Albemarle County Planning Commission
April 12, 2005

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, April 12, 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, Pete Craddock; Calvin Morris and Bill Edgerton, Chairman. Jo Higgins and David J. Neuman, FAIA, Architect for University of Virginia were absent.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Francis MacCall, Senior Planner; Amelia McCulley, Division Director of Zoning and Current Development; Joan McDowell, Principal Planner; Elaine Echols, Principal Planner; John Shepherd, Zoning Administration Manager; Glenn Brooks, Senior Engineer; Rebecca Ragsdale, Senior Planner; and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Edgerton called the regular meeting to order at 6:05 p.m. and established a quorum.

Other Matters Not Listed on the Agenda from the Public:

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

Review of Board of Supervisors Meeting – April 6, 2005.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on April 6, 2005.

Consent Agenda:

Approval of Planning Commission Minutes: November 16, 2004

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

Mr. Morris moved for approval of the consent agenda.

Mr. Craddock seconded the motion.

The motion carried with a vote of (6:0). (Higgins – Absent)

Regular Items:

SUB 2005-47 Keswick Subdivision: Request for preliminary plat approval to create 48 lots on 177.3006 acres. The property is zoned RA, Rural Area. The property, described as Tax Map 80 Parcels 8, 61, 70A, 88A, 90, 95, 96, 97, 98, 100, 106, and 109A is located in the Rivanna Magisterial District off of Club Drive in the Keswick Subdivision just off of Black Cat Road (Route 616) approximately 1 mile from the intersection of Black Cat Road and Richmond Road (Route 250 E). The Comprehensive Plan designates this property as Rural Area. (Francis MacCall)

Mr. MacCall summarized the staff report. He passed out 3 attachments to the Planning Commission. (Attachments: 1. Letter dated April 7, 2005 to Marilynn Gale from David Swales, Groundwater Manager; 2. Letter dated April 8, 2005 to Mr. Cary Brent, Director of Estate Development of Keswick Hall at Monticello from Brian R. Houston, PE Group Leader of Utilities of the Timmons Group with Table U2-4A: Daily Water Consumption (with irrigation) – no Inn Expansion; and 3. Keswick Estate Conceptual Long Range Master Plan dated December 18, 2000 by Roudabush, Gale & Associates, Inc.) The applicant is proposing to create fifty (50) lots on 177.30 acres. The property is zoned RA, Rural Area. The property, described as Tax Map 80 Parcels 8, 61, 70A, 88A, 90, 95, 96, 97, 98, 100, 106, and 109A is located in

the Rivanna Magisterial District off of Club Drive in the Keswick Subdivision just off of Black Cat Road [Route # 616] approximately 1 mile from the intersection of Black Cat Road and Richmond Road, Route 250 E. The Comprehensive Plan designates this property as Rural Area. The applicant is requesting preliminary approval. The original request was for 48 lots, which actually ended up in the amendment. Staff found that there will be up to 50 lots on the 177.3 acres. This application is before the Commission this evening by the request of an adjacent property owner. Staff received a written request from an adjacent property owner that included very many questions. Staff tried to answer the questions in the staff report. There have been additional questions that have been raised by some of the Commissioners. If there are further questions that staff is unable to answer, then the applicant will be able to better address some of those questions. Staff provided the Commission with some additional information at the beginning of the meeting, which was requested by Mr. Edgerton regarding the original application plan that was approved with special use permit, SP-2000-33. Some of the other information provided is about the water issue, and the applicant can discuss that further. Staff has reviewed this request for compliance with the provisions of the Subdivision and Zoning Ordinances and recommends approval of the preliminary plat with conditions.

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

Richard Carter, attorney, stated that he was represented Keswick Corporation, the applicant. Some of you were on the Commission in the year of 2000 when SP-2000-43 was granted. At that time they presented additions and improvements based on a three-phase scheme. Phase one was the addition to the Keswick Hall. Those who have been to Keswick know that on the left is a large hotel referred to as Keswick Hall. They will do that expansion first. Then they are going to go on the other side of the road for Phase Two, which will be the building of some cottages, offices and a banquet facility. Phase Three will happen next or at the same time, which will be the subdivision. Keswick is made up of three parts being the club, hall and the subdivision. They are all separate, but are all intertwined as one unit out there. They did some work on the hall and vested the special use permit. But, they have done nothing on the other side of the road yet. They have not completed the expansion of the hall and are not working on that at this time. What they have done is sold some lots in the subdivision. They have constructed some homes and others have constructed homes, and those homes have sold. When they were previously before the Board of Supervisors, they told us that they knew what we wanted. The Board acknowledged that we wanted Phase One, Phase Two and the subdivision. The Board asked us to show what all of this would look like on the master plan, which is exactly what they did at that time. He pointed out that the Commission has a copy of the master plan in their packet. The subdivision plat that is before the Commission tonight for preliminary approval is that master plan. There are a few boundary lines moved one way or the other, but 99 percent of it is a mirror of what was seen and approved by the Board of Supervisors and the Planning Commission in the year 2000.

Mr. Carter continued that there is also open space, which they were required to proffer. Therefore, they dedicated open space to the Public Facilities Recreational Authority. The reason they gave it to the PFRA is that the County said do it. They are still willing to give the open space easement. There is a central sewage system out there, which is monitored by ESS. It is also permitted by the Health Department. They have a report from ESS that says the sewage system in its present state can more than handle everything that they are going to do there. Before they receive final plat approval they will get the contingency or condition met that it has Health Department approval.

Mr. Carter continued that as to water, they will comply with all requirements of SP-2000-33 and all County Ordinances. There is no reason to believe that there is a lack of adequate water. You were given the letter from Timmons with a chart that reflects that. Nick Evans is here tonight and he will also address that. They have the capacity for sewage and water. They are working with David Swales and have done a Tier III. They will do a Tier IV or what is necessary to produce and to show staff, the Commission, the Board or whoever that they have adequate water and sewer. As to the staff report, Mr. McCall took the letter from the adjoining property owner and went through each one of the subjects that the property owner raised. He had addressed the water and sewer. The number of lots is in compliance with the zoning administrator's determination dated April 1, 2005, which is Attachment E to their packet. Attachment D was about the historical impact. They are in agreement with staff on that and everything else that staff addressed including the dedication of the open space. Therefore, what they are doing is

coming back to the Planning Commission five years later demonstrating that they are in compliance. Also, what they want to do is in compliance with the master plan that was shown and approved in 2000. There are representatives here tonight from Keswick. Mr. Evans is going to speak regarding water. There are engineers present from Roudabush, Gale and Associates. Mr. Ledbetter is present to answer any questions. If there are any questions, he would happy to answer them. He asked that the Commission approve this preliminary plat.

Ms. Joseph asked how they vested the special use permit.

Mr. Carter stated that they started construction on one of the improvements that was part of the site plan, which was a swimming pool that was put by the Hall. It was quite an elaborate construction. They did the infrastructure for that. He also believed that they have done some other infrastructure. He pointed out that they had a letter that satisfied the zoning administrator that it was vested.

There being no further questions for the applicant, Mr. Edgerton invited comment from other members of the public. He stated that there were four persons signed up to speak. He asked Cary Brent to come forward and address the Commission.

Cary Brent, Director of Estate Development for Keswick Hall at Monticello of Keswick Corporation of 701 Club Drive, spoke regarding the request. He stated that they have always considered themselves a good corporate citizen within Albemarle County. They have always adhered to all of the special use permit guidelines and worked diligently with the County staff to ensure that all of these guidelines were in order. On many occasions they have consulted with staff to make sure that they were heading in the right direction. As stated earlier they are here tonight to submit 48 home sites. This is not a short term development. They anticipate the 48 home sites to be marketed over a 6 to 8 year period. That is consistent with the time frame that they are currently operating under with the home sites that were a part of this special use permit in the year 2000. All 48 homes sites are not going to be happening within the next year or year and one-half. The price sensitive direction dictates that ten year time. That is the way that they budgeted that process. They have built 6 homes and/or residents have built homes in the last 5 years. So it is not a major thrust in that direction. Eventually each home owner has to build a home after a 3 year period of sensitivity from building after they have purchased. As he said, they considered themselves as a good corporate citizen of Albemarle County. They support many worthwhile charities in the area. In particular in the Keswick area that includes the Little Keswick School, which has been on their agenda since 1992. They own homes that are located on Black Cat Road that have tenants. They consider their relationship with their tenants to be excellent. These tenants have been there for some period of time. They are also environmentally sensitive within the framework of the estate. The golf course is designated as a certified Audubon Corporative Sanctuary. They are mindful of the environment that is around them and they have worked hard to achieve this certification. It took about four years to achieve this. They are conscious of water conservation on the estate. Many measures have been taken to make sure that the domestic water supply is not wasted and that it is put in the right direction.

Nick Evans, of Virginia Groundwater, stated that he was a professional geologist. (See Attachment) He stated that he was brought in by the Keswick Corporation to assist them with a Tier II Groundwater Management Plan pursuant to the new County Ordinance. Part of the intent of the ordinance was to foster and form decision making. Therefore, he was here as a resource to try and clue the Commission in as to what he has found in his professional study of the hydrogeology out there. The conventional wisdom is that water is short out in Keswick, and that is certainly very true for many people. However, there is a geological formation that runs down through there that exists between two very barren formations water wise, which turns out to be one of the most well endowed aquifers in Albemarle County. If you look at this map, there a black tooth line running down through here and that corresponds with a geological structure called the Mountain Run Fault. That is a zone that is about 300 meters wide in which the rocks are broken up. There are chunks of limestone in there which have become dissolved by acidic water running through them. The up shot is that the groundwater flows very readily along that fault zone. It is one of the most productive aquifers in Albemarle extending from Scottsville all the way up through Keswick into Gordonsville and on into Orange County. The direction of groundwater flow on the aquifer is from the northeast down to the southwest towards the discharge in the Rivanna River. The aquifer corresponds to a topographic low that is along Mechunk Creek in the Keswick area. You can see that valley running down where the arrows are drawn. That whole valley is a very effective sponge to soak up

water and recharge the aquifer. All up and down through that area there are numerous wells that have been drilled that are very high yield. It happens that the Keswick well field, which has a triangular symbol there down towards the bottom of the diagram, is right in the corner of this aquifer. The up shot of all of this is that from a geological standpoint there is a very productive zone of groundwater where the eastern corner of the Keswick property happens to coincide with. While it is possible for them to get plenty of water out there, the adjoining geologic formations are very barren. So the groundwater flow is along this zone and it is not perpendicular to the zone primarily. There is a likelihood that pumping these wells is not going to have any measurable effect on wells that are in the adjoining formations to the east and the west. They don't know that, but from a hydrogeology standpoint the odds are that is the way it is going to work.

Mr. Rieley asked for clarification on his groundwater direction of flow in that he has some of these arrows pointed downhill and some of them pointing upstream. He asked which was the proper direction of those.

Mr. Evans stated that his colored printer had a failure late this afternoon. In his groundwater report that he submitted to the County the primary recharge and groundwater flow direction is, as he said, northeast to southwest. Secondarily there is recharge that occurs on Southwest Mountain and flows to the southeast. However, because all of the rocks between Route 22 and the Mechunk Creek that area is very impermeable to groundwater, which is where people have a hard time finding water with their wells. The recharge across that from the Southwest Mountains is not nearly as effective as the longitudinal recharge.

Mr. Rieley stated that he did not answer his question. His question is you were talking about the direction of the water flowing over the ground and you have some of the arrows pointing downstream and some of them pointing upstream. He asked why he had done this.

Mr. Evans stated that this was water flowing in the ground and not on the surface.

