Albemarle County Planning Commission
February 15, 2005

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, February 15, 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, Marcia Joseph, Vice-Chair, Jo Higgins, Pete Craddock and Bill Edgerton, Chairman. Absent was David J. Neuman, FAIA, Architect for University of Virginia and Calvin Morris.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; David Benish, Chief of Planning & Community Development; Stephen Waller, Senior Planner; Amelia McCulley, Division Director of Zoning and Current Development; Louise Wyatt, Zoning Enforcement Manager and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

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

Other Matters Not Listed on the Agenda from the Public:

Mr. Edgerton invited comment from the public on other matters not listed on the agenda.

Jeff Werner, representative for Piedmont Environmental Council, distributed a statement that he made to the Board of Supervisors last week after they had been addressed the prior week by the Rivanna Water and Sewer Authority. There is a tremendous amount of misinformation that is being circulated in the community about this. The PEC is an advocate for a solution within their local water supply and despite some efforts by others this is neither a no growth nor a no action approach. The PEC is not alone in believing the RWSA is determined to present the James River option. As he found in his construction career, one can argue that something can be done, but one can also argue why something can't be done. It is a very fine line there and that applies here. Of all the components made available to the public, the cost estimates singularly have become a shell game. There has been no consistency in the various cost presented for the various options. For example, from the RWSA's information, the James River option was $66-million in June 2004, then $109-million in August 2004 and in January 2005, it suddenly dropped to $49-million. In the RWSA's August 2004 item-by-item estimate for the project for the pipeline projects a 15-mile pipeline. But, all one needs to do is look at a map to see that from Scottsville to O-Hill is about 24-miles. The potential intake site is possibly five miles south of Scottsville. This suggests a significant omission in the cost estimate. Regarding dredging, in November the RWSA told the County and even the Daily Progress that the silt would fill Scott Stadium 20 times. I found the dimensions for Scott Stadium and the sediment would only fill it 6 times. They are hearing about how much the astronomical costs of the sediment removal would be. Here too are a lot of unanswered questions. He pointed out that he used to be a builder. When he heard that they were pricing it using 6-cubic yard trucks to move the silt that he felt that they might as well use a spoon and a pick-up truck. The RWSA told the Board that the hauling along was two-thirds of the multi-million dollar costs. When he talked to a couple of builders downtown that was doing some work they laughed at the idea of using 6-cubic yard dump truck. He noted that this was de-watered silt. It is not because it was heavy. He stated that he pulled out his old RS Means book and used the same categories that the RWSA used and he could potentially cut the costs in half by using larger trucks and a larger loader. He stated that he just wanted to bring that to the Commission's attention. He asked that they be honest about the fact that they are not going to be out of water in three years. The projection is for 2055 to have a 9.9 million gallon per day deficit. The RWSA has stated categorically that both the local watershed solution and the James River option will fulfill that projected deficit. To protect our local watershed is not a no-growth solution. He asked that the Commission not listen to the myths. (Attachment – Statement to Albemarle County Board of Supervisors dated February 9, 2005 with supporting documents submitted by Jeff Werner of the Piedmont Environmental Council.)

There being no further public comment, Mr. Edgerton stated that the meeting would move on to the review of the Board of Supervisors Meeting.

Review of Board of Supervisors Meeting – February 9, 2005.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on February 9, 2005.

Public Hearings:

ZTA 2004-0010 - Civil penalties: Amend Section 37.2, Civil penalty, of Chapter 18, Zoning, of the Albemarle County Code, to increase the civil penalty for each violation subsequent to the first violation arising under the same operative set of facts from one hundred fifty dollars ($150) to two hundred fifty dollars ($250), and to increase the total civil penalties resulting from a series of such violations from three thousand dollars ($3,000) to five thousand dollars ($5,000). (Louise Wyatt)

Louise Wyatt stated that she had been the Manager of Zoning Enforcement for the past four months. The request before the Commission was a request to amend Zoning Ordinance Section 37.2 to increase the civil penalties for zoning violations as allowed by Virginia Code Section15.2-2209.

Background: Use of civil penalties for certain zoning violations has been an effective enforcement tool as both a deterrent and as a consequence for noncompliance in numerous zoning cases. The Zoning Ordinance currently imposes civil penalties of $50 and $100 for the first violation (depending on the nature of the violation) and $150 for each subsequent violation, and imposes a cap of $3,000 total civil penalties for each violation. Over the past three years the County has had an average of about 339 zoning enforcement cases. Many of these cases have been part of the use of civil penalties before the violation is abated. Currently the County is pursuing civil penalties in about 28 percent of our unresolved violation cases. Additionally, several long term cases have approached the current ceiling limit before staff was able to abate the violation. Consistent with current State law the proposed ordinance would increase the civil penalties for each subsequent violation from $150 to $250 and increase the civil penalties cap from $3,000 to $5,000. Raising both the civil penalties for subsequent violations and the cap will help the County in adjusting these violations.

In terms of implications to staffing and staff costs, the proposed amendment has the potential to reduce staff workload if it results in more timely abatement of zoning violations. It would allow the County to actually come closer to covering actual staff cost for enforcement. For these reasons, staff recommends the adoption of the draft ordinance found in Attachment B of the staff report.

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

Mr. Thomas asked regarding the penalties if with the maximum amount going to $5,000 if the time frame would be the same or if the increments would just be larger and they would get there just as fast. He asked if it would slow down the time frame of getting to the maximum.

Mr. Kamptner stated that given that $3,000 is 60 percent of $5,000 and 150 is 60 percent of 250 that they should get there at about the same time. All of the civil penalty cases they have had so far have not reached the threshold. They have five or six cases that are at the threshold, but most of the cases are not even close, and staff is moving on those cases to seek an injunction from the Court.

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

Mr. Rieley asked when the last time that these penalties were increased.

Mr. Kamptner stated that the County has never increased these penalties so the current penalties were the original amounts. The $150 cap and the $3,000 cap were the original limits, which were consistent with State law when the County decided to move to civil penalty enforcement.

Ms. McCulley stated that civil penalties were adopted by the County in February, 2002.

Mr. Thomas asked if the County had any type of penalties prior to 2002.

Ms. McCulley stated that the County did not have a civil process.

Mr. Kamptner stated that civil penalties were adopted in 2000. Before that time the County did most of its enforcement in the General District Court seeking criminal fines. Those fines were sometimes as little as $25. For the volume of cases that they are handling and going back to Court for repeat offenders, staff thinks that this process, for the majority of the violations, is a good way to resolve cases in a minimum amount of time.

Mr. Thomas stated that he would hope that it would help abate the majority of the violations. The Commission has reviewed a few special use permits where they have had to get the applicants back in compliance before approving the request. There have been a few people who did not improve themselves very much and he hoped that civil penalties would push the violators to do what they have to do to come into compliance.

Ms. McCulley stated that civil penalties have been much more successful than the prior criminal process. It is a much more efficient process. The individual is allowed to and can be made to testify themselves since they are not protected as they are in a criminal process. The whole evidence in terms of beyond a reasonable doubt for criminal versus a preponderance of evidence is in our favor. This process is just very efficient and the County saves a whole lot of time doing it this way.

Ms. Joseph asked what happens to the money that is collected. She asked if the money goes into the general fund.

Ms. McCulley stated that the money collected does go into the general fund.

Mr. Kamptner stated that unlike the criminal fines, which are paid directly to the court, the civil penalties are paid to the Finance Department.

Mr. Thomas moved for approval of ZTA-2004-0010, Civil Penalties.

Mr. Rieley seconded the motion.

The motion carried by a vote of (6:0). (Morris – Absent)

Mr. Edgerton stated that ZTA-2004-0010 was approved and would be heard by the Board of Supervisors on March 16.

