Albemarle County Planning Commission
January 11, 2005

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, January 11, 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, Calvin Morris, Jo Higgins and Pete Craddock. Absent were Bill Edgerton, Marcia Joseph and David J. Neuman, FAIA, Architect for University of Virginia. Mary Hughes attended the meeting to represent David J. Neuman.

Other officials present were David Benish, Chief of Planning & Community Development; Frances MacCall, Senior Planner; Amelia McCulley, Division Director of Zoning & Current Development; Juandiego Wade, Transportation Planner; Glenn Brooks, Senior Engineer; Bill Fritz, Chief of Current Development; Mark Graham, Director of Community Development and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Benish called the regular meeting to order at 6:00 p.m. and established a quorum. He asked for nominations for a temporary Chairman for tonight's meeting due to the absence of the Chairman and Vice-Chair.

Mr. Rieley nominated Mr. Thomas to be temporary Chairman.

Mr. Morris seconded the nomination.

The motion carried by a vote of (2:1). (Higgins – No) (Thomas – Abstain) (Edgerton, Joseph – Absent)

Mr. Benish turned the meeting over to Mr. Thomas.

Other Matters Not Listed on the Agenda from the Public:

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

Consent Agenda:

Approval of Planning Commission Minutes – August 31, 2004.

SDP 2004-00086 Boar's Head Inn & Sports Club Major Amendment Critical Slopes and Buffer Disturbance Waivers: Request pursuant to Section 4.2.5.2, to allow for the disturbance of critical slopes, and Section 21.7.3 for buffer disturbance. (Francis MacCall) (Tax Map 059D2, Parcel 01-15 and Tax Map 075, Parcel 63 portion of)

Mr. Thomas asked if any Commissioner would like to pull an item off of the consent agenda for discussion or if there was a motion.

Mr. Morris moved for approval of the consent agenda as submitted.

Mr. Craddock seconded the motion.

The motion carried with a vote of (5:0). (Joseph, Edgerton – Absent)

Deferred Items:

SUB 2004-00232 Starfield Preliminary Plat: Request for preliminary plat approval to create 5 new lots averaging 5.034 acres on a private road. The site, described as Tax Map 81, Parcel 51D, contains 25.17 acres and is zoned RA, Rural Areas. This site is located in the Rivanna Magisterial District on Campbell Road (Route 600) approximately 1 3/4 miles from its intersection with Louisa Road (Route 22). The

Comprehensive Plan designates this property for Rural Area uses in Rural Area 2. (Francis MacCall) ***DEFERRED FROM THE SEPTEMBER 21, 2004 PLANNING COMMISSION MEETING.***

Mr. MacCall summarized the staff report. This is the Starfield Preliminary Plat request for a subdivision to create 5 lots averaging 5.034 acres on a private road that crosses the dam. This application was before the Commission on September 21, 2004 and had been deferred so that the applicant could provide staff with further information for analysis. Staff has done that with the information that was provided. Through the analysis staff is recommending denial of this application. If the Commission were to approve this request, staff has provided conditions similar to what was in the previous report. If there are any questions, he would be happy to answer them. Glenn Brooks is also here and can answer any further questions.

Mr. Thomas asked if there were any questions for Mr. MacCall or Mr. Brooks.

Mr. Rieley stated that the staff report seems to point out some areas in which they had requested but had not received information to satisfy concerns they had. He asked if the absence of that information the basis for the recommendation for denial or is it more substantive issues.

Mr. MacCall stated that for staff's analysis they were able to do the comparison between the public and private road. The main basis staff is not recommending denial was because it was not meeting the 30 percent. Also, staff previously recommended denial as per the general welfare section. Staff provided the applicant with bulleted items regarding the issues raised at the last meeting. Unfortunately, as stated in the staff report, the applicant could not address all of items. Therefore, staff was not actually basing the recommendation on those because it was more of the technical issues as laid out in the ordinance.

Mr. Rieley stated that it was the substance and not the absence of information.

Mr. MacCall stated that was correct.

Mr. Rieley asked Mr. Kamptner if he could lay his hands on the criteria that must be met before they could consider a private road. He stated that he was paraphrasing that consistent with his recollection on how the ordinance is worded, but he wanted to make sure that was correct.

Mr. Kamptner stated that the criterion for approval or circumstances where a private road may be authorized is contained in Section 14-232. He asked if Mr. Rieley wanted him to read the entire section.

Mr. Rieley asked that he read just the list.

Mr. Kamptner stated that to alleviate significant degradation of the environment that one or more private roads may be authorized:

1. If the property is within either the Rural Areas or Village Residential zoning districts.
2. The private roads will alleviate a clearly demonstrable danger of significant degradation to the environment of the property or any land adjacent thereto which would be occasioned by the construction of a public street in the same alignment.
3. No alternative public street alignment is available which would alleviate significant degradation of the environment.
4. No more lots are proposed on the private road or roads than could be created on a public street due to right-of-way dedication.

Mr. Rieley asked where the 30 percent is listed in the ordinance.

Mr. Kamptner stated that it was in the definition of significant degradation, which immediately follows what he just read. He asked if Mr. Rieley wanted him to go ahead and read that section.

Mr. Rieley stated that was not necessary, but that was his question. He pointed out that his interpretation of that has been specifically with the word may. The Commission may grant a private road waiver if these conditions are met. His reading of that has always been that if those conditions are not met the Commission may not. He asked if he was reading that correctly.

Mr. Kamptner stated that "may" is discretionary and not mandatory.

Mr. Thomas asked if any other Commissioners had any questions along those same lines. He pointed out that the word may was discretionary.

Mr. Craddock stated that he would like to ask Mr. Brooks a question about the dam. He asked what his opinion was about the life of that dam. He acknowledged that based on the recent heavy rains that he knew he could not say five or six years.

Mr. Brooks stated that it would be hard to be definitive, but he would not want to own it right now.

Mr. Craddock stated that he would not want to be downstream from the dam.

Mr. Brooks stated that it has already undergone quite a bit of erosion. While failure may not be catastrophic because it was not a tall dam and was only 5 to 8 feet that it could still create quite a bit of sedimentation.

Mr. Craddock stated that whether the road goes over it or around it that something has got to be done with that dam fairly soon, and Mr. Brooks replied that was absolutely correct.

Mr. Thomas asked Mr. Brooks if the dam has to be repaired.

Mr. Brooks stated that there was not a regulation that requires it.

Ms. Higgins asked if it would be correct to say unless a private road plan is submitted, which shows the dam as being a component of that road, that you would want the integrity of the dam to be included in that design.

Mr. Brooks stated yes. There are two cases where they would require refurbishing of the dam. That is if it is going to serve as a sub base for a roadway because they want it to be stable. The second case is if they are going to use it for storm water management purposes.

Ms. Higgins stated that was one of the reasons the Commission had identified as being favorable to this request in the past consideration. It would potentially address an outstanding issue. But, the Commission did not know the condition of the dam at that time.

