Albemarle County Planning Commission
January 04, 2005

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, January 04, 2005 at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Rodney Thomas, Bill Edgerton, Calvin Morris, Jo Higgins, Marcia Joseph and Pete Craddock. Absent was David J. Neuman, FAIA, Architect for University of Virginia.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Frances MacCall, Senior Planner; Yadira Amarante, Senior Planner; Glenn Brooks, Senior Engineer; Bill Fritz, Chief of Current Development; and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

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

Election of Officers: Chairman and Vice-Chairman:

Mr. Cilimberg opened up for nominations for the election of Chairman of the Planning Commission for the upcoming year.

Mr. Craddock nominated Mr. Edgerton to be Chairman of the Planning Commission for the upcoming year.

Mr. Morris seconded the nomination.

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

Mr. Cilimberg turned the meeting over to Mr. Edgerton, the new Chairman.

Mr. Edgerton asked for nominations for Vice-Chairman of the Planning Commission for the upcoming year.

Mr. Morris nominated Ms. Joseph to be Vice-Chair of the Planning Commission for the upcoming year.

Mr. Craddock seconded the motion.

The motion carried by a vote of (6:0). (Joseph – Abstain)

Set Meeting Time, Day, and Location for 2005:

Mr. Rieley moved that the Planning Commission's meeting time; day and location for 2005 remain the same for every Tuesday of the month at 6:00 p.m., in meeting room #241, County Office Building.

Mr. Morris seconded the motion.

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

Adoption of Rules of Procedure:

Mr. Morris made a motion to adopt the Rules of Procedure for the Planning Commission.

Mr. Rieley seconded the motion.

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

Other Matters Not Listed on the Agenda from the Public:

Mr. Edgerton invited comment from the public on other matters not listed on the agenda. There being none, he stated that the meeting would move on to the review of the consent agenda.

Consent Agenda:

a) **Approval of Planning Commission Minutes** – August 31, 2004.

b) **ZTA 2004-00010 Amendment to Fines for Zoning Civil Penalties**: Resolution of Intent to amend Section 18.37.2 of the Zoning Ordinance to bring Albemarle County zoning civil penalty fines in line with the recently revised State Code Fines. (Louise Wyatt)

c) **SDP 2004-076 Poplar Glenn Final (prior to preliminary) Site Plan - Critical Slopes Waiver:** Request for approval of a critical slopes waiver which will allow the approval of a final site plan for a 27,694 square foot townhouse community with 26 dwelling units on 6.65 acres. (Yadira Amarante) – (Tax Map 60, Parcels 31, 32, 33, and 34)

d) **SDP 2004-00098 Hilton Garden Inn @ Peter Jefferson Place:** Critical Slopes Waiver request. (Stephen Waller) – (Tax Map 78, Parcels 20B and 31)

Mr. Edgerton asked if any Commissioner would like to pull any of the items from the consent agenda.

Ms. Joseph asked to pull SDP-2004-076 Poplar Glenn Final Site Plan – Critical Slopes Waiver from the consent agenda. She asked that the approval of the minutes for August 31, 2004 be deferred to the next meeting since they were not listed on the tentative agenda.

Mr. Rieley asked that they be granted a one-week delay on the submission of comments for the minutes in the packet.

Ms. Higgins made a motion that items a) and d) be approved on the consent agenda as submitted.

Mr. Morris seconded the motion.

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

Mr. Edgerton stated that the consent agenda items a) ZTA-2004-00010 Amendment to Fines for Zoning Civil Penalties and d) SDP-2004-00098 Hilton Garden Inn @ Peter Jefferson Place passed. He stated that they would begin with staff providing the staff report on SDP-2004-076, Poplar Glenn Final Site Plan.

Ms. Amarante summarized the staff report for SDP-2004-076, Poplar Glenn Final Site Plan. This is a request for a critical slopes waiver to accompany the Poplar Glenn final site plan, which is a development of 26 dwelling units or townhomes off of Ivy Road. Staff did not do an analysis of the critical slopes waiver because this time around it was included in the rezoning application that went before the Planning Commission. The Commission recommended denial of the rezoning. The rezoning application went forward to the Board of Supervisors. The Board approved the rezoning, but sent the critical slopes waiver request back to the Planning Commission. Staff is not sure why the Board did not act on the critical slopes waiver at that time. In order to get the final site plan approved the applicant must go through this critical slopes waiver request. Basically staff took the language directly out of the staff report for the rezoning and put it in this request. Staff did not do any more analysis. Staff figured out that before the final site plan could be approved that there needs to be a modification of the private road standards as it relates to site plans. Engineering staff has reviewed the request for those modifications and has recommended approval of the modifications of the private road standards. Staff is not asking for approval of a private road at this time because it is just a modification of those standards as they appear in the Subdivision Ordinance.

Ms. Higgins asked if it was a private road.

Ms. Amarante stated that it was the standard for a private road. Technically it was not a private road because private roads can only be approved through the subdivision process and the applicant is not asking for a subdivision at this time.

Mr. Edgerton asked if the Board addressed either of these issues in their discussion during their review of this project.

Mr. Kamptner pointed out that the property was rezoned to Planned Residential Development (PRD). Therefore, the review falls under the PRD regulations. He stated that upon the approval of the application plan**,** the critical slopes waiver was also approved.

Ms. Amarante stated that what she read in the minutes was that the Board sent back the critical slopes waiver request to the Planning Commission.

Mr. Kamptner stated that the applicant had requested the critical slopes waiver as part of the rezoning, which was part of the application plan. Under Section 8.2, any waiver or modification to a regulation applicable to a Planned Development shall be reviewed and considered as part of the application plan.

Ms. Amarante stated that possibly it was because the Board did not take specific action at that time on the critical slopes waiver. Therefore, staff thought that it needed to come back. She pointed out that the critical slopes waiver was not addressed at that time.

Mr. Kamptner stated that under the operation of the rules of the Ordinance**,** when the Board of Supervisors approved the application plan it showed critical slopes being disturbed.

Ms. Amarante stated that was absolutely correct.

Mr. Kamptner stated that the Board's approval of the application plan had the effect of approving the waiver at that time. Therefore, he did not think that the critical slopes waiver was now in front of the Planning Commission.

Mr. Edgerton asked if that included the reduction in road standards waiver.

Ms. Amarante asked if the reduction in road standards waiver request would also fall under that section of the Ordinance.

Mr. Kamptner asked if that was a waiver under Section 4, 5 or 32.

Ms. Amarante stated that it was a waiver under Section 14. She stated that the only thing that it says in the standards in Section 32 is that the private road standards shall be applied to site plans. Therefore, it was a waiver of Section 32.

Mr. Kamptner asked if this was included as part of the application plan as well.

Ms. Amarante stated that she was not sure.

Ms. Higgins stated that it was an existing alignment of a road and was currently at this grade now. As she understood it they were not changing the grade of the existing road. She suggested that the Commission ask Glenn Brooks to provide an explanation. She stated that it is an existing road, but it is not consistent with the rolling terrain standards. It appears that they are just talking about a deviation for a short segment of that road to match what exists.

Ms. Joseph stated that it was very important to know whether it was shown on the application plan.

Ms. Higgins asked if the Planning Commission has to act on the request.

Mr. Kamptner stated that if it was shown on the application plan, then it should be deemed to be approved by operation of Section 8.6. If it was not identified anywhere in the process, then it raises a little bit of concern. But, he assumed that staff looked at it and evaluated it.

Ms. Amarante stated that the reductions were not identified as specific waivers during the time of the rezoning, but the road was shown on the application plan.

Mr. Kamptner asked if the road was recommended for approval.

Ms. Amarante stated that the application plan was recommended for approval.

Mr. Kamptner advised the Commission to go ahead and consider the request because the applicant did not specifically request that the provisions of Section 32.0 be waived. Section 8.2 states that the applicant needed to request the waiver of a particular provision. He stated that it may be a formality, but he felt that the Commission should go ahead and act on that part of the request.

Ms. Joseph stated that in the staff report it says that there will be a site plan to look at.

Ms. Amarante stated that she did not have a copy of that because Glenn Brooks is waiting for a revised plan reflecting what is in the applicant's letter. Therefore, the plan will have to match what is in the letter.

Ms. Joseph stated that this was a little difficult because staff's recommendation of approval is that the construction of the road shall be in accord with the display presented to the Planning Commission on 1/4/05 initialed GEB and it does not exist. Therefore, she did not know what action the Commission could take if they don't have a plan to review.

Mr. Rieley stated that he had the same concern as Ms. Joseph. Also, he was concerned about approving the request without having the supporting information for a reduction in the rolling to mountainous terrain standards. He stated that he was not concerned with this kind of density when talking about the horizontal alignment. But, he was very concerned about having a 16 percent vertical gradient for this kind of density. To put that into some perspective, he pointed out that across the street where High Street comes down the hill that they have to put saw horses at the top and the bottom of that hill when it snows, which is 14 percent. He pointed out that this request was for 16 percent. By not having a plan to review, he did not know if the plan was actually 16 percent because they don't know what is on the plan. He stated that without the supporting information that he could not make that determination.

Ms. Amarante stated that the Commission does have a copy of the site plan or the application plan that went before the Board. She pointed out that she was just informed that the only thing that has changed in that road is an entrance.

Mr. Rieley pointed out that the Planning Commission did not vote in favor of this request previously.

Ms. Amarante acknowledged that the Commission denied the rezoning request, but noted that she did not get the impression from the minutes that there were any conditions.

Mr. Rieley stated that there were concerns raised at the previous meeting.

Ms. Higgins pointed out that the way she read this was that they were talking about a short 20 foot section of a road that could go as steep as 16 percent. She asked if the applicant or Mr. Brooks could point out the 20 foot section on the plan where this would be occurring. She stated that from the applicant's letter, she understood that this is an existing road.