Mike Peoples, of 698 Black Cat Road, stated that he was present to speak as an adjoining land owner. The letter that they submitted for review was attached to the packet. He pointed out that none of their questions had been answered. In regards to question 2a the Keswick Corporation's Water System Plan dated in October, 2004 stated that Keswick Hall would need to either drill a well or add an above ground well or above ground water source for any existing lots. That has not been discussed yet. He stated that he did not know where that was going. The person who just spoke was a geologist and he could not tell us whether or not those wells or that facility will make a change on well water for anybody close by. That is a concern. He stated that he was still confused as to whether or not there were 47, 48 or 50 lots or homes because he had heard all 3 from the first two speakers. That still has not been clarified. The question was answered about the sewage facilities. They will not need any additional sewage facilities. As far as vested he had heard that question asked, but he was not sure what vested means. But, one of his questions was that according to their original plat approval in 2000 Keswick Corporation needed to begin construction within two years and finish it one year later. Now the gentleman who spoke first stated that they had started construction, but had not finished anything. It is now 2005. That is well outside of the guidelines for that first approved permit or at least by his calculations. The first gentleman that talked said that he agreed with staff on all of the points that they made with regards to our initial letter. But, they kind of glossed over one When Keswick Hall changed hands approximately in 1998, his mother was on the Keswick Citizen's Committee during which the County Club had a representative. They swore up and down that they were going to be a good neighbor. At no point in time during this process have they sat down with anyone in the neighborhood to ask what we feel about being in a subdivision. They live in the rural areas with no privacy fences and no towers, etc. They live there because they like it there. If they wanted to live in a subdivision they would do so.

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

Mr. Rieley asked to get several things clarified. Like Mr. Peoples, he was still mystified by the number of lots. The staff report did not seem quite to answer the question. The applicants refer to 48 lots and the staff report refers to 50 lots. He asked what they were looking at.

Mr. MacCall stated that was correct. From what he heard they were proposing 48 residential lots, but the Keswick Corporation representatives may be able to clarify it. The original plan showed it as per our review of the application plan that was approved with the special use permit. From what they have shown us it would be considered as per the ordinance to be 50 lots.

Mr. Rieley asked if he was saying the master plan or their application.

Mr. MacCall stated that their subdivision plat actually showed that.

Mr. Rieley asked if they were calling it 48, but staff counts 50.

Mr. MacCall stated that was correct. They may be proposing residential lots, but the applicant would have to correct with the final plat the issue of the two residues that are shown. They would either have to add those back to adjacent lots or include them as open space. Another possibility was in the letter Mr. People's addressed which spoke to a possible water tower. That was something that was mentioned, but the applicant can comment on that a little further. The applicant would have to basically show that there are 48 lots there if that is what their intention is or count it as 50 as what they have shown. Either way it would meet what staff had determined to be in compliance with the special use permit for a total of what was approved with the special use permit for 124 total lots that would be within the entire subdivision. That includes all of the pre-existing lots. Some of them already have lots on them.

Ms. McCulley stated that in short by our count there are 50 lots. One or two of those lots may be eliminated in the revised plat once they go to final because they may want to make one a utility lot. They may want to combine one with an existing lot. But, by staff's count they have 50 lots and that is consistent with the special use permit. They don't exceed the maximum allowed.

Mr. Rieley asked Mr. Carter if that was acceptable.

Mr. Carter stated that what they did is that they had 48 lots and they had 2 lots that they did not know what to do with. Therefore, they just called the two lots residue. Then when they submitted the plat to the County they say well you have to do something with them because you can't just have them hanging out there. They would either have to be in open space or something. Therefore, they are going to have to decide what to do with them on the next plat. But, there were two lots that did not have numbers. Only 48 lots had numbers, but two lots just had residue on it. Therefore, there are 50 lots. There were only 48 lots that they thought were usable lots. They were going to just call the others residue. But, the next plat may give those numbers. He pointed out that he did not know at this point.

Mr. Rieley stated that the second issue was the vesting of the special use permit. He asked Ms. McCulley to address that issue.

Ms. McCulley stated that there were a couple of things. First, she wanted to be clear on the dates that they were using. Although the special use permit has a 2000 date, it was approved in April, 2001. Therefore, the start time which is two years from that approval would be April, 2003, which is the start of construction of a structure that is necessary to the special use permit. Therefore, they accomplished that. Since the applicant did something in February, 2002 they met this start time. In April, 2001 the zoning ordinance had that start and stop date. There was a completion date which began with two years, which required it to be completed within the year or the year after. Six months after the approval of the special use permit the ordinance was amended to be more consistent with case law. She suggested that Mr. Kamptner could talk more about that in terms of the vesting. At that time there was no end date for completion except a vesting analysis that they do in terms of due diligence and the components of vesting. The applicant will no longer have to begin that project in two years and complete everything within a year or the year after because of the amended language in the ordinance. That is not how they would administrate the vesting of a special use permit based on case law. She asked if Mr. Kampnter would like to add anything to that.

Mr. Kamptner stated that the Ordinance says that pretty clearly.

Mr. Rieley asked what is the due diligence requirement of the plan and has that been met.

Mr. Kamptner stated that it has in this case because the special use permit has within it a two-year starting time. Under State law that is now codified. They just have to show that they have exercised reasonable diligence in the pursuit of the governmental approval.

Mr. Rieley stated that he understood that to be a benchmark by which your progress after the start is measured. He asked if that was correct.

Mr. Kamptner stated that it depends on the circumstances. Some projects may start and stop and start and stop and there might be significant gaps in time. "Diligent pursuit" may not be shown if there is a large gap in time. It is possible for the large gaps to cause rights not to vest.

Mr. Rieley pointed out that everybody was in agreement about that.

Ms. McCulley stated that it was particularly true that on a large multi-phased project that it is going to have stops and starts along the way with the various procedures that are necessary for the approval of the various phases.

Mr. Edgerton asked if there were any other questions.

Mr. Morris stated that the question about the water was troublesome, but it is all over the County. He felt that it was an excellent explanation regarding where they were right now.

Mr. Craddock stated that they did not have all of that water information four or five years ago and this helped clarify that quite a bit on the rock structure, etc. That information would have been helpful years ago.

Ms. Joseph stated that one of the conditions from the original special use permit had to do with the water and whether or not they continued to use the existing central water system or whether they had to amend it. It looks like there has been an analysis concerning the existing three wells. It looks as if what they have said is that they have enough capacity in the system that exists. She asked if that was what she was reading.

Mr. MacCall stated that was what he understands it to say as well. He believed that there would be further study that would be necessary prior to the final approval of the plat. He stated that he did not know the full extent of the study and about how that gets reviewed. But, that information would actually be reviewed by the County Engineer.

Ms. Joseph stated that once that is reviewed and the engineering department determines that they have an adequate water supply with the existing system then they would be good to go as far as that particular condition is concerned.

Mr. MacCall stated that was correct.

Ms. Joseph stated that however if they have to amend the central water system was she reading it correctly that they would have to come back to the Board of Supervisors to amend that system.

Mr. MacCall stated that was correct.

Ms. Joseph stated that part of what Mr. Evans was talking about is also something that the Board put in there as a condition that you have to make sure that you won't cause any down draw or whatever it is called, from the adjacent owners.

Mr. Thomas stated that it looks like it is pretty much in order. He was thinking about the same question that Ms. Joseph brought up because it seemed like a step in there when they hit a certain plateau that they would have to drill another well. What you are saying is that could happen again. Therefore, that stipulation could be put into the condition.

Mr. MacCall stated that was correct because he thought what they were saying here is that the residential uses would be adequately served by the existing system. There are further commercial uses that they may eventually have in any of the other phases that they have proposed that could draw into that, which could then possibly require them to expand the system. They would still have to meet that condition in the special use permit and get the Board of Supervisors and Health Department approval for any expansion of that system.

Ms. McCulley stated that is correct. It is going to have to be assessed for the approval of either the final subdivision plat or site plans for further commercial work, cottages and so forth. Therefore, there are a couple more chances for the County to review that before giving final approval for actual construction.

Mr. Thomas stated that answers the question on the six to eight year phasing process. He asked if this schedule would be controlled by how much water they use or how their phasing comes in. They are saying that it will take six to eight years to put in the houses. He asked if that would affect the water system also by the more houses they put in.

Mr. MacCall stated that he was not sure, but that their Tier IV assessment would probably address something to that extent, which is being required for the final plat. He stated that the Groundwater Manager is here if the Commission would like to discuss that.

Mr. Morris requested that Mr. Peoples be brought back up just to see if this answers his concerns.

Mr. Peoples asked if the Commission had a copy of the Keswick Corporation's own study that they conducted in 2004.

Mr. MacCall stated that he did not, but he did have the letter that he could make a copy of for him. He acknowledged that it was a part of the file.

Mr. Peoples stated that the study that they were talking about is the study conducted by Keswick Corporation that only took into account water usage of Keswick Corporation's property. It took into account the proposal of building additional lots. In Keswick Corporation's own report, it states that their current water sources, in other words, their three wells are not sufficient for additional growth. It then goes through and lists four different possibilities of what they can do. It lists them based on price. One would be to dig another well. One is doing something else. The fourth and most inexpensive one, which is why that is the only one that he talks about in the letter, was to install an above ground water tower. Obviously, his concern, aside from the effect of whatever they do to go about getting that fourth water source, was how that is going to effect us and our wells. His other concern is that if you have been living some place for thirty odd years would you want somebody to put a water tower right next door. One of the two lots that they have been talking about that is listed as residue happens to be right next door to his lot. He stated that he did not want a water tower. He did not want to stare at a water tower nor does he want to look at a privacy fence. Once again, based on Keswick Corporation's own water analysis they do not have sufficient water for 47 more houses. Right now they would have to do something either for fire suppression or for those additional houses themselves. That is part of the file that the County has. Unfortunately, he did not get a copy of that and he did not know if it was in their notes or not. So that does not answer my question.

Mr. Morris thanked Mr. Peoples and acknowledged that was what he wanted to know.

Mr. Peoples stated that the other question that was still not answered is the discrepancy between the last approved design plan, which was approved in 2001 and two years makes it 2003. According to what is written in there regardless of whether or not it is in agreement with current law at the time that it was approved he could only assume that this body would approve something in accordance with then current law. He pointed out that in the Navy that is what they always did. So at that point in time for the 2001 plan they still have to act within those guidelines, which says they must start something in two years and then finish it within one year after that. What did they start and what did they finish? He stated that he still had not gotten an answer to that. So with regards to that he had heard that they had started something, but then they stopped it because they had to wait for other things. He stated that he understands how things work when you are doing things in phases. But, you also have timelines and

deadlines that you have to fulfill as well. So if they did not meet the requirements of the 2001 plan, then how can the Commission approve this preliminary plan when it is based on a plan that is null and void? Therefore, those questions have not been answered to my satisfaction.

Mr. Morris thanked Mr. Peoples and noted that he had answered his question.

Mr. Kamptner asked to point out one quick answer to Mr. People's last point about the vesting of the special use permit. That language is in the Board's action letter as a recitation of the ordinance at the time. It is not an enumerated special use permit condition. The letter was stating what the ordinance said at the time. As Ms. McCulley pointed out, that requirement was changed six months after this permit was approved.

Mr. Peoples acknowledged that, but noted that it was after the permit was approved. He stated that at the time the permit was approved that was part of the language and that was the law. Therefore, it does not matter if the law changes after the fact because you still have to follow whatever was in effect at the time of the approval.

Mr. Kamptner stated that was not correct because the law changed.

Mr. Peoples asked if there was a grandfather clause in the change.

Mr. Kamptner stated that the requirement that they complete the work one year after the two year commencement of construction was no longer a requirement.

Mr. Peoples stated that his question is whether it was grandfathered.

Mr. Kamptner stated that it was made lawful. Grandfathering is a different concept.

Mr. Peoples stated that he understood that. He stated that normally when a law changes that up until the point when the law changes you follow that law. Then anything that was done under that law follows unless there is a grandfather clause. For example, if you take the ADA law, which is a totally different kind of law that went into effect in 1991, that it was grandfathered to 1993 for certain types of buildings. After 1993 it does not matter and those guidelines have to be followed.

Mr. Kamptner stated that the concept of grandfathering would apply in the opposite situation where a more restrictive regulation was adopted and going into effect after approval. The owner would be allowed to continue the use that had already been established. This is the opposite situation. The burden is being lifted. It is a different kind of situation.

Mr. Peoples stated that because a burden is being lifted it applies to this.

Mr. Kamptner stated that the fact that they got their approval before hand does not mean that burden continues on after the ordinance has been changed.