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

Roger Ray stated that his firm prepared the plan for the applicant. This is their third trip. He agreed with Mr. Rieley in that the ordinance allows them to present a private road and if they meet these conditions and convinced the Commission that it is better for the public interest to do the private road versus the public road, and then it is subject to the Commission's approval. He agreed that they could not come here and demand that the Commission approve this. Therefore, let him try. Again, they were here in 1997 first and he felt that they had it within their grasp fairly easy then, but they backed off and waited several years. They came back again last fall and maybe they were not well prepared at that time. Now they have through exhaustive meeting at the property and through additional studies tried to get themselves much better prepared for tonight. Since they were here before it was suggested that they ask for a deferral to get additional information and to meet on site with the County Engineering staff to view the dam and to look at the exact situation that they had. They did so. Then after the deferral they met on site with Glen Brooks and Francis MacCall and took photographs. He pointed out that Glenn Brooks took the photographs that the Commission was looking at. He stated that he had the originals that were a little clearer which he would pass around, but he would like to have them back. One of the concerns that they had previously was due to the downstream property owner objecting to the subdivision and the road being built immediately adjacent to their property line. Since that time they have readjusted the alignment of the dam. Also, they have readjusted the realignment of their road. The dam was moved upstream into their property approximately 40 to 45 feet to give better working room when they reconstruct the dam on

the lower side between their property and the adjacent property owner. Also, the private road was moved 30 feet further into their property to allow a 30 foot buffer between their property and the adjacent neighbor's property. He pointed out that the Commission could see very clearly on the plan that they moved the property line into their property to allow this buffer. This was done to try to alleviate some of the adjacent neighbor's concerns. They feel that by allowing this private road to go across this reconstructed dam and to get the private road and the dam into a permanent maintenance agreement would be a great environmental plus. They think that the Commission could approve this plan under the general welfare for the following reasons. The first is the environmental and ecological impact of reconstructing the dam and having it there for its environmental and ecological purposes. The actual surface area of the public road would be 9 percent more surface area disturbed. If they do the public road there would be 29 percent more yardage of earth work moved if they did the public road. The ordinance lists that the yardage to be removed is the environmental impact and you say to make it 30 percent. But, they are not just looking at just one item. They are looking at 3 reasons to approve this private road. They are the environmental and ecological impacts, the surface area disturbed, and cubic yards of dirt moved. For those reasons they believe that it is in the overwhelming general welfare to reconstruct this dam. Through the photographs the Commission can see the very poor condition of the emergency spillway, the pipe that drains the lake and the tree roots that are already in the dam that are all just waiting for a failure. He asked that they be allowed to get the dam reconstructed, a road placed across it and to get it under a permanent easement so they can go forward.

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

Ms. Higgins stated that under the reconstruction scenario Mr. Ray should also understand that there is a permanent stormwater maintenance agreement that would address it as a stormwater feature. That would be a recorded document that guarantees that the dam will be inspected annually.

Mr. Ray stated that if that is what the ordinance requires, then he would agree to it. He pointed out that Mr. Brooks could probably answer that question better than he could. Since he does not do those plans he could not answer the question.

Mr. Morris stated that the last time that they were considering the possibility of going to the north, which was briefly touched on in the staff report. He asked if he could tell the Commission about their decision of not going that way.

Mr. Ray stated that was only eleventh hour thoughts that they had immediately before that meeting. It was not well thought out on his part. He laid that out as an alternative route that the road might take. After further study and review the owner of the property just elected not to go that way. The main reason is that the owner lives in the home that is between the public road today and this lake. The main reason that he wants the pond to stay is because of his enjoyment of being able to visit that pond. If they did the road as he showed it previously that the road separated his house lot from the pond. It did not make as good an access to the building sites and it interfered with some of the better building sites. It made a longer road that would have been more expensive and would have been a greater environmental impact. Therefore, for all of those reasons they elected to move the road upstream from the adjacent neighbor and still approach that division.

Ms. Higgins stated that as a follow up to Mr. Morris' question, under that scenario that the applicant chose to not put on the table at this time it was clearly longer and would have exceeded the 29 percent by a much more substantial amount.

Mr. Ray stated that he was not sure of that. He stated that they never figured out the amount of cubic yards.

Ms. Higgins stated that the length by itself would have as indicated.

Mr. Ray stated that the length would have exceeded that amount, but they did not do the yardage calculations. He pointed out that in hindsight that he had made a mistake by putting that on the board and allowing the Commission to look at it. He apologized for confusing them.

Larry McElwain, of Parker, McElwain and Jacobs, stated that he was present on behalf of the owner of the property. If they step back for a minute and take a look at the big picture that they have three alternatives from a realistic point of view. One is to continue the property in its current status. He felt that everybody supported by the considerations already voiced here tonight is in agreement that is not a situation that they want to put up for an extended period of time. The other two alternatives are the one that they put forward and the default position, which is the state road construction. If they are compelled to construct a state road, in addition to the matters that Mr. Ray has already gone over in some detail, there is going to be a significant impact on the wetlands. The pond itself will disappear. They are talking about culverts. They are going to have a significant diminishment of the existing wetlands. This would be a voluntary act on their part because they were unable to get through what they thought was an economically responsible plan. Wetlands are a significant commodity, and are so significant that in some areas wetland banks have been created so that when properties are traded or sold and wetlands disappear that taxes and fines are paid and commodities are created and banks trade in wetlands. They are actually talking about destroying a wetland. Obviously, that is going to have a negative impact on the environment that they live in. The plan that they propose maintains that wetland. Not only does it maintain it in its current status, but there is going to have to be revitalization under the construction that is going to have to go on. There is going to be a significant improvement. Right now it is of a murky quality. If that dam fails who knows what the results are going to be and who knows what impact that is going to have in a long term sense not only downstream but upstream. Therefore, they are in a position here that they can responsibly prevent what he felt in either situation is going to be an environmental degradation. That is why they think that their plan is the best of the three. In addition to that, their plan has been one that has been well thought out. This is not something that they have just come up with at the last second. This is one that they have had significant input. They have met out on the property with representatives of the neighbor that is most impacted. They have tried to incorporate and in fact have incorporated at least some of their suggestions, if not all of the ones that they have had in respect to the design of what they have here. Questions of why do they want to risk putting a road over a dam is a legitimate issue in most situations. By the same token from an engineering point of view, they can put people on the moon. He feels that they can build a road over a dam that after all will be serving only four lots. They are not talking about Hollymead here. They are talking about a four lot subdivision. The impact of the traffic over that dam is going to be minimal over the course of time. He felt that it was going to put that property to significantly better use. In any event, he was convinced that the signs exist for them to be able to construct a dam that can sufficiently carry the traffic necessary for the responsible development of those four lots. As far as the administration of that, he had a tremendous amount of respect for the staff employed here at the County, not only through the design and planning stages but in the oversight of the construction phases. He pointed out that he says that in confidence. In addition to the developer's intentions as far as overseeing the project himself and his own dollars, he believed that they could come up with a responsible plan and implement that plan to minimize the damage during the course of construction. He stated that he was not here to tell anyone that there is not going to be any damage. In summary, over the three plans or the three alternatives that are out there that they think their plan is by far the most responsible.

Mr. Thomas stated that he would be allowed rebuttal time at the end.

Mr. Rieley stated that he had a question for Mr. Brooks. He stated that Mr. McElwain was talking about the pond like it was a wetland. He asked if was correct that open bodies of water are not wetlands.

Mr. Brooks stated that they could have wetlands on the peripheral. He pointed out that a body of water could be a part of a wetland system, but that it all depends what context he was referring to. There are definitely differentiations between types of wetlands that have to do with bodies of water.

Mr. Rieley stated that the wetlands are identified by the plants that grow in the wetlands soils area and that kind of thing and those kinds of plants don't grow in ponds.

Mr. Brooks stated that they can. Wetlands have many characteristics with soils and plants being one. Over time you can get plant life on the fringes if you have the right water elevations.

Mr. Rieley stated that the wetlands can be on the fringes, but can't be out in the middle of the pond.

