Albemarle County Planning Commission
June 28, 2005

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, June 28, 2005 at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were Rodney Thomas, Marcia Joseph, Vice-Chair, Jo Higgins; Pete Craddock and Bill Edgerton, Chairman. Absent was Calvin Morris, William Rieley and David J. Neuman, FAIA, Architect for University of Virginia.

Other officials present were Wayne Cilimberg, Planning Director; Rebecca Ragsdale, Senior Planner; Bill Fritz, Development Process Manager; Sean Dougherty, Senior Planner; and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Edgerton called the regular meeting to order at 6:00 p.m. and established a quorum. He apologized for the lack of air-conditioning.

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. He stated that there were two persons signed up to speak. He invited Mr. Lynn Curtis to come up and address the Commission.

Mr. Lynn Curtis, resident of Glenmore, stated that his comments or questions have nothing to do with the primary purpose of tonight's meeting. It has to do with the concept of developing a community master plan. He asked the Commission if it is true that their intent is to apply the master planning process to future developments as outlined in the guidelines for the Neighborhood Model that are in the County documents.

Ms. Joseph stated that she was not sure what he was asking.

Mr. Curtis stated that his question was if it was the intent of the Planning Commission to apply the master planning process that is outlined in various County documents, particularly Section 4 of the Neighborhood Model, to future development. He stated that he was interested in being on record saying that they want very much to have the master planning process applied to the proposed Rivanna Village development in Albemarle County before any zoning changes are entertained. That is his main point. Since this is not a give and take kind of format, then that concludes his remarks unless there are any questions.

Mr. Thomas requested to ask Mr. Curtis a question.

Mr. Edgerton responded that he certainly could ask a question.

Mr. Thomas stated that the plan that the County has is to master plan the County neighborhood by neighborhood. If Glenmore falls into a particular neighborhood, then yes it will be master planned.

Mr. Curtis stated that Glenmore is designated in the Village of Rivanna, which is a designated development area in Albemarle County. He pointed out that the County documents do call for applying the master planning process, which he would not go into detail to outline because he presumed that the Commission was somewhat familiar with it. If not, he would be happy to read from their County documents as to what it is.

Mr. Thomas stated no, because he felt that they were all familiar enough with it. But, the master planning part of that is neighborhood master planning. What that neighborhood master planning

will have done will apply to Glenmore or any other single development that does happen in Albemarle County.

Mr. Curtis stated that was excellent. He stated that he would conclude it also by saying that there are many residents that are now in the Village of Rivanna who would be pleased to participate in that process because one of the fundamental aspects of the master planning process is participation by concerned members of the public.

Ms. Higgins stated that her understanding was that the area that she thought Mr. Curtis is referring to is what went under the Comprehensive Plan review for designation back in 2001 and maybe Mr. Cilimberg can address that. But, that neighborhood is not even on an agenda for master planning in the same mode as Crozet was. She asked if Mr. Cilimberg could update the Commission on that. She felt that there is a specific thing that Mr. Curtis is talking about and that is not slated either before or in consideration with our upcoming applications.

Mr. Cilimberg stated that there was the Comprehensive Plan Amendment that occurred in 2001 that was applied to the Village of Rivanna, which is the village that Mr. Curtis refers to. That was not a full blown master plan process. The County is now in the midst of Places 29, which is our northern development area's master plan. Staff is also attempting to get finished with the Pantops Master Plan. A master plan for the Rivanna Village, which is not project based but is development area based, is not slated to begin until after Pantops is completed. It would be more than likely a year away before that would start.

Ms. Higgins pointed out that would be the earliest that it would begin.

Mr. Edgerton stated that Charlie Trachta was also signed up to speak. He asked Mr. Trachta to come forward and address the Commission.

Charles Trachta, resident of Albemarle County, spoke to the Commission regarding the recent 5 to 4 ruling by the Supreme Court that allows the seizure of private land by local government so that developers could acquire a piece of property under the guise that the community would be better off. As a side note, he stated that the house of the suitor, who voted for this, was now in jeopardy. (See Attachment One – Letter to Planning Commission from Charles J. Trachta, Jr.)

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

Public Hearing Items:

SP 2005-004 Final Touch Tree Service LLC (Sign #73) - Request for a special use permit for a Home Occupation Class B for an office use to support a tree trimming business, in accordance with Section 10.2.2.31 of the Zoning Ordinance which allows for Home Occupations Class B in the RA (Rural Areas) by special use permit. The subject parcel described as Tax Map 7, Parcel 30, contains approximately 5 acres and is located at 2985 Shiffletts Mill Road (Route 687), approximately 1 mile west of its intersection with Free Union Road (Route 601). The property lies within the White Hall Magisterial District, is zoned RA (Rural Areas) and is in the area designated as Rural Areas 1 by the Comprehensive Plan. (Rebecca Ragsdale)

Ms. Ragsdale summarized the staff report.

- This request is for a home occupation; class B, which is a special use permit. This request is to allow an office use to serve the Final Touch Tree Service business, but not include any other aspects of the tree service business, such as employees, equipment, equipment repair, customers and anything of that nature.
- Basically, it is an office and a special use permit is required because the office is in a detached structure. Photographs were provided in the packet on handwritten page 11.
- This property is located in the rural areas on Shiffletts Mill Road in the Free Union area of the County. It is fairly rural in character around the property. The Comprehensive Plan

identifies this area as Rural Areas 1 and offers some guidelines as to how home occupations should be limited in scale and intensity so that they would not diminish character or quality of the rural areas. Staff feels that this home occupation is very low impact. It would potentially fall under some of those that might be preferable by right as indicated in a strategy in the Comprehensive Plan. There were no detrimental impacts to adjoining properties identified.

- In the course of the review VDOT did identify a sight distance issue caused by vegetation. Staff recommends approval of this special use permit with conditions that address the sight distance issue, which would allow for this home occupation to take place in accordance with the information submitted. It would be limited to the building that is shown in the package. It is conditioned so that it could not potentially expand and include other aspects of the tree service business.

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

Mr. Craddock questioned condition 1 regarding the limitation that the building could only go up to 412 square feet.

Ms. Ragsdale stated that the building that they were using was 212 square feet in size. Based on the square footage of the residence, approximately 412 square feet would be allowed. In the past staff noticed that the Planning Commission typically likes to allow the applicant some flexibility. Therefore, she suggested 400 square feet as a number that was very close to what would be the limit of the 25 percent allowed in Section 5. That would allow the applicant some flexibility in case they wanted to make some modifications to it.

Mr. Edgerton stated that since the special use permit would go with the property he was wondering why that condition should not be worded up to 25 percent of the residence as recommended in the ordinance. The applicant obviously qualifies with what they are applying for.

Ms. Ragsdale stated that she did not think it was necessary to include that language in the condition, but asked Mr. Kamptner to comment on it.

Ms. Higgins stated that it was a moot point because the condition specifies that it shall be limited to the building labeled utility building. She asked what the total square footage was of that building.

Mr. Edgerton stated that building was 240 square feet.

