Albemarle County Planning Commission
November 9, 2004

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, November 9, 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; Stephen Waller, Senior Planner; Rebecca Ragsdale, Planner; Mark Graham, Director of Community Development; Yadira Amarante, Senior Planner; Amelia McCulley, Division Director of Zoning & Current Development; Allan Schuck, Engineer; 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. There being none, the Commission moved to the next item on the agenda.

Review of the Board of Supervisors Meeting – November 3, 2004.

Mr. Cilimberg reviewed the actions taken on November 3 by the Board of Supervisors.

Consent Agenda:

SUB 2004-00284 Hardware River Farms: Request authorization to allow a private road. (Steve Tugwell) (Tax Map 101, Parcel 7B & 23)

Approval of Planning Commission Minutes – August 24, 2004, September 21, 2004 and September 14, 2004

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

Ms. Joseph asked to pull SUB-2004-00284, Hardware River Farms, off of the consent agenda for discussion.

Mr. Thomas asked for a motion on the minutes.

Ms. Joseph moved for approval of the Planning Commission minutes for August 24, September 21 and September 14, 2004 as submitted.

Mr. Craddock seconded the motion.

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

Mr. Thomas stated that the minutes were approved as submitted.

Ms. Joseph stated that she had several concerns about the staff report for SUB-2004-00284, Hardware River Farms. There was no memo from engineering concerning the road itself. There was no evidence of a comparison between a private and public road other than it was 30 percent greater. She stated that on page 2 under number 3 the report says that the fee of the private road will be owned by the owner of each lot abutting the right-of-way or by an association composed of the owners subject in either case by an

easement for the benefit of all lots served by the road. Then it says that the fee of the private road will be owned by the owners of the residue parcel. She asked why they had those words there and then why it says that the fee is owned by the owner of the residue parcel. She stated that wording was very confusing and did not make any sense. Another concern she had was that it was not in the report that lots one and two, if you look at the plan itself, have each been assigned two development rights. There is really no discussion about how that affects the road itself and whether that would have to be upgraded. She asked for some clarification. Also, there appears to be an easement that goes through lot 8 to lot 7. She asked for some discussion on those issues.

Mr. Rieley stated that he had a general concern that parallels with Ms. Joseph's concern. It is that the 30 percent disturbance is not an automatic. There are lots of things in the ordinance that they end up treating like they were automatic. But, that is a threshold that has to be cleared before they can even consider it. He felt that there are lots of situations in which there may be in fact more than a 30 percent difference. That is a relatively arbitrary figure anyway in which the public's interest is not served by having a private road instead of a public road. The applicant is required to submit plans for the public and private road. The Commission should have that information in our packet to review and make an analysis. He stated that he was not comfortable in just saying that it was 30 percent and it was okay, particularly when the private road is 14 feet and the public road is typically 18 feet. If it should be automatic, then it should be written that way.

Ms. Joseph stated that the staff report says that this section of the ordinance requires the sub divider to demonstrate that to the reasonable satisfaction of the Commission. If all of the information is not available, then she could not make that decision.

Mr. Thomas agreed.

Mr. Edgerton stated that he was also concerned about this because he would not want to take an action that would increase the environmental degradation. He felt that this was a loophole that allows a substitution of a private road. Whether they admit it or not, he felt that they were encouraging further subdivision of the rural areas.

Ms. Higgins stated that they have to look at this as a by right development and how to minimize the impacts of the development. That was the whole basis for putting private road provisions in the ordinance. She did not want to encourage development, but if it was by right and can occur, then why not take the path of the least effect on the rural area parcel that is being development. That is the philosophy that the provision was put into the ordinance under. She pointed out that there were other issues, but she was just questioning the private road side of it.

Mr. Edgerton stated that public roads would be safer and also would be maintained by the state.

Ms. Higgins stated that public roads are built according to a specified standard. There is a standard for private roads, too. There is no one saying that a private road standard is not safe.

Mr. Rieley stated that a public road has a higher standard, which was why it costs more and there is more grading. They are trying to provide mechanisms through which property can be developed in the least disruptive manner. He felt that they should look at these with that in mind. But, at the same time there are other considerations. There is the issue of long term capacity and maintenance. He felt that they should look at the disturbance and the designs for the public and private roads as a part of the information that they want to look at in order to make a decision.

Ms. Higgins suggested that they change the rules and not just interpret them differently.

Mr. Rieley stated that the rules were fine. The rules say if you clear 80 percent, then it can be considered. It does not say if you clear 30 percent, then you get it.

Ms. Higgins disagreed with Mr. Edgerton's statement about the private road makes it less expensive and therefore encourages it.

Mr. Thomas asked if they were moving in the direction of changing the ordinances or are they using the Commission's discretion.

Ms. Joseph stated that all she wanted was some additional information since she could not make that decision with the information before them.

Mr. Thomas asked if the public hearing has to be opened to invite the applicant to speak.

Mr. Kamptner stated that it was not a public hearing item, but comment could be received from the public if the Commission so desired.

Mr. Thomas invited the applicant to address the Commission.

Roger Ray stated that his firm prepared this plan and submitted it to the Commission. Undoubtedly they were not talking about their plan from the comments that he had heard. They clearly did grading plans for the public road and grading plans for the private road and submitted them to engineering staff. The engineering staff has reviewed the plans and said that they reviewed them. In those plans they demonstrated that in this particular project that there is 244 percent more earth to be moved by the public road than it is by the private road. They clearly demonstrated that there was 32 percent more surface area disturbed by the public road versus the private road. The Commission is saying that they are lacking that information. That information was submitted with their submittal weeks ago and has been reviewed by the engineering staff. The engineering staff has commented on the plan by saying that they demonstrate more than the 30 percent. He pointed out that he talks with people everyday about division of land in Albemarle County. A lot of that division is about dividing on existing public roads. Then they have the discussion about the division of land on internal roads. They know that by right under the ordinance and the desires of everybody is that the preferred method of the division of land in Albemarle County is to build a public road. But then when they get to assessing the road situation for this particular project, then they make the assessment for the public road. If it is a public road, he advises people that they have rules that are spelled out. They cannot even request a private road unless they meet these criteria, which is 30 percent environmental degradation. There are other rules, but that is the one that the Commission likes to look at because they can demonstrate it by engineering calculations on what that percentage is. If they look at it and the percentage is real close to 30 percent, or maybe a little bit over, he cautions folks that they should go on and do the public road because it is easier. The design criteria once you get six lots or greater on the private road is designed to VDOT's Mountainous Terrain. Therefore, the width of the road, the shoulder, the pavement, structure and all is the same for the private or the public road. But, they can make the private road steeper to fit steep terrain and they can make the change in grade steeper to fit the terrain better. After they get though assessing every single project differently, then they make the recommendation to comply with their discussion of whether they would rather have a public or private road. There are certain cases that the public road just requires a lot more environmental impact to build than the private road does. This is one particular case that if there is any clear cut reason for using a private road, that this particular project right here demonstrates through their engineering calculations that it is an overwhelming difference between the two considerations. Again, the Commission has been discussing that they did not submit this information, but they did and they know that needs to be done. They are sympathetic with everybody's cost, but the main thing is that people have the right to develop their land by the public road, but if a private road suits better it is in the rule book to allow you to do it. They know that it is special permission to come here and ask for that. If it is overwhelming, they feel that they deserve to be able to do that. Again, if this is becoming a public hearing on private versus public they would like to have a say so later.

Ms. Higgins questioned the actual easement for the private road since it states in the staff report that the fee is owned by the owner of the residue parcel.

Mr. Ray stated that he was not aware of that. On most of the private roads the lot owner owns it. They don't have a residue because they were using all of the land here so that there will not be a residue parcel.

Ms. Higgins asked if it was clear that the property line actually goes down the center.

Mr. Ray stated that was not always true, but he would have to go back and look at this one.

Ms. Amarante pointed out that it was just an error in the staff report. She noted that the property lines do go down the center line of that easement and so the fee will be owned by all of those property owners. Sometimes they get them where the fee is owned by a homeowner's association, in which it is just a dedication to the homeowner's association for the right-of-way. In this case it is just an easement.

Mr. Ray stated that he would like to speak about the division rights on the first two lots. Division rights are zoning amenities that go with the land. They are dealing with two tax map parcels. Lots one and two comes out of the first tax map parcel and they have by the zoning ordinance four division rights assigned to that parcel of land. They are utilizing two of them. Therefore they are required by the ordinance to assign whatever is remaining. However, that lot is so encumbered by floodplain and steep slopes that they really had trouble getting a building site for the two lots there. Therefore, he thought they were not looking at getting any additional lots out of lots one and two. But, the zoning ordinance requires that they stipulate what happens to these division rights. He felt that Mr. Kamptner could probably tell the Commission that they could not give the division rights up even if they want to.

Ms. Joseph asked when they design the road if they design knowing that they have those there.

Mr. Ray stated that most of the time they do, but in this particular case they would have liked to have had those and be able to realize them as two additional lots here. But, they could only identify two building sites and room for the road because they have to keep that out of the floodplain. They could only identify two 30,000 square foot building sites. Therefore, they had two theoretical division rights that they cannot use, but they have to account for them.

Ms. Joseph stated that she did not think there was any question that he had not submitted any information that had been requested.

Mr. Thomas asked if any Commissioner had any more questions for staff. He asked if they feel comfortable with the request.

Ms. Joseph stated that she acknowledged what she had been told, but she has not seen anything. By not seeing the information she stated that it would be hard for her to make that determination. She felt that they were putting a burden on the applicant in this case.

Mr. Rieley agreed that they did not receive this information.

Mr. Thomas stated that the information went through the engineering staff. He felt that possibly staff was trying to condense the staff reports to get things expeditiously through and they have already taken care of all of that part of it.

Mr. Edgerton stated that if staff was empowered by the Code to make that decision that he would not have a problem. But, they are not and the Commission has to take that responsibility. If they don't have the information, then they can't make a reasonable decision.

Mr. Rieley asked Mr. Graham why the Commission use to get this information, but does not anymore.

Mark Graham, Director of Community Development, stated that he could not tell them what is going on in this specific case. But, he would just say that if the Planning Commission wants certain information that staff would be glad to include it with all of these private road waivers that come before them.

Mr. Rieley stated that would be very helpful.

Mr. Graham asked if the Commission wanted the public road comparison and all of the earth work computations that go with that.