There being no further questions, Mr. Thomas invited comment from the other members of the public. He pointed out that there was one person signed up, Michael Derdeyn.

Michael Derdeyn, representative for the adjacent property owner Jane Ashley Skinner, stated that he was present before the Commission in September when this matter was pulled from the consent agenda to discuss this matter. At that time and still today the concern of Ms. Skinner, the adjacent property owner, is with the integrity of her pond and the potential downstream effects of the development of this property on her pond. Specifically, it is the placement of the road over this particular dam. As Mr. Ray recalled, they had proposed at that meeting an alternative route at the headwaters of what he would call the applicant's pond as opposed to this proposed route, which is at the headwaters of Ms. Skinner's pond. That certainly made some sense to them because as he said at the time that if you are going to imperil the pond perhaps you should imperil your own pond as opposed to your neighbors. It became clear after that meeting that the applicant did not want to pursue that alternative of putting the road at the headwaters of their own pond. They were certainly not in the position to force them to pursue any particular alternative. As a result they began having discussions with the applicant about what kind of conditions they could work out or negotiate such that it would satisfy our concerns about the downstream effects on our pond during the construction of the dam and during the actual development of the lots on the property. There is a distinction to be made here because if you were to go an upstream route at the headwaters of the applicant's pond, he felt that this Commission would still require some maintenance to be done on the dam. But, it would not require the total reconstruction of that dam. So instead of having to completely remove the dam in order to build it back up and create a private road and therefore drain the pond in connection with that, they would simply draw the pond down, dig out a couple feet of the dam and then rebuild it from that standpoint. He pointed out that they have reviewed it with Nick Evans, who is their groundwater expert. That was his conclusion about what you would do in those instances. Therefore, actually placing the road over this dam does create a more significant potential impact to Ms. Skinner. Again, what they tried to do was to negotiate conditions. They thought that they had reached an agreement. They have through negotiations with counsel for Mr. Popkin, they actually drafted an agreement. The agreement had a provision in it that the fully executed copy would be submitted to the Albemarle County Department of Community Development to become a part of this file of SUB-2004-00232. They had the expectation that the applicant was going to sign the agreement and then as he understands from the counsel that the staff report came out recommending denial of the application and he has decided not to sign that agreement. That agreement has certain provisions in it that protects his clients and the integrity of the pond. In other words, it has a mechanism in there to measure potential damage for the pond and to resolve how to cure the potential damage to the pond. He stated that he was hopeful that he was going to be able to walk in tonight and say that with the terms of this agreement and the protections in it that he could support the application. But, because the applicant has not signed the agreement they are not in the position to do that. Again, that is an agreement that they believed that they had and was hopeful that they could support the application with those protections. That agreement has not been signed so they are in the position that again they have the same concerns about this dam. There are the same problems as far as the downstream degradation of the pond. There are the same problems in terms of having to dig up this existing dam, drain the pond and a potential stormwater event or something like that causing a significant amount of sedimentation and other damage to Ms. Skinner's pond. Nick Evans in a letter to the Planning Commission back in September also indicated that would have its own effects and that there would be problems in terms of repairing Ms. Skinner's pond in that event. In any event, their concerns remain the same. Their concerns are about the condition of the pond. They thought that they would be in the position of being able to support the application because of their negotiations regarding protections of the pond. But, they are not in the position to do that and their position remains the same as it was in the fall.

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

Mr. Craddock stated that he had a question under general welfare. In reading the last part of it if the County assumed maintenance responsibilities for the dam that the dam and the pond would still be there is it was a public road. He heard a couple of people mention that the pond was going to disappear, which was not what he believed. He pointed out that they would have to refill the pond.

Mr. Brooks stated that the VDOT regulation currently allows you to build a road over a dam, but it would require the County's Board of Supervisors to assume responsibility for the dam. There have been cases where this has been done in the past in the County. The County would then turn that over in an agreement for maintenance by the homeowner's association.

Mr. Craddock asked why that could not be a requirement if it was a public road.

Mr. Brooks stated that he could make that as a condition, but he could not speak for the Board and the Planning Commission.

Ms. Higgins stated that what they don't see in the staff report that was brought to the Commission before is that the very premise of making this a private road had to do with its location on the dam and that VDOT would not take it across this particular type of dam in this dead end situation. That was the way that she had interpreted it. They talk about the degradation of the environment and the number of lots that could be created, but she felt that it was clear in this case that whether it was served by a state road or a private road that the same number of lots will result. The second part of this is that there are concerns on both sides about the quality of the dam and its longevity, which she feels is an important concern. But, the environmental effect is one of the main reasons why the private road provisions is in the rural areas and brought to the Planning Commission. Many times these have been done on the consent agenda and they are scrutinizing them more closely on some other basis about lots being created. But, in this case even though the downstream property owners does have the concerns and not ignoring those, but if it is a choice between a state road and whether there is a pond or not or a private road to serve these additional four lots, it is the very premise that created the provision. The 29 percent being 1 percent short of the 30, which is somewhat discretionary by rule of thumb, there is also the surface area disturbance and the very cross section itself is different in a public road. From looking at these pictures she saw an avenue through a treed front where possibly the buffer between the now road shifting slightly off the property line where these trees may continue to exist. If this is done as a public road and the pond goes away and there are a few pipes in the stream she did not see that beneficial to anyone. When you talk about welfare that it would be a public responsibility to go in and maintain and repave it to push the snow and to do it for four lots that it does not seem like it serves the overall welfare. She felt that private road was the appropriate application in this case.

Mr. Morris stated that from looking at the pictures that one or the other something is going to have to be done with that dam or the neighbor is going to have some problems.

Mr. Rieley agreed with everything that has been said, even from the perspective of the downstream property owner he felt that having a stable pond upstream of their pond is typically a better situation. It is sediment for bay rather than having an open stream channel. It would be a more stable condition. He stated that he had a question about meeting the 30 percent threshold. He stated that he would rephrase his question since he did not do a very good job of it last time. He asked if the ordinance says that we may grant a waiver if the following conditions are met, can we presume that if those conditions are not met that we may not grant the waiver.

Mr. Kamptner stated that they could probably presume that. There is a second prong to the significant degradation test, which is in subsection (b). Significant degradation means environmental impacts, including but not limited to erosion and sedimentation, stormwater runoff, surface water pollution, loss of tree cover and/or loss of indigenous vegetation resulting from a public street which would be substantially greater than that of a private road in the same alignment based upon evidence submitted by the subdivider and reviewed by the County Engineer and other qualified staff.

Mr. Rieley stated that if they make that finding then they don't have to find the 30 percent, and Mr. Kamptner stated that was correct.

Mr. Thomas asked if there were any more questions or a motion.

Ms. Higgins moved for approval of SUB-2004-00232, Starfield Preliminary, with the conditions as outlined in the staff report that includes the County Engineer approval of the final road and dam design and that careful consideration is given to the downstream effect in the Erosion and Sedimentation Plan.

Mr. Morris seconded the motion.

Mr. Kamptner asked to consider two ideas. One is if the Commission makes the finding under subsection b**,** it needs to be based upon evidence submitted by the subdivider and reviewed by the County Engineer and other qualified staff. If this motion gets a second, then staff needs to summarize what evidence has been submitted. The other item that he wanted to raise was the tentative agreement between the two property owners and whether or not the Commission wanted to consider adding that as a condition. Then, they would have that agreement or applicable County regulations, and whichever was more stringent would govern. He pointed out that staff has not seen this agreement.