ZTA 2004-005 – Signs: Amend Section 4.15.2, Definitions, Section 4.15.6, Signs exempt from the sign permit requirement, Section 4.15.7, Prohibited signs and sign characteristics, Section 4.15.16, Regulations applicable to certain sign types, and Section 4.15.22, Sign maintenance, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Section 4.15.2 by amending the definitions of “advertising vehicle,” “banner,” “farm sign,” “flag,” “pennant,” “portable sign,” “temporary sign,” and “window sign,” and would add definitions for “rare gas illumination” and “agricultural product signs”; amend Section 4.15.6 by exempting certain window signs, flags, advertising vehicles and agricultural product signs from the sign permit requirement; amend Section 4.15.7 by deleting the total prohibition of neon signs, and by prohibiting certain types of signs using rare gas illumination, certain window signs, animated and moving signs using rare gas illumination, and certain advertising vehicles, and by exempting authorized flags from the class of prohibited moving signs; amend Section 4.15.8 by imposing a brightness standard of 30 milliamps on signs using exposed rare gas illumination throughout the county, and on all signs using rare gas illumination covered by transparent material within the Entrance Corridor Overlay District; amend Section 4.15.22 to establish maintenance standards for lighting fixtures and the sources of illumination on illuminated signs; and other nonsubstantive changes in those sections. (Amelia McCulley)

Ms. McCulley stated that this zoning text amendment is the culmination of a lot of good hard work in two years times since the resolution of intent. This is an amendment to Section 4.15 of the Zoning Ordinance, which is the sign regulations for neon advertising vehicles, commercial flags, window advertisement and

agricultural product signs. The staff report contains all of the background information in terms of work session dates and so forth in the process. In conclusion, the draft ordinance has been discussed and improved through the input of a Focused Sign Committee, a community roundtable as well as a total of five work sessions with the Architectural Review Board and the Planning Commission. The draft ordinance is Attachment C. The full ordinance showing the areas of amendment is Attachment D. In terms of public purpose, staff offers that the resolution of intent was adopted and the Sign Committee was chartered by the Board because the current sign regulations in terms of these four topic areas are problematic and do not adequately reflect the community's interest. Staff and the Commission recommended an additional amendment to provide for "agricultural product signs." While this was not one of the four focused sign topics, it has been incorporated into the draft ordinance and serves the Comprehensive Plan goal to facilitate viable agricultural uses. The new item is the "agricultural product sign", which the Commission has not seen in draft text, which was discussed conceptually last time. The "agricultural product sign" is as staff has drafted it an allowance for one or two signs, a maximum of 32 square feet (if two signs it would be an aggregate) that is available without a sign permit. This would allow farmers to more easily advertise products for sale. In addition to this "agricultural product sign" a farm is also entitled to a farm name sign as a separate sign, which is an exempt sign.

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

Administration/Review Process: Commercial flags, temporary window advertisement and agricultural product signs are all recommended as exempt from the requirement of a sign permit. The recommendation is based on an intent to reduce and simplify the administration of those regulations for both staff and the applicants. While the zoning regulation of temporary window advertisement is a new provision, it will provide consistency and close the gap where it has been regulated by the ARB in the Entrance Corridors, but has not been regulated in the Zoning Ordinance by any specific regulation. She pointed out that she meant permanent window advertisement by calling what is temporary interchangeable window advertisement as truly permanent advertisement. The new provision will cause staff to spend more time because it is a new regulation.

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

Implications to Staffing/Staffing Costs: The only regulation among these which will increase the administrative burden and will therefore have staffing implications is the enforcement of temporary window advertisement violations. While our zoning enforcement program is one which is responsive to complaint as opposed to a proactive program, it is difficult to estimate the implication to staffing and staffing costs from the new regulation of temporary window advertisement. However, it is a new regulation; it will increase zoning staff responsibilities.

In conclusion, staff recommends adoption of the draft ordinance found in Attachment C.

Mr. Edgerton asked for clarification on what a pennant actually is, particularly in staff's additional wording that it was two or more sections.

Ms. McCulley stated that a pennant is what you see often in areas that are not as regulated in terms of signage. Pennants are the triangular, typically plastic, very colorful things in a line on a string that flap in the breeze and catch your attention, which are used very often in an outdoor display of items for sale.

Mr. Kamptner stated that a single pennant could be a flag, which was not objectionable. The definition was changed because the prior definition was very vague. The prior definition had no distinction between flags and pennants.

Mr. Edgerton stated that language was just referring to some multiples of triangular segments.

Mr. Edgerton asked if there were any other questions for staff.

Mr. Rieley asked for clarification, which relates to a rather long conversation that they had a few weeks ago, about governmental flags. In Attachment A it talks about the maximum of three (3) flag poles with a

maximum of three (3) flags of any type governmental, commercial or otherwise and then goes on to talk about the maximum flag size as determined by the height of the flag pole, which are roughly in compliance with the information that he handed out. From reading the ordinance language it does not seen to pertain to government flags, which are shown as the second bullet.

Ms. McCulley stated that was correct.

Mr. Rieley stated that the exclusion for that is a flag representing the official symbol of a national, state or local government, which is not a sign for purposes of Section 4.1.5. A commercial flag is a flag that contains commercial speech and so forth. He stated that if he opened up a Mexican restaurant and put up a 100 foot tall flag pole with a Mexican flag on it that reaches all the way to the ground so that when the wind was blowing it would blow out 100 feet by 60 feet that it would be a 6,000 square foot sign. He asked if that would not be regulated.

Ms. McCulley stated that she would say that if it was a Mexican store or a Mexican grocery store that flag would serve to advertise that business.

Mr. Rieley pointed out that was not what the ordinance says.

Ms. McCulley stated that it would be an interesting appeal.

Mr. Kamptner stated that he would disagree with Ms. McCulley on that. Staff did not focus on generically political flags, but he felt that the County needs to look at regulating political flags and consider them in a separate ordinance.

Mr. Rieley stated that he felt that it was an enormously significant point. He felt that it pertains to our flag as well as other countries' flags when they are demeaned as being used as a way to attract attention to a business and the flags are displayed improperly or the proportion if incorrect relative to the height of the flag pole. With the language as it is, he would find it very difficult to support this.

Ms. Higgins stated that on page 4 on renumbered items 12 and 13 there is a residence sign that does not exceed 4 square feet in sign area. She felt that was very clear. But, then there was a residential sign which was one or more residential signs that are not illuminated signs and do not exceed thirty-two (32) feet in cumulative sign area. She asked why there is a need for a residence sign definition under exempt signs. If they are exempting the one or more signs that do not exceed 32 square feet, then she did not know why there was a need to have a definition for a residence sign. She asked if staff could explain the difference between those two definitions.

Mr. Kamptner stated that the difference is in the definition of the two terms. A residence sign is a sign directed on a lot containing a private dwelling that identifies the name of the occupant and/or the street address of the residence. A residential sign is a sign directed on a lot containing a private dwelling whose copy is exclusively noncommercial speech. This is the sign that is erected by the people who are exercising their first amendment rights of free speech. An example of that would be "Stop the War" or things like that. He stated that they are completely different types of signs. The United States Supreme Court has said that this type of sign is entitled to the highest protection. The 32 square feet is the largest allowed sign in the zoning district. Therefore, that is why it is a 32 square foot sign.

Ms. Higgins suggested that it read like the farm sign that says aggregate rather than cumulative. The residence sign would have the number on it and the person's last name, which is equivalent to a farm sign that does not include commercial identification and does not exceed 4 square feet in sign area. She pointed out that there was a lot of existing farm signs that exceed 4 square feet in area. She pointed out that 4 square feet was very small for a sign with the farm name on it. She asked if any one in the committees evaluated the farm sign area and if it was reasonable that they could be a little more flexible than just the 4 square feet.

Ms. McCulley stated that was not one of their four topics, and she had not before now heard that complaint about either the residence sign or the farm sign. She pointed out that four square feet is used repeatedly with different types of signs such as warning signs, temporary directional signs, etc.

Therefore, it is a common size. She felt that it would take some further review and maybe a different zoning text amendment to review that.

Ms. Joseph stated that one could get a 24 square foot sign in the rural areas with a permit.

Ms. McCulley stated that was correct.

Ms. Joseph pointed out that what they were currently talking about was those signs which are exempt.

Mr. Rieley stated that another important distinction is that an agricultural product sign can be 32 square feet under the new regulation.