Mr. Rieley stated that once they identify the cut and fill that it could just be a summary. He pointed out that they don't need section by section. He noted that he does not question Mr. Ray's numbers. This is not a question of whether this is close to meeting 30 percent or not. They know that it is not. It is just a matter of having the information so that they can weigh the environmental impact against the other considerations that they have to take into account. He felt that it would be very useful to have that information.

Mr. Graham stated that they would like to see a grading plan that has the public road on it, the grading plan with the private road on it and a summary of the earth work computations that go with each plan.

Mr. Rieley asked for the profiles that go with each of those.

Ms. Joseph stated that normally that is submitted.

Mr. Graham stated that information is not normally submitted. There is engineering judgment that is used on some of these things. This case is a great example of where it is clear to the engineers that they are far in excess of that 30 percent. If it is that obvious they don't spend a lot of time with that. The standard that is in the ordinance does not call for 60 or 100 percent, but it calls for 30 percent. If they are comfortable with that standard, then they use their judgment.

Mr. Rieley stated that he was concerned that they get the plans and profiles and the grading of it. That is just a minimum standard. Therefore, the Commission has to weigh several considerations.

Mr. Graham stated that he just wants to make sure that staff is getting the information that the Commission wants so that they can make a decision.

Ms. Higgins stated that they could look at the topography on what is presented on the plat and draw some general conclusions anyway. Therefore, she was satisfied with this.

Mr. Cilimberg pointed out that the Commission either needs to act on the request as it is before them or defer it. The Commission will have to take a vote on this request.

Mr. Craddock stated that the Commission has acted on similar requests in the past without all of the computations. But, the Commission had statements from engineering saying that it met and fulfilled the 30 percent.

Mr. Rieley stated that he would vote favorably on this application, but would ask that in the future that the Commission get road plan profiles and grading plans.

Ms. Higgins moved to grant approval to allow private roads to serve SUB-2004-00284, Hardware River Farms.

Mr. Craddock seconded the motion.

Mr. Morris asked to add a friendly amendment to the motion that number 3 be clarified by staff to ensure who is going to be responsible for the ownership and maintenance of the road.

Ms. Higgins accepted the friendly amendment, and Mr. Morris concurred.

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

Michael Wilson asked to address the Commission. He stated that he has lived in this area all of his life and just wondered when the development was all going to stop. He pointed out that he lived next to the Hardware River Farms subdivision and was very concerned with the land being destroyed. He stated that this area is getting packed with people, which was creating problems with congestion on the roads.

Mr. Thomas stated that currently the County was working on the Rural Areas Comprehensive Plan Amendments. He pointed out that this subdivision request was a by-right application.

Mr. Cilimberg pointed out that the Board of Supervisors would be holding a work session on the Rural Areas on December 1 during their day meeting. He asked that Mr. Wilson provide his telephone number to the clerk so that staff can advise him of the upcoming Board meetings.

Mr. Wilson stated that he would provide his home telephone number to the clerk and would appreciate receiving that information.

***Public Hearing Items**:*

Review of the Moorman's River Agricultural & Forestal District - Required 10-year review of the Moorman's River Agricultural & Forestal District. Tax map 27, parcels 32, 34, 34A, 40, 40A, 40A1, 42, 42A; tax map 28, parcels 2, 2A, 3, 4, 5, 6, 6A, 6B, 7, 7A, 7A1, 7B, 8, 11, 12, 12A, 12B, 13, 17A, 17C, 18, 23B, 23B1, 30, 30A, 30B, 32B, 32D, 34B, 35, 35B, 37, 37A, 37B, 37C, 37D, 38; tax map 29, parcels 2C, 8, 8B, 8E, 8E1, 8H, 8J, 8K, 9, 10, 15C, 40B, 40C, 40D, 49C, 50, 54A, 61, 62, 63, 63A, 63D, 67C, 69D, 69F, 70A, 70B, 70C, 70F, 70F1, 70H1, 70K, 70L, 70M, 71, 71A, 73B, 74A, 76, 78, 79C, 80, 84; tax map 30, parcels 10, 10A, 12, 12C, 12D,17A, 18E; tax map 41, parcels 8, 8B, 8C, 8D, 9E, 15, 17C, 18, 37D1, 41C, 41H, 44, 50, 67, 67B, 68, 70, 72, 72B, 72C, 72D, 89; tax map 42, parcels 5, 6, 6B, 7, 8, 8A, 8C, 10, 10A, 10D, 25C, 25C1, 37F, 37J, 38, 40, 40C, 40D, 40D1, 40G, 40H, 40H2, 41, 42B, 42B1, 43, 43A, 43A1, 44; tax map 43, parcels 1, 2B, 3, 3A, 3C, 3D, 4C, 4D, 5, 5A, 9, 10, 17, 18, 18A, 18C, 18E4, 18F, 18G, 18J, 19I, 19N, 19P, 20A, 20B, 20C, 2I, 21A, 23A, 23D, 24, 25A, 25B, 30, 30A, 30B, 30D, 30G, 30H, 30M, 30N, 32H, 33, 33D, 34, 34A1, 34A2, 41, 42, 43, 44, 45, 45C, 45D; tax map 44, parcels 1, 2, 24, 26, 26A, 26C, 27B, 27C, 28, 29, 29A, 29D, 30, 30A, 30B, 31, 31A, 31A1, 31D, 31F, 31G; tax map 59, parcels 32, 32A, 34, 35, 82A. The district comprises a total of 10,740 acres and is located in the vicinity of Free Union and White Hall, with portions of the district bordering Route 601 (Garth Road/Free Union Road), Route 614 (Garth Road), Route 665, Route 671 (Millington Road), and Route 680 (Browns Gap Turnpike). The area is designated as Rural Area in the Comprehensive Plan. (Rebecca Ragsdale)

Ms. Ragsdale stated that the Moorman's River Agricultural/Forestal District is located in the northwestern portion of the County in the vicinity of Free Union and White Hall along Garth Road, Free Union Road and Millington and a little bit around Browns Gap Turnpike, which is the western part of the district. It is the largest agricultural and forestal district in the County with 10,740 acres. This review is the State Code required review, which is on a ten-year review cycle. The district was created in 1986. It was reviewed in 1994 and it is now up for review. The 10,740 acres is an increase from its original acreage, which was 8,000 acres. This review is an opportunity for landowners if they chose to remove their parcels from the district.

At this time, there have been five requests to withdraw from the district, totaling 324 acres:

- Owner of Tax Map 42, parcels 25C and 25C1 (David J. Wood-Attachment B) has requested to remove both parcels: a 60.5-acre parcel (33 acres of which are used for agriculture and 28 acres in forestry) and a 22-acre parcel in forestry. These properties are located to the west of Decca Lane.

- Owner of Tax Map 43, parcels 33D, 34, 34A1, and 34A2 (David E. Caton-Attachment C) has requested to remove four parcels totaling 44 acres, 22 of which are used for agriculture and 9 of which are in forestry uses. The properties are located along Free Union Road on the western side, near its intersection with Woodland Road.

- Owner of Tax Map 29, parcel 15C (Edgar M. Bronfman-Attachment D) is requesting to remove a 70.2 acre parcel to create a 10 acre lot and then would like to add 60 acres back to the district after the subdivision is complete.

- Owner of Tax Map 28, Parcel 37D (Kenneth Bradt-Attachment H) is requesting to remove his 22-acre parcel located at 3700 Millington Road; 20 acres of the property are used for forestry.

- Owner of Tax Map 041, Parcel 37D1 (Kenneth Bruce) is requesting to remove his 5-acre parcel located on Garth Road.

Three requests have been made to add properties to the district totaling 192 acres:

- Owners of Tax Map 43, parcels 16B2 and parcel 16B3 (Pelton-Attachment E) are requesting to add these parcels to the district, one is 122.4 acres and the other is 2.03 acres. The properties are located along Clay Hill Road and are under a Virginia Outdoors Foundation Easement.

- Owners of Tax Map 29, parcel 4E (Purnell-Attachment F) are requesting to add their 12-acre parcel located on Buck Mountain Road.

That would leave 10,708 acres in the district and still would be largest agricultural and forestal district in the County. There are significant portions of this land under easement. There are 2,920 acres under easement. A lot of that land is along the Moorman's River, of which the agricultural and forestal district is named for. The Moorman's River is a State Scenic River. As far as scenic resources in the district, there is a State designated By-Way. Garth Road is designated as an Entrance Corridor, also.

There are 3, 200 acres in forestry use and 3,835 acres in agricultural use. There is 284 acres in open space use. There is a small portion of 24 acres in horticulture, with part of that being the Oakencroft Winery.

The Agricultural Forestal Committee met last night and recommended renewal of the district with the proposed removal and additions. There was one additional removal request that resulted from that meeting. A property, Mr. Ken Bruce, has five acres along Garth Road and he was interested in removing that also. This request was not included in the staff report.

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

Mr. Rieley stated that the County has no authority to keep anyone who wants to withdraw their property at this threshold from taking it out. The County would certainly not want to discourage anyone who wants to put their property in the district from doing so. Therefore, their action was pretty straight forward. He stated that he had a request for staff concerning the graphics. It would certainly be useful if there could be one tone used over all the properties that is in the district and then put a tone on the ones coming out that is different from the ones that are going in.

Ms. Ragsdale pointed out that Attachment G was not color coded, but showed the parcels coming in and going out of the district with pluses and minuses. She pointed out that the scale of the map made it difficult to read the parcel numbers, but staff would do a better job on that next time. Since it was a larger district and includes lots of tax map quadrants it was more challenging to try to put it all in a size and scale that could fit into your packet.

Mr. Rieley stated that the size and scale were fine on the attachment, and he only wanted to be able to more clearly see what was going in and coming out. He stated that he was only looking for the general pattern.

Mr. Thomas opened the public hearing and invited public comment. There being none, he closed the public hearing to bring the matter back before the Planning Commission for discussion and a possible action.

Mr. Craddock moved to recommend approval of the renewal of Moorman's River Agricultural & Forestal District for the 10-year period, with the requested additions and withdrawals.

Mr. Rieley seconded the motion.

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

Mr. Thomas stated that the motion carried and would be heard by the Board of Supervisors on December 1.

