Albemarle County Planning Commission
November 30, 2004

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, November 30, 2004 at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were Rodney Thomas, Chairman; Bill Edgerton; Cal Morris; Marcia Joseph and Pete Craddock, Vice-Chairman. Absent were William Rieley; Jo Higgins and David J. Neuman, FAIA, Architect for University of Virginia (non-voting). Mary Hughes was present for Mr. Neuman.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Stephen Waller, Senior Planner; Rebecca Ragsdale, Planner; Yadira Amarante, Senior Planner; Susan Thomas, Senior Planner; Bill Fritz, Chief of Current Development and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Thomas called the regular meeting to order at 6:00 p.m. and established a quorum.

Other Matters Not Listed on the Agenda from the Public:

Mr. Thomas invited comment from the public on other matters not listed on the agenda. There being none, the Commission moved to the next item on the agenda.

Public Hearing Items*:*

ZMA-2004-015 Boars Head Inn and Sports Club (Signs #70, 71 & 72): Request to rezone approximately 13.4 acres from R-1, Residential to HC, Highway Commercial, to allow new indoor and outdoor tennis courts with associated parking 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 and Institutional in Neighborhood 6. (Susan Thomas)

Ms. Thomas summarized the staff report. The most complex part of this project has been the process. There was some confusion at the staff level about how to handle this request relative to the provisions of our ordinance. The process started down the path of a special use permit, but then staff realized because of the split zoning on the parcel that it was not going to be possible. Therefore, the Planning Commission has a rezoning petition before them that on the face of it sounds as though the applicant is asking for a fairly intensive district. But the reality is that Highway Commercial happens to be the only zoning district that would allow such a use when associated with the health club, which puts it into the category of health spa or health facility. Briefly, that is one reason why staff's path twisted and turned. This project has been under review for several months. There is an existing facility at the Boars Head Inn and Sports Club. The Sports Club ownership is the University Foundation. The applicant seeks to expand the tennis courts because the tennis team has been practicing there in inclement weather. This has created some inconvenience for club members because the courts are in short supply with the University's sports team using them. There is a lot of demand for tennis in this area and Boars Head is one place where it occurs. Therefore, the applicant would like to expand the indoor courts to accommodate the existing demand as well as the anticipated future demand. If the rezoning is approved, the indoor tennis facility will be enlarged. It will be a large building. The building incentive from staff's standpoint has been since both adjacent parcels are under the same ownership there is a strong desire on the part of the Foundation to make the building as compatible as possible with the adjacent golf course. The golf course is very beautifully landscaped. It is nice that there is an incentive in that direction as opposed to one where there is separate ownership and the impacts fall on different parties. The applicant is present. If there are specific questions, staff would be happy to answer them. It is a very straight forward proposal. If there are any questions on the proffers, staff would be happy to answer them.

Mr. Thomas asked if any Commissioner had any questions for staff. There being none, he opened the public hearing and invited the applicant to come forward to speak.

Ms. Valerie Long, Attorney, stated that she was present to represent the applicants for this proposal, which are the University Foundation and the University of Virginia Post Properties. The latter entity owns and manages the Boars Head Inn and Sports Club. She pointed out that there are a number of representatives of both entities present this evening in case there are any other questions. Those individuals present include Mr. Tim Rose, President of the University of Virginia Foundation; Mr. Bruce Stouffer, Director of Real Estate Development; and Mr. Fred Missel, who is in charge of their design issues. There are several persons present from the Boars Head Inn, which include Mr. Jorg Lappuner, General Manager of the Inn and Pat Simpson, Director of the Sports Club. She stated that if there are any questions that she was not able to answer sufficiently that one or all of those folks could help. She thanked Susan Thomas for all of her help throughout this process. The process has been very tricky for the applicant in trying to find a zoning category that was appropriate for this property and that would accommodate all of the uses that are going on now and that are expected to continue. The bulk of the Boars Head property is already zoned Highway Commercial and has been for some time. A small portion of one of the parcels comprising the property has split zoning. The northern portion is zoned Highway Commercial and the southern portion is zoned R-1, Residential. In addition, the adjacent Birdwood Golf Course is zoned R-1, Residential. What the applicant is proposing is to rezone the southern half of the one parcel that is currently R-1 to Highway Commercial so that parcel is consistent with the balance of the Boars Head property. Also, the request is to rezone almost two acres that is part of the golf course, which would essentially be cut off and added to the Boars Head Sports Club parcel. That property would be rezoned from R-1 to Highway Commercial as well. It is a total of about six acres. The staff report said approximately ten acres. The project has evolved over the past few months. Originally it was going to be a larger area, but now was around six acres. The proposed expansion would accommodate additional indoor tennis courts for the Boars Head Club, which would be used for both the Inn's guests and club members. In addition, the facility would support the men's and women's tennis teams at the University. Therefore, they were very excited about the proposal. The teams have been practicing there during the winter and occasionally holding tournaments and matches. It is not really a facility that is as well suited for these activities as they would like. In addition, by the teams using the courts it obviously takes time away from the existing members and guests for indoor court time. There has been a very high demand for additional indoor court facilities, particularly during the winter months and periods of inclement weather. The proposal is really a net increase of six courts. There are six courts there now with three courts that are inside of the indoor facility and three that are under what is commonly referred to as the bubble. It is essentially a temporary seasonal structure that can be taken on and off, but it is not an ideal structure in which to play tennis indoors. It is noisy and apparently one cannot play at quite the same level that one can in an established facility. The three bubble courts would be replaced by three new indoor courts. In addition, between three and six additional new courts would be built. There would be a net gain at most of six indoor courts. It sounded like the Commissioners were familiar with the proffers, but she wanted to quickly run through them just to summarize. The applicant has proffered to build the project in general accord with the conceptual development plan, which was on display. They would be bound to build the project in general accord as it is shown on that plan. The applicants have proffered to essentially break up the massing of the building so that it either is made up of a series of smaller buildings or at least appears to be a series of smaller buildings. That could be done through the use of a terraced roof structure, which is called the step down finished floor elevations. The building could be built by taking advantage of the sloping terrain by building it into the side of the slope. By doing that it would make it appear as a series of smaller buildings rather than one large building. The applicant has proffered not to permit any uses on the property that are otherwise permitted by right in the Highway Commercial District. Therefore, they have proffered out the vast majority of by-right uses in the HC District. That really only leaves health spa, indoor athletic facilities, and some other things like that in support of structures like storm water management, roads and things like that. Therefore, the applicant is hopeful that will be agreeable. Finally, in working with the staff and a lot of the neighbors in the area they determined that one of the big issues that they could perhaps address better was the traffic and parking at the property during periodic on-site events. There are events held on the site periodically for such things as swim meets, tennis tournaments and the Boyd Tinsley Invitational Tournament. The applicant has proffered to submit an event management plan for the Zoning Department's review and approval that would spell out with more