Mr. Rieley pointed out that the existing road was not serving all of these town houses. He felt that it was irrelevant whether there was a road out there now that is 16 percent because the request has to be evaluated within the context of what the level and type of traffic is that it is going to serve.

Ms. Higgins asked if Glenn Brooks could come forward and explain if he had any concerns.

Ms. Amarante stated that she would post the plan on the board.

Glenn Brooks, Senior Engineer, pointed out that the applicant's representative was present. He stated that the first plan is the existing sketch and the next one is the proposed plan. There is a driveway, as seen on the existing plan, which does follow the same general alignment and grade. When they did the rezoning the proposal was to follow the existing driveway and grade with a private road, which was approved by the Board. He stated that the Zoning Ordinance requires that it meet a rolling terrain standard, which is a ten percent grade with slightly larger curves. The applicant could not quite do that and follow the existing driveway because the existing driveway is about 16 percent.

Mr. Rieley asked why the applicant had to follow the existing driveway. He stated that this was a huge multi-million dollar project and they were talking about having to be driven by the existing driveway. He felt that did not make any sense at all.

Mr. Brooks stated that staff took the approach that this was an oversight when it went to the Board and it was approved in concept this way. He pointed out that was why staff put this item on the consent agenda because they want to correct the oversight so that the applicant can actually build it as it is shown on the application plan.

Mr. Rieley stated that his difficulty with this is that he felt that there was a principle or a recurring theme here that they have been talking about. The first would be if they are relaxing a reasonable standard so that the property can be developed at a higher density than it might otherwise be. When the Commission reviewed this request one of the reasons that they recommended denial was that they thought that it was putting too much pressure on this steep use of land. One of the ramifications of that is the roads have to be steeper than they would otherwise. Therefore, he did not think that this is just a routine housekeeping matter because he believed that there are implications for this that are important.

Mr. Brooks stated that the applicant can barely meet this layout for the rolling terrain standard. But, the implication is that the existing house located on the bottom of the plan and the two driveways which serve it will be severely affected because the road gets lower than this. He pointed that this plan had about 100 feet of 16 percent grade, but the actual plan was very similar and only had 20 feet of 16 percent grade.

Ms. Amarante pointed out that the Commission had the plan in their packet that the Board reviewed.

Mr. Brooks pointed out that building C's entrance has moved slightly to the left.

Ms. Higgins asked if the Commission should ask the applicant if they want to defer in order to submit the requested information.

Mr. Edgerton stated that it would be appropriate for the applicant to address the Commission.

Mark Keller asked to refocus the Commission's attention on the fact that they were asking for a waiver in accordance with Section 14.2.3.3.d of the Subdivision Ordinance. The word oversight was brought up earlier in the discussion. He stated that he did not want the Commission to think that it was an oversight on Glenn Brook's part. As stated in the letter, they knew that the mountainous terrain standards could be applied when private roads were involved. But, they have no choice but to do a private road because the older road, which the Commission was looking at on their site plan, attaches to Stillfried Lane, which was a private road. A public road can not be put beyond the private road that they have to connect to. Their oversight was not appreciating the ability to be able to by right apply mountainous terrain standards to a private road design, which was limited to single-family detached homes. It was Mr. Brooks, after appreciating their situation and knowing that they had gone so far down the pike with these plans, who pointed out after consultation with others that Section 14.2.3.3.d was the avenue through which they would come to the Commission tonight for some sort of consideration on this matter. He pointed out that once you depart Stillfried Lane and go along Boulder Road that it is a driveway. It is platted as a road and has its own right-of-way. It serves three lots, one of which currently has a dwelling on it. This plat goes way back to the 1940's and Boulder Road was created at that time. It was only built as one would describe as a driveway. It was paved, but much of it has deteriorated. But, the first stretch of the road is there. The right-of-way is only 30 feet wide at the very beginning of the first stretch of it after you depart

Stillfried Lane. They have adjacent properties on both sides and would prefer to limit the impact on those properties. In terms of grading, they don't have a problem with the width of the road. That is not an issue here at all. But, they would like to be able to respond to the existing topography on the site much in the same way that the current road does. He stated that the 30 foot right-of-way exists after you go down and hit that first intersection and turn and go up where the 16 percent section is located. That right-of-way abuts the property that is immediately on the other side of the road, which is owned by the University of Virginia and includes all of the Kluge property. Therefore, they were compelled to try to keep that roadway and the right-of-way right adjacent to that property not just because it is platted there, but because that parcel also has a commercial venture on it. There are two driveways from that commercial venture that enter onto the roadway of that steeper section or the middle section of the road. It is important to the applicant that they impact their property as little as possible and that the improvements that they do can be accomplished in a very short period of time because it may cause interruption in the service to that site. Their goal was to try to have their road at those two points, as well as the back property corner, meet the existing grades as much as possible. The road width itself is nearly the entire width of the right-of-way through that area. From a technical standpoint they thought it was very prudent to try to keep it at the current grades. He stated that the reason the Commission does not have a plan showing that is because they are here asking for permission to do it. They have already drawn the plans up and are ready to submit them, but Mr. Brooks is not compelled to review plans that he does not have permission to review and approve. He felt that was why Mr. Brooks was directing them to the Commission at this point before they submit plans that are designed to mountainous terrain standards. What the Commission has before them tonight is the older plans. In the older plans the roads were designed much like a site plan in that it was fitting the terrain, but it really did not respect all of the vertical curvature that a private road really should. He pointed out that they have been able to apply broader curves and better landing areas. If the Commission asked Mr. Brooks he would say that they have done everything that they can do to meet the quality standards that he is looking for. But, in order to accept, review and approve their plans, Mr. Brooks needs some indication from the Commission that applying this standard in this particular situation would be an acceptable thing.

Mr. Edgerton asked if the applicant would consider asking for a deferral so that they could see a plan before they are asked to approve it. He stated that he did not know how long that would take, but he had made a good point that Mr. Brooks is very uncomfortable approving something that he has not been given any authority to approve. He pointed out that he was very uncomfortable approving anything that he could not even see since it was very hard to know what he would actually be approving. As Mr. Rieley has pointed out, the Commission did vote 6:0, with one member missing, to deny this plat when it came to them last May. After reviewing those minutes this afternoon, he stated that quite frankly he did not see any reason why the Commission, as a group, would be inclined to change their opinion from the information that they have. He stated that he was expecting to see a plat at the meeting tonight. But, obviously they have not seen it. He asked if the applicant would be willing to request a deferral until they get the requested information.

Mark Keller stated that the applicant would absolutely be agreeable to request a deferral. He asked that the Commission recommend what that period of time should be because their decision on that period of time may be a reflection of how soon they can turn that plan in to Mr. Brooks. He felt that there were two submittals that Mr. Brooks reviews in this situation, which would be the overall site plan and a set of road plans. That latter set of drawings is something that they could finish up in the next several days and present to Mr. Brooks for his review.

Mr. Thomas stated that it was something that the applicant has to do anyway.

Mr. Keller stated that it was something that they have done already. He pointed out that they wanted to make sure that they could do it and that it would not make a great impact on the site plan before they came before the Commission. Therefore, they would be comfortable that it works.

Mr. Edgerton asked Mr. Cilimberg when they would be able to put this back on the schedule.

Mr. Cilimberg stated that staff could put this item back on the agenda at a week's notice. Therefore, staff would just work with the applicant on the current development and determine when they can have the analysis to put it back on the agenda provided that it is not an agenda that is overflowing.

Mr. Rieley asked if staff was comfortable with an indefinite deferral with the caveat that the applicant was going to work with staff. He stated that staff would work to get it back to the Commission as soon as they could.

Mr. Keller stated that the applicant would be more comfortable to say that they were going to do it as timely as they possibly can instead of the word indefinite.

Mr. Rieley stated that was not one of their options.

Mr. Cilimberg pointed out that this was a site plan, which was not like a special use permit or a rezoning. Therefore, if there was not a legislative act involved and the applicant is willing to provide additional information that it was really just a matter of getting it rescheduled with the Commission.

Mr. Keller stated that the best that the Commission could do is what they will accept.

Mr. Rieley asked if they needed a motion.

Mr. Cilimberg stated that a motion was not needed because the request would be considered not decided tonight and would be coming back to the Commission.

In summary, it was the consensus of the Planning Commission to accept the applicant's request for deferral of SDP-2004-076, Poplar Glenn Final (prior to preliminary) Site Plan due to lack of information. The applicant will submit additional information on the overall site plan and road plans, which will be reviewed and commented on by the Engineering staff prior to being placed back on the agenda. Upon receipt of this information, staff will reschedule review of this project in a timely manner.

Regular Items:

SUB 2004-00332 Briery Creek Village: Request for preliminary plat approval to create a Rural Preservation Development with 20 lots on 141.64 acres. The property is zoned RA, Rural Area. The property, described as Tax Map 124 Parcels 14, 16A, and 17 is located in the Scottsville Magisterial District on Albevanna Spring Road (Route 622) approximately .25 miles from the intersection of Albevanna Spring Road and Ridge Spring Road. The Comprehensive Plan designates this property as Rural Area. (Francis MacCall)

Mr. MacCall summarized the staff report. The request is for preliminary plat approval to create a 20 lot Rural Preservation Development (19 lots averaging 4.5 acres and 1 preservation tract of 49.95 acres. The total acreage of the subdivision is 141.64 acres. The property is zoned RA, Rural Areas. The properties, described as Tax Map 124 Parcels 14, 16A, and 17 are in the Scottsville Magisterial District on Albevanna Spring Road [Route # 622] approximately .25 miles from the intersection of Albevanna Spring Road and Ridge Spring Road. The Comprehensive Plan designates this property for Rural Area uses in Rural Area IV, (See Attachments A & B).

Staff has reviewed this request for compliance with the Zoning and Subdivision Ordinances and does recommend approval of the preliminary plat and the waiver that is included in the report.

