**Albemarle County Planning Commission**
**October 18, 2005**

The Albemarle County Planning Commission held a work session and meeting on Tuesday, October 18, 2005, at 4:00 p.m., at the County Office Building, Room 235, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Pete Craddock, Rodney Thomas, Jo Higgins, Bill Edgerton, Chairman; and Marcia Joseph, Vice-Chair. Absent was Calvin Morris and David J. Neuman, FAIA, Architect for University of Virginia.

Other officials present were Joan McDowell, Principal Planner; David Benish, Chief of Planning & Community Development; Scott Clark, Senior Planner; Amy Arnold, Planner; Francis MacCall, Senior Planner; Bill Fritz, Chief of Current Development; Mark Graham, Director of Community Development; Greg Kamptner, Deputy County Attorney and John Shepherd, Manager of Zoning Administration.

***Call to Order and Establish Quorum:***

Mr. Edgerton called the regular meeting to order at 4:02 p.m. and established that a quorum was present.

**Work Session:**

**Rural Areas Comprehensive Plan Implementation**: A work session to discuss and receive input on Phasing of Rural Area subdivisions. (Joan McDowell)

The Planning Commission held a work session to discuss and receive input on Phasing of Rural Areas subdivisions. Guest speakers, who have had many years of experience with phasing of subdivisions, included: Betty Grayson, Madison County Zoning Administrator and David Jones, Chair of the Board of Supervisors from Madison County, and Diana Stultz, Rockingham County Zoning Administrator. Each guest speaker spoke on the experiences and challenges that their localities have faced in the implementation of phasing of subdivisions. The Commission held a discussion with the speakers, asked questions and provided comments.

Ms. McDowell: I am sure you will all remember that at a joint Board of Supervisors and Planning Commission meeting on this issue that one of the things that was discussed was trying to gain a little knowledge of what they were proposed to do as far as phasing and then clustering happening in the rest of Virginia. So she did a survey that staff did quite a while ago of what other Counties that is actually doing the things that they want and was lucky enough to get the best experience in Virginia for the meeting tonight. They have Madison County and Rockingham County representatives here. This is Diana Stultz from Rockingham County. She is the Zoning Administrator. This is Beverly Grayson and she is the Zoning Administrator in Madison County. Then they have the Honorable David Jones. He is the Chairman of the Board of Supervisors for Madison County. She thought that they would get started with Betty and then move to David and Diana to get their experiences. She understands that Betty started phasing in the 80's.

Ms. Betty Grayson: It was in 1989.

Ms. McDowell: It was in 1989. Diana started it in mid-1970. So they have a wealth of experience to draw from. I've already asked them to brief us as to any precedence as they go along. I've assured them that this is a pretty informal work session and so they are all in tune with what we are doing and realize that we are just talking about it now and want their comments. So we will get started with Betty. They will have one-half an hour each.

Ms. Betty Grayson: Thank you all for inviting us to come and share what we do in Madison County. Our original zoning and subdivision ordinances were adopted March 29, 1974. As time went on they could see that they were being squeezed between Green County, Charlottesville and Culpeper to the north. So the Planning Commission actually broke up into some groups. They talked about different ways of trying ways of trying to slow down the growth. Then we came up with doing four lots in a four year time period. They actually enacted that June 29, 1989. The way that works is according to each individual tax parcel that you own. If you were a farmer and your farm was comprised of four tracts, then each one of those

tracts was entitled to four division rights in a four year time frame. And, of course, the residue would count as one of those four. So really you could have three lots and a residue. So the three lots that you develop did not have any division rights either for four years.

Mr. Edgerton: If you have a parcel and cut off four lots, then you can't do any more subdivision of those four lots until four years later.

Ms. Grayson: It would four years from the date that plat is recorded at the Circuit Court.

Mr. Edgerton: Okay, but, that is assuming that those four lots have additional development rights.

Ms. Grayson: At the end of four years, right. And, of course, a lot of that depends upon the acreage of those lots as well. If you are in a conservation zoning, our minimum lot size in conservation is ten acres. Our minimum lot size in agricultural is three acres. Now I will just clarify on those 4 lots in 4 years. If you have 100 acres and you do (4) four 25-acre tracts, then that is fine. If you have 100 acres and you want to do (3) three 3-acre lots and the residue, then you can only do 3 lots and the residue.

Mr. Rieley: You can't break off 4 lots?

Ms. Grayson: You can't do 4 lots and the residue. You can only do 3 lots and the residue.

Mr. Rieley: Before you get going again, can you remind me when this came into effect.

Ms. Grayson: June 29, 1989 is when it went to the 4 lots in 4 years.

Mr. Rieley: Interesting, so you have 12 to 13 years of experience.

Ms. Grayson: Right. Then just last year, on February 4 we were getting squeezed pretty hard and could see that we did not like the direction that we were going in so we tried to tighten that up some more. They actually changed that from 4 lots in 4 years to 4 lots in 10 years. She felt that the Commission pushed around 12 years and 15 years, but they came up with 10 years. What they are seeing is that a lot of people are taking advantage of it since it is 10 years. They are going ahead and doing their 3 lots now and keeping their residue so that they are on the books counting so they can get three more when the 10 years is up. Of course, in our own ordinance the family division is an exemption from the subdivision ordinance. So that does not count towards your division rights with a family division.

Ms. Joseph: Is that the same acreage requirements?

Ms. Grayson: It is the same acreage requirements. Now with our family division we also put the stipulation in that family division has to stay in that person's name for a period of 3 years before you could sell or transfer that to a different person.

Ms. Higgins: Could I ask one other very basic question. You mentioned subdivisions and the conservation areas and then you have an agricultural area.

Ms. Grayson: Right.

Ms. Higgins: Some counties have gone to an A-1 or a Conservation/Agricultural zoning. Did you happen to bring a map or do you have any idea of whether it is a whole lump of the county or certain areas of the County.

Ms. Grayson: The majority of our county is zoned agricultural, A-1. We have quite a bit in conservation zoning, but a lot of that is the Shenandoah National Park, which is 32,000 acres in Madison.

Ms. Higgins: But, the majority is agricultural.

Ms. Grayson: The majority of our county is agricultural.

Ms. Higgins: Is the conservation 10 acre minimum in the minor areas.

Ms. Grayson: Right. The majority is the agricultural. They just have the one zoning in the agricultural, A-1 zone. They don't have an A-2 or A-3. Another thing that we are finding that is causing us a little bit of a problem in our county is when we allow people to do boundary adjustments between their properties, which is as long as they don't create any additional building lots. What we are finding is that if we have a pre-existing lot that they've acquired prior to the adoption of our ordinance, like a 2 acre lot, and they have another 100 acre tract next to it, then we are finding they are doing a boundary adjustment between that larger tract and the smaller tract and then getting 3 lots and a residue out of each one of them. So they get more lots. However, the Planning Commission is actually in the process right now of coming up with some proposed wording to try to take care of that to close that gap. When we did the 4 lots in 4 years and even the 4 lots in 10 years we had relatively not much opposition to it. They just had a few people there. But, once they found out that their farm was composed of more than one tax map, parcel and that they had more division rights if they needed them, it seemed to go over better. Another thing that we have in our favor is that we only allow 4 lots on a private road. So if you want to subdivide in our county, regardless of what zoning you are in, we only allow you to do 4 lots on a private road.

Ms. Joseph: So anything above 4 becomes a public road?

Ms. Grayson: It becomes a state road built to state standards. Another thing that we have on our primary highways, which is Routes 230, 231 and 15, is that we only allow entrances every 600 feet from the center line of one entrance to the center line of the next entrance. It has to be 600 feet.

Ms. Joseph: Could you name those roads again?

Ms. Grayson: Routes 230, 231 and 15.

Ms. Higgins: Are those scenic by ways?

Ms. Grayson: Route 231 is a scenic highway.

Ms. Higgins: When you went back to the 4 lot limit on private roads did that not preclude someone just taking the frontage of their property and then they don't use it along the existing state road.

Ms. Grayson: What we did with that, we use to have people that would do 2 lots on the front and 4 lots on the back. We actually amended that ordinance to where you have to when you put the subdivision street in that all lots touching that road have to use it.

Ms. Higgins. But, if the lots don't touch the road they can still drive on to the existing road. Did you ever consider going to a larger minimum lot size.

Ms. Grayson: In our conservation zoning it use to be a 5 acre minimum. What we were finding was that a lot of our conservation zoning is up against and adjoins the Shenandoah National Park and it was getting harder to find the drain field locations of lots on the slopes, etc. They did change that from 5 acres to 10 acres. They have talked about the agricultural zone several times or either making a different zoning called AR, Agricultural Residential zoning. It has never gotten off the ground, but they have discussed it before. To get back to the entrance regulations - and then on Route 29 that runs through Madison County they have a 900 foot entrance regulation on Route 29. Also, in our residential zoning we have tried to cut that down as well. They only allow up to 14 lots total in that zoning classification. If you go to the 15$^{th}$ lot, then you do have to be on public water and sewer. In Madison County, they don't have but a little public water and sewer available.

Mr. Craddock arrived at 4:20 p.m.

Ms. Grayson: We just recently in November of last year adopted a new ordinance on non-conventional drain fields. They have had a lot of them where it was not the traditional drain field and they had to do a lot that they call unconventional. They adopted a new ordinance and included that in both our zoning and subdivision ordinance.

Ms. Joseph: Was it to allow them?

Ms. Grayson: To allow them, but they have to be monitored like twice a year and the Health Department has to inspect those regularly and have to hand in paperwork.

Mr. Edgerton: Could you give us some specifics of that on what sort of a field it is?

Ms. Grayson: There are so many different kinds. That is the reason you call them non-conventional. It is anything that is not a traditional drain field is a non-conventional and through the Health Department.

Mr. Edgerton: And the way that they are policing that is just through additional Health Department inspection?

Ms. Higgins: Did you do that because of the pressure that they have become more accepted? Or did you do it because people had so many unperked sites needing something? We need to get something like that.

Ms. Grayson: We did it mainly because we felt that if the property owner was buying that lot they should at least have the right to know that their system was going to be a non-conventional drain field. So every plat that they approve that has one we require that be in writing on the plat when it is signed and recorded in the Clerk's Office.

