Albemarle County Planning Commission
December 7, 2004

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, December 7, 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; Pete Craddock, Vice-Chairman; William Rieley and Jo Higgins. Absent was David J. Neuman, FAIA, Architect for University of Virginia (non-voting).

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Tarpley Gillespie, Senior Planner; Susan Thomas, Senior Planner; Jack Kelsey, County Engineer; Amelia McCulley, Division Director of Zoning & Current Development; 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 6:05 p.m. and established a quorum.

Other Matters Not Listed on the Agenda from the Public:

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

Review of the Board of Supervisors Meeting – December 1, 2004

Mr. Cilimberg summarized the actions of the Board of Supervisors on December 1, 2004.

Consent Agenda:

Approval of Planning Commission Minutes – September 7, 2004 & September 28, 2004

Mr. Thomas asked if any Commissioner would like to pull an item for discussion from the consent agenda.

Ms. Joseph made a motion to defer approval of the minutes to next week.

Mr. Edgerton seconded the motion.

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

Mr. Thomas stated that the approval of the minutes was deferred until December 14.

Public Hearing Items*:*

ZMA-2004-007 Belvedere (Sign #62, 76 & 84) - Request to rezone approximately 254.03 acres from R-4, Residential to NMD, Neighborhood Model District, to allow up to 807 dwelling units, with an overall density of 4.4 dwelling units per acre, ranging from a density of 1.4 dwelling units per acre in some areas to 9.5 dwelling units in others. The property, described as Tax Map 61, Parcels 154, 157, 158, 160 (portion) and 161; Tax Map 62, Parcels 2B, 2C, 5, and 6A; and Tax Map 62A3, Parcel 1, is located in the Rio Magisterial District on the east side of Rio Road (Route 631) immediately east of the Southern Railroad. The Comprehensive Plan designates this property as Neighborhood Density in the northern portion of the property (3 to 6 dwelling units per acre), Urban Density in the middle and southern portions (6 to 34 dwelling units per acre), and Community Service adjacent to the railroad, in Neighborhood Two. (Susan Thomas)

Ms. Thomas stated that the Commission last discussed this project at a work session on August 31. At that time the Commission signaled its interest in hearing at the next meeting from the public and the neighbors even if the project was not ready for action and indeed involved another work session. So that is what they were doing tonight. As mentioned in the staff report, there are a number of unresolved

issues. They are making progress on some of them. But on other issues, staff and the applicant have a difference of opinion and maybe the Commission can provide some guidance tonight on those. Staff would like to bring the Commission up to date on a couple of things. One area in which the applicant and staff are working is to fully comply with the requirements of the ordinance in Section 8. This is a result of a comment by zoning that this first stage of Belvedere, which is 211 acres, does need to be a surveyed property. In other words, they need to know exactly where this phase ends and the remaining phase begins. That was not clearly understood by the applicant. The applicant thought that it could be shown on the plan as an area of future development. As it turns out that is not precise enough. Therefore, they are working to fully comply with that ordinance provision. There also is an issue that has come up since the staff report was completed. Once again this issue involves the zoning area. There is a parcel among the many parcels that are encompassed by this plan that the applicant owns the majority of, but not all of it. It is a parcel with an undivided interest among five people and four of those people have sold to the applicant and the fifth has not. There is a proceeding that will happen in court in January. That does not fully meet our submittal requirements because all owners are not in agreement. Furthermore, they all did not sign the application. Aside from the other issues that still need further resolution that were identified in the staff report that one particular parcel needs to be addressed. It either needs to be taken out of the plan or the applicant needs to secure all of the owners' signatures. That may happen in the relatively near future, but she did not know exactly how that works. It is a three acre parcel right in the middle of the plan. That is one reason why they cannot go forward with a decision tonight at least with this plan. There have been some positive developments relative to Belvedere. The range of units has been narrowed. They were now dealing with a range of 602 to 775. It is still a big range, but at least from staff's standpoint it is a more comfortable range than some of the previous ones that were even bigger. The Fairview Swim Club issue has been clarified. It will not be a part of the Belvedere plan. It is going to retain its own identity on its own property and it will not be part of the Belvedere community recreation facilities. Instead, Belvedere is proposing a second community center between the village green and the railroad track, which will be a full service community center and be used instead of Fairview. The applicant has committed to doing a phase one archaeological survey on the historic Free State property. The proposal is an attachment to the staff report. Julie Mahan, County Historic Planner, is present tonight. Also, there is a representative from Monticello present tonight. If there are any questions about that, then there are other people here that are more knowledgeable and can speak to that issue. There are several areas that need further resolution. Staff will briefly touch on those areas. If there are further questions, staff will be happy to answer them. If the Commission wants to go directly to the public hearing and hear from the public it is the Commission's call. There are a number of road issues that they are still working on. One is the street criteria. Staff is very sympathetic to the applicant's desire to have narrow neighborhood friendly roads. They are caught in the dilemma of needing to use standards that the County and VDOT can support and approve because these are to be public roads. The initial submittal on the road standards would not be approvable by the County or by VDOT. They have moved closer, but they still have some more work to do. The road comments are on page 6 of the staff report. Staff has also talked to the applicant about providing a 50 foot right-of-way along the Free State Road alignment on the parcels owned by Belvedere so that future parcels, whether owned by the applicant or somebody else, can be adequately accessed. The applicant has signaled a willingness to work with staff on that. That is a standard right-of-way dedication kind of request. Once again, the applicant has proffered to reserve a 100 foot right-of-way for the northern extension of the north Free State connector. Rather than reserving for dedication upon request of the County, which is kind of their standard approach, the applicant has indicated that this will be a purchase on our part. There is a ten year term involved. At our last work session on August 31st, the ten year term was discussed. So that is not new, but the purchase angle is new. There is a dollar amount included. Obviously, the County likes to have it dedicated if possible without a purchase. So that is a slight difference. There is a big issue that engineering identified, which is can the North Free State connector work with that roundabout number one, which is located just south of the Free State bridge. She thought that the applicant's understanding was that roundabout has been in the plan for a long time and the Commission may have seen that before she became involved with the project in the early preliminary reviews. Engineering has some real concerns on whether it is physically possible to extend the road north along the railroad tracks and still have the roundabout. Mark Graham is present tonight and that is something that perhaps he can address. Regarding storm water management, engineering has questions on whether it can work in all the blocks of the site. Staff is working on that issue. Regarding the open space easement behind the

rather large lots in block ten, which backs up to Dunlora Road and the circle there, that she feels that is very important because not only is it a beautiful Beech forest, but it would make the two neighborhoods work better together. Those Dunlora lots are quite narrow and shallow. So the houses are placed fairly close to the back property line. This gives everybody a little breathing room. Staff was happy to see that the applicant showed that on the plan. The County's position is that becomes a part of the common open space, but the applicant for the reasons explained in the staff report would like to see it as a preservation easement across the back of the lots for liability reasons. That is the reason why staff approaches it that way. There are no cash proffers offered by the applicant at this time. Once again they are reviewing this against the by-right zoning of R-4. It may be that the difference in density is not significant. She hesitated to weigh in on that because until they see a plan under the by-right R-4 zoning they really don't know what would or wouldn't be possible. It is certainly conceivable that they were very close in terms of what they would get from this particular rezoning and what they could get by right. Affordable housing is an area where planning staff had hoped to make more progress. They talked about some different approaches during the course of this review. Right now it was for carriage units only, which are to be regulated by market conditions and not any sort of restrictions imposed by the developer. The Code of Development needs some fine turning, but she felt that they were definitely moving ahead with that. As stated in the staff report, these Codes are new to us and they were working on how much detail is necessary. There is a lot of architectural detail in this one. It is not the County's job to review this, but it is really the internal committee within Belvedere that is to administer the Code. Nonetheless by including it here it provides a little more complexity than they would have if they did not have it. Regarding the proffers, what is attached to the staff report is really the first round. It has gotten some review comments, but the applicant did not have the opportunity to come back to us with revisions. There are some areas where they differ, and she was not sure if the applicant would come back with the language that staff ideally would like. Briefly she would go through the comments on page 9. Staff wants to make sure that there is an access either proffered or shown on the plan to the Dunlora Farm property. That was shown on a previous plan. She thought that got redesignated as open space and that is not an issue on which they disagree. But, that was just an oversight on this plan. Staff would like to see a provision for a possible future connection to Shepherd's Ridge Road if indeed that parcel in between came through review and there was that opportunity. There is a lot of concern on the part of Dunlora about connections to and from Belvedere with a signal at the Belvedere entrance. Staff is uncertain if Dunlora will have a signal. Access to Belvedere may be very important for Dunlora in the future because it may provide a more orderly way to get to Rio Road. Those connections might turn out to be more popular than they seem to be right now. Again, there is the 50 foot right-of-way provided along Free State Road across the parcels that the applicant owns. In the historic preservation category they want to make sure that Free State Road continues as an alignment and a name because it is very much associated with the historic community. They want to know more about what will happen next if something valuable is found in the phase one archaeological survey of the Free State community. She stated that they wanted to know what would be done with it if something were found. Briefly summarizing, there are some favorable factors for this rezoning request. There would be much more flexibility with the Neighborhood Model zoning district. It would be a more attractive, more walkable, convenient neighborhood. The open space would be interspersed with the development in an interesting pattern. There are some areas where staff needs some further clarification or they have not really come to an agreement, but staff is happy to see the open space. The historic Free State community survey is important. The greenway dedication will be very valuable. Staff is urging the applicant to consider dedicating the entire flood plain along with the greenway. The applicant is willing to show it as open space, but is not sure about dedicating it to the public at this point and to the County as part of the greenway. Factors of concern or ones that are not particularly favorable include the following. Affordable housing could be stronger. There is pretty slim no non-residential usage in the plan. They do understand that if the Greenbrier Road Extension could be made that could change. She felt that the Commission understood the reasoning behind that. There will be impacts from the increased density or what she felt that would be increased density to public facilities, which were not being addressed by any financial contributions. Staff is not sure if they were quite where they would like to be with the preservation language and the delineation on the site. At the very end of the report, staff identifies some areas for recommended action that will address some of these deficiencies.

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

Mr. Edgerton stated that he would like to gain some understanding about Jan Sprinkle's comment in the staff report, which says, I see no indication of an attempt to comply with the submittal requirements with Section 8.5. Staff mentioned that in the presentation. He stated that he was struggling with how that decision was made for them to go ahead with the review if the submittal has been judged to be incomplete. In addition to the need to understand that question, he would like to know how this would affect the 90 day deadline imposed upon us as a municipality to either deny or to act on a plan. He stated that he would like to be enlightened on those two issues.

Ms. Thomas stated that in zoning's view, the application is not complete until the area proposed for rezoning has been completely surveyed. It has not been done yet because they don't have that survey.

Mr. Edgerton asked if that was part of the zoning ordinance and wouldn't that apply to any review.

Ms. Thomas stated that it is, and all that she could say is that she thought that because it was a Neighborhood Model district and kind of a new process that there may have been some confusion on that issue.

Mr. Edgerton asked what this does to the 90 day requirement.

Ms. Thomas stated that the clock would not start yet because the application was incomplete.

Mr. Edgerton stated that he would like to have some assurance on that.

Ms. Thomas referred the question to Mr. Kamptner.

Mr. Kamptner stated that there would have to be a complete application for the 90 day period to start.

Mr. Rieley stated that in as much as they don't have a valid and complete application before them and this is listed as a public hearing and they are having a public hearing on an item that does not have a complete application that he wondered what position that puts them in relative to having met the public hearing requirements sometime in the future. He pointed out that they talked about going back and conducting additional work sessions due to the changes. He asked if they would have met the requirements for the public hearing if it was essentially a different project.

Mr. Kamptner stated that the Commission is going to need another public hearing anyway due to the 3-acre parcel. This particular parcel and the problems that it is creating were discovered after all of the written notifications had gone out. Therefore, this one will have two public hearings at least.

Mr. Thomas asked if there were any more questions.

Mr. Rieley stated that when staff was discussing access along Free State Road to undeveloped parcels, he was trying to make the connection to the property that Mr. Brown is representing that they received a fax. There is apparently a bill of complaint that the County has filed relative to that. He asked if that issue would be resolved by this easement or is that a separate issue.

Ms. Thomas stated that was a different parcel. There are actually at least four Brown parcels and the one that is the subject of the bill of complaint does not touch this Belvedere project. But, there are three other Brown parcels located along Free State Road with the Belvedere parcel in between them. She explained the location of the parcels on the map. The other parcels that are accessed by Free State Road don't really need it in the same way because one parcel has access from Dunlora and is actually part of Dunlora. The other parcels have access from Belvedere and will have access to Loring Run. One parcel will continue to have access from Free State Road. But, the other parcel will depend upon being able to cross this parcel 161, which was the disputed parcel. Historically, it had access from Free State, which was complicated by the Rivercrest rezoning.

Ms. Joseph pointed out that the plans show some grading and proposed vegetation located off site. It looks like the applicant is proposing grading on the Brown's property, which includes putting in a road.

Ms. Thomas stated that staff would need to know that they have some kind of agreement to allow that. That has been a concern of engineering and they continue to talk about that route and review of the project. Staff has been provided with a plat that shows a 60 foot easement across this area, which she thought was all on Fairview that must have gone with other property that they owned back there. But, she noted that has continued to be a concern of engineering. They have continued to talk with the applicant about it.

Ms. Joseph stated that she did not see how they could access the rest of the site unless they have an agreement with those property owners to do grading and plantings to build a road to the back.

Mr. Rieley asked staff to point out the parcel of the mixed ownership.

Ms. Thomas pointed out the approximate location of the disputed parcel. She stated that it would be awkward to develop around the parcel because it was pretty embedded in the proposed development.