***Regular Items**:*

SUB 2004-00289 Ragged Mountain Farm: Request for preliminary plat approval to create 40 new lots served by private roads from two existing parcels. The sites, described as Tax Map 74 - Parcels 5 and 7, contain approximately 470.297 acres and 33.85 zoned Rural Areas (RA), respectively. This site is located in the Samuel Miller Magisterial District on Dick Woods Road [Route # 637], approximately ½-mile west of the exit of exit ramp from Interstate 64 and adjacent to the Rosemont and Blandemar Farm Subdivisions. The Comprehensive Plan designates this property as Rural Areas in Rural Area 3. (Stephen Waller)

Mr. Waller stated that this was a request to subdivide 470.297 acres and another parcel of 47.735 acres in the Rural Areas. The staff report actually states that the second and smaller of the two parcels is 33.85 acres, but it is actually 47.735 acres. He asked to add that correction. This is a by-right subdivision. It has a proposal for access to most of the lots by a private road, which would be 34 lots on the largest parcel. Then, the request is for an additional side with access to a proposed public road. Staff has reviewed this request and found that it meets most of the requirements of the Subdivision Ordinance, with the exception of the requirement for having access on that public road entrance off of Taylor's Gap Road. VDOT and the engineering review staff also found that the proposed public road entrance on Taylor's Gap Road did not have adequate site distance. However, staff has gotten verbal information that VDOT had gone back to the site today and met the applicant and their engineer and found a location where adequate site distance could be obtained. However, staff has not has time to review this information. Staff's recommendation as is stands, but staff has also included a condition regarding the requirement to meet VDOT approval if the Commission should grant approval of the plat. The Planning Commission is reviewing the plat because the private road approval requires Planning Commission approval and also because several adjacent property owners have called it up for a full review. Some of those concerns that were addressed in those requests for Planning Commission review deal with the extent of land disturbance, the proximity of some of the smaller lots to the existing property lines, and also the location of the private road to the existing property lines. Those adjacent owners also had expressed concerns with the possible impacts of this development on groundwater supplies and also regulations regarding hunting. Staff has attempted to address all of those concerns in the staff report. During the early review of the private road request there were questions as to where the engineering review memo was. The engineering review comments provided in the staff report is written directly by the reviewing engineer. If there are any additional questions, he would be happy to answer them.

Mr. Thomas asked if there were any questions for Mr. Waller. He asked if the only reason for denial was the site distance.

Mr. Waller stated that was correct.

There being no further questions for staff, the public hearing was opened and the applicant was invited to address the Commission.

Tara Boyd, representative for the applicant Alex Toomey, pointed out that the engineers from Tara Partners were here tonight and could answer any engineering questions. The request is before the Commission for two reasons. The first reason is the private roads, which will require the Commission's action. The second reason is that the subdivision plat was called up by the neighbors. They feel that

they have addressed both of these concerns. She stated that she would walk them through what they have done based on staff's recommendations and comments. For the private roads, as Mr. Waller noted in his report, VDOT was out to the site today and has in fact found an entrance that satisfies their requirements. She passed around a fax from the Virginia Department of Transportation, which is attached to a revised section of a plat that corresponds to that lower parcel of approximately 40 acres. That shows where the entrance would be moved to in the reconfiguration. She asked that the Commission review this information. As the staff report notes the amount of grading that would be required to do public roads for this project would be massive. As per their engineer, that by moving from public roads to private roads that they were saving about 700,000 tons of dirt and rock to be moved. That brings them to 333 percent savings. Therefore, they were well within the margin for doing private roads. The second issue is the call up by the request of the neighbors. Since the neighbors have expressed their concerns to the Planning staff, the applicant has met with the neighbors in the Colston Subdivision and attempted to address their concerns. In fact, the neighbors have written a letter to staff, which Mr. Waller shared with her today, saying that their concerns were met. She pointed out that several of those persons were here tonight and would probably want to explain this further. But, roughly the main concerns were the house site on lot 27. There is a house site that will move slightly south, which was on the left side of the plat. That will move it slightly away from that lot line with the neighbors in Colston. Therefore, the house site would not have as much of an impact. There is plenty of room to move that house site that is outside of the critical slopes and they feel that they can do that without any problems. Their other question was about lots 6, 7 and 8. The neighbors were concerned that the smaller lots were close to the Colston neighbors' lot lines. The applicant is willing to work with those neighbors to move those slightly away and eastward so that there would be more trees in between the new house sites and the existing ones. Then the last concern was the road that comes down and runs in front of all of those lots in Colston. The applicant is willing and able to move that line slightly away to preserve more trees and keep more of a buffer between the lots. By working with the neighbors they can all have a spot to live on and co-exist. Therefore, they feel that they have addressed the neighbors' concerns. Other concerns brought up in other letters and by staff include the groundwater, which is always a concern in Albemarle County. Due to the Groundwater Ordinance being reviewed, any new lots that are built on in this subdivision before the building permit will be issued they will have to go through the well testing procedure that is laid out in that proposed ordinance. She felt that would address any concerns about groundwater that the neighbors might have. The applicant feels that they could have done a much more desirable job by a rural preservation development. But, they are precluded by the ordinance. She pointed out that this was one that slipped through the cracks for an over 20 lot rural preservation subdivision. Other issues were tree clearing. The applicant can certainly assure neighbors and staff that the tree clearing will be minimized. Lots with trees are much more desirable than lots without trees. The clearing will be done to accommodate roads and building sites. It is understood that there needs to be privacy with the neighbors and around the new lots themselves. Certainly the entire ragged mountain is not going to be cleared. There was question among the neighbors about runoff. Staff was looking for more information on runoff and erosion and sediment control best management practices. They noted that the road that runs along the Colston property is going to be moved slightly to the east to make sure that any runoff from the road stays within the property rather than running to the Colston property. The applicant wanted to meet with staff prior to the Planning Commission meeting to talk about ways to deal with storm water management on site because there are a whole host of things that can be done, which will certainly be done in order to get final plat approval. Staff did not have time to meet, but the applicant looks forward to working with them to resolve those issues. As customary, those are typically final plat requirements and conditions. These issues will be dealt with as they go along in the development process in the most creative and thorough way possible. That goes the same for the request from staff for more information on the topography and the overall lot grading plans. If these become necessary, they can look at them. But, at this point the information that they have presented, which complies with the requirements for a preliminary subdivision plat, shows that all of their building sites are out of critical slopes. Therefore, there is no need for a waiver in that regard. The topographic information that they supplied complies with the requirements that are needed. They don't see whatever information that they can add to that, but they are certainly perceptive to provide what staff needs to get it done. In conclusion, she asked that the Commission vote to approve the private road waivers based on that savings of 700,000 tons of dirt and rock moved. Also, approve the subdivision plat based on their compliance with the requirements of the statute and their work with the neighbors to address their concerns.

Mr. Thomas asked if there were any questions for the applicant. There being none, he invited any one else present to come forward and speak concerning this application.

Richard Thompson, a neighboring property owner in Colston Subdivision and President of the Colston Property Owners Association, stated that as the applicant's representative said they did meet with the developer, Alex Toomey. They brought several concerns up to him about the proximity of certain small lots next to the larger parcels in Colston as well as ground water problems, etc. Mr. Toomey was very gracious and did agree to address most of the problems that were beneficial to both parties. However, it was somewhat surprising when he found out that the prospect of a rural preservation development had been essentially been taken away from him by County action. It was also surprising because he did not hear anything about it from the news media. He felt that this would be a logical place to put a rural preservation subdivision that would protect the mountainous areas and leave a great deal more open space in that area. If the developer receives approval tonight that he hoped that they would keep open their options to change their plans if the County would be expeditious in addressing the problem that they have created by limiting rural preservation subdivisions to no more than 20 lots. He pointed out the County needs to do something very quickly to fix this problem. He suggested that they call it by another name other than a rural preservation subdivision in order to allow it. This is an ideal parcel for a rural preservation subdivision. He hoped that something could be done to take that into consideration.

Michael Zakin, resident of Colston Subdivision, stated that his property, lot 11, was impacted the most with homes right up against it and a private road that touches his fence line. There is a prospect of home sites that would be a couple hundred feet from his front door. He pointed out that he too was at the meeting with Mr. Toomey, and he was very pleased to report that he had a very cooperative attitude towards their concerns. They shared their concerns and the prospect that most of these concerns were win/win issues for both parties. In some ways, most of his house sites and lots would be improved by creating more privacy between their homes and his perspective home sites. He realized that he would receive approval tonight, which he supports. But, he felt that it was important to have it in the record that the reason that they were here in support of what he is doing is because of the message that they got at their meeting with him that some changes would be made. He echoed his support about what Mr. Thompson said about a rural preservation tract. This is a beautiful piece of property and the citizens of Albemarle County would benefit from it being a rural preservation project. It is really beyond him to understand how the County benefits for a project that has 20 lots or less, but does not benefit for the same things being done for the project with more than 20 lots. Surely someone can recognize that everyone benefits from the provisions in a rural preservation tract. He asked to reinforce that all of the residents in Colston would have been enthusiastic in their support of that. They have different goals and objectives than the developer, but this is one thing that they share in common. Whatever benefits that would bring the applicant, that they feel would be well worth it to the benefits of this County to preserve such a beautiful tract of land.

Mr. Hansbough thanked Mr. Toomey for meeting with the neighbors. Mr. Toomey explained to them that he was restricted from actually going on with the idea of dividing it up into more even parcels with larger home sites under a rural preservation tract because it was over 20 lots. He expressed the same concerns as was previously discussed about the applicant not being able to do a preservation tract. He supported the applicant being allowed to do a rural preservation tract if there was anything that they could do to make it happen. He asked that the concerns that were expressed in their letters be addressed. He pointed out that he had sent in a couple of letters to staff and wanted to make sure that they were a part of the proceedings tonight. He requested that the applicant provide some clarification on what he was actually proposing. Again, he felt that the applicant had addressed a lot of their concerns by meeting with them.

Susanne Berriam, resident of Colston, reiterated the idea of the preservation tract because more spacing between the houses was more in keeping with the development along Route 637. She felt that it would be most beneficial.