Mr. Edgerton: Has that been problematic?

Ms. Grayson: No, it has worked very well. It will soon be in effect for a year. That is the highlights. Now they did change our density in the residential R-3 zoning. They use to allow 13 units per acre and now they only allow 8 units. They considered doing that in the residential R-2 and they still might do that. It just by the State Code of Virginia if they do that she felt that there is a regulation if there is more than 25 property owners that it has affected you have to send certified letters to every property owner. And, they have quite a bit of R-2 zoning around the town of Madison and in our Brightwood area. And at $4.42 a letter that is a lot. Well, I guess they will have to weigh and see if they are going to go with that or not.

Mr. Rieley: What was the impetus of the motivation for making that change to a larger lot size?

Ms. Grayson: In the conservation zoning?

Mr. Rieley: No, in the residential zones going from what he believed she said from 12 to 8 or something.

Ms. Higgins: That was 13 units.

Ms. Grayson: They use to allow 13 units for gross acreage and then they changed it to 8, which slowed down the growth.

Mr. Rieley: Which means that it is a larger lot size, right?

Ms. Grayson: They decreased the number of units that they would allow on that acre.

Mr. Rieley: Right, that is a larger lot size, and if you have 8 units on an acre that is a lower density.

Ms. Higgins: That is a eighth of an acre.

Ms. Grayson: Right. And right now in our R-2 zoning if it is not on private water and sewer you would have to have an acre and a half minimum lot size.

Mr. Rieley: What was the impetus for that? What was the motivation for going to that change in density to a lower density in that.

Ms. Grayson: They were trying to slow down the number of people.

Mr. Rieley: It was just to slow down growth.

Ms. Grayson: Yes, just to slow down growth.

Mr. Edgerton: It was both steps in the phasing, which once again was trying to slow down the growth.

Mr. Rieley: Have you all done any monitoring of the effect of this since it has been enough time since 1989 to at least look at the rate of subdivision. Obviously, there are all kinds of intersecting forces at work.

Ms. Grayson: Well, in 2003 when it was still 4 lots in 4 years we had a total of 51 subdivisions or lots approved that year. In 2004 from the time they changed the ordinance to the end of the year they had 81. Then so far this year they have had 68 new lots created.

Mr. Rieley: That is not dramatic. That is interesting. Did you think that the 81 was a result of getting in over the wire?

Ms. Grayson: It could have triggered it a little bit. But she felt that people just got scared of the changes. Again, they had to do something right away to get their feet in there and get their 3 lots so that they could have 3 more lots in 10 years. But, she felt that it was a wave. Sometimes they get scared and they want to do something right away. They have a couple of developers in the county that are looking at every option to get the most they can get out of a piece of property. Honestly, they are trying to target and do something so that maybe it will go somewhere else.

Ms. Joseph: Do you know what your growth rate is annually?

Ms. Grayson: Not off the top of my head.

Mr. David Jones: In the 90's they were 4.1 percent for 10 years. We've picked up a little bit since then, but they were still below Rappahannock. They were still going to be in that 5 to 6 percent range. I think everybody has seen the unprecedented increase in prices. It seems like since 9/11 the stores have gone crazy. They have been getting a lot of pressure from there. People want to be able to get out if all of that breaks loose in DC and want somewhere to go that is as near normal that they can find. They have seen a lot of that. The school population has been flat for years. Taylor Murphy has finally stopped dropping us a couple of percent every year. Actually they peaked in school population in 1974 or 1975. They have 2,600 children in the area under the age of 18.

Ms. Higgins: So with all of these houses being built and lots being created you are not seeing more children.

Ms. Grayson: There are a lot of elderly couples.

Mr. Jones: They are not seeing the children.

Mr. Edgerton: Are a lot of the lots vacant? You mentioned that people are trying to have a place to go to get away.

Mr. Jones: Some of them are for retirement. Some are for commuting and second homes. It has a mixed bag. The question on the alternative drain fields - they have learned more about alternative drain fields than they would ever want to know. A lot of them require constant use to function. That was one of the things. A lot of people did not even know that they had them. We had them in the county even before they realized that they were even in there. But, that is part of it. In theory if they work right they are great things. But, if you don't maintain them and if you don't service them, then they are not worth 2 cents on a plug nickel. That is what they were trying to ensure that number 1; people knew what they were buying. Number 2, that somebody was required by state law that if it was in there that it was provided on the end by right. They have to provide service contracts and prove that they maintain them. Because if not you

are no better off than you were when you run the pipes into the creek 50 or 60 years ago. You have the same regime because if they are not working right they are not working.

Ms. Higgins: Do you have any figures on when you are talking about farmers and agricultural use? But, then the kind of growth that you are probably seeing is more for a second home or the northern Virginia way or whatever you want to call it. Do you have any feedback on how it has affected the agricultural lands? Are you seeing farms affected? Our goal is to protect the agricultural area, which are centered on less residential use.

Ms. Grayson: I don't know if they have any official record on that. Our big farmers are still there. It has not affected them. The true farmer that was there 30 years ago when he came is still in business. The smaller farms are being sold and right now the market is hot. They have some 3 acre building lots selling for $150,000. For Madison County, people just can't imagine that. Three years ago you could have probably bought the same lot for $25,000.

Ms. Higgins: I moved from Madison County in 1989.

Ms. Grayson: I thought that you looked familiar.

Ms. Higgins: I bred horses.

Ms. Grayson: I gave Joan a copy of our entire up to date ordinances so if anyone wants to see them.

Ms. McDowell: It is very thick.

Ms. Joseph: Is it on line?

Ms. Grayson: No, it is not. They do have it at the library or in our office. But, we don't have it on line. But, these are all up to date. She may make copies of any portions that you want.

Mr. Craddock: Are you seeing the big developers come down like Ryan and those guys yet?

Ms. Grayson: Not in our county.

Mr. Jones: They are looking, but we don't have the public sewer. Actually, the last of the hook ups were sold 30 days ago for the one sewer plant in Madison. Basically, if they want to do anything they are going to have to go to the CRSA, which is a three county service authority. They will have to build the plants to RSA's specifications. They are going to have to give it to RSA and then they will have to pay hook up fees. They have been very leery of growing sewer. Actually the county skewered the schools and rebuilt it on a force main size for the schools that we had plus one school down the road to deliver them. So it would be no ability to hook on to it. As long as you don't have excess sewer you are not going to have excess people.

Mr. Rieley: Wouldn't it be difficult to do a big subdivision with your 4 in 10 year regulation?

Mr. Jones: If you are going to subdivide you have to rezone. You have to go to one of the residential zones to make it work. Anything over 14 lots has got to have public water and sewer. It is required and RSA has to run it. In other words, it can't be a private system.

Ms. Higgins: But, if someone came in with 400 or 500 acres and wanted to get it rezoned into a residential district and provide their own sewer plan that would be a nightmare that they would not want to go through.

Ms. Grayson: Not necessarily.

Mr. Jones: But they couldn't. It is not allowed.

Ms. Higgins: They couldn't get a rezoning?

Mr. Jones: No, they can't build their own sewer system. RSA has got to run it.

Ms. Higgins: Typically they would build it and turn it over to RSA to operate.

Mr. Jones: If they wanted that size. But, they don't want that size. In other words, if they refuse to take what they are submitting, it does not happen. We don't have to rezone it to start with.

Ms. Joseph: That is the key.

Ms. Higgins: Well, right. It just depends on what's in your Comp Plan. You don't really have the defined development area either.

Mr. Jones: Not really, other than the land around the Town of Madison. But, basically agricultural is the prime driver of what they are trying to keep open.

Ms. Higgins: Well if you look at it and if you want to call it northern Virginia even if it comes down as far as Culpeper and then from Albemarle going north, that Madison seems to be in that half way point where really it is a little bit far to commute given the place.

Mr. Jones: That was one of the things that concerned us with this base realignment. I don't know if you noticed, but they moved about 17,000 defense workers from Crystal City to Fort Belvedere because they could get the setbacks from the car bombs. What that did was open up eastern Orange and Culpeper County in commuting for 17,000 to 18,000. Now the other federal agencies are raising cane because their people are thankful enough that they want them out of there and get them into safer housing. If this trend continues, then the handwriting is on the wall.

Ms. Higgins: The centralization did affect some of the rural areas.

Mr. Jones: It is going to affect us all. It is just like the defense group here is talking about another 1,000 people. They are going to import 700 of them.

Ms. Joseph: Into Albemarle, too.

Mr. Jones: Yes. So they are going to build not necessarily all in Albemarle County. We are going to see a spill over on some of them.

Mr. Rieley: Do you all have a cluster provision in your zoning?

Mr. Jones: To have clustering you've got to have water and sewer. To cross that out into the middle of the county does not make any sense because if you have enough sewers to run to them, then infilling is what kills you.

Ms. Higgins: Since you just adopted this in 2004, is there an expectation of how long this stays in place, since this is somewhat political. Staff might not want to answer that question, not to put you on the spot. But 1989 to 2004 is a pretty long time. Would it be the expectation that this may stay in place for the same period.

Mr. Jones: I think that a lot of it depends on the pressure from prices of land. If you look at what has happened in the last 5 to 6 years it is just about unprecedented in this part of the world. We are still growing the value of land at 2 percent a month since our last reassessment 19 months ago. That has slacked up a bit. But, for the three years before that it was 2 percent. They might have to adjust it. But, when things get expensive enough people go to immense means to circumvent the rules because it is worth their time.

Ms. Higgins: Do you have any programs similar to the ACE Program where development rights are purchased or people give up their rights to develop their land?

Mr. Jones: We encourage the private people that are full of words and usually lacking in actions to step up to the plate and put their money where their mouths are at. Madison County has 13,000 people. We've got the sixth smallest staff in the Commonwealth of Virginia as far as County staff. If anybody has ever done business with us, they know that we are the tightest bunch that ever walked God's green earth. If people want open space, the ones who want it need to pay for it because we still have got a lot of working farms. For most of these people, their equity in that land is their retirement. It is their inheritance. It makes a difference.