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

Frank Stoner, of Stonehaus Development, stated that his partner Don Skelly was also present. He pointed out that they were both residents of Albemarle County. They really appreciate the Commission's willingness to hear the next installment of the Belvedere rezoning application. Regarding the deficiencies in the application, they just found out about the zoning violations less than a week ago. Prior to that they did not need this parcel delineated with an actual survey. They will be happy to provide it and it is not an issue. It just ended up being a timing issue for this particular hearing. It was a decision on Ms. Thomas' part that it would be best for them to go ahead and move forward and get the public input and have continued dialogue with the Planning Commission about the other issues in hopes that at the end of this meeting that they would be closer to the point that they would like to get to, which was a decision making position. With that, they will take them through a brief summary of where they have been and where they are. They would like to get some feedback from the Commission tonight. They presented a power point presentation. (Attachment – Belvedere ZMA-2004-00007 Contents Supplemental Exhibits & Powerpoint Presentation submitted by Stonehaus)

Don Skelly, representative for the applicant, stated that they appreciate the Commission and staff working with them regarding this new Neighborhood Model. One of the things that they wanted to remind everyone was that Belvedere is actually a cross zoning. Traditionally they were all accustomed to people up zoning and coming in looking for higher density and more intensive uses on the land than what it is currently zoned for. Obviously, in this case this is a little bit of a different situation because they already have R-4 zoning in place. They have estimated that with bonus densities that they would have 906 by right development rights, which actually came out of one of the County's staff reports. The current ZMA at its maximum density only allows for 975 residential units. Therefore, they were really not looking here at a change in density. What they were trying to do is to try to change the form. They really want to create a new model for suburban growth in the County with a more walk able type of neighborhood with some of the functionality that they have all identified in the Neighborhood Model as being positive. Another key factor that they were very dedicated to is that this is located within the urban growth area. It is in Neighborhood Two and they are committed to keeping development focused in those areas. Finally, all of this adds up to the fact as opposed to a normal rezoning, this really is sort of revenue neutral or in fact that the staff report found back in June a revenue positive rezoning for the County. There was over a million dollars in savings to the County versus going with a full by right maximum density development. They are all familiar with the fact that this has been a long process. They agreed to do some pre-planning with planning and appreciate the opportunity to be part of that process. They began that process back in January of this year and have had four work sessions with the Planning Commission and innumerable meetings with planning staff. They appreciate staff's willingness to work with them. Their actual rezoning application was submitted back in April. What they all have to ask is what this plan offers the community.

They would like to highlight a few things that they think this rezoning request brings to the table. First, currently the VDOT Six-Year Plan has the construction of the Free State Connector approved with money allocated. Their plan actually constructs this road, which provides the County with a savings of 1.5 million dollars. As with most of these projects the actual savings if it were to be built would probably be higher.

Mr. Stoner stated that there was an update to that. The revised budget is more like 2.2 or 2.3 million dollars for the estimated cost of the Free State Connector Road.

Mr. Skelly stated that the additional things that they feel that they bring to the table were that that they have agreed to reserve the right-of-way needed for the extension of the Meadow Creek Parkway. Ms. Thomas pointed out that the County would prefer to have that as a dedication, but they have actually offered it as a sale. He pointed out that the proffer does reserve that at today's bulk appraisal rate. That certainly has some cash value considering the timeframe involved. Ten years from now that land is bound to be increasingly valuable. It also aids everyone in the planning. They have also added an additional 1.5 miles of trail on which they will construct the green way system. They are very excited about that since they have facilitated a connection through their trail system. Currently they were working with the Dunlora Homeowner's Association to facilitate a trail crossing along there, which will provide a means of by passing. They have also agreed to provide 50 percent of the cost of constructing the pedestrian bridge over to Penn Park. This will really expand almost 3 or 4 miles of additional trail to the greenway system, which they feel will be very attractive for their residents and obviously for the overall community. They have really tried to address the community's concerns and to make a valid effort to understand the concerns of the community. They started out in November, 2003 holding public meetings. They have held more than one meeting with the Northfield's residents, the Dunlora Homeowner's Association and also with the Fairview Swim Club to try to understand what their concerns are. Out of these meetings came several positive actions. They have relocated the community center and the pool in block 2, which was originally slated to sit on the east side. After meeting with the Rivercrest Association they discovered that perhaps relocating that away from their boundary would be something that they were interested in. Ms. Thomas mentioned that they have created a conservation buffer to preserve a beech stand that separates their block 9 from the Dunlora community. Since they have heard a lot of concern about affordable housing here in the County, they have committed to provide 103 carriage house units. That will provide affordable housing that will be integrated in and functioning in the greater Belvedere community. One of the things that he felt was important as they move through a series of meetings like this is to make sure that they cover new ground. To date some of the issues that he felt that they have successfully addressed in their prior work session is connectivity. The County has expressed a strong interest in providing connectivity. Unfortunately, they operate under some geographic constraints when it comes to the Belvedere property due to the presence of the river and the railroad. They have reached some consensus among the items that they originally discussed, which he thought has been tabled with the notion of building an additional railroad bridge over the Carrsbrook Road. They have all agreed that is neither feasible nor desirable. One of the other discussions was the town center, which included its size, what is sustainable and also where it is located. He felt that they have all come to a common consensus that it had a limited scope including any connection to Greenbrier Drive, which was what would be feasible to do. Also, it should be located closer to Rio Road to provide increased traffic. Finally, he felt that they all came to some consensus on the Meadow Creek Parkway. They mentioned earlier that the original need for the survey arose from one of their first planning sessions when they decided to partition their rezoning in order to allow for two alignments that came out of the study. That was where that confusion was created, which created that issue. Since their last work session in August they have made some fairly significant changes to both the Code of Development and the site plans. They have added a central clubhouse and a pool complex. They have dedicated additional open space. Among the highlights of that is that they have added an additional 37 acres of river front property, which will be preserved as preservation area. This is not shown in the documents yet, but it is a verbal agreement. They plan to work with the County's Neighborhood Model designs for street standards. As they understand it that as much as they would like to push the street standards and traffic calming as much as they can, there are obviously some limitations there. Finally, in response to a lot of what they heard at their work session, they have gone ahead and commissioned an architectural survey for the existing structures within the Free State community. Today they received word that report has just been completed, which will be forwarded to the County. Finally that brings them to what it is that they want to

cover tonight. They are looking for some guidance from the Planning Commission on some of these issues. They have presented an archaeological plan. They are in the process of trying to word that into a legal proffer. They would like to obtain some feedback on whether this is an acceptable approach. They would also like to talk about road standards. Obviously, they have an interest in narrow roads. Because of their grid system they have a defused traffic pattern. They feel that narrow roads would serve two purposes. First, the narrow roads would really serve to calm traffic and promote a pedestrian environment. Secondly, the narrow roads would provide a sense of enclosure. From their conversations with other people doing traditional neighborhood design, it is an important factor. If the road standards are too wide it does not create the feel that they are all looking for. He asked for some clarification on their approach on affordable housing and how that will be received by the County. He felt that there has been some confusion as far as storm water management and engineering not so much on the content of the issues, but as to the timing and whether these are zoning issues or whether they are issues to be resolved at a later date during the site plan process. They would also like some feedback on the Commission's response to the proffers.

Mr. Rieley stated that Ms. Thomas said that these are to be public roads. He asked if that was correct.

Mr. Skelly stated that was true.

Mr. Rieley asked why the applicant should address the Commission about the road standards since they would have to talk to VDOT about that. If they are public roads, the Commission has no authority over lowering those standards.

Mr. Stoner stated that they had talked to VDOT as well. He felt that the process was ongoing to try to get VDOT to consider adopting new standards to allow private roads with some allocation for maintenance from the State. They would like to reinforce tonight how vitally important they think it is to the overall concept. When you lose the neighborhood road standards, then you lose a lot of the Neighborhood Model.

Mr. Rieley stated that he was saying two diametrically opposed things. One is that you want them to be public roads. Secondly, you want them to be Neighborhood Model type streets. Mr. Graham has worked with VDOT on a committee to try to make roads a little bit more neighborhood friendly. But that has been completed and those recommendations are moving ahead, but they are not going to get anywhere close to the kinds of things that they are talking about. He stated that he was just trying to keep them on a realistic footing here because there was not any point in talking about the objections of Neighborhood Model type of streets when you are talking about public streets. That is completely impossible.

Mr. Skelly stated that from the guidance that they have gotten from staff that they would be willing to explore private roads, but what they were being told was that in order to get approval they would still have to meet those standards. They feel like they are being caught within this, but they were willing to go with public road standards.

Mr. Stoner stated that there was no action on behalf of the County at this point to say yes we will accept private roads because there might be some future potential liability down the road when the HOA are unfounded. He felt that was where the confusion lies.

Mr. Rieley stated that issue was very much in place. There are diametrically recommendations going to the Board of Supervisors from different committees on that. But, those are not state roads.

Mr. Edgerton stated that he was sorry to hear that their effort to work with the Fairview folks has now been abandoned. Without that right-of-way, it does not provide a long term solution to that.

Mr. Stoner stated that was not the case. They now have a committee that they are working with at Fairview. It is an exploratory committee to evaluate all of potential options. What they don't have is a resolution to bring to the County. Those efforts are ongoing and felt would be fruitful based on their recent conversations. He stated that there were two issues. One is can they work with Fairview to

establish a joint community facility that can be utilized by Belvedere residents as well as their existing ownership base. The second issue, which relates to the right-of-way, is an issue that he felt that they will not easily seize on as it relates to this application. He stated that he did not think that they will become part of this application nor would they ever agree to dedicate right-of-way because the right-of-way goes right through the pool. Therefore, they would need to be compensated at the time that property is taken because otherwise they would be out of a pool and have nowhere to go.

Mr. Edgerton noted that the reason he brought that up was if they continue along this line and count on that as the future right-of-way that they need to be fully aware of what obligations that the County is taking on.

Mr. Stoner stated that was a VDOT combination question to be answered at some point.

Ms. Joseph stated that they were unsure on the number of units and that they need some reliance that if they go to the higher number that this open space would remain the same or a certain percentage will remain the same or the parks will remain the same. They have given themselves an incredible amount of wiggle room within the Code of Development to do different things within conservation and preservation areas to be able to change things around. The wording indicates that what they are looking at is not necessarily what they would be getting in the end. She asked that they look at that language to make sure that there is some reliance when they are looking at that so basically they would get something close to this at least in the layout. There are some open space issues in some areas that are sensitive that they really need some sort of assurance so that when they do the expansion into 700+ units that area will be protected. Because of the acreage and if you went to bonus density for whatever reason you would be able to get 900+ units. She asked if the applicant had ever sketched that out and if they were able to get that density with all of the lots meeting all of the standards of the R-4 zoning. There is a lot of critical slopes and floodplain within this area.

Mr. Skelly stated that the illustrated plan is actually at the maximum density. He believed that they addressed this in one of the proffers. Essentially what they see in the plans as far as open space, conservation space, and amenity locations are fixed. It is the alignment of the individual lot lines. Therefore, a change in density would most likely encompass taking a block of 40 foot lots and due to a shift in perceived market demand instead of having 10-40 foot lots having 8-50 foot lots on that same general alignment. That is where the change in density would occur. There would also be some potential variation between the required numbers of carriage house units built. There would obviously be homes that may choose to increase the number of carriage house units in those units, but the actual parks and conservation areas would remain unchanged regardless of any changes in density. They have not formally set down and sketched out the lots. That number actually came out of a planning staff report that was written back in June.

Ms. Joseph stated that there was nothing that exists that shows that you can get those units.

Mr. Skelly stated that they do have some earlier very old plans that were done sort of on a more by right spine road cul-de-sac, but they were done with larger lots and were no where near that number.

Mr. Thomas opened the public hearing and invited public comment.

Jillian Galle, archaeologist for Monticello, commended Stonehaus for including a phase one archaeological survey in this proposal. That is an important and significant step that they have undertaken. The applicant plans to proffer to do some historic interpretations, which includes some road signs and possibly naming a few roads by people who are living in Free State. She emphasized that it was vital that a phase 2 or phase 3 surveys be conducted if anything of significance that dates from the late 18th through 19th century is found in Free State. She asked that the Commission keep that in mind regarding future phases.

Charlie Trachta, resident of Albemarle County, stated that first he was present to represent the Board of Directors of Fairview. He was told to inform the Planning Commission tonight that there is no agreement

between Fairview and Stonehaus concerning any issue even though Stonehaus has made offers to Fairview in the past. Those offers were unacceptable. Any agreement which will be acceptable to Fairview must take in the point that Fairview will remain an independent entity, and not be controlled by Stonehaus. Secondly, he was here as a private citizen who has concerns about the destruction of our history. There are tracts of land within this property which represents our history, dating back to the Revolutionary times and before. There are grave sites, and most likely an entire graveyard included here. While Mr. Stoner, at the last meeting, stated he would offer to pay for a study, he did so without providing substance to his offer. He is required by law to pay for this study. So what is the offer that he spoke of? If anything is found, will he delay the development of those tracts until all graves and artifacts can be protected? What I heard at the last meeting was a loud and resounding no! If Mr. Stoner was offering anything of substance, he would be making plans to try and develop these tracts which are in question, last, not first. That way, he could start the development of his property and do the right thing at the same time. I do not have to go outside our County to point out some of our shortcomings. Let me bring up an article from our own *Daily Progress*, dated November 19, of this year, which was written by Kate Andrews. The article is entitled *5 Localities Honored for History Protection*. (Attachment entitled *5 Localities Honored for History Protection* by Kate Andrews, Daily Progress staff writer, dated Friday, November 19, 2004) If you read the article, you will see, Albemarle County, a County which contains so much history is not included on this list. Isn't it time to change that? No one is asking for this development to be stopped; only that it gets developed in such a manner to protect our history and to respect the rights of the adjoining property owners. He pointed out that the proffers have not been addressed. Right now the County is going into an extreme intensive redistricting process within our school system. With over 600 homes this development is going to come into an area of schools that is already overcrowded and there is nothing that this developer is offering to the school system.

Phillip Brown, Sr., resident of 1135 Free State Road, stated that he represented and speaks on behalf of the family members who lives on and has prescriptive right to Free State Road. He pointed out that these people cut his right-of-way off to Dunlora by putting a spite strip across the entrance. He noted that they did have an entrance into their property. He stated that his family goes back six generations and he was the seventh generation. As a responsibility to his immediate and extended family, he has the following statements. The Belvedere rezoning request should only be allowed with careful consideration of the impact on the present owners, especially the blacks. Viewing the preliminary plan, he quickly noticed that the intensive development on a near by property deprived him of a good deal of privacy. The proper screening and setbacks should be acquired so as not to overly impose the development on neighbors. The Commission and Board of Supervisors should be acutely aware of how it can cause extreme difficulty for adjacent property owners. While he was not opposed to the development of Belvedere, it seems that Albemarle County's various departments should try to be even handed and fair to all property owners. He asked to call their attention to an existing unresolved situation that should be finalized before this request is granted. He stated that the Commission was provided with copies of a bill of complaint filed by Albemarle County Board of Supervisors through the County Attorney that alleges that Belvedere Land Trust violated County Ordinance in the community depriving heirs of Susie Brown, his mother, the right to access and develop a 7.175 acre through a spite strip in Dunlora. Further, our long existing prescriptive easement was destroyed and houses built along the existing easement. A demurrer was filed stating that Albemarle County had no power to enforce the County Ordinance. The action has occurred in the past four months. As far as he knows no court date has been set and there is apparently no County action at this time. The petition before the Commission of this request has ignored the County request to record the connection plat and its demerit that Albemarle County has no right to enforce this ordinance. Therefore, negligently the inattention to important details by planners, especially the final presented for recordation may cause extremely difficulty to adjacent landowners. This is true for his family due to the unnecessary County legal expenses paid by all taxpayers and to the Planning Commission trying to rectify an unattended mistake. They request that the County delay action on the Belvedere Land Trust request until sometime as the allegation as referred to has been concluded or Belvedere Land Trust has complied with the County Ordinance. It is ignored at this time. He thanked the Commission for their consideration of these matters for the Brown family.