Andrew Wright stated that he lived off Taylor's Gap Road adjacent to Ragged Mountain Farm. There

have been several comments expressed tonight and comments that were presented to the Commission in writing, and he shares those issues and concerns particularly regarding the impact of 40 additional houses on the groundwater resources in their neighborhood. The number of trees that could potentially be removed for construction would create erosion and critical slope issues for the house sites, which are located on the ridge lines. Some of these issues could have been addressed better by a rural preservation district and he shared his neighbors concerns about the lack of availability of that as an option. He recognized that the proposed Ragged Mountain Farm Subdivision is essentially a done deal because it is a by right development. But, while they are focused on this one development that he would like to put it into the context of the future of the rural areas and what it says about that. The following statements come directly from the draft revisions to the Comp Plan of the Rural Areas section. "Conversion of land in the Rural Areas for residential development is the County's biggest threat. The most important and obvious source of resilience in a water shed eco system is natural forest. Forests create the cleanest and most reliable flow of water possible. A continued decrease in forested land and further fragmentation of the remaining land reduces the sustainability of both the ecological services and the forest products provided by the forests of Albemarle County. The subdivision of land for the construction of residences is the central factor in the ongoing fragmentation of rural land. It has serious implications for the viability of rural industries and successful resource conservation and protection, and therefore has a significant impact on the character of the rural areas that they experience. In addition to fragmentation, rural subdivision creates conflicts between residential uses and rural economic activities and increases service delivery needs and permanently alters the natural scenic and historic landscape. Fragmentations also reduce the economical viability of the agricultural and forestall industry. These particular resource areas should not be converted to rural residential uses and the County will need tools to prevent that conversion." So it seems that with this development, they are continuing to do what they say is the wrong thing for our rural areas and what the County's survey recently indicated that the majority of residents don't want us to do. It is long past time for our community to get serious about protecting our rural areas and to stop paying lip service with nicely worded intentions in our Comprehensive Plan that in reality does nothing to preserve our resources or agriculture or forestry or biodiversity. When will we wake up and see that these good intentions are just paving the road to subdivision hell. Once the land is developed we would not get it back. Our Comprehensive Plan also says that residential uses never revert to agriculture, conservation or forestry. When is enough, enough? How many more Ragged Mountain Farms will we lose before we give ourselves the tools that we need to protect our rural areas?

Ann Mallek stated that it seems one reason why there are so many lots is because the County is allowing a private road that can be built over much steeper gradients than a state road would. Therefore, that is opening up much more land to development. There is nothing that requires the developer to put in the maximum number of lots. They could certainly have some larger lots in the more remote area on the property. Therefore, she was not sure if the bulk of the problem about this was the rural preservation development.

Mr. Thomas asked if there was anyone else who wanted to speak regarding this application. There being no one, he closed the public hearing to bring the matter back to the Commission for discussion. Before they get started on their discussion, he pointed out that there have been a lot of points brought up by every speaker. He asked Mr. Kamptner to enlighten the Commission on the rural preservation tract ordinance.

Mr. Kamptner stated that they could thank the General Assembly for taking away our right to grant special use permit for cluster developments. Under the County's former regulations, they could do that for proposed developments of more than 20 lots. A couple of years ago they changed the law that required us to allow cluster developments only by right. Because of the rural areas plan that is currently going through the Comprehensive Plan that is being applied to the rural areas that put us in a box because we could either adopt the new regulations under the new State law, which required us to establish the zoning standards and make the approvals ministerial by staff or they could grandfather in the RPD regulations that they had for RPD developments of 20 lots or less. Therefore, the County kept the grandfathered RPD provisions for developments of 20 lots or less. But, until the Comprehensive Plan is revised, which will include the policy, goals and strategies for clustered developments, staff has not been able to develop the regulations that will allow us to consider these types of cluster developments of any size.

Mr. Cilimberg stated that the Board of Supervisors did review last week in a work session the cluster provisions in the rural area that the Commission had recommended to them. The Board seemed to endorse the concept, which would essentially by and large go to mandatory clusters in a rural preservation development. They did not endorse central water and sewer and asked staff to remove those aspects. Fundamentally, he felt that they had a different opinion with the Commission from the beginning with that particular aspect. What that really means is that the lots in a cluster won't be as small as they could be if you had central utilities of public water and sewer. They did not endorse that moving forth. But, regarding the cluster concept for the use of rural preservation developments they Board seemed to be very happy with and want to continue to endorse as part of the Comp Plan. It still needs to go to public hearing in order to get an action from the Board so that they can move forth. That is going to be one of several fast tracked rural area amendments that are going to need to happen with the adoption of the plan. There is one thing that the Commission should understand before they ever receive the revision. He felt that Mr. Kamptner hit on a very important point. By the State law, when the changes do occur to our Rural Preservation Development provisions they will no longer come to the Commission for review. Rural Preservation Developments will be strictly ministerial, which makes them a little different from standard subdivisions that can come to them.

Ms. Higgins pointed out unless it has private roads.

Mr. Cilimberg stated that it would for private road approval. Those aspects that would require a waiver would come before the Commission. But, the Rural Preservation Developments themselves when the changes are made to the ordinance will not.

Ms. Higgins asked if there was any alternative to provide an avenue for the applicant.

Mr. Kamptner stated that they could have amended their regulations to allow over 20 lots, but they would have had to do it with design criteria that would make it a ministerial decision. Regarding the current rural area plan that is currently going through the process, the decision was made that there was no way that the design criteria could be created because they did not know what the Comprehensive Plan was going to say regarding cluster developments.

Ms. Higgins stated that the answer was no that there was no other way to allow this in a by right form, but in a format of an open space plan for lack of not calling it a rural preservation development.

Mr. Cilimberg stated that it did not matter what you call it because if it was clustering then it was clustering. That is what the Virginia law hit on.

Mr. Kamptner stated that if the applicant only wanted to use a limited number of development rights, then he could create a conventional development that would have a large parcel. But, he would be sacrificing a number of development rights that he has.

Ms. Higgins asked if another way would be to create the two acre lots, for example, under a phase approach while these regulations and design criteria were developed. She asked if that would have to be a voluntary act.

Mr. Kamptner stated that it would have to be voluntary and he would have to defer to staff to chime in on this. The developer has the right to develop this as it is because he meets all of the existing regulations.

Mr. Edgerton asked if there was any reason why they could not have come in with two 20 lot rural preservation developments since there are two separate entrances to this proposed plan.

Mr. Kamptner stated that the problem was the way that development rights are assigned is that the rights that apply to the 470 acre tract have to stay within those boundaries. He stated that he did not know if it could be done or not.

Mr. Rieley asked if a boundary adjustment could be done and assigns the development rights in such a way that would allow it.

Mr. Kamptner stated that he would have to defer to them in order to see these types of layouts.

Mr. Rieley stated that he just wondered if it would be possible in theory. He asked Ms. McCulley if she had looked into whether that kind of arrangement would be possible.

Ms. McCulley asked Mr. Waller to answer that question because they had just been talking about it.

Mr. Waller stated that during the preplanning process the applicant did go through a pre-application conference and it was determined that because the 12 acres had already come out as part of a conventional development that the RPD on that larger parcel was pretty much out of the question unless he could in some way bring that portion of the property back into the full development.

Ms. McCulley stated that is because of the prohibition against mixing conventional and RPD in the same property.

Mr. Waller stated that on the second parcel itself that it only contains 5 development rights and another 21 acre or greater parcel. He stated that he was not sure how they would get into transferring some of those development rights from that larger parcel to that parcel.

Mr. Rieley asked to ask Mr. Thompson a question.

Mr. Thompson stated that one of the discoveries that he made in examining this problem with the rural preservation development was that the 12 acre parcel had been sold off as a conventional development. But, that was done some 8 to 10 years prior to the passage of the rural preservation development ordinance. Therefore, he could not see how that would now penalize this parcel. But, it was brought up that it does and it now cannot be considered as a rural preservation development because of the mixture of conventional and rural preservation development. He questioned whether that would hold up in Court.

Mr. Morris asked Ms. Boyd to shed some light on this issue.

Ms. Boyd stated that they did go through some scenarios with the Planning staff on how they could do a rural preservation development. The main parcel has more than 20 development plus division rights on it. Even if they did two separate RPD's the one with the larger parcel would fall over the 20 lot maximum. Therefore, they could not do a RPD on that parcel.

Mr. Thomas asked if there were any other questions.

Mr. Rieley stated that Mr. Thompson made what seems to him to be a pretty reasonable assumption that something happened 8 to 10 years before the passage of the rural preservation ordinance would not affect this.

Mr. Kamptner stated that the ordinance provides for that situation and it does say that "nothing contained herein shall be deemed to preclude the Director of Current Development and Zoning from approving a rural preservation development for multiple tracts of adjoining land, or on land divided or otherwise altered prior to the effective date of this provision. It is still subject to all of the rural preservation guidelines.

Mr. Rieley pointed out that answered one of the questions, which was an important one. The second one is that Ms. Boyd indicated that if they want to achieve the full development potential for the property that the larger parcel would be more than 20 lots. Is there a mechanism through which a boundary adjustment could be made and transfer with that boundary adjustment a number of the development rights so that two smaller than 20 lot rural preservation developments could be done as Mr. Edgerton suggested.

Mr. Kamptner stated that he did not believe that was possible with the development rights to be

transferred.

Mr. Cilimberg stated that they would end up with 21 acres and they would be using them to create the cluster.

Mr. Rieley stated that they could do it.

Ms. Joseph agreed that it could be done.

Mr. Edgerton stated that he personally agreed with some of the comments that Mr. Wright made. Even though this is by right, from the Planning perspective it is a study of chaos and a very poor plan. He stated that he was troubled with this because what was before the Commission was talking about private road yet again, and in this particular case they were dealing with a lot of topography. He pointed out that it appears from the plan that a critical slope waiver will be needed.

Alan Schuck stated that he was the staff engineer who reviewed the preliminary plat along with the private road request. He stated that the applicant did submit a comparison of public road/private road for the 30 percent degradation. The same alignment did show a significant amount of degradation difference between the two road standards. This road could be place in many different locations, alignments and designs. He stated that engineering wise staff feels that the applicant would still meet the 30 percent degradation rule due to the existing topography of the site. If you look at the plat there are several elevation differences from 300 to 400 feet in elevation. To answer the previous question, the applicant did provide profiles for the private road. The applicant did go to the mountainous terrain standard, which is the 16 percent grade. To meet the public road standard it would be a ten percent grade for VDOT approval. It is correct that the applicant can build a private road on a steeper grade to accommodate the topography from looking at this plan. He pointed out that one of the main degradation differences is the crossing at the creek. There is a lot of earthwork that will be done there. Either way you look at it coming off of Dick Woods Road they will cross the creek. It is the low point on the subdivision. Therefore, they would be coming down at a significant grade and going up the grade. Based on what the applicant has submitted, the grades were comparable. If the applicant had done more cut and fills and showed different alignments and different grades, it could have. But, based on what staff saw the applicant did meet the 30 percent degradation rule with the alignment that they have shown.

