Albemarle County Planning Commission
November 16, 2004

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, November 16, 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 (non-voting)

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Yadira Amarante, Senior Planner; Amelia McCulley, Division Chief of Zoning & Current Development; Mark Graham, Director of Community Development; Tarpley Gillespie; Senior Planner; Jack Kelsey, County Engineer; Glenn Brooks, Senior 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 meeting proceeded.

Consent Agenda:

Approval of Planning Commission Minutes – September 7, 2004

Ms. Joseph made a motion to defer action on the minutes of September 7, 2004 until the November 30, 2004 meeting.

Mr. Morris seconded the motion.

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

Items Requesting Deferral:

ZMA 2004-015 Boars Head Inn and Sports Club (Signs #70, 71 & 72): Request to rezone approximately 10.6 acres from R-1, Residential to HC, Highway Commercial, to allow new indoor and outdoor tennis courts at the existing Boar's Head Inn & Sports Club. The property, described as Tax Map 59D2 Section 1 Parcel 15 and Tax Map 75 Parcel 63 (portion), is zoned R-1, Residential and HC, Highway Commercial. It is located on the south side of Ivy Road (Route 250 West), just west of the entrance to Ednam and south of the Boar's Head Inn, in the Samuel Miller Magisterial District. The Comprehensive Plan designates this property as Office Service in Neighborhood 6. (Susan Thomas) ***APPLICANT REQUESTS DEFERRAL TO NOVEMBER 30, 2004.***

Mr. Thomas stated that the applicant has requested a deferral to November 30. He opened the public hearing and asked if the applicant or anyone else was present that would like to speak regarding this request. There being no one, the public hearing was closed and the matter placed before the Commission for discussion and possible action.

Ms. Higgins moved to accept the applicant's request for deferral of ZMA-2004-015, Boars Head Inn and Sports Club, to November 30, 2004.

Mr. Morris seconded the motion.

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

Mr. Thomas stated that the motion carried for ZMA-2004-015 to be deferred until November 30, 2004.

Regular Items:

SUB 04-077 Belle Vista, LLC Preliminary Subdivision Plat: Request authorization to allow a private road. (Tax Map 69, Parcel 50C) (Yadira Amarante)

Ms. Amarante summarized the staff report. The applicant proposes to subdivide Tax Map 69, Parcel 50C, consisting of 76.513 acres, into 5 parcels. All five parcels will gain their frontage and access from a proposed private road. The property is zoned RA - Rural Areas and is located in the Whitehall Magisterial District on Critzer's Shop Road [Route # 151] approximately 0.2 miles south of its intersection with Rockfish Gap Turnpike [Route 250]. The Comprehensive Plan designates this property for rural area uses in Rural Area 3, (see Attachments A & B).

The reason for the Planning Commission review is for authorization of that private road. The applicant submitted a request for the private road, which is shown on Attachment C. Engineering staff looked at that request and has recommended approval. Engineering and Planning staff supports the use of a private road for the subdivision because the difference in earthwork during construction will be much less than if constructing a public road, (see Attachment D). After reviewing and analyzing the supporting earthwork computations submitted by the applicant, Current Development Engineering agrees that the degradation to the environment will be greater than 30% for the public road when compared to the private road. In other words, construction of a private road will alleviate a clearly demonstrable danger of significant degradation to the environment of the site, or adjacent properties. Staff has looked at the other items from the Subdivision Ordinance in terms of whether or not the private road will be adequate to carry the traffic, whether or not the Comprehensive Plan provides for a public road in that alignment, and how the fee of the private road will be handled through a road maintenance agreement. Staff has looked at all of this and recommends approval of the private road. With approval of the private road from the Planning Commission, staff can approve the plat administratively.

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

Ms. Joseph stated that she would like to understand lot 3 because it looks as if some of lot 3 comes from the parent parcel that the other lots have been created from.

Ms. Amarante stated that was correct.

Ms. Joseph asked if there has to be 21 acres added from this other parcel Z to allow them to have 2 development rights.

Ms. Amarante stated that they can get the 21 acres from a combination of both the existing parcel 50C and this lot Z. But, the 2 acre kernel needs to come out of that portion of lot Z.

Ms. Joseph stated that the development right lives in lot Z.

Ms. Amarante pointed out that the Commission did not get reductions of the road profiles, but it was posted on the bulletin board. Also, the engineering staff was able to put together that summary of the cut and fill, which they should have in their packet.

Mr. Edgerton asked engineering staff to explain the option contained in the summary. In the last line on the first page it says staff investigated the possibility of shortening the road or using the 3 to 5 lot standard both of which would decrease the earthwork if the applicant chose not to do these.

Glenn Brooks, Senior Engineer stated that this was mostly a verbal exchange with the applicant. He stated that staff told the applicant about the possibility of shortening the road to serve the last two lots for the two lot private road. Of course, they have this extra development right in the back and they wanted to reserve the possibility of getting six lots eventually, which would require the next standard up in the private road design. That is why they are sticking with an 18 foot section instead of a 14 foot section,

which the 3 to 5 lot standard would allow. If they don't go as far with the road up the hill, then it would reduce the earthwork quite a bit and was what they wanted to do. But, the applicant did not wish to split the road that way.

Ms. Amarante stated that if they would look at the corner of lot 2 she believed that the cul-de-sac could have gone up to that part and then they could have had a smaller private road to serve lot 3.

Mr. Edgerton stated that if they put the cul-de-sac back to the corner of lot 1 and 2 that would give access to lot 2, lot 4 and lot 3 and they could have a driveway. He asked if that was correct.

Mr. Amarante stated that was correct.

Mr. Edgerton asked what they would be losing by going that route.

Mr. Brooks stated that they would have to ask the applicant that question.

Mr. Edgerton stated that he did not think that they would be losing a development right or the use of the land.

Mr. Brooks stated that in the future if they made one more subdivision for a total of 6 lots they would have to meet the 6 lot private road standard, which is equivalent to the VDOT standard for mountainous terrain.

Mr. Edgerton stated that they were reserving the right to do one more development, but they want to do it with a private road that would work for 5 lots but not for 6 lots.

Mr. Brooks stated that they would just not have to upgrade the road in the future if they subdivided one more. If they build it to a 3 to 5 lot standard, it has to have a 14 foot width.

Ms. Higgins asked if they were following VDOT's mountainous terrain standards.

Mr. Brooks stated that they were following VDOT's mountainous terrain standards, which was above what was required in this case.

Ms. Higgins stated that instead of meeting the 3 to 5 lot standard, they are already meeting the standards for 6 lots.

Mr. Brooks stated that was correct. Therefore, if they subdivide one further lot, then they would be at 6 lots and don't have to come back and rebuild portions of the road.

Ms. Joseph asked if engineering ever works with Fire and Rescue when they look at some of these private roads.

Mr. Brooks stated no, but that they were on the Site Review Committee so they have their chance to comment, but he does not work personally with them.

Ms. Joseph asked if the Site Review Committee ever comments on steep slopes or any other aspects of the private road regarding rescue vehicles access.

Mr. Brooks stated that he had not seen them doing that on any individual applications. He stated that they address those issues in committees with larger scope items like redoing the VDOT standards and things like that.

Ms. Higgins asked if Mark Graham could comment on that.

Mark Graham, Director of Community Development, stated that Ms. Higgins had approached him with a question about the driveways and the grades. They have looked at that with Fire and Rescue with what

is called safe and convenient access, which is a requirement for issuance of a Certificate of Occupancy for a house and what is necessary to get a fire truck to the house. Obviously, if you are building a house we would love to have a fire truck to be able to get to it so that you could put the fire out.

Ms. Joseph stated that they were talking about driveways at this point.

Mr. Graham stated that the question was what is necessary to get a fire truck on the road. The Fire and Rescue people tell us that they are comfortable up to a 20 percent grade to be able to get that equipment there. They would need a 13'6" vertical clearance and they want a 10' minimum horizontal clearance to make sure that they can get their equipment up the grade. But as far as the road grade or driveway grade itself that up to 20 percent is considered acceptable.

Ms. Joseph stated that she hated to contradict him, but she had talked to Dan Eggleston, the Chief, this afternoon and when she mentioned 16 percent that he thought that was pretty steep.

Mr. Graham stated that all he could say is that they have worked with Fire and Rescue staff and the 20 percent was the number that everybody agreed to. He stated that was an acceptable highway standard. If you just go 15 miles west of the city the highways can be that great.

Ms. Joseph stated that the highways are usually publicly maintained. She noted that they were talking about something that is privately maintained at this point. Whether it is ice and snow removal or pothole or edges of pavement maintenance that was what they were talking about with a private road.

Ms. Higgins stated that there was a difference between maintenance and fire truck safety access.

Mr. Rieley stated that they were associated if a fire truck was trying to get up the road in a snowy condition and it has not been maintained properly. He felt that was Ms. Joseph's point. He stated that 20 percent on a small road is very difficult.