Mr. Craddock stated that when they previously discussed governmental flags and Mr. Rieley had some examples of display that he was thinking that the United States flag had to be the tallest and the only thing on that pole. He recognized that would not go under the commercial flags, but it says a maximum of three flag poles with a maximum of three flags of any type. He stated that was probably what got this started in the first place because of an American flag with something under it.

Ms. McCulley stated that what is seen in Attachment A is the focused sign committee's recommendation. Staff did not incorporate the requirement that the commercial flag can't be larger or higher than the governmental flag. That may be in the protocol, but staff did not incorporate that into the draft ordinance.

Mr. Craddock asked if that stands alone on itself and would supersede this.

Ms. McCulley stated that if it was not in the ordinance, then it was not something that staff would regulate.

Mr. Kamptner stated that the protocol of the United States Code was only a protocol, and they felt that for staff to be enforcing that as a zoning regulation would be stretching our authority and staffing levels.

Mr. Craddock asked if someone could have an X, Y, Z flag above the American flag.

Ms. McCulley stated that you could under the proposed language of the ordinance unless it was changed.

Mr. Edgerton stated that would not affect the protocol.

Ms. Higgins stated that it would just mean that the County would not be out there enforcing it if you did something that was not in conformance with the protocol.

Mr. Edgerton asked if there was any way to resolve his dilemma.

Mr. Rieley stated that he thought that Ms. McCulley and Mr. Kamptner were right that more work needs to be done in the area of the governmental flag. The last time that they met Ms. Joseph and Mr. Edgerton were not here and they had a rather extended conversation about it. He stated that he was encouraged to hear Mr. Kamptner say that there is a mechanism and a precedent in the state for that kind of regulation. He stated that it seemed to be a huge hole in this ordinance to allow that kind of abuse not only of our national flag, but of other national flags.

Mr. Edgerton asked if he was referring to the huge American flags seen at many gas stations.

Mr. Rieley agreed and pointed out that it would apply to any national or state flag. He stated that there were not very many abuses of this in our neighborhood, although they do have some. He stated that there were some around that were just egregious and that patriotic people calling up are not addressing the problem. He felt that it was a much more serious issue than how pennants can be strung up in a row. Therefore, he asked that the Commission move this ahead without the section on flags and then fix that separately or else fix it before they act on it.

Ms. Higgins asked if he meant that they now go back and include the protocol for the flags and that sort of thing that they at the previous meeting decided not to do.

Mr. Rieley stated that the people that were here decided that the majority of the people decided not to move it ahead. He stated that he was not sure, particularly in hearing what Mr. Craddock had to say, that was the current sediment. Certainly it was not something that he could support without the inclusion of regulating the flags in a reasonable way.

Mr. Thomas disagreed with regulating the American flag, but noted that he understood Mr. Rieley's point.

Ms. Higgins agreed with Mr. Rieley's point, but not the part where it goes beyond including it here. She disagreed that our zoning staff's time should be spent dealing with it. She stated that it could potentially be a violation if they included it in the regulations. If someone contested it, then someone would try to say that Albemarle County is limiting the size of an American flag. She pointed out that there has been a flag issue before, which probably brought a lot of this up. She stated that she just did not see the resource of zoning being spent trying to do those limited cases because of a couple of cases. If it became prevalent and an issue that was beyond the protocol, then there would be other remedies for it. She stated that she could not see Albemarle County as being the enforcer.

Mr. Rieley stated that she had made the same point last time they discussed this, but that he still remained unconvinced simply because it seems perfectly silly saying that we don't want zoning people going out and regulating the display of governmental flags because we want them to concentrate on little pennants and where you have three pennants strung in a row. That would be a violation of the ordinance, but, the improper display of the American flag would not. He stated that he also opposed utilizing any national flag as a cheap advertising gimmick. He felt that it was degrading and that it was perfectly legitimate and much more important than regulating the signs that go up in a grocery store window on a rotating basis.

Ms. Higgins stated that there was no other regulatory cover for those, but there is one for the protocol on flags. That is why those items are included in this ordinance.

Mr. Rieley stated that they were talking about Albemarle County where there is nothing in the ordinance about this, but that there are in other places and they enforce it because it has been upheld in the courts.

Ms. Joseph stated that staff had talked about the American flag or national flags as being something that they had been discussing that they know needs to be fixed. She asked if this was something that they are planning to do quite soon or is it something that is on the work plan that will get buried.

Ms. McCulley stated that they had not really talked about it. She asked to hear from Mr. Kamptner as to whether it is possible to insert language in that sentence that would otherwise exempt that type of flag that says that if it is used for commercial expression related to the product or service available on that property, and then it can be regulated as a sign. She stated that she did not know the legalities of that.

Mr. Thomas asked if she was requesting an opinion.

Ms. McCulley stated that she was talking about inserting some clarifying language that would say that it is not exempt in every case, but for example the Mexican flag at the Mexican restaurant is a commercial flag.

Mr. Rieley stated that he was not arguing that they should insert the national flag protocol into our ordinance and enforce the protocol as if it were something that it is not. But, he felt that there are accepted proportions for flag display that are easy to see that should be enforced. The County would only be alerted to them by egregious abuses. He pointed out that was what he would like to see inserted. He stated that he did not think that trying to ascertain the intention of whether a particular display of any national flag is for a commercial purpose or for patriotic purposes. He acknowledged that they could not figure that out. He felt that they could have a proportion between the size of the flag and the size of the flag pole that has been widely accepted for generations and use that as a basis for the scale of governmental flags and enforce it in the same way that they enforce everything else.

Ms. Joseph asked Mr. Kamptner if there was a problem with that.

Mr. Kamptner stated that there was probably not a problem with including size limitations based upon the protocol. He stated that he could look at that and come up with some language.

Ms. McCulley stated that it would be enforcement after the fact because those are flags which are exempt and require no permit. Therefore, it would be enforcement after the fact that is an additional enforcement responsibility after it is in violation.

Mr. Rieley asked how that would be different from someone putting up a string of pennants.

Ms. McCulley stated that luckily people don't put up pennants very often in this area because they recognize that the County regulates that very closely; whereas, they would not know about governmental flags.

Ms. Higgins stated that no where in the ordinance do they give proportionality to a flag that is not exempt.

Ms. McCulley stated that was correct.

Ms. Higgins stated that they would have to incorporate that information into the ordinance as well. They have a definition of a flag and it mentions which ones are not flags for purposes of this ordinance, but then they don't have a relationship between a pole and a flag that is covered under this or its size in relation to how it is supported.

Ms. McCulley stated that was correct.

Ms. Higgins stated that they would have to do that consistently.

Mr. Rieley stated that would probably be fine, but that commercial flags are regulated relative to total size. He stated that he was not suggesting that governmental flags be regulated relative to their total size, but to their proportion to the flag poles.

Ms. Joseph pointed out that they would not be regulating the height of the flag pole either.

Mr. Edgerton opened the public hearing and invited comment from other members of the public.

Neil Williamson, representative of the Free Enterprise Forum, stated that first and foremost that the discussion of flags has been illuminating. As one who was responsible for a business located directly on Route 29 with 8 flag poles on the south bound side of Route 29 that he would tell them that the American Legion and the Veterans of Foreign Wars will all send you copies of the Code for the flag if they have any inkling that there is any issue there. He stated that he liked the conversation that had been going on that they would not regulate that. That being said, the company that he worked for at the time was French owned and it was very important to their corporate culture that the French flag be flown at the proper dimension. That was not really a commercial flag because it was very important to the ownership of the company. That being said, he just wanted to make certain that they don't try to determine the intent as Mr. Rieley mentioned of the flag that goes up. Finally, the dimensions of political flags he feels is a slippery slope. He stated that there are precedents, but that governmental and commercial flags do have a purpose and he encouraged the Commission to tread lightly.

Jeff Werner, representative for Piedmont Environmental Council, thanked the Commission for addressing the agricultural sign issue because they had made a commitment to their agricultural economy. He stated that it was nice to see that elevated to the same status as signage for residential developments in the rural areas, which they don't want. He agreed with Mr. Williamson that the flag issue is an illuminating one. As an observation, when a flag is flown at night it must be illuminated. He stated that one night that he had seen a flag on Route 29 that was illuminated from the bottom while he was driving. He asked if there was anyway that flags could be illuminated down because it seems like a round about way to get around the lighting ordinance. He stated that they were really illuminating the dark sky. He asked if there was a way to limit the lighting on signs.