Ms. McDowell: David, tell them what you do in your life.

Mr. Jones: I am a dairy farmer. I have been a dairy farmer ever since I was 4. I went to Blacksburg and majored in Dairy Science and minored in U.S. History. In this business, if you don't appreciate history, then you are going to get run over and stomped. Because of what they are talking about none of us knew if you looked at all of the natural areas down north of here. They have been there and they have seen it. It was done before Long Island went through it. The area of the milk shed around New York City has been through it. There are variations on this theme. But, basically you can keep open space and farms until you get to a certain point or a certain pressure, then you are either going to have to buy people's rights, not steal them, but buy them. Or, they are just going to bail out and move because the infrastructure that keeps farmers farming is not there. Just the pressure of the people that don't understand what you are doing makes it difficult. But, he thought that it was a decision that people are going to have to make that basically raises the millions of dollars to buy these rights.

Ms. Higgins: Since you know everybody, which I know that you do.

Mr. Jones: Use to.

Ms. Higgins: Do you have any feedback on large land holders that have self imposed their own conservation easements or Virginia Outdoor Foundation easements to get the tax break?

Mr. Jones: Basically the people who do that have a tax problem. Usually they have income other than farming that drives that. If you're a true farmer usually a tax problem is the least of your worries.

Ms. Higgins: Then you are not seeing a lot of that?

Mr. Jones: Not on a true farmer. The ones that are doing it are people who bought property. You will see it on occasion if you have a very strong entity and they are trying to make it easier for the transition from one generation to the next. Because if you put it into easement that way it takes the IRS out of what the land is worth. You only have one value and that is the land use value. You don't have this other garbage to go through. So it does simplify that if there is enough interest and a strong enough will within the group. I think that there is a little realization that these conservation easements to a certain group of buyers does not matter because they don't want but one house anyway or two. They are not looking at development. That is the one thing that has changed, Betty, within the last 10 to 15 years that instead of the 3 acre lot or the building lot people want 10, 20, 30, or 40 acres. They want enough to have a few horses and a couple head of cattle. They want elbow room. They will pay just about the same for an acre for that as they will for a 3 acre lot. There was a farm sold 3 months ago in the county that is in the lower end of the county. There are no mountain views and it was in a hole with 60 yards of road frontage and 350 acres for $10,000 an acre. For Madison that is a lot of money.

Ms. Higgins: It is on 230.

Mr. Jones: No, it is on Farmer's Mill. It is back in the bushes. We are talking of no views of the mountains. You can't see, unless you don't want to see anybody. They are going to spec on it and play with it. I don't want to cut into Betty's time.

Mr. Rieley: You can talk as long as you want to.

Mr. Jones: I have been on the Board of Supervisors for 18 years this year. I was on the Planning Commission for 8 years before that. I came on right when the first Comprehensive Plan was

implemented in Madison. It was a unique experience in itself. As Betty said the zoning started in 1974. The best thing that ever happened to Madison County was the oil crisis in the 70's. Basically, it just kicked everybody in the teeth and all of the developers that were there went under. It just killed everything for a number of years with that bit of luck as far as zoning wise. He was not talking about the luck of the 19 percent interest that he paid in the 70's. It was not luck. It was a pain. It hit everybody. But, zoning wise we did not have the accumulation of inbuilt lots that has been the pain for a lot of people. If you look at your neighbor in Green that is what has killed them. It was the lots that they created in the 60's and the 70's. If you look at Loundon County, in 1992 they had 125 people on the planning staff. They had a 6 million dollar planning budget. They had 60,000 people in the County. And yet they had created enough residential for another 40 million people. They had created and approved enough commercial that was bigger than metro Richmond. And he asked one of the planners, why you don't all just go home. You know just quit. If you don't do anything else you are looking at 300,000 people. You could save the 6 million dollars a year. Of course, they didn't and they are not. But, who knows how big they will get.

Mr. Rieley: You just described Albemarle County, too.

Ms. Joseph: Yes, you did.

Mr. Jones: And Culpeper and Orange. When we started zoning we had less than 1,000 lots and most of them were not built on. They were ½ acre lots up in the mountains. It takes 4 or 5 to hope to get 1 lot. So we did not have the back log. Actually what they were facing was what he called the pressure cooker type of situation. Has anyone of you ever run a pressure cooker?

Ms. Joseph: Yes.

Mr. Jones: You get the heat up and then what do you want to hear, that little hiss. That little hiss is the building that you need to have to keep things going and not have a build up of demand that will encourage somebody to put in a 500 acre subdivision. You've got to have enough building going on to take care of your current needs. Madison historically has got a group of builders that will build between 5 and 10 houses a year. People will sell a lot here and a lot there to meet their needs or for family. And basically it is almost like having two zoning ordinances. One for us, and then one for them. The us was the small builder that normally gets along and did very little to get their money. The them was for the public water, the state roads, no sewer plans, and you know did everything you can to throw in a monkey wrench. It worked well for years until the money got up so high. Now it is a little harder than it use to be. I don't think anybody that is in zoning will say that it is as easy now as it was 10 years ago. It's tough because of the knife that sets on that edge and does not rock one way or the other. That is where the 4 and 4 originally came from. It was to try to take care of the people that are here and the ones who need to sell a piece of land. What made it sell was by putting it on a tax parcel rather than per farm because most farms have at least a hand full of tax parcels. Some of them have a huge number. Some of them don't. But, the people who just bought the land and created it, they only have one tax parcel. They are not very happy with that. But, the person who has been there, they will have several. That is what made it palatable. And that is what made the 4 and 10 palatable. I think they could see the growth coming, but they also realized that for most people, and especially for the lots of grain, you could sell a lot or two and lose 6 acres and still farm and have a pot of money to work with. The question was asked why we don't have a bigger lot. The neighbor to the north has had bigger lots to use. Basically you have to have 25 acres to start.

Ms. Higgins: Is that Rappahannock?

Mr. Jones: That is Rappahannock. I have a cousin in Rappahannock and he had hit it very sequentially. He said that that you are either rich and move to Rappahannock or poor and born there. There is nothing in the middle. You have very little middle class with the cost of doing business. You either were born there or you've got plenty of money and moved. We've been blessed by having a very wide diversity in people. On our composite index there is a pile of rich people in Madison. He was not one of them, but there are some somewhere running around. The index has jumped up considerably in the last couple of years. But, they do have a wide variation. That is one of the challenges that they are looking at now. They try to control growth. They try to hold things back. It is what it has done to the cost of that initial

house. They are not the only ones. I am not preaching anything that you are not seeing everyday. It is how the people that are born there and their children, unless they have got family or know somebody that will cut them a break, do they get started. How do you justify spending $179,000 for a 1,000 foot house that 25 years ago was a single-wide trailer? It had a roof put on it and then adds about 400 feet on .9 of an acre. It sold 6 months ago. It is a nice place. It is neat. It has a good view of the mountains. But, the heart of it is a 25 year old single-wide trailer for $179,000. For starter homes, they have got one group that builds with one design of house and that is all he has built for 10 years. You either like his house design or you don't buy his house.

Mr. Edgerton: Is that $179,000, too?

Mr. Jones: I expect it is $175,000. It has not been that long ago that they were selling for $35,000 and $40,000. But, I mean that is the two edged sword. But, what they have seen is where people supposedly made it a little bit looser where you could get more density and affordable housing. But, it did not change the price of the house. It is still just as high as everybody else's. It has just got more of them.

Ms. Joseph: Yes and the justification is that if you put in some affordable housing, then you have to jack up the cost of all of the rest of the houses in the area.

Mr. Jones: So really it is not so what are you accomplishing?

Ms. Joseph: I don't know.

Mr. Jones: Our, I guess, our thought on this is that basically everything that a county does, you think you are getting ahead, but basically you are on a treadmill. You might get a step on that treadmill. Has anybody got an electric treadmill to walk on? You get your first step and you think you have made some progress and then you settle in on the middle. The question is do you want to walk on the treadmill or do you want to jog on the treadmill or do you want to run on that treadmill? I am getting to the point in age that I like walking mostly. As we call it, moseying. I am not much on running anymore. That is just a question on the county. If you don't watch yourself, because you are not going to get ahead anyway, the question is how hard you want to work to save your land. We are trying to walk. That is our point and it has been for going on 25 years. So we want to walk in Madison. We want a great place to live. It is going to change and it is going to evolve, but I would rather have evolution and it sort of gradually changes. We will adapt to it, rather than just quantum leaps that you get if you bring in 700 houses in one fell swoop. That is what just drives you crazy. The other thing that you need to remember on these 4 and 10's because after 10 years if you want to divide it up again you can do it. But, again it is another 10 years before you can do it again. For most speculators that is not real palatable. Some of the people are planning ahead and have big enough lots that they can do it. But, with these public roads it makes them think twice. Most of what they are seeing is people that are creating single building lots in that 3 acre to 6 acre range. People are going out and trying to find land that makes it work for that. And again, you've got to have some of that. In other words, there has got to be some lots available. Because if you don't, and you just dry it up then you get in that pressure cooker and then it explodes and you have a pile of houses going somewhere. The boundary adjustments have been a problem. On family divisions, if that is not the most convoluted state law that was ever written from a planning perspective, it does not require but a 20 foot right-of-way. I mean it just is a nightmare to try to deal with. But, at the same time in some cases it is the only way some young people are going to get a house. But, they did put the three years on it. They have never been challenged. I know other counties have either that or more. So it is something that will drive you crazy.

Mr. Edgerton: Is it being abused by the developers?

Mr. Jones: Not so much the developers, but you have got individuals that are abusing it more so than the developers. Because it is normally fairly small lots and they are playing games with it. Some people are, but a lot of people are not. But some people do. It is like anything else, it is not the 99 percent that you have to deal with, but it is that 1 percent that will make you pull your hair out. The other thing on densities was that he would not be surprised if you don't see R-2 and R-3 go down again.

Mr. Rieley: The lower density?