detail exactly how the parking and traffic would be managed during those events. That would include things like assuring the use of off-site overflow lots, which are things that they are already doing. The applicant uses the lots at the golf course and then has folks walk over along the cart paths from the golf course or they use shuttle buses in some instances. They have an overflow grassy area near the pond that they use for large events. They have agreed to put something more formal in writing that the Zoning Department can be agreeable to and have some input on. Therefore, the applicant thinks that will accommodate a lot of those issues. There are a few other issues that they have worked on that she wanted to bring the Commission up to date on. The most common thing that comes up is traffic. The applicant wanted to make sure that there was not going to be an increase in traffic that would cause the intersections to function at poor levels of service. They wanted to make sure that the road network was adequate. Therefore, the Foundation engaged an engineering company to prepare a traffic impact assessment. They were pleased to note that study reported that all of the intersections both internal to the site as well as several intersections external to the site, such as at the Route 250 intersection and a few others farther down Route 250, will not be negatively impacted by the project. In fact, all but one of the intersections even during peak periods of use will perform at a level of service of B or better. There is only one exception. One intersection will be at a C level during peak periods, which was one of the internal intersections. But, other than that, all of the other intersections work well. VDOT was comfortable with that analysis and indicated that the intersection at Route 250 was adequate to support the additional traffic. In addition, we are hopeful and optimistic that any additional traffic that is generated by the project will in fact kind of balance out seasonally. Any increase in traffic will likely be due to additional indoor tennis courts. Those courts are used most heavily during the winter months at which time the outdoor tennis courts are not used as much. So they are hopeful that because indoor and outdoor courts are not always used at the same time that the traffic will balance out well. One other issue that they have addressed in the form of traffic, which is in response to speaking to some of the neighbors near the club, is that there is an access road that she would like to point out. The traffic comes off of Route 250 down Berwick Road and would come around and park in this parking lot and access the facility in this location. This road is owned by Boars Head and is a private road. Deliveries currently use this area as well. One thing that they have agreed to do is to use that road, which was essentially planned only for an emergency access road for fire vehicles. The Foundation has essentially agreed to upgrade their plans for that road so that it can accommodate passenger and delivery vehicles. That way it can be used as an alternate egress after large events so that not all of the traffic is on Berwick and that some of it can come around. In addition, the delivery trucks can come in here, make their deliveries, turn around and then go back out. Whereas, currently all deliveries are using this road.

Mr. Thomas asked if the access road would be open and usable all of the time.

Ms. Long stated that she believed that is the case. It would be subject to County regulations and other things. They believe that there is space and that it is possible to upgrade that road. Originally, it was only going to be an emergency egress road. They found that after talking with the neighbors and staff that it would be nice to have an alternative egress route, particularly during large events. It would be nice to have the deliveries come in this new route rather than the current route because of the existing residences that would prefer to have as little traffic along there as possible. The Foundation was happy to be able to accommodate that request.

Mr. Edgerton asked if that road doesn't ultimately go into Berwick Road anyhow.

Ms. Long stated that it does.

Mr. Edgerton stated that he was trying to figure out how it was going to give any relief from traffic.

Ms. Long stated that it may not help further down Berwick Road, but it was an issue that was very important to the neighbors who live right in this area. Therefore, the applicant felt like if it was possible to at least reduce the amount of traffic that was going right behind those houses for delivery trucks that they were willing to do so. They recognize that it may be that during large events that if they have traffic coming in here that they may bottle neck on the road. But, at least it will not be a constant stream of egress traffic on that road.

Ms. Joseph asked if that was included in their proffer.

Ms. Long stated that it was not included in the proffers. But, the road was wide enough as shown on their conceptual development plan and they have committed to the neighbors to do that. She noted that she had prepared some comments as to why this facility would be helpful and important to the UVA tennis teams and why it was an appropriate use. If anyone has questions, she would be happy to provide some follow up regarding her comments.

The consensus of the Commission was to have the applicant address those comments. Therefore, Mr. Thomas asked Ms. Long to elaborate on her comments.

Ms. Long asked why the tennis team wanted to have their facility at this location. She noted that they think that it is an excellent fit. Obviously, the team has been practicing and playing some matches there already. It is an efficient use of resources for the club and the tennis club to essentially share facilities and resources. It is better to build a combined facility that they can share since they don't always need the facilities at the same time. If the UVA tennis facility built their own facility off site it would create a greater expense and impact on the terrain. It seemed like a good use of the area. It seems to be working very well already concerning the relationship. The Foundation and the University are very excited about the proposal.

Mr. Craddock asked how many additional parking spaces they are anticipating.

Ms. Long stated that they estimate approximately 30, but it is not set in stone. Obviously, they will have to go through the site planning process and confirm all of that. The parking spaces were shown on the conceptual plan.

Mr. Craddock asked when people come in on that lower level if they were going to be funneled up to the front or will they just go to the tennis court that they are looking for.

Ms. Long stated that she believed that was the case, but she was not exactly sure. She pointed out the location of the entrance to the facility.

Mr. Morris asked what the probability was of getting court time for the current members.

Ms. Long stated that it was extremely difficult. As mentioned, Pat Simpson, the Director of the Sports Club, is here and could provide more specific information if that would be helpful. It is very difficult and frustrating for the members to get indoor court time. Of the existing six courts, three of them are set aside for the UVA team when they need them. Therefore, when the tennis team is using the courts there are only three other courts, which are in the bubble that are not as good. There is quite a demand. Their existing membership has been asking for more indoor courts for some time.

Ms. Joseph stated that it sounds like this is not just about tennis courts. There are other uses that the applicant is contemplating could go into this footprint, which include a multi-sports court, fitness facilities, a restaurant, a snack bar, a pro shop, administrative office space and a child care facility.

Ms. Long stated that most of those uses were already there now within the existing club. The reason that they wanted to list those was to make sure that if they ever wanted to rearrange anything they could. There are existing office spaces there now. There are existing child care facilities. There will be as part of this what is being termed as a multi-sport court that would be used for things like racket ball and that sort of thing in addition to the tennis courts. The only other recreational uses that they are talking about are possibly having a small climbing wall as part of the health club. That is why they wanted to reserve the right to have other recreational and fitness uses in the existing health club. All of that is currently contained in this area, which is across the line already zoned. She pointed out the line of the division between this area, which is zoned Highway Commercial, and this other area, which is zoned R-1. They tried to stick to those uses that are already in existence and just recognize that those are recognized

accessory uses to a health spa. That is the zoning category that the Zoning Administrator determined was applicable for this use.

Ms. Joseph stated that some golf cart trails and the location of a future sand trap were shown on the plan. She asked if those were existing uses. She pointed out that the word future indicated that they were going to put that use in.

Ms. Long stated that the cart path itself existed and would remain. They have coordinated and confirmed with zoning that it is permissible for that cart path to remain and continue to be used as a cart path. The two new conceptual locations for sand traps are actually intended to benefit the tennis club in an effort to prevent people from hitting their golf balls towards the new tennis facilities. Their research shows that if you locate sand traps near where you don't want people to hit that they will hit away from them. Therefore, they will hit closer to the green. That is part of the plans for the future buffer. There will be some landscaping. The parking lot for the new facility will be located very close to the fairway. Therefore, they want to do everything that they can to minimize interference between the two uses. They will be installing some landscaping and other sort of natural buffers in this location. But, they wanted to make sure that they had the ability to locate additional sand traps in this area as well because they knew that was going to be necessary. The applicant has worked through that with the zoning and planning departments as well. They were comfortable with it as long as it was shown on the plan.

Mr. Thomas asked if there were any more questions. There being none, he invited public comment noting that there were five signatures on the sign up sheet. He asked that the first person signed up, Dillon Walker, come forward and speak.