There being no further public comment, Mr. Edgerton closed the public hearing to bring the matter back before the Commission for discussion and an action.

Mr. Rieley commended staff, particularly Ms. McCulley, for taking what has been an extremely contentious issue over the years and boiling it down to the point in which the only comment is about governmental flags. He stated that it was an astounding accomplishment.

Ms. Higgins made a motion that ZTA-2004-005 be forwarded to the Board with a recommendation consistent with staff's proposed revisions to the ordinance in Attachment C with a note that the Commission has had a significant conversation about the governmental flag issue. Then potentially if the Board wants to commit staff time to the enforcement of the governmental flag then they could consider it.

The motion died for the lack of a second.

Mr. Thomas moved for approval of ZTA-2004-005, as contained in Attachment C with no recommendation from the Commission to the Board regarding the American flag regulations.

Ms. Higgins seconded the motion.

Mr. Edgerton asked if there was any further discussion.

Ms. Joseph stated that she felt that it was worth it to represent what Mr. Rieley was talking about regarding the proportional aspects and would ask the Board to please look at that in their decision. She stated that she would rather that ZTA-2004-005 not go to the Board without the discussion about that concept.

Ms. Higgins pointed out that the Board would have the minutes of this meeting.

Ms. Joseph stated that it would just make it a little bit stronger if they send their recommendation to the Board with a statement about that concept. She pointed out that Mr. Kamptner had said that he had been thinking about that it was something that staff really needs to take a look at. She felt that it was valid if staff has determined that because they are the ones who work with it all of the time and know what may or may not happen as a result of this ordinance.

Mr. Rieley stated that his view was that staff has suggested that this needs work. Ms. McCulley thought that a 100 foot Mexican flag will come under the ordinance and Mr. Kamptner does not. Therefore, he thought that this section in particular needs some additional thought and work. He suggested that they give it a week or two to get staff's best recommendation on how to address what everybody has acknowledged is a problem.

Mr. Craddock asked if that was a new motion.

Mr. Edgerton stated that there was a motion and a second on the floor.

Mr. Rieley stated that he was just explaining why he could not support the motion.

Ms. Higgins stated that the Commission had that discussion when this came back before them and the Commission identified the things for staff to work on. Staff has brought it back with those things. She stated that it was no reflection upon the flag, but just about the commitment for zoning inspectors to take on that kind of enforcement action. It really is about that and not about excluding the flag issue.

Mr. Edgerton asked Mr. Thomas if he would consider a friendly amendment to the motion that would reference the Board's consideration of the minutes in the discussion that has taken place.

Mr. Thomas stated that he would agree to a friendly amendment to his motion as suggested.

Ms. Higgins accepted the friendly amendment to the motion.

Mr. Thomas stated that the recommendation was not coming from the Commission because they were just asking that the Board review the issue.

Mr. Rieley stated that he felt that was meaningless without making a recommendation about it.

The motion carried by a vote of (5:1). (Rieley – No) (Morris – Absent)

Mr. Edgerton stated that ZTA-2004-005, Signs would be heard by the Board on March 16.

Regular Items:

SUB 2004-00097 Bending Branch: Request for approval of a preliminary plat to allow the creation of 10 new lots in the Northfields Subdivision. The property, described as Tax Map 62A(3) – Parcels 2 and 1A, contains 9.064 acres zoned R-2 – Residential. This site is located in the Rio Magisterial District on the eastern side Northfield Road [State Route 1427], between Northfield Circle and Brownstone Lane]. The Comprehensive Plan designates this property as Neighborhood Density in Development Areas Neighborhood 2. (Stephen Waller)

Mr. Waller summarized the staff report. This is a request for a subdivision of 9.06 acres in the R-2, Residential zoning district, which would create a total of ten lots averaging 3.9 acres. It would also be 2.7 acres of open space to be shared in common ownership and 1.5 acres that would be dedicated for public use as part of the County's greenways trail system. This property is located in the Northfields Subdivision. It shares its boundary to the North with the Still Meadows Subdivision. It shares its boundary to the East with the railroad. The applicant is proposing to provide access to this site with a road that would be constructed to public road standards and then be dedicated for acceptance into the state system. This request has been reviewed by the Site Review Committee and comes before the Commission with a recommendation for approval with conditions. It is subject to the Planning Commission's review because of the open space that is being held in common ownership and that the neighboring property owners in the Still Meadows Subdivision have requested a full review by the Planning Commission. Staff recommends approval with conditions. Staff passed out an amended condition 4, which basically clarifies that the green space dedication should be made with the plat at the time that the final plat is approved as opposed to being reserved for future dedication. The applicant has been made aware of this language and they have agreed to make that dedication at that time. The proposed area of dedication has been reviewed by the Parks and Recreation Planner and it is basically in line with what he has reviewed and approved for that dedication. There is a trail that lines up with the dedication in that greenway area that will allow for public access from the residents from the Northfields Subdivision as well. He pointed out that Ms. Joseph wanted to see something that showed the greenways alignment. That has been provided on the original map from the Comprehensive Plan. The area that they were talking about was circled in pencil on the plan. It lines up with a prior dedication that was done with proffers in the Still Meadows Subdivision. With this subdivision plat that last piece will be dedicated. If there are any questions, he would be happy to answer them.

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

Steve Melton stated that he represented Bending Branch. After a lot of time spent with staff, particularly Mr. Mahon with Parks and Recreation, they were in agreement with what staff has proposed. He stated that he would be happy to answer any questions that they might have.

Mr. Edgerton stated that he had one individual who had signed up to speak regarding this request. He invited Mr. James Hill to come forward and address the Commission.

James Hill, resident of 2816 Northfields Road and President of the Northfields Neighborhood Community Association, stated that all of the literature that has been issued on this project, as well as Mr. Waller's remarks, indicates that this is part of the Northfields Subdivision. He requested that the Planning Commission require that the covenant of the Northfields Subdivision be impressed into this development.

Jeff Werner, representative of Piedmont Environmental Council, stated that he just wished to make an observation. He stated that they keep hearing about affordable housing in this community. If they could just build at a higher density, then they would have affordable housing. If only the County would allow us to build more, then we would have affordable housing. The County has so many restrictions on density. Yet here we have .9 dwelling units per acre on land that is planned for 3 to 6 building units per acre. He understands that the market dictates that; but, he finds that this is exactly why the growth area is being gobbled up and people are claiming that there is no land. Forest Lakes was built out at less than 2 dwelling units per acre. That was land that was identified in the Comprehensive Plan for higher density. They either have to adhere to the plan or ask the development community why when higher density is possible they are not taking advantage of it. Yet, the developers will yell at the County for not allowing them to build it. He congratulated the applicant for working with the greenways and trails. He stated that he did not want to do anything to disturb that. But, clearly this calls into question why they are running out of land in the growth area. They need to either amend their plan or hold developers to the intentions of the plan.

Neil Williamson, representative for The Free Enterprise Forum, stated that he would also call attention to the protection of the open space and critical slopes that seem to be taken into account in this plan. As you know The Free Enterprise Forum takes no position on projects, but he felt that was worthy of consideration based on the previous comment.

Mr. Edgerton asked if there was anyone else present that would like to address the Commission on this application. There being none, he closed the public hearing to bring the matter back before the Commission.

Ms. Higgins stated that in the staff report the statement was made that could be somewhat misleading to say that the property was located within the Northfields Subdivision. She asked if it was accurate to say that staff meant within the road system served through the Northfields Subdivision or is this land a further subdivision of land that was in the Northfields Subdivision.

Mr. Waller stated that it was a residual parcel or area that was left over from the parent parcel when the Northfields Subdivision was created.

Ms. Higgins asked if this was subject to the covenant of the Northfields Subdivision.

Mr. Waller stated that would have to be a private matter. He pointed out that it was not really a question that is asked in the County's review. If the roads were private, the County could require the applicant to be a party to a maintenance agreement for the roads up to the point where they access this property, but that is not the situation.