Mr. Thomas asked if there were any more questions. There being none, he opened the public hearing and invited the applicant to address the Commission.

Tom Gale, representative for the applicant, stated that he had one piece of information that may be of some use to the Commission. It is a slope map that shows the 15 percent and greater slopes on the property. He felt that the slope map shows you why they have the cul-de-sac where it is and actually justifies the road location. He distributed copies of the map. He pointed out that he gave a copy of this map to the engineering department to justify the mountainous terrain standards, and they were okay with it. As Mr. Brooks mentioned, he did try to do a public road and was turned down.

Mr. Edgerton asked just for clarification that he said that he applied for a public road and they turned him down.

Mr. Gale stated that was correct. He stated in Mr. Bryan's letter that he indicated that the alignment was in the best place to build the road. He pointed out that he was pleased to hear that. But, essentially VDOT does not recognize mountainous terrain standards in Albemarle County. He stated that he did not realize that, but he had learned it the hard way.

Mr. Thomas asked if there was any one else present who would like to speak regarding this application. There being no one, he closed the public hearing to bring it back to the Commission for further discussion and a possible motion.

Ms. Joseph distributed copies of the private road part of the ordinance because she thought that sometimes we only think that we can look at the 30 percent rule. She asked Mr. Kamptner to clarify this. If you look at Section 14-233 on page 14-29, it says in addition to the request for authorization to construct one or more private roads in a subdivision the following related matters may also be considered by the Commission in conjunction to the request. If you turn the page on e, it says that the Commission

may impose any condition pertaining to the road it deems reasonable and necessary in conjunction with any approval pursuant to this section. That means that there are other things that they can look at other than the 30 percent aspect. The other thing while you are on page 30 is that this pertains to what they can see. Under a1, it says that the request shall also include a map of the subdivision having contour intervals at no greater than 20 feet showing the horizontal alignment together with field run profiles, as a requirement, and typical cross sections of the road. The County Engineer can waive the requirement of the field run profile. This sort of pertains to what they were looking at last week. Therefore, the County Engineer has every right to request a field run profile because it is a requirement.

Mr. Thomas asked if any other Commissioner would like to weigh in on that.

Mr. Rieley asked if they could back up for a minute and ask Mr. Gale a question for clarification. He asked what were the typical side slopes shown on the grading in both cases.

Mr. Gale stated that the side slopes were 2 ½ to 1, which was consistent in both cases.

Mr. Thomas asked Mr. Kamptner if he had any comments to give the Commission on the part that Ms. Joseph was reading to them.

Mr. Kamptner stated that the standards under 14-232 provide the criteria to allow you to exercise the discretion whether or not to approve a private road. It is clearly discretionary. There is language in 234 that notes that private roads are to be the exception. He stated that he has always read Section 233.e as simply granting the Commission the authority to impose conditions of approval. Therefore, if the Commission chose to approve this private road they could add some additional conditions as to its design or what have you. In Section 234.01 the field run profiles is a requirement and it does allow the County Engineer to waive that requirement.

Ms. Higgins asked to go back to their previous discussion. From her perspective she was looking at the 76 acres and for various reasons it appears that not all of the development was potentially being used because it could be 5 lots plus 1 more if it was a by right development. In this case the applicant attempted to do a public road and took the correct course. They went to VDOT and proposed a design, but VDOT did not grant them a waiver. Then her focus shifts to what is the least impact. A private road in the rural areas at 2.5 to 1 slope on side slopes are actually sections that will fit very well. Depending on the depth of the field, it could require a guard rail. For a VDOT road they have to be flat. Potentially for a private road in the County there are probably guard rail requirements that will kick in. That would be minimized grading, but the grading widths could be greater.

Mr. Rieley stated that this was in a cut section and that does not require a guard rail. He noted that the whole upper two-thirds is that soft cut.

Ms. Higgins suggested that they look for a way to minimize the intrusion and the impact, which are the cubic yards of dirt that have to do with the grading, and then the impervious area and widths. They have gone to the mountainous terrain standards for the 6 lots, which is an accepted standard at 16 percent. VDOT uses that standard across the mountain. The reason that they don't use it on this side of the mountain has to do with their snow removal equipment and not with the emergency vehicles.

Mr. Rieley pointed out that was not what Mr. Bryan's letter says. His letter says for safety reasons.

Mr. Edgerton pointed out that the letter also says for maintenance.

Ms. Higgins stated that what they were saying then was that VDOT has a recognized standard for mountainous terrain at 16 percent and he has implied that it is not safe. She pointed out that she totally disagreed with that because there is no standard that VDOT holds that they will ever say that is not safe. It is an accepted road standard in Augusta County, but on this side of the mountain in the Culpeper District it does not procure the kind of snow removal equipment that will operate effectively at that grade. Across the mountain they buy different equipment and they handle those grades all of the time. She felt

that he meant safety, but he cannot say that it is not safe because it is in their book as an accepted standard. She questioned if they are talking about modifying a standard that has been used on a private road. She noted that it has been an acceptable standard in their Design Manual. She felt that they were going way past that and were actually going to make it flatter and not necessarily straighter. They also would be increasing the grading over the 30 percent comparison. She stated that she was confused and unsure why they were doing this.

Mr. Rieley stated that they had a good conversation about this last week. There were two points that were made. The point that Ms. Higgins made that was perfectly correct is that this standard allows a road to be constructed which will have less impact because it can follow steeper grade. The point that Mr. Edgerton made, which is equally correct, is that there are situations in which applying that standard allows the development of land that would otherwise have to be developed in a different way. The question is which criteria this fits. He felt that it was the second one. The reason that it was the second one is that in order to achieve the ten percent grade the road gets in a deeper and deeper cross section until it gets up near the top where it is 40 feet deep. That is not a practical alignment for a road if you take a 10 percent radiant as the way in which you have to design the road. If you were starting not with a 16 percent road, but a 10 percent road that the grade would never be there to begin with because that is not practical. Not only are you in a 40 foot ditch with 40 percent slopes on both sides, but when you get to the cul-de-sac there is no way to get out because you have the 2 ½ to 1 side slopes on all sides. It would have 40 percent slopes, which was 1 ½ times what their critical slopes standards are. They would be manufacturing slopes 1 ½ times what critical slopes are. From his perspective that is not a reasonable alternative to this. Therefore, he could not support the private road standard in this case because he thought that it allows development in a way that would not occur without the exception. As Mr. Kamptner pointed out private roads are intended to be the exception. In his view they are intended to minimize disturbance, but not intended to make land developable if it is not otherwise practically developable by that general strategy.

Ms. Higgins asked if based on that did he mean that if there was a road standard that they could come up with that could be built with this number of lots and then compare it to the private road that then your argument would go away.

Mr. Rieley stated yes and that he had supported private roads in that situation lots and lots of times. It is a judgment call because you have to figure out if this is in fact allowing development to occur that would not otherwise occur by facilitating it. Or is it just simply lowering the standard in order to mitigate the environmental impact.

Ms. Higgins felt that was not clear in the standards here and this case was not as blatant as the one they looked at last week.

Mr. Rieley stated that he felt that it was almost identical. In fact, he sent a memo around to his colleagues about this and he had not seen this when he did that. It is striking the degree to which this is similar to that example that he just pulled out of the air. That was 37.5 feet of cut and this is about 40 feet.

Mr. Thomas asked if it was really going to be a 40 foot gully when you get to the cul-de-sac.

Mr. Rieley stated yes that it was going to be 40 foot deep.

Ms. Joseph pointed out that was why it was important for the Commission to see the profiles because that is what it shows us.

Ms. Higgins stated that was in a public road scenario, but in a private road it is not.

Mr. Edgerton stated that he says that they do not outweigh our requirements for safety in standardized highway maintenance operations and the degradation which will result in unacceptable costs to the public. Then he goes on to say that to grant a waiver to this extent would set an impudent precedent.

That is pretty strong language. They have asked him to allow them to go to the 16 percent slope and keep everything else the same, and he is saying no that he did not think that is a good idea. In engineering's summary report, that they just received this evening, in the bottom paragraph on the first page there are positive alternative alignments. However, not considering the other subdivision layouts there are no alternative alignments. There are perhaps other ways to develop this property, but not with this alignment going through these slopes. At some point the topography may or may not have to be the determination made about whether this development should occur, which was what he was struggling with. In looking at these slopes, this property is incredibly steep. There is no question about that.

Mr. Thomas asked if there were any other comments. He asked if anyone could think of a better example of this from the past that was passable.

Ms. Higgins stated that there were a lot of private roads out there. There have been three private roads along her road that have been put in during the past three years. Those roads are 14 foot wide and are working nicely. Across one of the stream crossings there is a 27 foot fill that was minimized by going to a private road standard. She felt that if there had been a waiver request in sections for maybe 12 percent and then VDOT can make them make the road longer to get up the same distance. That would cause even more degradation to the environment. She asked if they were saying that maybe a lot will drop off this or they will make the road longer. The applicant could withdraw it and come back with a different design and not come back before the Planning Commission and do it with a public road. She felt that the applicant looked at their developable property. Mr. Gale provided a plan that shows everything with a 15 percent slope to show us that this land by using a private road can follow the land in a more consistent way and is the way to look at it. She felt that in the past that is the way that it has been done by the environmental impact. Since this is a 5 to 6 lot situation she did not think that it compares to the other one that they looked at.