Mr. Jones: I would say probably somewhere between 4 and 6 in R-3 and probably 3 to 4 in R-2. The reason on lot size again on the cost, at 25 acres a lot you are chewing up open space that is going out of sight. I am not saying that they might not look at it afterwards, but, if they can chew up 3 acres. Especially at the price that it is bringing now, people can sell a lot or two and still farm. They really have not hurt that much. If they sell 2 lots at 25 acres, that is a chunk. That is two big fields in Madison County. There are only two different agricultural soils. They don't have a real fine agricultural plan like Rockingham has. He does not happen to have any Class One land in the County and not a whole lot of Class Two. They have a lot of good honest land, but nothing that he would call prime land. The conservation zone is basically driven by elevation and slope and soil types. There are the lower soils types. It is 780, 680 or 700 feet in elevation. It is pretty steep slopes. That is what drove the creation there. They also went up to an acre and a half in R-1. They were at an acre at the beginning. But you go find that you get an acre here and you get your well and septic and then you get a neighbor that puts his well and septic in. Then you get a lot in between, and the guy put it in and puts his house in and hits a dry hole. Then he is bouncing trying to find a way of getting a septic in and a well site. And, he does not have a neighbor that can give him an easement. You've got troubles. So they tried an extra one-half of an acre to just give a little bit more room to work with. They are quite a ways off from a lot of sewer. I am sure it is going to come sooner or later. But, again they are going to try to live with what we've got as far as individual well and septic or alternative drain fields. That is a Madison nightmare in itself. There must be hundreds of permutations of it. Of course, you never know what you are approving. The engineer signs off on it. But, until he comes back and gets the permit you don't know exactly what he is putting in. It is a nightmare because again, in the state of Virginia one size fits all. You will pull your hair out, too, because they spent months on this. But, again, it is not perfect although they have the former planner from Rappahannock County who is looking at our zoning ordinances now. They are looking at mainly what do we need to change that a lot of money will make invalid. Then Mr. Chandler in Richmond will look at his proposals. Because when you are starting to pump out the money people are talking about it. It just changes the ball park on some things. He thinks most of it that they have got will work. But, again, it is just coming faster than anybody ever anticipated than it would have. We had a meeting about six weeks ago with a person from George Mason. He does labor statistics, planning, and feasibility studies for housing for all the labor or the new jobs that are being created in northern Virginia in the next 20 years. Mr. Jones can't remember the numbers, but for every 4 jobs there will only be 1 house built. He just ran a feasibility study in southern Augusta and northern Rockbridge for a major national homebuilder for a commute to DC up 81 and 66. His question is, "if the federal government continues to move federal employees out to safer housing, then where can we buy them?" There is pressure in this particular area. What Charlottesville, the Research Center and the Defense Center are doing, he does not see any change except that the pressure is going to get hotter. That is what he does for a living and if you take out a 100 pound bag of salt and pinch as needed.

Mr. Edgerton: His projection again, could you clarify that?

Mr. Jones: I can't remember the total jobs. The bottom line was that there was bunch of new jobs being created. What they are going to find is that there are areas in northern Virginia that are going to build out in the next 20 years.

Mr. Edgerton: So the new jobs are in the Washington Metropolitan area?

Mr. Jones: This is from Charlottesville to southern Maryland. But, basically you got a lot of areas there that are about ready to build out as far as available housing. I am not even talking about available housing. But, for every 4 new jobs created there has to be 1 house built on the current zoning. The other thing that he found in the main service in southern Maryland, northern Virginia and DC was that 10 years ago we had 4 percent of the houses sold for one-half a million dollars or more. Last year it was 40 percent. He said that this year it would probably bust between 50 and 60 percent. What is happening is that everybody that earns what he called an honest living, the firemen, the policemen, the school teachers, and the public servants have to move farther and farther out so that they can afford a house they can call their own. And for us it is still too much money, but it is less than they pay up there. We have met the new superintendent of Shenandoah National Park and they have about given up on having a lot of in-park housing. A normal commute to them for a park ranger is one hour one way. That is the standard. If you get above that, then you have to start providing housing. As long as you can find a

house within one hour of Shenandoah Park, which is crazy? But, that is what we are dealing with. But, it is just an interesting time to be in local government.

Ms. Joseph: Does Madison use Agricultural and Forestal Districts?

Mr. Jones: We have Agricultural and Forestal Districts. This is the first reassessment that has really cost us a bunch. In the past when they are talking $600 or $700 agricultural value and the last reassessment was like $2,600 or $2,700. So it is not a whole lot of deferred money. We went up to over $7,000 actual value of that. So we are looking at our adjusted rate without the forestry and land use, which would have been .38 cents. We had to take it to .56 cents just to make the deferral. It is a major chunk.

Ms. Higgins: Now can you explain that. Do you mean you raised the tax rate?

Mr. Jones: In order words you have to equalize your tax rate. When you reassess you can't make a dime. In other words, if we raised a dollar on the old reassessment you can only raise a dollar on the new reassessment. Without forestry and agricultural land use the adjusted rate would have been .38 cents a hundred on real estate. But, because of the deferral we went from 150 million to over a 600 million deferral.

Ms. Higgins: Because more people put their land in land use?

Mr. Jones: No, because the value went from $2,600 to over $7,000.

Ms. Joseph: It was the value.

Ms. Higgins: Even though it was in the Agricultural and Forestal District. Oh, okay.

Mr. Jones: Because actually the value of agricultural land has gone down the last three times from Blacksburg. Forestry has gone up, but agricultural land actually would have been $500 on the top end in Madison this last time if they had not held it where it was. But, basically it took the .38 cents to the .56 cents. It took .18 cents a hundred on the real estate rate to pay for the deferral or in other words, to bring in that same one dollar of actual money this year. Then they are going to reassess this spring. So they are looking at a 35 to 38 percent increase in value since the last assessment 2 years ago. So you are going to look at another major deferral. Right now they are deferring on average $43 an acre for county taxes that has land use. It is even more than that if you are in forestry. So it may be that is something for you to look at, which we have never gone. We had one agricultural district in the county years ago that a whole farm and conservation would serve. So they got out of it. It really links the flexibility of the farmer especially with the economics as they are. But, in looking down the road that might be something that is going to be needed for land use and forestry use. Then you need to be in an agricultural district. Again, at least that gives the county a window of time that you pretty well know that this piece is not going to change. The other thing that they have been beating on, and the Farm Bureau does not want to hear it, is the roll back instead of 7 years ought to be 15 years.

Ms. Higgins: You see we don't even look at that. We don't consider what the revenue of all properties is. We promote agriculture and forestry for more land to go in that deferred basis.

Mr. Jones: It is still cheap.

Ms. Joseph: What he is just saying is that it is a good thing if it goes in and it does change.

Mr. Rieley: What is our roll back?

Ms. Joseph: It is five years.

Mr. Jones: Well ours is seven years. But, as you get bigger and bigger deferrals, you are looking at a huge amount. You've got to remember now; we only have got a 27 or a 29 million dollar budget. That is everything. And a couple hundred thousand dollars to us is a lot. It did not take me long to figure out when you talk to your legislators from Virginia never talk money. Because all we've got is pocket change

if you use the whole budget of if you talk percentage of your budget. When telling them that we are rehabilitating a high school that is going to cost us one-half of our annual budget to rehab it, that gets his attention pretty quick. But, you don't talk money.

Ms. Higgins: So, if a lot of people or if more and more people in Madison seek to go in an Agricultural and Forestal District, the tax rate is going to go up?

Mr. Jones: The tax rate is going to go up.

Ms. Higgins: We don't look at that aspect of it when people come in for Agricultural and Forestal Districts.

Ms. Joseph: There is also the assessment of the property that goes up. You are getting more taxes because the land is more valuable. They are assessing that.

Mr. Edgerton: Actually we don't have to go with the Agricultural and Forestal Districts in Albemarle County to get your land use.

Mr. Jones: And we don't in Madison.

Mr. Edgerton: You have to cut hay once a year and take pictures.

Mr. Jones: But that is something that you might want to look at.

Ms. Higgins: Do you have land use?

Mr. Jones: Yes, it our agricultural and forestal land use. And some of it is abused. But, again that is something that you might want to review. People do play with it. Developers do play with it.

Mr. Edgerton: In Albemarle, it has historically been used as a way of holding property for a period of time until you are ready to develop it.

Mr. Jones: But, without it you would have a whole lot of people selling land. I can tell you that right now. If you look at the numbers on what it cost for an acre of pasture land versus a house on an acre, there is no comparison. That has not changed forever. Houses have never paid their way. The last time I figured it, it took a half million dollar house to break even on one child. The average house in Madison with 1.8 children it takes 55 years to pay for their education. So in other words, you never catch up. There is no way for the average house. It is not saying that everybody needs to have a half million dollar house. Something is wrong. But housing is nothing but red ink and space. With that I am going to stop because I am crowding into somebody else's time.

Ms. Diana Stultz: I want to thank you all for inviting me here this evening to explain a little bit what they are doing in Rockingham County. They started in the 70's with having the waiting periods in the Agricultural District. At that time they only had one Agricultural District and the waiting period between divisions was 3 years. In 1985, they went to 2 Agricultural Districts, the Prime Agricultural and the General Agricultural Districts. Then last year we redid our ordinance and we kept both of the districts. Right now, in the A-1 district we are allowed 1 division every 5 years. The one thing they have in Rockingham County is a non-family division that the Board of Supervisors has to approve. And right now they probably have between 5 and 10 non-family divisions in '81 that our Board has approved.

Ms. Joseph: What if their Board won't approve them?

Ms. Stultz: They will approve them, if it is for farm workers that maybe had worked for you for a long time and you want to give him an acre of land. They will approve it, if you have a large parcel or a large farm and you want to split your farm. But, for somebody just to come in and buy 42 acres of land, they will not approve it. Our minimum lot size in the A-1 district and AC district both is an acre. In the A-1 if you have greater than 40 acres you can't go below 40 acres. It is saying that it either has to be that you divide off greater than 40 acres and you keep the smaller amount or you keep 40 acres and you divide off. You can do family divisions and boundary adjustments and adjoining transfers. But, you can't do non-family

transfers. You can't go below 40 acres. In the A-2 district, we have 1 division every 3 years. The beginning minimum lot size is an acre. If you are on public utilities, then it can be 20,000 square feet development lot size. In the A-2, any parcel of land of 6 acres or less created after August of last year and no non-family divisions. In the A-1 it is 40 acres and any parcel of land of less than 40 acres created after August of last year and no non-family divisions.