Ms. Joseph asked if there was a 100 foot stream buffer on that area.

Mr. Schuck stated that on the preliminary plat that the applicant has provided 100 foot stream buffers in several different locations. The applicant will be required to submit a mitigation plan down the road for approval.

Ms. Joseph pointed out that one of the things that staff says in the report is that he has asked for certain pieces of information concerning the drainage. Staff asked for a preliminary drainage plan and talks about a critical slopes waiver and an overlot grading plan. One of the other things mentioned is that the applicant has disagreed with staff and said that they don't need to submit this information because the plat meets the minimum ordinance requirement. She asked if there was any mechanism in the ordinance that says that you can ask for these things that you feel from an engineering standpoint that you require additional information for review.

Mr. Schuck stated that there was a section in the Code that allows for a field run topo to confirm or not to confirm critical slopes. In this particular case, he pointed out several different lots that he believed after walking the site with Mr. Waller that it was close to critical slopes. Based on the Code, they did provide aerial topography and it is allowed. But, in this instance staff feels with the significant topography out there that a field run topo would probably be a significant benefit to staff for the review in those lots for critical slopes. There are several different areas where this information would be useful.

Mr. Graham pointed out that the Program Authority with the Water Protection Ordinance has the right and ability with the building permits to require a grading plan submitted with that building permit. Typically

what is used is called an agreement in lieu of a plan, which does not require a lot grading plan. But, that is an option of the Program Authority. This would be after approval of the subdivision, but with the construction of the houses on each of those lots to require an individual lot grading plan.

Ms. Joseph stated that it was not for the road itself.

Mr. Graham stated that would have to be done as part of the road plan.

Ms. Higgins stated that historically when they were not requiring overlot grading plans in general in subdivision, there was a provision built into it where if there was a question about drainage and slope issues that the reviewer could require a grading plan for those areas. That was kind of an inner step before they went to a full overlot grading plan for subdivisions. She asked if that provision could be used.

Mr. Graham stated that there was a provision that allows us to look at the driveway entrances, but not actually for the house sites themselves.

Ms. Higgins stated that was potentially what the issue is here. It is how to get from the roads to the houses. Some of the proposed roads are long stretches over difficult terrain.

Mr. Graham stated that the other issue is that just because they show that is not what they are going to build when they get out there with the building permit.

Mr. Schuck stated that the other item staff would request involves the ditch design. One of staff's concerns is with the steep grade that they would get a lot of potential runoff at high velocities and how that is going to be taken care of. Staff did not see anything on the plan to address potential easements, what are the outfalls, and what kind of slopes would they be going down. That is the information staff requested pertaining to additional information for drainage. In this particular case with the grades the potential for runoff would be high with the high velocities of the water potentially with the neighboring properties. That was a concern brought to staff during this particular review, which was why he had made that particular comment.

Ms. Joseph asked why this project was brought before the Commission before they had worked out the entrance.

Mr. Waller stated that was why the request had been brought with the recommendation for denial.

Ms. Higgins asked staff how the changes would be incorporated to the plan resulting from the applicant's meeting with the neighbors if they have not been made at this stage.

Mr. Waller stated that it was a timing issue with the site plan review schedule. It would have deferred the Commission meeting and the applicant wanted to remain on schedule even with the recommendation for denial.

Mr. Schuck pointed out that after the applicant's meeting with the applicant, staff has not seen any revisions or recommendations as have been stated here. The applicant met with the neighbors after their staff report was written.

Mr. Thomas asked if there were any further questions for staff.

Mr. Edgerton asked Mr. Waller if the staff report recommends denial based on the lack of the VDOT entrance.

Mr. Waller stated that was correct.

Mr. Edgerton stated that the applicant has submitted a fax from VDOT saying that they can locate an entrance, but staff has not had a chance to review it.

Mr. Waller stated that he had not had a chance to review that, but staff's recommendation has not changed pending engineering's review of the road. If the applicant changes the alignment of the road and some of the building site locations, then staff will have to look at that again to make sure that the new building site locations do not have critical slopes. As Ms. Higgins said, that is information that staff still has not had a chance to review under the schedule which they were working under.

Mr. Thomas asked if there were further questions for staff. There being no further questions, he asked if there was a motion.

Mr. Edgerton made a motion to deny SUB-2004-00289, Ragged Mountain Farm, for both the private road request and the subdivision.

Mr. Morris seconded the motion.

Mr. Kamptner stated that the private roads was covered in Section 14-512 and then Section 4.2.1 through 4.2.5 dealing with information necessary to determine whether critical slopes exists on the buildings.

Mr. Craddock asked if the Commission should ask the applicant whether they would like to request a deferral. He questioned whether a denial would be more prejudiced than the applicant deferring.

Mr. Rieley stated that the other aspect was that he did not know if it was appropriate to include in the motion that the door was wide open for a rural preservation.

Mr. Thomas stated that there was a motion and a second on the floor, which could not be put on hold. He asked Mr. Kamptner how to stop the motion.

Ms. Joseph stated that if the request was deferred that the applicant could come back with a redesign or with the same thing.

Mr. Kamptner agreed.

Ms. Joseph stated that if the request was denied that the applicant could come back with the same thing next week. Therefore, they would not be precluding them from coming back.

Mr. Craddock stated that if the request was denied that the applicant could appeal it to the Board, which would not come back to the Commission.

Mr. Cilimberg pointed out that if it was deferred that the Commission would need the applicant's agreement to defer. If the request was denied, the applicant could bring the request back to the Commission or appeal it to the Board. Considering some of the particulars of the project and what needs to be satisfied, he could see the Board sending it back to the Commission anyway.

Mr. Thomas asked what would need to be done to the motion.

Mr. Kamptner stated that someone needs to propose a motion to amend and it needs to be accepted by the motion maker and the person who seconded the motion. If they consent, then there is a vote on the motion to amend. If it is approved, then the amended motion is before the Commission.

Mr. Rieley asked if the motion to amend could be a motion to table the original motion and second until the applicant has had an opportunity to request a deferral.

Mr. Kamptner stated that the motion can provide for anything you wish.

Mr. Rieley made a motion to amend and table the motion and second that is on the floor which gives the applicant an opportunity to request a deferral to address the issues that the Commission has raised.

Ms. Higgins seconded the motion.

Mr. Kamptner stated that the next step is that the motion maker and the person who seconded the original motion need to accept Mr. Rieley's motion.

Mr. Thomas stated that there was no acceptance of the motion. Therefore, he called for a vote on the original motion to deny the request.

The motion for denial of the private road request and subdivision was approved by a vote of (4:3). (Rieley, Morris, Edgerton, Joseph – Aye) (Craddock, Higgins, Thomas – Nay)

Mr. Thomas stated that the motion carries for denial.

The reasons that the Planning Commission denied the request are as follows:

- The Commission did not approve a private road because it does not comply with Section 14-232 through 14-234. The plat cannot be approved unless the private road request is approved or public roads are proposed.

- The Commission does not have sufficient information in order to determine that the applicant has complied with Section 14-512(H) of the Subdivision Ordinance requiring adequate access to a public road. Section 14-512(H) requires that the principle means of access meet Virginia Department of Transportation standards. Therefore, the applicant needs to demonstrate that this new location will meet those standards.

- The preliminary drainage plan needs to be submitted as per Sections 14-304 and 14-306. The applicant has not met Engineering's request for an overlot grading plan and field run topography. More grading and drainage information is needed to assure that the issues regarding drainage can be adequately addressed.

- The applicant needs to submit a critical slopes waiver request for this proposal or provide more accurate field run topography and an overlot grading plan to demonstrate that there are no critical slopes within the building sites shown, as requested by Engineering. This additional information may be required under the Subdivision Ordinance as a plat requirement and under the Zoning Ordinance's requirement that a building site not have critical slopes. The lots of concern are Lots 8 through 14, 16 through 22, 27 through 29 and 33 to 34. The applicant provided aerial topography as allowed by the Code. As per the Ordinance, the reviewing engineer can ask for more information if he feels that it is necessary for his review.

Ms. Higgins stated that for the record that she only voted no because she wanted to allow the applicant an opportunity to bring in a redesign. She felt that an opportunity for a redesign was more important than a denial.

Mr. Rieley stated that he voted in favor of the motion because he felt that the avenue that was most promising to get this to a level that would be acceptable to the Commission and the neighbors would be to reconsider this within the parameters of the Rural Preservation Development. It is clear that avenue is open and it would require some work.

The Planning Commission took a five minute break at 8:15 p.m.

The meeting reconvened at 8:20 p.m.

SDP 2004-00095 Arrowhead/Ntelos: Request for approval of a Tier II personal wireless service facility to replace an existing treetop facility that was approved originally as SP 98-09. The applicant proposes to construct a monopole that would be approximately 107 feet tall (10 feet ASL above the height of the

tallest tree within 25 feet), with ground equipment in cabinets placed on a 160 square foot concrete pad. This application is being made in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property, described as Tax Map 88 - Parcel 26, contains approximately 71.34 acres zoned Rural Areas and Entrance Corridor. This site is located on Arrowhead Valley Road (State Route 745) just east of U.S. Route. 29 South, in the Samuel Miller Magisterial District. The Comprehensive Plan designation for this property is Rural Areas 4. (Stephen Waller)

Stephen Waller summarized the staff report. He reviewed the request for compliance with the new requirements that are set forth in Section 5.1.40 for application for a Tier II Personal Wireless Service Facility. Staff has found that the request meets all of the new requirements as far as meeting the application criteria. However, during the field visit staff observed the balloon test and identified the following issues that may be unfavorable to this request.

1. Section 5.1.40(d)(2): The monopole would be skylighted from at least one vantage point near the site, and;
2. Section 5.1.40(d)(2): The site does not offer adequate opportunities for screening a monopole at the proposed height and location.

That first issue comes from Section 5.1.40(d) (2). Staff observed the balloon test from a point on Arrowhead Valley Road and noticed that from at least one view the monopole, based on the balloon test, would be skylighted. That particular vantage point can be found on page 48 of the staff report. There is an arrow which points out the balloon. At the time staff did the balloon test there was also a balloon being flown for a Nextel facility which ended up having to be moved because it was too close to an adjacent property line. The Planning Commission will also be seeing that request in the future as a Tier II request.