Mr. Rieley stated that this is a wonderful potential Rural Preservation Development. There are all kinds of ways that one can start. But, if you start with using public roads and that entails the 10 percent radiant, then you don't end up here. This has started somewhere else and it is justifying it by saying that a 10 percent road on this alignment is much worse, and it unquestionably is.

Ms. Higgins stated that the background of this is if it comes in as a private road in a Rural Preservation Development, then that would be given more favorable consideration.

Mr. Rieley stated that was not what he said.

Ms. Higgins stated that was what they did before.

Mr. Rieley stated that if you have a road, whether it is a Rural Preservation Development or whether it is a conventional development, in which you have reasonable access and you can show that you could do a state road reasonably, but that you would like to minimize the environmental degradation by going to a private road then that is a viable case. But if you have a situation in which you have no practical way to get up the slopes without going to a 16 instead of a 10 percent radiant, then he thinks that you are utilizing the private road provision, which is to be an exception, to actually allow you to develop land in the rural area more conveniently than you could otherwise. He stated that he did not think that is what this provision is in there for.

Ms. Higgins stated that Mr. Thomas brought up a good point as to how there are other ones out there that have worked. She reiterated that there were several examples on her road that have worked and there was about to be a fourth. They have recently reviewed the rural areas Comp Plan and they have concerns about what is happening in the rural areas. So now what they are doing is taking things that have been treated in a more routine fashion and looking at and treating the applications in another way. She felt that it was implied that they were kind of turning up the requirement to accomplish this.

Mr. Rieley stated that was absolutely untrue and he did not know where she gets that.

Ms. Higgins stated that it was her perspective that they need to change the rules and not just start interpreting them differently.

Mr. Edgerton stated that last week that he was of the opinion that they might need to change the rules, but actually now he did not think they need to change the rules because they are very clear. What Ms. Joseph has brought to them this evening is very clear. The Commission has the authority. They have been operating under misinformation from his perspective that if it shows greater than 30 percent that they ought to do it. Staff has been presenting it to the Commission that this is the way it is and so it ought to be done. But, in the reality it is not staff's decision and they are not the ones responsible for making this decision. The Planning Commission is making this decision. He felt very strongly that on this property if it cannot be done safely that he did not know why they should bend over backwards to allow them to do something that is unsafe. On this particular project he felt that they have a real issue here.

Mr. Rieley asked to make a quick observation that this is not something new and that these have not just been sort of automatic in the past. They have had knock down drag outs about this same issue in the past. He recalled one meeting about private roads that went until 1:00 a.m. in the morning. The Commission has wrestled with this and it has been a very difficult issue for years, but it has never been automatic. There is nothing about their discussion here tonight that is new or inconsistent with the kind of discussions that they have had in the past.

Ms. Higgins stated that she agreed with him, but that Mr. Edgerton was just admitting that before that he thought they needed to change the rules until he understood that you apply these.

Mr. Edgerton admitted that he was not as familiar with the ordinance as he should be.

Ms. Higgins stated that it was still a change in the thought process. There is only one thing that she would dispute and she would dispute it until the last level including getting Jim Bryan back here. VDOT has a standard for 16 percent grade and his letter does not negate the safety that was presented in the Design Manual that other localities use. Therefore, vote against it for the reasons that you want to, but not because someone has said that the Mountainous Terrain Standards are unacceptable.

Mr. Edgerton asked if she had not just given the reason for why that standard does not apply to our County.

Ms. Higgins stated that has to do with the maintenance of the roads.

Mr. Edgerton asked if she just said that it does not apply to our County.

Ms. Higgins stated that this district does not allow this County to use it because they don't buy the equipment consistent with that. She noted that it does not have to do with safety.

Mr. Edgerton pointed out that his letter says that.

Ms. Higgins stated that Jim Bryan was no longer at VDOT and if he was that she would take it to him. She stated that they have allowed private roads at 16 percent before.

Mr. Thomas stated that he agreed with Ms. Higgins that they were really changing strokes in the middle of the stream when they go against that. The 16 percent is in there and Mr. Bryan's letter does say that it is unsafe, but he is no longer with VDOT.

Ms. Higgins pointed out that our ordinance has Mountainous Terrain Standards in it, but it is for 6 lots or greater. She stated that they could say that their own standards are unsafe if you want to take that work and apply it to that grade. She asked that they not go on the record saying that their own standard is unsafe.

Mr. Rieley stated that Ms. Higgins makes an excellent point and he felt that Mr. Bryan's statement has to be taken within the context that the equipment relative to maintaining those roads is not here and that is the basis for the safety issue. He stated that his concern was whether giving a waiver for private roads in this case is an enticement at making it easier. But, he felt that her point was well taken.

Mr. Thomas asked if the Commissioners understood the words that Ms. Joseph read or do they need more interpretation of that or more legal advice from Mr. Kamptner on that part of it.

Mr. Rieley felt that Mr. Kamptner has already done that.

Ms. Higgins made a motion that SUB-04-077, Bella Vista request to allow private roads be approved with conditions as recommended.

Mr. Morris seconded the motion.

Mr. Craddock stated that this has been a big discussion on one other committee that he was on about access to mountain tops regarding public and private roads. Based on that and Mr. Bryan's letter, if the new person there would come back with a letter saying that it is okay on this side of the mountain that it would certainly help this other committee that he was on also about going to the ridge tops. That has been a great concern.

Ms. Higgins stated that it does not have to be private roads to go to the ridge top.

Mr. Craddock stated that it was just the whole cutting of the road to a ridge top, whether it is public or private. He stated that it regarded the development of property that would not otherwise be developed.

The motion for approval did not carry by a vote of (2:5). (Higgins, Thomas – Aye) (Craddock, Rieley, Morris, Edgerton, Joseph – Nay)

Mr. Kamptner stated that another motion was needed and then he would provide the reasons based on what he had heard so far.

Mr. Edgerton moved to deny SUB-04-077, Belle Vista request to allow private roads.

Mr. Morris seconded the motion.

Mr. Kamptner stated that the reasons would be that the Commission would deny the request for private roads in exercise of its discretion under Albemarle County Code Sections 14-232 through 14-234 and the proposed public road alignments could not be approved by VDOT. Otherwise, the approval of the private road would allow the property to be developed differently than it could be with the public road. In order for the preliminary plat to be approved, the subdivider must either amend the plat to show that all of the roads would be public roads or provide the Commission with an alignment of a private road that meets the requirements of Albemarle County Code sections 14-232 through 14-234.

The motion for denial carried by a vote of (5:2). (Craddock, Rieley, Morris, Edgerton, Joseph – Aye) (Higgins, Thomas – Nay)

Mr. Thomas stated that there were two motions. The first motion did not carry. The second motion carried. He stated that it was a good discussion and the Commission needs to hold a work session on that issue.

SUB 2004-286 Meadow Estates Subdivision: Request for final plat approval to create 8 lots on 139.59 acres. The property is zoned RA - Rural Area. The property, described as Tax Map 103, Parcel 3 is located in the Scottsville Magisterial District on Carters Mountain Road (Route 627) just north of its intersection with Blenheim Road (Route 727). The Comprehensive Plan designates this property as Rural Areas in Rural Area 4. (Yadira Amarante)

Ms. Joseph stated that she had a personal interest in this transaction in that she has represented landowners who may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the Planning Commission on SUB-2004-286. She declared that she was disqualifying herself from participating in this transaction and request that this fact be recorded in the appropriate public records for a period of five years. She left the meeting room. (Attachment – Transactional Disclosure Statement)

Ms. Amarante summarized the staff report. The preliminary plat for this project was approved by the Planning Commission last February. At that time the Commission had asked that the final plat come back before them. Currently the applicant is requesting final plat approval to create 8 lots averaging about 16 acres from a total of 139 acres. A significant portion of this property is located in the Landark Agricultural Forestal District. Therefore, most of the proposed lots are 21 acres or more, which fit the regulations for subdividing in agricultural forestal districts. At that time the Planning Commission approved the preliminary plat subject to several conditions, which are listed at the bottom of the staff report. In the staff report the staff went through those conditions and stated how the applicant has met those conditions. One of the conditions recommended by the engineering staff was trying to get that riparian easement recorded with the Thomas Jefferson Soil and Water Conservation District. The reason that they did it this way as opposed to basically making them record the easement before they signed the plat is because the Thomas Jefferson Soil and Water Conservation District would like the plat approved before they record the easement. Staff is confident that the applicant is cooperative and will do it. Staff will also get this documentation from the Soil and Water Conservation District.