Ms. Higgins stated that the condition needs to say that it could be in another building or it is only for the footprint of that building. She felt that it does not matter if they put the 400 square feet because that exceeds the square footage of the building that it was isolated to.

Mr. Edgerton stated that his question was since the special use permit goes with the land and is not specific to the owner, if at a later date somebody came and they needed more space rather than having to come back before the Commission that if they put an addition on that building that it would be limited up to the 25 percent of the residence.

Ms. Higgins recalled the Commission having this same kind of conversation with the author (Home Occupation request). But, if someone came in and it changed hands and they doubled the size of the house, then that 25 percent would be 25 percent of the house and would be flexible. Therefore, she thought that they limited it with some flexibility within a number with the idea that they would come back if it ran with the property. She asked if it would have to come back if the use changes.

Mr. Edgerton stated that he was not sure.

Mr. Kamptner stated that this home occupation permit was for this particular type of home

occupation.

Mr. Edgerton stated that if it was any other business besides the tree service that they would have to come back.

Mr. Kamptner stated yes, because it was a different home occupation

Ms. Higgins stated that she felt that the home occupation was just for an office.

Mr. Edgerton stated that it was an office for a tree service.

Ms. Joseph pointed out that the conditions were very specific regarding the tree materials and the equipment that was specific to a tree service.

Mr. Kamptner stated that home occupations could be issued in more of a general nature such as for "offices," but, they are traditionally conditioned in a way that they are specific to a particular type of use. For example, furniture making would have a number of conditions that are specific to that type of activity.

Mr. Cilimberg stated that as far as the square footage goes, the Commission usually uses square footage rather than the 25 percent of the structure because that can vary over time based on structural change and it is also more difficult for the zoning administrator to enforce than having an actual square footage listed.

There being no further questions for staff, Mr. Edgerton invited the applicant to come forward and address the Commission on this application.

Kim Umstadter stated that she and her husband own the property. She pointed out that her husband owns Final Touch Tree Service, but she was the only person who uses that structure to carry out the bookkeeping and other day to day business. She stated that no customers would be coming to the site. The main reason for the application is so that they will be in compliance with the Zoning Ordinance. They were unaware that they had to have a special use permit to have their office in a separate structure. The only reason that the business was in a separate structure was that when they moved here twelve years ago the building was already in existence and the house was about 800 square feet. Therefore, there was no room for their office in the house. Now their house is bigger, but they moved the office so they would have extra space in the house.

Mr. Edgerton asked if there were any questions for Ms. Umstadter. There being none, he asked if there was any member of the public that would like to address the Commission on this application. There being none, he closed the public hearing to bring the matter back before the Commission for consideration.

Ms. Higgins moved for approval of SP-2005-004, Final Touch Tree Service LLC, with the conditions recommended in the staff report.

1. Structures used for this home occupation shall not exceed 400 square feet in size and shall be limited to the building labeled "Util Bldg" on the physical survey plat of the property dated July 17, 1996. (Attachment B)
2. No tree service equipment or materials shall be stored on the property.
3. No customers of the tree service business shall visit the site.
4. Prior to the issuance of a Zoning Clearance for the home occupation class B, the applicant shall provide sight distance at the entrance/exit to the property onto Shifflett's Mill Road (Route 687) to the satisfaction of the Virginia Department of Transportation.

Mr. Thomas seconded the motion.

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

Mr. Edgerton stated that SP-2005-004 would go to the Board of Supervisors on August 10 with a recommendation for approval.

SP-2005-014 Crown Orchard – Gray Television Amendment (Signs #51&54) - Request to amend condition #1 of SP 2004-003 to allow an additional 30.28-foot flush-mounted television antenna to an existing tower. This request is being made in accordance with Section 10.2.2.6 of the Zoning Ordinance, which allows for microwave, radio-wave transmission and relay towers, and appurtenances. The property, described as Tax Map 91, Parcel 28I, is part of a larger parcel identified as Tax Map 91, Parcel 28 which contains 234.165 acres, zoned RA, Rural Areas. This site is located in the Scottsville Magisterial District on Carter's Mountain Trail, approximately 1 mile south of the intersection with the Thomas Jefferson Parkway (State Route 53). The Comprehensive Plan designates this site as Rural Area 4. (Yadira Amarante)

Mr. Fritz summarized the staff report.

- In June, 2004 a special use permit was approved on this property for the construction of a new tower. The proposal is to amend the conditions of that special use permit to allow for an additional antenna to be placed on the tower. It requires condition # 1 of the old special use permit to be amended because it was very specific as to the permitted antenna. What this would do is allow for a new antenna to be constructed.
- He presented a photograph of the top of the tower. The applicant wants to attach another antenna identical to another one on one of the other faces of this tower. It would extend out the exactly the same distance and be the same kind of antenna at that height.
- On Attachment F, there is an additional antenna that is in violation of the conditions of 2004. Staff has not had time to confirm, but that antenna may have been removed already. The applicant is telling staff that they have removed that antenna, but staff will have to verify that before it goes to the Board. It will have to be removed because the applicant is not asking for that approval. What they are asking for is approval of another antenna like this on the other face.
- The antenna that is being put up here is to move an antenna off of another tower that is up on Carter's Mountain. This is in the tower farm for Carter's Mountain.
- Staff looked at the provisions of the Open Space Plan and the Comprehensive Plan. There were two factors in the Comprehensive Plan in particular, which were the Mountain Resource Area and Historic Resources. The proposal does not necessitate any additional ground disturbance. Vehicular access to the site is already provided by a private access road. No further action is proposed there.
- Staff's review was limited to its impact based upon the visual impacts that could possibly be created by the additional antenna. Staff looked at the Mountain Resource Area and the cultural resource plan within the Open Space Plan. Staff's opinion is that this request is generally consistent with the Comprehensive Plan.
- The request does comply with the principles of the Personal Wireless Service Facilities Policy also, which is to make use of existing facilities provided that the increased use does not create a negative impact on the community or surrounding area. From this photograph it was staff's opinion that the additional antenna on this tower would have no noticeable impact on any adjacent properties.
- Staff also analyzed this request for compliance with Section 31.2.4.1 of the Zoning Ordinance, which is a standard section that all special use permits are reviewed against. Staff found it to be generally complying with that section.
- Staff's opinion is that approval of this would have no additional adverse impacts on any adjoining properties, therefore, are recommending approval with conditions outlined. Conditions 6 and 7 can be left as they are or be deleted from this particular special use permit. There are simply carried over from the original special use permit, which was approved in 2004. The tower shown in the photograph replaced the smaller existing tower. Those towers are gone. Both conditions 6 and 7 really no longer mean anything because the things that 6 and 7 require to be removed have been removed. Staff leaves

these conditions in simply as a historical record. It makes research a whole lot easier when they are going back through time. It is left up to the Commission whether to leave or delete them.

Mr. Edgerton asked if there were any questions for Mr. Fritz. He asked which drawing the first condition was referencing in their packet.

Mr. Fritz stated that it was going to be Attachment G as stated in the conditions, which was initialed YGA 6/16/05. On Attachment F, Ms. Amarante had noted the approximate location of the unauthorized dish because it is not actually shown on the diagram. He pointed out the unauthorized tower on the diagram. There were four approved antenna here, and what the Commission saw in the photograph was five antennas. There are only supposed to be four antennas.