Dillon Walker, fourth year UVA student, stated that he was on the Men's Varsity Tennis Team and was from Houston, Texas. He stated that the first year he was on the team that they were unranked. In the last three years he has watched as the team has grown. Last year the team won the ACC Championship, and finished eighth in the nation. As the program has emerged, their goals have emerged. They want to compete for the ACC Championship and the National Championship every year. One of the things that are hindering their goal was just the lack of court time in an indoor facility. They have been competing for time with the members right now. The last thing they want to do is upset these members because these are the people who come and support the team at their home matches. They want to work it out so that during the winter months the team will be able to develop their skills as players. All of their competition has indoor facilities available.

Sally DuBose, resident of Ednam Forest, stated that the proposed project was visible from her house. Tonight she not only supported the request, but wanted to commend the University for many reasons. She was not so worried about the court time, but felt that they should be able to continue to be a tradition of excellence for the youth in the community and to set an example. She could not think of a finer place to access that, but right there at the Boars Head Sport Club. She supported the request.

Marian Spano stated that she had been a member of the Sports Club for over 20 years, a resident of Ednam Forest for 15 years and served on the Association Board for several years. She felt that it was a wonderful idea that the Sports Club enhances the court situation. As a member she uses the courts a lot in the summer and quite often in the winter time. Between the University students wanting it and the Sports Club members needing it, this would provide good accessibility for both the club members and the UVA team. As a member of the Association, they always felt that it was good to be good neighbors with the Sports Club. Therefore, she was in support of having the UVA Foundation go ahead with the new facilities and hoped that the Commission will consider it favorably also.

Holmes Brown stated that he was 90 years old and has only been playing tennis 80 of those years. The program at the Sports Club is improving his backhand. Therefore, nobody should ever give up. He stated that he had been President of the Ednam Village Owner's Association for three terms. Therefore, he knew most of the members of the club. He pointed out that his house was the closest possible one to the tennis courts. He noted that he bought the house on purpose, and he had agreed to sell it when he was 100 years old to another member of the Sports Club. This wonderful community has doubled in size since

the Sports Club was started, but yet the Sports Club has practically the same facility it had at that time. The membership has also increased. There just has to be more room so that the members can get the tennis that they want. Right now it is very difficult, particularly in the winter, to play tennis. Therefore, they need those courts.

Dirk Katstra, Associate Athletic Director and a member of their senior staff, stated that as they look to expand their program they set some very aggressive goals in the athletic department. They speak to goals of graduating all of their student athletes to winning championships and to operating with physical integrity and to building great facilities for both their student athletes and our fans to attend that are in keeping with the architecture and beautiful nature of our community. Finally, they want to attract top quality student athletes to our community and University. If you look at this proposed project at the Boars Head, it really hits on every one of our goals. If you look at the facilities that they have built over the past several years, such as Scotts Stadium and Davenport Field, those facilities are great facilities. Those facilities are some of the best in the country. They have a good facility in the Boars Head for their UVA Tennis Program. This expansion will make it a great facility. It would allow our coaches to compete each and every year not only for ACC Championships, but National Championships. It would allow them to recruit not only the best tennis players in the country, but the best students and student athlete tennis players in the country to our University. It hits on every goal that they aspire to have at this University for excellence. They shoot every year to have the number one academic institution in the country. As an athletics program, they want to have that very same goal and shoot to be the "Stanford" of the east since Stanford wins in almost every single sport. This would help our tennis programs immensely. It would definitely help the club membership and the Boars Head Inn as a resort. It seems that this would be a win/win/win for all of the people involved. The Athletic Department wants to look for ways to be collaborative when they look to build excellent facilities. This is most definitely a joint effort on the Athletic Department, The Boars Head Inn and the UVA Foundation to provide what he believed to be a win/win/win for everybody involved.

Derwood Chase, member of the Boars Head Sports Club for over 40 years and a resident of Ednam Forest, stated that they have had an extreme imbalance between availability in the summer months and winter. They have all been complaining for years and this seems to be an outstanding opportunity to bring that back in balance. The traffic problem won't be as great in the winter time even if all of the courts are built because they would not have the swimmers and there is practically no use of the outdoor tennis courts in the winter time. From that respect, he did not think that it really changes the overall dynamics of the area any more than it would in the middle of the summer time when they are able to get courts and play there. The bubble that is now in his view is a much bigger eyesore than the facilities that they are proposing to build on a permanent basis. Those of us who play doubles can't play doubles as well in the bubble. He supported the proposal.

Mr. Morris stated that he had indicated that it was difficult to obtain court time. He asked what the process was now as a member that he has to go through to get court time.

Mr. Chase stated that right now they had a computer lottery. He noted that one would have to identify in advance the people that they were going to play with, which in itself was very restrictive because they usually gather about six people that want to play. Nobody can apply for any other group and are therefore blocked out of everything else. In other words, you could not be on his list and on somebody else's list to play on any of those same times. For those persons who are working and can only play late in the day or in the evening, it was extremely difficult. They use to have an open lottery where everybody got together, but that was also impossible. The computer just completely takes it over now. Many persons just don't get a court at all.

Steward Chase supported the project since he saw it as a win/win/win situation. He stated that they needed to support the tennis teams, but also need to provide court time for the members of the club

Mr. Thomas asked if there was anyone else in the audience that 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 possible action. He asked if there was going to be a cart path going into where the tennis courts were going to be.

Ms. Thomas stated that her understanding was that the cart path was going to stay in the same place. It will continue to be used as a cart path. It does actually cross a portion of what is being rezoned. In that sense there is a nonconforming use, which was a question that she had asked Jan Sprinkle because they were creating one. Normally, they don't like to do that, but it is not the first time that it has been done. It is well understood what it is all about. That little sliver of property to the east of the existing boundary is more to provide the required buffer between the Highway Commercial and the R-1, Residential than for any active purpose. She asked Ms. Long if that was correct that the path was there now and would stay.

Mr. Thomas asked if there was any interconnectivity between the golf course, the parking lot and the tennis facility of a path or anything else.

Ms. Thomas stated that people use a cart path to get from one to the other and it was pretty common during these events. As mentioned in the staff report, staff put the applicant on notice that they can't do much more expansion without a separate dedicated more formulized vehicular entrance to this. She felt that part of that was dealing with the Ivy Road situation and where a good intersection would be. There seemed to be some things that are moving towards a consolidated entrance at the golf course entrance with potentially a signal. There is no guarantee of that until they review the Kappa Sigma property proposal, but part of it was just figuring out exactly where the best alternatives would be. She felt that area was maturing in the sense of how the transportation is going to work.

Ms. Joseph stated that on page 4 of the staff report under roads in the last paragraph, staff had said that service, and/or emergency access currently exists. She asked if there was some mechanism that they have in some other approval that says that road will continue to be maintained.

Ms. Thomas stated that the reason that they did not write it into the proffers was because they were dealing with the whole stream buffer issue. Therefore, staff did not want to be too rigid about it in case there were some storm water issues that they had to deal with in terms of it being a more formal road for more than service vehicles or emergency access. That was the original thought. During the times of a whole lot of activity it would be opened up in one way direction and vehicles would exit that way. The Commission is going to be hearing a request for a critical slope waiver and a buffer modification, which the Commission has to grant, but she was unsure of that date. That might be an issue that the Commission can take up with the site plan at that time.