Mr. Edgerton: No non-family divisions.

Ms. Stultz: It depends how you do it and where you do it. (inaudible)

Mr. Edgerton: Have you seen an increase in the size of families?

Ms. Stultz: No, actually (inaudible) it would be useful if they could allow (inaudible) the state of Virginia alleges it is your spouse (inaudible) because they only use it to abuse it.

Mr. Edgerton: You can't do that now for your spouse. You can go vertically. You can go parents or children.

Ms. Stultz: Yes, it includes parents, grandparents, children, grandchildren and siblings. But, not spouses. We also allow with the A1 and A2 district only one grandparent subdivision. (inaudible) It does not matter if you have 20 different parcels. You can choose (inaudible) again; they were using that more to get around the Code and using it to put rental housing on it. Then they were taking each parcel that they owned and dividing off an acre and creating a small house. In our downgrade adjustments you can do that anytime, but if you get land in a boundary adjustment or an adjoining transfer, in the A-2 that land that you got as a land transfer can't be part of the division that came in. In the A-1, it can't be part of the original plat. You can sell your entire parcel, but you can't use that to be part of the division. We did that because what they found happening was, for example, that I own a piece of land and I made a division, so I could not make another division, so I sold it to my neighbor and he turned around and sold it for me. We allow two parcels of land on a 20 foot right-of-way. It is a 20 foot right-of-way with a 12 foot road bed. If you have more than that, you have to go to a 50 foot right-of-way with a 20 foot road bed. The only exemption to that is on a single 20 foot right-of-way. (inaudible) They do require that anything less than 5 acres has to perk and it has to have 100 percent septic reserve and it has to be shown on the plat when it is done.

Mr. Edgerton: Did you have trouble with the 1 lot minimum size getting the 2 drain fields.

Ms. Stultz: We really have not had much trouble. (inaudible) As far as when we adopted these and any problems that we are having, let me track back on that. We do allow the divisions to the family members. If you have five children you can divide it off for all five children at the same time. A-1 they have to keep it 5 years and in A-2 they have to keep it for 3 years. We have never been challenged on that. Our County Attorney says that they have 2 or 3 attorneys in the town and all of them use real estate and they all agree. So there is nobody to challenge us. We have not had a lot of problem with any of it. When we redid our ordinance what we did was have a group or a committee of farmers, some residential landowners, some large landowners and some of the realtors to be a part of our committee. The committee helped draft up the ordinance. So they have not found in the time I have been there to be a problem. The only people that they may have a problem with are ones that are moving into the area. They can't understand why they can't just turn around and sell their land if they want to. But, most of the people that have either lived in Rockingham County for a long period of time or they have lived there all of their lives want to see agriculture stay for as long as they can keep it there. We debated in the A-1 whether to go to a larger minimum lot size, but we figured if we did we would just be using up the agricultural land and they want to keep it in agricultural. So if they go to 10 acres or 20 acres they would just be taking more out of the farm. We've been real successful and as I say the people are just relatively agreeable with it. I guess they have just gotten use to it after 10 years. Nobody has tested it.

Mr. Craddock: With the new hospital going out there where is it and what is the plans for the land around it. Particularly on Reservoir Road it looks like with that whole mess from University Boulevard over to there and then Reservoir Road with all of those apartments, it looks like almost every month they creep a little bit further out. So I am wondering with these division rights what is going to happen to that farm land

around that area. Currently they have the golf course and that big new subdivision that came there on 33.

Ms. Stultz: I think what you will see happening in that area is that you will see some businesses go in. You will have a lot of the doctors trying to get closer to the hospital once the roads are brought up to what they are suppose to be. JMU has said that they are going to go to 25,000 students. When they do you are going to see more housing near the city part. Once water and sewer is brought out there the area is going to be full.

Ms. Higgins: Aren't those more of the R zoning R-2 or R-3?

Ms. Stultz: R-2 and R-3 or R-1 is the single family and you have to have a 12,000 square foot lot. R-2 and R-3 you can have 10,000 square feet, and with a duplex unit you just split that. I think that is what you will see. Instead duplexes, townhouses and those types of things are going out there. I think you will see all of that with the new business, commercial and townhouses. Especially in the city I am sure it will be college students. As you go out into the county it will be some other housing, too. Once the utilities are brought out there all of that will happen. But, that is okay from a planning standpoint because the utilities are there. Once the utilities are there you expect to see it developed.

Ms. Higgins: Didn't the county have a moratorium on the city utilities serving the county or has that been relieved?

Ms. Stultz: It has sort of been relieved.

Ms. Higgins: You have water and sewer in the city that serves in the county.

Ms. Stultz: We do now. And they did put a moratorium on it in 1985. And that was up until last year. The city did lift it last year, but they still have to approve each individual development and see whether they want to do it. Some of them are approved and some of them are not. What it was about was the hospital annexation. And now in the state of Virginia they say you can't do it. And until 2010 the city cannot annex the county. That was done back in the early '80's and since then three times the General Assembly has extended it. So right now the City of Harrisonburg can't annex Rockingham County. What is happening is that they are not bringing utilities in. When our new Walmart went in on the south end of the town, the city would not approve utilities to it. So the town said that they could do it. So now the city can't annex because it has county and date issues. So that was part of the problem that they ran into with that. The one other thing that she didn't mention, they do have land use taxation, but they do also have the Agricultural and Forestal Districts. There are several thousand acres in the County that are under Agricultural and Forestal Districts. In each of those, the citizens that wanted to go into the Agricultural and Forestal District put their own conditions into their district as to what they were going to allow to happen. And in none of those districts are they allowing non-family divisions. So we are not going to let it develop. It is staying as farming and there are only agricultural related businesses in that area.

Mr. Edgerton: What if any benefits go back to them?

Ms. Stultz: None, they just want to preserve the agricultural.

Ms. Higgins: Do they get land use taxation?

Ms. Stultz: They would get it anyway.

Mr. Rieley: We have a 10 year opportunity for people to pull out of that. What is yours?

Mr. Stultz: Ours is 7 and 17. We just had the first ones that were done 10 years ago, which were just renewed and then we had about 2 people to pull out and several more go into it. Some of the people pull some of their smaller acreages out and left their larger acreages in. I believe we have some people in it with 5 acres. So it has worked well.

Ms. Higgins: So basically what you said the city can annex.

Ms. Stultz: They cannot.

Ms. Higgins: Oh, they cannot. And that is why they do not want to serve the connecting utilities.

Ms. Stultz: The County thinks that is part of the reason.

Mr. Rieley: Have you found that the 3 lot cluster residue every 4 years has had an effect on discouraging large scale subdivisions in the area.

Mr. Edgerton: That is for Madison County.

Ms. Stultz: We are 1 division in 3 years.

Mr. Rieley: I am sorry, I meant for in A-2 and 1 every 5 years. It is the same question if she had found that had a substantial impact on subdivisions going in.

Ms. Stultz: We have, as I said, we have only about 5 to 10 non-family divisions in the A-1. And in A-2 right now there may be 50 or 60. Most of our divisions are for family members or to adjoining landowners. In the A-2 some of them are to non-family. They find that it is either about an acre or it will go up to 2 acres in 15 years. In A-1 even the family divisions are going higher than that. In most of those what they are doing is dividing it for their children, but they continue to farm it. So for anybody driving by nobody would even notice. The other thing that they have done in agriculture, and this came about because our farmers wanted this, that you are allowed one residence by right on a piece of property and to put a second house on it you need 15 acres and a special use permit.

Ms. Joseph: And your farmers asked for that?

Ms. Stultz: Yes.

Mr. Rieley: And why did they think that was relative.

Ms. Stultz: People renting agriculture and putting rental houses on it and farm workers were being removed.

Mr. Edgerton: The rental housing market was being supported by JMU.

Ms. Stultz: That is exactly right.

Ms. Higgins: Do you think that with the growth of JMU if the city is absorbing maybe the growth that they are experiencing and it has not really gotten to the county. Or are there major rezonings or major things proposed for the county that will absorb that protection of agricultural land.

Ms. Stultz: Yes, we are seeing more people moving. There for a while we would have a property zoned residential and it would sit there. They did not do anything. Now they are finding that as quick as they rezone it they are developing it as fast as the lots go on the market in the county.

Ms. Higgins: So you are absorbing it as rezonings and that is how you are protecting this.

Ms. Stultz: Yes.

Mr. Rieley: You are having exactly the effect that our Comprehensive Plan says that we should have, except you are having more success with it. It seems like. What is the population?

Ms. Stultz: Around 72,000.

Mr. Rieley: It is amazing I mean Rockingham to a much greater extent than Madison is a very parallel

situation to ours, with the population of JMU and the city. Let me ask one more time to make sure that I understand. You have 5 to 10 non-family divisions in A-1 per year.

Ms. Stultz: Yes.

Mr. Rieley: That is astonishing.

Ms. Higgins: It is under A-1 and A-2. You divided the county up. We just have one zone of agricultural. You picked portions of the county.

Ms. Stultz: What we've done is look at the better farm land. We knew that if they wanted Rockingham County to stay agriculture then they looked at the areas that were the best farm areas.

Mr. Rieley: Do you have similar figures for A-2?

Ms. Stultz: A-2 is probably 80 to 90.

Ms. Higgins: How much land area is in A-1 versus A-2?

Ms. Stultz: There are probably, and I am not sure the acreage wise, it is probably about 1/3 as much as in the A-1.

Ms. Higgins: So about 1/3 of the county is in A-1 and the rest is in A-2.

Ms. Stultz: There is a lot more A-2 than there is A-1. I think the one thought in the A-1 that helps is that the Board does not approve those divisions of land. What use to happen was that it use to be that you had to have a special use permit to build a residence in A-1. And what they found out was happening was that the developer was going out and buying an acre of land in the A-1 and building his house. It is real hard after somebody owns the property to say no that you can't build on it. So the Board said well we want to look at it before the division is made and see why the person is dividing the land. We have had some A-1 when an elderly couple owned a farm and then wanted to downsize their house and they have allowed them to make that division so that they could build a smaller house. But, that has slowed it down a lot.