Mr. Rieley stated that he would be very reluctant to bring a private agreement between two parties into the middle of this. As Mr. Kamptner said, they have not even seen the agreement.

Mr. Kamptner stated that would throw the County into the position of enforcing the agreement if it became one of the conditions.

Mr. Thomas pointed out that he had told the applicant that he would allow him some time for rebuttal.

Mr. Kamptner asked if the motion had been seconded.

Mr. Morris stated that he had seconded the motion.

Mr. Kamptner stated that since the motion had been seconded that it was now opened up for discussion. If someone wanted they could invite Mr. McElwain up to add whatever he wants.

Ms. Higgins asked Mr. McElwain to come forward to answer a specific question.

Mr. McElwain stated that he only had one point of order, which was that the word agreement has been batted around by counsel. He stated that there is no agreement. They have had negotiations, but they have not had an agreement. It is that simple. There is nothing to enforce. That was the point of order that he wanted to make.

Ms. Higgins asked if there were any elements of what the property owner under this request is willing to do that can be added into the conditions that you would consider that might be out of context of that agreement.

Mr. McElwain stated that he would be delighted to discuss that with the property owner since there were elements of that which they would be delighted to work with. By the same token, he has a tremendous amount of respect for your counsel, but they are going to have to come up with an agreement that is going to bind all of the property owners out there for the maintenance of that in accordance with it. So what the next door neighbor wants that he felt, quite frankly, would be subsumed by what is in the benefit of what your counsel is going to put forth.

Ms. Higgins asked staff if the typical stormwater maintenance agreement contained all of the elements to require an inspection and annual review of the condition of the dam and if this is done in a private road design. She stated that a stormwater maintenance agreement probably would not include the road.

Mr. Kamptner stated that it is a stormwater management issue, and the Program Authority can determine the frequency of the inspections.

Mr. Thomas asked if that was something that they need to condition or is it automatic.

Ms. Higgins stated that it was listed under item 1a that the subdivider shall submit a maintenance agreement for the private road, which satisfies the requirements of section 14-313. She asked if that was sufficient to cover the maintenance of the dam.

Mr. Kamptner suggested that they add that just to be certain so that when the maintenance agreement is submitted staff will pay attention to it.

Mr. McElwain stated that it was the developer's intention to incorporate that and they would be cooperative.

Ms. Higgins amended the motion to add wording in item 1a that says to include long term maintenance and inspection of the dam so that it is clear.

Mr. Morris seconded the amended motion.

Mr. Thomas asked if there was any more discussion.

Mr. Kamptner asked staff to summarize the information that would support a finding.

Mr. MacCall noted that as indicated on page 2, there was no information that was provided to staff. Staff would most likely have to reevaluate that with either further on-sites or with other information provided by the applicant.

Mr. Thomas asked if it was something that could not be done.

Mr. MacCall stated that it could be done, and that it could probably be done through a condition.

Mr. Kamptner stated that the language of b would be: environmental impacts including, but not limited to erosion and sedimentation, stormwater runoff, surface water pollution, loss of tree cover and/or loss of indigenous vegetation resulting from a public street which would be substantially greater than that of a private road in the same alignment based upon evidence submitted by the subdivider and reviewed by the County Engineer and other qualified staff.

Mr. Rieley stated that because of the erosion, the fact that there is a built-in stormwater detention pond for erosion and stormwater management, and the protection of the existing edge wetland plants that are associated with the existing pond, all of which would be removed if the public road was put in because the public road could not have the pond behind it, are all factors that support the findings under subsection (b).

Ms. Higgins agreed with Mr. Rieley's explanation as to why this proposed private road in this case satisfied the requirements of subsection (b).

Mr. Morris agreed.

Mr. Thomas asked for a role call.

The motion carried by a vote of (5:0) subject to the following conditions. (Edgerton, Joseph – Absent)

1. The final plat shall not be submitted for signature nor shall it be signed until the following conditions are met:

    a. The subdivider shall submit a maintenance agreement for the private road to include the long term maintenance and inspection of the dam, which satisfies the requirements of section 14-313.
    b. The final plat shall contain the statement required by section 14-303(N).
    c. The subdivider shall provide surety for the completion of the private road as required by section 14-413 if the private road will not be completed prior to approval of the final plat.
    d. Each deed of subdivision, or similar instrument, and each deed conveying a lot within the subdivision shall contain the following statement: "The streets in this subdivision may not meet state standards and will not be maintained by the Virginia Department of Transportation or the County of Albemarle."

2. County Engineer approval of final road and dam design.

3. Health Department approval of all lots.

4. Careful consideration should be given to the downstream effect in the Erosion and Sedimentation Plan.

Public Hearing Items:

CPA 2004-00005 Charlottesville-Albemarle Airport Master Plan: Proposal to amend the Comprehensive Plan to include, by reference, the updated Charlottesville-Albemarle Airport Master Plan. The applicant is seeking a resolution of intent from the Planning Commission. The Charlottesville-Albemarle Airport is located on Bowen Loop at the intersection of Dickerson Road (Route 606) and Airport Road (Route 649). The Airport is located on 558 acres and is zoned Rural Areas and Airport Impact Area (RA and AIA). The Comprehensive Plan designates this property as Institutional and is located in the Hollymead Community. The property, described as Tax Map 32 Parcel 10 is located in the White Hall Magisterial District. (Juandiego Wade)

Mr. Wade stated that the Commission had a work session on the Airport Master Plan update at their December 14 meeting. At that time the Commission provided comments and the Executive Director provided some background information. Tonight staff is presenting information for the public hearing and some actual language proposed to be amended in the Comprehensive Plan, which are provided on pages 6 through 9. The Charlottesville-Albemarle Airport is specifically mentioned in two sections of the Comprehensive Plan – the Transportation Section (pages 189 and 191 of current Land Use Plan) and in the Hollymead Community Section (page 82 of the current Land Use Plan). Staff has provided (on Attachments B and C) the proposed changes to the text of the Comprehensive Plan incorporating the updated Master Plan. The New language is in bold italics and the old language will be struck through. Staff recommends for the Planning Commission to hear public comments and adopt proposed revision to language found on Attachment B and C. Staff will schedule a work session with the Board of Supervisors.

Mr. Thomas asked if there were any questions for staff. There being none, he opened the public hearing and asked if the applicant would like to address the Commission.

Bryant Elliot, Executive Director of the Charlottesville Albemarle Airport Authority, stated that he spent a great deal of time before the Commission last month. They propose and seek approval of their request to include their Master Plan that was adopted by their Board in August as part of the Comprehensive Plan for the County of Albemarle. If there are any questions, he would be happy to answer them.

Mr. Thomas asked if there were any questions for Mr. Elliott. There being none, he invited comment from any one else in the audience regarding this request. Since there was none, he closed the public hearing to bring the matter back before the Commission for discussion and a possible motion.

Mr. Rieley moved to send CPA-2004-00005, Charlottesville-Albemarle Airport Master Plan, forward to the Board of Supervisors with a recommendation for approval.

Mr. Morris seconded the motion.

The motion carried with a vote of (5:0). (Joseph, Edgerton – Absent)

Mr. Thomas stated that the motion was unanimously approved. He asked what date the Board would hear this request.

Mr. Benish pointed out that the final Board hearing date had not been set because they were waiting to see what type of public input was received.