Mr. Edgerton pointed out these were not private roads. He asked Mr. Kamptner if they had any ability to address Mr. Hill's request.

Mr. Kamptner stated that they had no ability under the Subdivision Ordinance to impose private covenants as part of the plat approval process.

Mr. Melton asked if he could address something along those lines.

Mr. Thomas invited Mr. Melton to address the Commission.

Mr. Melton stated that he knew Mr. Hill and that they would be happy to work with the Northfields Homeowner's Association. But, he thinks that their covenants and restrictions was something that was done by Charles Hurt a number of years ago relatively dated. In fact, they would probably have a stronger covenant and restrictions than what is in place right now for Northfields. Therefore, he would be happy to work with Mr. Hill on a one on one basis to make sure that he is comfortable with what they are doing over there. It will be similar to Still Meadows. He stated that he did not think that they would have any problems with the square footage. In fact, he had worked with them a couple of years ago on a lot that was sold in Northfields for a house that they put up over there and the square footage was relatively low compared to what the builders were going to be putting in Bending Branch. The property is still owned by

Dr. Hurt, but they would have to research to see if this was a parcel included in the original Northfields covenant. Northfields was a very large subdivision at the time and it included a lot of undeveloped parcels. They can research that with their attorneys and see what they could come up with. But, again they would be happy to work with Mr. Hill to put them at a comfort level. He felt that it was going to be similar to Still Meadows and the homes will be in the range of 500 to 600 thousand dollars.

Mr. Craddock stated that he had a question in that it says that the applicant is developing a total of 8 less lots. He asked if it meant 8 less development rights.

Mr. Edgerton stated that would be solved.

Mr. Kamptner stated for clarification that he talked with Mr. Melton before the meeting to let him know about this revised condition. Mr. Melton showed him the area that they were willing to dedicate. He suggested revising the first line to just instead of referring to the lands adjacent to the Rivanna River that it be: "The plat shall dedicate for public use lands identified on the preliminary plat as the open space to be dedicated to the County of Albemarle which shall be part of the greenway trail system identified in the Comprehensive Plan and used as a public access trail and greenway. The location and extent of the lands to be dedicated shall be subject to the reasonable satisfaction of the Albemarle County Department of Parks and Recreation."

Ms. Joseph asked if that would include their storm water detention pond. She asked if that would be indicated as open space, too.

Mr. Kamptner stated that it was identified differently from the preliminary plat.

Ms. Joseph stated that the County would not be taking that.

Mr. Kamptner stated that he did not believe so as part of this.

Mr. Waller stated that it would not at this point. If it would provide some regional value that the County may consider it, but it would be a different process.

Ms. Higgins stated that there was a letter attached that talked about the close proximity to the railroad. In looking at the overall map of the subdivision that there are many people further away that back up to the railroad. She stated that people make different choices about living in the proximity to interstates, railroads and that sort of thing and she did not know if there was any way to protect people from those sorts of things.

Mr. Thomas stated that all of the east side of that subdivision backs up against the railroad tracks and it would be very similar to that.

Ms. Higgins pointed out that it was something that they did not govern because there was no setback to the railroad. She moved for approval of SUB-2004-00097, Bending Branch Preliminary Plat, subject to the recommended conditions with Mr. Kamptner's clarification on item 4.

The Department of Community Development shall not accept submittal of the final subdivision plat for signature until tentative 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. The plat shall be subject to the requirements of Section 14-303 (Contents of final plat), as identified on the "Final Subdivision Checklist" which is available from the Department of Community Development.
2. *[14.4.1]* Submittal of a conservation plan showing the methods of protecting the existing vegetation that is to remain within the open space, in accordance with Section 32.7.9 of the Zoning Ordinance.
3. *[14-313]* Submittal of a maintenace agreement identifying all parties that are responsible for the common area/open space that is being created and their roles in maintaining this area, subject to

County Attorney review and approval.

4. *[14-404]* The plat shall dedicate for public use lands identified on the preliminary plat as the open space to be dedicated to the County of Albemarle which shall be part of the greenway trail system identified in the Comprehensive Plan and used as a public access trail and greenway. The location and extent of the lands to be dedicated shall be subject to the reasonable satisfaction of the Albemarle County Department of Parks and Recreation.
5. The plat shall be subject to the Current Development Division's engineering review for compliance with Section 903.B.6.a of the County's Design Standards Manual.
6. Virginia Department of Transportation approval for road plans in accordance with the requirements for acceptance into the state system.
7. The proposed road name shall be approved by the E-911 Addressing Coordinator.
8. Service Authority approval of all water and sewer utility construction plans.
9. Fire Official approval of fire hydrant locations within the required distance to the proposed lots.

Mr. Craddock seconded the motion.

Mr. Thomas asked if they need to add anything to the motion about what Mr. Melton was saying about working with Mr. Hill or is that something that they can put in.

Mr. Rieley stated that was something outside of their authority.

Mr. Kamptner stated that the Commission could just encourage him to do that.

Ms. Joseph agreed with both Mr. Werner and Mr. Williamson on this. When she looked at this she could see how it could be redesigned to get a few more lots in there, but she was also grateful that they were getting connections to the greenway and a park system in essence by having all of these developers willing to give areas for the trail. She appreciated that and felt that it would be great to get more density, but that they were getting a trade off by getting something in return.

Ms. Higgins agreed with Ms. Joseph.

The motion carried by a vote of (6:0). (Morris – Absent)

Albemarle First Bank-Shadwell Antiquaries, Review for Compliance with the Comprehensive Plan: Review of a proposal to convert a private septic system to a central system (to serve 3 or more users) for its compliance with the Comprehensive Plan as per State Code 15.2-2232. No building expansion is proposed. The site is located on the south side of Louisa Road (Route 22), approximately 600 feet from its intersection with Route 250. The property, described as Tax Map 79, Parcel 19, is located in the Rivanna Magisterial District. The site is Zoned C-1, Commercial and EC, Entrance Corridor and is recommended as Rural Area in the Comprehensive Plan. (David Benish)

Mr. Benish summarized the staff report for the review for compliance with the Comprehensive Plan (Va. Code 15.2 – 2232) for the Albemarle First Bank Central Sewage System Request (Shadwell Antiquaries). The applicant intends to modify the interior of the Antiques/Retail building to provide a multi-user building. No expansion of the building is proposed. Since the septic system serving the site could serve three of more users under this proposal, it would be defined as a central system. Central systems are considered public facilities and, therefore, must be found in Compliance with the County's Comprehensive Plan as per State Code (Section 15.2-2232). If the Commission finds this proposal in compliance with the Comprehensive Plan, The Board of Supervisors must review and approve the central system. Attached is the staff report from the County Engineer, which provides an analysis and recommendation regarding the proposed central system (Attachment A). The County Engineer's report is not subject to Commission review and recommendation, but is provided for information. The action is forwarded to the Board so that they are aware of the Commission's finding in its compliance. The Board may decide to entertain that issue, disagree with the Commission's finding or have other comments to make.

The site, previously referred to as Shadwell Antiquaries, is located on the south side of Louisa Road (Route 22), approximately 600 feet from its intersection with Route 250. The 2.04 acres property, described as Tax Map 79, Parcel 19, is located in the Rivanna Magisterial District (Attachment B). The

site is Zoned C-1, Commercial and EC, Entrance Corridor and is recommended as Rural Area in the Comprehensive Plan.

A final site plan for the property was approved administratively on June 11, 1999 for 2,112 square feet of building space, in two connected structures, to be used as an antique store and workshop. On December 7, 1999 the Planning Commission approved an amendment to the site plan modifying the use of the smaller building on site from a workshop to a restaurant (tea room). The Commission's review of this amendment was based on an appeal by an adjacent property owner. The Commission unanimously approved the site plan amendment.

The site is fully developed with two buildings, parking lot and existing septic system. The site is located on the south side of Route 22, between Route 22 and Route 250. The Shadwell market convenience store is the adjacent property on the western boundary of the site (zoned C-1). The adjacent property to the east, consists of the CSX Railroad and, across the tracks, the GOCO Oil gas station (zoned RA). The adjacent property to the north, across Route 22, is rural in character (zoned RA). The property is accessed by an entrance off of Route 22, just past the Shadwell Market.