Ms. Joseph asked staff as a planner if she saw the need for this. Since it is in the staff report, is this something that the Commission should be considering at this point because it was something that they could not ask for on a site plan.

Ms. Thomas stated that it could probably be requested on a site plan under the safe and convenient access provision. She felt that it was a very positive thing and that was why she had said it should be maintained with the club expansion in terms of an emergency use or a special event use. She pointed out that she did not call for it as being more of a road because of its location near the buffer and she wanted to try to accommodate Tamara's concerns, too. She would be satisfied if it were used for more of an occasional use and a service use and not for a formal internal road. She stated that would be an emergency or special event alternative access or a service use. As a mechanism, it is shown on the conceptual plan.

Ms. Joseph asked if it was their expectation that it would be maintained.

Ms. Thomas stated that it would be maintained in the sense that it would still be on the conceptual plan.

Ms. Joseph asked if it would have to be maintained in a safe manner so that the road could be used.

Ms. Thomas stated that it was her expectation that it could be used during special events.

Ms. Joseph asked Mr. Kamptner if they saw this on the conceptual plan if their expectation was that it would be maintained as a service road.

Mr. Kamptner stated that there was no mechanism in the concept plan itself that requires it to be maintained, but if it was on the site plan it would.

Mr. Cilimberg stated that he felt that it would be safe to say that if it was on the conceptual plan, then it would be on the site plan. The site plan requires that these be maintained.

Mr. Kamptner stated that it could not be eliminated without amending the site plan and will be subject to site plan review.

Mr. Thomas stated that he thought that the answer was that the road would be maintained.

Ms. Joseph agreed with Mr. Thomas, but had one more question for Mr. Kamptner. One of Jan Sprinkle's comments was about taking the piece from the R-1 zoning and attaching it to the other parcel so that part of the golf course then becomes nonconforming. She asked if that was anything that the Commission needs to consider at this point.

Mr. Kamptner stated that they could consider it, but Zoning has looked at it and are comfortable with it. The concern is if the golf course becomes nonconforming and is a nonconforming use on the HC property. In this case that means that what the applicant could modify on the golf course on that part of the HC will be restricted somehow. Given the amount of land involved, it should not be a big problem.

Mr. Morris moved to recommend approval of ZMA-2004-15, Boars Head Inn and Sports Club, with the proffers set forth in the staff report.

Ms. Joseph seconded the motion.

The motion carried by a vote of (5:0). (Rieley, Higgins – Absent)

Mr. Thomas stated that the motion carried and would be heard by the Board of Supervisors on December 8.

ZMA 2004-00013 Mountain Valley Farm (Sign #21, 33 & 83) - Request to rezone 14.176 acres of a 29.75 acre parcel from the PRD (Planned Residential Development) Zoning District to RA (Rural Areas). The property is described as Tax Map 89, Parcel 73A, is located in the Samuel Miller Magisterial District, approximately half a mile north from the intersection of Rt. 631 (Old Lynchburg Road) and Rt. 706 (Dudley Mountain Road). The Comprehensive Plan designates this property as Rural Area 4. (Rebecca Ragsdale)

Ms. Ragsdale summarized the staff report. This rezoning request is to rezone 14 acres, of a 29-acre property from Planned Residential Development (PRD) to Rural Areas (RA) to allow that 14-acre portion of the property to be included in a residential subdivision. The rezoning is to bring the whole property into the RA zoning category. Approval of this rezoning would allow the 14-acres to be incorporated into the Mountain Valley Farm development as 2 lots (4 and 7 acres in size), a segment of Ambrose Commons Drive, and small portions of two other lots. The remainder of the parcel is zoned RA. The property is located off of Old Lynchburg Road and is landlocked. Old Lynchburg Road is in the Neighborhood V Development lying within the Rural Areas of the County. This property is located in behind a large chunk of PRD, which would be referred to as the Liberia PRD, which is 200 acres. With the proposed Mountain Valley Subdivision, the property would be accessed from Old Lynchburg Road along Ambrose Commons Drive, which is now just being constructed and starts out as part of the Mosby Mountain Subdivision. The general area across Old Lynchburg Road is the development area. This property of 14 acres is surrounded by Rural Areas to the north and south and then the remainder of the Planned Residential

Development in front of it is along Old Lynchburg Road. The proposal is to correct a mistake regarding ownership. The property was rezoned back in 1977 when the PRD was created. It was not a PRD at that time. It was a rezoned to Residential Planned Neighborhood in 1977. There were several parcels that were rezoned and this 14 acre portion was thought to be owned by the owners that created the PRD in 1977. Going back to 2004, she pointed out that since that time there was a significant change in the 1980 comprehensive rezoning which took away the application plan that went along with that PRD, which was approved in 1977. Therefore, they are left with 214 acres of PRD where the conditions of approval apply, but there is no application plan that applies since the standing of the plan has changed. Therefore, since that time the ownership issue was resolved and the applicants before the Commission now are proposing to rezone the 14 acres to RA for a RA subdivision. A preliminary plat was actually approved before it was discovered that this portion was PRD. In evaluating this project it is being rezoned and the plan is to incorporate it into a residential subdivision. The Mountain Valley Farm Subdivision would include about 37 lots averaging 14 acres in size ranging from about 2 to 32 acres in size whereas the Planned Residential Development was approved with a minimum lot size of 40,000 square feet in size. The 14 acre portion that is PRD could potentially, if it was developed as a PRD, require a rezoning process to provide an application plan that meets the current standards of the ordinance. It could create about 7 to 8 lots, whereas with the proposal with this rezoning it would be about 2 lots. So that is the request in summary. If there are any questions, staff would be happy to answer them.

Mr. Thomas complimented staff on their summary of the request.

Ms. Ragsdale stated that she tried to keep it as simple as possible without confusing them.

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

Ms. Joseph asked if they were only looking at the rezoning request for this and could not talk about the subdivision.

Ms. Ragsdale stated that was correct because she had only provided the plat so that the Commission could see what the plan is for those two lots and the proposed access.

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

Justin Bates, with Evergreen Land Company, stated that he would like to compliment Ms. Ragsdale as well because it was a confusing story on how they had gotten here. He pointed out that if the Commission had any questions, that he would be happy to answer them.

Mr. Thomas asked if there were any questions for Mr. Bates. There being none, he invited public comment from anyone else in the audience. There being none, he closed the public hearing to bring the request back before the Commission for discussion and a possible action.

Mr. Edgerton asked Mr. Kamptner how this it could have been rezoned back in the dark ages of 1977.

Mr. Kamptner stated that back in 1977 the State law said that any person can apply to rezone property. The Attorney General had interpreted that literally to mean that someone else could apply to have your property rezoned. The General Assembly took note and changed the law as to who is eligible to apply to submit a rezoning application.

Ms. Joseph asked what it does to the existing Liberia PRD to take this piece out of it. She asked if it would do nothing and they could still come in with an application plan.

Mr. Kamptner stated that it does not affect that. Whatever is remaining in that PRD continues because that is the zoning.

Ms. Joseph stated that all of their approvals, including the central water, was still allowed and is intact.

Mr. Kamptner stated that whatever approvals they have still apply.