CPA 2004-00006 Stormwater Master Plan: Proposal to amend the Natural Resources and Cultural Assets component of the Albemarle County Comprehensive Plan by adding a stormwater master plan that identifies stream resources to be protected and restored as development occurs, regional stormwater

facilities, and watershed projects that can be implemented in conjunction with development; provides guidance for land use planning and neighborhood master planning; and promotes public and private stormwater solutions based on needs and opportunities at the watershed scale. (Greg Harper)

Mr. Benish stated that at the September 1, 2004 meeting the Board of Supervisors adopted a resolution of intent to amend the Comprehensive Plan to incorporate the Stormwater Master Plan. The Board directed the Planning Commission to prepare an amendment and hold a public hearing on the proposed amendment. This action was the culmination of three prior work sessions held by the Board on April 7, May 5, and July 14, 2004. A summary of the Plan was presented to the Planning Commission in a work session on June 15, 2004. The Planning Commission recommended adoption of the Plan to the Board. A more thorough summary of the history is provided in the attached Executive Summaries of the three Board of Supervisors work sessions. He pointed out that Mark Graham and Greg Harper, who is the County's new Water Resources Manager, were present to answer any questions about the plan. He introduced Greg Harper to the Planning Commission. Language is included in Attachment A that includes the Comprehensive Plan's references to the Stormwater Plan. He pointed out that he wanted to make it clear that they were adopting the Stormwater Master Plan; but, it does not include the financial component that the consultant did. That financial component is still under review by the Board of Supervisors. What is going forth is the concept of the program for Stormwater Management. He pointed out that under the first paragraph in Attachment A there is a bracketed sentence, which mentions the Historic Preservation Plan. That reference should be deleted. In the paragraph below the last sentence it says that the open space critical sources plan, Historic Preservation Plan, adopted September, 2000 and the Stormwater Management Plan are located under separate cover. That plan has already been adopted and this is an opportunity to update that paragraph and he just wanted to make that change. Staff will answer any questions that the Commission might have.

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

Ms. Higgins stated that this was kind of a chicken and an egg thing. She noted that staff had answered her question about the Board still considering the funding strategies. But under amendment 3, page 30 in the list of strategies it only lists 2 strategies with the first one being to implement the stormwater management program and improvements in accordance with the County approved funding strategy. This raises the question of how can they recommend something on to the Board that has a list of strategies if they don't what in accordance with the approved funding strategy is.

Mr. Benish stated that this motion is referring to the chicken part since they would adopt the plan and then it was recognized that to implement it with the limitations in the funding strategy that the Board will have to adopt it.

Ms. Higgins asked if the Board would adopt it without it coming to the Planning Commission.

Mr. Benish stated that the funding strategy would ultimately be adopted by the Board of Supervisors. Typically funding matters do not come to the Planning Commission. He pointed out that this is existing language that is in the current plan.

Mr. Thomas stated that he thought that it meant that it would be applied in accordance with what they have approved.

Mr. Benish pointed out that the Board will approve the funding.

Ms. Higgins suggested that it be changed to read implement the Stormwater Master Plan Programs and improvements in accordance with the Board of Supervisor approved funding strategy.

Mr. Benish stated that he felt that it meant the same thing.

There being no further questions, Mr. Thomas opened the public hearing and asked if anyone wanted to speak for the applicant. There being no one else to speak for the applicant, he invited comments from other persons in the audience who wanted to speak on this matter.

Eric Christianson stated that he was present at last week's meeting. He asked if the priorities are identified in that plan for which projects may be most important in terms of preserving the drinking water quality and the general water quality in the area.

Mr. Graham stated that the priorities identified in the plan were identified primarily for the development areas that were outside of the drinking water supply. Therefore, no there is not a strong emphasis on that. During the Board's discussion of the Master Plan it was brought up that they would like to expand the original scope to a County wide Stormwater Master Plan. Originally, they were thinking in terms of a development area Master Plan. So there will be an increased interest on that and possibly an amendment to the Comprehensive Plan sometime in the future as they develop those strategies for the Rural Area.

Ms. Higgins stated that it seems to apply to the development areas, but on the inserts you have the Crozet Parrot Branch designated facilities. She asked if those facilities are in or outside of the development area.

Mr. Graham stated that those facilities are in the development area.

Ms. Higgins stated that on the attachment that those facilities are shown as being outside of the colored area of Crozet.

Mr. Benish stated that the facilities would serve part of the new downtown area that was included in the Comprehensive Plan area.

Mr. Graham stated that was correct.

Ms. Higgins suggested that this insert has not been updated.

Mr. Graham stated that insert was created prior to that.

Ms. Higgins suggested that this particular attachment, Figure 2-12, be clarified because it should be corrected before it goes to the Board. She pointed out that since the Crozet Master Plan has been adopted into the Comprehensive Plan that it should be clarified. In the language it has been struck out that the Design Manual currently under development will further refine County guidance on these matters. She asked why that was struck out.

Mr. Benish stated that the intention to strike that language out was mainly to recognize that the Design Manual was completed.

Ms. Higgins stated that the mention that it is currently under development should be struck out, but not the Design Manual part of it. It should say that the Design Manual does further refine County guidance on these matters. If they strike it completely you don't include the Design Manual as any kind of criteria because you would now be disregarding it. She pointed out that it was the Design Manual that she was on the committee for that had not had a meeting yet.

Mr. Benish stated that it was a good point. Therefore, staff would just strike out currently under development.

Ms. Higgins stated that there were elements of it that would further define County guidance on these matters.

Mr. Graham stated that was correct in regard to the stormwater management.

Ms. Higgins stated that the last part of that under paragraph 2, page 28 in the last two sentences it is recommended, getting back to the financing mechanism, to be implemented to the various elements of the Stormwater Master Plan. It says that an analysis of the funding options was completed subsequent to the Stormwater Master Plan, but it is not presently adopted. She asked if that sentence would stay as it is when it was inserted into the Comp Plan. It gives it no context and sounds like it was completed by a

consultant and submitted to the Board for consideration. If someone goes back and reads it five years from now it will not make sense. She suggested that the structure of that sentence be changed to say exactly what they mean.

Mr. Benish suggested that the sentence be taken out completely.

Ms. Higgins asked if he could in a nutshell describe what the funding options were going to be as compared to how it is funded now.

Mr. Graham stated that the primary one of consideration is can we continue to fund it out of the general fund like they have done up until now with the operating budget and the CIP, or should the County consider creating a special tax district that would be a separate line item on the tax bills that would be dedicated to the stormwater issue.

Ms. Higgins asked about the development contributions as development occurs on existing ones. She asked if that has not been sufficient.

Mr. Graham stated that the County never recovers the majority of the costs using the mechanism of the pro-rata share contribution reimbursements. That still exists in the County's financing plans and is being considered by the Board to continue. That would be one element that would remain in place. Similarly the collection of fees associated with the review of stormwater management plans and erosion and sedimentation control plans would continue. Those existing revenue sources would remain.

Ms. Higgins stated that basically that these new identified potential recommended regional stormwater facilities would become capital projects in general.

Mr. Graham stated that was correct. But they would still need to come forward through the capital improvements plan and the funding source would just be different.

Ms. Higgins asked if the list of all of the regional basins that existed 8 or 9 years ago have all been completed.

Mr. Graham stated that staff is working on the last of them as we speak.

Mr. Higgins stated that was good news because they have been hanging over staff for a very long time.

Mr. Thomas asked if there was anyone else in the audience that would like to speak. There being none, he closed the public hearing to bring the request back before the Commission for a possible action.

Ms. Higgins asked if the entire book will become part of the Comp Plan or if just by reference.

Mr. Benish stated that the plan will be adopted by reference and will stand under separate cover.

Ms. Higgins asked if this plan was the final document.