Mr. Peoples asked if that was available in writing. Since he had been in the Navy, he liked to have things in writing.

Mr. Kamptner stated that it was just the law. There is some case law available.

Mr. Peoples thanked him for the explanation.

Mr. Craddock stated that in this water report it was referencing 122 residences in multiple locations and coming out of a peak flow of roughly 62,000 as opposed to the approved 73,000.

Ms. Joseph felt that there were still some issues that are floating out there. She stated that she would really like Mr. Peoples to have another opportunity to look at this before it is approved as a final. Therefore, she would not mind approving this as a preliminary and asking that it come back before the Commission before it is signed by staff just so that they can see if everything has been covered. That

includes whether the applicant has the flow, whether staff feels comfortable with the draw down and what happens to those residue parcels, and whether or not there is some type of a water tower proposed so that they all know exactly what is going on.

Mr. Rieley stated that it was a very good suggestion.

Mr. Edgerton asked if that was a motion.

Ms. Joseph moved for preliminary approval of SUB-2005-47, Keswick Subdivision, subject to the seven conditions recommended by staff with the addition of condition #8: The final subdivision plat shall come back before the Planning Commission for approval before the plat is signed by staff.

1. Compliance with all applicable conditions of SP-2000-033 shall be met.
2. The common area shown on Lot 78 must be added to become part of Lot 78 and a 30' joint access/utility easement be shown to provide for access to Lot 79.
3. The 3.0405 acre residue lot shall either be counted as a lot for a total of fifty (50) lots in the subdivision or be added to any of the adjacent lots.
4. Legal access to Tax Map 80 Parcels 61 B, 61C, & 61E shall be provided to and from Palmer Drive.
5. Current Development Engineer approval of all applicable items as specified in the Design Standards Manual, section 903.
6. The final plat will be subject to the applicable requirements required by Section 14-206 of the Subdivision Ordinance.
7. A final groundwater assessment shall be provided per Section 17-400 and 17-403.
8. The final subdivision plat shall come back before the Planning Commission for approval before the plat is signed by staff.

Mr. Thomas seconded the motion.

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

Mr. Edgerton stated that the preliminary approval of SUB-2005-47, Keswick Subdivision, was granted with conditions.

Ms. Joseph thanked Mr. MacCall for bringing the information regarding the prior approval of this to the meeting.

Public Hearings:

SP 2004-33 Baugher Excavating, Inc (Sign #25) - Request for a special use permit to allow the equipment storage yard for Baugher Excavating, Inc., in accordance with Section 10.2.2(31) of the Zoning Ordinance which allows for Home Occupations Class B. The property, described as Tax Map 19 Parcel 1A, contains 11.373 acres and is zoned RA, Rural Areas. The proposal is located at 6282 Estes Lane, in Dyke, approximately 1,800 feet east of the intersection of Estes Ridge (Route 806) and Simons Gap Road (Route 663) in the White Hall Magisterial District. The Comprehensive Plan designates this property as Rural Area 2. (Joan McDowell)

Ms. McDowell passed out photographs of the applicant's property. (Attachment – Photographs) She summarized the staff report. The applicant has requested approval of a special use permit for a Home Occupation Class B to allow a contractor's storage yard and a location for the repair of equipment and vehicles used in an excavating business behind his residence. The residence is located at 6282 Estes Lane in the Dyke area of the County just east of the intersection of Estes Ridge (Route 806) and Route 663. The area is characterized as a mixture of residential wooded areas and farm land. There is an historic residence and farm directly adjacent to this property. Staff learned of this application and received this application as a result of zoning violations. Currently, there is one outstanding violation for a junkyard and the other violation would remedy with the approval of this application, and then there is the contractor's storage yard.

The recently adopted Rural Areas section of the Comprehensive Plan specifically identifies contractors' storage yards as a land use that should not be permitted as a home occupation in the Rural Areas:

> The increasing frequency of applications for home occupations (Class B are permitted by special use permit) has made it clear that the current definitions need clarification to ensure that only appropriate uses are permitted. Restructuring the standards that define which uses are permitted by-right and which require special use permits, based on impacts of individual uses rather than simply location (in a house vs. in a detached structure) and number of employees, could streamline approvals for low impact uses and more effectively manage or prevent high impact uses. These standards could also more clearly define which uses (such as those that approximate contractors' storage yards) would not be permitted as home occupations.

The applicant wishes to use a three sided pole barn to store most of the equipment. However, a dump truck, low boy and backhoe would need to be stored outside of the pole barn. The pole barn does not provide enough space to store all of the equipment.

Contractor equipment and storage yards are permitted by right in the County's Industrial Districts. Industrial Districts have been designated for areas that are:

"- Areas served by water and sewer facilities or is such facilities are reasonably available;
- Areas served by a major highway, rail or air service; or on a secondary road improved to standards approved by the County; and
- Areas having clearly demonstrated suitability for intended uses with regard to physical characteristics and relationship to surrounding development."

The purpose and intent of the Rural Areas District is to preserve agricultural and forestal lands and activities; protect the County's water supply; limit service delivery; and conserve natural, scenic and historic resources. The proposed contractor's storage yard does not meet the intent and purpose of the Rural Areas District.

The proposed contractor's storage yard is not consistent with the uses permitted by right in the Rural Areas District. By-right uses support the intent and purposes of the Rural Areas District, as described above.

The Zoning Ordinance regulations are provided in Italics.

(Section 5.2.2.1.) The following regulations shall apply to any home occupation:

a. Such occupation may be conducted either within the dwelling or an accessory structure, or both, provided that not more than twenty-five (25) percent of the floor area of the dwelling shall be used in the conduct of the home occupation and in no event shall the total floor area of the dwelling, accessory structure, or both, devoted to such occupation, exceed one thousand five hundred (1,500) square feet; provided that the use of accessory structures shall be permitted only in connection with home occupation, Class B;

The proposed home occupation does not comply with this requirement. The dwelling contains 2,690 square feet and the building proposed to store most of the equipment is 54' by 77' (4,158 square feet) 154 % of the area of the dwelling. The outside storage area shown on the concept plan is a 50' by 50' (2,500 square feet). A total of 6,658 square feet would be used for the storage and repair of excavation equipment and materials.

Section 5.1 allows the Commission to waive or modify requirements of Section 5.0 upon finding that such requirement would not forward the purposes of this chapter or otherwise serve the public health, safety, or welfare. The full text of Section 5.1 is attached as reference (Attachment G).

b. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation provided that a home occupation, Class B, may erect one home occupation Class B sign as authorized by section 4.15 of this chapter. Accessory structures shall be similar in façade to a single-family dwelling, private garage, shed, barn or other structure normally expected in a rural or residential area and shall be specifically compatible in design and scale with other development in the area in which located. Any accessory structure which does not conform to the setback and yard regulations for main structures in the district in which it is located shall not be used for any home occupation;

While the barn structure proposed to store the majority of the equipment and materials is typical of those found in the rural areas, three-sided structure would allow the equipment to be visible from the neighboring property. The dump truck, lowboy and backhoe that would be stored outside the pole barn would be visible from Estes Lane and from an adjacent property.

The Zoning Ordinance restrictions regarding size limitations for home occupations provides assurances that the primary residential use is not be overshadowed by the business. The proposed contractor's storage yard would significantly exceed the maximum size allowed and would require a waiver.

c. There shall be no sales on the premises, other than items hand crafted on the premises, in connection with such home occupation; this does not exclude beauty shops or one-chair barber shops;

This regulation is not applicable to this request.

d. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street.

The applicant has stated on the concept plan that the "business is limited to not more than two employees, other than members of the immediate family residing on the premises." The equipment would access the property by a private road, Estes Lane, that intersects with Estes Road (Route 806). Seven residences access directly onto Estes Lane and sixteen other residences in the area access Estes Lane from Estes Ridge Road (see Attachment H). Excavating and heavy construction equipment being transported and stored within a rural residential neighborhood is not typical for rural residential neighborhoods and mixing these two conflicting land uses could create unsafe conditions.

The private road, Estes Lane, would not fall within the jurisdiction of Virginia Department of Transportation. Therefore, VDOT has not required road improvements because of this application.

e. All home occupations shall comply with performance standards set forth in section 4.14; (Section 4.14 Performance Standards Attachment G)

These standards place restrictions on the noise, vibration, glare, air and water pollution, and electrical interference normally associated with industrial uses. The Engineering Division did not identify any impacts regarding the proposed use.

f. Tourist lodging, nursing homes, nursery schools, day care centers and private schools shall not be deemed home occupations.

This section is not applicable to this application.

and with the public health, safety and general welfare.

The large excavation equipment is transported on both private and public rural roads to this location. Estes Lane is a gravel private road directly accessed by seven residences and sixteen other residences accessing Estes Lane from Estes Ridge, causing safety concerns.

Evidence of dumping into a ravine behind the residence raises concerns regarding pollution of Beaver Dam Creek. It is unknown what has been dumped into the ravine.

Staff has identified the following factors unfavorable to this application:

1. A contractor's storage yard is not an appropriate Home Occupation land use in the Rural Areas, according to the Rural Areas section of the Comprehensive Plan;
2. A requirement for the property owner to be an employee of Baugher Excavating would be difficult to enforce;
3. Transporting large excavating equipment/vehicles from storage on the property to job sites could cause an unsafe conditions;
4. The equipment/vehicles would be visible from the road and from adjacent properties, one of which is a property with local historic significance;
5. Zoning ordinance violation pertaining to the junk yard contained on the property have not been abated and this special user permit would not abate the junk yard violation;
6. Dumping of unknown materials into a ravine may be causing environmental impacts;
7. Long-term maintenance of both public and the private road used for the excavating business could be an issue;
8. The size restrictions for a Home Occupation permit would be exceeded by a significant amount;
9. Staff cannot identify any factors that are favorable to this application.

Based on the findings contained in this staff report, staff recommends disapproval of SP 04-33 Baugher Excavating.

If the Commission determines that an approval of this application is warranted, staff requests that the Commission defer the approval until conditions can be developed. Should the Commission determine that approval is warranted without a deferral, approval of a waiver of Section 5.2.2.a. will also be required.

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

Ms. Joseph asked if staff has contacted DEQ.

Ms. McDowell stated that she had not contacted DEQ, but had suggested it to the zoning inspector.

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

Nelson Morris, President of Baugher Excavating, Inc. stated that he was present to speak for Baugher Excavating and Wayne Baugher. He spoke in favor of the request and read his presentation into the record. He presented a petition signed by his neighbors requesting that this complaint be dismissed for the reasons elaborated in the attached petition. In the petition Mr. Baugher wrote, “I have been at this address for more than twenty-five (25) years, during which I have paid business personal property tax and have never encountered problems with the County or neighbors regarding my residence and surrounding property.” (Attachment – Letter dated April 12, 2005 addressed to the Albemarle Planning Commission from Nelson R. Morris and a petition signed by Mr. Baugher’s neighbors in support of his request.)

Mr. Morris asked to make a couple of corrections in the package that he received from Joan McDowell that was post marked April 5, 2005. It stated in the opening paragraph that Wayne bought and sold the business to Nelson Morris in 1991, but the date is actually July, 2001 as stated correctly in the planning and zoning history section of the same package. In the second paragraph, the property of 6282 Estes Lane is said to be approximately 1800 feet from the intersection of Estes Ridge, which is Route 806, and Simmons Gap Road, which is Route 663. The correct distance is approximately 1 mile as correctly mentioned in paragraph 3 Estes Ridge is .38 mile or 2,006 feet to the dead end road and the property is about another ½ mile. He stated that he did not know where the 1,800 feet figure came from, but that is not correct. It is quite a bit further off of the main road.