Mr. Edgerton: Is the designation by soil types or just the production of the land.

Ms. Stultz: A little bit of both, and saying that we know that someone some day might not be able to build at all. Rather than taking each individual farm you take an area.

Ms. Higgins: When did you divide the county up that way?

Ms. Stultz: In 1985.

Mr. Rieley: From the Board he presumed that she was talking about anything in excess of 1 lot for every 5 years for anything. There is essentially no by right residential development in the A-1 district. It is zero.

Ms. Stultz: There is no non-family.

Mr. Jones: It is the same thing as Madison. The board rules on every division of land in the county regardless of the zoning whether it is one lot or more.

Ms. Joseph: It sounds like you take your agricultural use very seriously.

Ms. Higgins: The smaller lots protect the larger farms. What is the total area involved?

Ms. Stultz: We have 7 towns incorporated in the county, but the county is still building schools for them. We are going to need 3 new schools within the next 5 years.

Mr. Jones: That is really the dichotomy that you have with state law. It does not matter to the towns because they see it as income because they don't provide the schools. A lot of them don't provide the infrastructure. And yet the counties are eat up by the school children and there is no way that you can stop them if they want to flood you with children, they are going to flood you with children. Orange is going through it. The Town of Culpeper is just getting ready to blow Culpeper County under water in the next couple of weeks because of that.

Ms. Higgins: How many towns do you have in Madison County?

Mr. Jones: We have got one and it is down to 200 people.

Ms. Joseph: What do we have, Scottsville?

Ms. Higgins: There seems to be a downswing in the chicken farms. There seems to be a lot of farms where the poultry operations are on market. Is there anything on the horizon about those regulations?

Ms. Stultz: I don't see it right now. But, I think that it might because of the (inaudible) the turkeys. (Inaudible) We are looking at some of the older poultry houses that they can't obviously use for poultry anymore of the different things that they do in those, such as storage. Several of those have been turned into horse barns.

Ms. Higgins: There are such large numbers of them and they dot the country side. Do you have any restrictions against manufactured and mobile homes?

Ms. Stultz: They can go in any of the agricultural districts and the RS-1 District. That is more like our little communities that aren't really a town, but they may have a store and a post office. We allow them there. Then in our recreational residential, which is a 2 ½ acre subdivision that would allow manufactured homes.

Ms. Joseph: I am amazed. They have really made the decision that there are residential areas and there are agricultural areas and they are not really mixing them up.

Ms. Higgins: We've talked about other counties before. Fluvanna has a conservation area. Do you have conservation areas?

Ms. Stultz: We have a conservation list. (inaudible)

Ms. McDowell: One reminder is that they are going to have another work session next Tuesday at 4:00 p.m. to go over some of the issues that they have pulled out at the joint PC/Board meeting. If they need any other documentation or materials, please call or email staff. Staff will provide the information as quickly as possible.

Mr. Rieley: Joan, do you know how many subdivisions we have in the rural area and the number of lots.

Mr. Graham: There are probably about 230 to 250.

Mr. Benish: It is probably about 800 total lots in the County per year on average.

Ms. McDowell: Staff will look up that information and share it with the Commission at the next meeting

**A second work session is scheduled for October 25 at 4:00 p.m. to discuss some of the other issues brought up at the joint PC/Board meeting, including phasing, clustering and public input issues. No formal action was taken.**

**The Planning Commission recessed at 5:30 p.m. and reconvened at 6:00 p.m. in Meeting Room 241.**

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, October 18, 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, Pete Craddock, Jo Higgins, Bill Edgerton, Chairman; and Marcia Joseph, Vice-Chair. Absent was Calvin Morris and David J. Neuman, FAIA, Architect for University of Virginia.

Other officials present were Wayne Cilimberg, Director of Planning; David Benish, Chief of Planning & Community Development; Stephen Waller, Senior Planner; Jack Kelsey, County Engineer; Francis MacCall, Senior Planner; Mark Graham, Director of Community Development; Bill Fritz, Chief of Current Development 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, the meeting proceeded to the review of the consent agenda.

***Review of Board of Supervisors Meeting*** – October 12, 2005.

The review of the Board of Supervisors Meeting was deferred to the end of the meeting.

***Consent Agenda:***

a. **SDP 2005-087 Airport Industrial Center, Lot 5 Preliminary Site Plan** – Critical Slopes Waiver Request. (Tax Map 32, Parcel 17E4) (Steve Tugwell)

b. **Approval of Planning Commission Minutes** – August 30, 2005.

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

**Motion**: Mr. Thomas moved, Ms. Higgins seconded, that the consent agenda be approved.

The motion that the consent agenda be approved passed by a vote of 6:0. (Commissioner Morris was absent.)

***Regular Items***:

**SDP 2005-088 Roundtop Farm Minor Amendment** - Request for approval of a minor amendment to allow a 4.6-foot increase in the height of an approved metal treetop monopole serving an existing Tier II personal wireless service facility. This would result in a monopole height that would be approximately 8.47 feet taller (ASL) than a nearby reference tree that was incorrectly surveyed at a lower height in the original application. The request is being processed in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property, described as Tax Map 102 - Parcel 17, contains approximately 109.29 acres zoned Rural Areas and Entrance Corridor. This site is located in the Scottsville Magisterial District off of Scottsville Road [State Route 20] approximately ¼-mile north of the intersection with Red Hill Road [State Route 708]. The Comprehensive Plan designation for this property is Rural Areas 4. (Stephen Waller)

Mr. Waller summarized the staff report.

- This is a request for an item that the Commission reviewed recently for a Tier II Wireless Service Facility that was approved with a monopole that was to extend approximately 4.75 feet above the tallest tree within 25 feet. The applicant built this facility and after they built it they noticed the facility did not extend above the trees as they expected. That was based on an earlier tree

survey that was done for the original request. In response in finding out that the antenna and the top of the monopole did not extend to the point that they had anticipated the applicant hired a team of tree climbers who were able to take more accurate measurements. They found that the monopole as it exists now was only at tree height. Therefore, they are now requesting permission to do a 4.6 foot extension onto that metal monopole. If approved, that would allow the monopole to extend 7 feet above the tallest tree as opposed to the original approved 4.75 feet.

- During a field visit, staff was able to take some photographs of a balloon test on the site and found that there was no material difference in the anticipated adverse impacts from what the Commission had seen before with the earlier balloon test.
- Therefore, staff recommends approval of the 4.6 foot extension as shown in red on the revised site plan.

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

Ms. Joseph asked if staff has heard from any of the adjacent property owners.

Mr. Waller stated that he had not. He pointed out that with the first proposal one of the owners who had contacted staff was present at the site visit and the balloon test. At this time the applicant notified them a while before the balloon test was even carried out. Staff also notified the adjacent property owners that this request was coming back before the Planning Commission. Staff has not heard from any of the adjacent property owners or received any correspondence.

Mr. Edgerton opened the public hearing and asked the applicant to address the Commission.

Carl Taskus, representative for Nextel Partners, stated that basically the original tree survey that they were given was wrong. Once they constructed the monopole it sat below the tree level. Basically, they were just asking to get above the trees so that the 7 foot allowable limit by the ordinance could be obtained.

Mr. Edgerton invited comment from other members of the public. There being none, he closed the public hearing to bring the matter back to the Commission for consideration.

**Motion**: Mr. Rieley moved, Ms. Higgins seconded, that SDP-2005-088, Roundtop Farm Minor Amendment, be approved to allow the monopole to be increased 4.6 feet above the previously approved height.

The motion passed by a vote of 6:0. (Commissioner Morris was absent.)

Mr. Edgerton stated that SDP-2005-088, Roundtop Farm Minor Amendment, was approved.

**SUB 2003-262 The Rocks (Resubdivision) Final Plat** – Request for approval of the extension of Newcomb Mountain Lane as a private road and the modification of the private street design standards. (Tax Map 74, Parcels 18C, 18C1, 18C2, 18C3, 72, 73 and 74 and traverse a portion of Parcel 18, preservation tract) (Jack Kelsey)

Mr. Kelsey summarized the staff report. (See Attached staff report.)

- The staff report summarizes the design modifications and discusses each in detail and then provides his recommendation on each item.
- He asked the Commission to review these modifications, consider the recommendations and establish design criteria for this private road in accordance with condition 16.

Ms. Joseph asked what the yellow and blue colors indicated on the map.

Mr. Kelsey stated that the most critical section of this entire road is before and after that sharp switch back that you can see on the plan view of the roadway. There is a section approaching from left to right where the road grade is 18 percent. That is one of the places where the applicant wanted to exceed the mountain terrain standards for the roadway. In the colored section he tried to show if you tried to put a road grade of 16 percent all the way up through there. They do provide a 6 percent grade through the

switchback, which he has kept in there. In yellow is the area of cut based on their road plan. In blue is the area that shows the additional cut that would be required in that area in order to achieve a 16 percent maximum grade. It is a little over 9 to 9 ½ feet of additional cut through that area.

Ms. Higgins asked if the applicant has reviewed all of staff's recommendations and if they were in agreement or if there were particular ones that the Commission should concentrate on.

Mr. Kelsey stated that they have looked at the recommendations, but he was not sure where they may agree or disagree. He felt that they want to have an opportunity to make their own statement regarding staff's comments.

Mr. Edgerton stated that he was having a little bit of trouble because the plat that they reviewed last spring shows a much different configuration for the alignment of the road. That configuration was used to determine the configuration of the lots. We're looking at a set of engineering drawings, which was cut into four different sections, and he was having trouble understanding how these were consistent. He noted that the switch back does not exist on what was approved last year.

Mr. Kelsey stated that was correct that what is shown on the plat does not exactly match the road alignment. He suggested that when they were doing their final design and they actually had more detailed grade information and started working that into the hillside they must have realized that changes along the access easement would be needed. He thought that once they get to the very top up near the revised lots 1, 2, 3 and 4 the alignment fits a little bit closer to what the original plat showed. But, the plat would definitely have to match the road plans.