There being no further public comment, Mr. Thomas closed the public hearing to bring the matter back before the Commission for discussion and possible action. At the request of the Commission, Mr. Thomas invited Ron White to come forward and address the affordable housing issue.

Ron White, Albemarle County Housing Director, stated that he spoke about the carriage house units during the August work session. Any increase in the number of units that are potentially affordable will have some positive impact on the market. They have met with the developer. The County has only had two projects that have come forward with proffers, but they were much smaller projects. One was able to do some townhouse units and meet the 15 percent goal that has been set forth. The other project was able to do a mix of some auxiliary apartments and some townhouse units to meet the goal. This is the first project that they have seen that propose only the carriage house units themselves. Last week the Affordable Housing Advisory Committee provided a report to the Board of Supervisors. Some of these questions still remain unanswered. Every recommendation that they look at they have to turn around and look at the potential unintended consequences. One thing that they have noted in this development, as well as some others that they have looked at, is that it is hard for them to second guess the market. The builders are building to the market that they perceive. What they need to do to promote the affordable housing is to come up and show that there is a market there, but he was not sure if they are quite there yet. They would like to see some of the townhouse units being affordable and also if there were any possibilities for rental properties around the commercial space. They have talked with the applicant about that. At this time that is the extent of his comments. But, the recommendation is to have a goal or a target of 15 percent of all units being produced being affordable. The means of getting there is still unanswered. They are planning on doing some more work on this and then setting up some work sessions with the Commission and the Board.

Mr. Rieley asked if he had an estimate of how many carriage house units would be needed to meet this percentage.

Mr. White stated that on the low end it was 103 units out of the 600+ units.

Ms. Thomas stated that it was 146 units out of the 775 units, but there is not a lot of diversity.

Mr. Rieley stated that there is no commitment that the townhouses proposed will be affordable.

Mr. Thomas invited Mr. Graham to address the Commission regarding this project.

Mr. Rieley asked how likely is the scenario that VDOT standards are going to change by the time this project comes about to allow Neighborhood Model streets to be public streets.

Mark Graham, Director of Community Development, stated that the change that is happening in the VDOT's regulations has already happened. They will not be able to get much more out of VDOT. He pointed out that they continue to work with them and have proposed a set of what they call Neighborhood Model friendly streets, which they feel is closer to where they ultimately want to be with the Neighborhood Model. But, quite honestly if they are trying to go with the ideal for the Neighborhood Model they are still not there with the public street.

Mr. Rieley stated that the cross sections were beautifully illustrated. He asked if they could build those with the VDOT's standards.

Mr. Graham stated that some of them they can, but some of them they can't.

Mr. Thomas asked if the Commissioners wanted to discuss the four questions that the applicant brought up.

Mr. Edgerton asked Mr. Kamptner to provide a lay person's overview of the litigation that Mr. Brown represented and where that is.

Mr. Kamptner stated that in the preliminary plat they depicted two segments of Townbrook Crossing, which both go within several feet of the property line. As a condition of final plat approval, the County required that the applicant reserve that area for the public right-of-way up to the property line. After the plat was recorded it came to the County's attention that mistakes were made in the review of the final plat because that condition had not been satisfied. Conversations with the developers failed to resolve the problems and the County filed a bill of complaint. Their attorney filed a diverter, which is a pleading that says that we failed to state a cause of action. Their theory was that they were not enabled to require that those two segments be reserved because there is no approved plan showing the road network on the contiguous property. We filed a response last week saying that under a different subsection of the same status that they have the authority. Therefore, that is where they are. They have tried to set a court date, but have been unable to contact their attorney.

Ms. Higgins stated that involves the Rivercrest section of Dunlora, which is a different development than this one. She asked if there was any relationship between Belvedere and the Rivercrest section of Dunlora. She asked if anyone lives on this property that has had its access cut off. They are actually talking about a proposed access. It is anticipated that at some time there will be interconnectivity, but there is nothing to connect to now.

Mr. Kamptner stated that the Brown family has told them that before Dunlora was built they had a prescriptive easement that allowed them to get to that particular property, but they don't have that.

Ms. Higgins asked if there was anyone living there at this time.

Mr. Kamptner stated that he did not believe so.

Mr. Thomas invited Mr. Brown to come forward and address the Commission regarding that question.

Phillip Brown, Sr. stated that his great, great, great granddaddy lived there. The foundation still remains there. They use to go and cut wood off that property. He stated that personally he talked with Mr. Stoner and he told him that he would not cut his driveway off going into the property. Also, he talked with Mr. Dillard, who was operating the bulldozer, and he said that Mr. Stoner told him to forget about it. When he went back they had put a cul-de-sac around both sides. Their intention was to buy the land and bring the cul-de-sacs in and then they would be able to branch it off anywhere. He pointed out that he had problems with Mr. Stoner after he offered someone down the street more money for their land than what he had offered them. Since the offer to buy the land was not fair that he had decided against selling the land. He stated that no one lives on the property at this time. He pointed out that after the spite strip was put in that he was no longer able to go there to cut fire wood.

Ms. Higgins asked Mr. Kamptner if he could answer her previous question.

Mr. Kamptner stated that he did think that parcel has any direct bearing on this particular application.

Ms. Joseph asked if any of the Dunlora parcels are part of this Belvedere proposal.

Ms. Thomas stated that she believed that a portion of the Rivercrest parcel is involved in block 2 of Belvedere. She stated that the applicant may correct that. But, that is her understanding from current development that a portion of this parcel in the Belvedere rezoning is still a part of the Rivercrest parcel.

Mr. Rieley stated that there is a connection.

Ms. Thomas stated that there were about ten parcels in Belvedere, but actually eleven parcels if you count the parcel in dispute. One of those is a residue of Rivercrest.

Mr. Thomas asked if the parcel Mr. Brown was referring to has nothing to do with this application whatsoever.

Ms. Thomas stated that it was not involved with the Belvedere project. There are other Brown parcels that abut the Belvedere parcels, but that particular parcel does not touch Belvedere as proposed.

Ms. Higgins asked if the other Brown parcels are an issue at all.

Ms. Thomas stated that those parcels are located off of Free State Road and they want to make sure that there is a right-of-way dedication across the Belvedere parcel there.

Mr. Rieley asked if the applicant is still not offering a dedication along the river for multi-use fields.

Ms. Thomas stated that staff had asked the applicant to dedicate that land along with the greenway. The applicant is willing to show it as open space. Staff does not think it can be shown as preservation space, which needs to be changed. She stated that there were some disturbances that would occur there that would make it ineligible for preservation area, but it could be conservation area. It still would be part of the open space, but not given to the County at least not at this time. It would be shown as open space, but not dedicated to the County.

Mr. Rieley stated that staff's position is that it should be a public dedication.

Ms. Thomas stated that would staff's preference. The green way is what they are most interested in. The open space would still be positive even if it is not publicly owned. The applicant has indicated that might be a future dedication, but not at this time. The green way has never been an issue. The complicated thing with the green way is how you measure the 100 feet because the river moves. Staff feels if the entire floodplain is dedicated, then it would not matter if the river moved. But, that might be something that they will be able to accomplish in the future.

Ms. Higgins pointed out that the green way was going to have to be maintained by the County. She suggested that possibly that development needs to continue to maintain that as an amenity and open space.

Ms. Thomas stated that if and when Donlora Farm comes through development, which was nothing that was being proposed right now, that is really where the best access is. It is difficult to get to that flood plain area from Belvedere.

Mr. Morris asked for some clarification on this issue. He asked if the applicant could come forward and address this.

Mr. Stoner stated that he realized that this parcel was not part of the Belvedere rezoning, but he felt that his integrity has been attached that does not set very well. The Board has received, as well as Mr. Kamptner, a copy of a letter that they wrote Mr. Brown back in April related to these access issues. They have offered Mr. Brown access easements off of the end of Town brook Crossing. They have offered him free of charge a 50 foot access easement back to the property that he owns and has frontage on Free State Road. He pointed out that this was not a race issue. It is not an issue of him being unfair to Mr. Brown. He pointed out that he has offered to pay fair market for his property with all of the easements in place. He apologized for getting off the subject.

Ms. Higgins asked if he had a response about the floodplain area.

Mr. Stoner stated that they have another phase of this property to rezone, which is the phase in the rear. He felt that it was more appropriate to tie the dedication to that section phase of development if they chose to do so. They were unclear what the open space requirements would be in phase 2 and how all of that works with the existing plan. They were not opposed to it in concept, but would like to understand the difference between open space and dedication. If that means that if they want to go and put a soccer field on the property, would that create problem because it has now been dedicated and the County owns it. There are also liability issues. Because of those uncertainties they felt that it was best for now to just be committed to the open space and building the green way. They feel that it is premature to show that

as a dedication. They are committed to providing affordable housing in the County. This form of development offers unique opportunity to create that type of unit. Their perspective is that in the not too distant future there might be an oversupply of affordable townhouses in this market that can't be absorbed. That is the only product that can be delivered in the County right now. Therefore, their affordable housing view is more regional and not so specific to this neighborhood.

Mr. Thomas stated that the Commission was not going to talk about the Brown property that has nothing to do with this application from this point on. They will keep their discussions with the application that is in front of them. If that property comes up and is a part of this application, then they will be able to discuss it further. He asked that the ongoing arguments be settled in another manner. He asked if there was anymore discussion.

Mr. Rieley stated that he was trying to figure out which way to go on this application since it was incomplete. Both the applicant and staff agreed to bring it to the Commission with that understanding in hopes of getting additional clarification in giving an opportunity for public input. He asked if it would be useful to go down some of these items that staff raised and weigh in to see if they could clarify the Commission's point of view on.

The Commission discussed the following outstanding issues:

- How to address the road network and standards to leave it flexible and open for multiple routing opportunities for the future.

- The 100 foot right-of-way is a big issue in whether it is dedicated or not. There are enormous implications on future development if they cannot get the right-of-way.

- Road standards.

- Roundabouts.

Mr. Rieley stated that there were too many issues for the Commission to address tonight. The Commission has heard the public comment. He moved for indefinite deferral of ZMA-2004-007 for Belvedere and asked staff to schedule a work session as soon as possible to discuss the outstanding issues.

Mr. Edgerton seconded the motion. He asked for a friendly amendment to the motion that staff schedules a work session to go through this list of items as soon as possible.

Mr. Rieley agreed to the friendly amendment.

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

Mr. Thomas stated that the motion carried for indefinite deferral of ZMA-2004-007, Belvedere. Staff will set up a work session on this item as soon as possible.

Mr. Cilimberg stated that staff might have to schedule a late afternoon work session in January due to their heavy work schedule.

ZMA 2004-00014 Briarwood (Sign #17) - Request to rezone 123.612 acres from PRD (Planned Residential District) to PRD (Planned Residential District) to amend the proffers of ZMA 1991-00013 and ZMA 1995-0005. The property, described as Tax Map 32G, Parcels 1, 3-A and 3-83 is located in the Rivanna Magisterial District on Seminole Trail (Route 29) at the intersection of Seminole Trail and Austin Drive (Route 1575). The Comprehensive Plan designates this property as Neighborhood Density Residential in the Piney Mountain Community. (Tarpley Gillespie)

Ms. Gillespie summarized the staff report. The applicant is requesting an amendment to the existing proffers for the Briarwood development which were approved as part of ZMA-1991-13 and ZMA-1995-05 in order to allow a change in their phasing requirements and a change in the unit mix for the development. They are also proposing several changes to the Application Plan that was approved previously related to the unit type as well as the road layout for the development. Attachment B shows the existing approved Application Plan for Briarwood with notations showing the proposed new maximum number of units and unit types for each phase. That is the first plan on the wall in the back. Attachment C shows the actual Application Plan for which they are seeking approval. That is the second plan on the wall. The proposed new application plan was received by Planning Staff after the normal review period had ended for this Commission hearing date (11/18/2004) and has not received a complete review by the time the County staff published this staff report. Staff has not received an internal staff review or a review from VDOT at the time of the Commission's staff report. Staff has since received comments from the internal staff as well as VDOT. Those comments were distributed to the Commission this evening. (Attachment – Letter dated December 7, 2004 addressed to Wendell W. Wood from Tarpley Vest Gillespie) These comments were first available today. Those comments were also shared with the applicant at this point. As noted in the staff report, staff cannot recommend approval until the outstanding issues have been addressed and until that review had been complete. There were a large number of outstanding issues identified in this latest round of comments. Therefore, staff cannot recommend approval at this time either. Staff's desire would be for the applicant to respond to these comments, revise and supplement the application materials to address each one of their comments and then go forward. The Commission is under an obligation to act on this project within 90 days of the submittal. There was one request for deferral from the applicant previously. However, the Commission will need to act on this application either tonight or at next Tuesday's meeting. Considering the short time period between tonight and next Tuesday it is not practical for the applicant to address these comments between now and then. Therefore, staff is recommending denial or they are encouraging the applicant to seek a deferral of the application until all of the outstanding comments can be addressed.

As mentioned, the application plan is seeking to amend proffers from ZMA-1995-05 and ZMA-1991-13. They are specifically offering four proffers with this application plan, which accomplish the amendments to the previous proffers and also offer an additional new proffer related to affordable housing. The first proffer in this set of proffers seeks to amend proffer 12 of ZMA-1995-05, which would allow simultaneous development of the remaining phases of Briarwood. The applicant previously proffered that no more than two phases of development would occur at one time. It appears that there was some concern in the past about timeliness of conclusion of infrastructure relative to development advancing and the CO's being issued for houses, etc. At this point in time County staff is confident in our own ordinances and our bonding practices and our ability to ensure that the infrastructure is in place for each phase of development to stand on its own. Therefore, staff is not longer concerned about how many simultaneous phases of development are under construction at one time. However, staff still feels that it is important that phase 1-B be built prior to some of the later phases. That is because phase 1-B provides the Briarwood Drive connection out to the stop light at the National Ground Intelligence Center. Staff feels that phase of Briarwood Drive to the stop light is an important before all of these other new units are put into place. Staff asked the applicant to commit to building that phase and he did so in the form of a proffer. Staff is comfortable with the first proffer in the packet.