Regarding the history of the business, Mr. Morris stated that Wayne Baugher began operating equipment with his daddy at an early age of about 7 or 8 years old. He could install septic systems by the age of 12. He continued working with and operating equipment throughout the years and became a crane operator

during the line construction period at the nuclear power plant in Louisa County. In May of 1980 after the completion of the nuclear power plant he officially started Baugher Excavating. For the next 21 years Wayne and his wife Joyce managed and operated the business from their home at 6282 Estes Lane. In the last two to three years of their time the stress of doing business seemed to be taking its toil on Wayne's health. He started experiencing problems with his hear beating irregularly. With concerns from family and the doctor's advice Wayne began looking for a way to sell the equipment to someone who would run the business and allow him to operate and work in the field as he always had done before. As Wayne would say, it would put the burden on someone else's shoulders. This is where he came into the picture. Since he had already been in the construction business with his dad for 22 years under Nelson Morris and Sons Incorporated. He pointed out that he had been using Wayne for excavation for most of those years. It was a perfect fit. He was already set up to do the business part and Wayne was set up to do the field part. In July, 2001 he became part owner of an excavating company. Everything continued to be the same around the Baugher property and household as the last 20 to 30 years except for the stress and he would have the convenience of an excavating company at his disposal. With the exception of Baugher Excavating Incorporated becoming profitable he was doing well until Albemarle County got involved. That is why they are here tonight. He admitted that all of this procedure has been overwhelming to him and he has difficulty in understanding the language and the terminology of the documents submitted to them by the County. Both he and Wayne misunderstood that there were two different violations charged against them. They understood that after applying for a special use permit that the violations would be put on hold until the approval of the permit was decided upon. Even without fully understanding, Wayne had began cleaning up some of the items in question thinking it would be in our favor to have a head start on what they thought the County expected of us as we wanted for a response from them. Not until Wayne was called into Court January 24 and March 28, 2005 and found guilty and paid a $250 fine did they understand that they were up against two violations that were not relevant to each other, which Judge Barkley kindly informed Wayne of. As you can see, the junkyard violation has been abated and has been settled in the Courts. This is one of the reasons the County staff is not recommending approval of our special use permit application. He hoped that the Commission could see and understand their perspective on this issue. The reason that you see some of what is referred to as junk around any small excavating company is because they are most likely operating on a shoestring budget. All sorts of parts are needed to keep equipment running. As new equipment is being put into place the old equipment is used for parts for saving money and providing work on rainy days for workers who need full time employment for their family needs. They do, however, understand that this is expected to be cleaned up. They have already accomplished about 75 percent of this request and will complete it within the next 30 days. This includes the dumping mentioned in the package from Ms. McDowell in the Comprehensive Plan section. Baugher Excavating, Inc. is a very small company and does not disturb the community with a lot of coming and going. During the busy season equipment is being moved from job to job about 75 percent of the time and is not even on the Baugher property. There is no way that this is detrimental to adjacent property no more than a typical farm activity. They are only talking about a one-man operation and not something like Faulconer Construction. As far as visibility from adjacent properties, this property is surrounded by trees on three sides with the open side facing the property of Wayne's daughter, Dawn Shifflett and his son Kenny. Attached please see a document signed by all of the adjacent property owners and other neighbors. It also includes the signature of Jeanie Tuck, who is the owner of the historic Estes farm that was mentioned several times by Ms. McDowell. This document alone should satisfy the County in approving our request for a special use permit.

He pointed out that he was under the impression that a home occupation would allow one dump truck, a low boy and a back hoe to be stored outside. But, they could probably make room inside if that is what it takes to satisfy the request. He pointed out that Mr. Baugher maintains the road year round with volunteer labor. Mr. Baugher helps the church and several widows in the community. He asked that the Commission approve the special use permit.

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

Mr. Rieley stated that his statement says that the business has been going on for 20 years or so. What is the level of the business now relative to what it was 15 years ago?

Mr. Morris stated that back then Wayne owned the business himself. When he purchased it in 2001, it

was basically the same because nothing has really changed. It is still the same equipment and the same type of work is being done.

There being no further questions for the applicant, Mr. Edgerton invited comment from other members of the public on this application.

Ken Hamm stated that he was personally in the construction business. He felt that it would be unfair to the people to deny this request. He asked for everyone to stand up in the audience to show their support for Wayne Baugher. The majority of the people in the audience stood in support of the application. Mr. Hamm asked that the Commission take the public's support of the business in consideration and grant the request.

David Allison, Senior Pastor of the Church of God, spoke in support of Mr. Baugher's business. He pointed out that Mr. Baugher has greatly assisted in the construction of the church. Mr. Baugher's excavating business has been a very big asset to the community in snow removal and excavating work. He asked that the Commission grant this request.

Rick Morris stated that he had known Wayne Baugher all of his life. He felt that the grandfather clause would come into play for Wayne's business because it has been there for so many years. He asked that the Commission take that into consideration. He pointed out that Wayne has been a good neighbor for many years. He stated that a lot of what was being called junk was just spare parts that he needs to be able to run his business economically.

Dawn Shifflet, daughter of the applicant, stated that she lived next door and was the one who has to see all of this. She stated that it was not offensive and in no way, shape or form did she consider it a junk yard or a detriment to her property.

Mark Evans stated that he and his wife both work at the University of Virginia, and are both essential employees. Wayne always comes down to their house in Earlysville and makes sure that their driveway is plowed in bad weather so that they can get into work. Also, Wayne Baugher and Nelson Morris have done a lot of excellent work for him. He stated that this business was an asset to Albemarle County and surrounding counties and should be supported.

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

Mr. Rieley stated that there were a number of photographs in their packets. He asked how many of those photographs relate to the issue of the junkyard violation and would be abated as it relates to that. It seems that should be a separate issue and he wanted to see if that could figure out where the line is between the two.

John Shepherd stated that he was a worker in the Zoning Division. It is true that the violation that has to do with the junk is separate from the issue of the home occupation for the excavation business. Both of these are ongoing matters with their department. Some of the material that is out there would fit in the category of junk or debris. No doubt there are other things out there that might be used with the excavation business. The only way to clear that up would be to show on the plan if this was to proceed what would be areas that would have storage and what would be there and whether it would be visible. Those two issues would have to be separated out and dealt with separately. In the end what is junk would have to be removed. What would be parts would have to be properly stored in approved places as part of the home occupation.

Mr. Kamptner stated that the top photograph on page 2 shows the ravine and the junk that is there. On page 25, the top photo, you can see near the middle of the picture some more of the junk. The photos on the top of page 27, the bottom of page 28, and the top of page 29, would all be examples of the junk also.

Mr. Rieley stated that it seemed that a big percentage of the problematic issues would be dealt with under the junkyard violation. He asked if staff has received any letters in opposition to this special use permit.

Ms. McDowell stated that they have not.

Mr. Edgerton asked who filed the complaint with the department.

Mr. Shepherd stated that he did not think there was a complaint.

Mr. Edgerton stated that he thought that was how this came to staff's attention.

Mr. Shepherd stated that when a zoning inspector was traveling in the County on another matter he saw this and proceeded to process this and bring it forward as it is. There is not a complainant. The zoning inspector has been out to this site recently and much of this is still there. Clearly the violation that concerns the junk is not abated and it is an ongoing open violation. It is still part of the picture here. As he understood from the inspector, some of the junk has been covered and some has been removed.

Ms. Joseph asked Mr. Kamptner about the nonconforming aspect of this business because it has been in operation before the zoning ordinance was adopted. She asked how that affects this.

Mr. Kamptner stated that the aerial photographs that are identified in the staff report were the 1980 photographs that were taken in December of 1980. That was around the time that the zoning ordinance was adopted. Those photographs did not show this activity on the property at that time. When she issued the notice of violation, the zoning administrator makes a determination that the violation exists. It is up to the applicant to provide evidence to the contrary to show that it did exist at the time. They would probably need to go back to the 1969 ordinance for the junkyard violation to see what existed then. But if the photographs in 1980 did not show anything, then they could stop at that point.

Ms. Joseph asked if there was any other way to do that with affidavits or if anything like that is ever accepted.

Mr. Kamptner stated that it can be accepted. At this point it is called a thing decided. The determination was not appealed. Therefore any claim of nonconforming status is lost at this point.

Ms. Joseph asked if the determination was not appealed after thirty days.

Mr. Kamptner stated that the determination was made about a year ago.

Mr. Shepherd stated that staff looked at that carefully and even the 1977 zoning ordinance provided for home occupations. From talking with Mr. Baugher, he understood that he bought the first tractor in 1979. The aerials did not show any of these activities in 1980. In 1986 saw where the property was being used this way. Therefore, it does not qualify for a nonconforming use. He did not think that Mr. Morris or Mr. Baugher disputed that.

Mr. Nelson asked if he was saying that they did not have a business going until 1980 because of the pictures.

Mr. Shepherd stated that no that he understood that from Mr. Baugher that after that point that a home occupation would have been required.

Mr. Kamptner stated that it would be classified as an illegal use and it continued until it came to the attention of the County zoning staff. It is not atypical because these things are discovered all of the time.

Mr. Rieley asked if the pole barn that the applicant was suggesting to construct limited in size by the size of the house.

Mr. Shepherd stated that the pole barn already exists and is currently 1,158 square feet. The dwelling is 2,690 square feet. Therefore, the pole barn is more than 25 percent of the area of the house and is also more than 1,500 square feet, which is the maximum size that the accessory structure can be. The approval of this application would require waivers or modifications of both of those provisions. It would also need a modification for the outdoor storage.

Ms. Joseph asked if he could clarify what outdoor storage he was talking about.

Mr. Shepherd stated that it would be any storage not within a building. There are two aspects to that. The first is that the building itself is open. Therefore, they would have to deal with enclosing the building or granting a modification to allow the building to exist as it is. He pointed out that those modifications have not been requested.

Mr. Rieley stated that it was a three-sided building.

Mr. Shepherd stated that there was also the issue of storing equipment outside of the building.

Ms. Joseph asked Mr. Kamptner if there was any way that any requests like this can be attached to a person rather than the land.

Mr. Kamptner stated that it could not be attached to a person, but the Commission could consider putting a time limit on the life of the special use permit.

Ms. Joseph noted that this was very difficult because the Commission usually has a room full of people in opposition. It is difficult to go against the Comprehensive Plan because they have spent a lot of time talking about these issues. They have also talked about the fact that many farms have large equipment. The expectation that you see large equipment out on rural area property is something that you do expect to see. Some of the things they see on this property are tractors, trucks and equipment that one would expect to see.

Mr. Rieley stated that the parts of this that trouble him the most are not the home occupation, but the violations that relate to the dumping and the potential off site impact of that. He acknowledged that the proposal has community support and felt that there were special considerations that need to be taken into account with the special use permit.

Mr. Edgerton stated that this was not an agricultural endeavor and nobody suggested that. This is a commercial business and it has been located here illegally for 25 years. Nobody has complained about it, but does that make it all right. He noted that he was really having trouble with the principle. If these folks move away and somebody else comes in they have rights under the ordinance, Comp Plan and our laws and they may not feel the same way.

Mr. Rieley felt that they do have to acknowledge the fact that conditions change over time. That is why he liked the idea of imposing a time limit on the special use permit. Once again looking at these photographs it sure did not look a lot unlike a lot of barn yards that he has seen. He felt that it was not unlike something someone would expect to find in the rural area. He stated that he could hear Bill Finley whispering in his ear that the notion of putting somebody out of business when nobody around objects that he was not certain who they were serving by doing that.

Mr. Craddock concurred with Mr. Rieley's statements. The thing that really sets him over is the fact that there is a time limit. There is time involved here that gives him a chance to clean up even more so than what he has. It looks like he is making a good faith effort right now to get it cleaned up. Everybody needs reasonably priced contractors, especially in the rural areas. He felt that it was something with that time limit that they could work with it. But, he questioned what this would do legally regarding the junk yard and the class home occupation if they approved it.

Mr. Kamptner stated that they could think of the two as two separate things. This special use permit, if the Board approves it, will take care of the occupation. The junk yard issue is separate and the County will continue to work with Mr. Baugher to get compliance.

Mr. Craddock stated that if this was approved, Mr. Baugher better get that junk yard cleaned up.

Mr. Thomas asked Mr. Kamptner if the Commission put a time frame on this if they could be a time frame on it to have all of the junk cleaned up.