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

Mr. Craddock asked if they could add additional land as long as the initial land is over 21 acres.

Ms. Amarante stated that was correct. For lots that are created by using development rights there is the kernel rule that keeps those development rights within the original property boundaries. But, that is not the same for 21 acre lots.

Mr. Craddock pointed out that there was an error in the development rights acreage. He stated that whatever adjustment was made would need to be made on 13 to make it consistent.

Ms. Amarante suggested that they ask the applicant to clarify this issue.

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

Steve Blaine, representative for the applicant, stated that they were searching for the answer to the question about the development right reference that Mr. Craddock made. They believe that comes from that 31 acre rule on the use of the 5 development rights and what was retained, but they are not 100 percent certain. They will have that answer before they leave tonight or make that a condition of the approval. It may be a typo, but he believed that was where it comes from. He stated that they don't have the answer to that right now.

Mr. Thomas asked if there were any questions for Mr. Blaine. There being none, he invited public comment. There being no one, he closed the public hearing to bring the matter back before the Commission for discussion and a possible motion.

Ms. Amarante suggested that staff could find the mathematical error in the development right acreage and then bring it back to the Commission under the consent agenda.

Mr. Rieley stated that it was just an error on the drawings.

Mr. Thomas asked if the Commission wanted to condition the approval that the correction should be made by staff.

Ms. Higgins moved for approval of SUB 2004-286, Meadow Estates Final Subdivision Plat, with the conditions as recommended in the staff report and modified to add one condition.

The final subdivision plat shall not be signed until the following conditions have been met:

1. All improvements shall be built or bonded.
2. Written documentation from the Thomas Jefferson Soil and Water Conservation District that the applicant has submitted the required documentation and paid the appropriate fees to begin the recordation process for the riparian buffer easement.
3. The development right allocation summary item 1 and notes item 13 are appropriately corrected with mathematical correction as necessary.

Mr. Rieley seconded the motion.

The motion carried by a vote of (5:1). (Craddock – Nay) (Joseph – Abstain)

Ms. Joseph returned to the meeting.

SUB 2004-188 Terra Bella, Phase 1, Preliminary Plat: Request for preliminary plat approval to create 44 new lots adjacent to the advance Mills Farm Subdivision. The site, described as Tax Map 19 - Parcels 30, 32 and 32A, contain 742.47 acres zoned RA, Rural Areas. This site is located in the White Hall Magisterial District on Frays Mountain Road approximately 1/8-mile east of the intersection with Buffalo River Road (Route 604). The Comprehensive Plan designates this property as Rural Area, in Rural Area I. (Yadira Amarante)

Ms. Amarante summarized the staff report. (For details see the staff report.) Staff has looked at the requirements for subdividing in the Rural Areas. All the lot sizes meet the requirements and have building sites. There are two items which require Planning Commission approval. One of them is a private road to serve lot 27, which is one of the lots highlighted in orange. That private road will only be for one lot. The applicant is requesting that private road and to not have to extend the public road through critical slopes and stream buffers to be able to get to that. In their discussions last week it seemed that the Planning Commission was okay with that private road going through what will be, if the RPD gets approved, a preservation tract. The other two things that the Commission must act on is the two lots, being lots 2 and 44, which would like to have direct access on to the existing public road. Staff is recommending approval of those waivers as well as for the reasons stated in the staff report. Although staff can recommend approval of the waiver of Section 14-505(b) for Lots 1 and 44, without viable frontage for Lot 27, staff must recommend denial of SUB 04-188: Terra Bella, Phase 1, Preliminary Plat and denial of the private road request for Lot 27.

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

Rob Duncan, representative for Southern Development, stated that he came to the Commission last week for phase II of this project. He felt that the restraints on the building envelope of the 30,000 square foot area has not been researched in any detail to see about drainfield locations, well sites and those sorts of things. That building envelope could expand and move somewhat. They would, of course, like to reserve the right to move the building envelope on those lots where needed if the waivers are granted. Others present include Tim Miller, of Rivanna Engineering; and David Anhold and Charlie Armstrong, from his office.

Mr. Thomas invited public comment from any one else present in the audience who would like to speak on this application. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and action.

Ms. Amarante stated that because they were recommending denial of the last of this item and now it has all changed that the Commission needs to look at the sheet handed out at the beginning of the meeting as the recommended conditions of approval.

Ms. Higgins moved for approval of SUB 2004-188, Terra Bella, Phase 1, Preliminary Plat, with a waiver for the private road request to serve lot 27 and the conditions for the waivers on lots 1 and 44 to delete number 2, but to approve the waivers for lots 1 and 44 as recommended in the staff report.

Conditions for the private road request for Lot 27:

1. Submittal of a road maintenance agreement pursuant to Section 14-313 of the County Code subject to County Attorney review and approval.

Conditions for waiver of Section 14-505(b) for Lots 1 and 44:

1. Prior to final plat approval, the applicant shall submit written evidence of VDOT approval of one (1) entrance location off of Frays Mountain Road for Lot 1 and one (1) entrance location off of Buffalo River Road for Lot 44. Both entrances must meet VDOT sight distance requirements.
2. Approval of a preliminary plat for Terra Bella, Phase 1 for Tax Map 19 - Parcels 30, 32, 32A, & 32B generally in accord with the plat entitled Preliminary Subdivision Plat for Terra Bella – Phase 1, Lots 1 thru (sic) 44. Dated/revised 10/20/04 by Rivanna Engineering & Surveying, Inc.

Mr. Rieley seconded the motion.

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

SUB 2004-00287 Terra Bella- Phase 2, Preliminary Plat: 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 as Rural Area, in Rural Area I. (Yadira Amarante) ***DEFERRED FROM THE NOVEMBER 9, 2004 PLANNING COMMISSION MEETING.***

Ms. Amarante summarized the staff report. She stated that this item came before the Planning Commission last week. In light of the Commission's discussion with the applicant last week, all staff is doing with the handout is giving recommended conditions of approval and some items that were missed in last week's staff report. The preliminary plat is at the Commission's discretion because of the RPD. The applicant would like a private road for lots 47 and 48, which was that short private road that they were talking about at the end of the meeting. Staff did get the applicant's request for that. Then the applicant also would like a waiver of 14-505(b) to have that separate entrance off of Buffalo River Road. It is an existing entrance and staff is recommending condition 2 if you look on sheet number 6.

Ms. Higgins stated that since item 5 under conditions for preliminary plat is for Health Department approval of all drainfield locations that it was a restriction in itself. Since the lots are less than 5 acres you would typically get the drainfield locations approved before the plat. Therefore, that could be removed.

Mr. Thomas asked if the Commission was in agreement with the information that they have been provided compared to what they went over last week.

Mr. Rieley stated that he liked phase two a lot better than phase one.

Mr. Thomas opened up the public meeting and asked the applicant to come forward and address the Commission.

Rob Duncan, of Southern Development, thanked the Commission for their time and consideration of their project. He stated that he had one question about the agenda which states that the approval was to create a ten lot rural preservation development. He felt that was a typo and pointed out that there were actually 11 lots. At one point they were operating under the assumption that it was 10 lots and it was

found that it was 11, which was what he presented last week to the Commission. If there were any questions, he would be happy to answer them. He stated that he had the same concern with the building envelope being specified for lot 45 obviously the same as for lot 1 and lot 44 for phase 1. They would like to be able to adjust the building envelope for those lots.

Ms. Joseph asked if they would like to have a separate entrance onto lot 46, and Mr. Duncan stated that was correct.

Ms. Joseph stated that an old road was shown on the plan. She asked if that was how they planned to get on to that site. She pointed out there were streams and very steep slopes that would get them up to his beautiful building site.

Mr. Duncan stated that was absolutely true in that there was an existing road. He pointed out that they had VDOT come out. There is an approved entrance off of Buffalo River Road. Also, there is a 48 inch culvert that has been in place that crosses that first stream and then the road follows the creek right up to that building site. He stated that they would not be creating a new entrance there. Also, they were using an existing road bed.

Ms. Joseph asked if he would have any problems if the Commission added a condition that they must use that existing road.

Mr. Duncan stated that they absolutely would not object to that.

Mr. Rieley stated that it was shown on this drawing and could be referenced as such.

Mr. Thomas asked if there were any other questions for the applicant. There being none, he opened the public hearing and invited public comment. There being none, he closed the public hearing to bring the matter back before the Commission for discussion or a possible motion.

Ms. Higgins made a motion for SUB-2004-00287, Terra Bella – Phase 2, Preliminary Plat, to be approved with the private road waiver request to serve lots 47 and 48 with the conditions as recommended in the staff report #1; that the waiver for lot 46 with the recommended conditions with condition #2 modified to say that lot 46 access is at the existing road entrance on Buffalo River Road, the existing driveway crossing the creek at the existing creek crossing and following the alignment as shown on SUB-287 exhibit.

Conditions for the private road request for Lots 47 and 48:

1. Submittal of a road maintenance agreement pursuant to Section 14-313 of the County Code subject to County Attorney review and approval.