The public hearing was opened and the applicant invited to come and address the Commission on this application.

Valerie Long, attorney representing the applicant, Gray Television, stated that others present were Mr. Roger Burchard, Manager of Gray Television's three local affiliates, and Mr. Tim Free, chief engineer for all three stations. If there are any technical questions, she would be happy to defer to them. She felt that Mr. Fritz summed up the facts pretty accurately. All of the Commissioners were members of the Commission last year when they came before them to request permission for this replacement tower. They were very grateful for the opportunity to be able to move so quickly. The tower was built just in the nick of time and the station channel 19 did come on the air just in the nick of time. So far things are going very well. Gray television now operates three stations locally. The CBS affiliate channel 19, the ABC affiliate station channel 16 and as of yesterday a new FOX affiliate station channel 27. They recently acquired an existing PAX station, WADA and essentially converted that to a combined PAX and FOX station. So whether you know it or not our community now has a third local television station. She noted that it was the fourth, but it was the third Gray Television Station. Therefore, Gray Television is very excited about that. As Mr. Fritz mentioned the existing FOX station or its predecessor, WADA, has been operation using an antenna that is located on a completely different tower at Carter's Mountain. It is a tower that is owned by one of the public broadcasting stations. That antenna is there and Gray Television will for the short term continue to operate using that antenna. If this application is approved it would replace that antenna, take it off of the PBS station tower and upgrade the antenna using one that meets more current engineering specifications and would locate that antenna on its own tower. That will provide a much clearer signal to its station on Elliot Avenue in the city. It does not have to go through quite as many trees. The PBS is actually a little bit in the trees and just does not provide as straight of a shot down into the broadcast studios. It will also provide for better security and safety for the antenna because it will be located on the tower that it owns, maintains and controls. That is very important to them. As Mr. Fritz mentioned, the antenna would be located on the side of the existing tower essentially just on a different face of the tower much like the Channel 16 tower is. When she learned yesterday from Mr. Edgerton that there was some confusion as to where the proposed antenna would be mounted she had some photo simulations prepared that she hoped would at least provide a better idea of where that would be located. She presented the photo simulations to the Commission to review. From the picture taken yesterday, the Commission could see that the small dish that was shown on the picture that Mr. Fritz referred to is no longer located on the tower. It has been removed. The background on that was that when Gray Television was scrambling to get Channel 19 on the air last summer prior to the FCC deadline they had technical difficulties with the main micro-waive dish feed for Channel 19. The dish that was installed on the tower initially was not functioning properly. So in order to make the station work and meet the deadline they installed that small dish as a very short term temporary measure until they could get the station on the air. A few days later the main micro-waive dish started working just fine, but in the confusion associated with trying to get the new station on the air, they neglected to remove the small dish that was at that point unnecessary. So it sat on there not even in function or in use since then. As soon as it was brought to their attention by the Planning staff, they had it

removed. The pictures show that it has been removed. She stated that she had witnessed that herself and would be happy to work with staff to have them confirm that. The height of the tower would not be increased. There would not be any need for any additional buildings at the base of the tower. There is an existing road. All of the equipment will fit into the existing building. If there were any questions, she would be happy to answer them. In essence, this proposal fits the spirit of the Comprehensive Plan for this facility. The proposal will not cause an adverse visual impact. As the staff report notes it will not have any impact on the character of the district. It is in harmony with the purposes and intent of the ordinance. The use is permitted by right in the district. Certainly most importantly to their clients, it will promote and enhance the long term viability of the new Gray television station channel 27, which they feel will provide a real public benefit to this community.

Mr. Edgerton asked if there were any questions for Ms. Long.

Ms. Joseph stated that she had said that they had been using an existing antenna on the PBS pole. She asked if they would be removing that.

Ms. Long stated that if this application is approved, they would install the new antenna on the Gray tower and would remove the existing antenna from the PBX tower. It would no longer be needed.

Ms. Joseph asked if it would be alright to add that to the conditions.

Mr. Fritz stated that the PBS tower was on a separate parcel from this facility, which is not part of this application. That parcel is owned by a separate person.

Ms. Joseph asked what that means.

Ms. Higgins asked if there was a condition about all of them if they are inoperable to remove them after a certain amount of time.

Mr. Fritz stated that the tower has to be removed, but not the antenna.

Ms. Long stated that if it would help they would probably remove it anyway. They are charged rent on the other tower. Therefore, as a condition of terminating their lease with the other tower owner they would be required to do that.

Mr. Edgerton stated that he was concerned that they went through a special use permit last year and then it sounds like because of some technical problems the conditions of the permit were ignored and this extra antenna was put up. He asked what kind of assurance the applicant could give the Commission to ensure that kind of behavior will not occur again. He noted that he really has some trouble with that.

Ms. Long stated that she certainly appreciates and understands that concern. Certainly, without making any excuses, because Gray Television certainly takes full responsibility for this situation. There was a great rush to comply with the conditions of approval initially and built the tower prior to the FCC deadline. There was about a 15 day period that they had once the special use permit and the building permit was approved they were rushing frantically. The out of town construction team came in to erect the tower. It was all very close. There was an oversight. There were different employees on board working for Gray at the time. There was a different station manager and a different chief engineer. Therefore, the folks that are here tonight were not aware of the conditions of approval. It was really just a combination of factors in their haste of meeting the FCC deadline and the staff turnover at the time with the lack of awareness. But, she has met with them and has assured them of the importance of this issue. That is why as soon as it was brought to our attention they worked very quickly to have it removed. As soon as they could get the tower crew out there they had it down. So they are here this evening. They are very aware of her concerns with regards to the importance of complying with the conditions. They are now

hearing your concerns, Mr. Chairman, and we will work together to ensure that in the future anything that is added will done so pursuant to zoning. (Attachment Two: Photograph of existing tower in reference to SP-2005-014 Crown Orchard for Gray by Gould Digital Imaging distributed by Valerie Long.}

Mr. Edgerton asked if there were any other questions for the applicant. There being none, he asked if there were any other member of the public that would like to address the Commission on this application. There being none, he closed the public hearing to bring the matter back before the Commission for consideration.

Ms. Higgins moved for approval of SP-2005-014, Crown Orchard – Gray Television Amendment, with the conditions recommended in the staff report as modified by adding a statement that conditions 6 and 7 have been satisfied as of today's date.

Mr. Craddock seconded the motion.

Mr. Edgerton asked if there was any further discussion.

Ms. Joseph asked Mr. Kamptner if a condition needed to be added about the removal of the antenna.

Mr. Kamptner stated that he had looked at the authority of the special use permit conditions and the concern about the removal of the antenna. With the property being a tower farm he wanted to make sure the conditions controlled the cumulative effects. He suggested that the conditions require removal of the antenna on the PBS pole within a period of 90 days after installation of the other antenna.

Mr. Fritz stated that he had confirmed that the PBS tower is on a separate parcel owned by a separate entity. He stated that he did not know if that made a difference.