The second issue that staff found that may be unfavorable to this request is that, in staff's opinion, the site did not offer adequate opportunities for the screening of the monopole at the proposed height and location. Looking at the photos one can see that the backdrop that was being relied upon is to the distance and goes along the ridge line of Dudley Mountain Road. There is actually a stream between this site and that area where those trees are providing the backdrop. Under the requirements of Section 4.1.40(d)(2), the ordinance requires that the screening and camouflaging be provided on site. If you are looking at the tower site itself in comparison to that ridge line, and if you look at the topo map, you will see that there is nearly a 400 foot distance from the site itself to a point where the backdrop would be provided based on the incline of the mountain. That was part of how staff came to that conclusion.

In the event that the Planning Commission chooses to deny this application staff offers the following comment:
In order to comply with the provisions of the Telecommunication Act and with Section 5.1.40(d) of the Zoning Ordinance, the Planning Commission is required to provide the applicant with a statement regarding the basis for denial and all items that will have to be addressed to satisfy each requirement that have not been met.

If the Planning Commission feels that the site needs to be adjusted or if the height that the applicant has requested for 10 feet above the tallest tree is too tall, then those are some of the things that the Commission can consider in coming to their conclusion. The applicant is requesting a height of 10 feet, which is the maximum allowed by right as a Tier II facility. But, in order to go from 7 to 10 feet it also requires a separate action from the Planning Commission for that allowance. If the Commission has any questions, he would be happy to answer them.

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

Mr. Rieley stated that there were a couple of other towers existing on this site. He asked which material was being used for the existing monopoles.

Mr. Waller stated that there were two existing wooden facilities on the site. When this policy went before the Board of Supervisors there was discussion of whether or not the County would set a preference for wood poles over metal monopoles. Based on some of the concerns that were brought forth by some of

the representatives from the wireless industry, the Board approved the final version of the ZTA and set no preference for the different types of materials.

Mr. Craddock asked if this proposed monopole would be replacing an existing structure.

Mr. Waller stated that it would be replacing an existing structure.

Mr. Craddock asked if the monopole in the picture was the one that would be replaced.

Mr. Waller stated that it was not the monopole that would be replaced. The picture was of the second facility that was built on that site, which had a height of 93 feet. Staff was unable to find a photograph of the monopole that would be replaced. He pointed out that the applicant probably had some problems with getting coverage from the existing site.

Ms. Joseph asked if the existing monopole closest to Arrowhead Valley Road is the one that is going away, which was being replaced by the one that was further away from Arrowhead Road.

Mr. Waller stated that was correct.

Ms. Joseph stated that the new location would be climbing up a hill.

Mr. Waller stated that it was correct that the new monopole would be going on a higher elevation and would also be a taller tower as well.

Mr. Edgerton asked why the Ntelos monopole was also shown on the photograph.

Mr. Waller stated that both Ntelos and Nextel have been pretty cooperative with one another. But, they were not willing to meet with staff on the first balloon test on the Nextel site and the only balloon test for the Ntelos site. Both field teams coordinated the balloon test and rode around with staff taking photographs at the same time. Staff also requested that they exchange information to show each carrier's newly proposed site on one set of plans so that when the Commission looks at this they could see how the future Nextel site will relate to the location of those existing facilities and to the one that is being proposed. Nextel has provided the Commission with the proposed location of the Ntelos site as well.

Mr. Edgerton asked if the Commission was just talking about the Ntelos site tonight. He pointed out that for the record that he wanted to make sure that there was no confusion about that.

Mr. Waller stated that was correct.

There being no further questions for staff, Mr. Thomas opened up the public hearing and invited the applicant to address the Commission.

Valerie Long, representative for Ntelos, stated that Ms. Debbie Balzer, who was the acquisition manager for this part of the state, was present to answer any questions. To clarify Mr. Craddock's question, she stated that this facility, if approved, would replace the existing Ntelos facility on this property. The facility there is one of the first tree top poles that was built in the County and they have determined that it literally does not work. It is too low to the ground. It is in the trees. Its signal is blocked by a mountain further up the road. That is why after extensive field research, engineering reviews and studies of the properties that they have finally determined this need. Right now the monopole is not as tall as it is permitted to be. The monopole is permitted to be 6 feet above the tallest tree. They determined that if they raised the monopole to that height or even higher that it would still not work. They really need the monopole to be higher up on the property on a higher elevation in order to get around the ridge that is in the way in order to have effective service. She stated that there was one clarification that she would like to make, which she felt Mr. Waller would concur with, since there was one minor typo in this staff report. In discussing the fact that some of the adjacent parcels are under conservation easement, there was an indication that

staff had determined that the proposed facility would be visible from the resources protected by those conservation easements. Mr. Waller has confirmed that he intended that to say the monopole would not be visible from those protected resources.

Mr. Waller stated that was correct.

Ms. Long pointed out that she just wanted to clarify that because she felt it was an important issue.

Mr. Waller pointed out that was located on page 3 of the staff report.

Ms. Long stated that this facility does comply in all respects with the County's new Wireless Ordinance in terms of design, location, etc. The property is heavily wooded. The lease area is approximately 1,140 feet from Route 29. Its location on the side of the hill provides a wooded backdrop behind the pole from all locations viewed along Route 29. During the original balloon test she was not involved in the process. Ntelos conducted a balloon test for her benefit a few weeks later so that she could view the test as well. She stated that they drove up and down Route 29 many, many times. There are only two places where it is visible at all from Route 29. It is visible at one-tenths of a mile in each direction. In each of those two points there is a lot of wooded backdrop behind the pole. In the staff report, the Commission received copies of their photo simulations. These pictures were taken from the only two vantage points where this facility will be visible from Route 29. She stated that they are also comfortable based on comments of some of the neighbors near by that it is not visible from their property. The staff report also includes a picture that shows the two balloons skylighted. She stated that she did not see this picture because she was not there that day. But, the picture was taken from about a mile and a quarter away north of the site. Staff was gracious enough to send her electronic copies of all of the digital photos that they took the day of the staff report. What is not in their staff report was a photo that was taken with what appears to be a very strong zoom lens. She passed around some pictures showing the same viewpoint without the zooms lens. The Commission will be able to see that the photos were all taken from the same location because of the street sign located in the corner. The balloons are located way over in the photos. In one of the pictures you can sort of make out the larger Nextel balloon, but just barely. Then in those same pictures you cannot make out the Ntelos balloon. She stated that these photographs just put this in perspective. They certainly acknowledge that there is this one view where the balloon appears to be skylighted. But, it is a mile and a quarter away from the leased area and the photograph was made using what appears to be a very strong zoom lens. Therefore, at a mile and a quarter away with the naked eye that pole will be very minimally visible if at all. She hoped that would help ameliorate some of the staff's concerns about the visibility at least with regard to that particular view. That is the only location that anybody had identified where the balloon skylighted and where there was no wooded backdrop.

Mr. Edgerton asked if that was located on Route 745.

Ms. Long stated that site was at the intersection of Arrowhead Valley Road, which she believed was Route 745. She pointed out the location where the photograph was taken on a map in relationship to the proposed monopole location. She stated that the Commission also received in their packets copies of other pictures where there is wooded backdrop behind the trees. She pointed out that staff's main concern is that there is no wooded backdrop. They certainly dispute that position since they feel that there is very adequate backdrop behind it and the photos were taken too far away from the site. When the existing Triton facility was approved in 2001 there was no question that there was an adequate wooded backdrop. In fact, she had handled that application for Trition and well remembers it. This site was considered to be a very positive site with very effective wooded backdrop. Therefore, she was a little perplexed by the concern that all of a sudden it was not considered to be adequate. They think that there is more than sufficient screening on site as required by the ordinance.

Mr. Thomas asked which balloon belonged to Ntelos.

Ms. Long stated that the Ntelos' balloon was always the smallest one in the pictures. She passed out a photo that was very representative that was not taken with the zooms lens. She acknowledged that it will appear farther away than what the naked eye would see, but that in this picture you can easily pick out

the larger Nextel balloon because it is so large. You have to look very closely to find the smaller of the two red balloons that represents the Ntelos facility. She pointed out that in the picture you can see the extensive wooded vegetation on site that provides very adequate, in her opinion, wooded backdrop. The color of the monopole will be dark brown. She asked to take a moment to address the issue of the height of the pole at 7 feet above versus 10 feet above. As many of the Commissioners may recall, the new Wiireless Ordinance provides that the Commission can approve a facility at 10 feet above. She cited directly from the ordinance, "If the owner of the facility demonstrates to the satisfaction of the Commission that there is not a material difference in the visibility of the monopole at the proposed height rather than at a height 7 feet taller than the tallest tree and there is not a material difference in the adverse impacts to resources identified on the County's open space plan caused by the monopole at the proposed height rather than at a height 7 foot above the tallest tree. That is the reason that they submitted the proposed photo simulations that showed a side by side of the pole at the two locations where it was visible from Route 29, which showed it at 7 feet above the tree and 10 feet above the tree. That was done to demonstrate that, in their opinion, there is not a material difference in the visibility of the pole at 7 feet above as compared to 10 feet above. In addition, staff has already indicated that the proposal does not have any adverse impacts on the open space resources. Therefore, they feel that if it does not have any adverse impacts on the open space resources as they have applied for it, and there is no material difference in the visibility at 7 feet versus 10 feet above it, then they hope that the Commission will agree that they have met that standard. There are other points that she would like to make, but obviously she was out of time but would be pleased to respond to additional questions. She distributed photographs from when the Triton facility was approved that demonstrate, in fact, that the visibility of the Ntelos site is, in her opinion, better than it was with the Triton site. There is actually a spot on Route 29 where the Triton site is skylighted. It is a very short distance away of about one-tenth of a mile. At the time the Board and Commission had determined that was a minimal amount of skylighting to be considered in the larger picture. There is also a brand new facility that was just constructed north of this site that was right next to the road. She stated that it was a fine site, but it demonstrates that the site does not have nearly the effective screening as the Ntelos' proposal has. (ATTACHMENTS – 9 PHOTOS SUBMITTED BY VALERIE LONG AND LETTER DATED 11/8/04 TO DEBBIE BALSER FROM MICHAEL ABBOTT, ISA CERTIFIED ARBORIST WITH SOIL ANALYSIS REPORT)

Mr. Thomas invited public comments regarding this application. He stated that there was one person signed up, which was Mr. M. Bird Woods.