Staff has received a petition from adjacent and neighboring residents outlining their concerns regarding this project and it is included as Attachment F. If there are any questions, staff will be happy to answer them.

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

Roger Ray, land surveyor and land planner, stated that his firm prepared this plat. This property has the option of being developed in three different fashions, which was posted on the board. Option one is a by right rural division that would be administratively approved without Planning Commission review. That would be a yield of 14 lots out of this tract of land that lies in Albemarle County. Part of the property lies

in Fluvanna County, and they were just going to let it remain there. Option one outlines the lots in the brown color. The blue color is State Route 622 that separates their property from the neighbors to the west side of Route 622. Most of the lots created would be 5 to 21 acres. They had started working on applying option number one and had completed about 60 percent of the survey work to complete that. They had met with County staff to make sure they were going in the right direction to do that. Then they had a purchaser that came along that preferred not to do the division like option number one, which was called stripping the land by using the road frontage to create the lots with the existing road frontage and not building any infrastructure. That would not give a subdivision much identity for itself. The new purchaser wanted to do a much superior subdivision for a much superior use of the land. Through discussions and meetings with the County planners he encouraged those folks to look at the rural preservation subdivision, which is shown as option number 3. Option number 2 is only to demonstrate that through a by-right division under the standard subdivision, without asking any special permission, they could build a public road with a yield of 26 lots. Theoretically on this tract of land they could do 28 lots. But, in reality they could only demonstrate that they could do 26 lots by option number 2. He pointed out that they think that is not the best use of this land. They feel that option number 3 is by far the best use of the land. There are three ways to get conservation easements on properties. One is through the County's program of purchasing these easements out of our general fund, which is our taxpayer's money. The County has done some of that over the past several years. The way that is going the County is not going to get much land into this program by purchasing development rights. The other way you get it in is through the federal program where people can sell these development rights for tax credits. That money comes out of our tax funds. It is extremely expensive to get land into conservation easements. Most of those easements are geared towards the more affluent people because they are the ones who can use the tax credits. Then they have the County Ordinance that allows us to set aside conservation easements or easements on property through rural preservation subdivision. He stated that he was a great advocate of trying to encourage people to do that. They can get land set aside with permanent easements that will not come out of federal, state or local funds to be able to do so. In this particular case, option number 3 allows us to only do 20 lots out of a possible 26 lots that they could do in option 2 by-right. The ordinance limits us to 20 lots, which has something to do with a change in the State Code last summer. Again, they are asking for the approval of option number 3, which means they are giving up 6 potential lots that they could do. But, they believe that this plan is by far superior to that In addition, this land lies in the southern part of the County where they don't have the stream buffer like they do in most of the County where the water runs into the drinking impoundments. But, they are voluntarily creating a 75 foot stream buffer along these two streams that they were willing to do on a voluntary basis, which meets the same criteria that the stream buffer does in the rest of the County. That is just to protect those streams and to be as friendly to the environment as they could possibly be. Again, the green section depicts the preservation lot, which is roughly 50 acres. It lies almost exactly across the street from most of the neighbors. Those neighbors have signed a petition opposed to this subdivision. He hoped that he could convince the neighbors and the Commission that they prefer to do option number 3. But, if they are not allowed to do option 3, then they will use option number 1 for administrative approval of that plat. The land owner is present if there are any questions.

Mr. Edgerton asked if any Commissioner had any questions for the applicant.

Ms. Joseph stated that there were two parcels in Fluvanna County. She asked if these parcels are legally attached parcels or do they straddle the border between Albemarle County and Fluvanna County.

Mr. Ray stated that the parcels straddle the border between Albemarle and Fluvanna County. Those parcels are being taxed in Fluvanna County and they are going to leave both parcels intact just like they are. But, they are going to provide a right-of-way out of their cul-de-sac down into the properties in Fluvanna. They plan to access that through a private right-of-way to the properties in Fluvanna. They would like to let those parcels exist like they are.

Ms. Joseph asked if he had done any discussion with Fluvanna County about accessing in that area.

Mr. Ray stated that personally he had not done that. Since this plan sits in both Albemarle County and Fluvanna County he thought that they would have to have Fluvanna County also review the plat. But, they were not subdividing or changing any use on the land in Fluvanna County, but they were providing

good access to that property. Therefore, they believed that was going to be a plus rather than to be of any concern.

Ms. Joseph stated that apparently there are six more development or division rights floating around. She asked if he had been asked to designate which lots will take these development rights.

Mr. Ray stated that it was a little bit stronger than that. He pointed out that they have been instructed that they have to assign the floating development rights. The last time he was before the Commission he had given them his view about that. They have been instructed that there are items that exist that they need to assign to some of these lots that would be greater than 4 acres. Again, your ordinance limits us to only doing 20 lots. The rural preservation lot is one and then they have got 19 regular lots. He stated that he felt that those division rights should go up here in this holding pattern. But, they agree that they will assign them.

Mr. Edgerton asked if he had already assigned the division rights.

Mr. Ray stated that he had not assigned the division rights yet, but would do so on the final plat.

Ms. Higgins stated that she had a question about the access to the parcels in Fluvanna County. She stated that these were public roads and then what they were going to do was to put a driveway in basically so that the parcels would not be landlocked.

Mr. Ray stated that was correct.

Ms. Higgins asked by what he was doing if that would allow him to extend the public road.

Mr. Ray stated that the person who was purchasing this land from the property owner has expressed that he does not want this subdivision road to continue into Fluvanna County. Therefore, they have kind of off set that in to the cul-de-sac to prevent that public road from being extended into Fluvanna County. He stated that he was not sure if the Commission was familiar with the new Fluvanna County Ordinance, but their ordinance is extremely restricted in having a cluster division. Again, they have no plans or desires to do that. If someone purchased both of those lots at the end of the cul-de-sac, maybe it would be possible to extend this public road into Fluvanna County, but that was not the plan of the folks that he was working for. Therefore, he really did not see the benefit of it.

Ms. Higgins asked where the access was for those parcels now.

Mr. Ray stated that those parcels were just a part of this tract of land and there is no access. He stated that he was only subdividing the land that lies in Albemarle County. He stated that what lies in Fluvanna County is part of two parcels of land today. They are leaving those boundary lines that are in Fluvanna County intact without any changes, and they are only providing access to that property.

Mr. Craddock stated that Mr. Ray always talks about his three choices. He stated that he always likes to bring up again that it was a shame that if someone was willing to give up development rights that there is no mechanism to take those.

Mr. Edgerton agreed with Mr. Craddock. He asked if there were any further questions for Mr. Ray. There being none, he invited comment from other members of the public regarding this application.

Jackie Aikins stated that she was the property owner directly across from the farm house that is listed as part of the property that will not be developed because of its historical nature. She stated that Debbie Camp and she were instrumental in doing the petition to oppose this lot. There were several reasons why they opposed this request. The most important reason was their water supply. There have been several incidents over the past several years where wells have gone dry in their area. They have had people who live on their road within a half of a mile of this proposed development who have had to put in new wells at an expense of over $15,000. For the people who were able to manage to save their wells through extreme conservation methods such as having to take their laundry into town, importing drinking water, not being able to wash their cars, or to water their grass or crops the drought had a severe hardship on

them. The water supply in this area is not going to support this kind of a development. She asked what is going to happen when everybody's well runs dry on this road. She asked who was going to pick up the bill for that. The water is just not there. The creeks that they are talking about in the summer are completely dry. In 1980, when she built her house the well was 75 feet deep and had 50 feet of water in it. It has diminished down to about 20 feet of water. Even with the large amount of rainfall the water table is still not up to speed and the water table is not going to support this many houses. That is their primary concern. The second concern is about the property values in their area. In the calendar year 2003 her property value went up 50 percent with no development on the Albemarle County side of the road. When she appealed it and requested information about why there was such a large increase in one year she was told that there was a lot of development going on along that road with all of it being in Fluvanna County. There have not been any houses built in Albemarle County that should have impacted their property taxes. The people who live along this development on the opposite side of the road for the most part are elderly people, people on disability, people who have been in these houses ever since they were built and people who cannot afford another raise in the property taxes. This development will force several of those people out of their homes. She stated that she had lived in her house for 25 years. She pointed out that property was beautiful farm land and that this development would ruin all of that.

Eric Christenson stated that as Ms. Aikins has mentioned, they had people drilling new wells during the drought in this area. That is a concern because when the next drought comes around they will have to do exactly the same thing, which was very expensive. The staff report indicates that there will be no new development in Fluvanna County. If the applicant does option 3, which would be preferable if the land in Fluvanna County remained undeveloped, then he would like to see a legally enforceable agreement on the part the applicant had verbally agreed to. He stated that he was concerned about the process because he was only given a three-day notice and there was a lot of new information that he had not seen before tonight. He felt that the tract as a whole should be considered together by both Fluvanna and Albemarle County.

Donald Morse stated that he had been a real estate broker for the past 33 years with his primary major in land sales. Shortly after he came to Albemarle County the rural preservation development came into being and he thought it was the most sensible well thought out plan for development that he had ever seen before. Essentially, it is environmentally sensitive by allowing the lay of the land to dictate where homes should be located. It also helps preserve the areas that are environmentally sensitive. More importantly, it creates a community rather than having development like slices of bread going down a road. He stated that option 3 would promote more of a sense of community within the development. He stated that he represented the current owner. The current owner's rights cannot be denied because they were inherent in the land. The current owner is all in favor of doing it the most environmentally sensible way. The proposed purchaser and developer are well thought of in Fluvanna County for the quality of his homes and the way he treats his customers. He stated that if this development is approved that the developer would create a wonderful community. From the standpoint of VDOT and highway entrances, option 3 takes it from 13 entrances, 2 of which exists, to only 1 additional entrance that is a collector road. That is something that should be taken into consideration. This property has been beautifully planned out by Roger Ray and his associates, and he knew in the long run that the owners that are opposing it are going to eventually realize that this is the most sensitive way to develop this land. He pointed out that one of the three options was going to happen.