Mr. Edgerton asked if the antenna was owned by someone else.

Mr. Fritz stated that he did not know who owned the antenna. But, it was a good question.

Ms. Higgins stated irregardless that she would like to amend the motion to add an additional condition that says that Gray is the owner of an antenna on the PBS tower at whatever location and must be removed within 90 days after the new antenna is operable.

Mr. Craddock accepted the amended condition.

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

Mr. Edgerton stated that SP-2005-014 will go to the Board of Supervisors on August 3 with a recommendation for approval subject to the following conditions.

1. The facility including the tower, its attachments and the new ground equipment building shall be sized, located and built in general accord with the construction plans, tower elevations and schematic drawings initialed SBW and dated May 5, 2004 and initialed YQA and dated June 16, 2005 subject to maximum height and width restrictions in conditions three (3) and five (5). This information is provided in Attachment G of this staff report.

2. Prior to the issuance of a building permit, the applicant shall submit the final revised set of site drawings construction of the facility. Planning staff shall review the revised plans to ensure that all appropriate conditions of the special use permit have been addressed.

3. The height of the tower structure shall not exceed one hundred fifty (150) feet and the top of the antenna, including the lightning rod, shall not exceed one hundred ninety (190) feet above ground level. No equipment, with the exception of any FAA required flight safety lighting, shall extend higher than the tallest portion of the top-mounted antenna.

4. Antennas supporting services other than television broadcasting shall not be attached to extend above a total height of the tower itself.

5. The width of each side of the tower shall not exceed fifty (50) inches in width.

6. The existing guyed tower that currently supports this facility shall be removed within sixty (60) days of the completion of the new tower. This condition has been met as of 6/28/05.

7. The short existing tower, owned by Adelphia Cable Company shall be removed within ninety (90) days of the discontinuance of its use and in any case no later than October 31, 2004. This condition has been met as of 6/28/05.

8. The new ground equipment building shall be painted a natural, dark brown color, and screened on its eastern and western sides with evergreens or a mixture of trees deemed acceptable by the County's Landscape Planner.

9. No building permit for additional antenna installation or modification shall be issued until the unauthorized microwave dish is removed.

10. The existing Gray TV antenna on the PBS tower located on Tax Map 91, Parcel 28E shall be removed within 90 days after the new antenna authorized by this special use permit is operational.

ZMA 2004-007 Belvedere (Signs #62,76,84) - Request to rezone approximately 206.682 acres from R-4, Residential to NMD, Neighborhood Model District, to allow up to 775 dwelling units, with an overall density of 3.74 dwelling units per acre, ranging from a density of 1.6 dwelling units per acre in some areas to 9.4 dwelling units in others. The property, described as Tax Map 61, Parcels 154, 157, 158, 160 (portion) and 161, Tax Map 62, Parcels 2A (portion) 2B (portion), 2C, 3, 5, and 6A, and Tax Map 62A3, Parcel 1, is located in the Rio Magisterial District on the east side of Rio Road (Route 631) immediately east of the Southern Railroad. The Comprehensive Plan designates this property as Neighborhood Density in the northern portion of the property (3 to 6 dwelling units per acre), Urban Density in the middle and southern portions (6 to 34 dwelling units per acre), and Community Service adjacent to the railroad, in Neighborhood Two. (Sean Dougherty)

Mr. Dougherty summarized the staff report.

- ZMA 2004-007 is a request to rezone approximately 206.682 acres from R-4 residential to NMD Neighborhood Model District. It will allow up to 775 dwelling units with an overall density of 3.74 dwelling units per acre ranging from a density of 1.6 dwelling units per acre in some areas to 9.4 dwelling units per acre in other areas.

- On March 29, 2005 the Planning Commission reviewed this proposal. Significant issues were outstanding and the applicant agreed to a deferral. It has taken about two months to get back to this point and there are still several outstanding issues. The submittal was made on May 18, which allowed staff no time for review and revisions. The request before the Commission tonight is what the applicant submitted on May 18, but additional items have been sent to staff that have not had the chance of a full review by all of the different departments.

- Staff has identified factors that are of concern or that have not been sufficiently addressed that remain outstanding:

    1. While a plan has been provided showing how Belvedere Boulevard could be accommodated within a 56' right-of-way between the Fairview Swim Club and land owned by Philip Brown, no commitment to providing this right-of-way has been made.

    2. The right-of-way for the Northern Free State Connector is reserved for the County to purchase rather than reserved for dedication upon demand by the County.

    3. The alignment of Belvedere Boulevard from Rio Road to Roundabout #1 does not sufficiently accommodate a future widening, as requested by engineering staff.

    4. The applicant has not demonstrated that the residential to non-residential mix is appropriate at this location.

       There has been some question about that from the applicant. Staff reviewed the February work session minutes and found nothing to indicate that this does not need some final resolution.

    5. The applicant's commitment to affordable housing places the responsibility for providing such housing on individual, future owners of carriage house units and provides no enforcement mechanism.

    6. Regarding the Village Green, conflicts remain between the general development plan and graphic representations offered in the Code.

    7. Preservation Areas have been decreased to 3.1 acres (from 83.4 acres) and Conservation Areas have been increased to 91.2 acres (from 10.3 acres).

    8. A table required by the zoning ordinance illustrating uses permitted by each block is missing from the Code of Development.

       The applicant sent the missing table to staff about a week ago. The table has not been reviewed by staff. The most critical reviewer of this would be Jan Sprinkle and myself. Ms. Sprinkle was on vacation this past week and the table has not been reviewed.

    9. The County Attorney has identified significant problems with the proffers.

       After consultation with Mr. Kamptner, staff was in agreement that they could move forward with some of the proffers acknowledging that there are still some issues that obviously need to be worked out.

    10. Deficiencies with the Code of Development listed in the attached memos from Jan Sprinkle and Jack Kelsey.

        Today the applicant has indicated that some of these things could be fixed, but that is nothing new.

    11. Regarding archeological resources located on the ZMA parcels, applicant does not address the most recent findings of a Phase I study conducted this winter. Additionally, the findings of this study have not been identified in the Code of Development and the mechanism proposed for dealing with new

information does not sufficiently address the County Attorney's concerns for the guidance for the recovery process.

Unfortunately, staff did not include number 11 in the staff reports that went out to the Planning Commission this week. But, staff has copies of this list showing this additional comment. Mr. Kamptner feels that they do have some language that will sufficiently address these things. The big question is if they should put them both in the Code of Development and the proffers if it is acceptable language.

The outstanding issues noted above must be resolved before ZMA 2004-007 can be approved and, therefore, staff cannot recommend approval at this time.

Mr. Edgerton asked if there were any questions for Mr. Dougherty or Mr. Cilimberg from the Commission. There being none, he opened the public hearing and invited the applicant to address the Commission on this application.