Mr. Benish stated that it was the final document, except for the maps that she had pointed out, which will be changed.

Ms. Higgins asked what action staff was expecting from the Planning Commission tonight.

Mr. Benish stated that he had assumed that the Commission could move forward with the document, but he did not know that they have to.

Ms. Higgins pointed out that she was not comfortable moving it on tonight particularly with two Commissioners being absent.

Mr. Rieley stated that they had the opportunity to look at this pretty thoroughly before and thought that they could pass it on.

Mr. Morris stated that the important thing was to take the time to consider the public's input. Since there was not much public input tonight he was ready to forward it on.

In summary, the Commission suggested several minor non-substantive changes to the text of the Comprehensive Plan Amendment.

Mr. Rieley made a motion to send CPA-2004-00006, Stormwater Master Plan, to the Board of Supervisors with a recommendation for approval.

Mr. Craddock seconded the motion.

The motion carried with a vote of (5:0). (Joseph, Edgerton – Absent)

Mr. Thomas stated that the motion carries and would go to the Board of Supervisors on February 2.

ZTA 2004-00009 Gas or Oil Transmission Line: Proposal to amend Section 3.1, Definitions, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Section 3.1, Definitions, by amending the definition of "transmission line, gas or oil" to mean pipelines that convey gas or oil for the purpose of supplying gas to a system, or which serve as a common source of supply from a system station or substation to one or more distribution lines as delineated in the definition if any portion of the pipeline is within the rural areas (RA) zoning district or within a public right-of-way abutting such district. (Amelia McCulley)

Ms. McCulley summarized the staff report. This is a proposal to revise the definition of transmission lines, gas or oil, and to broaden it and further clarify it. In terms of background, the Charlottesville Gas Division is currently proposing a 6" gas main trunk line from the General Electric Fanuc Plant in Albemarle County along Route 29, extending to also provide service to Greene County. The Commission should have a colored map attached to the staff report. The Zoning Administrator has again determined that this gas line is a transmission line, requiring a special permit for approval. The City of Charlottesville has again filed an appeal of the Zoning Administrator's determination. The appeal is pending and is scheduled for a February 8th public hearing with the Board of Zoning Appeals.

PUBLIC PURPOSE TO BE SERVED:
Staff recommends that revision to this definition will allow a more comprehensive review (as is required for a special permit) for the impact caused by significant gas and oil transmission lines. This special use permit review would include the impact on the Rural Areas and protected resources caused by proposed lines. The special permit review could also consider the impact, including service to our development areas, from extensions to establish new systems in other jurisdictions.

DISCUSSION:
Lines for the distribution of local oil or gas service to customers are permitted by right. The main gas or oil trunk lines which serve the distribution lines and supply the system are transmission lines and require a special permit for approval. Electrical power substations, transmission lines and related towers also require a special use permit for approval. Water and sewer lines, interceptors and larger facilities are allowed by-right; however, they are subject to review for compliance with the Comprehensive Plan.

The currently proposed 6" gas main trunk line will extend only about 1 1/2 miles along Route 29 in Albemarle County before it reaches Greene County. Once there, it will extend another approximately 4 1/2 miles before the currently proposed termination at the S.L. Williamson Asphalt Plant. In Greene County, 4" gas mains will extend from the 6" trunk line at Routes 607 and 33. Smaller (2") lines serve numerous individual subdivisions. The City has explained that this expansion of service can be provided with an increased supply within the existing lines.

This revised definition is not intended to require further approvals for the distribution lines. This revised definition is intended to address the impact of the main trunk lines which cross the Rural Areas to provide service to the smaller distribution lines. The fact that individual customers would be permitted to tap into a transmission line is not determinative as to whether the line is a distribution or a transmission line. The

fact that a new line does not directly connect to a gas supply at a station or substation, is also not determinative as to the classification of the line. The proposed ordinance definition parallels federal regulations for transmission, distribution, service and main natural gas lines as found within 49 CFR § 192.3.

The City of Charlottesville Office of the City Attorney has submitted a letter of objection to this ZTA (Attachment C). There are representatives present tonight who will speak to that. They ask "as a matter of fundamental fairness, that consideration of the City's plans by the Zoning Administrator, and if necessary by the BZA, be allowed to continue under the provisions of the Albemarle Zoning Ordinance as currently in effect." They further state that revising the zoning ordinance definition that will require a special permit for more lines is not consistent with the Comprehensive Plan and will result in difficulties for interpretation.

What staff is suggesting is that we acknowledge, identify and address potential impacts. Staff is not trying to address or control development in other Counties. That is not the agenda here. It is to address the impacts on our resources in our Rural Areas and Entrance Corridors when you have a significant line that traverses the County. There are some existing lines which may as a result of this definition become nonconforming.

One of the points also made in the letter from the City relates to the fact that this definition would cause some existing lines to become nonconforming to the requirement of a special use permit. Staff has not studied this issue extensively and can offer preliminary comment. Those nonconforming transmission lines may remain and their use may continue consistent with Virginia Code and Albemarle County Zoning Ordinance provisions. Maintenance of the lines is permitted; however, enlargement or extension of these transmission lines would be subject to a special permit.

With regards to compliance with the Comprehensive Plan, staff recommends that the requirement of a special permit for a broader definition of "transmission line" will better serve our Comprehensive Plan goals. To illustrate the point, staff provides some relevant excerpts from the Comprehensive Plan:

- The Land Use Plan chapter on "Other Utilities" states in part: "Natural gas service is provided to the City and adjacent portions of the County…"
  General Principles for Other Utilities:
  1. Insure the adequate provision of … natural gas services to support existing and anticipated development in the County.
  2. Locate other public utilities in a manner that has minimal impact on the natural environment.
- The Land Use Plan chapter on "Growth Management and Facilities Planning Goals" states in part:
  - The County's growth management goals are to be supported through the appropriate provision of transportation, public utilities, and public facilities and services to designated Development Areas. The provision of fire, rescue, and police protection, roads, utilities, school bus service, and other governmental activities and functions to a large, dispersed rural population is viewed as inefficient and contrary to the overall public interest in guiding new development to the designated Development Areas.
  - Emphasis is placed on providing a level of public service delivery that will support development in, and direct development to, designated Development Areas. To accomplish this, service and facilities will be provided at a much higher level in Development Areas than in the Rural Areas. Those persons living in the Rural Areas should not anticipate levels of public service delivery equal to services provided in the Development Areas.

Staff will address the three (3) criteria which the Board has previously asked staff to discuss with zoning text amendments.

Administration / Review Process: Broadening this definition will Increase the number of lines which will require special permits as opposed to being permitted by-right. This will increase the administration and

review process for oil and gas lines. Because it is not a frequent proposal, it is not expected to have much impact on staff.

Housing Affordability: The proposed amendment would not affect housing affordability.

Implications to Staffing / Staffing Costs: This amendment alone is not expected to generate much impact on staff workload.

RECOMMENDATION:
In conclusion, she asked in light of the schedule that they were on that the Commission consider this amendment and forward your comments and your advisory recommendation to the Board so that they can keep on schedule for February 2. Staff hereby recommends adoption of the draft ordinance found in Attachment B.

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

Mr. Rieley stated that he had one question about the schedule. He would presume that the appeal to the BZA is on its own schedule and this is another thing and if they don't relate because that is something that was already in the works before this came about. He asked if that was correct.

Ms. McCulley stated that was right. The BZA schedule at this point is for February 8 and it is independent of the zoning text amendment schedule.