The County's growth management policy discourages non-rural related development within the Rural Area. However, this site and the adjacent Shadwell Market property are zoned C-1, Commercial. This "old zoning" was established prior to 1980 to recognize existing development and prior activities on these properties. Therefore, while the zoning and existing development on-this site is inconsistent with the County's current Comprehensive Plan, it is consistent with the existing zoning.

The Comprehensive Plan policy regarding central utility systems discourages the use of central systems in the Rural Area (Attachment C). However, in this particular case, the site has been developed for commercial uses consistent with its zoning and is served by an existing private septic system. The internal modifications to the building proposed by the applicant, that would permit three (3) or more separate users in the existing buildings, necessitate the re-designation of the system from a private to central (public) system. There is no expansion of the buildings or intensification of use of the site. Most of the existing system is being utilized, including the existing drainfields. Modifications to the system are primarily related to the laterals into the building to accommodate the multiple users (see County Engineer's comments for more detail on system modifications).

Staff opinion is that this request, although not entirely consistent with the principles and recommendations noted above, is not contrary to the Plan's overriding intent to provide for orderly development and provide for the protection of the Rural Area and its associated resources. The intent of the Comprehensive Plan statements is to discourage the use of new central systems that support and encourage new development, which may not have occurred without the use of a central system. This proposal amounts to a reclassification of an existing private system to a central system because of the potential for the system to serve three or more users. No expansion of the building is proposed and essentially the same septic system, including existing drainfields, is being used.

The existing development constitutes a significant capital investment on the property. The approval of the system does not facilitate an expansion of the use and no expansion to the leasable square footage is proposed. Approval of the central system does provide the owner greater flexibility in leasing the existing space.

Staff recommends the Planning Commission find this proposal consistent with the Comprehensive Plan with the condition that the central septic system is to serve existing on-site structures only.

Mr. Edgerton asked if the only decision that they were being asked to make tonight is whether it is in compliance with the Comprehensive Plan.

Mr. Benish stated that was correct.

Mr. Edgerton stated from what Mr. Benish had wrote and just said that he had heard fairly clearly that it was not in compliance with the Comprehensive Plan, but it was in compliance with the old zoning. He asked if that was correct.

Mr. Benish stated that his opinion was that it was not on its face consistent with the Comprehensive Plan, but it was consistent with the overriding intent of the Comprehensive Plan to support orderly development. Because of the existing circumstances on the site and the proposal it cannot be consistent with the Comp Plan because it did not start out consistent with the Comp Plan. But, it was not intensifying the use or making it any more inconsistent with the Comp Plan. He noted that was probably the best way to explain it. He pointed out that he had a larger copy of the system and the site to post on the board because the one in their packets is very small and hard to read.

Ms. Joseph passed out copies of two letters in opposition of the request that she received. The first letter was dated February 13, 2005 from Pat and Leo Napoleon. The second letter was dated February 14, 2005 from Jim Ballheim. (ATTACHMENTS – TWO)

Ms. Higgins asked if they were allowed to consider some of the basis that the Planning Commission has already forwarded to the Board with respect to the Comp Plan Amendment to the Rural Areas, which involved negative opinion on its consistency with what the Planning Commission has recommended on how it relates to cross road communities. She asked if there was any relationship between this analysis and what is now before the Board of Supervisors. In other words, they have a Comprehensive Plan now, but the Commission forwarded to the Board amendments to the Comp Plan relating to the Rural Areas and at that time the Commission took specific conversation and note about what was called cross road communities. She asked if this was one of those types of established locations. She asked if staff has any input on that.

Mr. Benish stated that it was too early to say whether this site would be one of those cross roads that they would designate. That would be subject to the implementation tools that they put in place for that. But, he felt that this could be characteristic of those types of things that they would be designating. Theoretically, it could be. But, they were not at a point in time yet that they have decided which ones they were going to designate and what sort of tools they would use. He stated that arguably yes, there could be that type of location on Keswick, Cismont or Batesville sites that have existing facilities and historic characteristic to them. Now whether this one will qualify and will one that they designate he was not sure because they were not at the point of implementing it yet.

Mr. Thomas pointed out that on the first page of the staff report it has the word restaurant. When this came before the Commission previously they had emphasized that there not be a restaurant. He stated that it was a tearoom, but he did not remember the stipulations that they put on it.

Mr. Craddock stated that they could have a commercial kitchen. He stated that they had also approved a veterinary office on that site a few years ago. Currently there was a wine shop on the site, which he felt had a minimum water use and falls into compliance.

Mr. Benish stated that the property was zoned C-1, which permits a broad range of retail and commercial type of uses. It is one step away from the HC zoning district, which is accommodating commercial. There are a lot of uses that could be made of the building regardless of whether it is petitioned off. Arguably the larger the building that was not petitioned the larger type of use that could fit in. The more the building is petitioned off the smaller the scope that any individual use could be. They were really looking at the same building and the same square footage of land use that is in play using essentially the same septic systems. Staff sees it more as a reclassification that allows more than three entities to be located within the building as opposed to the two prior ones.

Mr. Thomas asked if the property would be able to be utilized more extensively with the new septic system.

Mr. Benish stated that it could be used more extensively if extensively defines how many people could be in the building, but it was still the same square footage because there was no expansion to the building that would accommodate any more square footage of activity.

Ms. Higgins stated that it was still the same septic field size because there was no proposed expansion of the septic field.

Mr. Benish stated that the change really related to the way the septic system was developed. There are three drainfields with two to serve the tea room and one was for the antique shop. They are simply combining them all into one system so that the distribution box distributes to all three systems for the whole building. In essence, that is what they are proposing to do.

Mr. Thomas asked if this had anything to do with the market located on the adjacent property, and Mr. Benish stated that it did not.

Mr. Craddock stated that he would like to argue that this is all water under the dam because it was all approved administratively for this building many years ago. There was a residence on that property back then and the only commercial use was right there where Shadwell Store is, which had a house right behind it. There was also another house that was on this property. He stated that maybe it got old zoned as commercial through administration, but there was a residence on this. Then when it came to the Commission in 1999 he voted for it because it was going to be on a private septic system.

Mr. Rieley agreed with Mr. Craddock.

Mr. Benish stated that he did not research how this particular property got that zoning. The zoning has been there for a long time. The best that staff can speculate is that there was some activity within those buildings that caused at some point in time when the zoning was put on the property to recognize it for that zoning. But, staff could not figure that out. He stated that it was very clear that the Shadwell Market was a commercial retail store. He stated that he could not find any history to find out why this property was zoned C-1, but that is old history from a long time ago.

Mr. Craddock stated that his grandparents ran the store and the post office for thirty years.

Mr. Edgerton 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.

Richard Carter, representative for the applicant Albemarle First Bank, stated that he would argue that it was consistent with the Comprehensive Plan in that when the Comprehensive Plan was adopted this property was zoned the same thing that it is today. Therefore, if the Comprehensive Plan recognized that this was commercial, then arguably it was consistent with the Comprehensive Plan at that time. It is not something that was residentially zoned. It was commercial at the time the Comprehensive Plan was adopted. Therefore, he would argue that by recognition of this and this zoning at the time that it was already consistent with the Comprehensive Plan for the commercial use. They agree with and adopt the staff report. What this does is that there is one small building, as Mr. Craddock mentioned, where a special use permit was granted on it for a veterinary hospital. Also, a special use permit was granted for a tea room. There is now a wine shop in the little building. He stated that the bank was using the big building right now as the only tenant. The bank can continue to occupy the whole building, and they can wait for another big tenant to come along. But it makes more sense if they had multiple users. As Mr. Benish said, they are not really increasing the intensity with the multiple users. They may even be with multiple small users as opposed to one big user actually diluting the intensity of it. What they were trying to do was to make some internal changes to give them some more bathrooms so that they could have those users. They were not increasing the square footage. They were not increasing the intensity of use. They were not doing anything other than adding some bathrooms to this. They recognize that the property is in the Rural Areas, which was why they were asking for the central sewage system. This property was there when they unfortunately had to buy it back. Therefore, they are doing what they think is consistent with the Comprehensive Plan as a use when the Comprehensive Plan was adopted. He stated that Mr. Pryor was present from the bank and he would be happy to answer any questions.