Don Skelly stated that he would first like to start by thanking the Planning Commission and the staff for working with them so diligently on this. They have found this process of dialogue instructive. He felt that it has led to a better project. He stated that he would begin by summarizing where they have been. They started this process in November, 2003 when they began working with staff in what was suppose to be an expedited process. One of their things that they really want to focus on is that yes they understand that they have some issues that are primarily technical in nature that they would like to get expedited and get those results. However, the key question here that needs to be asked is what the County's commitment is to the Neighborhood Model. He felt that any model that takes as long to get something approved as this has is unfortunately setting a precedent. It is not setting a precedent that encourages use of the Neighborhood Model. He pointed out that his wife could have had two children in the time that it has taken to approve this project assuming that it would be approved. So they ask the Commission to move forward at this meeting.

They understand that there are a number of technical issues. There are some substantive issues, some of which they disagree. So they ask the Commission to basically make an opinion on those and move forward. Each Commissioner should have received last night by email a summary of the ten points identified in the staff report. They have tried to go through and address each of those staff points. He felt that the majority of them can be resolved. (Attachment – Letter dated June 27, 2005 to Planning Commission from Frank Stoner, which was sent by email that was a summary of the issues related to ZMA-2004-007 presented by Don Skelly)

There are several issues on which they may not agree, which includes the reservation of the right-of-way of the Free State Connector and the necessary right-of-way at Fairview Swim Club. Now they are in the process of actively negotiating with the Fairview Swim Club. They are very positive that they can move forward in a productive manner. But, he felt that it really comes down that at this point they need to move forward. At this point a deferment is not an option that they were willing to consider. So at this point they would really like to ask that some decision be made and that they would be allowed to move forward so that they can bring to the County something that it has expressed the desire to have, which is a Neighborhood Model Development. As the Commission may recall, they do have just as many by right division rights.

They are constructing the Free State Connector Road, which with the recent downgrading of Free State Bridge has become a pressing issue for the County. That is a 2.3 million dollar road cost that is being absorbed by the developer. They are constructing over 1.3 miles of the greenway system and providing a connection through that will allow greater access to the public to that Rivanna River basin. They are providing a commitment to affordable housing. It may not be exactly what the County has outlined in its proposal, but he felt that they all recognize that Ron White has spoken to the fact that they need to have a diversity of affordable housing options. Therefore, tonight they ask the Commission to take a look away from the trees and start to focus

in on the forest and really get a sense after 18 months where are we and where do we want to be. In their letter they suggested a framework that would allow them to hopefully recommend approval of their project pending completion of certain key items, which they are happy to work with staff on resolving. But, he believed that the vast majority of the concerns have been resolved to date. They understand that it will take some time to review that, but there should be sufficient time between now and any Board of Supervisors date. If there are any questions, he would be happy to answer them.

Mr. Edgerton asked if any Commissioners have any questions of the applicant. There being none, he opened the public hearing. There is one person signed up to speak, Mr. Philip Brown. He invited Mr. Brown to come forward and speak.

Philip Brown stated that the Browns did not want their small parcels of land to be left out of the rezoning request. They have three tracts of land in Belvedere. If the County rezones Belvedere they want the Browns, the Wells and Susie Brown's Estate properties to be rezoned too. He pointed out that the applicant surveyed across his land for a road to come across it, but nobody ever consulted him about a road coming across his property. He felt that before someone tried to go and survey another person's land that they ought to go and try to consult the owner. If the County approves the rezoning for Belvedere, he wanted a setback from his property. He asked that the Commission take these things into consideration.

Mr. Edgerton invited further public comment on this matter.

Frank Stoner, representative for Stonehaus, stated that they would like the opportunity as part of this public hearing to address the ten items that are in your staff report. They wrote the letter to the Commission last night about these issues. Mr. Skelly did not bring those items up because they had the expectation that they would be able to work through those points one by one to hopefully satisfy the Commission that those items have been addressed. He asked if the format of this public hearing would allow them that opportunity.

Mr. Edgerton stated that personally he felt that was what work sessions were for, but he would defer to what the rest of the Commission would like to do on that. He asked if the Commission wanted to have a dialogue about this.

Mr. Thomas requested that the Commission go through the ten steps so that the applicant can have the opportunity to describe each one. He felt that they might have the opportunity to condition in for something that is missing along the line.

Mr. Edgerton stated that was his initial response when he read the email today. If the letter was mailed last night it must have been very late. If the Commission allowed this, then they would be skipping the process of using the staff's help in reviewing their allegations here. The Commission has a letter from the applicant addressing these issues, but staff has not had time to review it. If they have that dialogue they need to engage the staff in it. Obviously, they are far more familiar with what has or has not been done or said in the past. Therefore, he was a little troubled about bringing the staff review into a dialogue with the Commission.

Ms. Higgins stated that he agreed with Mr. Thomas in that she felt that the applicant and staff in a couple of issues were basically disagreeing. The applicant is asking the Commission to weigh in on whether certain items will be a condition of approval or not.

Mr. Edgerton stated that he did not think it was appropriate to have a dialogue with the applicant who says that they will not allow for a deferral. Therefore, the Commission has to make a decision on what is before them, and staff had indicated that there is information which has come in rather recently that they have not had a chance to review. It is hard to review a letter that fast.

Ms. Higgins stated that she did not agree with that. Some of these items may or may not be able to be handled with conditions, but that would be left to the discussion. She suggested that the Commission try to see if there is a way to move the request forward.

Ms. Joseph stated that she would be happy to hear Mr. Stoner address items 1 through 10, but she would really prefer not to have a dialogue and try to work some of the details out with Mr. Stoner at this time. She felt that it was more appropriate for the applicant to present the information and then during a Planning Commission discussion they could discuss those items.

Ms. Higgins stated that the Commission could ask a question if they needed to.

Mr. Edgerton stated that he saw no reason for the Commission to change their usual format.

Ms. Higgins suggested that this be handled at the rebuttal at the end after the public hearing.

Mr. Edgerton stated that Mr. Stoner could address those items during the rebuttal. He asked if there was anyone else present to speak regarding the request.

Michael Horn, resident of Rivercrest, stated that it was his understanding that the nearest building in the Belvedere would be 150 feet from their property lines. That would include a 50 foot green buffer zone from their property line towards the buildings. They would like to request that to be increased to 200 feet from 150 feet. Also, they ask that the 50 foot green buffer be increased to a 100 foot green buffer inside the 200 foot buffer. With those conditions the Rivercrest residents would be satisfied and their interest would be met. Then they would be in favor of seeing the zoning request granted. It is a provisional support. They would offer their support of Belvedere with those provisions. He stated that as the Homeowner's Association Manager he could speak for the Rivercrest residents. The additional buffer would make a tremendous difference in that it puts it a little further up the ridge and leaves a lot of the larger growth trees.

Dick Coleman, 2213 Shepherd's Ridge Road, stated that his home was located in phase B of the Rivercrest Subdivision. The back of his property abuts the proposed Belvedere phase one project. He stated that he takes issue in the amount of green buffer area that the developers have proposed. From the back of his property line to the woods measured almost 50 feet, and there are very few trees in this area. Recently the developer has changed their green buffer zone from .6 acres to 1.2 acres or 50 feet from his property line to 90 feet. The developer measures their green buffer zone from his property line. The developer's plan shows a nice green buffer zone, but in reality in that buffer zone there are few trees. Looking from the developer's building towards his property there is over 100 feet of woods. Another 100 feet consumes the drainage ditch in his property. If nothing is going to be built in that 100 foot of wooded space why can't the developer preserve and proffer it. It certainly would help with erosion on that hill and to visually block the back of the condominiums.