Mr. Rieley stated that it was independent of this and no matter what this determination is it won't affect that. In other words they are not going to be making their determination based on the new rules. He assumed that they would be making their decision on the rules that were in place for the definitions that were in place when the appeal was filed.

Mr. Kamptner stated that the BZA would be considering the appeal of the Zoning Administrator's determination from October or November.

Mr. Rieley stated that it would be concerning the definition at that time.

Mr. Kamptner stated that it would be for that time, but it may render that appeal moot if the definition has changed.

Mr. Edgerton asked if there were any further questions for staff. There being none, he opened the public hearing and invited the appeal, who was the City of Charlottesville to speak.

Ms. McCulley pointed out that the County was the applicant for the zoning text amendment.

Craig Brown, Attorney for the City of Charlottesville, stated that they were not the applicant, but were an extremely interested party in this zoning text amendment. With him tonight was Judith Mueller, Director of Public Works; Phil Garber, Chief Gas Engineer for the City and Stan Ballis, principal with the law firm of Miller, Ballis and O'Neil who has been counsel to the City's gas division on regulatory matters for the last thirty years. He asked to offer his opinion of the question that Mr. Rieley posed. The sole question before the Board of Zoning Appeals is the correctness of Ms. McCulley's interpretation of the existing definition of transmission lines. If the County Board of Supervisors changes that on February 2 prior to the BZA, then he thinks that moots their appeal. It is an appeal of a provision that is no longer in existence. Therefore, he did not think they would be allowed to go forward on that track if this ordinance is in fact amended. They appreciate the opportunity to comment on it. It is a very significant amendment because they believe that it could seriously impact the City's ability to provide natural gas service to customers in Albemarle County. It affects not only the line that the City is planning in the County, but it may also make certain existing lines, as Ms. McCulley referenced, nonconforming transmission lines. That is significant because it means that they cannot replace those lines unless they get a special use permit. As background he asked to show the Commission their existing natural gas system. He referred to a diagram he had on display. This is the Buck Mountain gate where they receive gas from Columbia Gas Transmission System. It is transported into the City along this line for distribution to in the City and

County. In terms of some reference the white area is the City. Some of the County lines include Farmington, Boar's Head Inn, Ednam Forest, Mill Creek, Pantops/Wilton Farms and Route 250 east to the intersection of Route 22 to serve Keswick Estates. North of the City there is the line which goes up the Route 29 Corridor to serve customers there that terminates at the GE Fanuc Facility. This line is currently in the median of Route 29 north of the city. The definition that is being proposed is in response to the City's plans to extend this line, which is about a mile and a half to the Albemarle County border with an extension of the existing 6 inch natural gas pipe line that is currently there. If they are allowed to build it he felt that it would be in question on whether they would be required to get a special use permit. This additional line for the last one mile and a half would be within an easement that is immediately adjacent to the Route 29 right-of-way. They think that significantly it is within an existing easement for overhead utility lines before it enters Greene County. They have been planning this line for years believing that it was a by right use because its purpose is to distribute gas to customers rather than to supply gas to a system, which is the current definition of transmission line. In the agenda materials there is a statement that staff finds that the distinction between lines for distribution of local service, which are permitted as a matter of right, and transmission lines, which are permitted only by special use permit can be further clarified with amendment to the Zoning Ordinance. They certainly don't dispute that. He felt that anytime that they have the opportunity to provide greater clarity in a land use regulation that it is openly in everyone's best interest to do so. But, it is unfortunate however in their opinion that this proposed amendment does not do that. The most recent version that they received last Wednesday is very complicated and in their opinion overly broad. It still defines transmission lines as lines that supply gas "to a system" but like the current definition it does not define a system. It still defines a transmission line by reference to this specific line, but it also presumably would include this line despite there being very significant differences between the characteristics of the two lines. In addition to those two components it would apply to a pipe line any portion of which is within a rural areas zoning district or within a public right-of-way abutting such district. Our interpretation of that language is that it would make this line where it leaves the City a transmission line despite the fact that it is going through probably the most densely developed and heavily populated area of the County and it would make this a transmission line simply because it abuts areas that are zoned for rural use north of the City. Of course that means that entire line has become a nonconforming use. He thought that the statement was made that the proposed ordinance definition parallels federal regulations for transmission, distribution, service in main natural gas lines found within the Code of Federal Regulations. He felt that the use of the word parallel is curious. He noted that he thought of something that is parallel that it is never touching and sitting there aside from one another. It does track the definition of service lines, but none of these lines that are in existence now and none that the City is proposing meet the federal definition of a transmission line. As you know, this line went to the BZA in 1999 and that was the position that they took at that time that under federal law it was not a transmission line. Staff's and the BZA's position was that federal regulations were pretty irrelevant and meaningless when it came to defining a land use in a local zoning ordinance. In light of the wording of the amendment, it seems that the concern is to protect the County's rural areas. That is certainly a very legitimate concern. He felt that to put that into context he would ask them to look at the fact that the City has been providing natural gas in to Albemarle County for the better part of the last thirty years. To the best of their knowledge there has never been a special use permit requirement for any line that conveys gas from the City into the County. They are likewise unaware that there has been any adverse consequence or harm that has resulted from the presence of these lines whether they have been in the rural areas or in one of the development areas. For the lack of better word, he would say that they are puzzled why this proposed mile and a half extension of this existing 6 inch line when it is right next to Route 29 and under an existing overhead utility line is seen as perhaps posing a threat to the rural character of the County. If it does not, their question is why this ordinance is drawn so broadly to include it. The Comprehensive Plan does, of course, state that residents who live in rural areas can not expect the same level of public service delivery equal to services provided in development areas. That certainly makes sense and it recognizes that the provision of County funded services such as fire and rescue, police protection, school bus service, and roads can be very inefficient in a sparsely populated area. That is true for gas. Although in this case it would be inefficient for the City rather than the County and that is the reason why gas lines are planned for areas where they know development is going to occur. In a natural gas system pipe lines are not extended into undeveloped natural areas with the hope that some day development is going to occur there. They had a policy approved by City Counsel which dictates their decisions to extend gas lines, which are based on an economic model that must show a certain return on an investment within a specific period of time. That really can only occur when they know that there is going to be development that can use natural gas. That situation exists in Green County. To

summarize, they certainly don't question the motivation in trying to protect the County's rural areas. It is certainly admiral and understandable. They think that this proposed amendment is overly broad and it is not tailored to protect that interest. It would include both this proposed line, which they don't see how it could pose a threat to any rural areas, and the existing lines, which he frankly did not think anybody knew they were there other than for their gas division. This small one mile and a half extension he felt has placed them in the position of feeling like they were looking at a avalanche all of a sudden where all of their significant gas lines in the County may become nonconforming uses, which cannot be replaced and cannot be extended without getting a special use permit from the County. In closing, he stated that he would like to make one suggestion. He pointed out that he had some language that he would like to suggest. He stated that the County staff might be able to improve up their suggested language. But, he would like for this to be an opening for some discussion. The County Comprehensive Plan states that public utilities should be located in a manner that has minimal impact on the natural environment. Certainly, no one can argue with that. They would suggest that if their pipe lines that are in rural areas are kept in a public right-of-way or within a specified distance of a public right-of-way or as in this line within an existing utility easement, keeping in mind that they were only going to go where they have customers that are willing to buy gas, then he would suggest that they have met that goal of locating in a manner that has a minimal impact on the environment. He handed out information regarding a proposed definition that makes the City's supply line from the City gate at Buck Mountain a transmission line and it would retain the statement that a transmission line supplies gas to a system. It would also apply to a pipe line located in whole or in part within a rural areas zoning district that supplies gas or oil directly from a system station to one or more distribution lines within a rural areas zoning district. But it would allow them to have their pipes when they are located within 50 feet from an existing or an improved right-of-way or within an existing utility easement. They would also ask that the definition that the Commission adopts grandfather in their existing lines and not make them nonconforming. He thanked the Commission for considering their comments. If there are any questions, he would be happy to answer them. (Attachment – definition of Transmission line, gas or oil submitted by Craig Brown, City Attorney)

Mr. Thomas asked if any Commissioners had any questions. There being none, he asked if there was anyone else present that would like to speak regarding this request.

