointed out that the CD in their packet contained the 1980 Ordinance, which he felt would be helpful in their review of the project.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 7:30 p.m. to the October 19, 2004 meeting.

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V. Wayne Cilimberg, Secretary

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