Jeff Werner, representative of Piedmont Environmental Council, stated that there were some comments raised that he needs to shine some light on. Since 1972 PEC has worked with landowners and other organizations, such as the Virginia Outdoors Foundation, Nature Conservancy and others, to protect under voluntary conservation easements on almost 190,000 acres in the Piedmont. This is an area larger than the Shenandoah National Park. Of these protected acres almost 43,000 acres are located in Albemarle County. He stated that he was not the conservation officer for PEC. He stated that Rex Lindale was the conservation officer for PEC and he felt that there is a need to get him here to talk with the Planning Commission and Mr. Ray. With all due respect, some of the comments that Mr. Ray made are just simply inaccurate. He stated that he could not discuss the specifics entirely. But, first of all conservation easements are not the only tool available for the wealthy. Some people take advantage of those tax credits, but for altruistic reasons they could put their land under conservation easement. He stated that he could assure the Commission that if there was a landowner out there with 140 acres in Albemarle that wanted to put their land under conservation easement that the PEC would turn over every

stone to find a way to help them do that. Therefore, the barriers that are alluded to because of wealth are false. The ACE Program is available and someone can sell their tax credits in the State of Virginia if you don't have the ability to take them off of your own taxes. He stated that if this landowner had wanted to put this land under easement that PEC would have worked with them. Mr. Ray talks about the great cost of conservation easements. He stated that the public does benefit from these conservation easements. The City of New York realized that they could save millions of dollars on their water treatment by purchasing conservation easements on thousands of acres in the Adirondacks. Therefore, there is a public benefit involved here. For this request it was the classic if you don't let us do X, then we are going to do Y. But the cluster regulations are clear when they say prime, local and important resources are to be protected. In this case they are setting aside 35 percent of the site and claiming that they are protecting this site by creating this wonderful community. He felt that this proposal was ridiculous because it was not an environmental conscious or agricultural conscious proposal.

Jane Gatewood, a property owner on Albevanna Spring Road, stated that originally she was not going to speak because of the lack of lead time to be able to research the questions that she would like to pose. She stated that the original recommendation for the rural preservation site was to be placed on the south end rather than the north end of that property on Albevanna Spring Road because of the soils. She pointed out that of those two sections that are basically on the opposite sides of the existing house in the center that the southern end is the less aesthetically pleasing from the road. The northern end has quite a bit of rolling hills and vegetation that leads down to a pond, which was a very attractive site as it is. She stated that she would rather see building going on in the area where it was not going to ruin anything. She asked if there was any way to revisit that. She asked if there was any way if this development was approved to place some type of covenants on the lots to protect the surrounding landowners from inappropriate development and behavior. She asked that concern to be looked at. She stated that she did not understand how a particular layout of a subdivision was going to make it more of a community than another one.

Mr. Edgerton asked if there was anyone else that wanted to speak. There being no further public comment, he invited Mr. Ray to present his rebuttal.

Mr. Ray stated that what was before the Commission tonight was not the choosing of option 1, 2 or 3. What is before them tonight is the applicant's request to approve option 3. Option 1 and 2 were only shown to demonstrate other ways that this property can be developed. They are not here threatening that they are going to develop the land some other way. But, they were assuring the Commission that they were 60 percent in to doing option 1, but wanted to do option 3. Therefore, they were not asking the Commission to choose option 1, 2 or 3. He reiterated that they were asking to get option 3 approved tonight. The Commission would certainly not be lowering any bar by approving option 3. Option 3 should be the by right way to develop land in Albemarle County. Therefore, they could get conservation easements on land that are voluntarily placed on there by their program of rural preservation subdivision rather than paying any fee to anyone to get those easements.

Ms. Higgins requested to ask a question of Mr. Ray. Actually one of the things that make option 3 possible is that waiver of 14.5.05.b for lot 1, the preservation tract. She asked that he explain to the Commission where that is located.

Mr. Ray stated that their rules were written such that there would have been no homes there to be served by the existing driveways that are there. There is an existing driveway that goes on to the home site on the rural preservation tract and there is an existing driveway that goes on to the home site for lot 1. They are asking for a waiver in requiring those to have access off of this internal road, which will require a long driveway to serve those two existing houses. The existing houses are already served by existing driveways that have been there for many years serving the property. He pointed out that is what the waiver is for.

Ms. Joseph stated that in option 1 there were 14 lots, option 2 there was 26 lots and option 3 there was 26 lots.

Mr. Ray stated that was correct.

Mr. Craddock stated that regarding the flipping of the preservation tract, the staff report talked about making that to the north as opposed to the south. He asked Mr. Ray to address that issue.

Mr. Ray stated that initially when they first approached the planning staff that Mr. Clark reviewed the soils and suggested that they flip the preservation tract to put the preservation lot in the northerly part and the development lots in the southerly part. He stated that he had done a plan to see if he could get a yield of 19 good lots that provided good building sites by doing that, but he was unable to do that. Therefore, they did not try to go any further with that plan. Again, they feel that this plan is by far superior by putting the development lots up the road from most of the home sites that were across the road. It also puts the rural preservation tract, which would remain an open farm, across the road from the good neighbors that are here tonight that are concerned about this development. It was for those reasons as well as the fact that he could not locate a good configuration of a road and compact lots that had desirable sites by switching the development.

There being no further questions, Mr. Edgerton closed the public hearing to bring the matter back before the Commission. He pointed out that he had one question for Mr. MacCall. On page 3, staff mentions that the dwelling located on tax map 124, parcel 14 was expected to be impacted greatly. He asked Mr. MacCall to elaborate on that.

Mr. MacCall stated that those comments, which were included in item F, starts on page 2 and were the comments from their Historic Preservation Planner. He stated that those comments were provided to the Commission so they would be able to evaluate that particular item F as far as the particular nature of the historic structure being located on the development lot as opposed to in the rural preservation tract. He stated that it was on lot 1.

Mr. Edgerton stated that it was the lot located in the northwest corner, and Mr. MacCall stated that was correct.

Mr. Rieley stated that the issue of groundwater has been raised in this area. He asked Mr. Kamptner to explain where the Groundwater regulations stood and how it would relate to this proposal.

Mr. Kamptner stated that the Groundwater Ordinance was adopted by the Board on December 8 and would become effective on February 8. It would require that, as a condition of the building permit issuance, the applicant would have to drill a well. The subdivision plat would be subject to a Tier III assessment, which would require an evaluation of the terrain. Staff will work with the applicant to have a design that is acceptable. This particular project will be grandfathered from the Tier III assessment. But, the requirement that attaches to the building permit will be required.

Mr. Fritz stated that there was no way that the final would be signed by February 8 so have the building permits issued. Therefore, for the building permits they will have to have drilled the wells and provide the well installation and assessment report prior to the issuance of the building permits on the various part of the property.

Mr. Kamptner stated that the one thing that is not connected to the ordinance is the general concept of water rights, which are attached to the land and are not taken on a first come, first serve basis. Every landowner is entitled, generally, to a reasonable use of the groundwater that exists. The fact that lot A has a house that has been there since 1980 does not give them any pre-eminent rights over lot B because they are each entitled to a reasonable use of the groundwater.

Mr. Rieley stated that he wanted to make sure everybody had a chance to hear that because it does relate to their questions.

Ms. Joseph stated that there were two issues that need to be clarified before she could take action on this. One is to find out where those extra development rights are going on this property. The other is to find out from Fluvanna County whether or not they can live with access to these sites as demonstrated on this plat.

Mr. Edgerton asked regarding the first question if she would like to invite the applicant to come back up

and make a declaration of that or would the applicant be prepared to do that.

Ms. Joseph questioned whether that designation should be done at this meeting. Not having had the time to make an analysis of that made her uncomfortable. Right now she was looking at 5 or 6 acre lots and they were asking them to create 6 more lots on this site.

Mr. Fritz stated that the all of the remaining development rights could be put on the preservation tract, which would prevent them from being further utilized by the existence of the easement held by the Recreational Facilities Authority and the Board of Supervisors. It could be placed on there, but not utilized because the easement prohibits further division of the property.

Ms. Higgins stated that they could move development rights back and forth if they are off of the parent parcel.

Mr. Fritz stated that if they made it as a condition of the approval, then it would have to come back before the Planning Commission to move those development rights away from the preservation tract because it would be an amendment of the plat. Also, they would have to amend the plat for further action to use any of the development rights. He pointed out that locating them does not allow their usage.

Mr. Kamptner stated that the other thing that is going to limit the use of those additional development rights is the current transition period. The County's regulations allow only a maximum of 20 lots within an RPD. Those additional 6 development rights won't be able to be used until the new cluster RPD regulations are adopted.

Mr. Thomas asked if the 6 development rights could be used in Fluvanna County.

Mr. Kamptner stated that everything that they were considering tonight really focuses only on what is in Albemarle County. The extent of the Planning Commission's authority is what is in Albemarle County. The things that they have to satisfy to be eligible for a Rural Preservation Development would have to be within Albemarle County.

Ms. Joseph stated that, however, they are creating two landlocked parcels in Fluvanna County as a result of this subdivision. She felt that they really need to talk with Fluvanna County to make sure that whatever regulations that they have would not be messed up with their action.

Mr. Kamptner stated that he was not saying that they could not get information from Fluvanna County, but when they take their action it needs to be based upon what is in Albemarle County.

Mr. Thomas questioned whether the access road that the applicant is offering to designate from the cul-de-sac would unlock the land.

Mr. Fritz stated that there was an access easement that serves the Fluvanna parcels.

Ms. Joseph stated that it made her uncomfortable because they were creating an easement in Fluvanna County and she did not think they had the authority to do that.