Ms. Ragsdale stated that was one of the conditions of the 1977 approval, which was that the lots would be served by central water and sewer. That condition would be addressed if the Liberia PRD comes forward with the application plan.

Mr. Thomas asked if there was any more discussion or a motion.

Mr. Craddock moved to recommend approval of ZMA-2004-00013, Mountain Valley Farm, with no conditions.

Mr. Edgerton seconded the motion.

The motion carried by a vote of (5:0). (Rieley, Higgins – Absent)

Mr. Thomas stated that the motion carried and would be heard by the Board of Supervisors on January 12.

***Regular Items**:*

SDP 2004-099 Violet Mawyer- Ntelos Cook Mnt. (Sign #88) - Request for approval of a Tier II personal wireless service facility replacing an existing treetop facility that was approved originally as SP 1998-00007. The applicant proposes to construct a monopole that would be approximately 120.35 feet tall (10 feet ASL above the height of the tallest tree within 25 feet), with ground equipment in cabinets placed on a 160 square foot concrete pad. This application is being made in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property, described as Tax Map 98, Parcel 22, contains 48.83 acres, and is located in the Samuel Miller Magisterial District on Thackers Lane (State Route 804) approximately 400 feet east of the intersection with Monacan Trail Road (Route 29 South). The property is zoned RA, Rural Areas and the Comprehensive Plan designates this property Rural Areas 4. (Stephen Waller)

Mr. Waller summarized that staff report. (See the Staff Report) Staff has identified no unfavorable factors in this request. Therefore, it is staff's opinion that the applicant's request to allow the monopole at 10 feet above the tallest tree within 25 feet is also justified in this proposal and recommends approval of the request.

Mr. Thomas asked if any Commissioner had any questions for staff.

Mr. Craddock asked how long it would take for the old tower to come down once the new tower was installed.

Mr. Waller stated that after 90 days the applicant would be required to remove the old tower or would be found in violation of the ordinance.

Mr. Craddock asked if the lease for that site would end and the property goes back to the property owner or does it remain leased to Ntelos.

Mr. Thomas suggested that Mr. Craddock wait and ask the applicant's representative, Ms. Long, that question. There being no further questions for staff, Mr. Thomas opened the public hearing and invited the applicant to come forward and address the Commission.

Valerie Long, Attorney for Ntelos, stated that according to Debbie Balser that they will be terminating the lease and obtaining a new lease for the new area.

Mr. Craddock asked if the leased area would convert back to regular land.

Ms. Long stated that was correct. According to Larry Hirschman, Ntelos radio frequency engineer, the site currently is not operating according to Ntelos standards. This is one of their earlier acquired sites and the tower provides poor service. They have found a better location higher up on the property with minimal levels of visibility. The new site is located in a small clearing. The access road will have to be extended for the new lease area, but they will not have to take down any trees. That is a very positive aspect of the request. There is an excellent backdrop behind the facility. During the balloon test there was only one spot on Route 29 just past the driveway where the balloon was visible. But, they had to drive very slowly, stop the car and get out to be able to see the balloon. The balloon will be visible from Mr. Thacker's adjacent property, but he is in favor of the request. Mr. Thacker requested that Ntelos install a small directional sign on the property in order that Ntelos workers would know how to get to the tower. Ntelos is very willing and happy to do that. There is a very minimal amount of visibility. There is a backdrop of trees from Route 29. The tower will only be visible right at the driveway at Sprint Mountain Farm. The facility itself is 775 feet from Route 29 and is in the range of 700 feet from Mr. Thacker's house. The Commission has photo simulations in their packet showing 7 feet above the top of the pole to the tallest tree versus 10 feet above the tallest tree. The applicant hopes that that the Commission will be supportive of that. The ordinance provision states that the facilities are to be 7 feet above the tops of the tallest trees unless the Commission concludes that the applicant has demonstrated that at 10 feet above there will not be a material difference in visibility. Therefore, they tried to use those photo simulations to demonstrate that the with two difference heights there will not be a material difference in visibility. She hoped that the Commission would agree with that. With the amount of backdrop that was provided from those very few instances where you could actually find the balloon when traveling on Route 29 or from any adjacent properties they think that the wooded backdrop very well provides excellent camouflage and would not result in any material impact on visibility. As she has spoken to the Commission on several occasions, those 3 extra feet are tremendously significant when it comes to the quality of the signal. With a tree top tower design like this every foot of clearance between the bottom of the antenna panels and the tops of the trees is very significant. So the difference at a facility that is 7 feet above the tops of the trees versus 10 feet above the tops of the trees is really quite significant when it comes to coverage from Route 29 and many of the roads in this area. The roads are relatively narrow, curvy, winding with mountain in the way and with foliage close to the road. It is a very difficult area to provide wireless coverage. Again, every foot in height is very significant. She hoped that given the visual evidence that they have provided as to the difference in height and visibility that the Commission will agree that it merits approval at 10 feet above. In addition, the applicant had a tree arborist study the soils on the property and to try to give them some idea of how fast the trees were going to grow on this property. This letter concludes that most likely the trees will grow about 3 inches every year. That is a significant amount of growth. Ntelos would like for this facility to work well as long as possible and not have to replace the pole any time soon. The engineers conducted a periodic drive test of the site to test the level of the signal at various points along the coverage objective. The applicant has some data that can plot out how much the service signal has deteriorated over the last four years as the trees have grown. It is really quite significant. In 2001, the coverage was at least marginal and it worked. Then over the next few years the coverage just really deteriorated as the trees grew. They have always assumed that tree growth was going to be an issue, but it really took a few years of having sites actually built and operational and having time for the trees to grow to see how much of a difference that would really make.

Mr. Thomas asked Ms. Long if she had been involved with any towers that had to be elevated due to the growth of trees.

Ms. Long stated that she had not personally, but she had been told that Ntelos has started that process. She pointed out that that the applicant looked at that process for this facility. But, they determined that even if they could resurvey the trees and confirm that if the trees had grown 6 or 7 inches, in theory the way the special use permit conditions were written they could have then increased the height of the pole by an equivalent amount. They determined that because this site was really located in too low of an elevation. Even if they raised it as high as they expected that they would be permitted to be able to raise it by right, it still would not provide the level of service that they needed. They really needed to move the entire facility to a higher elevation point where it could be more functional. The new facility will be far less visible than the existing one. In one of the pictures the Commission can see the existing facility fairly well. The new site will be located farther back into the trees and would even be less visible from on the site.

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

Ms. Joseph asked if they knew if this would work at 7 feet above the trees.

Ms. Long referred the question to Ntelos' engineer who has been looking at this issue. She felt that it will, but it does not work at nearly the same level and quality of service. She introduced Larry Hirschman who is a RF engineer for Ntelos. She pointed out that Mr. Hirschman corrects her that when she stated that the arborist has stated that the trees would grow 3 inches per year that it was actually 3 feet. She distributed copies of the letter from the arborist, Bartlett Tree Experts. (See Attached letter from the arborist, Bartlett Tree Experts.)

Larry Hirschman, engineer for Ntelos, stated that as Ms. Long stated they have system drive tests that they started back in 2001 in the third quarter. They did a drive in 2002 in the third quarter, 2003 in the third quarter and 2004. The receipt level that they obtained on Route 29, which was the drive route, was significantly deteriorated year after year.