Mr. Edgerton stated that unless he was mistaken the original 4 family subdivision lots they allowed for reconfiguration so that they could be accessed from this other road. He asked if his memory was correct on that.

Mr. Kelsey stated that was correct.

Mr. Edgerton stated that now they have got a whole different configuration, which was very different from what they saw last year because the engineering had not been determined.

Ms. Higgins stated that it was not that much different.

Mr. Kelsey stated that there was some variation along the easement that is shown on the plat, but as far as he knew the lots themselves have not changed. He suggested that they ask the applicant to verify that when they come up.

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

Tara Boyd, Council for The Rocks, who are making this proposal. Her client, Alex Toomey, who is a principal of The Rocks, is here tonight along with Mike Boggs, who is the neighboring property owner of the upper lots in Rosemont that are affected by this. She pointed out that Mr. Toomey and Mr. Boggs have been working together on this. She stated that because of the detailed nature of the road waiver request she put together a one-page summary to help us structure our discussion. Hopefully, that will keep things brief and fairly simple for this evening. She passed around the summary. She passed out a letter of support from the Rosemont Homeowner's Association Board, which goes to the road maintenance agreement that they were going to enter into with them as part of their CC&R. They were all fairly familiar with this having been over the proposed changes in the first go round, which was to get the revision to the special use permit that allowed the substantial permitted private road that would go through the Rocks preservation parcel to be abandoned in favor of this much shorter access. There was something in the whelm of 7,000 and some change feet of road that was being done away with by changing the road from the long road going through the Rocks to the short road running between Rosemont and this four family lots on top of the mountain. So they were here today to do the second half, which is to set the standards for that road that will run between the end of Rosemont Drive and the four family lots on top of the mountain there. As the Commission know, when the amendment to the

special use permit was approved, it was approved to get rid of the Rocks Road and then to allow this private road subject to the Commission setting some standards for it. Now engineering has reviewed the road based on the existing road standards and they have made some recommendations. They have done a good bit of study. But, again as Mr. Kelsey pointed out the Commission is free to set the road standard that works best. She knew when they have spoken in the past a huge concern has been visual and environmental degradation to the Rocks preservation parcel and to the upper Rosemont lots. Therefore, her client has designed the road to minimize those effects and thus the need for the waivers.

Ms. Boyd stated that just to address the Chair's question regarding differences in the special use permit plan and what they are looking at tonight with the detailed road waiver plans; those have not changed substantially except to fill in the engineering for the various parts of it. But, they have made every effort to make this as transparent as possible to make sure that they followed the same plan. Planning staff reviewed those preliminary road plans way back when they looked at the special use permit request and were able to make a recommendation for that approval of the private roads subject to setting the standards based on what they presented then. So they have made every effort to stick with that. But, again as they noted in the staff report the last time around for this special use permit, it does entail waivers. So what she had given the Commission was the summary of what ends up being nine waivers that they were looking for because number 10 has to do with the erosion and sediment control as Mr. Kelsey pointed out to them that they have sort of limited preview over that. The engineering staff will take care of that.

To respond to the question as to which ones they need to focus on Ms. Boyd pointed out that it would be numbers 2 through 6. Those were the items that staff had come back with some conditions that as they would like to show and as some of Mr. Kelsey's diagrams would show would entail a lot more environmental degradation in terms of earth moving and tree removal than they were comfortable doing and they feel is within the intent of the amendment to the special use permit and the plan for getting rid of a large unattractive road and replacing it with a smaller low impact road. Just to give a little more context, the road that would have gone through the Rocks preservation tract was permitted as basically a driveway to serve those four family lots up on the mountain. They have agreed to let that go in favor of the smaller road. Also, on the Rosemont side she understands from Mike Boggs, who owns the lots over there, that there is also a permitted private road from that side that can be built to serve the Rosemont lots. So the alternative to doing this road, although they would rather not think about it because they feel this is the responsible way to go, is to have two separate driveways with one serving the Rocks and one serving Rosemont, which for the small area of road that they are talking about seems like a waste in truth. So they are hoping that the Commission would see clear to setting a standard for this that would allow it to go forward. She addressed the waiver requests as follows:

- The first waiver they are seeking is a reduction in the speed limit in the entire road segment. There is staff support for that to reduce the speed from 25 to 15 miles per hour for safety. She did not think that was controversial.
- The second waiver they are seeking is the ability to increase the cut and fill slopes on the sides of the road. That is because in this area there is extension natural rock that is underneath there. Based on soil's test, particularly in the area of the 'switchback', which they will talk about, there will be stable rock that our engineering people feel would be safer to leave in place at a 1.5 to 1 slope than to blast it loose in order to flatten the slope and risk making the cut less stable. There were sections on I-64 that run through Ragged Mountains that have slopes of 1.5 to 1 in stable rock. There are also sections along the Blue Ridge Parkway where there are rock up along the side of the road that are stable. So they are trying to seek a balance between safety and not having to clear. Because the alternative to having a steeper side in stable rock is to blast and clear it back, which of course means that more trees would be lost. Mike Boggs provided a diagram with the Commissioner's materials that showed the geometry there of how much tree length would be lost in every degree that they would have to make the side slope less steep. So that is the second waiver request is to change the slope on the sides of the cuts and fills along the road.
- The third waiver is to decrease the horizontal radius. That actually occurs on two spots right where you come from Rosemont Road on to this road it deeps down and there is an "S" curve there. Those just go slightly below the 95 foot required radius to 90 feet each. That is to stay within the permitted easement that is already there, which will minimize disturbance to the

neighbors and to preserve some screening trees that they have planted there. Therefore, they have asked that they keep that within that area. The smaller horizontal waiver is within the 'switchback', which avoids in the permitted driveway to serve those upper Rosemont lots. That road instead of doing the 'switchback' and going behind that knob, it would go around the knob, which is quite visible from Dick Woods Road and I-64 in the Ivy area. So by routing the road within the 'switchback' instead of going around the knob, they would end up saving the visual view from Dick Woods Road and I-64 in that area. Again, that would be in keeping with everything that they talked about in the special use permit process of preserving that view and limiting the grading. The radius that they are seeking within the 'switchback' would allow you to basically park at a standard cul-de-sac that you could turn a fire engine around in the middle of the radius there.

Ms. Boyd asked for additional time to be able to finish her presentation.

Mr. Edgerton agreed, but noted that it would have to be brief.

Ms. Boyd continued addressing the requested waivers:

- The fourth waiver they were seeking was an increase in the grade. Again, Mr. Kelsey has illustrated the degradation that would result if they were kept to the 16 percent required VDOT grade. They would like to take that to 18 percent in one section of the road again to keep from having excessive grading and fill.
- The fifth waiver request is to decrease the vertical curvature. There is a shag area, which is a shag curve in the road that goes beneath an existing communications line. In order to accommodate that they would rather not fill that all in, but rather keep that in place. Because of the driveway distances from there it is unlikely that there will be children playing in. Therefore, visibility should not be as much of a concern.
- The sixth waiver request is to reduce the pavement width, which she did not think was controversial. They would like to provide three pull offs and she noted the proportions on the summary. She felt that would give a little more room for folks who want to stage a car. There are going to be seven driveways along this section. Certainly in the country people let others use their driveway to stage a vehicle to pull off if they need to. So she would take that into consideration.
- The last four waiver requests are not controversial. They have to do with shoulder and ditch width and nonstandard guardrails, and then, of course, the erosion and sediment control plan.

Mr. Edgerton asked if there were any questions for Ms. Boyd. He asked if there were members of the public who would like to address the Commission on this matter. There being none, he closed the public hearing and brought the matter back before the Commission for discussion and a possible action.

Mr. Rieley stated that he would like to make a general statement and then ask a question of staff. He congratulated staff on what he felt was a very thoughtful and reasonable review of a very difficult request. This is a request for a substandard road to allow lots in a place where they do not want lots. So it is a very difficult position to be in. The trade off is one that they talk about all of the time, which is where is the tipping point between making it easy to develop in places where the County is trying to discourage development. It is in direct contradiction with our Comprehensive Plan and allowing a certain degree of flexibility in order to mitigate the impacts of a supportable or a standard road design. His fundamental question for Mr. Kamptner is even staff's recommendations are allowing a road design that is not supported by any standard that he knows of. He has not seen a source that suggests that an 18 percent slope is acceptable in a place where there is ice and snow in the wintertime. He stated that even from a practical standpoint he asked his old friend Bill Roudabush, who has probably designed more roads in this County than anybody else, what he used as an absolute maximum for a driveway and 16 percent was his answer was the steepest you should ever go. That is not even taking into consideration the request for five lots. So they are really pushing the envelope in every way. If they allow this is the County complicit in an accident that occurs as a direct result of lowering these standards.

Mr. Kamptner stated that whatever standard the Commission ends up approving the County would not be liable for accidents that might result.

Ms. Higgins asked if it would complicate it if they intercede in what the applicant's design engineer has proposed.

Mr. Kamptner recommended that whatever standard that is established by the Commission the Board would entrust on you that the special use permit conditions be one that the design engineer can support.

Ms. Higgins stated that she was referring to the point that it is usually a package and sometimes when you change one thing it affects another thing.

Mr. Kamptner stated that his answer was broader. It should be a design that an engineer can support.

Ms. Joseph stated that the condition places it upon the Commission to approve these particular standards.

Mr. Edgerton suggested that the Commission go through each waiver request. If they do not approve a request for a waiver he believed that was going to force a redesign of this road. One of the things that the County Engineer was not comfortable with was the cut and fill and the stable rock. He suggested that the Commission should be telling the engineer what is acceptable and not how to design.

Mr. Edgerton asked if one of the conditions of this special use permit was to abandon this jeep trail and they find this an unacceptable access, then they would have to go back and amend the special use permit.

Ms. Higgins asked for someone to explain the other alternative the applicant referred to through the Rocks.

Mr. Rieley suggested that the Commission just look at the application before them and act on it and not get side tracked.