Mr. Higgins asked if a plat that involves both Albemarle and Fluvanna County have to be signed by them.

Mr. Fritz stated that the final plat must be signed by both Albemarle County and Fluvanna County.

Ms. Joseph stated that may be true, but noted that no communication has taken place up to this point with Fluvanna County. She felt that they were being presumptuous.

Mr. Edgerton stated that he was concerned about the proposed easement from the cul-de-sac into the Fluvanna property from a different perspective. VDOT will be approving these public roads based on the anticipated 18 lots that will be accessing this. If the land that is accessed through that easement is developed at a far greater density, then he was concerned that Albemarle County might be setting us up for a disaster down the road if there is some intense development at some future date on the Fluvanna

parcel. Then the only way in or out would be across the public roads that they would be approving with this plat. They could be creating a future problem that needs to be addressed.

Ms. Higgins stated that this is not a unique case. There are some roads, just like the County's access to some of the City properties, where VDOT has to evaluate the traffic as per the design. If the design is upgraded to meet the standard for the traffic proposed, then they would approve it. There are places in Albemarle County that the standards for the roads have to change if you access part of the City. There is also at the Greene and Albemarle County line some actual roads in Greene that access Albemarle County property and VDOT reviews the roads and requires them to be upgraded based on the number of lots. To VDOT it is all about whether it is designed appropriately. If it is, then they approve it. But, if it is not then they make them upgrade it. She stated that she was optimistic that this plat sounds somewhat restrictive by doing this by a private driveway easement. The alternative to that would be to run a road dedicated to public use right to that property line, which they would be requiring if it was Albemarle County land.

Mr. Edgerton stated that he did not feel that it was a private driveway because it actually says a 50 foot right-of-way.

Mr. Craddock stated that it said a 50 foot access easement.

Mr. Rieley stated that this request should come back to the Commission in a form that has these two issues worked out. He asked that the assignment of the development rights be addressed. He stated that there was no reason why Fluvanna County should not look at this and allow the Commission the benefit of any concerns that they might have. That would provide the Commission with more information.

Mr. Edgerton supported the applicant coming back before the Commission with additional information on the development rights and comments and feedback from Fluvanna County.

Ms. Higgins asked the applicant to come back and address the Commission's request.

Stew Gesner, owner of Southern Homebuilders and Rivanna Land & Development, stated that he was the contract purchaser of what they were proposing before the Commission. He stated that he was a little confused about what kind of information the Commission wanted him to get from Fluvanna County other than having them sign off on the plat. He stated that the land that he was proposing to build on was located in Albemarle County. There is going to be some kind of granted access easement, but no development going on in Fluvanna County. He pointed out that he was not the landowner or contract purchaser of the land located in Fluvanna County.

Mr. Edgerton asked if he was only purchasing the Albemarle County land.

Mr. Gesner stated that was correct. He stated that he was not the contract purchaser of any property attached to this development in Fluvanna County. Even under the new cluster development regulations in Fluvanna County he would need more than a 50 foot easement. He stated that he would need County road access to bring in a major entrance to a cluster development as it is. He pointed out that he would not be able to access it through another community the way that the ordinance in Fluvanna County stands now. The most important part is that he does not even own that land.

Ms. Joseph stated that if there is no easement there that they were land locking parcels in Fluvanna County, which is not a good neighborly thing to do. She stated that her expectations were that at least the Planning Department of Fluvanna County was aware of what was happening to this land so that they would know what is going on. It is not good policy to land lock property. What the applicant has shown is an easement on the property within Fluvanna County, which is not something that the Commission can approve. It is something that the applicant needs Fluvanna County to approve. In essence, if Fluvanna County does not approve the plat that they would be land locking the lower parcel. That just needs to be clarified.

Mr. Gesner asked if other than notifying Fluvanna County to sign off on the plat what other information would the Commission want him to give Fluvanna County.

Ms. Joseph stated that Fluvanna County needs to see what the applicant was proposing regarding the access easement. She pointed out that it was a very difficult process to go through when a parcel gets land locked, and she did not want to see it happening again.

Mr. Rieley suggested that staff communicate with Fluvanna County on this issue.

Ms. Joseph pointed out that she had spoken to Stephen Biel at Fluvanna County and he had not received a copy of the plat.

Mr. Edgerton stated that the Commission needs a request from the applicant for a deferral.

Mr. Ray asked that the Commission look at item 5 of staff's recommendation for approval. Staff recommends that by the time that the final plat is signed that they assign the development rights to lots that are greater than 4 acres on the final plat. He stated that they have been guided by staff's discretion all along and they hate to get here tonight and not get a favorable vote or be penalized because they have worked very closely with the staff. Again, the assignment of those development rights should go into the holding pattern that he had previously described. If the only two issues of concern is the assignment of development rights to these lots that qualify and letting Fluvanna County look at this plat, they will ask for a 2-week deferral to be able to accomplish those items and be back in 2 weeks for a favorable vote.

Mr. Edgerton stated that they needed to have some dialogue between their staff and Fluvanna's staff to make sure that they are fully aware of what is being proposed, and then the Commission would like some feedback on that.

Mr. Ray stated that they were not land locking land. Land locking land is the act of dividing land and providing no access. They are actually providing access to the parcels that are in Fluvanna County that have no access today. Therefore, they are providing access by this plat to land that has no access today if they were treated as independent parcels in Fluvanna County.

Ms. Higgins moved to accept the applicant's request for a two week deferral to allow him time to come back with two pieces of information as defined in their conversation.

1. Comments and feedback from Fluvanna County regarding this proposal.
2. Information regarding the assignment of the development rights needs to be submitted by the applicant.

Mr. Morris seconded the motion.

Mr. Craddock stated that he would prefer that the additional development rights be placed on the preservation tract.

The motion carried with a vote of (6:1). (Thomas – No)

Mr. Edgerton stated that SDP-2004-00332, Briery Creek Village, was deferred for two weeks. In summary, the individual Commissioners need to communicate to staff their feelings about the placement of the additional development rights. He supported those additional rights to be placed on the preservation tract as suggested by Mr. Craddock.

Mr. Thomas stated that he did not understand the Fluvanna request because the applicant is putting the easement right to the line. He pointed out that he did not know what else the applicant would be required to do.

Mr. Rieley suggested that if that scheme did not work for some reason that it was very important to get those development rights away from the road.

The Planning Commission requested staff to set up a future work session on the assignment of development rights.

SUB 2004-00333 Echols Subdivision: Request for preliminary plat approval to create 27 lots accessed by public roads. The site, described as Tax Map 44, Parcels 33G, 33G1, 33G2, 33G3, 33G4, 33G5, 33G6, 33G7 contains 100.84 acres zoned RA, Rural Areas. This site is located in the Jack Jouett Magisterial District on Still House Road (Route 1020) approximately 1,700 feet south of its intersection with Ivy Farm Drive (Route 1015). The Comprehensive Plan designates this property for Rural Area uses in Rural Area I. (Yadira Amarante)

Mr. Edgerton stated that before the staff report was given that he needed to read a transactional disclosure statement regarding the conflict of interests act. He stated that he was an adjacent property owner and that he declared that he was a member of a group of three or more persons who own real property in proximity to the real property that is the subject of the transaction and he was able to participate in this transaction fairly, objectively, and in the public interest. (Attachment – State and Local Government Conflict of Interest Act Transactional Disclosure Statement dated 1/4/2005 submitted by Mr. Edgerton)

Ms. Amarante summarized the staff report. This is a request for a preliminary plat approval to create 27 residential lots on proposed public roads. The total acreage of the subdivision is on 101 acres, which exists as 8 existing parcels with a combined by right potential of 29 lots. That would be 28 development right lots on lots of less than 21 acres and one-21 acre lot. The property is located in the Jack Jouett Magisterial District off of Stillhouse Road and Fox Run Way. The proposed 27 lots would have access on an extension of Fox Run Way and a new road that would come from Stillhouse Road. These roads would be built to public road standards and maintained by VDOT. The lots are to have a direct access onto the existing public roads and all lots would access the proposed new internal roads. This is a by right development with access on public roads. The request is usually reviewed and approved administratively, but an abutting property owner has called it up to the Planning Commission for review. She stated that the concerns of the adjacent property owners had been outlined in the staff report. Basically the Site Review Committee has reviewed this plat and finds that it is compliance with the provisions of the Zoning and the Subdivision Ordinances and recommends approval of the preliminary plat with the conditions as shown in the staff report. If the Commission has any questions, she would be happy to answer them.

Mr. Edgerton asked if any Commissioner had any questions for Ms. Amarante.

Mr. Rieley asked what the criteria were for allowing odd shaped lots. He felt that the ordinance language certainly allows for interpretation.

Ms. Amarante stated that was absolutely correct. She stated that it was her understanding that the language came about in an attempt to prevent pipe stems. She stated that she did not know how one could define a peculiarly long or odd elongation. But, staff has interpreted this that there would not be a pipe stem going out to the road specifically to gain your frontage onto an existing public road. Staff also has to make the detriment call on whether or not they are doing it just to have the minimum two acre lot as required by the Zoning Ordinance. Therefore, it is tough to interpret it since it only applies to two subdivisions. So you could actually have an odd shaped lot for family divisions and rural divisions. This particular section of the ordinance only applies to subdivisions.

Mr. Fritz stated that one other thing to look at is the extensive areas of an individual lot that may not meet the minimum lot width. That is one of the key things that staff looks at first in determining if it meets that definition. The minimum lot width in this area for these lots is 150 feet. Some of the lots at certain points do have less than 150 feet side by side, but that is not uncommon. But, staff looks to see if it is extensive. That is just one of the places that staff starts at. Staff also looks at the reasonable location of the building site. They are absolutely correct that it is a difficult provision.

Ms. Joseph asked if the plat was created on December 9, 1980.