Ms. Long stated that she thought the question was would the proposed facility work at 7 feet above the tallest tree as opposed to 10 feet above the tallest tree.

Mr. Thomas stated that the Commission was looking for a justification for the 10 feet.

Mr. Hirschman stated that if the tree growth is 3 feet per year that even after the first year it was already deteriorated and it would not work. In 2001 they had a good signal, but in 2002 the coverage was deteriorated enough that the quality of it was not up to their design standards. It deteriorated even more with each additional year, and that was due to the tree growth.

Mr. Edgerton stated that he did not think he had answered Ms. Joseph's question. He stated that the Commission has not had enough history to know whether the existing tower could be extended. The question was whether the tower would work at 7 feet right now.

Ms. Long stated that it was her understanding that it would work marginally well, but it would not meet their standards. She pointed out that Mr. Edgerton was correct that the way the ordinance is written it says that the facility should never be more than X feet above the top of the tallest tree. So if in five years Ntelos has evidence demonstrating that the trees have grown say 5 feet they can administratively increase the height of the facility by an additional 5 feet. She noted that while that seems to be something that is not a big deal that it is actually a significant endeavor. It is very expensive to do and involves construction on site again with all new cables for the facilities. That is not something that would be an option once the trees have grown significantly because, in essence, the facility's carriers don't want to do that every year. It is not feasible to make them do that every year. They prefer to not start out with a site that works marginally. They want a site that is going to work well from the beginning. Given the standard, it talks about no material increase in visibility. She felt that particularly with this site there is so little visibility at all and where there is any visibility there is wooded backdrop from all locations. She felt that this is one of the best sites that they have ever brought to the Commission in terms of visibility. Therefore, she felt that it really warrants 10 feet above. It would seem to be a shame for Ntelos to go through the process of replacing this facility and the expense associated with it to end up with a facility that is only going to work marginally maybe for a year or two before they have to extend it again.

Mr. Morris stated that in reading over the staff's information it seems that during the balloon test the balloon at 117 feet was not visible at all. He asked if that was correct.

Mr. Long stated that the balloon test was conducted at the proposed height of 120 feet.

Mr. Waller stated that at the time the balloon test was done this request was being reviewed as a special use permit. There was no requirement to show the difference between the 7 and the 10 feet.

Ms. Long stated that the applicant provided the photo simulation. They had a graphics expert take the digital photograph and take the red balloon out and replace it with the proposed pole. He adjusted the proportions so that he could show it 3 feet shorter.

Mr. Thomas asked if there were any further questions for the applicant. There being none, he invited comments from other members of the public. He stated that Cheryl Thacker was the only person signed up to speak.

Cheryl Thacker stated that she was the daughter of Harold Thacker who was the owner of the most adjacent property and the one that is actually affected the most by the request. The owner of the property that the site is actually going on does not live on the property. Therefore, she is not affected by the request at all. The tower will be visible from their property. She stated that her father had indicated that there was no problem in seeing that because they have seen the two towers that are up there now for the last two years. Their concern is the construction of the actual antenna itself and the actual getting to the proposed site. The access way to that site is steep. There are concerns about the equipment being able to get into that area. What they have seen with the past two tower installations has been that any equipment has to be unloaded in their driveway, which is actually a state maintained road, in order to get the equipment up to the site. Even then there are issues when it is winter time if there is snow on the ground, if it is muddy or whatever the case may be. They end up pulling the equipment up to the site with other equipment. There are access issues there concerning this request. As the owner of the property that is going to be affected by that, they want to make sure that Ntelos knows that regarding the state maintained highway or driveway that comes up into their property that they don't want to see that used as the unloading or the storage of their equipment on it. Certainly there is 48 acres on the adjacent property that they can pull the equipment up on. Therefore, that is their concern about it. She felt that since the site was higher up on the mountain that there were going to be greater access issues. The other concerns the Commission has already seen in the proposal and in the staff's findings.

Mr. Thomas asked if in the previous construction of the other towers if there was any trespassing on their property at that time or did they get permission to be on there.

Ms. Thacker stated that sometimes they came and asked and sometimes they did not. There were several times that the people did not know where they were going so they just ended up on their property. Because they have rather large equipment if they come all the way up to the end of their road then the only choice they have is to back down the road. Backing a tractor trailer down a road that has a heavy piece of equipment on it that is only a size of a car is not good. They have ended up storing stuff on their property such as poles. They have kept equipment on the side of the road and things like that. They have some concerns about those issues.

Jeff Werner, Piedmont Environmental Council, stated that he did not have any direct objections to a tower on this land, but the fact that it is adjacent to land that is under a conservation easement made him want to bring some issues up that need to be looked at and discussed. The discussion is that this tower is necessary relative to service on the Route 29 corridor. But the tree that is dictating the height of this tower is uphill from this tree away from Route 29. Therefore, he was not sure how the tree that is uphill no matter how fast it is growing in how it is disrupting where it is trying to reach down on Route 29 unless it is trying to shoot up and across the mountains, but it does not appear tall enough to do that. The reason that he is concerned about this is if you look at the topography and the property to the south, which is under easement, it starts to push this thing up above that tree line and his photographs in his sample are not good enough to look at it. He stated that he did not want this uphill tree to artificially allow the raising the height of this tower to allow the argument that this tower should be taller and then suddenly it becomes far more visible from the parcels under easement to the south. Again, the staff report does not identify that this is visible, but it is suggested that it is probably invisible. He asked that the Commission was cautious that maybe in the future that they line up these maps and look at where the topography is that he realized that this is an adjacent tree and a tall hill, but it is uphill. He pointed out that one of the trees downhill was actually 20 feet lower than the tower. He suspected that as the grade falls away that some of these trees are much shorter than this proposed tower height. Therefore, that is just a

perspective there. If this 10 feet is so critical because of this one single tree, he just wanted to make sure that does not get used over and over again.

Ms. Long asked to respond briefly to the 2 comments that were made, particularly Ms. Thacker's comments. She spoke briefly with Debbie Balser who was on site during the balloon test and met with Mr. Thacker during the balloon test and she has assured him that she will have their construction engineer on site at all times during the construction to ensure that none of the problems that existed with either of the prior facility installation by Ntelos or with the Nextel facility installation, which Ntelos has no control over. Ntelos is obviously very respectful of Mr. Thacker's property rights and their concerns and frustrations of the things that have gone on in the past. Also, Ntelos has agreed to install the directional sign on the site to direct the maintenance and construction traffic. They are hopeful that the sign on sign will go a long way in addressing that problem as well as good communication with all of Ntelos contractors, subcontractors, maintenance crew, etc. To respond to Mr. Werner's comment, she herself had been curious about what some of the heights of some of the trees are. Unfortunately, the plans did not show the height of all of the trees that were within a 50 foot radius. She asked the engineer to provide her with the measurements of some of those trees. Since she did not receive that information until yesterday she did not get a chance to revise their plans to show it. She pointed out the reference trees, which was the tallest tree within 25 feet that Mr. Werner alluded to that is uphill. She has shown that it is 102.8 feet tall. The proposed facility would be 10 feet higher than the top of that tree. In addition, there are these two trees that are down the hill from the facility, in essence between the facility and Route 29. This tree is 123 feet tall and has a top elevation of 967.6. Therefore, the difference in height will be less than ten feet with this tree. Similarly this one is 123 feet with the top elevation at 965.7. Therefore, this is not the only tall tree in the area. This is the reference tree that will dictate the height of the facility during its operation, but these trees are equally tall and will be a problem. That is another reason why it is so important to Ntelos that the facility be approved at 10 feet above the top of the tallest tree rather than 7 feet above. Even at 10 feet above the margin between these two facilities it would really only be like 7 and 9 feet. If you reduce the approval to 7 feet above the tallest tree, the distance above the tops of these trees is reduced to about 4 and 6 feet. So it really becomes very significant, particularly the one that is 4 feet above. The panel antennas are 5 feet long. If the facility is approved at 7 feet above, about 1 foot of the antenna will be lower than the top of this tree.