Mr. Edgerton asked if there were any questions for Mr. Carter. There being none, he asked if there were any members of the public that would like to address the Commission on this application.

Judith Summer stated that she lived on a farm located on Route 631 in Keswick. Only recently had she heard about this plan to divide up the Shadwell Antiquaries building and that she mostly had questions. She felt that Albemarle First Bank had made a bad business decision and now they are asking the

Commission to make a bad decision. The County's own staff said that it was inconsistent with the Comprehensive Plan. Certainly the proposal is an intensification of a use. If you take a large building and divide it up into multiple spaces with multiple users, of course, you would have multiple people compared to what it was before. She noted that she had not heard the number of divisions that the applicant plans for this building. But, from what she heard it sounded like a mini mall, which she felt was an inappropriate way to use that building. She asked who will renovate and manage the building. How many employees will there be for these multiple users? How many customers do they plan to have for these multiple uses? She asked what type of parking will be required and do they plan to pave over the entire area? She asked what about the use of signs, flags and pennants to advertise the multiple users in that building? She asked what about access for commercial trucks if they have commercial businesses? She asked whether it would make the road unsafe. She asked if there was any evidence that the site will support that number of businesses. She understood that there is an area dedicated to Glenmore for multiple small businesses, but she did not know when that would be utilized. She believed that the overriding intent of the Comprehensive Plan is to protect the Rural Areas and the residents and not to allow development, which is what this multiple use would be. She felt that this was development that was in the wrong place.

Jeff Werner, representative for the Piedmont Environmental Council, stated that the Southwest Mountains was a very important place to the PEC. There is a tremendous amount of stewardship in that historic district. This is the doorstep to the Southwest Mountains. Mr. Carter refers to the importance of the Comprehensive Plan. Given Mr. Carter's enthusiasm for holding up the Comp Plan, he looked forward to him supporting the regulations proposed in the Mountain Overlay District that was adopted into the Comp Plan. He stated that he would like to read something dated August 3, 2004 from staff when this came to the Commission before. This project requires connecting the dots. This property is currently served by private well and septic neither of which is a central water supply or a central system. Therefore, under Section . . . this property would only be permitted to have one establishment. While there is less than 120,000 square feet of site area which is required for two establishments, two establishments were mistakenly approved on this property in the past. The applicant has asked for a variance to allow a possibility of 15 separate commercial establishments on this property. Fifteen separate commercial establishments on private well and septic require a total of 900,000 square feet of land area. This property consists of 88,000 square feet. Therefore, this is a variance of 811,000 square feet. The applicant last year claimed undue hardship in requesting this, but that was denied. So now they were back requesting a pocket septic plan which will allow this. He asked that they look at the Comprehensive Plan. It states that pocket septic plans within the rural area shall be strongly discouraged except to address health and safety problems. This is a foreclosure on a piece of property that the owner now says that they cannot make money on it. That implies that it is a poor investment and not a health and safety problem. However, he talked to some of the folks out there and they are encouraged about some uses there. But, they are very concerned about the potential for 15 uses. Back when the Board of Supervisors reviewed this on 1-15-03, their minutes reflect a specific discussion about requiring turn lanes into this facility and the additional traffic that might be brought on. Therefore, what they have here is a site that is problematic. The site may be able to serve the community, but he suspected that there was more to risk here than just simply a few more tenants in this space. He stated that he wished the wine shop well, but he just thinks that the Planning Commission does not need to start providing precedence to rural area policy, which in his opinion was very specific when there was no demonstrable health or safety issue involved.

Marshall Pryor, of Albemarle First Bank, stated that they don't envision putting fifteen people in there. They envision having possibly two or three other tenants. They certainly hope that there will be more traffic, but it would probably just be the traffic that is already on the road that would stop and use that. One can never be certain what will ever end up in the future. It is a 2 acre piece of property that is adjoined by the railroad tracks, an existing store, the road and the interstate. It could not be used for anything else other than a small commercial site, which has already been put on there. They were simply trying to utilize the site to the best of their ability. Currently the bank now uses 7,000 square feet and the wine shop uses 2,100 square feet. There are several people who are interested in that. They feel that two or three other uses would be the maximum that could be put there. He stated that they think that this would be a good use of the property and appreciate the Commission's consideration.

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

Mr. Thomas stated that the applicant has stated in the staff report that it would be up to 3 modifications to the building proposed by the applicant that would permit 3 or more separate users. The applicant stated that it would probably be a maximum of 3 separate users.

Ms. Joseph stated that Mr. Pryor stated that there would be 3 additional users, which would be a total of 5 separate users.

Mr. Edgerton stated that the definition of central is 3 or more units. Therefore, there is no way to limit it.

Mr. Benish stated that he would suppose that they could make a finding, and Mr. Kamptner could correct him on the compliance review, that would set a limit on this. But, again the users would be using the same amount of square footage. Basically they would be looking at cubicles if they had 15 users in 2,200 square feet.

Ms. Higgins stated that there were also two other limiting factors that are controlled, but the building footprint does not change. Each time a new user goes into a C-1 space they have to meet the parking requirements. Each individual user must go to the Zoning Department to get their Certificate of Occupancy and they must prove how the parking is calculated for the use. Therefore, as far as traffic it could be a mixture, but traffic generation is considered based on the number of parking spaces. When she looked at this she asked what the restrictions on the site were if the building footprint does not change. If the use changes within it from the wine shop and bank, she felt that 15 users would not meet the parking requirements for that kind of base use just for the employees only. Therefore, that is one limiting factor that would considered. The second one is that there is a Code requirement for bathroom facilities and hand wash facilities and the septic fields are not being modified. She asked if the septic fields were modified if that is again an expansion. She felt that they were taking almost all of the area on the site right now. She stated that the applicant could not get into high traffic generators because of the limit on the parking space requirements.

Mr. Thomas stated that previously they approved the convenience store, which would be a pretty high intense use of that corner right in the fork of the road. He asked the status of that approval.

Mr. Benish stated that he honestly did not know, but to the best of his knowledge the County had never received a site plan on it.

Mr. Thomas stated that this site would not be as intense as that store. He felt that no more traffic would be generated than the store that was sitting there now.

Mr. Craddock pointed out that the store was going to run their septic line under Route 250 to the little parcel over on the other side of the road. That will be a private septic system.

Mr. Edgerton stated that Mr. Craddock had made a very specific distinction between a private septic system and a central septic system. He asked how they are different if they are using the same tanks and the same fields.

Ms. Higgins stated that she spoke with Mr. Benish today and found out that basically at the third user the health department calls it a central sewer. But, two people can share and it will still be private.

Mr. Edgerton stated that from reading the staff report that he felt that they would have to add two more septic tanks, but the fields were going to stay the same.

Mr. Benish stated that the applicant was not adding a tank, but actually deprogramming one tank and putting in a new tank so that there was one line that feeds both buildings to the drainfield. Right now the way that the drainfield system is set up that there are two lines with one coming out of the wine shop and

the other one coming out of the tea room. The new facilities are to centralize the lines, but to use the same drainfields.

Mr. Rieley stated that he was certainly sympathetic to the situation that the bank is in. He felt that the points have been made that the parking, square footage and the septic systems themselves will not be expanded. But, it is hard for him to think that this will not end up intensifying the use as Ms. Summers said. The economic reality is that they are trying to intensify the use and get more use out of this building. At the end of the day he was struck with two very straight forward statements that he thinks answers their questions. The Commission only has one determination to make. The second sentence in Jack Kelsey's memo says, however these modifications create a "central system" as defined by Code. It is not by the health department. On page 7 or page 129 of the Comprehensive Plan under recommendations a statement is made that new central sewer systems in the rural area should be strongly discouraged except to address health and safety problems. In addition to those two statements he agreed with the statement that Mr. Craddock made earlier, of which he concurs with having the same vote. He stated that he was part of the unanimous vote in favor of this. At the time the fact that this was on a private system that could not be expanded because if it was expanded that it would become a central system was a big part of the approval process. He stated that he voted for it on the condition that it was private. He stated that he would not have voted for it if it had been on a central system.