There being no further public comment, Mr. Edgerton invited Mr. Stoner to come forward to give his rebuttal.

Frank Stoner thanked the Commission for the opportunity to share with them in more detail their perspective on these ten items. He felt that the biggest issue that staff has raised as an obstacle to this rezoning is the constrained right-of-way at the intersection of Belvedere Drive and Free State Road in area C on the map where the two points come together. Currently they have about 46 feet of right-of-way. Staff has requested 58 feet of right-of-way. This has gone back and forth for some time. Tonight they wanted to share with them a drawing that shows how the roadway could be accommodated in a 46 foot right-of-way. They also wanted to share with the Commission the latest fruits of their efforts with regard to their Fairview discussions and negotiations. He pointed out that there is a representative from the Fairview Board here tonight who could perhaps provide his input as well.

Don Skelly stated that what they have tried to do is to provide an illustration under the current available right-of-way what could be constructed. Staff had early on identified to them that they were concerned about the lack of the sidewalks on both sides of the streets. They have gone back to the drawing board and come up with a solution that they believe provides for the issues that they identified at their last meeting. They now have provided a sidewalk. The illustration is a horizontal analysis of the road width. They have two 11' travel lanes. Staff had identified a desire to have 4 foot bike lanes. Therefore, they have incorporated these 4 foot bike lanes 2 ½ feet on each side for a curb and gutter pan. Then they tapered the sidewalk down for a short vertical distance. It tapers up against the edge of the curb. The sidewalk is just slightly under the normal width of 4 feet down to 3.725 feet. It still meets the 1 foot required setback that VDOT requires on the edge of the right-of-way. Essentially, the net effect of this is that it still provides all of the features that are typically identified in the Neigborhood Model as being desirable in an urban streetscape. They still have street trees and a tree lawn, with the exception of one 35 foot section. They have found a solution that has identified in a worse case scenario, but it operates under the assumption that no additional right-of-way is acquired on either side of the road. This deals strictly with the right-of-way that is there. He felt that this plan successfully addresses some of the concerns that they heard during the last meeting.

Mr. Stoner provided the following rebuttal:

- Item 2 was the Meadow Creek Parkway reservation north of Free State Road. They proffered to reserve the right-of-way for the future Meadow Creek Parkway, which was a 100 foot right-of-way. They have offered it up to the County for a period of 10 years at a price of $40,000 per acre. They believe this request is fair and reasonable for three reasons. First, the proposed right-of-way north of Free State Road takes significant developable land away from the Belvedere project and does little to provide any tangible benefit to the community unless it provides a connection across the river to Route 29. They think it is unlikely that will occur anytime during the development of this project and probably for some time thereafter. The perpetual proffer would hurt long term values of properties adjacent to that right-of-way. Secondly, they are already funding their sole expense for the construction of two lanes of this road from Rio Road to Free State. Their estimated cost is 1.5 million. The County's most recent estimate was 2.3 million dollars. That represents a significant non-cash proffer. They think that to ask for more from them would be unreasonable. Third, the Belvedere rezoning proposes a density of less than the 992 units that they would be allowed by right. This is a rezoning that they entered into purely for form or the Neighborhood Model, which is what the County had told us that they wanted. The only tangible benefit for them in this rezoning process is really the flexibility of form and variable density. The proposed level of compensation for this right-of-way is equivalent to the present value of the purchase price of the property. They have offered to fix that for the entire ten year period. Were they to make it subject to appraisal at the time they think the value would be at least 200 to 300 percent higher.

- Next, item 3, the alignment of Belvedere Boulevard from Rio to Free State is an issue that came up relatively late in the review of the process. Engineering requested that they consider relocating the two lanes that they have designed from the outside of the right-of-way along the railroad to the inside of the 100 foot right-of-way. What they have said as it relates to that is they don't want to do it as part of the rezoning. They have not engineered the roads so they are not clear about what the engineering implications would be. They are concerned that it leaves them with a strip of ground on the other side of the road which will never be usable if that second two lanes of road is never built. But, they are certainly willing to revisit it after the road has been engineered.

- Fourth, the residential and non-residential mix is an issue that he felt was covered early on in the second worksession with the Commission. He stated that it does not warrant a lot of additional consideration unless there are particular questions. He felt that staff and the Planning Commission have agreed that the location and the size of the commercial district that they have proposed is in fact appropriate for this area and development.

- The fifth item is affordable housing. Ron White has talked several times about the affordable housing they have proposed. He believed that Mr. White has indicated that it would represent a form of affordable housing that they don't currently have in the County that has been popular in other areas. He felt that the assertion that "it does not or that the form of affordable housing will not give the County enforcement" while accurate misses the point, which is that affordable housing of this type satisfies two things. 1. It makes the primary residence more affordable. 2. It provides a form of rental housing, which is currently not available on the market.

- The sixth item is the conflicts between the general development plan and the graphic illustrations. He acknowledged that those are technical issues. He believed that CDA is in the process of revising the exhibit, which was mislabeled. He felt that they could make that a condition of approval this evening. Staff has agreed that is purely a technical issue.

- The seventh item is the reduction of preservation areas and the increase in the conservation areas. He felt that they made that decision primarily because none of their stormwater or utilities have been engineered at this point. They are fearful that if these areas are designated as preservation areas and then they find out that they need to run a sewer line through there because it is the only practical solution, they will have to come back in and request that the area be switched from a preservation or conservation area. Again, he felt that once these areas are engineered they would be happy to reconsider these areas or the remaining areas as preservation areas. But, they would be hesitant to do so at this point.

- The eighth item is the missing table. That has been replaced. It was in prior Codes of Development. He apologized for the omission in the last version submitted. That has been corrected and sent to staff.

- The ninth item is the proffer problems identified by the County Attorney. Revised proffers have been submitted. Mr. Skelly and Mr. Kamptner have had several conversations about that today. They feel that those issues can be resolved. Most of the issues are technical in nature.

- The tenth item is the deficiencies with the Code of Development listed in memos fro Jan Sprinkle and Jack Kelsey. All of those issues were technical issues and have been addressed. The plan has been resubmitted with the appropriate corrections. He believed that whatever outstanding issues for review since staff has not had a chance to review those, they could certainly make that a condition of approval that it would be subject to their review and approval of those changes.

Mr. Skelly asked to address the earlier comments about the buffer. They are concerned with the buffer. As such, they have made two modifications to the buffer between the Rivercrest Home Association's property and our own. They have also provided an illustrated diagram showing that, which was included in the staff report. While the extra 40 feet of buffer is measured from a vertical perspective, because of the slope of the hill it actually provides a fairly meaningful buffer. As you move horizontally it raises the level of trees. By incorporating the 40 feet they feel the concerns of the residents have successfully been addressed in regards to visual impact on their properties.