Mr. Edgerton asked if she was figuring anything in for the contours.

Ms. Long stated yes that she was. This is the top elevation that was based on the difference in base elevation.

Mr. Edgerton stated that the proposed tower looks like about another 10 feet above those two trees that she was referring to.

Ms. Long agreed.

Mr. Edgerton asked if she was not counting that.

Ms. Long stated that she has factored that in. She agreed that the tower was at a higher elevation than these 2 trees and that he was absolutely correct. But, again the regulations speak to distance above the top of the tallest trees. Therefore, despite the fact that these are on the lower elevation, they are actually taller than the pole. The pole height is 120.35 feet and the trees are 122 and 123. Obviously, even at 10 feet above the pole elevation top of it will be 974.9. By comparison the top elevations for these trees, which are at a lower elevation, are actually taller. The trees are still shorter than the pole, but they are not 10 feet shorter than the pole, which is her point. She asked if that addressed Mr. Edgerton's concern.

Mr. Thomas closed the public hearing to bring the matter back before the Commission for discussion and a possible action. He stated that the 10 foot antenna seems to be the question. He asked if it demonstrates satisfaction to the Commission that it is warranted.

Mr. Edgerton asked if staff would discuss the fact that the 7 feet was picked as something that they would be comfortable with as being by right. It is obvious that the tower would be better if it was higher. He asked if they should just go back and rethink the ordinance and allow it to be 10 feet. He stated that he was missing the reason.

Mr. Thomas stated that the applicant has demonstrated that the backdrop is very good on this proposal.

Mr. Edgerton agreed with him on this particular request, but was wondering why the 7 feet was locked in on.

Mr. Thomas stated that was what the Commission had recommended for the policy and the Board had approved it, but the decision making power came back to the Commission. If there is justification for it and they demonstrate to the satisfaction of the Commission that there is not a material difference in the visibility of the monopole at the proposed height, then it is at their discretion. He asked if that was correct.

Mr. Waller stated that was correct.

Mr. Craddock stated that there was a grounding rod of 18 inches on the top of the pole.

Mr. Waller stated that the grounding rod is exempt. During the Board's discussion, it dealt with the effects on the signal and whether the strength of the signal would be diminished. The Board threw that proposed language out. Then the Board created this language, with staff's help, that talks about the material difference in the visibility. One of the things they would look at is whether at 10 feet the tower would be sky lighted above or visible above the tops of the trees as opposed to the 7 feet, and things of that nature. That would probably be the most telling factor in whether there is a material difference.

Mr. Thomas stated that was the way that it reads in Section 5.1 of the ordinance.

Mr. Kamptner stated that a body of principles will develop, which staff will use to develop guidelines to help them do the analysis in the review. It might take a few more applications before a common theme develops.

Mr. Edgerton stated that there were two other points that were brought up. He felt that Mr. Werner's comments were pretty logical. He wondered why a tree 7 to 8 feet higher by elevation is used. It is out of the area that they are trying to send a signal. He felt that they need to focus on that one in future reviews. The final point that he was concerned about was the prior problems with the trespassing occurring on the Thacker's property. He felt that it was good that they had been reassured that the Thackers were not going to be trespassed upon. He suggested that if the Commission approves the request that a condition be added that requires the supervisor to be on site

Mr. Waller stated that the last two facilities that were installed had wood monopoles. This kind of gets back to the previous discussion that they had with the Board of Supervisors in that only wood monopoles would be allowed by right. But they had a lot of voices from the industry who were saying that with a wood monopole that there comes a lot more disturbance. When a metal monopole comes to a site it comes in sections. There have been instances, such as Verulum Farm, when a wood monopole has had to be placed along the side of the road due to the difficulty to getting it to the site. The monopole had to stay along the side of the road until they could get a road that was adequate enough to get it up to the site. They had to remove some trees. From the standpoint of moving ability, even though a metal monopole may have that potential of being reflective and having a reflective coating that would be seen from certain angles, the industry has indicated that it is easier to bring in two 50 foot sections than it is to bring in a 115 foot wood monopole. Staff discussed this issue with Mr. Thacker in the field.

Mr. Thomas stated that it makes sense if the terrain is too rugged that sections are better than one entire expanse of a pole.

Ms. Joseph supported this request because there was no sky lighting and apparently it is not going to be visible. Staff has been all over looking at the balloon and making sure that it is not visible. Also, the properties that they are looking at the balloon are those with easements and in the staff report it states that it is staff's opinion that the views of the proposed facility would be obscured from these eased properties. Because of all of that, she supported the 10 feet versus the 7 feet.

Mr. Morris concurred with Ms. Joseph.

Ms. Joseph moved for approval of SDP-2004-099, Violet Mawyer – Ntelos Cook Mountain, as submitted to allow the monopole to be 10 feet above the tallest tree within 25 feet.

Mr. Morris seconded the motion.

The motion carried by a vote of (5:0). (Rieley, Higgins – Absent)

Mr. Thomas stated that the motion carried.

SUB 2004-00302 Chestnut Ridge - Request for preliminary plat approval to create a 20 lot (19 development lots and 1 preservation tract) Rural Preservation Development. The total acreage of the subdivision is 204.47 acres. The property is zoned RA, Rural Areas. The property, described as Tax Map 19, Parcels 20, 20B & 24, is located in the White Hall Magisterial District on Buck Mountain Road (State Route 663) just south of its intersection with Simmons Gap Road (State Route 663). The Comprehensive Plan designates this property for Rural Area uses in Rural Area 1. (Yadira Amarante)

Ms. Amarante passed out two items to the Commission. She summarized the staff report. This is a request to create a Rural Preservation Development consisting of 20 lots with 19 development lots and one preservation tract on 204 acres, zoned Rural Areas. The property consists of 3 existing parcels as stated in the staff report. All 3 parcels were parcels of record in 1980. Therefore, all 3 parcels have all of their available development rights. Staff has looked at this request for compliance with the Rural Preservation Development parts of the ordinance and also for the Subdivision Ordinance. Staff recognized that it meets all of the requirements of the Rural Preservation Development and the Subdivision Ordinance. There are a few small issues. One is that the 3 parcels by right could do 21 lots, and they are only proposing 20 parcels. There is an outstanding issue about the additional development right that needs to be allotted. Therefore, one of the conditions staff is recommending basically states that development right has to be put somewhere on one of those lots so that it is just not floating. Staff ran across this in The Rocks and several other circumstances. Staff just needs to deal with it. The other issue that is specific to this parcel is that back in 1993 there was a special use permit that was issued for a barbershop on parcel 24, which is still being as such. Usually staff does not approve preliminary plats with a special use permit, especially since this one had a condition that the property could not be further divided. The Zoning Administrator is totally comfortable with staff recommending approval of the preliminary given the special circumstances of this particular owner knowing that they have to come back and amend their special use permit to either get rid of that condition or get rid of the special use permit altogether. The owner is here if the Commission has any questions related to his intents. Also, the surveyor and applicant are here. Staff finds that this Rural Preservation Development meets all of the intents of the ordinance and recommends approval with several conditions.