Conditions for waiver of Section 14-505(b) for Lot 46:

1. Prior to final plat approval the applicant shall submit written evidence of VDOT approval of the adequacy of the existing entrance off of Buffalo River Road for Lot 46. This existing entrance must meet VDOT sight distance requirements and if not, must be improved to meet such requirements.
2. Note on the final plat which states: Lot 46 access is at the existing road entrance on Buffalo River Road, the existing driveway crosses the creek at the existing creek crossing and follows the alignment as shown on SUB-287 exhibit.

Conditions for Preliminary Plat:

1. Engineering staff approval of erosion control plans. A narrative, application and fee are required with plans.

2. Engineering staff approval of storm water management and mitigation plans if necessary. A narrative, application and free are required with plans.
3. Engineering staff (and VDOT) approval of road and drainage plans.
4. All improvements are to be bonded or built before final plat approval. Bond estimate and construction schedule forms can be obtained from the Engineering office.
5. Health Department approvals of all drain field locations.

Mr. Rieley seconded the motion.

Ms. Higgins made a friendly amendment to the motion to include the conditions (1 – 5) for preliminary plat approval.

Mr. Rieley seconded the friendly amendment.

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

Work Sessions:

ZMA 2004-011 Charlottesville Power Equipment (Sign #29 & 37) - Request to rezone 2.142 acres from C-1 (Commercial) to HC (Highway Commercial) to allow a 12,000 square foot, two-story structure for the Charlottesville Power Equipment Company and a second building of undetermined specifications. The proposal includes requests for outdoor sales and display and fill in the floodplain (see SP-04-36 and SP-04-37). The property, described as Tax Map 78, Parcel 4A1, is located in the Rivanna Magisterial District on the northwest corner of the intersection of Route 20 and Route 250 East behind McDonald's Restaurant. The Comprehensive Plan designates this property as Regional Service, in Neighborhood Three. (Tarpley Gillespie)

Ms. Gillespie summarized the staff report for ZMA 2004-11 Charlottesville Power Equipment. The applicant, C. W Hurt Contractors, is seeking approval to rezone a 2.142 acre property from C-1 Commercial to HC Highway Commercial for the Charlottesville Power Equipment rental business. The request also includes two special use permit applications: one request for fill in the floodplain and another for outdoor sales and display. A critical slopes waiver will also be necessary with this proposal. The site is located to just west of McDonalds off of Route 20 North in the Pantops Area.

The applicant requested this work session in response to staff's response to their first submittal. In the first submission staff expressed some concern about the appropriateness of this use in this location with the close proximity to Rivanna River and the planned

The proposed development would require a rezoning from C1 Commercial to HC Highway Commercial. The C1 district does not allow machinery and equipment sales, service and rental. Therefore, the applicants are seeking the more intense HC district. The development would also necessitate the two special use permits mentioned above.

The applicant has requested this work session in response to staff comments received after their first submission. With the first submission, staff expressed concern about the appropriateness of this land use at this location, given the proximity to the Rivanna River and planned Greenbelt trail. The applicant has responded by providing some additional information about the topography, proposed grading and how the use will be screened from Free Bridge Lane. The applicant has also moved Building 2 from the east to the west side of the site, allowing it to function as a visual screen between the greenway and power equipment outdoor sales and display. He has also provided staff with some additional information about the existing vegetation and how the existing topography would act as a visual screen.

The Comprehensive Plan designates this property for Regional Service use in Neighborhood 3 (Pantops). Regional Service uses generally include: "regional-scale commercial, regional malls, medical centers, mixed use developments, hotel/motel/conference facilities, professional and corporate offices, interstate interchange developments and uses providing retail, wholesale, business, and/or employment services to Albemarle County and the region." The proposal for the sales and rental of power equipment and for an office use would be generally consistent with the uses envisioned under this designation.

The Comprehensive Plan addresses the need to develop a greenway trail for both pedestrians and bicyclists along the eastern edge of the Rivanna River. A Greenbelt Trail is planned for this segment of the Rivanna corridor along Free Bridge Lane. The Neighborhood Three Study, which the Comprehensive Plan references and looks to for guidance in the Neighborhood Three (Pantops) Development Area, encourages "river oriented development." It suggests commercial facilities along the greenway be designed to encourage utilization by trial users. Staff is concerned that approval of this rezoning will result in a lost opportunity for such a river oriented development on this site. Because of this specific recommendation in the Comprehensive Plan, staff is bringing this forward to the Commission for a work session.

There has never been a development proposal for this property. However, the site plan for the adjacent McDonalds, located on Parcel 78-4A1 shows an access easement from the McDonalds site onto this property. The idea was for the site to be accessed via the McDonald's property.

In 2001, ZMA 2001-9 River's Edge Commercial Park was approved for a parcel north of this site fronting along Free Bridge Lane. That rezoning allowed Parcel 78-58H to be developed comprehensively with Parcel 78-58G, removing access from Free Bridge Lane and creating a new access from Route 20. All of this goes towards a broader County vision to allow Free Bridge Lane to become part of the Greenbelt system and possibly a lineal park by it being at a vehicular access point. This proposal would allow that idea to continue down the way.

Staff has several questions that they would like the Planning Commission to address tonight. The primary question relates to the land use that has been proposed on the site as it relates to the Comprehensive Plan in the Neighborhood Three Section.

Questions for the Commission:

1. ***Is the proposed use appropriate at this location? Does the Planning Commission find that this site should contain a use that is oriented towards the Greenbelt and River?***

Staff believes that the use can be supported at this location even though the Comprehensive Plan recommends a use oriented towards the Greenbelt and the river. The applicant asserts that this particular site does not lend itself well to such a river oriented use, due to the physical constraints of this site, the topography, the surrounding auto-oriented commercial uses along Route 250/20 corridor, and access from McDonalds. Staff recognizes this point of view for this particular site. However, due to guidance offered by the Neighborhood Three Study and past Planning Commission expressions of a desire for appropriate uses along the Rivanna Greenway, staff and the applicant are seeking Planning Commission guidance on this issue early in the rezoning process.

Staff recognizes that the applicant has made improvements to the proposal, such as the relocation of Building 2 to the west to create a visual buffer from Free Bridge Lane. In light of the changes made and information provided by the applicant in the recent submittal, staff agrees with the applicant's logic. However, we recognize that approval of a rezoning to HC could result in a lost opportunity for a more appropriate development on this site.

The single access to the site is through McDonalds. The McDonalds site plan was approved with an access easement to this site. In concept, staff supports taking the access through McDonalds, which will allow the future possibility of Free Bridge Lane becoming a linear park or non-vehicular trail. Further analysis of the access will be necessary. Staff will continue to evaluate the access issues as the applicant provides more detailed information about types of vehicles and deliveries that will be generated by this use.

The applicant would like the Commission's guidance as well before he provides the additional information requested since it requires specific engineering information that requires a little bit more of an investment on his part. Staff will conduct further analysis of the site such as the access issues relating to the specific use from that access easement once the additional information is provided.

2. ***Does the Planning Commission believe that the request for "Outdoor Storage and Display" is appropriate at this site, given its location near the Route 250 Entrance Corridor and the Rivanna Greenway?***

Given the location of this site the way it is tucked in between the existing buildings, it is shielded from Free Bridge Lane and it is also subject to ARB review, staff feels that the special use permit could probably be dealt with and it could be an appropriate request. Staff generally believes that the outdoor display and storage aspect of the use can be mitigated and that the display is appropriate for this site. The applicant asserts that the visual impacts of the outdoor storage and display can be mitigated through screening and building placement and working with the natural topography of the site. The cross sections provided by the applicant show that there will be a 100 foot vegetated buffer between Free Bridge Lane and the developed portion of this site. This buffer area contains existing vegetation, including trees. Replanting of some areas will be necessary after construction of this project. There will be a 24 foot drop in elevation between the site and Free Bridge Lane. Staff can support the request but asks for Commission comments. Are there issues or concerns related to the request for Outdoor Sales and Display that staff should be aware of as we proceed with the review of this proposal?

3. Does the Planning Commission believe that the request for "Fill in the Floodplain" at this site is appropriate to support a development such as the one proposed?

Staff has really not conducted an analysis of the request for “Fill in the Floodplain”. Staff does not have sufficient information to assess the impacts of fill in the floodplain at this time. The proposal does not include any building construction within the floodplain. The proposal, would however, require fill impacts to extend 10 to 20 feet into the floodplain. The fill in the floodplain is necessitated by grading to prepare the site for development. There will also be disturbance of critical slopes. All of the disturbed critical slopes appear to be manmade. At this point, limited information has been provided relating to fill in the floodplain. Further review of the Fill in the Floodplain will be conducted by County staff after the work session, when more detailed information is provided. The applicant has stated that further engineering information will be provided relating to fill in the floodplain will be provided after the Planning Commission has had the opportunity to provide guidance on the proposed land use. The primary purpose of this work session is to seek guidance on the Land Use question. Are there any issues or questions related to the fill in the floodplain request that need to be considered during the staff review?