Mr. Kamptner stated that staff could look at that because as staff notes at the end, he would like to look at some other projects where the County has done that with conditions. The best example, which was very similar in character as far as the neighborhood support, would be Mr. Harris' garage that might have similar conditions. He pointed out that staff could take a look at that as they craft the conditions.

Ms. Joseph stated that when he said in looking at the end of the report if he was saying that maybe the Commission ought to move for a deferral on this and then have some of these questions answered.

Mr. Kamptner stated that the request needs to be deferred at least to bring it back on the 26th because staff had not recommended conditions in the staff report.

Ms. Joseph asked if staff was okay with the time frame.

Mr. Cilimberg stated that he did not think that two weeks was going to be enough time, and Mr. Shepherd could probably respond to that at some point. They need first of all to get some tie down on the request for modification because there are modification needs for area exceeding 1,500 square feet. It is going to take the applicant a couple of weeks to probably get us information, then a couple of weeks for the County to do the work that staff needs to do that Mr. Kamptner mentions in getting some conditions pulled together, and a week to pull that report together to put in the Commission's packet a week before the meeting. That is already six weeks. Therefore, he felt that they were looking at a need for that kind of time frame and he thought that the applicant would need to agree to a deferral in order for that to happen. The applicant should understand that the Board date will be pushed back as well because of that.

Mr. Rieley asked the Chairman if they could ask Mr. Morris.

Mr. Edgerton asked the applicant to come forward.

Mr. Morris asked to say one thing. He pointed out that they had been talking about this business being illegal for all of these years. Ms. Baugher reminded him that she paid business personal taxes for all of those years that the County was happy to receive. They don't understand how their business could have been illegal when they were paying business taxes while they were all of that time doing business at the same location.

Mr. Baugher stated that he paid business taxes on the tractors and everything.

Mr. Morris stated that they were kind of confused with that talk about them being illegal for all of those years.

Mr. Edgerton stated that it was from the zoning point of view that they were illegal.

Mr. Kamptner stated that the Department of Finance does not review for compliance with the zoning regulations.

Ms. Joseph stated that what they were asking for is that if you would request a deferral for six weeks and then come back so that these questions that have come up can be answered so that everything can be clean and clear the next time and then move them on to the Board of Supervisors to make a decision.

Mr. Baugher asked the Planning Commission to grant a deferral.

Mr. Rieley moved to accept the applicant's request for a six week deferral of SUB-2004-33, Baugher Excavating, Inc.

Mr. Morris seconded the motion.

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

Mr. Edgerton stated that SUB-2004-33, Baugher Excavating, Inc., was deferred for six weeks.

Mr. Cilimberg stated that the next meeting date would be May 24.

ZMA 2004-06 Pine Ridge (Sign #61) - Request to rezone 6.432 acres from R1, Residential to R-6, Residential; to allow 17 single family detached dwelling units. The property, described as Tax Map 46, Parcel 26F is located in the Rivanna Magisterial District on Ashwood Boulevard (Route 1670) on the north side of the street, approximately 300 feet west of the intersection of Ashwood Boulevard and Kendalwood Lane. The Comprehensive Plan designates this property as Neighborhood Density, recommended for 3-6 dwelling units per acre, in the Community of Hollymead. (Elaine Echols)

Ms. Echols summarized the staff report as follows:

This is a request to rezone 6.4 acres from R-1 to R-6 with a proffered plan. The property is located on Ashwood Boulevard between Forest Lakes South Club and the Kendalwood cul-de-sac. The entire property is approximately 20 acres. Many of the Commissioners were here when the Church of the Cross special use permit was approved back in 2000. There was a quite a discussion at that time about the use of the entire acreage for the church. Staff had encouraged the applicant to reserve the opportunity at some future date to provide for residential units. The church at that time did not seem too keen on that idea, but they did not want to lose any options. Therefore, the church made some notes on the special use permit concept plan that talked about the potential location for residences on the property. In retrospect, she felt that was very wise because it meant that they did not have to come back in and amend the special use permit. But now they have brought in a request for a rezoning of the area that is shown in lots and streets on the plan. The acreage for the rezoning is 6.4 acres and the proposal is for 17 single-family detached lots for a development similar to Forest Lakes. Their intent is to have this development be part of Forest Lakes even though it has a different zoning.

There have been some emails that have gone back and forth in regards to questions some of the Commissioners have had. As noted in the staff report, there are several issues in need of resolution. One of them has to do with grading. Staff knows that the grading in the back of lots 13 and 14 looks fairly severe, which is a concern. This is something that staff has brought to the Commission's attention. There are many rezoning concerns that deal with the grading and they ask for weigh in on what the Commission thinks should be done. The second big issue has to do with an interconnection. There is a problem with the interconnection in that it requires at the location a sight easement waiver from VDOT. Right now staff does not know what the possibility is. When staff first talked with the assistant resident engineer at VDOT he thought it would be pretty likely, but in thinking about it some more and realizing that it had to go to Richmond he is not so sure that the Richmond offices will grant the sight easement waiver that is necessary for the interconnection to a occur as shown on that plan. Staff thinks that the interconnection is a really good thing and would hope that it could be retained. It is not supported by the residents on Kendalwood. There is a petition in the packet which indicates that all of the residents on Kendalwood are opposed to that interconnection. Staff thinks that it is a good thing because it provides for a second means of ingress and egress not only to Kendalwood but also to English Oaks, which is up the way. It also prevents two cul-de-sacs from sort of backing up to each other. The local residency is recommending that the solution to this problem about needing the sight easement waiver would be to move the road west about 20 or 30 feet. In doing so there are some impacts. One impact is that it takes about 30 feet of the property that the church would like to have and use. That is the negative impact.

The positive impact is that it allows for the grading on those lots where staff has some concern to be more evenly graded and not be quite as severe. Staff does not think that is something that the applicant is interested in doing because she believed that they have contractually arranged for the particular area that is shown on that plan. There was a question raised about the Church of the Cross special use permit and the concept plan and whether or not that road was shown in the same location. The road was shown in generally the same location. The road was not really given a great deal of thought through that particular application because it was unknown at that time whether or not those were actually going to be residences. It was thought that it might be a possibility so they wanted to leave open that option, but it was really envisioned more as a

driveway to the church. You can see on the concept plan that there is an idea of where the church would be.

Staff reviewed and approved a preliminary site plan, which showed a church configuration that is not as shown on the concept plan. It was viewed by zoning as being in conformity. That preliminary site plan was approved and a final site plan was brought in, but when the final site plan was brought in they did not continue to act on it. Therefore, the preliminary site plan died and the final site plan never occurred. There are probably opportunities for reworking the church site to make it work better with the road, but staff does not think they are things that the applicant would like to pursue. Where the problem exists is that with the sight easement waiver can't be granted and the applicant is not willing to move that intersection the applicant is saying that the interconnection goes away. That is problematic to staff in the sense that they promote interconnections. She felt that there were probably residents in the audience that believe that it is just not appropriate at this location. Certainly that is for the Planning Commission to determine how they feel about this. Staff has left that open for the Commission.

There was one thing on the plan that staff did not note that was received from VDOT yesterday, which was that there will need to be a left turn lane from Ashwood Boulevard. It is a condition of the special use permit. VDOT missed it because they were thinking that this was just a subdivision and they did not realize that the County had conditioned it. Their first set of comments in relation to the church said that there needed to be a turning lane. This is not major and was something that can be accommodated on the plan. But, staff just wanted to note it because they had not included that in any of the comments to now.

There are some other issues with this particular project. One has to do with the drainage. The plan does not adequately address stormwater management for run-off towards Forest Lakes Development or the proposed pond. They think that needs to be addressed. Some of the Commissioners asked a question on why the Housing Director suggested that the project was too small to provide affordable housing units. Staff talked to the Housing Director today and asked him the questions and got the answer on a voice mail. What he said was that with 17 units in the $300,000 to $400,000 range of houses, and these are probably $250,000 to one-half a million or higher, that with single-family detached in that price range he did not think there was going to be an opportunity to provide more density to help make up some of the loss in value that providing affordable units would require. He said that he thought that the combination of the type of unit, the price of the unit and the number of units really did not lend itself to asking the applicant to provide affordable housing units within the development. He suggested that cash proffers might be a way to offset some of the needs that they had for affordable housing in our community. That was passed on to the applicant. She thought that there was a church representative here tonight who may be able to speak to the issue of whether and how the owner would want to address affordable housing.

The Commission had asked about common area because it was not shown very well on what they received. The plan that staff received to review showed the common area a lot more clearly than the electronic copy. Staff tried to clarify the area by highlighting it in green on the plan on the board. The width of that common area ranges from 25' at its widest until it gets to that triangular area down to about 12.5' and also another section of 20'. Staff obtained that information from scaling the subdivision plat. It may be slightly different than that. But, at least the Commission can see where the common area is. That was common area that was provided through the Forest Lakes South PUD. In looking at the zoning, proffers and application plan for the Forest Lakes PUD, staff does not believe that there was an expectation that would be preserved in its natural state. Staff has asked the applicant to provide information on whether or not they might be able to use that common area for stormwater, utilities or erosion and sediment control. They have given staff some information, but staff wants to look into it further. On the surface it looks like they have the ability to use that common area to accommodate what kinds of needs they might have. It looks like it is going to be a loss to the community because there are a lot of trees in that particular area, but there is a sewer line shown on that plan. Therefore, they know that grading is going to occur on either side of that sewer line and take out a number of those trees just to provide the sewer for that particular development. Staff would like to

recommend approval of this project because it was something that they think helps to achieve the goals of the Comprehensive Plan. It is something that they worked on many years ago to try and make sure that there was an opportunity for more housing in this particular area. There are some things that still need some attention before they can do that. It may just be that staff needs the Commission's weigh in to advice on the best way to go with this particular application and how to address these issues. The applicant has some solutions that he is suggesting that might take place on some of these lots with regards to the houses that are shown. She noted that he will provide that information for the Commission. Staff would say that probably the most important decision area is going to be the location of the interconnection and whether or not the Commission feels that it is appropriate. Glenn Brooks, who is the reviewing engineer on this, is here to answer any questions about grading, drainage and those kinds of things. It was more of the Planning staff's recommendation about the grading that there needed to be something better shown there.

Mr. Edgerton asked what the status was of the church that was approved back in 2000.

Ms. Echols stated that it was a concept plan. The church submitted a preliminary site plan, which was approved. The applicant submitted a final site plan and they never proceeded after the first set of reviews. The preliminary and final site plan both died because they were not pursued in a timely fashion. Therefore, the church has nothing that is on the table right now as far as any kind of vested plan other than the concept plan that you see with your special use permit. That concept plan is not necessarily the plan that would be approved for that site. Their site plan looked somewhat different. It was so different that staff questioned whether or not that site plan was in conformity with the approved concept plan. They had a church building on the front where those lots are shown as the western most lots on the preliminary site plan. There was a two building or starter church up towards the front and then a larger building towards the back. Staff was told that the way the special use permit conditions were written is that the development was limited to what was shown on the plan and not in general accord with the plan. She felt that there was fair amount of flexibility in terms of how that concept plan might play out on the site. She was disappointed because she had done a lot of work on that concept plan. It was a matter in the ways things were worded and she was taken aback.

Mr. Edgerton asked staff what were the negatives regarding the cul-de-sac.

Ms. Echols stated that the sight easement waiver was a negative because that was an unknown factor. She felt that the residents on Kendalwood believe that this is going to cause people to cut through their neighborhood to get on to Ashwood. There is always concern in neighborhoods when you talk about making an interconnection. It is concerns that they often hear about safety for children who might be playing in the street, having more cars pass in front of them, and potentially what the church might generate in terms of traffic and people not using the main road through there to get to the church, but using Kendalwood to get in or out of the church. Staff's position is that the people that are going to use that road probably are more of the people in the neighborhood. Somebody from English Oaks might chose to go up Kendalwood and then down that street. It would probably be better to let the residents explain their concerns. Staff did not see any negatives. She pointed out that the special use permit is valid because the use has been vested and they have established a use of the office in the existing building, which zoning has said is okay. Therefore, their special use permit has not expired. There is an active special use permit for the church. There is an existing driveway up to that house. The plan shows the proposed road to provide access to the church as well as to set up the system for the lots within the development.