Ms. Amarante stated that she was correct that the plat was created very close to the December 10, 1980 magic date. She stated that the County did not review that plat because it was one of those plats that was exempted by those old ordinances. Therefore, she did not put that in the staff report as a history item because they never reviewed it since it was an exempt plat.

Mr. Rieley stated that he noticed that a number of the building areas almost abut property lines and go way over the building setback line. He asked if that was typical.

Ms. Amarante stated that yes that was typical.

Mr. Rieley asked if the reason for that is that while the building could not be placed in that area that you could put the septic system within that area.

Ms. Joseph stated that the definition of building site includes that 30,000 square foot area.

Ms. Amarante stated that the setbacks are a regulatory restriction whereas the building site restrictions were actually physically properties of the land where you can't build.

Ms. Higgins stated that the 30,000 square foot area was just a reasonable area established where you could put a drain field, a reserve, a well and a building. She stated that they could have other areas since they were not restricted to build within it.

Mr. Fritz stated that the reason that they have always allowed the setbacks to be included was because the definition of building site actually was specific about the things that could not be included. It does not actually say outside of the setbacks.

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

Matt Swartz stated that he was present to represent the applicant. They feel that they have thought through and were very thorough in the design of the subdivision. They have worked with and addressed the concerns of the neighbors and have satisfied all aspects of the ordinance. He stated that he was here to answer any questions that they might have.

Mr. Edgerton asked if there were any questions for the applicant. There being none, he invited public comment from any one else who would like to address the application. He asked that Richard Carter come forward to address the Commission, who was the first person on the sign up sheet.

Richard Carter stated that he represented a number of the homeowners in Ivy Farms. Ivy Farms is the adjoining subdivision to the Echols Subdivision. They feel that this is a subdivision plat that should be scrutinized very carefully. They have a number of concerns, and he was going to speak to two of them. The first one is the odd shapes of the lots. What makes the odd shapes of the lots is the odd shape of the property. If you look at the boundary lines you can see how that is an odd shape. Maybe these lots don't meet the definition of double frontage because some of them are long and skinny, but some of them are double frontage lots. He asked what is wrong with narrow lots. Narrow lots mean that the houses that are built on them are close together. They are closer together than when you have a wide lot. In Ivy Farms having long and skinny lots and houses close together is out of character with the neighborhood. Some of the lots have four sides and some have five, six, seven and eight sides. There is one lot that looks like Idaho in reverse. These lots are all odd shaped. He pointed out that they have tried to squeeze as many lots as they can into the property that they have. Again, an odd shaped boundary and trying to squeeze this number of lots into it are going to give you odd shaped lots. It is out of character with Ivy Farms and the neighborhood. What should they have done? They should have reduced the number of lots and kept the character. Then they could have put lots in like option 2 or 4 and it would have been a better looking subdivision without odd shaped lots. However, they would have had fewer lots. That is what it is coming down to, which is dollar signs. The proximity of Ivy Creek is very, very important to them. They expect, hope and realize that when you scrutinize this that you will keep Ivy Creek in mind and make sure that any crossing in the future of Ivy Creek can only be done if they come back with an amendment to this subdivision plat.

Reenst Lesemann, an adjacent property owner who lives at 1935 Stillhouse Road, stated that he emailed a letter to the Commission today that he would read into the record. In advance of the Planning Commission meeting on January 4, 2005, we have written this letter to voice the concerns of a significant

number of families that live within close proximity of the proposed Echols Subdivision. While we respect the right of the property owners to develop the property as per County regulations, we feel that there are a number of issues which merit your consideration within the approval process. First and foremost is a desire to see that the development adheres to Albemarle County's rules and regulations. Secondly, and where appropriate, the development should adhere to the "Statement of Restrictions, Covenants and Conditions" for Ivy Farms. We are confident that staff has done their part to insure the proposed development technically adheres to the County's rules, and we would hope that continued vigilance is paid to insuring that the end product adheres to said rules and regulations. We do not believe, however, that the proposed subdivision adheres to the covenants and conditions for Ivy Farms. The Project Developer, which is a related party to the original Declarant for Ivy Farms, has agreed that five of the seven original parcels comprising the Echols Subdivision are subject to the original Ivy Farms covenants that were filed in January of 1976. As such, those five parcels are subject to the document's Architectural Control language. That language clearly states that the neighborhood's Architectural Control Board (ACB) shall regulate the lots and the improvements thereon to maintain a harmonious relationship among structures … and topography, and to conserve existing natural amenities and ecologically sensitive areas." We would expect the Planning Commission to echo these intentions. The ACB is also supposed to pre-approve any major improvements or alterations. Our concern is that much of the proposed development is out-of-touch with the existing neighborhood, would not be approved by the ACB, and as-such should not be allowed to move forward until an agreement is reached. Equally important is a stated refusal to allow a crossing over Ivy Creek. We would ask that the Commission secure written confirmation that the Owners and Project Developer will not build or allow to be built a crossing of any kind contiguous to any of the property within the proposed Echols Subdivision. Another issue of importance is the proposed double front configuration of four of the lots (#'s 4, 5, 6 & 7). As a compromise to our concerns about this issue, the Project Developer has proposed a 75' undisturbed buffer along Stillhouse Road. This change is included in the plat revision dated 12/13/04. We are appreciative of this offer. However, three of these lots are uniformly rectangular with approximate dimensions each of 150' wide by 630' deep. The relatively narrow 150' dimension represents the frontage on Stillhouse and the maximum width of each of the three lots. This layout is completely out of character with the rest of the proposed subdivision and the existing neighborhood. Therefore, we would ask that these lots be disallowed. An additional consideration is the significant number of lots on the relatively severe down slope of and in such close proximity to Ivy Creek. The building sites on lots 8, 9, 10 and 11 are well within 50' of the approximate 100-year flood zone, although they are marginally outside of the 100' stream buffer. The building sites and lots are on severe slopes; falling some 50-70' before reaching Ivy Creek. We are concerned about the impact and regulation of the road and home construction and septic fields for these lots. Additionally, the layout of these lots is very irregular and not in character with the lots on the proposed Fox Run Way or the existing neighborhood. You can see that there is a significant difference between Fox Run Way Extension and the original Stillhouse Court which is now Angler's Way Extension. We would ask that the Commission work with the owners and the project developer to reduce the proposed density and potential impact on Ivy Creek as required in the Ivy Farms' covenants. He stated that they appreciate the Commission's time and consideration. There are a couple other quick comments that he would like to make. He stated that he brought up the covenants of the neighborhood because it was not a dusty old document. The project developer is a related party to the declarante and is still of the neighborhood and exercises division right control over the neighborhood. This covenant is an agreement that is still in force from the project developer's standpoint. There is a significant amount of children on this street. There are ten children under the age of ten years old within 300 feet of these proposed subdivisions just on Stillhouse Road. (Attachment- Email dated January 4, 2004 from Reenst Lesemann with attached letter dated January 3, 2005 addressed to the Albemarle County Planning Commission from Reenst Lesemann and Paul Bower.)

Jeff Werner, representative for Piedmont Environmental Council, stated that he was not going to offer any specific opinion on this project, but he had some folks in the room who were clearly looking for some answers and maybe he could use his three minutes to offer them some thoughts. First of all this application is a perfect example of what lies in the future for Albemarle County's rural area. This is 101 acres thoughtfully chopped into 27 lots. He asked if that sounds like a country side to anyone in this room tonight. He pointed out that PEC is more than willing to sit down with this applicant and discuss conservation easement opportunities. In any event, what they have here is exactly what our regulations allow. The development is not breaking any rules. The developer is using what is available to him. Mr. Rieley said it best that the rules are at fault and not the applicant. As most of you are all aware, he was

aware of how it works because he use to build houses in northern Virginia for about a decade. He stated that obviously something needs to be done to change the way the rural areas is developed. One big step is to make the development in the growth area far easier than it currently is. The other thing that must happen is to change the rules in the rural areas. That process is currently underway and he urged everyone present tonight to come out on February 9 and urge the Board of Supervisors to adopt a meaningful rural areas policy. It may not alter the outcome of this project, but it might save the rural areas. Why is this important that they change these things? Just one observation is that the staff report and the adjacent landowners have raised concerns about the protection of Ivy Creek. The RWSA is currently discussing how many millions of dollars it will cost to remove the accumulated silt from the South Fork Rivanna Reservoir. Property rights are sacrosanct in Albemarle County, but for some reason no one ever worries about how much those rights are costing the rest of us. It was recently chided by a realtor saying that the Piedmont Environmental Council was always against everything. But, he would guess that he could ask them why they were opposed to all the things that the PEC supports. They support the growth in the growth area. They support a country side that is rural. As a city resident he could tell them that he supports more development in the city. So if being an advocate for well built communities in a rural area is being against everything, then he stands guilty as charged.

Linda Odum, an adjacent property owner at 1915 Stillhouse Road, stated that she wanted to make sure that the Commission knew that there were some other adjacent property owners present. They were Paul Bower, Eric Cossdicint, Tom Kester and Barbara Kester. She echoed the sediments of Mr. Carter and Mr. Lesemann. She emphasized once again the odd shapes of the lots and that the terrain was very rough terrain. She pointed out that the Echols were nice enough to let them cross their land to go down to Ivy Creek, which was kind of a neighborhood thing that they got to do. She stated that they might be able to get a building site if they change the protractor around. She felt that needed to be changed, which she would appreciate very much. She thanked the Commission for their consideration of this.

Katurah Roell stated that to talk about the shape of the lots simply is based upon the kernel rule of the original parcels of the plat. They would have loved to have shaped the lots differently, but the ordinances which they all play by today would not permit that to be reshaped. They had to keep two acres in the parent parcel in the kernel piece and you can't cross the line. That is why the first lot at the entrance has two frontages and two pieces because it has the two acres in the kernel parcel. They did make an effort to put the 21 acre parcel adjoining the largest parcel in consideration of some of the residents.