In summary, the applicant and staff are seeking the Planning Commission's guidance on the proposed land use. Once the Commission has weighed in on the land use question, then the applicant will provide more detailed engineering information and the staff will conduct a more complete analysis of the specifics of the development proposal.

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

Mr. Rieley stated that staff had made the determination that this is an appropriate location for the proposed use including outdoor display. He asked what led staff to that conclusion.

Ms. Gillespie stated that it may be premature to say that staff has made that conclusion. Staff has come to the Commission on that issue. Staff is inclined to understand the applicant’s point of view, and feels that his submittal has addressed some of the concerns related to visibility of the site. However, staff realizes that approval of this rezoning would forever eradicate the possibility of that river oriented use that is recommended in the Comprehensive Plan. Therefore, it is premature for staff to make any conclusions at this point.

Mr. Thomas asked what “river use” means.

Ms. Higgins pointed out that there was a road in between the use and the river.

Ms. Gillespie stated that language was pretty general, but talks about encouraging trail users to partake in that use, which could probably be any number of commercial uses. It does talk about the interaction between the trail user and the use.

Mr. Thomas asked if there was going to be a trail on the north side of the road.

Ms. Gillespie stated that the long term vision is to orient all of the uses to provide access to other than Free Bridge Lane and to allow Free Bridge Lane to become a linear greenway park/trail.

Ms. Joseph asked if staff was saying that Free Bridge Lane was eventually going to become a walking path and would not be a road any more.

Ms. Gillespie stated that was a long range goal of the County as she understands it.

Ms. Higgins asked if Free Bridge Lane was a State maintained road.

Mr. Cilimberg stated that it was.

Mr. Morris asked how much of the site would be visible.

Mr. Rieley stated that it was 71 feet away through deciduous woods and he felt that once the building was there that a lot of the site would be visible.

Mr. Thomas stated that it would probably require some type of buffer. He asked what the appropriate use would be if it was not this one. He stated that the use question was a matter of opinion.

Ms. Gillespie stated that the applicant was arguing that this particular site does not lend itself to that river oriented use that is mentioned in the Comprehensive Plan. A river oriented use may be some use that actually physically interacts with the trail and invites users to come and go from that commercial use. Staff is saying that we understand that argument and are inclined to accept that argument. But, because the Comprehensive Plan is so clear in its recommendation, staff wants the Commission's guidance relative to this specific site before proceeding.

Ms. Higgins pointed out that there are a lot of uses by right in the C-1 zone. The use would have to be placed behind the existing Wendy's, McDonald's and Jiffy Lube. She stated that the use really could not be oriented to be over the river or in the floodplain. Therefore, the use would still have to be back from the river.

Mr. Rieley stated that the use was not so much whether the activity that goes on in the building is something that relates to the river. But, it seems that the key issue is that as they build near the river they should build in a way that is sympathetic and cognitive of that resource. That means the orientation, scale, buffer and to some extent the use and if there is a use that is served by automobile access, which most businesses do, that the location of the parking relative to that and what you see from the river fits in was what he felt was the most important thing. He stated that the mass needs to fit the land. He stated that it looked like the back end of the building faces the river. He pointed out that Lynchburg now wishes that they had not build their structures with the back end facing the river. He stated that they should insist that for any rezoning that they get a plan that is cognitive of the importance of the river, is illustrative and does not treat this as if you are just trying to make the most out of left over land that does not have any particular value. He stated that he did not think that you could use the topography as the justification for this because the building is not oriented with the topography anyway. The topography is much more aligned with the river's edge than the building is. It is not so much an issue of the use and its direct relationship with the river as it is the form and the fit and that it is sympathetic in its design.

Ms. Higgins stated that there would be Entrance Corridor issues with this due to the site's visibility. The ARB has not weighed in on this. She pointed out that the ARB's concerns would be what would be seen from Route 250. It becomes very challenging when they start talking about the visibility from the river and the Entrance Corridor.

Mr. Rieley and Mr. Thomas agreed that it should be reviewed very carefully because of the river.

Ms. Higgins stated that there is no Entrance Corridor Overlay for the river. She questioned whether the parking should be in front of the building towards the Entrance Corridor or behind the building towards the river. She pointed out that it is a challenge.

Mr. Rieley stated that there is Comprehensive Plan language that is very strong and he felt that should be their guide. The use issue is not in and of itself the one, but it was more of the design.

Mr. Cilimberg stated that one of the comments that he had heard was that it was not really so much whether this use is appropriate or not, but it is more about how the buildings are oriented for the use based on some of the topography and how it flows down to the river.

Mr. Rieley stated that since there were other buildings already built in the area that it was how the use/building on this site relates to those and how the whole thing is going to add up.

Ms. Gillespie stated that the applicant revised the layout after they received staff's comments and moved from the east to west in order to visually shield the office building.

Mr. Craddock stated that it appeared that the little building was to block the size and mass of the bigger building. He stated that he had no problem with the proposed use on this site.

Ms. Joseph asked if staff has done any type of analysis on what is allowed in C-1, what they can do right now, the additional uses in Highway Commercial and whether there would be some uses that you think would be inappropriate for this particular location.

Ms. Gillespie stated that staff has had a cursory look at that and would anticipate that some of the most intense uses would possibly be inappropriate uses in HC and would be proffered out of the application. Staff has not had that conversation with the applicant at this point.

Ms. Joseph stated that once Highway Commercial zoning was approved the use could be anything on this list.

Mr. Thomas stated that the Commission would discuss each of the questions posed by staff to try to reach a general consensus. (See summary at end of request)

Mr. Thomas asked if there were any other comments. At this time he invited the applicant to come up for a discussion.

Michael Barnes, representative for C.W. Hurt Contractors, stated that Tim Carlson, one of the clients on this property, was here to answer any questions about the business itself that the Commission might have. He stated that it was interesting hearing the conversation go on here and think about all the hours that they have sat thinking about how to design the site. He pointed out that they have been sensitive to every concern that has been brought up here. It is a tough site in itself to try and achieve. He stated that maybe they have not achieved everything as well as potentially they could have, but he would like to go through and explain how they have tried to get to those concerns. What he was hearing from the Planning Commission is that the use itself is not that much different than a C-1 type use. The reason that they have to rezone is because farm equipment sales cannot be done in a C-1 area, even though other types of machinery can. Farm sales and equipment is the category that their proposed use is being put into. As they go through the process, they are cognitive to the greenway trail. Virginia Land Company has been working with the greenway trail along the Rivanna by providing easements between State Farm and the Advanced Auto. They have worked with Dan Mahon on parking issues next to Free Bridge with the Shenandoah Coffee Shop. They have worked on the adjacent property, River's Edge, to restrict access to Free Bridge Lane. The thought was that eventually Free Bridge Lane would eventually become a part of a greenway trail system. Virginia Land Company owns one-half of the prescriptive easement. They would be willing to provide one-half of that easement to the County if the road itself would revert back from VDOT status to be a non-public road. It is his understanding that would mean that the prescriptive easement would no longer be for a right-of-way. They would be willing to proffer that as part of this rezoning to be a part of the greenways system. He stated that they would be willing to work to be a part of the river or not to be a part of the river. Unfortunately what they were not seeing here was the second page, which was one of the principal things they were trying to bring to the Commission tonight. He asked that the Commission look at the second page. What they tried to show here was that they were trying to work with the grade with the bi-level building that was previously discussed. As they build in to the site they were trying to take advantage of two things. First, the flood plain extends 50 to 80 feet into the site, which precludes putting a building up to the road or to front the river. Secondly, they have an elevation difference of 20+ feet. The building would actually be sitting on a site above the river and they were trying to use the difference in elevation to their advantage. They would be looking up into their site using that parking lot so that the building would not be as visible. They were also willing to retain the vegetation that is along the site. The idea in this case is to either embrace the river by bringing the buildings down to the

road or down to the river. They might be putting a use there that might be objectionable, but they would try to screen it to the best extent possible. He pointed out that they have chosen the latter route. The outside display would be limited. The applicant would sell lawn mowers, which would stay on the sidewalk in front of the building. Regarding the fill in the floodplain next to building 2 and 1, they have tried to step those buildings down the slope. They would only encroach 10 feet into the floodplain. The floodplain is about 150 feet wide there. The larger area of impact would be in the northeastern quadrant of the site where their access easement comes in. That could be handled by retaining walls. That was shown the first time with retaining walls, which were about 8 feet tall. That kept them more or less out of the floodplain. They have used the floodplain data to try to incorporate that. That area would have about 25 feet encroachment into the floodplain, which was farther away from the river itself on the extremities of the floodplain fringe. Finally, as far as the storm water management, they were trying to keep that away from the river. They have not designed that yet. They are thinking about using similar technology that has been used on adjacent sites. It would probably be a bio-filter down at the bottom. It is his understanding, even though it does not create a net fill because they are actually digging out to create the berm and the bio-filter area, that it would still require a fill in the floodplain permit. He asked how they could relate back to the Entrance Corridor. The parking is in the middle of all of these buildings. He questioned how to relegate it from the river and the Entrance Corridor, since it was somewhat sitting behind those buildings. It is a very tight site and they have worked with several different orientations of it, but they were trying to achieve the best possible orientation that they can and believe that they have done that.