Mr. Edgerton asked if the future access to the church would be along Pine Ridge Road.

Ms. Echols stated that was correct.

Mr. Rieley asked Mr. Brooks if he could talk about the issues relative to the grading and the drainage, and secondly, the interrelationship between the location of the road and that grading. It sounded as if there may be a connection between the two.

Mr. Brooks stated that the lots that are being carved out are in front of the green triangle. That green triangle is the Forest Lakes open space. The way the grading looks now the edge of that upper edge is the sewer line running along there. There is a steep slope on the back of those lots that comes up to a level area next to the road. So if the road moves northwest up the plan it would pull away from that green triangle allowing themselves more room to grade.

Mr. Rieley stated that is actually a problematic area.

Mr. Brooks stated that the concern for erosion control was related to that. Right now the existing church building is sort of on top of the ridge as you see on the topography. Everything is draining towards the green triangle on that side of Forest Lakes. If you were to grade a steep slope in there you would have to put something at the bottom of it to trap sediment for construction. It would be in the Forest Lakes common area in that case. He brought that up just as a notice to the applicant that he will definitely have to disturb the Forest Lakes common area. He anticipated that they have agreements to do that and that is what planning has picked up on and used.

Mr. Rieley what will happen in the field by moving the road 20 feet to adjust the site?

Mr. Brooks stated that he did not anticipate that VDOT would approve a sight distance waiver. The current folks at VDOT are talking that friendly talk, but he had never seen a waiver in the ten years that he has been here. He noted that his recommendation was to move the road towards the cul-de-sac, which was the same thing. That just pulls away from the curb on Kendalwood.

Mr. Rieley asked if he felt that a 20 foot or so shift would achieve the necessary sight distance.

Mr. Brooks stated that or to obtain an easement on the Forest Lake lot on the sight line where it goes over.

Mr. Rieley stated that it was pretty close to where that would meet, and Mr. Brooks agreed.

There being no further questions for staff, Mr. Edgerton opened the public hearing and asked the applicant to come forward to address the Commission.

Don Franco, of the Kessler Group, stated that he represented the applicant and would continue the discussion to answer some of the questions that they have raised about the interconnection and the grading. With respect to the grading, particularly on the lots in question with staff, that lots 13 and 14, it is their opinion that for one that they meet and exceed any existing ordinance or proposed ordinance as far as slopes go and the grading in and through there. Part of the problems that have been created in and through here is in trying to react to the proposed overlot grading plan. The original plan that they submitted had all of the grading and stuff take place on the property and not in the common area. But to provide for some of the constraints of the overlot grading plan that is before the Board, which will be acted upon next week, they have been asked to provide additional grading back in there to handle drainage so that it came off three lots and was controlled in a ditch and other things. That all forced the utilities to push into the common area in and through there. That was something that they sat down and talked about with Mark Graham and it was agreed that was the solution to take place. As far as the slope goes, a 2:1 slope was something that was allowed in through here. They have gone above and beyond by saying that they will landscape that slope so that it was low maintenance in and through there. They feel that they have addressed that. The other concerns that staff has raised is that they don't feel that the quality of the lots there is a reasonable quality. He felt that their goal of showing the footprints on there was to demonstrate access, which was one of the issues that staff raised. He felt that there were smaller footprints that can be on there, but they were not planning on proffering that particular house being on the lot. But if they other lots on 5, 6, 7 or 8 and put it on there they could all of a sudden create a 20 foot backyard before the slopes start. So they think that they have a reasonable plan that works in and through there.

Mr. Franco continued with respect to start to shift the intersection and try to address the sight distance issue, the alignment is following the general alignment that was used in the special use permit. That is what their direction was with the owner of the property, the church. The problems and conflicts that come

provide relief to the lots on the lower side of the road. If you go out to the site now there is a 4' to 6' retaining wall at the end of Kendalwood on that cul-de-sac. By pushing the road uphill in order to make it work you could always see that there is 6 to 8 feet of grading up and through there, but he would be creating even more grading on the church side. It was their opinion that because of the intensity of the church site, the size of the building, the amount of parking, and things like that it was better to try to keep that site to be on the larger flatter area as opposed to creating a problem that has a steeper slope to the road. They were trying to keep the church so that it related to the road grade. That is one of the reasons that they have resisted pushing the road in that direction due to the need for retaining walls or more grading to take place. In defense of staff they don't have this drawing that they brought, which was pieced together from other documents they do have. It shows the proposed church site that was used in the special use permit process and how it relates to the road that is there and what the initial comments they got of shifting a road to make the connection straight and forward. There is parking shown down next to the road that will have to go somewhere else on the site. The solution is to really end up pushing it on the other slopes on the site or in a location that no longer relates to the buildings. Therefore, it has some impacts to the residue piece. That is one of the reasons why they have resisted changing the site improvements. Other than that if there were additional questions, and then he could talk about some of the other comments that staff has had.

Mr. Franco continued that since they were at the rezoning stage, they have not prepared an E and S plan. He felt that they could achieve an acceptable plan through there. The term storm water has been used, but they don't have a detention requirement in this area because it has already been provided for upstream at the lakes at Forest Lakes. They have water quality criteria that they are confident that they can meet. Therefore, he felt that they have a reasonable plan in front of the Commission. The big question is going to be that interconnection. They submitted this plan about 1.5 years ago. Back in February they had this discussion with VDOT who was thinking this was something that was doable. Now they were getting comments this week from VDOT telling them that they have now taken the position that they have to go to Richmond to get this answer because they don't know what it is going to be. They are frustrated in getting last minute comments from VDOT on something that has been before them for quite a while.

Mr. Edgerton asked what happens if VDOT says no.

Mr. Franco stated that there were several different options. One was to simply cul-de-sac it, which was what they were proposing. Given the fact that adjacent neighbors have presented a petition to the County already saying that they don't want the interconnection, he was assuming that getting an easement was going to be real difficult. Is the County ready to step in and condemn. He was not sure if he could answer the question. They have talked about shifting the road and how it would affect the church site, especially with the grading. One of the big problems is that in the bend of the road you can see the storm drain coming from the pond at the top of the page. They have to keep that as a low spot because there is not a way to collect drainage that goes towards Kendalwood. Therefore, they must have the road dipping from Kendalwood as it comes down. So moving it up the hill creates even more of a grading problem. It becomes very problematic to achieve that. Even shifting the road 30 feet shows that he is crossing up 6 more feet of contours in that direction. It is exasperating a problem that they are already trying to fight to control the drainage adequately. Also here with him are representatives of the church to answer other questions, particularly dealing with proffers.

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

Mr. Craddock asked Mr. Franco why the applicant failed to address the principle of affordable housing.

Mr. Franco stated that he was not the applicant, but was only representing them. Reverend Victoria Hurt is here and can speak to that. He stated that basically the church felt that they do a number of things already with the community and they feel that they would rather take whatever funds might be presented to the County to manage for affordable housing and use that in the way that they distribute funds.

Mr. Craddock stated that they would ask her to come and answer that question later in the hearing.

There being no further questions for the applicant, Mr. Edgerton invited comment from other members of

the public.

Mary Manley, resident of 2685 Kendalwood Lane, stated that she lived almost directly opposite of where the interconnection was proposed and was present to represent most of the residents of Kendalwood Lane. All of the residents of Kendalwood Lane are present tonight and are all opposed to this interconnection. There is a petition that was signed virtually by every resident of Kendalwood Lanes, which is Attachment F in the staff report. She asked that the Commissioners take a look at that. Basically, they feel that the interconnection would have a huge negative impact on their neighborhood. That has been an established residential cul-de-sac for a number of years. A lot of the residents bought into the subdivision with small children knowing that a cul-de-sac provides a certain quality of life. The increased traffic from the church that is also going to be connected off of Pine Ridge really concerns all of the residents. In terms of quality of life, they feel that the increased traffic would be a huge problem. Also, they are concerned about the safety of their children. There are no sidewalks and it was intended to be a cul-de-sac and not a cut through. In terms of children riding bikes, scooters and that sort of thing, she did not know where that would happen if there is a lot of church traffic and possibly a pre-school down the road. They don't want to have to deal with the safety of our children being jeopardized by that traffic. In addition, Southern Middle School and Hollymead Elementary School are sort of off to the right of the bulb of that cul-de-sac. A lot of children who live on Kendalwood and English Oaks walk up Kendalwood Lane everyday and come back in the afternoon to get to school. They feel that by making that a traffic artery instead of a dead end cul-de-sac would also really jeopardize the safety of our children. There are many negative impacts. Most of the residents of English Oaks and Kendalwood Lane would not use the cut through because it would not eliminate any distance or time in getting out to Ashley Boulevard. Nor would the cut through reduce traffic on Ashley Boulevard as an arterial road. The Neighborhood Model states another reason for interconnections is to allow for an alternative traffic route. If they are not going to be using it, and they don't want it, there are a number of neighborhoods in Forest Lakes, if not most of them, that are cul-de-sac and they don't have alternative entrances and egresses. Therefore, they feel like they don't need that either. She pointed out that in some of the documents that she had read that the developer has said that they were willing to do just a cul-de-sac. They feel that if the Neighborhood Model wants a pedestrian cut through just to be able to get to the church to enable some of them mixed use in the neighborhood, that a bike trail would be fine for people from English Oaks if that is really the only people in English Oaks and Kendalwood who would be getting to the church. Therefore, they ask that the Commission take their concerns seriously in looking at the interconnection and not just assume that any two roads that are connected is always going to be a good thing.

Conrad Spangler, resident of 2578 Kendalwood Lane that was adjacent to the church property, spoke in opposition to the rezoning request. He stated that he had lived on lot 31 for about 10 years and had also been involved with church design for about 25 years. He noted that he was a licensed professional engineer who had some experience with church parking lots and roads over the years. The three concerns that he wanted to share were:

1. The church was already obligated to install a left turn lane on Ashwood, which was left off of this plan. He felt that it should be followed through on.
2. In their special use permit and site plans the County has already approved no cut through to Kendalwood Lane, but that their traffic would go to their parking lot. It is a little deceptive in looking at the plans, but the large area in the upper right hand corner is really two-thirds of the property that will be used for an urban church. He felt that the traffic there needs to go on controlled roads. It does not need to be turned onto residential streets like Kendalwood. Ashwood is a controlled access highway. All of the neighborhoods turn off of Ashwood. Also, the swim and tennis club traffic is similar to the church traffic with crowds at certain times of the day and truck, buses and the like. He felt that the church traffic should go on to Ashwood. It is preferable to not make the cut through as well as the VDOT perspective. Therefore, they recommend that the Commission not insist on the cut through, but take into account the desires of the developer, the property owner as well as the citizens. The cut through is inconsistent with the design of the values of Forest Lakes. There is over 40 neighborhoods in south Forest Lakes. None of those has another cut through into another neighborhood. The only through street is Powell Creek Drive, which is a retro-fit cut-through. If you have been on Powell Creek Drive you will find that it is clogged, the traffic is too high and the road pavement is destroyed by the buses and trucks that go through there. Kendalwood Lane should not be done like Powell Creek Drive. Linkages should be through walking trails, bike trails and not by automobile highways.

3. They have talked about the destruction of the forested area and buffers. The green area is the common area to Forest Lakes. All of that area except between 8, 9 and 10 is forested. He recommended that no drainage be allowed from that common area into Forest Lakes without being controlled in a properly designed drainage structure. The forested area from lots 8, 9 and 10 be planted with Leyland Cyprus or some type of screening so that all of that common area is forested and values are maintained. There should be some privacy left for his lot through that one area.

Scott Waskey, resident of 2691 Kendalwood Lane or lot 19, spoke in strong opposition to the rezoning request for the interconnection of Pine Ridge and Kendalwood Lane for several reasons.

1. The proposed cut through is going to compromise the safety and quality of life that this neighborhood has enjoyed. There are many young children that live on Kendalwood that will be directly affected.
2. It does not serve a valuable purpose. The residents of Pine Ridge are not going to be coming out on to Kendalwood to travel back to Ashwood. He encouraged the Commission to ask the applicant to cul-de-sac Pine Ridge and preserve their quality of life there.