Mr. Edgerton stated that staff indicated in the staff report that the new application plan was received after the review period had ended. Therefore, he asked why the clock was ticking if the information that was required for the application was not submitted in a timely manner. If you are suggesting that they need to address many, many issues as identified in the information that the Commission has just received why are they going ahead with this discussion at this point. He asked why they don't they wait until they have a complete project in front of them.

Mr. Kamptner stated that the clock was running because it was a complete application even though staff had not received all of the information. He pointed out that Zoning had determined that the application was complete.

Mr. Cilimberg stated that it was not a statutory requirement that the applicant have these comments in by a certain point in time to a degree satisfactory to staff because there is always the alternative for the Commission to deny based on not having had issues addressed. That is an action which is within the 90 days. He stated that he did not think that the Commission would be asked to address all of those things that were commented on by the review staff. Staff suggests that those things be addressed by the applicant and then come back to the Commission, which would require the applicant to request a deferral. But in the absence of the applicant requesting the deferral to address those things that were identified, then the Commission has the option of denial.

Mr. Edgerton stated that he would prefer deferring the request until they have all of the information. He pointed out that the way the information was distributed had made it very difficult for him to figure out what he was looking at, specifically on the graphics. He suggested that instead of spending a lot of time discussing this that they ought to invite the applicant up and see if he wants to request a deferral.

Mr. Thomas agreed with everything that he was saying, but that they have to go through the procedure for the public hearing.

Mr. Kamptner stated that it has been advertised for a public hearing. Therefore, they would have to receive public comment. But, the Commission could invite the applicant to come up now.

Mr. Cilimberg stated that the Commission did not have to receive the rest of the staff report.

Mr. Edgerton stated that he would prefer to postpone the rest of the staff report particularly because of the new information.

Mr. Thomas questioned what the Commission could accomplish. At this time he opened the public hearing and invited the applicant to address the Commission.

Wendell Wood stated that he would like to make a statement about the deferral. Briarwood has been a development since 1986 in this community. It has been called one of the most successful developments in the community providing affordable housing. If the Commission would read the comments from Ms. Gillespie and Mr. Shepherd they would find that they both like what they are doing. They started this one year ago. Ms. Gillespie was not the staff person at that time. There was another staff member who worked on this project for six months, who has since left the County. That certainly has put this project behind. In fourteen years this is the first year that they have not had production in Briarwood Subdivision. There have been 350 houses built. They did this trying to get closer to what the County wants in mixed use development. Briarwood was approved as 660 single-family attached lots in 1982. Today that is probably not the best development for that area. It has been a very successful affordable housing project. They have had two supervisors live there. They have had three planning commission members live there. They have had a number of police officers and teachers who live there to this day. It has been a success. If the Commission would read Ms. Gillespie's and Mr. Shepherd's comments it would be very clear that they have agreed with everything that they are doing. They are simply here now after one year of not being able to continue this development. They are not asking for any new houses. They are only changing the mix of these houses. If the Commission will just give them a chance tonight he felt that they would be able to see the issues that are being resolved. They just received new information this afternoon at 4:30 p.m., but they don't view that those issues contain anything that anybody will have any problem with. But, time is money. They have one year's production lost in the best housing market in this County for affordable housing. It was not their fault. He pointed out that they started one year ago and here they are tonight being asked to defer again. If they miss this building season it will go into two years. There is one issue in here if they chose to make them do then this case will not be heard for another six months. He stated that he was prepared to explain why that request was not well thought out because it was something that they have already done. He asked that the Commission allow them to respond to a few of these things on why they don't want a deferral. Then, he felt that they would agree with them that this was not a detriment to this County. He stated that this afternoon that Ms. Gillespie said that they want to do this. It is a matter of red tape when you talk about the alignment of the road as shown on the plan. If you read staff's report she likes the new design. He pointed out that the design takes that traffic to an

existing traffic light. They are not adding any new units. There is nothing new that will happen. There were 661 lots approved and there were only 5 additional lots, which would not change a traffic pattern. Not only is it an improvement, but it takes all of that traffic to an existing traffic light as opposed to a road that has no light. Therefore, it is a better situation. He felt that the people looking at this have not thought of that and have said that a study needs to be done. He pointed out that if they had to do a traffic study that they would not be before the Commission for at least six more months. Unfortunately, they have to continue on. If they cannot continue on, then they will just do what they can do by right. They can continue to go in there and build these 660 units. They have already built 330 of these units. But, staff unanimously says that this is a better program and it meets your DISC study much better than what is there. He stated that there was absolutely no disagreement on this. He commended Ms. Gillespie for her assistance on this. The traffic would now go to a traffic light.

Mr. Edgerton stated that the applicant has not answered his question about requesting a deferral. He stated that the Commission was going to have to make a decision tonight for denial or deferral. He pointed out that Mr. Wood was in the driver's seat regarding the request for the deferral. He stated that he had reviewed all of the materials except for the new information distributed tonight.

Mr. Wood apologized for getting off track. He requested that the Commission go forward with the review of the application.

Mr. Thomas stated that Mr. Wood's answer was no that he did not want a deferral. He stated that they would proceed with the review. He opened the public hearing and invited the applicant to address the Commission.

Wendell Wood stated that if the Commission went through the report that staff agreed with them on everything. He stated that he would like to address the new requirements that staff would like for them to do, which was listed in the new information from Ms. Gillespie received this afternoon. Number 1 says that the 11/17/04 plan shows the removal of connection between Briarwood Drive Phase 4 and St. Ives Road. Staff is concerned about the loss of this interconnection. Please either revise your plan to show this interconnection, or provide a justification for its removal. He stated that they would like to have it removed. The approved connection was done 17 years ago. At this time there is a traffic light on Route 29. When that plan was approved there was no traffic light there. This is the plan that you heard Ms. Gillespie speak to tonight stating that she requested that road to be built before they do the back section. They agreed to that. There is a traffic light today at that intersection that was not there when this plan was approved 15 years ago. The traffic light was installed within the last 2 years. They have agreed to build that section of the road first. Therefore, all of that traffic, which would go out on St. Ives Road through an existing neighborhood that opposed the request 15 years ago, would not go out at a traffic light on Route 29. There are 5 new lots in this subdivision. Therefore, there would not be a difference in traffic. Number 2, staff recommends that the application plan be revised to show Camelot Drive extended to connect to Phase 1A of Briarwood. That was part of the proffer that when this plan got approved Camelot residents did not want a connection there. Therefore, they honored that with one of their proffers. They are honoring what their neighbors requested of them. Number 3, staff notes that the road layout of Phases 5 & 6 has been modified from the previous plan. If the Commission will look at the old plan and the new plan for phases 5 & 6 you will see that there is not much difference. Staff requests that they show the Resource Protection Area. It is shown on the old plan, but is not outlined in the new plan. They are well aware that they cannot develop in the Resource Protection Area. They don't intend to ask to develop in that area. Therefore, they do not see that as an issue. They know that they will not develop in the Resource Protection Area and they will comply with that ordinance. Number 4, with the existing Briarwood development there is a sidewalk on one side of the public streets. The plan does not indicate where sidewalks curb and gutter, or street trees are proposed on the new plan. That is part of their site plan. They will add that to their proffer that they will continue to put in sidewalks. They have done that throughout the development and don't intend to stop. Those are the new issues that came up tonight. If you go down through it the Commission will see that these comments are unchanged. When this started there were several people at the County that did not think that they needed to come back before the Commission. But, the reason that they had to change it to a rezoning was because of the proffer. The real issue here and the only thing that they are talking about is the proffer that they are changing

regarding the townhouses on Section 8 as opposed to single-family houses and bringing the road and taking all of that traffic to the traffic light as opposed to taking it up on Camelot Drive. That is something that the Camelot residents have asked them not to do. They have now made a connection and all of that traffic comes to a controlled traffic light on Route 29, which is something on other projects that they make everyone do. If you look at Phase 1-A on their existing plan you will see two cul-de-sacs. On the new plan that road is connected. If you read Ms. Gillespie's response to that issue, she thinks that is positive. If you read her response to everything, she states that everything is a benefit to this land by staff's own recognition. Therefore, they don't think that there is an issue regarding the roads. This is affordable housing. They can't wait another six months. He stated that Mr. Brooks indicates that they might need a traffic study because of not having the road connect to St. Ives Road. There is no new housing. There will be not be any traffic going from Camelot to Briarwood because that traffic is leaving this development and getting on to Route 29 at a controlled traffic light. People will be leaving those two subdivisions going to Route 29 and 80 percent of the time coming to Charlottesville. Therefore, they would not ride a mile north to do that because they would be going to the traffic light. This is affordable housing and he would like to be viewed in light of that. He asked that they look at their record. This has been a very successful neighborhood. He pointed out that they do not charge a homeowner's association fee. They have built and maintained the play areas with no fees. He stated that their request was to go forward because they have been working on this for over a year.

Mr. Morris asked what percentage of their current housing is affordable housing.

Mr. Wood stated that they built 320 units and there were only 5 that went above the affordable housing. There were 312 units that meet the guidelines of affordable housing.

Mr. Craddock asked if phase 8 townhouses would come out through Camelot.

Mr. Wood stated that they would go back to the traffic light on Route 29. On the old plan the traffic from phase 8 townhouses went through Camelot.

Ms. Higgins stated that as she understood that he did not want to comply with items 1 and 2 if they were added as conditions.

Mr. Wood stated that they would like to take that off.

Ms. Higgins stated that they would like to do away with those two connections. She asked if there would be a provision to allow pedestrian connections at those locations in lieu of a vehicular connection.

Mr. Wood stated yes that she was correct. He pointed out that they were showing a 25 acre recreation area and at the time of the site plan they will show a walking trail as to how to get there. That was already provided for in their existing plan, but they have just not gotten down to those phases.

Ms. Higgins stated that if all of these items were clear conditions of a recommendation and would become part of a site plan that he would have no problem with that and would comply with them.

Mr. Wood stated that was correct. He felt that they could look at this and impose the conditions that they were looking at as a condition of approval. He stated that they were willing to accept that. They also believe that they can have all of those items on a plan for the County within a week. They are all very simple things to put on a plan. He stated they could provide all of this on a plan before it goes to the Board of Supervisors.

Mr. Thomas invited public comment regarding this request. There being no one, he closed the public hearing to bring the matter back before the Commission for discussion and a possible action.

Mr. Edgerton apologized to the Commissioners for taking this off track. He stated that he would now like to ask Ms. Gillespie to give the staff report that she was trying to give. He stated that he was still having a

great deal of difficulty when a plan is not received until November 18 on how they could have a 90-day deadline hanging over them. He stated that he would have to defer to the legal opinion on that.

Ms. Gillespie stated that the second proffer in their submittal package relates to an amendment to proffer 13 of ZMA-1991-13, which allowed the lots along Camelot Drive to be developed as townhouse units. This section of Briarwood along Camelot Drive is referred to as phase 8 in the application plan. The current plan calls for 32 single-family detached units and 20 duplex units. Staff has no problem with the change in the unit type at this particular location, but they do note that on the application plan there is the proposed change in the connection which has already been partially addressed here. Staff feels that proposed change in the access in phase 8 coming off of Briarwood Drive rather than Camelot Drive could provide a benefit to this development. However, staff really has not had a complete analysis even today of the impacts of that. In the comments received today from the engineer, they requested a traffic analysis. They did not request a full blown traffic study, but a traffic analysis to look at the redistribution of traffic as a result of this change in access. The other concern that they have in the planning about this phase and the changes to this phase is that the applicant indicated verbally, even though it is not indicated on the plan, that the townhouses would be oriented towards this new access road off of Briarwood Drive. Therefore, the rear of the townhouses would face Camelot Drive. Currently, the character of Camelot Drive has single-family houses along the south side of Camelot Drive and staff is concerned about the aesthetic impacts of the town houses being oriented towards this new road with the rear being oriented to Camelot Drive. They really don't have any information on how that is going to work out at this point. The applicant has mentioned that he will provide screening and a buffer, but has not really provided any details on that.

The third proffer seeks to amend the unit types and the maximum unit numbers in each of the remaining phases. The proposed changes would result in a total increase in units from 657 to 661. That is for Briarwood in total. Staff does not think that an increase of 4 units is really going to have any significant impact on the development. Staff feels that the change in unit mix will probably have a positive impact on the development rather being so dominated by duplex units. Therefore, staff supports that change.

The fourth proffer commits the applicant to providing 25 units of affordable housing with the construction of the remaining phases. This proffer came out of the conversation with the Chief of Housing and the applicant. The applicant did exactly what was asked of him by the County. Therefore, staff does support this proffer as well and thank him for his commitment to affordable housing in Briarwood. There are several notable changes to the application plan, which are summarized in the staff report. They have already been touched on briefly, but they pretty much relate to the reconfiguration of the roads in Briarwood. There is that change to Phase 8 that they have talked about. In phase 1-A on the existing plan there are two cul-de-sacs which have been interconnected into an existing road. Staff feels that is a positive development in terms of it achieving interconnections within Briarwood. More significantly in phases 5 and 6 the road configuration has changed and the cul-de-sacs seem to be jetting out further towards the Resource Protection Area and the river. Staff has very little information at this time about the location of the floodplain, whether or not there are any critical slopes and whether or not there is any encroachment on the stream buffer. Therefore, staff is concerned about that change. In today's comments from engineering you will note that engineering recommends that the roads in those phases extend no further out towards the Resource Protection Area than they do on the approved plan. That is an outstanding concern that may be addressed with additional information from the applicant or there may be a need for waivers that have not been identified tonight. That is a pretty serious concern of staff's at this point in time. Engineering's recommendation to the applicant is that they revise the plan so as not to extend any farther.

Ms. Higgins stated that the applicant would have to come in with a site plan regarding all of these sections. Their site plan approval would be predicated on those conditions of waiver being met at that time.

Ms. Gillespie stated that they could seek the waivers at a later date. The applicant does not have to seek the waiver at this time.

Ms. Higgins stated that they would not seek a waiver now because they have not identified whether they need a waiver. But, the Commission would still have the request back before us to address that issue along with the curb and gutters, sidewalks, etc. that would be shown on the site plan if it was a condition. She stated that those items are not always shown on a rezoning plan.

Ms. Gillespie stated that it was an outstanding concern in assessing this particular change right now.