Greg Woods stated that he was one of nine family members who own the adjoining property to the site. They have been lived on the site since the first request for the cell towers and have witnessed what the Planning Commission has gone through. He pointed out that the Planning Commission has gone through a great deal of time and difficulty in establishing the guidelines for these towers because they have had so many requests. When the Commission set the height limit, the material, etc. for the placement of these towers, they had voiced their objections about turning the adjoining property into a commercial zone and asked that it be minimized. They feel that they can't really object to the tower, but they do feel like questioning it. He stated that it seemed like Planning was giving in to some of the guidelines that were so difficultly fought for. He questioned why the original sites could not be made to work. He stated that he did not like the invasion further up the mountain since the height of the monopole is considerable. They can't object to the tower because it is going to be there and is going to be needed, but they do object to the location. He stated that he was sorry that the Planning Commission's guidelines were now being ignored. There are some spots where the proposed cell tower will be visible from Arrowhead Valley Road, but that is not as immediate as the fact that the County has working guidelines and they should be adhered to.

Mr. Thomas asked if there was anyone else in the audience that would like to speak on this application.

Ann Bersardi stated that her property was just directly below the site of the tower on Route 29 between the railroad and the highway just south of Arrow Valley Road. She supported the opinion of the staff in that the tower will be visible from at least one site. Since she did not see the balloon she did not know if the tower would be visible from her property. She noted that the other opinion of staff was that the site did not have adequate coverage.

Chris Delvalley, representative for Nextel Partners, stated that their application's proposed monopole was going to be 75 feet away from Ntelos new location on this site. Last Monday their request went before the Architectural Review Board. He pointed out that they did not have any problems with the ARB and had obtained their approval. They had not come across any major problems with this site and felt that it would be the same for Ntelos as well.

Ms. Long stated that they appreciated some of the comments made by some of the adjacent landowners. They certainly always try to be extremely respectful of the rights and interests of adjacent landowners. It is my understanding with the proposal that the balloon test was viewed from all adjacent properties when the staff was there and that the balloon was not visible. Staff has determined that there will not be any adverse impacts on adjacent properties or any of the resources that are protected by some of the conservation easements on this property, which gives them a great of comfort. She reiterated that this proposal is not waiving any of these toughly fought standards that are included in the Wireless Ordinance. This proposal complies very strictly with the Wireless Ordinance in every respect in terms of its design, its location and its on site screening. She stated that there has been no attempt to deviate from those very strict requirements. The applicant well knows that any efforts to deviate if it does not comply with the ordinance that it will not be approved. Therefore, they have worked very diligently to meet all of the criteria. In fact, this site was chosen by Ntelos because of the vast backdrop of trees that are on the property and the fact that the existing facilities there are so well received. The only other point was if Ntelos could have figured out a way to make the existing site work, then they would have done so. They have looked at the existing site in every way possible because it certainly would be much cheaper and much faster if they could just retro-fit the existing site to make it work. They have determined that even if they raised it 20 feet above the tops of the tallest tree, which they know would never be approved, it would still not be at a height that would enable the signal to work around the obstacle, which is the ridge line of the mountain. It is simply not at a good location. It was one of the very first sites and they did not realize that it was not going to work. They have tried everything, but they know this new site will work and work very well. If there are any questions, she would be happy to respond to them.

Mr. Thomas asked if Ms. Long could provide an explanation why they need the extra 3 feet above the 7 feet allowed.

Ms. Long stated that every foot in height above the trees makes a tremendous amount of difference in the quality of the signal. The entire portion of the antenna needs to be above the tops of the trees and not just the top of it. The antennas on this facility are actually somewhat shorter and 5 feet long. But if you are only 7 feet above the tops of the trees that only allows for 2 feet of clearance. That is only in regards to the trees within 25 feet of the site. There are also trees that could be taller farther away, but because of the sloping terrain at this site that would probably not be an issue. Intelos had an arborist study done on the soils and trees on this site to try to find the likelihood of how fast these trees would grow. The arborist has taken soil studies of the property. She distributed copies of his letter, which conclude in essence that based on his soil's study and analysis of the property that he expects the trees to grow about 2 to 3 feet per year on average. Because of that, Ntelos does not want to have a site that is marginal. At 7 feet above, if the trees are growing 2 to 3 feet a year on average, granted that is going to vary; they are looking at having to replace this pole and extend it higher probably within a few years. That requires a lot of effort and cost. Because the standards say as long as there are no material differences between the visibility of the facility at 7 feet versus 10 feet above and no adverse impact on any open space resources, the Commission can approve it. So monopole works tremendously better for every additional foot in height, which will enable this site to work sufficiently to meet their standards for coverage. Where at 7 feet above the monopole will not work as well. Again, the mountains in this area are relatively close to the road and the trees are close to the road and the road is curvy. It is very challenging to develop a network in that area and every foot in height counts. Given that that there is no difference in visibility, she hoped that the Commission would agree that it would warrant your support at 10 feet above.

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

Ms. Joseph pointed out that their arborist is telling you that the trees will grow, but he is also telling you to fertilize them.

Ms. Long stated that the arborist was talking about the trees immediately near the site that are going to be impacted by construction, which was why they asked for a very tough and comprehensive conservation plan. As the Commission knows, heavy equipment will be required to install these sites. When heavy equipment gets any where near these trees, even with the tree protection fencing and the conservation measures that he is recommending, there is going to be an impact on the trees. Our goal, of course, is to protect those trees, particularly the tallest tree. Therefore, they asked the arborist to tell them everything that they needed to do to protect those trees. She felt that the conservation plan was very comprehensive. It was more stringent than any other tree conservation plan that she had seen before. She stated that the conservation plan was a step in the right direction. She felt that his recommendation for fertilization was not to make the trees grow, but to protect them.

Mr. Thomas asked if there was anyone else present who would like to speak on this application. There being no one, he closed the public hearing to bring the matter back to the Commission for discussion and possible action.

Ms. Higgins stated that she knew that they had to differentiate between the balloons. She asked if there was any relationship to the size of the balloon and the specific antenna that it was made for.

Mr. Waller stated that on the second test Nextel used a much smaller balloon.

Ms. Higgins asked if there was a relationship to the diameter of the balloon as opposed to the antenna shape or size.

Mr. Waller stated no because they just used the balloon that they had in stock. The current requirements set a maximum diameter of the top of the pole at 18 inches and then the face of the antenna can be no further out than 12 inches.

Ms. Higgins asked what the size was of these balloons because she was trying to get a perspective. Is the balloon as big as what they were going to look at or is it exaggerated so that you can see it better.

Mr. Waller stated that the Ntelos balloon is probably going to be a lot closer to the true size to the top of the pole.

Ms. Long stated that it was her understanding that in the pictures where you see both balloons that the Ntelos balloon was a 36 inch diameter balloon, which roughly equates to the size of the facility at its top. That would be 18 inches plus 12 inches on either side for antennas and brackets. It would be a few inches wider than that balloon. She believed that the Ntelos partner's balloon was in the range of 6 to 7 feet in diameter, which was much greater than the facility would be. She stated that they use 36 inch diameter balloons in an effort to be as representative as possible.

Ms. Higgins asked why they did not make it the same color that the pole would have been

Ms. Long stated that the ordinance actually requires that you use a bright color for high visibility.

Mr. Thomas asked if there were any other questions for Ms. Long. Since there were none, the meeting went back to the Commission for action.

Mr. Morris moved to accept SDP-2004-00095, Arrowhead/Ntelos.

Ms. Higgins seconded the motion.

Mr. Rieley asked to get something on the table. He agreed with staff and Mr. Wood in that the proposed site creeps up the mountain. There is a shift in the materials that would be larger and more visible.

There is a shift from a dull surface to something that the applicant could paint, but it still reflects light enormously. At the same time he thought that this site does have some advantages. He agreed with staff that it was better to have the backdrop close. The difference between having or not having a back drop is a bigger difference than having the backdrop closer than farther away. He stated that he could support this with two provisions. He stated that the illustrations that the applicant gave the Commission shows that there is, in fact, a material difference between the 7 and 10 feet. He suggested that they hold the height at 7 feet as they have done for all of the towers in that location and stipulate that the materials will be wood to make it consistent with the other towers in that area. He pointed out that he was suggesting that as a friendly amendment.

Ms. Higgins stated that the arborist's report indicates that these trees have a useful life span of 20 to 30 years with a very aggressive growth rate. She felt that 3 foot difference would not make the monopole any more visible for the short duration that it might be visible from Route 29. She supported allowing the applicant to have a taller pole to allow for the best coverage possible so that the next pole would be further away.

Mr. Kamptner advised that the Planning Commission could not stipulate a change in the pole's material to wood, and that was dropped as part of the condition of approval.

Mr. Waller stated that in this case the ARB has already given the blessing to allow the metal pole.

Mr. Rieley stated that was a big mistake since he disagreed. The shinier and higher the pole was would make the pole more visible.

Mr. Edgerton agreed with Mr. Rieley that the pole should remain 7 feet.

Ms. Joseph agreed that the pole was much more visible at 10 feet.

Mr. Craddock agreed with Mr. Rieley.

Mr. Rieley seconded the amended motion.

Ms. Joseph clarified that the motion is to approve this Ntelos monopole at 7 feet higher than the tree.

Mr. Kamptner stated that the motion was to approve the request with the tower being 7 feet in height.

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

Mr. Thomas stated SDP-2004-00095 was approved to allow the monopole to be 7 feet in height above tallest tree.

Ms. Higgins suggested that another motion be made denying the applicant's request for the monopole to be 10 feet in height above the tallest tree.

Mr. Morris moved for denial of the applicant's request for the height of 10 feet above the trees.

Mr. Craddock seconded the motion.

The motion carried by a vote of (6:1). (Higgins – Nay)

Mr. Thomas stated this motion gives the applicant the option to appeal it to the Board of Supervisors.