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

Mr. Edgerton stated that there is a statement under the reason for Planning Commission review which says that the reason for Planning Commission review is that the Rural Preservation Development aspect of this proposal is discretionary. He asked what that meant.

Ms. Amarante referred the question to Mr. Kamptner.

Mr. Kamptner stated that the review is ministerial in nature. What the Commission is doing in this process

is determining whether of not the provisions of the ordinance have been satisfied. This would be the same thing staff does for a site plan or a subdivision plat. The Commission would be making a factual determination that this particular application meets the requirements of the ordinance.

Ms. Amarante stated that language is probably left over from before July from those other staff reports when it was discretionary.

Mr. Thomas asked for some explanation about the one development right that is left over. He asked if it was the Commission's responsibility to assign it or does the applicant have to assign it.

Ms. Amarante stated that the applicant has to pick some place to put it on. It is just an outstanding issue that they have not figured out how to deal with it. The ordinance does say that they have to account for these development rights. Therefore, it is just a condition of approval.

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

Roger Ray, land surveyor and planner, stated that he did the plan for the applicant, Ted Costnex who was the contract purchaser on the property. He stated that he was sorry that Mr. Rieley and Ms. Higgins were not here tonight because he was here to try to support a portion of the ordinance that he felt was very important, which was Rural Preservation Subdivisions. There are basically three ways that they can get land into conservation or preservation easements. One is with the County's method of purchasing developing rights. Over the past few years the County has not been able to do too many because it is very expensive. The cost of that comes out of the taxpayer's pockets. But, you can get easements on land that way. The other way is through the purchase of conservation easements through the federal and state government. In that they are paying immense amounts of money to get these development rights through conversation easements on land. He pointed out that he was not arguing whether it is good or bad, but was just saying that was the way that they were doing it. The third way is with a Rural Preservation Subdivision. Just recently they were discussing that it was by right or by special use approval through the Commission. It should be the by right way in Albemarle County to divide land. It should be the preferred desired way to develop land. It works extremely well on parcels of land that range from probably 100 to 300 acres. If you get parcels much less than 100 acres, this minimum of 40 acres seems like it does not work as good. It allows between 12 and 20 lots within the subdivision, which allows you to cluster and most of the time use less than one-half of your land. Then you end up with a large parcel in the preservation tract. In this case, they were ending up with 56 percent of 200+ acres in the preservation tract. Over one-half of this will be in the preservation tract, which will be greater than 100 acres. Therefore, it works really well. Not all properties within Albemarle County will lend to Rural Preservation. Sometimes it is difficult to find a place on the property to actually cluster your lots and be able to shorten the roads and have them all in a cluster to leave some open space. This particular parcel of land fits almost perfect for a rural preservation. Today it consists of two farms. Mr. Wood owns the front farm. Mr. Roberts, his brother-in-law, owns the other parcel. Both of those properties are working farms. One parcel still has cattle and livestock on it. But, Mr. Roberts sold his livestock about two months ago in anticipation of this sale. The Rural Preservation Subdivision will cluster all of the lots up close to the public road, which minimizes the length of the roads. It also allows the lots to be located in a compact area. More than 100 acres will be preserved in the back preservation area for farm land. A lot of that area has stream buffers located on it. The most critical areas and the best farm land that is being used today are in the rural preservation area. Again, this particular project works very well for a Rural Preservation Subdivision. The by-right development of this property would require a lot more area for the roads, which would actually have to go in some areas of stream buffer. Therefore, this should be a Rural Preservation Subdivision. Regarding the one left over development right, they were under the understanding that they were limited to 20 and that they could not regroup this development right unless they did a standard development. But, they have been told that according to a previous decision that had been made by the Zoning Administrator that they have to assign it. Therefore, they would chose one of these development lots to add that division lot to just because they are told that they are required to do it.

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

Ms. Joseph stated that on the plat that he talks about the easements that exist on the property. She pointed out that she only saw an easement for Virginia Electric and Power and Virginia Telephone. She assumed that they were not conflicting with anything.

Mr. Ray stated that there were two dwellings on this property for Mr. Roberts and Mr. Wood. Those are the easements that were created for those two dwellings to stay.

Ms. Joseph stated that there was also a road that comes up through the back. She asked if that road would be abandoned as a result of this or does it serve that back parcel.

Mr. Ray stated that it would probably not be abandoned, but it was the access that Mr. Robert's used to get to his dwelling now. But, once this internal public road is built that by your ordinance all of these lots have to enter that internal public road. With the new division, all of the lots will get access from the public road.

Ms. Joseph stated that if they just give something a development right it does not mean that you can subdivide it, but it means that you could have two dwellings on it.

Mr. Ray stated that he felt that was possible because if they assign a development right that under the ordinance they could probably have two dwellings.

Ms. Joseph stated that as long as they have the available acreage.

Mr. Kamptner stated that it would have to meet the zoning setbacks and other regulations.

Mr. Ray stated that they would assign the extra development right and figure out if it could be used.

Mr. Thomas asked if there was anyone else present in the audience that would like to speak regarding this application. There being no one, he closed the public hearing to bring the matter back before the Commission for discussion and a possible motion.

Mr. Edgerton moved for approval of SUB-2004-00302, Chestnut Ridge Rural Preservation Development, with the conditions recommended in the staff report.

The Division of Zoning and Current Development shall not sign the final subdivision plat until the following conditions have been met:

1. A completed application and fee for erosion control and storm water management. [17- 203, 17-303]
2. A storm water management/BMP plan, computations, and maintenance agreement. [17-203, 17-303, 17-304, 18-32.7.4]
3. An erosion and sediment control plan, narrative and computations. [14-311, 17-203, 18-32.7.4.3]
4. Road plans, pavement design sheets, and drainage computations. VDOT approval will be required for the public roads. [14-512,14-304,Policy]
5. [14.302.o] All existing development rights are not being utilized by this proposal. Allocate the additional development right to one of the development lots by placing a note on the plat to that effect.
6. [14.303.m] Note #5 must be revised to state "Roberts Lane and Cleopatra Court…"
7. [14.309 & 310] Written approval from the Health Department for all drain field locations.
8. [10.3.3.3.f] Approval and recordation of a preservation easement by the Public Recreational Facilities Authority for the Preservation Tract.
9. SP 93-26, a Home Occupation Special Permit for a barber shop granted by the Board of Supervisors on 12/8/93 must be vacated or amended by the Board of Supervisors, through the normal SP application process, prior to final plat approval.

Mr. Morris seconded the motion.

The motion carried by a vote of (5:0). (Rieley, Higgins – Absent)

Mr. Thomas stated that the motion carried.

Old Business

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

New Business

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

Adjournment:

With no further items, the meeting adjourned at 8:00 p.m. to the December 7 meeting.

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V. Wayne Cilimberg, Secretary

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