Mr. Rieley stated that clearly if he had heard their comments that the Commission did not agree with him. He suggested that the applicant review the Commission's earlier comments and bring back something that addresses those concerns.

Mr. Barnes stated that it was not his intention to ignore their comments. He pointed out that the one thing that the staff report does not stress is the elevation difference. There is a difference of 24 feet plus between the bottom of the building and the road. That is a significant elevation difference. He stated that clarification from the Commission on how to best use that to their advantage and meet that river orientation may be what the applicant needs.

Ms. Joseph asked that the applicant take a look at the building and try to make it friendlier towards the river instead of being sort of the back end of the building. She felt that they all agree that there is a grade change there. She suggested that there might be something that was a little bit separate from the other equipment. This could be done using some design techniques to make that a separate entity from the other building. It could be something that could orient itself to some sort of river use. She suggested that the applicant look at Tim Miller's building design.

Ms. Higgins stated that generally this is a concept plan and that it can be tweaked. But, the larger building using the critical slope does overlay a significant portion of the critical slopes. There are not many ways that they could do this. The ARB would have to review this request and provide comments. The concerns that need to be addressed include:

- The building looks like one-story from their viewpoint.
- The mass of it is down the hill and that the parking is between buildings. She preferred seeing the parking between the buildings rather than oriented towards the river.

She recognized that he kept within the limits of the floodplain on everything related to the buildings. But, the travel way coming in is in the floodplain fill. Personally, she did not favor building a retaining wall there to avoid a special use permit for filling in a floodplain after they had mitigated the effects on the flood elevation. She felt that those walking along the river looking at Advanced Auto would not get any good feeling, particularly looking across the river at a large brick wall. She was not vesting in that and would prefer to see something that is landscaped. A retaining wall could possibly be put in to fix that, but the entrance seems to be fixed by the McDonald's entrance. The site is a challenge. When the applicant gets into engineering this site in great detail they would probably find some things that were difficult to do with the turning radiuses and that sort of things.

Mr. Barnes stated that the first plan that they brought in was truly a concept plan. This is actually an engineered plan and hopefully everything works on the site as far as grades, turning radiuses and what

have you. Both buildings were two-story buildings, which was the whole intent of this. The applicant is trying to have a repair area, which is what is accessed from the lower side

Mr. Rieley stated that he hoped that the applicant would listen to the Planning Commission in that this plan is not saleable and needs to be fixed to address the Commission's previously expressed concerns.

Mr. Thomas asked staff if she had enough information.

Ms. Gillespie stated that she had enough information from the Commission.

In summary, the Planning Commission held a work session on ZMA-2004-011, Charlottesville Power Equipment to rezone 2.142 acres from C-1 (Commercial) to HC (Highway Commercial) to allow a 12,000 square foot, two-story structure for the Charlottesville Power Equipment Company and a second building of undetermined specifications. The Planning Commission discussed the proposed land use and asked the applicant to go back and work on the plans and consider their comments and suggestions. The Planning Commission made the following comments and suggestions regarding staff's questions raised in the staff report.

1. ***Is the proposed use appropriate at this location? Does the Planning Commission find that this site should contain a use that is oriented towards the Greenbelt and River?***
   - It was not really so much whether this use is appropriate or not, but it is more about how the buildings are oriented for the use based on some of the topography and how it flows down to the river.
2. ***Does the Planning Commission believe that the request for "Outdoor Storage and Display" is appropriate at this site, given its location near the Route 250 Entrance Corridor and the Rivanna Greenway?***
   - It was the consensus of the Commission that the proposed use would be appropriate at this location depending on the design.
   - Mr. Rieley stated that the Commission's perspective may be different than the ARB's because their point of view is the Entrance Corridor and the ARB's may be from the river and other places.
3. ***Does the Planning Commission believe that the request for "Fill in the Floodplain" at this site is appropriate to support a development such as the one proposed?***

- It was the consensus of the Planning Commission that the design should be more responsive to the floodplain. The Commission did not have the engineering information to know how much area will be filled, but they indicated that the applicant should be very cautious about filling in the floodplain.
- Mr. Thomas asked if the Commission feels that the request for fill in the floodplain at this site is appropriate to support the development that is being proposed. The basis question is if they think this is the proper use for the infill in the floodplain.
    - The Planning Commission asked staff to look at the new FEMA maps, which will be in effect in February, to determine the fringe and buffer area towards the floodplain.
    - It should be demonstrated that it is absolutely minimized and whatever redesign is done to this to make it a more sympathetic fit in that setting to take into account the fact that fill in the floodplain should absolutely be minimized.
    - The Commission should be very cautious about allowing fill in the floodplain. There has not been enough engineering to really identify how much area would be filled.
    - The concern was expressed that it appeared that the critical slope was caused by the previous development on the McDonald's site, which was man made critical slope. The larger building was setting right in the middle of the critical slopes on the site. The Commission was not opposed to the use, but would like to see a realignment that might be more respectful of the critical slopes than what this particular layout shows.

- In general consensus the Planning Commission agreed with the general principle that utilizing buildings to take up critical slopes is often a very sensible thing to do.

ZTA-2004-008 Flood Hazard Overlay ZTA/ZMA Modification of the Overlay Maps and District Regulations and adoption of a Resolution of Intent - Work session to discuss the ZTA/ZMA necessary to revise the flood hazard overlay definition by referencing the new flood study and to provide for "housekeeping" text amendments. The Albemarle County flood insurance study was adopted December 16, 1980 and was later updated in 1990 to include the changes resulting from the Scottsville levee. The new flood study has expanded the "detailed study" areas, where the 100-year flood or base flood elevations (BFE's) are determined, and will become effective February 4, 2005. FEMA has notified the County that as a condition of continued eligibility in the National Flood Insurance Program, the County is required to show evidence of adoption of the FEMA floodplain regulations prior to the effective date. This includes the adoption of the effective flood maps and study report to which the regulations apply.

Mr. Kelsey summarized the staff report. (See Staff Report) He asked the Commission to review the proposed text amendments and bring comments and suggestions to the work session. The text amendments necessary to assure continued eligibility in the National Flood Insurance Program must be adopted before February 4, 2005. Staff also included a list of some additional modifications for consideration and they could be pursued with this amendment, separately or just looked at in the future. The detailed wording is provided as attachments to the report. There are three attachments. He pointed out that the resolution of intent that was included as Attachment A in the staff report was not the most current one and he did have copies for everyone. Attachment B is the ordinance amendment itself. Attachment C is some additional suggestions. Staff requests input from the Commission on that. Therefore, staff requests the Planning Commission to adopt a Resolution of Intent (Attachment A) to hold a public hearing on December 7, 2004 and make its recommendations to the Board of Supervisors.

In summary, the Planning Commission held a work session to discuss the ZTA/ZMA necessary to revise the flood hazard overlay definition by referencing the new flood study and to provide for "housekeeping" text amendments.

Ms. Higgins suggested that staff conduct a Round Table Discussion on these issues with the public.

Mr. Rieley moved to adopt the revised resolution of intent for ZTA-2004-008, Flood Hazard Overlay ZTA/ZMA.

RESOLUTION OF INTENT

WHEREAS, Section 30.3, Flood Hazard Overlay District, establishes regulations pertaining to uses, structures and activities within delineated floodways, floodway fringes and approximated flood plains; and

WHEREAS, Section 30.3 is based on, and is intended to meet or exceed, the federal National Flood Insurance Program regulations; and

WHEREAS, the delineation of the boundaries of the flood hazard overlay district are based on a study dated June 16, 1980, prepared for the County by the Federal Insurance Administration – Federal Emergency Management Agency ("FEMA"); a new study is currently being prepared by the Army Corps of Engineers, and it is expected to be adopted by FEMA in January, 2005; and

WHEREAS, it is desired to amend Section 30.3 to adopt the new study identified above as the source for delineating the boundaries of the flood hazard overlay district; and

WHEREAS, it is desired to evaluate Section 30.3 to assure that it meets or exceeds federal National Flood Insurance Program regulations, and to amend Section 30.3 where required by federal regulations; and

WHEREAS, it is desired to amend Section 30.3 because it has been found that certain activities in the Flood Hazard Overlay District can be managed through administrative regulations rather than through special use permit; and

WHEREAS, it is desired to amend Section 30.3 to make all other appropriate amendments to improve the clarity and the implementation of the Flood Hazard Overlay District regulations; and

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to amend Section 30.3 of the Zoning Ordinance to achieve the purposes described herein, and to amend the Zoning Map accordingly; and

BE IT FURTHER RESOLVED THAT the Planning Commission will hold a public hearing on the zoning text amendment proposed pursuant to this resolution of intent, and make its recommendations to the Board of Supervisors at the earliest possible date.