Mr. Cilimberg pointed out that this was a rezoning request and the Commission could impose conditions. It would have to either be shown on the application plan or proffered. He stated that was worth understanding as they made their decision. That is one of the reasons why staff has covered this ground. If it is not established in the application plan or by proffer in the zoning action, then it cannot be conditioned.

Ms. Higgins stated that it could be a denial with conditions that if they are met.

Mr. Kamptner stated that they could recommend changes to the plan that would bring it into compliance.

Ms. Gillespie pointed out that there were features on the existing approved plan which do not appear on the proposed plan, such as the Resource Protection Area. For future enforceability of this plan, the application plan becomes the zoning for this property and it is really important to the staff that all of the features that are intended to remain on the plan be shown on the plan prior to it being acted on by the Planning Commission or the Board of Supervisors. Staff analyzed this plan against the Comprehensive Plan. The Comprehensive Plan designates this for Neighborhood Density Residential in the Piney Mountain Community. The proposal generally meets the designation of the Comprehensive Plan. Staff did note that the Comprehensive Plan provides guidance on the issue of expanding existing subdivisions. It clearly states that new development within an existing subdivision shall be in keeping with the character and the density of the existing development. New subdivisions are to be developed at higher density and in keeping with the Neighborhood Model. Staff reviewed the proposal in the spirit of this recommendation from the Comprehensive Plan. Therefore, staff did recommend a wholesale redesign of Briarwood to meet the Neighborhood Model. Staff was comfortable with the applicant continuing with the general form of development that you see out there today. But, staff did recognize opportunities to improve the development and move it closer towards some of the goals in the Neighborhood Model. Therefore, staff did go ahead and analyze the proposal against the Neighborhood Model. Staff noted that the existing phases of Briarwood have curb and gutter and sidewalks on one side of the street. This was done voluntarily by the applicant without proffer. The new plan does not indicate one way or the other of the intention of curb and gutter or sidewalks. Staff recommends that he commit to curb and gutter and sidewalks on both sides of the street in the form of a proffer. The applicant has indicated to staff verbally a willingness to proffer sidewalks on one side of the street, which would be consistent with what is already out there today in the existing phases. They have talked a lot about the interconnections. There are examples where interconnections have been strengthened by the proposal, which include the two cul-de-sacs being alleviated and the connection of phase 8 into Briarwood. They have lost the interconnection between phase 4 and St. Ives Drive, which is of concern to staff. Staff also feels that there is a missed opportunity for an interconnection between Camelot Drive and phase 1A. Regarding the parks and open space, staff has mentioned several times that the Resource Protection Area is not shown on the proposed application plan. It is noted on the approved plan as our passive recreational area to consist of walking and jogging trails. Staff would like to see those clearly delineated on the plan prior to its adoption. They also raised the question of pedestrian access to those areas and they would like to see the applicant provide some more detail on how those areas will be accessed and make a commitment to their access. Briarwood has been developed to date as an affordable housing development. Nearly all of the units in Briarwood have met their criteria for affordable housing. The applicant has willingly proffered that at least 25 units of the new phases will be affordable and will be available to a preferred list of buyers from Albemarle County to make sure that the units go into the hands of those in need of affordable housing and not investors. Staff is very pleased with that aspect of the proposal. Regarding site planning that respects terrain, staff has mentioned some outstanding questions about those upper phases and the need for more information in order to clarify any potential impacts to Natural Resources in that area. In regard to impacts on public facilities and services, staff talked a little about the impacts on transportation.

The addition of four units will probably be nominal over all in terms of impacts on schools or a physical impact on the County. However, there is this reconfiguration within the development that might have transportation impacts and engineering has requested additional information in order to ensure that all of those impacts are fully addressed. Regarding storm water management, staff would also like to get that clarification on those upper phases of development in order to ensure that there are no new impacts on the storm water development prior to moving forward.

Staff has identified the following factors, which are favorable to this rezoning request:

1. The proposal will provide affordable housing within the designated Development Areas.
2. The proposed change in unit types will create a better mixture of unit types within Briarwood, one of the principles of the neighborhood model.
3. The proposed changes to Phase 1A of the Application Plan will create one additional internal interconnection.
4. The applicant has committed, in the form of a proffer, to construct Briarwood Drive to Route 29 prior to commencing with phases 4, 5, 6, thus ensuring the appropriately sequenced construction of a second access to Route 29.

Staff has identified the following factors, which are unfavorable to this request:

1. The proposed application plan was not submitted until after the normal review period had ended. Comments from reviewers have just been received and the applicant has not had a chance yet to respond to those comments and revise his submittal appropriately.
2. An interconnection between Briarwood and Camelot seems to be lost with the proposed changes to Phase 4 on the Application Plan.
3. It is unclear what the proposed orientation of buildings along Camelot Drive in Phase 8 will be.
4. The proposed application plan does not show the existing resource protection area.
5. The proposed application plan does not provide access to the open spaces on the plan.
6. At this time, no commitment has been made to the streetscape of the remaining phases, including a commitment to curb and gutter and sidewalks.

Therefore, staff cannot recommend approval at this time. Unless the applicant requests deferral, the Planning Commission must act on this item tonight or next week. Staff does not see any real purpose to deferring to next week. That would not really give the applicant a chance to respond to these concerns in a reasonable amount of time. Therefore, staff recommends denial of the application plan at this time. However, if the Planning Commission is so inclined staff could support approval of phase 1B. That would necessitate the applicant requesting the approval of just phase 1B. There are really no outstanding issues related to phase 1B. That is an important phase of the interconnectivity of the development. Therefore, staff could support approval of that given that the applicant requested it and the application plan and the proffers were revised prior to the Board hearing.

Ms. Joseph moved to recommend denial of ZMA-2004-0014, Briarwood, based on the items outlined by staff as follows:

1. The proposed application plan was not submitted until after the normal review period ended. Therefore, staff and VDOT have not had adequate time to review changes to the plan, including the proposed access changes to Phase 8 and new internal road configuration on Phases 1A, 5, and 6.
2. An interconnection between Briarwood and Camelot seems to be lost with the proposed changes to Phase 4 on the Application Plan.
3. It is unclear what the proposed orientation of buildings along Camelot Drive in Phase 8 will be.
4. The proposed application plan does not show the existing resource protection area.
5. The proposed application plan does not provide access to the open spaces on the plan.
6. At this time, no commitment has been made to the streetscape of the remaining phases, including a commitment to curb and gutter and sidewalks.

Mr. Edgerton seconded the motion.

Ms. Higgins asked if those were on a list under denial then before the Board meeting those could be addressed.

Mr. Rieley stated that he did not think that they could make a list because they simply don't have staff analysis of the information that relates to things like the interconnectivity.

Ms. Higgins asked if they could separate phase 1B.

Mr. Rieley stated that phase 1B might be able to be separated with the caveat that staff's recommendation for sidewalks on both sides, which was something that they could express their opinion about. He opposed sending the Board a signal that if the applicant does a, b, and c that they think this proposal is okay. They don't have any idea whether it is okay because they don't have the information to go on.

Ms. Joseph stated that the major concern was that this has not been properly reviewed by staff. They have a paid professional staff to give them recommendations. She felt very uncomfortable when they don't get these professional recommendations and then get information on the night of the meeting that they were supposed to process. Going though these items one by one like in a site review meeting made her feel very uncomfortable because she expected to have staff's opinion.

Mr. Rieley stated that there was a lot to commend this proposal. He felt that the addition of townhouses is a positive thing if the configuration is a positive one. But, they don't know whether it is or not at this point. The role that this development has played in the past and will play in the future in meeting the affordable housing needs is really significant. He felt that the fact that the people who live there don't have to pay a homeowner's association fee is terrific and really significant. Therefore, he was very supportive of this in a general way, but wished that they had the information before them so that they could act on it positively. But, the request is full of holes and they rely heavily on the information that they get from the staff. It is very apparent when they don't have it.

Mr. Thomas asked if it would be fair way to treat this application if they deny the request and use staff's checklist to note the deficiencies, but not call them conditions.

Mr. Edgerton asked why they were working so hard to abandon their process. He asked if it was because of the affordable housing or the mix of uses. Mr. Wood has made a very positive pitch about that. He stated that he would welcome a true mixture of units and true affordable housing, but it was a big stretch to say that he was moving towards the Neighborhood Model in other areas as far as transportation. They have a very limited application plan in front of them. Staff has brought up a lot of real issues. He pointed out that there were very significant items missing from this proposal. He stated that he could not see how they could just ignore the process that they require everybody else in the County to follow.

Mr. Rieley stated that the difficulty that he had in sending the proposal along with recommendations is that the checklist would simply be the analysis. What is missing here is being able to make a determination about the pluses and minuses of the connection to St. Ives Drive. Certainly a simple traffic study is not an unreasonable thing to request for this kind of recommendation. He felt that this should just be a denial.

Ms. Joseph stated that she based her motion for denial on the major issues that have not been properly reviewed by staff.

Mr. Rieley agreed with Ms. Joseph.

Ms. Joseph stated that she was not implying that this goes to the Board and if everything that was listed was corrected that it would be okay. The major concern is that this has not been reviewed properly by staff.

Mr. Rieley stated that they don't have the information to make the decision because they have no staff review.

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

Mr. Thomas stated that the motion carried to recommend denial of ZMA-2004-00014, Briarwood, which would be heard by the Board of Supervisors on January 12, 2004. The applicant has the option of going forward to the Board of Supervisors or bringing it back to the Planning Commission.

The Planning Commission took a ten minute break at 8:40 p.m.

The meeting reconvened at 8:50 p.m.

SP 2004-00040 Mount Fair Farm (Sign #73 & 95) - Request for special use permit to permit fill in the floodplain for the purpose of constructing two stream crossings for a second driveway/farm road, in accordance with Section 30.3.05.2.2(3) of the Zoning Ordinance which allows for fill in the floodplain. The property, described as Tax Map 26, Parcel 33, contains 75.3 acres, and is zoned RA (Rural Area) and is located at the northwest corner of the intersections of State Route 810 and State Route 673. The Comprehensive Plan designates this property as Rural Area in Rural Area 1. (Yadira Amarante)

Bill Fritz summarized the staff report. He stated that this was an update from a prior Planning Commission meeting held in October where they deferred action. The request is for a proposed stream crossing and activity within the stream buffer. At the time staff was unable to support the request for four reasons, which are outlined in the cover of the revised staff report. One of the reasons was that the applicant has not provided the County with enough information to analyze the impacts of the public health, safety and general welfare in terms of post construction flood plain levels. There has been discussion about that and it is possible that with some additional information from FEMA that they would be able to verify that there is no increase in the flood levels and that the County Ordinance would be met. There are also other provisions which talk about the disturbance of the buffer, which was appealed as being something that the County had originally determined that it was activity that was not permitted within the Water Resource Protection Area. Upon further evaluation it was determined that it was permitted and covered as an agricultural activity and no appeal was required. Staff is now able to recommend approval of the special use permit with some conditions. Those five conditions are outlined in the staff report. If there are any questions, he would be happy to answer them. Also, Mark Graham is here to answer any questions. (Attachment – Letter dated November 3, 2004 from Calder Loth, Senior Architectural Historian to Mr. Ken Collier) (Attachment – Diagram of Proposed Stream Crossing)

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

Mr. Edgerton stated that condition 1 references a plan dated 11-19-04. He asked if that was the plan that they were currently looking at. He pointed out that the plan that he had was dated 6-17-04.

Mr. Fritz stated that he would find the plan while the Commission meeting moved forward.

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

Ken Collier, with Hughes, Good, O'Leary and Ryan, stated that he was representing the applicants, Mr. and Mrs. John MacFarlane who were not able to come into town for this meeting.

Mr. Thomas asked if there were any questions for the applicant.

Ms. Higgins asked if the applicant had read and agreed with the conditions in the staff report.

Mr. Collins stated that they were in agreement with the five conditions, but might want some clarification on the bonding for the mitigation plan for the stream buffer disturbance in how that might be handled. He pointed out that the answer to the question about the site plan that they have before them was that site plan was not the most up-to-date one. The farm road has been shifted over from the stream to move it outside of the stream buffer.

Mr. Fritz stated that the site plan was also revised to allow more information to be evaluated with calculated floodplains, location of vegetation, trees, fences within the pond and so forth to allow better analysis. He passed around a copy of the revised site plan.

Mr. Thomas invited public comment from anyone who wanted to speak on this application. He noted that there were two persons signed up to speak, which were Ken Collins and Paul Julian.

Paul Julian stated that he was present with Mr. Collins to represent the applicant.

Mr. Thomas asked if there was anyone else in the audience who would like to speak on this application. Since there was none, the request was brought back before the Commission for discussion and possible action.

Mr. Rieley moved to recommend approval of SP-2004-00040, Mount Farm, with the conditions recommended in the staff report.

1. With the exception of all changes that would be required in order to comply with the conditions listed herein, the site shall be developed in general accord with the plans entitled, "Mount Fair; Albemarle County, Virginia; MacFarlane Residence; Whitehall Virginia," dated revised 11/19/04.
2. Approval and bonding of an erosion and sediment control plan.
3. Approval and bonding of a mitigation plan for buffer disturbance.
4. Federal and state agency approval for stream and wetland disturbances.
5. FEMA approval of a map revision (LOMR or LOMA).

Ms. Higgins seconded the motion.

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

Ms. Joseph stated that she would also like to send her apologizes to the applicant for the time that it took them to make the decision for this review.

Mr. Collins thanked Ms. Joseph. He stated that he would pass that message on to the MacFarlanes.

Mr. Thomas stated that the motion carried and would be heard by the Board of Supervisors on January 5, 2005.