David Shifflett, resident of 2661 Kendalwood Lane, spoke in opposition to the rezoning request. He stated that he had lived on lot 15 for 6 months. It is a wonderful neighborhood. The reason that they moved there was because of the cul-de-sac. In the evenings he has seen 10 to 15 children in the street roller blading, skateboarding, etc. and just enjoying the area. It is safe for the children to do this because it is a deadend. He stated that he would beg the Planning Commission not to approve that interconnected road because it would be a disaster and ruin the Kendalwood neighborhood. He asked that the developer follow the recommendation to cul-de-sac that Pine Ridge area.

Victoria Hurt, Commissioner for Church Planning for the Diocese of Virginia stated that she had several concerns. She shared the neighborhood's concern about the cul-de-sac and making it an interconnector. She lived on a cul-de-sac that backs onto a cul-se-sac and it is a very safe family friendly situation. She does not see the need for that street to go through. She checked with the Church of the Cross and they also see the value of having a foot path or a bike path, but with working with the neighbors so that they don't have a vehicular path. In addition the plan that staff is recommending would substantially change our site plan and force us to fairly substantial increased cost including run off by pushing the parking to the slopes on the other side of the proposed church building. It would also incidentally take out part of their education buildings. It would reduce their usable site. That is a second concern for them as they move forward to actually build a building there. They are committed to community growth as a diocese and she believed that there were no requirements for small developments. Someone asked what they had done lately for Albemarle County. The Diocese of Virginia in the purses of their churches in the County has in the most recent years done for habitat for humanity houses. They have a fifth in the works under contract to buy the land. They are also responsible for the Michael Mitchell transitional housing for the shelter for women. They want to continue that. They feel that they will be better serving the community by doing that as a private entity and they are committed to doing so. They will be using the resources and equity that they will take out of the site to further the ministry of the diocese in social and religion purposes in Albemarle County and elsewhere.

Mr. Rieley asked if they would be willing to put their commitment to affordable housing off-site in the form of a proffer, and Ms. Hurt stated no because they feel that they do that better as a private entity and they are unaware of the requirement to do so legally.

Ronald Morris, resident of 2697 Kendalwood Lane that is lot 20, reiterated the point that they could see no point in putting a interconnecting road through that has no sidewalks. They see no advantage in putting in an interconnecting road in an area where there are no sidewalks. He felt that it makes no sense to do so.

Ruth Dole, resident of the house at the end of the cul-de-sac, spoke in opposition to the cut through. She felt that if the road was to serve the church that it needed to go up to the sanctuary. She voiced concerns about their privacy and the safety of the children. She felt that it would detrimentally affect the value of her property.

Sarah Shifflett, daughter of David Shifflett, spoke in opposition to the road. She stated that this road would jeopardize her and many other children. Forest Lakes is like one big family and if a shortcut was made that everybody would use it, which would become very crowded. She pointed out that many children walk to school and many families take walks. It would be a no purpose road jeopardizing children and families.

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

On the basis of both the interconnectivity and the failure to deal adequately with affordable housing, Mr. Rieley made a motion for denial of ZMA-2004-06, Pine Ridge.

Ms. Joseph asked if they would want to ask the applicant if he would like to request a deferral at this point.

Mr. Rieley agreed with Ms. Joseph's suggestion.

Mr. Edgerton asked to what purpose.

Ms. Joseph stated that possibly the applicant could figure out if there was some way after discussion with his client that they might want to change their position on some of the items that the Commission has talked about. She invited the applicant to address the Commission.

Mr. Franco stated that they were looking for a lot of direction from the Commission, which they have received. He felt that it does make sense for them to take an opportunity to defer and to go back and talk with their clients to see what flexibility that they might have. But, also they would ask for a commitment from staff to get an answer to the VDOT problem. He stated that he did not appreciate getting this from VDOT at the last minute with the change. It is hard for them to react when a plan has been sitting down here for quite a while to say that they think that they can give a waiver, but now they can't. It greatly affects the interconnection itself. On behalf of their client he would request a deferral to come back. He asked if they need to have a specific time.

Mr. Kamptner stated that if there was a specific date, another public hearing would not be needed. But, if they had a slightly revised project, then another public hearing would be required anyway.

Mr. Rieley revised his motion to accept the applicant's request for an indefinite deferral of ZMA-2004-06, Pine Ridge.

Mr. Morris seconded the motion.

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

Mr. Edgerton stated that ZMA-2004-06, Pine Ridge, was indefinitely deferred.

Mr. Rieley recused himself from the next hearing because of his ongoing consulting work with Monticello.

The Planning Commission recessed at 9:03 p.m.

The Planning Commission meeting was called back to order at 9:20 p.m. by the Chairman.

ZTA 2004-03 Monticello Historic District (MHD): This zoning text amendment would establish a new zoning district in Albemarle County pertaining to land uses and structures associated with Monticello by amending Section 4.15.8, Regulations applicable in the RA, VR, R-1 and R-2 Zoning Districts; amending Section 7, Establishment of Districts; amending Section 8.1, Intent; amending Section 8.2, Relation of Planned Development Regulations to Other Zoning Regulations; amending Section 8.3, Planned Development Defined; amending Section 8.4, Where Permitted; and adding Section 11, Monticello Historic District, MHD; of Chapter 18, Zoning, of the Albemarle County Code. The amendment to Section

4.15.8 would add the MHD as a district subject to that section. The amendment to Section 7 would add the MHD as a district subject to that section and re-order the list of zoning districts. The amendment to Section 8.1 would add the MHD as a district subject to that section and revise the purposes of planned development districts. The amendment to Section 8.2 would clarify when a waiver or modification of a requirement of Sections 4, 5 or 32 of the Zoning Ordinance could be obtained, and revise the findings required for granting a waiver or modification. The amendment to Section 8.3 would revise the definition of "planned development district" to exempt planned historic districts such as the MHD from certain definitional criteria. The amendment to Section 8.4 would allow planned historic districts such as the MHD that contain and pertain to a historic site to exist in the Rural Areas of the County as designated in the Comprehensive Plan. The addition of Section 11 and its subparts would establish the MHD as a zoning district, state its intent and purpose, identify its status as a planned development district, and establish permitted uses and associated regulations applicable within the zoning district. The proposed MHD zoning district would allow uses specifically related to the operation of Monticello as a historic house museum and historic site, including visitor facilities; educational, research, and administrative facilities; temporary events; sales of products; cemeteries; concerts; and agricultural, residential uses, and other delineated uses similar to those permitted in the Rural Areas zoning district. The proposed district regulations also would require that development be preceded by an application plan approved by the County and otherwise be subject to Sections 4, 5, 8 and 32 of the Zoning Ordinance. The density for new residential development authorized in the MHD would be one dwelling unit per twenty-one acres.

AND

ZMA 2004-05 - Monticello Historic District (MHD) (Signs# 38,39&41) – Request to rezone approximately 868 acres from the Rural Areas (RA) to the Monticello Historic District (MHD) (reference ZTA 2004-03), to allow uses specifically related to the operation of Monticello as a historic house museum and historic site, including visitor facilities; educational, research, and administrative facilities; temporary events; sales of products; cemeteries; concerts; and agricultural, residential uses, and other delineated uses similar to those permitted in the Rural Areas zoning district. The properties proposed for rezoning are within the Scottsville Magisterial District in the vicinity of Monticello, south of Interstate 64 and east of Route 53, and are identified more particularly as follows: Tax Map 78, Parcels 22 (Monticello), 23, 25, 28A, 28B, 29; and Tax Map 79, Parcel 7A. The Comprehensive Plan designates these lands as Rural Area 4, and the general usage for Rural Area 4 is as follows: land uses supportive of the character of the rural area, including agricultural and forestal uses, land preservation, conservation, and resource protection. No density range is specified for Rural Areas 4. The density for new residential development authorized in the MHD district would be one dwelling unit per twenty-one acres. (Rebecca Ragsdale)

Ms. Ragsdale summarized the staff report as follow. (See Attached Staff Report.)

The applicant, Thomas Jefferson Foundation, Inc., has requested a Zoning Text Amendment and Zoning Map Amendment to establish a planned district called the Monticello Historic District (MHD). This application was submitted last April and is an application that has evolved from previous applications starting in 2000 when Monticello identified the need for some new facilities. They started working with the County to address their nonconforming status. The uses there now such as the house museum and the educational research activities are nonconforming and have not been addressed in the zoning ordinance. Therefore, that is what these applications are attempting to do by establishing the Monticello Historic District as a planned district in the zoning ordinance. The site is currently zoned Rural Areas and is designated for Rural Area land use in the Comprehensive Plan. The proposed district would include approximately 868 acres. Monticello and the activities associated with its operation as a historic house museum and educational center are not in compliance with the zoning ordinance and are non-conforming uses. The proposed MHD would bring these existing uses into compliance with the zoning ordinance and allow for improved facilities. The Foundation is not proposing to introduce new activities but would continue the land uses that have been taking place, including education programs, research, and visitor facilities. A new visitor's center, service center, administrative campus, and restoration to the Monticello mountain top are planned with this application. The Foundation believes that the visitor experience will be enhanced as a result of these changes. The Foundation does not anticipate visitor growth, as a result of these changes, beyond what would normally be expected to occur.

The Foundation intends to remove 20th Century additions surrounding the Monticello mansion, including the gift shop, offices, and restrooms which are currently located in a historic building known as Weaver's Cottage, as well as remove offices from the basement and upper floors of Monticello. The Foundation plans to relocate these uses to less obtrusive locations at lower elevations and as far from the historic house and structures as possible. The Administrative Campus would be located on a site on the south side of Route 53 adjacent to Kenwood. A new visitor's center and parking area would replace the existing facilities. A building and grounds service area is planned in areas where existing facilities are located, further down the mountain from the visitor's center area, near Route 53.

A binder containing details of the application background and ZTA and ZMA requests was provided to you in April 2004. With the resubmittal of this application on February 28, 2005, another bound notebook (Attachment B) of information was provided to you reflecting any changes from the original application.

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

1. This proposal will result in improved facilities for visitors of Monticello and also the Foundation's employees.
2. The Monticello exit onto Route 53 will be improved, providing a safer roadway for all users.
3. No new entrances on to Route 53 will be created with the development of the Administrative campus, which will share access with Kenwood.
4. Monticello has positive fiscal impacts and this proposal will not result in any burden on public facilities.

Staff has reviewed the proposal and associated proffers for conformity with the Comprehensive Plan and the Zoning Ordinance and recommends approval of ZTA 2004-03 and ZMA 2004-05, along with the waivers of Section 4.2.3.2 and Section 21.7.3 as requested by the applicant and including engineering conditions (Attachment G).

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

Ms. Joseph stated that she just wanted to clarify one thing. She asked if staff was only recommending for the waiver request for the critical slopes and the curb and gutter.

Ms. Ragsdale stated that staff was supportive of the waivers from the planning standpoint. The Planning Commission action is needed to approve the critical slopes waiver and the minimum yard requirements for the commercial district. In the ordinance it kind of varies where it specifies where Planning Commission approval is necessary. Some places it says the zoning administrator can approve it after consulting with the county engineer. In some places it just says the county engineer can approve it. But, these two specifically refer back to the Planning Commission. But, staff is in support of all of the waivers at this point.

Ms. Joseph stated that they have planning support for the travel way and the parking waiver request. Also, they have engineering support for the critical slopes.

Ms. Ragsdale stated that engineering reviewed it as far as the four waivers that were requested, and did not recommend denial for any of them. They provided their comments to the waivers and what they could identify at this stage as far as what they wanted to see as far as notes regarding storm water detention. She pointed out that Glenn Brooks was present.

Ms. Joseph stated that she was specifically referencing the parking the travel way slopes. She asked if Mr. Brooks would like to speak to that.

Glenn Brooks, Senior Engineer stated that was the waiver that the zoning administrator would prefer to do at the site plan stage. But, it was consistent with the parking that was already out there. Therefore, he thought that it was fine.