* * * * *

Mr. Craddock seconded the motion.

Mr. Kamptner asked that the Commission clarify that it approved the revised resolution of intent, which includes language that the zoning map will be amended as well. Therefore, the resolution is for both the zoning text amendment and the zoning map amendment.

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

Mr. Thomas stated that the resolution of intent passes and the matter will be coming back to the Planning Commission on December 7.

Mr. Cilimberg pointed out that he had a quick question about the text modifications outlined on page 2 and 3 of the staff report. Staff assumes that those Sections 3.2.1, 3.2.2, 3.6.2 and 3.7 will be part of what the Commission sees on December 7. He asked if there were any of those provisions that they would also like to move forward now or would they prefer that they all wait.

Ms. Higgins asked if Section 5.1.2 should be included, which has to do with the County Parks and Greenways.

Mr. Cilimberg pointed out that he was asking a question since staff needs the Commission's direction.

Mr. Thomas stated that he did not have any problem with including those in that.

Mr. Rieley stated that he would like to see that included.

Ms. Joseph stated that she would rather not see them in there and would prefer to see the design standards that staff came up with. Then, that could be part of the discussion.

Ms. Higgins stated that she would assume that they would see that if they got them at that point.

Mr. Cilimberg stated that they wanted to see those design standards for greenways along with considering that amendment.

Ms. Joseph stated that they would have to reference something.

Mr. Rieley stated that suggestion would really make sense.

Ms. Higgins stated that they would add Section 5.1.2 in regards to greenways to the list.

Mr. Cilimberg stated that the actual reference would be 5.1.2.3. He stated that on page 9, appendix C

under 30.3.05.1.2 By Right within the Floodway Fringe that number 3 was the only one that the Commission wants to move forward.

30.3.05.1.2 By RIGHT WITHIN THE FLOODWAY FRINGE

3. Pedestrian and multi-use paths that are within County parks and Greenways that have been dedicated to the County of Albemarle and accepted by the Board of Supervisors; provided that any filling of land has been approved by the county engineer in accordance with 30.3.06.1(1) through (5); and any footbridges necessary to cross tributary streams, watercourses and swales have been approved by the county engineer.

Ms. Joseph stated that there is a different organization chart and there is a reference to the County Engineer. Within the organizational chart is it clear who the County Engineer is?

Mr. Kamptner stated that it was very clear that Jack Kelsey is the County Engineer.

Mr. Thomas asked Mr. Kamptner if they need to amend the motion.

Mr. Kamptner stated that the motion did not need to be amended.

Review of the Board of Supervisors Meeting – November 10, 2004

Mr. Cilimberg reviewed the actions taken on November 10 by the Board of Supervisors.

Old Business:

Mr. Thomas asked if there was any old business.

Ms. Joseph stated that when they were talking about the standards for private roads, written in our ordinance it says the Commission may authorize the application of the Virginia Department of Transportation Mountainous Terrain Design Standards to apply to a private road as provided in. It says that they may authorize. It does not say that they have to. Therefore, she just wanted everybody to know that they do reference Mountain Terrain Design Standards within the ordinance, but it does not say that they have to do that.

Ms. Higgins stated that there is another location in the ordinance that references six lots that says shall.

Ms. Joseph stated that section needs to be changed.

Ms. Higgins stated that it raises the standard to Mountain Terrain Design Standards.

Mr. Thomas suggested that the Planning Commission hold a work session on that issue.

Ms. Higgins stated that regarding the issue about critical slopes and the roads that she had gone back to her old index and in Section 14.1.06 it use to have the definition of critical slopes. Currently the definition of critical slopes is not contained in Section 14.1.06. She asked where the definition of critical slopes was found in the ordinance.

Mr. Kamptner stated that it was in the definition of building sites.

Ms. Higgins stated that it was not contained in the definition of building sites. She stated that the reason she brought this issue up is that in the consultant's community since it was not in the DSM, but that the source determined by the County Engineer is County Flown 10 foot topo. Therefore, the County is already using a standard to identify critical slopes that is better than it was before and that the County topo is now their suggested standard. It never draws a conclusion, but it talks about the 25 percent

slopes. Section 4.1.2 is entitled Critical Slopes, but it never says anything 25 percent or greater is considered a critical slope in Albemarle County. She pointed out that had been removed from the information section. She pointed out that it was in the 1980 ordinance under Section 14.1.06.

Mr. Kamptner stated that the item that he handed out deals with the Ragged Mountain decision from last week. (See Attachment Draft dated 11-15-04) The Commission may recall that it was late and they were trying to provide a list for the applicant. He pointed out that he had been contacted by the applicant and they are interested in the preservation development. It looks like staff was going to meet internally tomorrow. Mr. Waller has already set up a meeting with Mr. Toomey to explore RPD's. But, the Commission has to fully state the basis for the decision. Therefore, he went through and took Ms. Taylor's draft action materials and tried to put everything together. Also, he pulled out some of the Code sections that they could not find during the meeting. He identified the three bases for the request of the private road. The Planning Commission exercised their discretion to deny it in order for the preliminary plat to be approved. The subdivider needs to either show that all of the roads will be public roads or provide the Commission with the requested information. In addition, the applicant also needs to revise the plat to show the revised locations of the private road. You may recall that there was a discussion with the neighbors and they had agreed that the Commission did not have anything in front of you that showed where those alignments would be. If all of those things were done, then the Commission would reconsider the request for private roads. The principle means of access was probably the clearest because they had Section 14.5.12.a. He acknowledged that there was a typo there. That requires that the principle means of access meet VDOT standards. Really what is left to do is for staff to have the opportunity to verify VDOT's findings. The other two issues are drainage and critical slopes. He stated that he went back and looked at two provisions of the Subdivision Ordinance that pertain to the agent and the Commission. Those provisions allow you to consider any other evidence that is necessary for you to make the findings that you need to make. You can deny the plat if you find that the plat does not comply with the requirements of the chapter. Based upon the representations by staff at the meeting, you need additional information to determine whether the plat complies with the drainage provisions, which are 3.04 and 3.06, and the critical slopes provision, which are 500. Section 3.04 and 3.06 interrelate and pertain to drainage, which require in part that the subdivider submit with a preliminary plat any other information required by the agent to determine where drainage improvements will be required. That was the basis for the drainage information that Mr. Schuck was seeking. Section 3.06 requires that the subdivider submit a sketch plan that indicates the provisions for the proposed method of accomplishing drainage. Without the information to address Section 3.04 you cannot do the sketches under 3.06. Therefore, the applicant needs to identify what they need to do to do what staff had requested. Those were the field run topos on the overlot grading plan. Critical slopes, under Section 500, require that each lot have at least one building site that complies with the requirements of the Zoning Ordinance. Section 4.2.1 of the Zoning Ordinance prohibits critical slopes. Again, with that Mr. Schucks said that he could not determine whether or not the building sites shown on the plat had any critical slopes on it. Again, they needed that same information on the field run topo and the overlot grading plan, which would allow him to make those determinations to make the recommendation to you.

Ms. Higgins stated that she disagreed with that last one because of this standard that engineering uses, which is the 10 foot contour instead of the field run topo.

Mr. Rieley asked if the Commission needs to take any action.

Mr. Kamptner asked that the Commission take an action either endorsing or ratifying it so that this will really be put into the letter that staff sends out reflecting their decision. He pointed out that staff would take care of any typos. Staff has looked at this and agrees with the language.

Mr. Rieley moved that the Commission endorse this as an active record of that action.

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.

Mr. Craddock seconded the motion.

Ms. Higgins disagreed with the last one about the critical slopes because of the field run topo.

Mr. Rieley stated that they were only voting on the accuracy of what they said that they did and not how they voted.

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

There being no further old business, the meeting proceeded.

New Business:

Mr. Thomas asked if there was any new business.

Mr. Cilimberg stated that he would provide an overview. The MPO and the City and County through the Board and City Council have agreed to create a working group with local private and public representatives to investigate means of funding and a transportation district here in the Charlottesville/Albemarle area. They have asked for an individual from the Planning Commission to participate. That is what is before the Commission. The Board will have a participant as well. It will most likely be one of the Board's MPO members, which would be either Mr. Rooker or Ms. Thomas. He pointed out that Mr. Thomas was the MPO TECH representative. He asked for the Commission to choose someone for this position. It is part of this discussion of creating a district and trying to pursue funding options and identify priorities. Basically it was taking CHART and saying this is what we really want to focus on in a district.

Mr. Thomas agreed to participate in the work group if no one else wanted to.

There are no items scheduled for the Commission on Tuesday, November 23. The next Planning Commission meeting will be held on Tuesday, November 30.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 8:45 p.m. to the November 30, 2004 meeting.

_____

V. Wayne Cilimberg, Secretary

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