Eric Christianson asked what kind of pressures that line is running at. He felt that the definition of a transmission line and its hazards had a great deal more to do with how big it is and how much pressure it is than what its ultimate purpose is. There have been gas lines where someone has come along with a backhoe and caused apartment buildings to burn down. It happened in New Jersey while he was living there. The second thing is that he would like to see all of that stuff buried under the ground. Utility right-of-ways are fine, but if you have to build a trestle in the utility right-of-way that he did not think that is what is meant by low impact.

Mr. Thomas asked Mr. Brown if he could answer Mr. Christianson's question about what the pressure would be

Mr. Brown stated that the wiring which comes in from the City gate at Buck Mountain conveys gas at 400 pounds per square inch until it reaches a station on 29 North at Greenbrier. The line that runs north of the City on the Route 29 right-of-way is 90 pounds per square inch.

Mr. Thomas asked if there was anyone else in the audience who would like to speak on this application. There being none, he closed the public hearing to bring the matter back before the Commission for discussion and a possible action.

Ms Higgins asked if staff had a chance to look at the City's proposed language changes. There are two issues. The first is the potential grandfathering because that is a unique point in this proposed language.

Ms. McCulley stated that staff has just received this information and did not have prior access to this. There are two components to this. On the bottom it relates to the grandfathering the existing lines. She stated that staff does not object to that. The new language she was not prepared to speak about without conferring with other staff in considering it.

Mr. Kamptner stated that if the Commission wishes, it should close the public hearing tonight and defer action for two weeks.

Ms. McCulley suggested that the request be deferred to January 25.

Mr. Rieley stated that he appreciated Mr. Brown's presentation. It seems that the proposed language is a reasonable way to reach an accommodation. He proposed that the Commission do exactly what Ms. McCulley suggested. This would give staff time to evaluate this and see if they can come to a reasonable accommodation for the City's concerns.

Ms. Higgins stated that Mr. Brown's presentation was pretty much what she would expect as a presentation at the time the special use permit is being requested. He had a very good explanation of the issues that would be of concern under a special use permit request. But the crux of this is the effect on the rural areas and whether the effect is directly because of the line's location within the ground or does it effect by having it available. The only parallel that she can draw is water and sewer and that there is typically a jurisdictional area associated with water and sewer. That is under the control of the Board of Supervisors having to affect growth. But, she did understand that it was the supply and demand and that there were a lot of efficiencies with using gas versus other forms of energy. The real question is whether the City's goal is just not to be subject to special use permits, which she did understand. The second part would be is what sorts of conditions under a scenario of a special use permit consideration would be considered if it is in close proximity to an approved public right-of-way or an existing utility easement. She raised one objection regard being close to an existing utility easement because of the existing wind. If it exists where there are overhead power lines and putting a gas line under the ground would kind of make it that they can go anywhere. The language is a little broader than she would have expected to see as a counter proposal to the language that has been proposed by staff. She questioned when it said within an existing public utility easement is it existing of February 2, 2005 or is that the new ones that would be created. If they are not in a right-of-way adjacent to it then that would be very issue that they are trying to look at with rural areas.

Mr. Rieley stated that was a concern on both sides. Is it true that if the applicant comes before the Commission with a special use permit that they have to have their easements in place before making that application or can they make an application over raw land without easement in place.

Mr. Kamptner stated that an applicant needs to be an owner, but it can also be the owner's agent. So before an easement can be entered into he would assume that if the City envisions a particular alignment for their pipeline, it would have at least contacted the owners. They can get the authority to act as the owner's agent to apply and identify all of the parcels that would be affected by the proposed alignment. So they don't have to have all of the easements in place, but they may need to at least have the owner's consent to submit an application on their behalf for the special use permit.

Mr. Rieley stated that he could understand that being an onerous part of the application process. In this particular case, which is unlike a special use permit that is dealing with just one big piece of property, they would be dealing with a lot of landowners even before making the application because of the very nature of a lineal system. That may be a reason to look favorably on the ones in existing right-of-ways.

Ms. Higgins asked to comment on the existing language of less than 50 feet within an existing public utility easement. If it was in the right-of-way she could understand that impacting the rural areas would not be an issue under any review. But if it was 50 feet outside of it that she did not know if 50 feet was the right number. But within an existing utility easement does not make any sense because if they already have an easement, then it exists. She suggested that there be additional language that would be more win/win to address the issues of the rural areas impacts and may be more flexible.

Mr. Rieley suggested that staff work on the language over the next two weeks.

Mr. Benish pointed out that road right-of-ways would be included, and therefore they have to look at those impacts. Route 29 might not be an issue, but it could be located on other roadways.

Ms. Higgins asked if the public utility have the right of condemnation for the gas line.

Mr. Rieley stated that he would assume that they have the authority, but it was a question of whether they exercise it or not.

Ms. Muller stated that the City has never condemned property.

Mr. Rieley made a motion to defer ZTA-2004-00009, Gas or Oil Transmission Line, for two weeks. He asked staff to look at and carefully evaluate the proposal put forth by Mr. Brown to see if some language can be crafted and then bring the ZTA back to the Planning Commission in two weeks. (January 25)

Mr. Craddock seconded the motion.

The motion carried with a vote of (5:0). (Joseph, Edgerton – Absent)

Mr. Thomas stated that the motion was unanimous and the request would be brought back before the Commission in two weeks.

Work Sessions:

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)

Ms. McCulley summarized the staff report. (See Attached Staff Report and Handout with the Revised definition of sign using rare gas illumination.

The Planning Commission held a work session on ZTA-2004-00005, Focused Sign Ordinance Amendment. Staff reviewed and discussed the draft text amendment to Section 4.15, Signs regarding the four identified sign topics and the two additional sign issues. The Commission provided comments and suggestions and asked staff to set up a public hearing so they could receive public comment.

Mr. Rieley submitted two handouts concerning the proper protocol for flags. He pointed out concerns about the size of the sign compared to the height of the pole. He suggested that the ordinance contain regulations regarding restrictions on how large a sign can be according to the height of the pole. (Attachments (2) – Submitted by Mr. Rieley regarding flag protocol)

It was the general consensus of the Planning Commission to leave the section on flags as it was written and not include restrictions as requested by Mr. Rieley regarding the size of the sign being restricted by the height of the flag pole.
Ms. McCulley stated that the request would be coming back before the Commission on February 15 for a public hearing.

Old Business:

Groundwater Ordinance Implementation

Mr. Graham distributed a handout entitled New Groundwater Ordinance Requirements Effective February 8, 2005, which was being distributed to notify the general public about the new regulations. He pointed out that the handout explained the implementation of the new regulations. He stated that he wanted to make it clear that if someone had an existing use that this would have no impact on it. (See Attachment)

New Business:

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 8:35 p.m. to the January 18, 2004 work session and meeting at 4:00 p.m.

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V. Wayne Cilimberg, Secretary

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