ZTA 2004-008 – Flood Hazard Overlay District (FH) – Amend Section 30.3.01, Intent, Section 30.3.02.1, Definitions – Generally, Section 30.3.02.2, Determination of Floodway and Floodway Fringe in the Approximated Flood Plain, Section 30.3.05.1.2, By Right Within the Floodway Fringe, Section 30.3.07, Amendment of the Flood Hazard Overlay District, and delete Section 30.3.06.2, Finding of County Engineer, of Chapter 18, Zoning, of the Albemarle County Code. The boundaries of the Flood Hazard Overlay District are those areas within the County subject to inundation by the waters of the one hundred year flood, based upon maps resulting from a flood insurance study prepared by the Federal Insurance Administration, Federal Emergency Management Agency (FEMA). Recent detailed studies prepared by FEMA have resulted in new maps that will establish revised boundaries of the Flood Hazard Overlay District. This ordinance would amend Section 30.3.01, Intent, to also refer to FEMA; amend Section 30.3.02.1, Definitions -- Generally, to specify that the source for delineating the boundaries of the Flood Hazard Overlay District is the new flood insurance study prepared by FEMA, effective February 4, 2005; amend Section 30.3.02.2, Determination of Floodway and Floodway Fringe in the Approximated

Flood Plain, to provide that the procedure applies only to determine the floodway fringe in the approximated flood plain; amend Section 30.3.07, Amendment of the Flood Hazard Overlay District, to add that the boundaries of the district may be revised, amended or modified upon completion of an authorized fill operation (superseding and being the basis for deleting Section 30.3.06.2, Findings of County Engineer), or where changes are indicated through FEMA's issuance of letters of map amendment or letters of map revision; amend Section 30.3.05.1.2, By Right Within the Floodway Fringe, to allow pedestrian and multi-use paths within County parks and dedicated greenways, and footbridges.

AND

ZMA 2004-00019 Flood Hazard Overlay District (FH) – This proposed amendment to Chapter 18, Zoning, of the Albemarle County Code, would amend the zoning map to change the boundaries of the Flood Hazard Overlay District (FHOD). The FHOD exists for the purpose of providing safety and protection from flooding by restricting certain uses, development and occupancy of lands within the district because they are subject to inundation by the waters of the one hundred year flood. The district's regulations also assure that Albemarle County will continue in the regular program of the National Flood Insurance Program. The boundaries of the FHOD are based upon maps resulting from a flood insurance study prepared by the Federal Insurance Administration, Federal Emergency Management Agency (FEMA) in 1980. Recent detailed studies by FEMA have resulted in the creation of new maps that will establish revised boundaries of the lands subject to inundation by the waters of the one hundred year flood and, correspondingly, the boundaries of the FHOD, affecting approximately 4,120 parcels within Albemarle County. As a result of this proposed amendment to the zoning map, some parcels, or portions thereof, will be placed within the FHOD, some will be removed from the FHOD, some will remain in the FHOD but with the FHOD's boundaries changing, and some will remain in the FHOD but with no boundary change. The general usage within the FHOD includes certain agricultural and recreational uses to public utilities and other public service facilities; various water-related uses such as flood warning aids, water monitoring devices, flood control or environmental restoration measures, dams, docks, bridges, ferries, pump stations; certain retaining walls and revetments; hydroelectric power generation; aircraft land strips; and certain towers and fences. The FHOD also prohibits the establishment of structures designed or intended for human habitation; the storage of various petroleum-based liquids, explosives and other materials; the storage of machinery and vehicles as a primary use; and the stockpiling of debris, logs, junk cars and similar materials. The FHOD does not establish a density range, though it does prohibit establishing structures designed or intended for human habitation. The general usage within floodplains described in the Comprehensive Plan discourages development and inappropriate uses, the stripping of land, and the creation of impervious surfaces within floodplain lands because such development can result in increased danger to life, health and property, increased flood levels, and degradation of water quality and the natural and man-made environment. The Comprehensive Plan does not establish a density range within the FHOD.

Jack Kelsey, County Engineer, stated that the original Albemarle County Flood Insurance Study was adopted in 1980. That study involved the detailed study of some of the streams in the floodplain to determine the elevations. On a lot of the other streams the floodplains were delineated by approximated methods. The study was later updated in 1990 to reflect the levee that was built in Scottsville. But other than that revision there have been no changes in the County's floodplain maps. Due to their age, development activity and the changes that have occurred in the County the maps have been severely outdated. Since September of 2002, the County staff have been working with FEMA and the US Army Corps of Engineers to update our flood insurance rated maps and expand some the detailed study areas so that the 100-year flood elevations could be determined and known so staff could pass that information on to the residents who would call in and ask for floodplain insurance information. Also, staff was able to use that information for our enforcement purposes. The maps were updated by FEMA and on January 27, 2004 FEMA and the US Army Corps of Engineers held a joint meeting with both the County staff and City staff to go over the maps that they had generated. They also discussed their process for finalizing the maps, their public appeal period, their process for adopting the maps, and then what the County and City responsibilities would be as far as incorporating that into the regulations. In order for the County to be able to continue their eligibility in the National Flood Insurance Program the County had to adopt the new maps. As noted in the staff report, there were several significant improvements to the flood insurance maps. The first one was that the report was expanded and updated via the community description and

also the flood history information. The maps reflected all of the letters of map revision and letters of map amendment that FEMA had issued since 1980. The maps were also based on topographic mapping that was provided by the County, the City and the Albemarle County Service Authority. The maps reflected the changes in topography and the development activity since 1980. Another good benefit is that by using these maps the digital mapping layers that FEMA has provided match up exactly with all of their other mapping layers so that they could create various types of maps and be able to overlay that floodplain information to easily compare them. The last item was that the detailed study areas were expanded along the Rivanna River in the North Fork. The new detailed study areas were added through the Crozet Development Area including Lickinghole Creek, Powell Creek, Slab Town Branch, Urban Neighborhood IV, and Cows Branch; and in the Hollymead-Piney Mountain Community including Herring Branch, Flat Branch and the tributary to Flat Branch. All of these areas now have floodplain elevations computed along those streams. One other item is that now they have one set of maps that cover the County, the City and Scottsville. Now staff can pull out one map to review for all three of these areas rather than having three sets of maps to pull and match up. This helps provide a little bit more consistency. FEMA published public notifications of the proposed base flood elevations in the Daily Progress of February and March of 2004 and initiated their 90-day appeal period. The County received notification on August 4 that 90-day appeal period had been completed and that no appeals were received by FEMA during that time. Therefore, the floodplain maps would be considered effective on February 4, 2005. The Flood Hazard Overlay District is defined in our Code as the area inundated by the 100-year flood as delineated on the Flood Insurance Study of the County of Albemarle dated June 16, 1980. Therefore, the adoption of the zoning text amendment to reference the new flood insurance study and a zoning map amendment to adopt the Flood Hazard Overlay District map changes is necessary. Staff's request is that the Planning Commission holds a public hearing and adopts the resolution of intent. Staff is actually recommending approval of the ordinance amendment and the map overlay. Our justification for the request is that the new flood study and map become effective on February 4, 2005 since FEMA has notified the County that prior to those maps and study becoming effective that we are required as a condition of continued eligibility in the National Flood Insurance Program to show evidence that the new maps and study have been adopted. This includes the adoption of the flood maps and study for which the regulations apply. At the November 16 work session with the Planning Commission staff had described the text amendments that would be necessary to ensure continued eligibility in the Flood Insurance Program and to provide clarity for the implementation of the regulations. The Commission concurred with staff on those text amendments, which are contained in Attachment A of the staff report. Staff also presented additional text amendments for consideration. The Commission expressed an opinion that the suggested modifications should be developed through a process of public involvement such as Round Table Discussions and input from the development community or other means used in past amendments. It was noted by Mr. Cilimberg that during the special use permit hearing of Old Mills Trail of the Rivanna Greenway that the Board had instructed staff to pursue a by-right regulation for construction of trails within the Floodway Fringe. The Commission agreed to include the recommended amendment that would have allowed this, and that has also been included in Attachment A of the staff report. To supplement the text amendment the Commission also requested that the County Engineer include the information on the Design Standards for Pedestrian and Multi-Use Trails. These are included as Attachments B, C and D of the staff report. Attachment B essentially summarizes the research that was done on various types of sidewalks, pedestrian and bicycle facilities, and multi-use facilities. It includes what they are, how they are used and the various standards that are used for those, the design criteria and the types of surfaces, and horizontal and vertical alignments and where they apply. Attachment C then takes that into a long, lengthy list of all of the information and tries to boil that down into recommended standards for each of those different types of pedestrian and bicycle facilities. Then the last step was then to look at that table and figure out some description or definition of the various types of facilities so that they know where and how to use them and then pull out the general criteria that was consistent amongst all of them and put that into a Design Manual Section and then condense the matrix down on the design criteria for each type. That is provided in Attachment B. Lastly, staff recommends approval of the ordinance amendment provided as Attachment A and the associated zoning map amendments. Then this request would go forward to the Board of Supervisors for adoption.

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

Mr. Craddock asked if any development rights were obliterated when these new perimeters were put in. In other words is there any development that someone could have had, but now it is not there because the 100-year floodplain moved up.

Mr. Kelsey stated that any place where the floodplain has been increased on the property that the Flood Hazard Overlay regulations will apply to that new area. Any building sites that you may have on a piece of property for any future development that those building sites would have to stay out of the floodplain. The property lines for the subdivision can go into the floodplain, but the building sites themselves have to remain outside.

Mr. Thomas asked if that was totally controlled by FEMA. He stated that in other words, if a piece of property falls within the floodplain that FEMA made that determination.

Mr. Kelsey stated that FEMA and the US Army Corps of Engineers are the ones who determined where the floodplains are. Only FEMA can make a change to the floodplain. The County staff can look at it and make interpretations of it. In the Flood Hazard Overlay they are dealing with the existing nonconforming structures that may need to be restored or modified. But, County staff cannot change the lines on the paper or on the map since only FEMA can do that.

Ms. Higgins stated that she was a little confused with the new language on page 6 at the top of the page under 30.3.05.1.2(3). On the third line it talks about provided that any filling of land has been approved by the County Engineer in accordance with 30.3.06.1(1 – 5). She noted that there was no 30.3.06.1(1-5) because it has been crossed out.

Mr. Kelsey stated that section still remains in the Code.

Ms. Higgins stated that she wanted to understand what those were because they were talking about by-right within the Floodway Fringe and they have a new definition of fringe. The idea about the trail system within the greenway had to do with coming back to the Planning Commission and asking for a fill in the floodplain. But, when she reads this it does not relate back to fill in the floodplain.

Mr. Kelsey stated that Section 30.3.06.1 is the requirement to get a landfill permit. First you would need to get a special use permit from the Board of Supervisors to place fill in the floodplain. Once you get that special use permit, then you would have to get a landfill permit, which means you would be reviewed by the County Engineer for items 1 through 5. What they were trying to do here is essentially say that if you are building a pedestrian path or multi-use trail within a greenway that it could be done by right. Therefore, a special use permit would not be required. They wanted to make sure that any of the engineering review requirements that would normally be done in the special use permit process would still be done. The only difference is that it would not have to come to the Planning Commission and Board of Supervisors for approval of a special use permit.

Ms. Higgins agreed with the premise on allowing it by right and then depending on conditions 1 – 5. But, she still had questions about the process because those items still need to be approved. She suggested that within this process that it should somehow relate to why they were allowing it because it seemed like an endless circle. Then when she went back to the pedestrian trails and multi-use paths that they were allowing by right that they were not referencing any standards in here. Therefore, she was not sure which ones would apply. There are some greenway criteria or standards in here that could be quite substantial. She pointed out that this was a concern that they had before. She asked that he pass around the page that listed conditions 1-5.

Mr. Kelsey passed around a copy of conditions 1-5. He stated that it was a structure that required a building permit if someone was putting in a pedestrian bridge or something of that nature. It would include anything that would have to be done under the *Uniform Building Code*. This would make sure that all of those technical items would still get done.

Ms. Higgins stated that this does not tie it back to the trail criteria, which is attached. The other thing that she was going to ask was that it says that it had been dedicated to the County. She suggested that it say proposed for dedication or dedicated because there were probably instances that would be needed.

Mr. Kamptner stated that there was one change that they have made to clarify that. It is going to read County parks and greenways and owner operated. Right now the County is getting greenways in every form possible and because of the licenses this language is a little more restrictive. It says that the County Parks and greenways that have been dedicated to the County of Albemarle.

Ms. Higgins asked if they were excluding those proposed for dedication.

Mr. Kamptner stated no that it was not going to be limited to the land that has been dedicated because they retain interest in land in a whole host of forms other than mere dedication.

Ms. Higgins asked if there was another version of this.

Mr. Kamptner stated that it was a draft.

Mr. Kelsey stated that Mr. Kamptner has done some reformatting and made some minor corrections since the staff report went out.

Ms. Higgins asked what they were doing the public hearing on.

Ms. Joseph asked when they were going to be able to look at the changes.

Mr. Kamptner stated that substantively that is the only change that is being made. All that he was doing was adding the Board member names for their vote and correcting the way 30.3.02.1.1 ends up in the numbers. In reviewing that he had discovered that this language in 30.3.5.1.2 was a little too restrictive. If someone wants to give the County an easement, this provision is not going to apply.

Ms. Higgins stated that if it was given by easement that it would still be allowed.

Mr. Kamptner stated that right now Dan Mahon is working with parcels that the owners are granting us licenses on, which are not even interests in land.

Ms. Higgins asked if those would be allowed by the new wording.

Mr. Kamptner stated yes, that the new wording would be a pedestrian or multi-use path that is within a County park or greenway and owned or operated by the County.

Ms. Higgins asked if that would then exclude, for example, Old Trail that has a golf course and maybe a greenway section. She asked if they want to exclude when a development continues to maintain a greenway section. She pointed out that she always looks at it from the perspective of the responsibility that the County is taking on.

Mr. Kamptner stated that only if it was owned or operated by the County would it fall under this provision. But, if it has not been dedicated to the County that the homeowner's association would want to continue maintenance and it would fall under the owner category.

Ms. Higgins asked if it was not owned by the County and it was continued to be owned, operated and maintained by the homeowner's association would it apply.

Mr. Kamptner stated that it would not fall under this provision.

Ms. Higgins stated that they would have to come for a special use permit.

Ms. McCulley stated that if it was part of a greenway system wouldn't it be operated or maintained by the County even if it was not owned by the County.

Mr. Kamptner stated that if it was part of the County's greenway system it would be.

Ms. Higgins stated that they were only opening up the exclusion from the special use permit for the County's use and not to someone else who might want to add to the greenway.

Ms. Joseph stated that was correct in the way that this was written.

Mr. Rieley stated that was one of his concerns.

Ms. Higgins stated that it would make someone who might want to develop something and give it to the County later on, but maintain it for some other reason to be required to get a special use permit. She pointed out that if they were opening this up that she just wanted to bring that up.

Mr. Kelsey stated that as far as including a reference for pedestrian trail standards if it would be appropriate to include a reference to the Design Manual in here.

Mr. Kamptner stated yes that it would be fine.