Ms. Higgins asked if they have a problem incorporating the 100 foot strip outside of that area referred to by Mr. Coleman. She asked if that area would actually be graded but was not shown because the final design has not been done.

Mr. Skelly stated that under their preliminary grading plan, they have asked their site engineers to bring that as close as they can. They are willing to work with the home owners should they

require additional plantings in those areas. However, the preliminary grading does indicate that rough grading would extend to the edge of that buffer. While it does not appear that it is being used, it is in fact a part of the mass grading of that area.

Ms. Higgins asked if at this point if they have a landscape plan for that area.

Mr. Skelly stated that at this point they do not.

Mr. Edgerton asked if there were any other questions for the applicant.

Ms. Higgins stated that she had one question on item 11, which had to do with the archeological resources. She asked the applicant to provide comment on whether they have addressed this in the revised proffers dated June 27.

Mr. Skelly stated that Steve Tompkins from Rivanna Archeology was here to speak to this if the Commission so desired. He stated that they have not. Those proffers remain unchanged. The next phase has not been initiated just due to the fact that they just got the bid a couple of days ago. Therefore, there was no progress to report. They can suppose certain things based on the findings of the phase one. However, it is premature at this point to try and speculate what phase two will find.

Mr. Kamptner stated that proffer 8.1 has been revised to incorporate the language that the County suggested. Julie Mahon has commented on it and she was fine with 8.1 with a couple of minor changes in the reference to the plan. Proffer 8.2 is unchanged.

Mr. Skelly stated that they basically have agreed to take the archeological excavations to the next phase as is warranted by the findings of each phase. They currently have completed what he believed was called the phase one. They are currently looking at doing phase two. They have committed already that they will undertake that and if that warrants further exploration, then they in turn will do a phase three.

There being no further questions for the applicant, the public hearing was closed and the matter placed before the Commission for consideration and possible action.

Ms. Joseph requested to ask Mr. Dougherty a question. Within the staff report it says that Chuck Proctor says that they need 58 feet of right-of-way. She asked if that was something that was negotiable with this body.

Mr. Dougherty stated that was a very good point. Essentially what Mr. Proctor said last week is that he would require the minimum of 58'. They went over places where you get reductions in the new Design Manuals, but 58' would work. That design cannot work just because anytime you use traffic circles you cannot have a break in the roadway and some sort of median needs to come along there. Essentially, it is a 4' median. They went through everything, including the bike lanes and sidewalks that VDOT said in this instance would be required from the right-of-way. The 58' is what would be required by VDOT, and therefore the County is also requiring it. The answer to the question is yes, it would be nonnegotiable.

Ms. Joseph asked if he had any discussions with any of the adjacent property owners regarding this right-of-way area.

Mr. Dougherty stated yes, that he had talked with Mr. Philips several times and had heard from people associated with the swim club.

Ms. Joseph asked concerning reservation of dedication of right-of-way it is true that our Comprehensive Plan calls for 20 years and not 10 years.

Mr. Dougherty stated that was correct.

Ms. Higgins asked if Meadow Creek Parkway was even in the Comp Plan along this alignment to cross at this point.

Mr. Cilimberg stated that it was in the Comp Plan at this point, but the plan is to be changed to reflect the regional plan which is not any longer defining a route. It is defining this area for study as to what route a road would take. So the applicant and staff are dealing with a bit of an unknown right now in terms of exact location. He felt that the applicant was trying to provide for location that could be used, but they are not dedicating it, which is the issue staff raises.

Mr. Edgerton stated that this was one of the initial discussions that they had in one of the earlier work sessions. The applicant was asking whether they would be comfortable allowing the realignment of it so it would not be cutting this property in half. He believed that was how it had gotten to where it is right now.

Mr. Cilimberg stated that was correct. The issue is dedication versus reservation. Typically the County gets right-of-way dedicated for what are felt to be the public transportation project needs.

Mr. Kamptner asked if there was a distinction when the project itself generates the need versus a road like the northern connector to the Meadow Creek Parkway. This project is not necessarily creating the need for that.

Mr. Cilimberg stated that in the rezoning case when it has been a public project it has been our experience that dedication upon the demand of the County has been provided beyond that which is just associated with the project itself.

Ms. Higgins stated that really what it was about was the difference between having it reserved with a dollar amount associated with it versus reserved upon the demand of the County at no cost. She felt that in older cases the dollar amount was not as clear. She felt that based on the amount of time and where they were here today with these issues on the table they have just gotten drawn into a lot of important details, but this is the rezoning. The road design is not done. She pointed out that if someone submits a road design and asks for a waiver request, they are granted in a lot of cases. VDOT is not allowed to say that a waiver will be granted. It is the developer's risk to take if a road is shown on a plan and he can't get it approved by VDOT. In the rezoning it is almost too premature to even make that decision over a few feet. She felt that the overall form of this development has a lot of positive things. She reinforced that this is not a typical rezoning. This road has been proposed for years and has a huge price tag on it. The Commission can either disapprove it with specific items that can be addressed between now and the Board or they approve it with these technical issues to be worked out by staff and the applicant before the Board of Supervisors hearing. If those issues cannot be addressed by that date, then the applicant can defer at that time. She stated that the things about this right-of-way are not a reason to deny it. They will not be making the call that the applicant can do it with 46 feet of right-of-way. But, if the developer does not work it out and purchase it and get a waiver or whatever is necessary, then it is going to stop them cold.

Mr. Thomas suggested that the Commission move it along with that condition of the applicant acquiring enough area for the right-of-way or acquiring the necessary waivers. That area is between Fairview Swim Club and Philip Brown's property.

Mr. Edgerton stated that he took issue with some of the allegations made by Mr. Skelly about how uncooperative they have been and how much trouble they have caused. All of these issues are issues that have been discussed over and over again going back at least to the second work session, and yet somehow they don't get resolved or no progress is made. He questioned whether that was the County's fault. He asked what gave them confidence that these issues would ever be resolved. He asked if they would find themselves just pushing ahead because we don't want to hold anybody up, but they are not going to resolve the issues. All of the issues were serious.

Mr. Kamptner stated that item 11 was partially addressed. They still need Julie Mahon's comment on what is now proffer 8.2. That language is the same as it was in the May 18 set of proffers.

Mr. Edgerton stated that one of the proffers has been addressed and one has not.

Mr. Kamptner stated that was correct.

Mr. Thomas stated that the Fairview Swim Club Board member was present. He asked if he could come forward and address the cold hard facts of what has been going on.

Reids Bailey, Board member of the Fairview Swim Club and Chairman of the Long Range Planning Committee, stated that this specifically was part of his job on the Board to try to figure out how they could as a private entity deal with a large development that is going to be occurring around the club. They have been in meetings with representatives from Belvedere for some time and going back and forth on various points. The Commission needs to understand that their issues don't just deal with the small piece of land that they need to acquire, but they are working towards accommodating new memberships related to Belvedere residents that obviously don't exist yet. They need to improve their own facilities and provide for those increased memberships. There are multiple parts to the negotiation that are going on between Belvedere and Fairview. While they have not worked all of those details out, he does not have any reason to believe that they won't get them worked out. They have been sitting down and cooperatively working towards resolution to all of these different pieces as they have. They are a group of volunteers that all have full time jobs and only have a certain amount of time that they can put into these negotiations and work with them. It is taking a little bit longer than they would all like to come to a resolution. Again, he did not foresee not being able to work with them in figuring this piece of the equation out. He pointed out that that is the Board's opinion. The Board is positive about being able to work things out, but they are not there yet.