Ms. Higgins asked what his thoughts were on what they had just recently recommended that would change this language. There is the old zoning for the old store in this location, but also there is the existing zoning. She asked if they were acting contradictory to what they just forwarded to the Board.

Mr. Rieley stated that he felt that she had a very good point. But, he felt that the distinction is that the kind of language in the Comprehensive Plan that they forwarded was to address situations like Batesville, which are historic cross road communities. He pointed out that he lived in that community and would guarantee if there was a proposal to put Page's Store to a good use that the surrounding community would be in here filling up the room in favor of that. He pointed out that he had received a lot of emails on this application. But, there was not even a single positive email. This is not an integral part of the cross roads community. This is a new building that was built. He stated that the promotional material that came with the last application said that the reason that this was needed so badly in the Keswick community was that the nearest place that one could get a really good sandwich was Paris and they needed to address that. He felt that was why the business had failed. He felt that it was a good point that the Commission should be consistent with what they were sending on to the Board. But, the difference between the cross roads community like Batesville and the function that it plays and this building was that this building was simply built out of scale from what it should have been to begin with. Now they were trying to back up and make the building fit when it does not fit. Therefore, he felt that there was a big distinction.

Ms. Joseph stated that one of the other aspects of the cross road communities was looking at some of the historic structures to see if those could be preserved by some other uses within those structures. This building is fairly new. In 1999, during the review when everyone was wondering why they needed such a big building that it was explained that they needed that enormous space to do the repair work and that they would be selling out of the smaller space. She stated that she could not support this because it is not in compliance with the Comprehensive Plan.

Mr. Craddock stated that he would not support it either because of the aforementioned reasons and that this is not addressing any health or safety problems as noted in the staff report.

Mr. Edgerton stated that he was very torn about this because he was very sympathetic to the request since nothing is changing except the plumbing lines. But, he pointed out that he was very concerned about setting a precedent. If what they were doing this evening was reviewing for compliance with the Comp Plan, then he did not think there was much question because to approve this change was not in compliance with the Comp Plan. He pointed out that he was one of the groups of persons who voted unanimously for this, but he did not share Mr. Craddock's distinction between a private and central system in this particular issue. Once a central system was approved then the question was, without a lot of extra conditions, whether they would be able to control the limit of development. He noted that he had

received a lot of emails. He asked staff if the question about the 15 businesses was something that came up last summer.

Mr. Benish stated that staff has not talked about that in this review and honestly he could not remember that piece of information from when it came out before. But, again he would suppose if they petitioned off the building for cubicle space, then they could literally have 15 different people operating 15 individual businesses requiring business license on there. But, he did not remember the details of that discussion. He felt that from the Comprehensive Plan standpoint the precedent that you always set is the precedent on the case that they were reviewing. The circumstance here in staff's evaluation of the Comp Plan is the C-1 zoning and the existing buildings that are out there now. He stated that any decision that the Commission may make is unique to the proposal in front of them. He stated that he was sympathetic to where the Commission is because this was not an easy one for staff given the history and the unique characteristics of this site, the zoning and the potential use in whether it was subdivided or not. He noted that the individual uses may be more intensive as multiple uses depending on the type of use.

Mr. Edgerton asked if heard him correctly earlier on that this will go to the Board for their determination since they make the decision about going from private to central sewer system.

Mr. Benish stated that what would happen in this circumstance is that the finding that the Commission has made on the Comprehensive Plan will be forwarded to the Clerk's Office and on to the Board. The Board can decide whether to entertain it or not. The Board should be using that information in their deliberation of the central system. Since a central system has not been found to be in compliance with the Comp Plan, then he would defer to Mr. Kamptner or Mr. Davis as to how they will deal with that at the Board. But, he would suppose that the Board could take their action up as a review of the central system and make a different finding.

Mr. Kamptner stated that if the Commission recommends disapproval, the owner can appeal that decision to the Board if it files the petition within ten days and then the Board can take an action.

Ms. Higgins agreed with both sides, but was torn because she felt that they were changing laterals and putting in plumbing fixtures. But, on the other hand she thought that smaller uses fit more in a rural area than one large use. Whether it was a financial decision or not, she felt that seeing a building that goes partially vacant out in the rural area does not help anybody. But, the one question she had was if there was a way to modify this or make a recommendation that says unlimited that they don't think that it is in compliance, but if it were limited to four or five uses then they were seeing it in a different light. She asked if that was a possibility. She felt that to say yes or no does not give the Board as much direction as saying well if the applicant was not looking for 15 uses because of the intensification issue and that the parking limits it as well as the septic lines themselves. But, if they said that there will not be more than five users, that it would be more consistent with it. She suggested that they forward it with that information and let the Board make its decision. She stated that was just a thought.

Mr. Edgerton stated that it was a very interesting thought because there were a lot of other requirements in the Ordinance that were going to have to be met such as use and parking regulations.

Mr. Kamptner stated that on at least a couple other occasions when the Commission has had a 15.2-2232 review, the Commission has imposed conditions or limitations that allow them to make a finding of consistency. But, there needs to be a nexus between the condition and the finding of consistency with the Comprehensive Plan.

Mr. Rieley suggested that they deal with this in the same way they dealt with an issue earlier this evening, which is that they take their action and then ask the Board to read the minutes. He pointed out that was what the Commission had done earlier.

Mr. Thomas stated that the applicant stood in front of the Commission just a few minutes ago and said that it would be four users. He supported the idea of limiting it to four users.

Ms. Higgins stated that she was not against the central system in this case because it is already built and is being used differently. That is what makes this a unique situation. But, she felt that modifying their

review for compliance, as Mr. Kamptner said, has been done in the past in saying that they consider it consistent up to a point, but if it goes beyond that point then they were in a different ballpark. Then that would also set a precedent.

Mr. Rieley stated that since the engineering department has said that these modifications will create a central system under the Code and because the Comprehensive Plan says that new central sewer systems in the Rural Areas shall be strongly discouraged except to address health and safety problems, that he would make a motion that the request is not consistent with the Comprehensive Plan. He asked to attach to that motion once again the admonition that the entire conversation that the Commission had will be forwarded to the Board of Supervisors and that they be encouraged to look at all of that.

Ms. Joseph seconded the motion.

Ms. Higgins stated that under the discussion part of this in reading the words where it says new central systems in the rural areas shall be strongly discouraged that she thought that the engineering report says that it is not a new central sewer system.

Mr. Rieley stated that however these modifications create a "central system" as defined by the Code, which was what it says.

Ms. Joseph stated that it does not exist as a central system now.

Ms. Higgins stated that it says that it exists as a system. She stated that as the motion stands that she could not support it because she felt that there was opportunity to allow it with a limitation of no more than four or five users. Then, that information could be used by the Board because she felt that they would consider it differently. She asked that the Board be given the opportunity to do that. She asked that Mr. Rieley consider making an amendment to the motion so that she could support it.

Mr. Rieley stated that the addition of the third use is what puts it in to the category of a central system, which was the point that he felt that they need to stand on.

Mr. Craddock agreed with Mr. Rieley.

The motion carried by a vote of (4:2). (Higgins, Thomas – No) (Morris – Absent)

Mr. Edgerton stated that the motion to determine the noncompliance with the Comprehensive Plan was approved.

Old Business:

Mr. Edgerton asked if there was any old business. He updated the Commission on the plans for the retreat to be held on February 25 and 26. There being no further old business, the meeting proceeded.

New Business:

Mr. Edgerton asked if there was any new business.

Ms. Joseph stated that on Thursday, February 16 from 6:30 to 8:30 p.m. with a pre-meeting from 5:30 to 6:30 p.m. at the new County Office Building the Rivanna Water & Sewer Authority is going to be talking about the four concepts for the water supply projects currently under consideration. She pointed out that there was also a meeting coming on March 3 when the City Council and the Board were going to discuss water resources.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 8:00 p.m. to the February 22, 2005 meeting.

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V. Wayne Cilimberg, Secretary

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