Ms. Higgins stated that her other real problem with this is that she was the one who brought up that this should go through some open forum to decide the criteria, but this is in addition to the Design Manual and it has not even gone to the Design Manual Committee. As the representative for the Design Manual Committee she was concerned that it was not even sent out to the committee members for comment. Potentially, she has some comments, but she did not think that it would come as part of this. She thought that they agreed that it possibly could not go to a Round Table meeting, but she was extremely uncomfortable since she did not even know who the other Design Manual Committee members are. She stated that she was uncomfortable adopting something to go into the Design Manual without the committee being informed. If they could separate that, she would feel more comfortable. Then in the details of it that she would like to understand what the typical sections would be and what they were actually looking at. The information looks consistent, but it is a lot of information to absorb.

Mr. Kamptner stated that when he started looking at the different resources it seemed like it was pretty consistent as far as when you are looking at it with the bike lanes, the width of the multi-use trail and the width of a pedestrian trail. He felt that it was fairly consistent across the board as far as what is being used.

Ms. Higgins stated that her pet thing is that on multi-use trails in the State of Virginia and Virginia Greenways that they don't have horses or equestrian trails. Previously she brought that up with the Crozet Master Plan. She stated that if this was adopted with that being included that in essence by not addressing it that it excludes it. She felt that there were some provisions in some of the greenways in some of the areas, even in the development areas, where they should be incorporated.

Mr. Rieley stated that he had a different concern about 30.3.05.1.2.3, but he would wait until after the public hearing to discuss it.

Mr. Thomas asked if there were any more questions for Mr. Kelsey.

Ms. McCulley stated that she would like to make a point that for tonight's purposes this is the zoning text amendment and the zoning map amendment and that number 3 is a use listing. It is saying that use is allowed by right in the Floodway Fringe. She questioned if they want to encumber too much of the category of use listings, which is a design criteria, because that is not really where it belongs. It is just something to think about.

Mr. Thomas opened the public hearing. Since the County was the applicant in this request that he would invite anyone in the audience who would like to come up and speak. He stated that he would start with the sign up list with the first name, which is Darryl Williams.

Darryl T. Williams stated that the question that he had was as far as houses are concerned. His grandfather lives in the floodplain in Covesville. He is about 50 feet from a small creek that a baby can walk across. In order to get to his house the creek would have to rise at least 35 to 40 feet. His mother lives on the edge of the floodplain, which is about 300 feet from the creek. The creek would have to rise 100 feet to get to her house. What difficulties as far as building laws and stuff like that would affect those two properties?

Mr. Thomas stated that if they are in the floodplain that he would refer that question back to Mr. Kelsey.

Mr. Kelsey stated that if someone had an existing structure that is located within the floodplain that it was considered as an existing nonconforming use. There are provisions in the Code which do allow for some modifications to those structures depending on the value of the modifications, but there may be other modifications concerning the finished floor. They would have to make sure that it is 12 inches above the 100-year flood elevation. The basement itself would have to be flood proof.

Ms. McCulley stated that there are limits to what use you can put in an expansion and how much you can expand in terms of how much value that construction is. You can't exceed 50 percent of the value of the existing house itself and it can't include what is considered habitable space where people would live. But, for example, it could be storage space.

Mr. Williams stated that he was talking mostly about habitable space. He noted that he was not talking about expansion too much, but the direct living space.

Ms. McCulley stated that there would be a limitation to additional actual living space that is within the flood elevation. But, if it were above it like on a second floor or something, then that would not be limited.

Mr. Kelsey stated that it seemed like in both of those cases that it would be very rare that the floodplain would ever reach those particular areas. He stated that in most of the areas of Covesville that for most of those streams that FEMA delineated the floodplain based on the approximate methods. Therefore, they were not exact. A lot of those lines were drawn using the USGS Contour Maps, which are at a 20 foot contour interval. There have been a number of cases throughout the County where they have places that the maps were showing the structure in the floodplain, but it does not make sense because it was 30 or 40 feet above the stream. Those folks would file for a letter of map amendment with FEMA, which generally requires a surveyor to come out to the site and look at it and try to get some physical information so that FEMA can use it to make a better determination. There is a form that can be filled out and sent into FEMA.

Mr. Williams stated that before flood waters would even reach either one of these structures one-half of Charlottesville would be under water.

Mr. Kelsey stated that they have copies of those forms if he needed one. He asked that he provide his address and that he would send the form to him in the mail.

Bill Milan stated that he owned property in Advance Mills near the Swift Run River. According to the letter his property is included within this flood fringe area. He pointed out that he did not have a house on this property, but if he wanted to build on it what problems would he have. The location that he planned to build his house the water would have to rise 35 feet or better to reach it. He stated that his proposed building site goes up a big hill and there was no way in the world that water could get up there.

Mr. Kelsey stated that any of the floodplain regulations and any building restrictions only apply in the area where the floodplain is located. If he had a large 2 to 5 acre tract of land with a stream running along the edge of it and the floodplain comes across his property line that those regulations only apply to that part

of the property in the floodplain. The rest of the parcel has all of the privileges of whatever the zoning is on that parcel.

Mr. Milan asked if this would affect the price of his property if he wanted to sell it.

Mr. Kelsey stated that he was not a marketing person. Therefore, he really did not know the answer to the question. He pointed out that he was not familiar with where Swift Run is located. He pointed out that there are a lot of areas in the County where the streams were in zone A or in approximated floodplains that was determined back in 1980. There are a lot of those streams where absolutely no changes were made with the new maps. Swift Run could very well be one of those where there were no changes.

Mr. Milan asked if there was some way that he could get a map of 1980 and this new map.

Mr. Kelsey stated that he would be happy to look it up for him.

Jeff Wray stated that he had been an Albemarle County resident since 1985. They bought 3 other lots back in 1992 that adjoined their property, which was located at a very unique space in the County right at the intersection of Route 53 and Route 20. He felt that it is kind of a cold slap in the face to get a notice two weeks prior to the hearing and find out that one whole lot is considered in a floodplain. He pointed out that one of his lots was already considered to be in the floodplain. He pointed out that he knew that when he bought the property, which was shown on the 1980 maps. But, now they have another lot that is in the floodplain. He stated that he did not understand why they were just dropped a notice two weeks prior to something that is as important as this that is going to be approved. It must be County interest involved with FEMA or the Corps of Engineers for greenways and other activities. Again, he was opposed to his property being considered more of a part of a floodplain when it was not before. In the 20 years that he has lived here he has never seen water up that far for a 100-year flood. He asked what brought up this study. To look at an advertisement in a newspaper for something that is going to happen to your property is like looking for a needle in a haystack. They should have been sent notification as individual residents of these properties that were going to be affected and not a cold letter like this. He stated that he was opposed to it.

Mr. Thomas stated that Albemarle County did not make the decision. FEMA is the one that does the map. He stated that he was sorry that anyone's property ended up being in a floodplain when it was not before. The alternative would be to file the letter as previously mentioned.

Mr. Kelsey stated that he could file for a letter of map amendment to at least show what part of the property is included.

Mr. Wray stated that when the advertisement that FEMA was done that they were suppose to be on their toes to see a federal government advertising something. He stated that it feels like being back stabbed. Usually citizens like to know what is going on with their property and why it is being surveyed.

Mr. Thomas stated that he wished that they could change it back to the way that it was, but the Commission has no authority to even come close to changing it back.

Ms. Higgins stated that there is one thing that is very positive for the people that are affected by the relevant floodplain on their property. The National Flood Insurance Program is specifically geared so that you can purchase flood insurance for homes. This flood insurance program is not something that is done on a private basis, but is a federal program because no one wants to sell insurance where there is any likelihood for someone getting flooded. For example, this would be for someone who lives at the beach. In essence, protecting this program for someone like yourself who has portions of their property actually affected by the flood elevations is really important for the County to have in place. The only people who actually get flood insurance are people who are affected by the flood zone that they are located in. So this is actually a very positive thing even though it has been taken unkindly. If you have a parcel and depending on which flood zone it is in and if you are able to build on it or any portion of it that you have certain requirements to meet. For example, your mortgage company might say you are in flood zone X

and you have to get flood insurance before we will lend you money. The program that they are trying to protect will allow you to go buy flood insurance at a rate set by the federal government, which is lower than a normal insurance rate. Really they are here to make sure that the program remains in the County. If this is not done, then they could withdraw the program eligibility and that would not allow you to buy flood insurance in this locality. This is really a positive thing for those who are affected.

Mr. Wray stated that last year was a drought and now all of a sudden they have more floodplain. That is something that a simple person like himself could not understand why they even chose to do this. He felt that time had been wasted on this. He stated that he was a builder and he bought the three lots for privacy. He pointed out that now he would need to get a special use permit to build on his property, which was something that they currently don't have to do. He stated that they would not be able to have a fill area within 10,000 feet or even create a flat spot without a special use permit. That has created a lot more red tape. He agreed that there were a lot of pros to the insurance deal, but it is not when it is your property. He stated that it was too short of a notice and should not have been advertised in a newspaper by FEMA, but notices sent so that they could have appealed it.

Mr. Thomas stated that the recourse would be to apply like Mr. Kelsey described. FEMA has already designated this area as floodplain.

Mr. Wray stated that the County has known about this and by law they go through whatever they have to go through. But, still it is just not fair.

Mr. Thomas stated that the County was mandated a certain date to have this done or they would lose their eligibility. He asked if there was anyone else in the audience who would like to speak.

Cliff Fox, County resident, stated that the County does have flexibility in what it allows in the floodplain and the mitigation. He presented a map of Powell Creek that was in the core growth area of Crozet. The purple outline shows the existing floodway and use according to the 1980 FEMA floodplain maps. This is now the floodplain. At least 100 percent was added to that area. He stated that he had planned to allow a greenway in the floodway, which was flat. If they were only going to allow it in the floodway fringe now that seems kind of unusual. He asked that if he did proper mitigation with the Corps of Engineers permitting if the County would look seriously at allowing other uses other than trail systems in a flood fringe. This area is the flood fringe and it was never going to be inundated by FEMA's definition with a foot of water. They have classifications for under 3 feet. Basically, he bought this property because he thought that he had this much area. Roger Ray put the 1980 floodplain map on here. But, now this is what he has. Actually he had 1.5 acres here, but now with the new flood maps that he was down to .35 acres. He stated that he could put a small building here, but if he was creative and does the engineering work that he would hope that when he comes in for a special use permit that the County would consider allowing other uses in that area.

Mr. Thomas asked if the Planning Commission had the right to grant a waiver or is that what he is speaking of.

Ms. McCulley stated that a couple of the regulations related to development in the floodplain that might be helpful to hear is that with a special use permit you can fill and raise the elevation such that whatever it is you are building is out of the floodplain, and then you would need something from FEMA.

Mr. Thomas pointed out that it sounded like the same thing that they had done on Fifth Street.

Mr. Kelsey stated that you would have to get your special use permit first to allow fill in the floodplain and meet those 5 criteria that are listed under the landfill permit section. One of those is that you have to demonstrate that there is no rise in the 100-year floodplain and then meet a number of other criteria. Once that area is raised above the floodplain, then you have all of the uses that are in the underlying zoning of that property. But, because you would be changing the alignment of the FEMA floodplain through there you would also have to file for a map revision with FEMA. The County can approve a special use permit to fill the floodplain and they could raise the elevation and remove the property from

the floodplain, but as far as FEMA is concerned that property is still in the floodplain until FEMA says that it is out. Therefore, you have to file with them to get a map revision. They are the only ones who can change the line on the maps.

Ms. McCulley stated that without changing the line on the map you can't put a septic field or build a brand new house in the floodplain. There are certain uses allowed, such as agricultural uses and structures supportive of that, recreational uses supportive of that, but not habitable structures.

Mr. Fox stated that his property was zoned CO.

Ms. McCulley stated that you could put parking in the floodplain, as an example. She stated that it would allow support use and infrastructure to the commercial use itself, but not the building.

Mr. Thomas stated that would be like what North Garden Fire Company did.

Cliff Fox stated that he was trying to figure out if there is a way to use the site if he does mitigation and uses green infrastructure to protect the site. He stated that he needed to know if the County is going to be willing to flex if he comes in with a reasonable design that adds to that area.

Ms. Higgins stated that he might be mixing two things because Powell Creek also has a 100 foot setback for the Water Protection Areas Ordinance. She thought that he was assuming that the floodplain might be his greatest impact, but actually it would have to be a reduction from the 100 feet because it is a perennial stream. Therefore, he was actually asking a different question than it has to do with the change in the floodplain although it has changed. She suggested that he make an appointment with Mr. Kelsey. She stated that 100 foot is already reserved and getting it reduced down to 50 foot is the question that he is asking.

Mr. Kelsey stated that in this particular case that it goes to the water supply or reservoir. Therefore, it was 100 feet or the floodplain whichever is the greatest.

Ms. Higgins stated that the public hearing that he should have been speaking at was when the Water Protection Ordinance was adopted.

Ron Keeney, of Keeney and Company Architects, stated that he had two points to make about this statement today. He recognized that this was going to happen because this is FEMA, but it is going to have some complications with what the County does and with what the County is considering. He passed out an illustration to make his first point. It is a site that some of the Commissioners may recognize. Unfortunately, he offers it as an illustration because it is really not related to that site if he may. (See Attachment) The drawing in front of you represents Flat Branch on the north side of Airport Road off of Route 29. The tightly hatched area on the lower left corner that is labeled floodplain is the old floodplain line done in 1980. The large hatched area that runs down the center of the site all the way to the right hand side of the sheet represents the new floodplain line. It is an area of approximately 200 percent more than the original area was. The significance of this and his first point is simply about a bureaucratic Catch-22 here. The reason that the floodplain is expanding around Flat Branch is because of pavement and development that has occurred in that area. As some of you who recognize this drawing may know that creek has eroded quite badly due to the excess development that has happened. The irony is that the developer that is trying to develop this property is proposing a lake or a dam and has proffered to control that runoff water as one of his elements of development. Those controls are now going to end up within the floodplain line and it is not going to take considerably more effort to put in controls in order to contain the water and in order to prevent the flooding downstream simply because the line is now being drawn which includes the stream that they are all trying to protect. So his first point is that yes there is a bureaucratic Catch-22 in the timing of some of this. Unfortunately, with FEMA's actions and what you all are going to have to do it is going to existing and they are all going to have to live with it. But, they thought that it would be helpful to illustrate an example of what can happen with this when something is already proposed to take care of some of the flooding. In this case the proposed lake and dam is probably going to control most of the flooding that would have generated this new line from FEMA.

Secondly, regarding the North Point proposal please be advised that because this is now going to be in the floodplain line that they are going to be back in front of the Commission repeatedly for special use permits to have some of this happen within the new floodplain line.