Mr. Craddock stated that he was totally against purchasing property and not having it dedicated for the County for future road use. He also was disappointed in the affordable housing provisions.

Ms. Joseph stated that she did not have any problems with the stormwater going into some of the conservation/preservation areas as long as they are healed in the process in that either the area is replanted or make it so that it was closer or better than the existing conditions.

Ms. Higgins stated that in conservation those things could be allowed under proper control and design standards. Therefore, she did not look at the conservation/preservation change as that detrimental.

Ms. Joseph stated that she did not mind if there were intrusions in those areas. The applicants wanted to change the acreage because they wanted to have the ability if during their final design they have to put in utilities or stormwater management in that area. She reiterated that if those things go in that area it should be done so it "reflects the area as it is or improves the area" and repairs the existing vegetation and the area."

Mr. Cilimberg stated that they were dealing with a rezoning, which could not have conditions. The applicant has to proffer those things that the Commission would feel are necessary for approval. Therefore, the Commission needs to recommend those items in their motion to the Board of Supervisors.

Mr. Edgerton asked Mr. Kamptner to address the proffers.

Mr. Kamptner provided the following comments on the June 27 proffers submitted:

- Proffer 1, which deals with the plan exhibits, was cleaned up as requested.

- Proffer 2 deals with affordable housing. Staff still has questions whether the carriage houses constitute affordable housing. Ron White's comments could be interpreted that this satisfies him. It is a different kind of proposal for affordable housing. The rest of that proffer incorporated the requested changes.
- The language in 3.1 and 3.2, with just one minor typographical error, is the language that was recommended. This was the language that was developed in their negotiations with North Pointe. There is still a question that staff needs to resolve as to whether this language belongs in the Code of Development or the proffers. The Code of Development regulations are supposed to include the conservation/reservation area regulations.
- Proffer 4.1 is still the language that was in the original proffer. He has a number of questions that he asked of staff that have not been answered yet.
- Proffer 4.2 deals with the greenway. The language that was revised satisfies the comments and concerns that he had. There are still some questions that staff needs to answer before the language is finalized. But, substantively, his comments had been addressed.
- Proffer 4.3, the greenway bridge – The text generally addresses his comments, but there are still some questions to be answered. This includes the consent of the owners of the parcels where the bridge would be located, whether they consented to this, and who would pay for the ongoing maintenance. It may be some third party or the County as part of its greenway trail system. It has not been answered.
- The reservation of the right-of-way – The language was revised that addressed some of staff's comments. It raised some concern about the evaluation of the land at that future date. The proffer was revised to simply include a $40,000 per acre flat rate rather than getting into appraisals sometime in the future.
- Proffers 5.2 and 5.3 – These proffers need some minor adjustments. The proposed right-of-ways need to be shown on a plan that will be adopted by the Board of Supervisors.
- Proffer 6.1 – dealing with overlot grading – The applicant addressed our comments completely. This is the overlot grading plan language that has been developed during the latest round of North Pointe's proffers.
- Proffer 7 – Staff did not have any comments on proffer 7 during the first review.
- Proffer 8.1 – The applicant incorporated the language staff requested. Julie Mahon commented today, and there were just a couple minor word changes. But, this substantially reflects all of our comments.
- Proffer 8.2 – This proffer is the same. The only comment previously was to ask that Julie Mahon comment on that proffer. No comments have been received at this point.
- Proffer 8.3 – There was one minor typo. Staff is recommending more than this one roadside marker.

Mr. Kamptner stated that the proffers that the applicant has set forth are close to being in an acceptable form.

Ms. Higgins moved for approval of ZMA-2004-007, Belvedere, with the proffers as submitted subject to meeting the legal requirements for acceptance as provided by Mr. Kamptner. She stated that her motion was based on the June 27 rezoning application proffer statement that Mr. Kamptner just reviewed, that the proffers would be worked out prior to the Board meeting as well as the missing items # 10 and # 6 resolved.

Mr. Thomas seconded the motion.

The motion was defeated by a vote of (3:2). (Joseph, Edgerton, Craddock – No) (Thomas, Higgins – Aye) (Morris, Rieley – Absent)

Mr. Kamptner stated that the Commission's recommendation needed an affirmative vote. Therefore, another motion would need to be made.

Ms. Joseph moved to deny ZMA-2004-007, Belvedere, based on the fact that the proffers could not be accepted as written. Although the proffers are procedurally correct, they do not contain information that the Planning Commission can support. The three reasons are summarized below:

- The right-of-way for the Northern Free State Connector is reserved for the County to purchase rather than reserved for dedication upon demand by the County.

- The applicant's commitment to affordable housing places the responsibility for providing such housing on individual, future owners of carriage house units and provides no enforcement mechanism.

- While a plan has been provided showing how Belvedere Boulevard could be accommodated within a 58' right-of-way between the Fairview Swim Club and land owned by Phillip Brown, no commitment to providing this right-of-way has been made.

Mr. Craddock seconded the motion.

Mr. Edgerton asked for some clarification. He asked if part of the motion was talking about the reservation/dedication issue.

Ms. Joseph stated that there was a proffer that had to do with the reservation of right-of-way. She stated that two of the reasons were proffers. One proffer had to do with affordable housing and she did not accept carriage houses as a means of providing affordable housing. A second proffer is the reservation of right-of-way. The insufficient right-of-way is outside of the proffers. It is what is shown on the plan as 44 feet.

Ms. Higgins asked if that was the issue that has to be worked out with Fairview Swim Club, even though they had indicated tonight that it was being worked out.

Ms. Joseph stated that she wanted to include that even though their indication tonight that it was being worked out. She felt that the applicant has had 18 months to do this as they have previously told us.

Mr. Edgerton asked if she would consider an amendment to include the issue of reservation versus dedication for the Northern Free State Connector.

Ms. Joseph stated that had already been included.

The motion was approved by a vote of (3:2). (Joseph, Edgerton, Craddock – Aye) (Thomas, Higgins – No) (Morris, Rieley – Absent)

Mr. Edgerton stated that ZMA-2004-007, Belvedere, will go to the Board of Supervisors with a recommendation for denial on August 10.

Old Business:

Mr. Edgerton asked if there was any old business. There being none, the meeting proceeded.

New Business:

Mr. Edgerton asked if there was any new business.

THE PLANNING COMMISSION MEETING SCHEDULED FOR JULY 5 HAS BEEN CANCELLED. THEREFORE, THE NEXT MEETING WILL BE HELD ON TUESDAY, JULY 12, 2005.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 8:25 p.m. to the July 12, 2005 meeting.

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V. Wayne Cilimberg, Secretary

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