Mr. Joseph asked Mr. Kamptner if the Commission chose to if they could go ahead and approve those waiver requests.

Mr. Kamptner stated that the Commission could approve all the waivers at this point. Because this was a planned development, under Section 8 the Commission and Board have the authority to consider all of these waivers at the rezoning stage. Until recently they would have been coming at a later stage in the development process.

There being no further questions for staff, Mr. Edgerton opened the public hearing and asked the applicant to come forward to address the Commission.

Michael R. Matthews, Jr., P.E., of Matthews Development Company, LLC, presented a brief overview of the project as follows:

> Mr. Matthews said it is my distinct honor to represent the Thomas Jefferson Foundation on the three applications that are before the Commission tonight. It is also a special day for the folks at Monticello. He pointed out that tomorrow is Mr. Jefferson's 262nd birthday. They will celebrate that tomorrow in Albemarle County with Founder's Day. That is a special day for them. He introduced the following persons Mr. Weller Davis, member of the Board of Trustees and Chair of the Building and Grounds Committee at Monticello; Kat Imhoff, Vice-President of Thomas Jefferson Foundation; Mike Merriam, Director of Buildings and Grounds; Valerie Long, of their legal team; Ashley Hardwell, also of McGuire & Woods; Adam Gross, of Aire, Saint, Gross; and Sandra Vixeo, project architect. He presented a brief over view of the project with a short power point presentation.
>
> There are three parts to their application. The zoning text amendment is the amendment that creates the district. Right now the district does not exist in the Code. It is a planned district under Section 8.0, which is a very important distinction from what has come before us. The district is about 868 acres. This is an area where either the foundation has programmed now or is planning a program that is not recognized in the rural area. In 1980 when the County comprehensively rezoned the County there was not special provisions made for Monticello and what has been happening there since the foundation took over in 1923. They tried to make the boundaries of the district very simple and wanted them to be commensurate with the tax map and parcel numbers so that they would be easy to administer. Ninety-six percent of the district is going to be left in open space. They wanted to have a very narrow definition of the district. All of the properties need to be owned by the foundation, have been owned by Jefferson, and are partially within the World Heritage designation. As you know the Monticello house is the only residence in the United States that is on the World Heritage list.
>
> The zoning map amendment is the second part of this application. It breaks down their plans into three pieces. Once the district is established, under Section 8.0 they create application plans, which will be binding on us for all development of any of the precincts. The three precincts that were identified were the mountaintop, where the goal is to basically return the mountaintop to the original Jefferson presentation by removing the 20th Century from the mountaintop; the visitor's center where they play into the enhanced visitor's experience and the administration campus, which will enable them to achieve the other vision of removing the 20th Century from the mountaintop and appropriately house the staff functions. All of these districts must comply with the application plan that will be binding on them.
>
> Planning Commission approval is required for the critical slopes waiver and the buffer disturbance. They chose the setbacks from section 21.0 that will apply to them in the rural areas, which are the commercial setbacks that are very rigorous. In order to create the development shown in the application plans, they need the waiver of the buffer disturbance, which will then be replaced.
>
> The other three waivers that were discussed today were the travel way and slopes, the parking slopes and the curb and gutter. They would certainly welcome the Planning Commission to approve those. They have done their homework on those and they are primarily existing

conditions or conditions that they think are respectful of the site. He displayed a picture of the African American burial area. He stated that they could not imagine surrounding it with curb and gutter and the grading that would be necessary for that sort of activity.

As a brief history, they started this application in 2000. There was a work session in 2001 with the Commission in which they received some valuable feedback. They went back to the drawing board. The last 3 years have been spent in some pretty intense planning in rethinking what the future of Monticello needs to look like. They refilled the application in 2004 under this planned district approach. They felt that answered the Commission's questions about certainly what may in a fairly open ended text amendment. Now it will be tied to the application plan, which was something that they were very comfortable with. Last year they had a very good work session with the Planning Commission last June. They went through a number of issues and made a number of changes to their plan. They had a great staff report in July of last year. But, Kat had called him one day and said that they needed to talk about a deferral. Monticello is one of the more self critical organizations that he had ever been evolved with. They just were not happy with the master plan and some of the land use issues that they were dealing with. So they said let's stop and let's get this right. They took a six month pause and during that time really made some substantial changes. These changes were made in how a visitor would experience the mountain.

The district itself, shown in green area is unchanged from their original submission. What is significantly different is the area that is in the cross-hatched. That is the 1,000 acres that was added into the VDOF easement since they were last before the Commission. Shadwell's 215 acres had always been in easement with the Virginia Department of Historic Resources. So now the vast majority of the district is entirely within some form of perpetual easement.

In summary, according to the application plan, there are now three pieces on the plan. The mountaintop plans are unchanged from what the Commission saw previously. Again, it is an effort over the years to remove the 20th Century intrusions on the mountaintop and replace them in more appropriate locations. The administration/campus plan is also unchanged from what the Commission saw last time. The big change was in the visitor's center itself. Originally they had a building situated they felt nicely situated into the hillside. It was not a small building. They had all of these areas in the parking lot being completely regraded and they had a green connection with the visitor's center and the African-American Burial area, which will incorporate that into the primary experience. That element has changed. Also, the building and grounds service area and the lower section of the site is part of their plan. From a big picture speculative the dynamic change that has occurred is in the parking. All of this parking now is to be left as is in its current scenario.

Due to the improved topographic information they were able to put the buildings in locations that are more sensitive. Basically, they have been able to do more engineering on that part of the site. The building itself is a lot different. He pointed out that the picture more than anything from their original submission is what resulted in their deferral. That building was pretty big. Their goals were to nestle this building into the hillside. They felt like they had achieved that, but still the amount of area sticking out up the natural grades on a sloping site just gave pause to a lot of folks at Monticello. There is a phrase that came about in some of early planning that they had somewhat departed from. That was that they felt like they had departed from a collection of dependencies that defined Monticello. They had probably strayed further from that than they were comfortable. They reground themselves on their philosophy that resulted in this plan. The buildings are now being broke up into six much smaller components that are smaller in scale and much more open. It allows them to create a courtyard area that has many benefits to the program and to the feel of the site. They have a new pavilion. In this area it is an area that is already cleared. The existing septic area will be changed in its current configuration. That will be a bit of an overflow place and a place where classrooms can come and meet for educational purpose. There will be four times less grading than they had originally planned in the parking area. After they rethought it they had basically been regrading the site to accommodate a bus circulation pattern that on second thought was not really necessary to accommodate it. They still have maintained the philosophy of taking cues from the existing building for materials and for open

design. They want to draw from the strengths and materials and some of the open forums. He pointed out that they had been successful in putting some of the areas underground at the visitor's center. He completed the power point presentation and pointed out the changes made to the plan. He stated that the deferral that the Commission was kind enough to grant allowed them time to look back at this goal of going lightly on the land that has been the buzz word in all of the design meetings in nestling this building nicely into the terrain. He felt that they have done a much better of achieving that. He stated that they have appreciated all of the efforts and the guidance that staff has given along the way.

Kat Imhoff, Vice-President of the Thomas Jefferson Foundation, thanked everyone for their comments and patience throughout this process, particularly the staff and the Planning Commission. She felt that they have had to remind ourselves why we are doing this. It is really the dual mission of education and preservation. She felt that they were really going to improve the experience for visitors and also for the visitors of the community that utilize Monticello.

Mr. Thomas congratulated the Foundation for changing their original plans, particularly the parking lot.

Mr. Morris commended the Foundation for the wonderful plan. He felt that it was a beautiful plan. He asked if it was handicap accessible.

Mr. Merriam stated yes, that it was definitely handicap accessible.

Mr. Edgerton invited comment from other members of the public.

Joe Andrews, representative for Luck Stone Corporation, stated that Ms. Ragsdale and Mr. Matthews have both been very helpful in assisting him in understanding what this proposal is all about. Certainly Monticello is a very valuable asset to Albemarle County and the State of Virginia. He felt that they most likely need the required flexibility that they are asking for as a part of this zoning text amendment and rezoning. A recommendation of approval would certainly seem appropriate by this Planning Commission. The only question that he still has deals with the easements. He stated that he would like to understand a little bit more about the easements sometime between now and the Board of Supervisors.

Mr. Edgerton asked if he was referring to the conservation easements on the land that adjoins his land and the impacts of it.

Mr. Andrews stated that was correct.

Mr. Edgerton asked if there was anybody else who would like to address 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. Joseph stated that she would like for the Planning Commission to go ahead and approve all of the waivers that have been requested because it is more appropriate than asking the applicant to come back at site plan stage. It would be extremely uncomfortable for the Commission to say that they approved a rezoning based on this incredibly detailed plan that the applicant has gone through a lot of reiteration and thoughtful process to try to preserve as many trees in that parking area and then to come back and say no that they did not think it was going to work now. She asked to make one comment about the critical slopes. The Planning Commission gets a lot of requests for critical slopes and they really need to point out that the area proposed is a very small area that they are grading with the critical slopes and she felt that it was also keeping them out of some more sensitive areas to just do it in that smaller area. Therefore, the benefit to the community is that there is less disruption on the site as result of that. Therefore, she could support this with the waiver request and the proffers as submitted and recommended by staff.

Mr. Kamptner stated that the first action should be the zoning text amendment.

Action on ZTA-2004-03:

Ms. Joseph made a motion to recommend approval of ZTA-2004-03, Monticello Historic District (MHD).

Mr. Craddock seconded the motion.

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

Mr. Edgerton stated that ZTA-2004-03 Monticello Historic District (MHD) was approved and would be heard by the Board of Supervisors on June 8, 2004.

Action on ZMA-2004-05:

Mr. Morris made a motion to recommend approval of ZMA-2004-05, Monticello Historic District (MHD), with proffers along with the five waivers as requested by the applicant and including engineering conditions (Attachment G).

Mr. Craddock seconded the motion.

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

Mr. Edgerton stated that ZMA-2004-05, Monticello Historic District (MHD) was approved and would also be heard by the Board of Supervisors on June 8, 2004.

Old Business:

Mr. Edgerton asked if there was any old business. In follow up to the issues identified at the Planning Commission Retreat, he passed out a memo with those issues identified and prioritized that need to be addressed through "administrative action" and/or future "work sessions. He asked that the other Commissioners provide their input. He suggested that the Commission push ahead with this because of all of the energy that they had put into it.

Ms. Joseph suggested that this item be placed on the next agenda for discussion.

Mr. Cilimberg stated that the next meeting's agenda was pretty full, but they could put this item on under Old Business for the Commission to verify that this was what they wanted to do.

There being no further old business, the meeting proceeded.

New Business:

Mr. Edgerton asked if there was any new business.

Ms. Joseph stated that she had been working with a citizen who wanted to do organic farming, which was something a little unusual in the rural areas. Thirty acres would be plowed and be used for organic produce. What happens is that it is very labor intensive. There is a movement in this country and Europe that you hire interns who come and work for the summer and they learn about organic farming, sustainability, and all that other stuff. She noted that she had been working with the zoning department on asking them to make a determination on whether or not they think this is an appropriate use. It has been determined that it is not and that migrant labor camps are not. That even though they are in use now that there is no provision in the ordinance and they do not find them customarily incidental to agricultural use. She pointed out that the letter was written to her as the appellant and she was appealing that determination and wanted to let the Commission know that was going on. That issue will be heard by the Board of Zoning Appeals.

Mr. Cilimberg stated that Mr. Thomas had received a letter from the City of Charlottesville requesting that there be a Planning Commission member from the County appointed to a Steering Committee that will oversee the design of the interchange in the Meadowcreek Parkway with the US 250 Bypass. That request has also been made of the County Board of Supervisors and the City's Planning Commission. He asked how the Commission would like to handle this.

After discussion, the Planning Commission selected Mr. Morris to serve on the Steering Committee that will oversee the design of the interchange in the Meadowcreek Parkway with the US 250 Bypass.

There are no items for the Planning Commission on Tuesday, April 19. The next Planning Commission meeting will be held on Tuesday, April 26, 2005.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 9:55 p.m. to the April 26, 2005 meeting.

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V. Wayne Cilimberg, Secretary

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