Neil Williamson, of the Free Enterprise Forum, stated that he was concerned that the zoning map amendment contains the uses. They have a lot of talented people in the County such as designers, architects, and park and recreation folks that need to have a weigh in on this. He asked that the Commission remove that from this particular action and perhaps revisit it at another time.

Billy James, resident of Sugar Hollow, asked if everything shown in the dark area is the new floodplain area.

Mr. Kelsey stated that everything in blue was in the 100-year floodplain.

Mr. James asked what the dark area on the map meant.

Mr. Kelsey stated that the dark colored parcels were the parcels that have floodplain on them. The light colored parcels are parcels that do not have floodplain on them.

Mr. James asked if in the dark colored areas you would have problems building a home on it.

Mr. Kelsey stated that the regulations only apply to the portion of the floodplain. It does not apply to the rest of the parcel.

Mr. James stated that he lives at Sugar Hollow and was the fourth generation that has lived there. He stated that he has lived on this property for 49 years, which is on the Mormons. This is probably the most flood prone area in the County. He pointed out that his great grandfather was the first caretaker there when the first dam was built in 1920. His grandfather worked there 42 years as the caretaker and he was there 10 years. He stated that he lives there now just below the dam. He stated that he really has a hard time with FEMA or anybody else trying to say that this is a flood prone area. Part of this area that they have out has never been touched by a flood. The largest flood that they have had was in 1985 and he was there and stuck in there for two weeks. But, this area that they have him on was not touched by the flood and has not been for 100 years. It just does not seem fair for our property to be taken. Every two years when the tax assessors come up the majority of the taxpayers have to meet with the tax assessor over what they say our property is worth. Now after 20 years of owning this property, now you are telling me I cannot build on it. After I have spent countless hours with tax assessors telling me that it is worth a whole lot more, what is it worth now? What good is insurance if you can't build on it? Why would you want insurance on a piece of property that you can't build on?

Ms. Higgins suggested that she had one observation to make because the public notice that has already gone out to the affected parties that they actually separated this intent, but there are other requirements that are potentially going to be included in the pipe later on that will definitely affect the use outside of the flood fringe/floodplain area. Therefore, may be all of the people that are here tonight should be more sensitive and maybe check back with County engineering from time to time because there have actually been proposals about buildings outside of the floodplain. She stated that would help them feel like it is not a surprise in the future.

Mr. Thomas asked if there was anyone else who would like to speak. He suggested that if anyone has any questions about their property being in the floodplain that they should call Jack Kelsey to get additional information. There being none, he closed the public hearing to bring the matter back

Mr. Rieley asked to go back to the issue of 30.3.05.1.2, item 3. He stated that he had been concerned about this since the first time they had this issue before us. This is a specific request that they got from the Board of Supervisors, but it seems that this is generated for a desire for convenience to not have to come before the Commission and the Board for special use permits for the construction of the greenway and to essentially have this determination made in house. He agreed that it would be more convenient,

but it would also be more convenient if Mr. Wray or Mr. Williams or Mr. Fox did not have to come before us for a special use permit. He objected just as a matter of principle to making it easier for the County to do their projects than it is for anybody else to do their projects. Therefore, he just felt that it was bad policy. He felt that the thing that this leaves out is and the thing that the special use permit brings into play is public scrutiny. He felt that there could very easily be situations in which a component of the greenway is objectionable to someone who is downstream or somebody who is affected by a trail. He suggested that they omit number 3 altogether in their considerations. Also, he felt that some really good points were made about the notification. There were questions asked here tonight and that there should have been venue to ask those questions short of a public hearing, but he was not sure what that is. The question about this process was raised. He felt that this process should not be taking people by surprise. He felt that Mr. Wray was right about being expected to see an ad in the newspaper if you happen to own property that is in the floodway. If they could send out notices for a public hearing to revise the zoning text amendment, that it seems that they ought to be able to send out notices to the same people to notify them that this is under way and give them a chance while the process is under way to be a part of it and to raise their concerns or objections then. Regrettably, as our Chairman has pointed out, that they are not in the business of redrawing these boundary lines. There is a process that can go through to do that. He felt that it was important that they act on this without number 3. He hoped that the County could be as helpful as possible for people who think that they have land that should not be within the floodplain. This puts the entire burden on the citizen of hiring a surveyor and making the argument themselves if the lines are drawn incorrectly. It seems that if there are reasonable expectations that the line is in the wrong place that the County should be as helpful as possible in fixing that.

Ms. Joseph agreed with what Mr. Rieley said and she did not feel comfortable with number 3. It does have a lot to do with the fact that it is County projects. Also, she was not comfortable with some of the information in the Design Standards. Last time they were very concerned about the pathways themselves and what they might look like. She hoped that when they get to that point that the Design Manual is not as confusing as this because she had a hard time wading through the information. She asked that number 3 be removed.

Ms. Higgins agreed with the removal of number 3, although she did agree that there were instances that it would be a fairly routine thing. She felt that they have not had enough experience with greenway development to decide this. She supported making the process less intense and relieving staff burden. Therefore, she has mixed emotions about that. She felt that Jack Kelsey did a really good job in compiling a lot of information, which contained a lot of valuable information. But, she felt that it needs to go to the Design Manual Committee to be reviewed for their input especially since it seems to be finalized by allowing it. She suggested that they exclude certain items in some of the higher class trails if they were to allow it by right. If it was primitive that she would not have a problem. But, some of these involve bridges and significant fills. The other part of this is that when you do trails and there is a substantial expense involved and they are located in such a way that they are going to wash out then the County's investment is at risk. The other part of it is that when you are talking about paved pedestrian pathways or multi-use trails that are 5 to 10 feet and they can be asphalt, then there are concerns about the velocity of the water as it gets up on that trail. She felt that it was not a big deal, but she was uncomfortable doing it this way. They may end up at the same point, but not this quickly. On page 5 under the new item 3 they have a new definition called approximated floodplain, but referring to some of the existing ordinance they have a floodplain. She asked if there was a difference between what they called an approximated floodplain and a floodplain. Under the landfill permits for floodplain alterations there is no place where she sees anything about an approximated floodplain. She questioned if that should be clarified.

Mr. Kelsey stated that there is a section that deals specifically with out the approximately floodplains are treated.

Ms. Higgins suggested that there be a definition for floodplain.

Mr. Kelsey stated that was called floodplain fringe. FEMA defines the floodplain as the floodplain fringe.

Ms. Higgins suggested that the language be clarified for those determinations. She stated that in our ordinance she has always had to come to this section and figure out which flood zone it refers to by definition. She stated that if there was no such thing as just flat floodplain, then she was okay with it. If they could put in parenthesis FEMA reference flood zone C where it is approximate that it would be helpful for anyone reading the map to know exactly which area it was in.

Mr. Kelsey stated that he would look to make sure that there is consistency between definitions and the references between the FEMA regulations and our Code. That is what they are should be doing. They should be providing that bridge. If there are discrepancies found, he would make those corrections.

Mr. Cilimberg stated that if the Commission has made their points, that they could rely on the County Attorney's office to work out the details and get that done.

Action on ZTA-2004-008 Flood Hazard Overlay (FH) –
Ms. Higgins moved to recommend approval of ZTA-2004-008, Flood Hazard Overlay District, with the deletion of Section 30.3.05.1.2(3). She recommended approval of everything else with the condition that some clarification be made before it goes to the Board between the definition of approximated floodplain and floodplain.

Mr. Rieley seconded the motion.

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

Ms. Higgins asked that the trail work that Mr. Kelsey has done so carefully and well be forwarded to the Design Committee for development.

Mr. Thomas stated that the motion carried and would be heard by the Board of Supervisors on January 5, 2005.

Action on ZMA-2004-00019 Flood Hazard Overlay (FH) –

Ms. Higgins moved to recommend approval of ZMA-2004-00019, Flood Hazard Overlay District, for the adoption of the FEMA flood maps as described in the staff report to be effective on February 4, 2005.

Mr. Rieley seconded the motion.

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

Mr. Thomas stated that the motion carried and ZMA-2004-00019 would be heard by the Board of Supervisors on January 5, 2005.

***Regular Items**:*

SUB 2004-00321 Old Ballard Farm Subdivision: Request for final plat approval (prior to preliminary) to create a 19 lot development on private roads. The total acreage of the subdivision is 46.5 acres (43.864 acres in lots and 2.636 acres in roads). The property is zoned RA, Rural Areas and is described as Tax Map 42, Parcels 70B1, 70C & 70D; Tax Map 43, Parcels 16C & 16D; and Tax Map 59, Parcels 1, 1A & 1C. The property is located in the Samuel Miller Magisterial District on the northeast corner of the Old Ballard Road (State Route 677) and Owensville Road (State Route 676) intersection. The Comprehensive Plan designates this property for Rural Area uses in Rural Areas 1 and 3. (Yadira Amarante)

Bill Fritz stated that this was a final plat prior to a preliminary to create an 18 lot subdivision. There are 8 existing parcels and it is an 18 lot subdivision. This is a by-right division and all of the lots are proposed to access proposed internal public roads. This is the type of plat that is typically approved administratively. However, review has been requested by an adjacent property owner. That request is

before the Commission. It has been reviewed by the site review committee and found to comply with the provisions of the ordinance. Staff recommends approval of it. The four issues identified by the abutting property owner are:

- The possible impacts to the groundwater supply.
- The possible existence of a cemetery. Staff has included some language to try to address that issue.
- The possible traffic impacts. This has been reviewed by VDOT and they are able to support the request.
- The timeliness of notification. There are two issues. One is that the date that the notices were sent out and how it relates to the site review meeting. It appears that the letter did go out a day or so late, but it was still within the legal timeline. The abutting property owner obviously did have the opportunity to be aware of the request for review of this application.
- The fact that building was occurring on the property. As stated, there are eight existing parcels and by our ordinance you can get a building permit on those parcels even if it is subject to a special use permit or a subdivision like this. It is not unusual to obtain a building permit on an existing parcel and you try to locate that building contemplating where the proposed property is going to be. That is what appears to have happened in this case. That explains some of the construction.

Staff recommends approval of the subdivision subject to the conditions listed in the staff report.

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

Mr. Rieley asked about condition 4 concerning the grave yard.

Mr. Fritz stated that our ordinance and the State Code require that if a cemetery is known that it be identified and shown on the plat. This condition is trying to raise the level of awareness that the surveyor is unable to identify the location of the graveyard, but it may exist. If they are unable to find the cemetery staff is encouraging them to put a note on the plat. The burden is on the surveyor to find the location of a graveyard.

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

Steve Driver, engineer for the project, stated that he was representing the application. Also, present is Tom Lincoln who is the surveyor. First, he would like to briefly address the letter that was sent in by Mr. May. The subdivision proposes 18 lots, and it was not 19. The number 15 was just omitted in the numbering of the lots. They worked with County staff and engineering about 9 months ago so that they would all be on the same page. In regards with the development, it is in keeping with the surrounding community. The lots proposed are 2 acres. That is what is characteristic in this area. Regarding traffic, there have been no issues presented by the County or VDOT. Eighteen lots will not produce a lot of traffic. They are proposing an exclusive right turn lane at VDOT's request, which includes right-of-way dedication. In regards to the house that Mr. May was referring to that was being built on one of the 8 existing parcels, that particular lot is not part of this subdivision. Other than that he would have Mr. Lincoln speak, and he would ask for their favorable consideration.

Tom Lincoln stated that there were three houses being built. One was being built on the corner by Mr. Gaffney. The two other houses were being built by McMillan Pace and Gaffney Homes. Those two lots are not part of this subdivision and were platted back in the 1980's. He stated that they would look for a cemetery and if they found any evidence that it would be shown on the plat. He stated that he was reluctant to put a blanket note on the plat that would claim that there may be a cemetery because anybody who has ever had title insurance would understand the burden on the title insurance company if there was some vague reference to a possible cemetery. There is nothing in the chain of title that they have observed that indicates that there is a cemetery. He stated that he was open to suggestions by the Commission on how to address that. He pointed out that if a graveyard was discovered after the plat had been put to record that they would have to make all the statutory actions needed to preserve that cemetery or relocate it as the law allows.

Mr. Thomas asked if anyone else was present to speak regarding this request. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and possible action.

Mr. Rieley moved to approve SUB-04-321, Old Ballard Farm Final (Prior to Preliminary) Subdivision Plat with one modification to staff's five recommended conditions by placing a period after must be shown in condition 4.

The Department of Community Development shall not sign the final subdivision plat until final approval for the following conditions has been obtained. The final subdivision plat shall not be signed until the following conditions have been met:

1. Submittal and approval of the following information:
    a. A storm water management/BMP plan, computations, and maintenance agreement;
    b. All drainage easements must be shown on the final plat,
    c. An erosion and sediment control plan, narrative and computations; and,
    d. Road plans and computations.
2. Virginia Department of Transportation approval for road plans in accordance with the requirements for acceptance into the state system.
3. All improvements must be built or bonded.
4. If a graveyard is found on the property its location must be shown.
5. Health Department approvals of all drain field locations.

Ms Higgins seconded the motion.

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

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.

Ms. McCulley stated that she had an item of new business, which was a resolution of intent to amend the zoning ordinance as it relates to the definition of a gas transmission line.

Mr. Thomas stated that they would take a minute to read through the proposal. He asked if there was a motion.

Resolution of Intent to Amend the Zoning Ordinance as it relates to the Definition of a Gas Transmission Lines

Mr. Rieley made a motion to adopt the Resolution of Intent to amend the Zoning Ordinance as it relates to the definition of a Gas Transmission Line as submitted by staff.

RESOLUTION OF INTENT

WHEREAS, the regulations in the Zoning Ordinance allow "lines for distribution of local service" as a matter of right and "transmission lines" by special use permit in the several zoning districts;

WHEREAS, the term "transmission line, gas or oil" is defined in Section 3.1 to mean "a pipeline that conveys gas or oil for the primary purpose of supplying gas or oil to a system, rather than distributing gas or oil to customers," and gives specific examples of lines determined to be transmission lines as defined;

WHEREAS, this definition, adopted April 19, 2000, was consistent with the longstanding and consistent meaning given to the term by the Albemarle County Zoning Administrator;

WHEREAS, it is desired to amend the definition, provide additional descriptions, and provide additional examples of existing or proposed lines that are transmission lines as defined.

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 3.1, Definitions, and other related sections of the Zoning Ordinance to achieve the purposes described herein; 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.

* * * * *

Ms Higgins seconded the motion.

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

Mr. Thomas stated that the motion carried to adopt the resolution of intent for transmission lines.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 10:30 p.m. to the December 14 meeting.

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V. Wayne Cilimberg, Secretary

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