SUB 2004-00287 Terra Bella- Phase 2 RPD: Request for preliminary plat approval to create a 10 lot Rural Preservation Development (8 lots are proposed ranging in size from 2 acres to 4 acres and two lots of 54 and 63 acres). The total acreage of the subdivision is 140.23 acres. The property is zoned RA, Rural Areas. The property, described as Tax Map 19 Parcel 32B is located in the White Hall Magisterial

District on Frays Mountain Road [Route # 664] approximately 1/8-mile east of the intersection with Buffalo River Road (Route 604) adjacent to the Advance Mills Farm and the Terra Bella Phase 1 Subdivision. The Comprehensive Plan designates this property for Rural Area uses in Rural Area I. (Yadira Amarante)

Ms. Amarante pointed out that Terra Bella-Phase 1 should have been before the Commission tonight along with Terra Bella-Phase 2 because the two projects really go hand in hand. Actually Terra Bella-Phase 2 cannot be built without Terra Bella-Phase 1 because the roads through Terra Bella-Phase 1 are actually the extensions shown in Terra Bella-Phase 2. It was an error on staff's part in terms of sending out the notices for Terra Bella-Phase 1. Terra Bella-Phase 1 will be before the Commission next week. The applicant is present tonight and understands the situation. The applicant would like to use this time to get the Commission's feelings on the RPD in general and would like the option to defer if it looks the Commission is going to go towards agreeing with staff's recommendation for denial of the application.

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

Rob Duncan, development manager for Southern Development, stated that they were the owner of Terra Bella that was an 880 acre parcel in Albemarle County outside of Earlysville with extensive frontage on the Rivanna River. Phases 1 and 2 will come before the Commission next week due to the road. He asked to take this opportunity to more or less have a short work session with the Commission because they have grave concerns with staff's report on this back parcel. Upon their purchase of this property he immediately went to the Nature Conservancy and consulted with them on their overall layout. He stated that the proposed plan was a result of thousands of hours in the field. Others present tonight are David Anhold and Tim Miller. He stated that research was done on the RPD parcels and the reason why they are not widely accepted in the development community is the amount of time they sit on the market after they are produced. The easement does put a stipulation on the title and many people don't like the feel of an easement on their property. In order to make this rural preservation parcel work they had to break it up into two large RPD parcels. One of staff's major concerns is that they are showing two rural preservation parcels instead of one. In their plan they are exceeding the ordinance by three fold on these clusters. Rather than eating up 60 acres, they are only eating up 20 acres with the clusters. In doing so they are leaving significant buffers to these tributaries. One of staff's comments, which gave him grave concern, was that the approval of a RPD allows land to be placed in permanent easement. However, the design of this RPD does not significantly increase the likelihood that the property will be used for agriculture because of the fragmentation of the conservation parcel. Thus, the RPD does not provide for any increased protection of the North Fork of the Rivanna River or the endangered species located in the river. Staff's opinion of the current design is that it does not forward the purpose of the rural preservation development. They were showing greater than 200 foot buffers to all tributaries and 118 acres in conservation easement along the river. He stated that he did not know how much more they could be proactive in conservation than what this layout demonstrates. He stated that they drew the property line at a distinct transition point between an existing agricultural field that was cropped in corn just five years ago and a wetlands area that has an existing river birch forest. There is a distinct difference between the two parcels. In the staff report it says that this proposal does not encourage a farmer to lease a bottom area, but they think that it is exactly the opposite. They feel that this layout does encourage a farmer to do just that. They could lease an area that is profitable and not have to lease the entire river bottom that encompasses an additional 15 acres of land that should be in nature conservation and not conservation for agriculture. He stated that he struggled greatly with staff's comments on this particular layout. A lot of time and effort has gone into the plan. In their opinion, they feel that they exceed the ordinance at every step. He stated that they were truly disappointed in staff's response to their layout. The other issue is the access to lot 27, which is a lot in phase 1 of Terra Bella. Throughout this entire project the cul-de-sacs were shortened. They are moving forward with public roads; however, they minimized the impact at every single point possible by keeping with existing roads when possible and also meeting their ridgelines and shortening up the cul-de-sacs. Then they provided access easements. The issue with this access easement is that within the easement documentation for the rural preservation that the parcel cannot be established after the establishment of the rural preservation parcel or after the easement is actually put into place. But as long as the easement is a pre-existing condition to the RPD, then it is allowable. Therefore, their thought process tonight is that Phase 1 would first go along with this access easement.

Therefore, it would be a pre-existing condition to the RPD. They contacted Ms. Amarante very early on in this. He stated that they had multiple alternatives here as far as doing boundary line adjustments and so forth, but nothing changes in the field. They could include this access easement in with lot 28, which would keep it off the RPD. He spoke with Steven Blaine, their attorney, who stated that is precisely why the condition is in that easement document to allow a pre-existing condition to move forward. Staff's concern on that is that it is not currently a pre-existing condition, but it is something that they would make prior to the acceptance of the RPD. He stated that in their opinion it would be an allowable use putting the easement into place now and then adopting the RPD. He stated that David Anhold had some photographs of the site to show the Commission.

David Anhold, of Anhold Associates, stated that they were landscape architects and planners in Albemarle County. He passed around photographs of the site to show the Commission what the property really looked like.

Mr. Thomas invited public comment from the audience.

Ann Mallek stated that she lived across the street from this property. If this land is developed there will be three RPD's within ½ mile of her property. She stated that her land was in a conservation easement of 187 acres. She was very surprised to hear of the reluctance of people to buy these RPD lots because it was her understanding that the two Tanager Woods were sold before they were even created. The one on the other side of her property was going to be 100 acres. Therefore, she hoped that could be worked out. She expressed concerns about the access for lot 27 only because of the precedence that it sets for the future. She felt that some of the restrictions that were put into the by-law helps keep things simple and predictable. That is something that would help everybody along the way.

Mr. Thomas asked if there was anyone else in the audience who would like to speak. There being none, he brought the matter back to the Commission for discussion or a possible action.

Mr. Rieley stated that he understands the reluctance to break up preservation tracts into more than one parcel. But, this really does seem to be a place in which the land is really divided topographically. He stated that he was trying to thing about the distinction between how these parcels would be used if they were one or two. It seems that they were not big enough either way for major crops. It would probably be somebody with horses or cattle for small scaled farming. He raised this as a question. What is the distinction between how these would function as two as opposed to one. That seems to be the crux of the issue.

Ms. Amarante stated that staff is saying that if they are going to do two preservation tracts that maybe the separation between the two tracts would be between the upper lands and the lower lands. She stated that it was her understanding that the other preservation developments that they have approved with more than one preservation tract usually use those kinds of land forms to separate the two tracts.

Mr. Rieley stated that he would phrase the question more broadly. He asked what the overriding advantage was in requiring one instead of two preservation tracts.

Ms. Amarante stated that it was her understanding that it was basically a maintenance issue that instead of the County holding an easement with two separate easements it would hold an easement with one owner. If somebody wanted to lease the land for farming they could deal with one owner as opposed to two owners and that fragmenting the easement in that manner really did almost preclude somebody from farming.

Mr. Thomas stated that the person would have to deal with two owners.

Mr. Amarante stated that in this case staff did not see that the bottom lands were topographically separated as much as the higher lands on the ridge, and then the bottom land could stay as one piece.

Ms. Joseph pointed out that every time that they have talked about subdivisions in rural area they have talked about how wonderful it would be if they could cluster and have all of these smaller lots in one big lot. The dream is that all of these big lots would back up all of these bigger lots. She was not sure why they were considering the fact that two would be better than one because of topographic reasons. She pointed out that they had Montfair come in with some topographic differences on their property and they were going to have a bridge go across the stream so that they could get the horses from one side to the other. She stated that for months they had been talking about being able to have the small cluster, which was the whole concept. To have these big lots is not meeting what they were thinking about.

Ms. Higgins stated that as long as the two lots under easement are contiguous that she would not have any problems with it.

Mr. Rieley stated that the proposal before them is so much better than the most of the preservation tracts that they have because typically what they get is 8, 7 and 6 acre lots and then they end up with minimum preservation lots such as 40 acres. That configuration ends up not looking much like a preservation tract. This really has some integrity with a lot of the smaller lots lining the realm of the top of that ridge. The compromise is that it is divided into two preservation tracts instead of one, which he was sympathetic to because the land is already topographic divided that way. That was why he was asking if there was some operational difference in acreage or something like that which he was not seeing.

Mr. Thomas stated that was the same direction that he was heading in. He asked why they can't do two preservation tracts and what would be the negative impacts.

Ms. Amarante stated that it was the two ownerships and the two easements, which were concerns of the Public Recreation Facilities.

Ms. Joseph asked if the applicant would like to defer the request to next week.

Ms. Amarante stated that the applicant would have to agree with the deferral.

Mr. Duncan requested deferral of the request to next week. He pointed out that he understood that staff would support two rural preservation tracts if there was not a break in the natural topography or natural area of the property. He felt that there was a natural break. He stated that they would be happy with a deferral until next week so that the Commission could see the project as a whole. Their goal tonight is to get a consensus on whether or not they would be able to move forward or if they would have to go back to the drawing table with more engineering on the access easement to lot 27 and the private road. Also, if this layout out is strong and valid for two rural preservation tracts and was supportive by the Commission. If so, they would leave it in staff's hands and bring Phase 1 and 2 to the Commission together next week. But, if the Commission does not support it they would like to have an opportunity to go back to the drawing table and work on the plan.

Mr. Thomas asked what the Commission's opinion was on the private road.

Mr. Edgerton asked that it be relabeled as a driveway, but he had no problems with it if it followed the contours.

Ms. Amarante stated that it has to be a private road.

Mr. Edgerton asked if a restriction could be placed on it that it only serves lot 27.

Ms. Amarante asked if he wanted it to serve the house site on the preservation tract too.

Mr. Edgerton stated that they have frontage on the cul-de-sac.

Ms. Amarante stated that they do, but she would rather that there are not two driveways located there.

Mr. Rieley agreed.

Ms. Higgins suggested that both driveways come off of the cul-de-sac at the same location. She suggested that the applicant come back next week with some suggestions on how that could work.

Ms. Amarante stated that in summary that the Commission was generally supportive of the two preservation tracts and did not need any other information from the applicant or staff regarding that. In addition, they were okay with the private road for lot 27 for phase 1. She pointed out that Tim was right about the entrance to Buffalo River Road. Staff does not see any problem with that as long as they can get VDOT approval. The applicant will have to make a request for the two-lot private road for lots 47 and 48, but staff can look at that quickly in time for the next week's meeting. She pointed out that the Commission will have to act on all of this next week.

Ms. Higgins made a motion to accept the applicant's request for deferral to next week on SUB-2004-00287, Terra Bella – Phase 1 RPD.

Mr. Morris seconded the motion.

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

Mr. Thomas stated SUB-2004-00287, Terra Bella-Phase 1 RPD, was deferred to next week.

Old Business

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

New Business

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

Adjournment:

With no further items, the meeting adjourned at 10:11 p.m. to the November 16 meeting.

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V. Wayne Cilimberg, Secretary

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