Paul Bower, resident of 1950 Stillhouse Road, stated that he thought that the 21 acre parcel was the least populated area of their subdivision. He stated that the representatives also stated that they worked with the neighborhood. He asked who they worked with besides the people offering the 70 foot buffer for the road. He pointed out that he had not heard that they worked with anyone else except for that one reason.

Tom Kester stated that he was Paul Bower's neighbor. He stated that his concern is about adequate water supply because the population density was going to almost double in that area. He stated that he was also concerned about the traffic flow and sanitary issues as well. He asked how they knew that land could support that number of families.

Mr. Edgerton asked if there was anyone else who wanted to address the Commission. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and a possible action.

Mr. Thomas asked if a traffic count would be required, and Ms. Amarante stated that it would not.

Mr. Rieley stated that he was mystified by the County's regulations. Two of the issues that have some concern are double frontage lots and unusually shaped lots. There is a condition in which if they are long enough and skinny enough that it negates the fact that they are double frontage lots. He felt that was like a Catch-22. He stated that he did not understand what mitigates a lot being a double frontage lot if it is also long and skinny.

Ms. Joseph stated that it is frustrating that they have these rural subdivisions still coming in and they keep hearing about these same issues. There is no guarantee that they will find water. There is no guarantee that they won't draw down the water supply. There is no guarantee of anything and it just keeps

happening. They keep hearing about the kernel rule, which is the reason why the lots look the way they do. Again, it is optimizing the site, which is why the lots look the way that they do.

Mr. Edgerton stated that the applicant's explanation on why the lots have to be so strangely shaped was the County's fault because of the kernel rule. He stated that there was another way to look at it. It might be that they should do less development in the rural area, which is the way that he would like to look at it. But, if their idea was that they were going to squeeze as much development as they could out of it, then they have to follow the kernel rule. Then, yes they were going to end up with some strange lots.

Mr. Rieley stated that the ordinance does not say that you should not have unusually configured lots unless you are trying to achieve that because of the kernel rule. It simply says that you are not supposed to have unusually awkward shaped lots.

Ms. Higgins stated that from what they had seen and what has been created before these are not interpreted as meeting the criteria for unusual or strange shaped lots.

Mr. Rieley stated that was why he asked the question of what the criteria was and who makes the determination. He pointed out that when he looks at lots 4, 5 and 6 that they all look pretty strange shaped. He pointed out that they would look a lot less unusual if there were 2 lots instead of 3.

Mr. Edgerton stated that he had really struggled with this because of the history that was not in the staff report. He noted that he would like to talk about that a little bit. As noted in the staff report this is a by right subdivision in the rural area. As such, it appears to meet the conditions of the ordinance and they are required to approve it. Unfortunately, Echols Subdivision got off to a bumpy start with the Ivy Farms neighborhood because the developer decided to clear the proposed road ways or a good proportion of them before getting any approval from the County. When confronted by the County the developer's agent noted that the clearing was allowed under the agricultural use standards, which is in fact true because he checked into that. It was not until they cleared more than 10,000 square feet that the County was actually allowed to stop the clearing action that was occurring. This action by the developer has caused an enormous amount of concern from the neighbors. Based on this activity, he felt that they were justifiably anxious about this project proceeding according to the requirements of the ordinance. The greatest concern about this project is the availability of groundwater to support the proposed 27 new wells. There is a real history of marginal wells in the immediate areas. Many lot owners, including himself, have had to go over 300 feet deep to get a marginal well that is one less than a gallon a minutes. During the recent drought many of these wells failed, including his well. This is not a new concern for the County. This Commission sent to the Board of Supervisors recommendations for amendments to the County's Water Protection Ordinance last August that would begin to address the concerns related to groundwater. The Board adopted the recommended amendments on December 8, 2004. Unfortunately the regulations don't become applicable until February 8, 2005. In effect, the amendments to the Water Protection Ordinance would address some of the groundwater issues that have been mentioned. Also, they would require the developer to prepare a groundwater management plan. Then, the history of groundwater resources could be accessed prior to an approval of this preliminary plat. This would be a Tier III request. With that said, he was still not comfortable approving this plat unless all of the applicable ordinance requirements have been fully met. He stated that he saw no reason to rush the approval of this plat this evening unless exempted from meeting the new amendments of the new Water Protection Ordinance. There are several inconsistencies to what the ordinance requires. Section 14-503 of the ordinance addressed lot shape. It specifically states that no lot shall contain peculiarly shaped elongations which are designed solely to provide necessary square footage of area or frontage on a public street. He felt that the developer would be pretty hard pressed to convince many of the Commissioners that some of these lots were not solely drawn to meet the necessary square footage and frontage. Second, many of the lots shown on the preliminary plat appear to be peculiarly shaped elongation designed specifically to provide the necessary square footage. Among the lots that he felt were peculiarly shaped were lots 1, 6, 7, 18 and 21. Mr. Rieley mentioned the building site area and he had a lot of trouble with staff's response to that. He stated that he had two separate issues concerning the building site areas as shown on the proposed plat. The first relates to the location of these building sites. It appears that the applicant has shown the required 30,000 square foot building site with no concern for the building setbacks. As required in Section 4.2.1 of the ordinance, the developer has shown the mandated 30,000 square foot building site areas outside of the areas of critical slope on each lot. In addition to providing the adequate

area for all dwelling units the ordinance requires in Section 4.2.2 that the building site shall have an adequate area for locating two septic drain fields approved by the Virginia Department of Health. In reviewing the proposed building site, it appears that at least 20 of the 27 proposed building sites infringe on the required building setbacks. Although this may have been allowed in the past, he saw nothing or could not find anything in the ordinance that suggests that the building sites are exempt from the limitations of building setback lines on individual lots. His second concern involves the further description applied by Section 4.2.4 in the location of septic tanks and/or drain fields. He pointed out Section 4.2.4 states that the County should be, "mindful of the intent to discourage the location of septic tanks and/or drain fields on slopes of 20 percent or greater." He noted that it was not 25 percent. Since they have no information on the plat identifying slopes of 20 percent or greater and some of the building site areas may include slopes of 20 percent or greater, he could not determine whether the building sites shown were adequate to provide the area for these septic fields. Based on these concerns and the real potential impact on the neighborhood and on Ivy Creek, he would be compelled to vote against the approval of the Echols Subdivision Preliminary Plat in its current form. He encouraged the rest of the Commission to do the same.

Mr. Thomas stated that the lots are very oddly shaped. He agreed that particularly the lots that Mr. Edgerton mentioned 4, 5 and 6 were done in order to get the square footage.

Ms. Higgins pointed out that there was a condition requiring health department approval for all drain field locations. Any lot less than five acres had to have a soils analysis done where they do survey the topography within the drain field, which is submitted to the Health Department. The well location and the topo specific to the drain field are required for Health Department approval on anything less than five acres. She pointed out that Ms. Amarante could expand on that. Therefore, the concern about the location of the drain fields and the soils test to meet the 100 percent reserve, which was the County's requirement and the Health Department requirement, all had to be met after the preliminary. But, it is usually not shown on the preliminary plat. It would have to be shown on a final plat or in essence the lot could not be created because the plat could not be signed. It was her understanding from earlier this evening that although this would not fall under the recently adopted ordinance with respect to the study requirement that for every building permit that is required that the well would have to be drilled for the Health Department approval. Hopefully if there was a situation where they could not achieve the well and exceeded the setback from the house and the septic field as required on the lot that it would cause a rearrangement of the lot also. On a preliminary plat the things such as the drain field locations and the topography of those drain field locations could cause a rearrangement of the lots. She stated that she was frustrated each time one of these plats comes to the Commission. This plat is consistent with the rules that are in place. There are a couple of things that have been done that are different that have to do with the stream buffer being recorded on the plat with the 75 foot undisturbed buffer. She hoped that buffer would be undisturbed, which came to mind when she heard the history about the roads being cleared before the plat being submitted. Potentially that could mean that the undisturbed area could have been affected by possibly the developer not keeping within the bounds of that. She suggested that the 75 foot undisturbed buffer be added as a condition so that if for some reason that the plantings are decreased that those are replanted, undisturbed and maintained. She stated that they were struggling with something that they have to live with every time that they do one of these plats because the rules have to be applied consistently. They have been applied and it is a by right subdivision plat. The careful review is still going to be required up until the final. She could not see any reason not to approve this. In her opinion, the peculiarly shaped elongations, in her history of reviewing plats, has to do with access and pipe stems that are prevalent throughout the County. There are still a lot of pipe stem lots out there that language was developed to preclude, but she did not see any parcel on here that particularly meets that. The double frontage interpretation of being greater than 350 feet has to do with the house only fronting in one direction instead of two whereas on a shorter lot they would appear to front on both roads.

The power went out at 8:20 p.m. The Planning Commission took a break.

The meeting reconvened at 8:40 p.m. after the power came back on.

Ms. Higgins stated that they need to change the rules and they can't hold each plat to a different standard. She felt that the rules were working against them. That is frustrating for the adjacent neighbors also. The well drilling requirement is very important and will be imposed before these building permits will

be issued. She stated that she lived in the rural areas and had a well. It takes about a 3 year cycle for a well to feel the effects of a drought or a recharging. Therefore, they still have the future in a heavily raining period to have wells that could go dry. Therefore, they need to change the rules.

Mr. Kamptner stated that during the recess Mr. Waller had asked if he could read Section 14-503 concerning lot shapes. The ordinance states that each lot shall be of a shape which provides a satisfactory and desirable building site and shall otherwise comply with the minimum lot width requirement allowed by the applicable provisions of the Zoning Ordinance. No lot shall contain peculiarly shaped elongations which are designed solely to provide necessary square footage of area for frontage on a public street.

Mr. Rieley stated that he was still keeping an open mind about this. However, when he reads this it seems to be clearly saying not just any lot shall contain peculiarly shaped elongations, but that they have to determine that those elongations were designed solely to provide necessary square footage of an area or frontage on a public street. He stated that honestly he did not see ones that he thinks that are of that criteria. Therefore, if anybody can point out where these can be shown to be designed solely to provide necessary square footage or frontage on the street if the peculiarity relates to one of those two things, then he would support it. He stated that he did not see that these lots meet the criteria that they would need to determine in order to say that this does not meet the ordinance.

Mr. Morris stated that it appeared to him that these lots work and meet the criteria.

Mr. Edgerton asked Mr. Kamptner if the Commission approved this request would they have the authority to place a condition on it that this complies with the existing covenant.

Mr. Kamptner stated no, that the covenant was independently enforced, and the people who have the authority to enforce the covenant will need to do that if they determine that this plat is approved and it is inconsistent with their covenant. That would be their responsibility and not the County's. He pointed out that one of the speakers said that five of the seven parcels were subject to the covenants. The developer will have to deal with that.

Ms. Joseph stated that she was not sure if she agreed with Mr. Rieley about the fact that they have not tried to get the square footage that they need for each lot, and; therefore, have made some odd shaped lots.

Mr. Rieley asked that someone show him a lot that the square footage relates directly to the shape.

Ms. Joseph stated that the way she interpreted the ordinance is that you need to get the square footage either from the building site or the lot itself and thereby are creating an odd shaped lot. She felt that a lot of them are. But, it was just a matter of getting the kernels and was something that Mr. Roell talked about. The reason that the lots are odd shaped is because they have to abide by the kernel rule and make sure that they get 2 acres from each parent parcel to create these lots. She felt that was what was happening here. That is why there were all sorts of ins and outs of frontage along the roadways so that the applicant was able to get the square footage that they need.

Mr. Morris moved for approval of SUB-2004-00333, Echols Subdivision with the conditions recommended in the staff report.

Ms. Higgins seconded the motion.

Mr. Rieley asked if the provision concerning the buffer area was included.

Ms. Higgins asked for a friendly amendment to the motion that an item 10 be added that the 75 foot undisturbed buffer that is shown across lots 4, 5, 6 and 7 is truly undisturbed, and if it has been disturbed by the early clearing activity that it be restored.

Mr. Morris amended the motion to include the friendly amendment.

Ms. Higgins seconded the friendly amendment.

Mr. Kamptner asked if Community Development needed a restoration standard and if that standard was one of the regulations in the Water Protection Ordinance that would provide some guidance.

Mr. Fritz stated that what they would use is the wooded area definition. There is a definition of wooded area in the ordinance that specifies the number of trees per acre based on the caliper of the trees.

Ms. Higgins asked that they make sure that it is shown on the erosion and sediment control plan and staked out with tree protection. If that area has been disturbed, then the same numbers of trees need to be replaced. She asked if they need a specific standard. The disturbance will be shown on the Erosion and Sediment Plan and could involve trees or it could just involve disturbance. She asked if they should be explicit and say that no driveways could be placed in the 75 foot undisturbed buffer. She asked if it was assumed that a driveway cannot be placed through a 5 foot undisturbed buffer.

Mr. Fritz stated that they could say including but not limited to driveway construction, utilities and any disturbance.

Ms. Higgins suggested that wording should be added so that no one would assume that a back driveway could go out that way. She felt that they should limit it.

The motion carried with a vote of (4:3). (Joseph, Edgerton, Rieley – Nay)

Mr. Edgerton stated that the SDP-2004-00333 was approved with the following conditions as amended.

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. A completed application and fee for erosion control and storm water management. [17- 203, 17-303]
2. A BMP plan or equivalent Mitigation Plan, computations, and maintenance agreement. It appears there is adequate space for BMPs if needed.[17-203, 17-303, 17-304, 18-32.7.4]
3. An erosion and sediment control plan, narrative and computations. [14-311, 17-203, 18-32.7.4.3]
4. Road plans, pavement design sheets, and drainage computations. VDOT approval will be required for the public roads. [14-512,14-304,Policy]
5. The cul-de-sac at Fox Run Way will need to be removed with the extension of the road and the right of way around the cul-de-sac platted back to the lot owners that front this area.
6. Road plans and drainage computations will need to be submitted for review and approval.
7. All improvements must be built or bonded.
8. Anglers Way is a conflicting road name with an existing road. Submit a list of three (3) road names for approval prior to final plat approval. [E-911 requirement]
9. Health Department approval of all drainfield locations. [14-309, 14-310]
10. The 75 foot undisturbed buffer that is shown across lots 4, 5, 6 and 7 must truly be undisturbed, including but not limited to driveway construction, utilities and any disturbance. If it has been disturbed by the early clearing activity, then it must be restored as wooded area. The disturbance should be shown on the Erosion and Sediment Plan. No driveways can be placed in the 75 foot undisturbed buffer.

SDP 2004-00109 Wood, T.E. (Nextel): Request for approval to allow the construction of a personal wireless service facility. The applicant proposes to construct a monopole that would be approximately 102-foot tall (8.4 feet ASL above the height of the tallest tree within 25 feet), with ground equipment in a 5' x 6' cabinet. This application is being made in accordance with Section 10.2.2.6 of the Zoning Ordinance, which allows for microwave and radio-wave transmission and relay towers in the Rural Areas. The property, described as Tax Map 88, Parcel 26, contains approximately 71.34 acres zoned Rural Areas and Entrance Corridor. This site is located on Arrowhead Valley Road (Route 745) just east of U.S. Route 29 South, in the Samuel Miller Magisterial District. The Comprehensive Plan designation for this property is Rural Areas 4. (Stephen Waller)

In Mr. Waller's absence, Mr. Fritz summarized the staff report. The application was originally filed at 8 feet above the tallest tree, and was now at 4.4 feet. The photographs were taken at the 8 foot level and not at the 4.4 foot level. Therefore, the photographs were actually higher than what is proposed. This is the same site as a recent Ntelos that the Commission reviewed and approved. There are existing facilities on this site and this is just a new location of one of the existing facilities, which was originally filed for as a special use permit and with the adoption of the new ordinance they have to go back and modify that. It was reviewed for its impact on abutting properties in nearby areas. It does have some visibility just like the other one for the Ntelos project. The distances by which it is visible are fairly great, which render the impact minimal in the opinion of staff. It is largely back dropped by Dudley Mountain. Staff's finding was that it had limited impact on adjacent properties some of which are either National Register historic places or in conservation easements. Staff generally found it to be consistent with the criteria of the ordinance as it relates to the wireless facilities.

Ms. Higgins asked if the monopole would be painted.

Mr. Fritz stated that the antennas would be painted and not the monopole itself.

Mr. Edgerton asked for clarification on the height of the monopole.

Chris DeValle, representative for Nextel, stated that the location was originally at a different spot and they had to move it because of setbacks. When they moved the location for the setbacks that their ground elevation changed drastically what they could do. He pointed out that they were locked in at 100 feet.

Mr. Rieley stated that he was very happy to see a wooden pole 4 feet above the tree height.

Mr. Edgerton opened the public hearing and invited the applicant to come forward to speak.

Chris DeValle stated that he was present to answer any questions that the Commission might have.

Mr. Edgerton asked if there was any member of the public that would like to speak regarding this application.

Debbie Balzer, Site Acquisition Manager for Ntelos, pointed out there are frequency differences between Nextel and Ntelos, which makes a big difference as far as height, antennas and everything. She stated that each company operated under different licenses and frequencies, which creates the differences.

There being no further public comment, Mr. Edgerton closed the public hearing to bring the matter back before the Commission.

Mr. Higgins moved for approval of SDP-2004-00109, Wood, T. E. (Nextel).

Mr. Rieley seconded the motion.

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

Mr. Edgerton stated that the SDP-2004-00109 was approved.

Work Session:

ZTA 2004-00005 Focused Sign Ordinance Amendment: - Work session for draft text amendment to Section 4.15 SIGNS to address four identified sign topics. (Amelia McCulley)

It was the consensus of the Planning Commission to defer ZTA-2004-00005, Focused Sign Ordinance Amendment work session until next week, January 11.

Old Business:

Mr. Edgerton asked if there was any old business.

Ms. Higgins asked that all Commissioners review the October 19 minutes on page 14 at the bottom of the page to see if they agreed with her suggested change. She asked that a clarification be made so that it would be worded such that it says, "intersection with Route 250" that has to do with safe and convenient access. She felt that it reads okay, but it only mentions Hansen Mountain Road. She noted that this might be exactly how they said it, but they were on the subject of Route 250. She asked that they jot it down and when they read it decide whether they agree with her. Under 1, it reads, "The site does not have safe and convenient access as required by section 4.12.6.1~~. and Hansen's Mountain Road, as it presently exists, is inadequate to accommodate the increase in traffic resulting from the proposed development in violation of section 32.5.8.1.~~ **Hansen's Mountain Road at its intersection with Route 250**, as it presently exists, is inadequate to accommodate the increase in traffic resulting from the proposed development in violation of section 32.5.8.1 In order to comply with these sections, the applicant must address VDOT's comments in its September 15, 2004 and November 5, 2002 letters to the satisfaction of VDOT and obtain a commercial entrance permit from VDOT.

There being no further old business, the meeting proceeded.

New Business:

Mr. Edgerton asked if there was any new business.

Mr. Kamptner handed out a short memorandum regarding rural preservation development for the Commissioner's reading pleasure over the next couple of weeks. It deals with rural preservation developments and their ministerial nature.

Mr. Edgerton and Ms. Joseph will be absent next week on January 11.

Mr. Cilimberg pointed out that next week the Commission could choose a temporary Chairman due to their absence.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 9:08 p.m. to the January 11, 2004 meeting.

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V. Wayne Cilimberg, Secretary

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