Ms. Joseph asked Mr. Kelsey to go through the requests.

Mr. Kelsey reviewed the waiver requests:

- The first waiver request was the design speed. The applicant requested a reduction to 15 miles per hour. Staff felt that it was acceptable and supported the reduction with signs posting the reduced speed.
- The vertical curvature waiver request was discussed. Since it is a very tight curve, staff suggested that the K value be kept and the waiver not granted particularly since it was already being based on an already lowered design speed.
- Minimum radius of horizontal curvature waiver request was discussed. It is based on the design speed. By allowing a reduction of the design speed that reduces the minimum radius. VDOT Rolling Terrain Standard requires a 120 foot turning radius. They do drop that down to 95 foot for mountainous terrain based on Aston you could drop that down to 50 feet if your are using a 15 miles per hour design speed with the super elevation. The first two "S" horizontal curves that Ms. Boyd referred to are at a 90 foot radius. Again, based on a 15 mile per hour design speed those curves are fine. So staff did not make any comment about making a modification for those. Staff did have concern about the 'switchback' because it drops down to a 35 foot radius with some pavement widening. If you look at the Aston turning templates for a truck vehicle, certainly a truck could make that maneuver. Our concern there is that those are usually based on a vehicle that is moving very slowly through a parking lot or something of that nature. It is not a vehicle that is coming down a 16 percent grade traveling hopefully at 15 miles per hour and then trying to negotiate at that very sharp curve. That is where they felt more comfortable to at least trying to adhere to an Ashton standard using a 2 percent super elevation and a 45. That is using the lower design speed of 15 miles per hour and anything less than that they would be lowering the design speed even lower. In a discussion with Mr. Barbour of Fire and Rescue he said that with a 6 percent grade that they are providing certainly a fire truck can make that corner and maneuver through the curve. But, again staff has some concerns for the vehicle coming back down the hill

and trying to come around that corner. Staff's recommendation is for a minimum of 45. Some additional cut is going to be required in that area. Staff struggled with public safety against the visibility issue and gave as much modification as they were comfortable with.

- Maximum cut for fill slopes – The applicant wanted to use 1.5 to 1 slopes and rock cut. Staff contacted VDOT in Culpeper to find out what they use in some of their roadways and do they allow a 1.5 to 1 foot cut in a road. VDOT's response was that they do allow slopes steeper than 1.5 to 1 in soil and in rock, but in every case they always have a geotechnical certify the slopes. Therefore, staff's recommendation included geotechnical certification of structural stability of the material. They do allow rock cuts 1 to 1. In a few cases they do allow a 1.5 to 1 in rock cuts, but their big concern is that in the long term that a rock slope that is cut that steeply there is more chance of that weathering and sliding and chunks of rock falling off. So normally if they use that steep of a slope they require more of a space between the edge of the pavement and that rock face so if material does fall off it is not going to land on the vehicles. The applicant is using a 2 foot shoulder in those areas proposed for 1.5 to 1 foot and staff does not feel that is a good mix. Staff could go with a 2 foot shoulder with a 1 to 1 slope if they wanted to use a 1.5 to 1 they would have to figure out what a safe distance would be to provide a safe zone. With the height of the rock slope it might not be much of a benefit when they took a look at it.

Ms. Higgins asked if he was saying that a 2 foot shoulder up to 1 to 1 with geotechnical certification, and Mr. Kelsey stated that was correct.

Mr. Kelsey stated that their best position was rather than having an 18 percent climb go through the 'switchback' and then climb at 16 they would rather see that climb balanced to a 17 percent up to the 'switchback' and leave the 6 percent through the 'switchback', which was supported by Fire/Rescue and then continue to climb up at 17 percent. Again, it may have some impact on the cuts and how far they have to go to tie the fill slopes back in, but they felt that was a good balance between safety, environmental and visual impacts.

- Pavement width – A standard VDOT road serving 7 lots requires an 18 foot wide pavement. The applicant is proposing 14 feet. It is important that a road has to be both safe and convenient. That is why for 3 to 5 lots they allow it to be 14 foot wide. Once you break into those 6 lots on a narrow road you do start having more frequency of confrontations of opposing vehicles and someone has to move off to one side. So again how convenient is that roadway. Staff feels that with 7 lots 14 foot could be acceptable provided that there are formalized places for vehicles to pull off. It is not very convenient, but still allows a reasonable level of accessibility. Staff can work with the applicant on places the pull offs in the proper locations once the location of the entrances have been identified.

Mr. Rieley stated that they don't want people to have to back up for a long distance. They already have very steep roads with very sharp turns and they have a lot at stake because the side slopes are very steep.

Mr. Kelsey pointed out that there were some locations along this road that the slopes are very favorable.

Mr. Rieley stated that if they were adding enough pavements for a car to get off on every couple of feet give and take on the exact configurations, why not make the whole road 16 feet and have a road that two passenger cars can safely pass on anywhere and not have people having to back up. He asked if that was an alternative.

Mr. Kelsey stated that was an alternative.

Mr. Rieley asked that they make the road 16 or 18 feet except in those variable area and make the pull off condition only where they have to have it instead of making the whole road smaller. The idea is not to make the road as cheap as possible, but to make the road the best balance between environmental degradation and function. It seems that in places where they should make the road the standard road width there was no reason not to require that. He questioned allowing the road to be reduced from the required 18 feet. He suggested allowing staff to work it out with the applicant in those areas that need less than 18 feet.

Mr. Kelsey stated that anything over 5 lots requires an 18 foot private road width. It really is not until you get past that 'switchback' that you would drop down to 5 lots being served by the roadway. For 3 to 5 lots 14 feet is the standard with 4 foot shoulders on each side. Therefore the shoulders could be utilized if two cars pass.

Mr. Rieley felt that the cumulative effect of this was going to be unsafe and inconvenient. With this one provision, he felt that staff has done an excellent job of balancing those concerns.

Mr. Kelsey stated that the next item is pavement type. Staff fully supports using asphalt pavement under these conditions. There is also the use of an additional traction surface on the steep areas which roughens up the pavement according to Fire and Rescue. Staff fully supports the use of that as well on anything over 10 percent grades. Regarding the shoulder widths, staff supported the modifications on the width of the shoulder, but with some clarification that they would like to have 4 foot shoulders used where ever possible. They need 2 foot particularly in the cut areas in order to minimize some of the degradation. They did not have any problems with using that. In the locations where they use guardrails they wanted to have assurances that they would have at least 4 feet between the edge of the pavement and the face of the guardrails. They did not want to measure to the post because the face tends to stick out. Regarding ditches and drainage, the standard VDOT cross section you have 4 feet from the edge of the shoulder to the center line of the ditch. They have asked to be able to use 2 feet. They would certainly have relief ditches or culverts whenever drainage exceeds 1 cubic feet per second. They are trying to provide multiple discharge points so you don't have concentrated runoff released in one location that would cause potential problems downstream.

Mr. Rieley asked if they are requesting cut slope in lieu of ditches.

Mr. Kelsey stated no, they would still have the ditch section, but rather than being 4 feet to the center it would be 2 feet and the ditch would actually be shallower. The hydraulic calculations for the ditches would have to be provided to make sure the capacities of the ditches was not being exceeded. Guard post and guardrails – There are varieties of guardrails available. Staff is open to different options. Staff wants to ensure that the public is safe and whatever type of guardrail goes in there that it meets acceptable standards. Staff wants to make sure whatever goes in there is going to retain the vehicles. Erosion and Sediment Control – There are many tools that the handbook gives designers and reviewers to make sure that erosion is being properly controlled. There are provisions of state law that modifications and waivers can be given by the program authority and they look at those on a case by case basis. Again, the bottom line is the down stream areas going to be protected. He stated that they would look at the size of the trap and the drainage area that is coming into them and what could be done to try to minimize some of those trap sizes whenever they can. The Fire and Rescue Division did have some specific comments regarding vertical and horizontal clearances for the vehicles. They generally want a clear box 14 foot wide and 14 ½ feet high that is going to be clear of any tree limbs, which was essentially going to be the width of this particular roadway. Then it would be 13 ½ feet up because they don't want their vehicles having to stop, get out, pull out a chain saw and cut off a limb so that they could get through while a house was burning.

Ms. Higgins asked if that could be met in the entrance to the last driveway.

Mr. Kelsey stated that as far as the turn around, yes, the driveway could be provided if they put in a T turn around or a Y turnaround, then the driveway can serve as one of the legs of the turnaround. The Fire Department needs to make sure that the grades are going to facilitate their movements, and they would have to look at them to make sure that they are okay.

Mr. Craddock stated that if the road was widened to 16 feet, then wouldn't that clearing be 16 feet.

Ms. Higgins stated that it would affect the clearing all the way up.

Mr. Kelsey stated no, that the roadway itself would be clear. But, they would still have to have an envelope at least 14 feet wide and at least 13 ½ feet high for the trucks to pass through along the road alignment.

Ms. Higgins stated that the biggest change if you went with the 2 foot wider pavement would be more tree clearing the whole way up.

Ms. Higgins asked to make a motion for SUB-2003-292 and would like to summarize what staff said.

Mr. Rieley asked if they could say with staff's recommendation with the addition of the 16 foot width since that was the only item that there was any conversation about.

Ms. Higgins suggested that her motion include the items that they could vote on and then they could vote on it or not.

Mr. Rieley stated that when the motion was made that the Commission also needed to establish the road standard from which these waivers are being granted. He believed that it was a request from VDOT's Mountainous Terrain Standard because this is a private street serving 6 or more lots.

Mr. Rieley stated that they don't have an application before the Commission to do what staff has recommended. They have an application before the Commission to do less than what staff has recommended. He asked if the Commission could on our own approve something that the applicant has not asked for. He asked if that would require a different application.

Mr. Kamptner stated that the request was in front of them because of special use permit condition #16, which required the Commission to establish the applicable road standards.

Mr. Rieley stated that they could just establish what they are.

Ms. Higgins made a motion that SUB-2003-292, in which the applicant has requested a variety of waivers to the private road Mountainous Terrain Standards and then they have staff's recommendations on the particulars on each of those waivers. The Commission is only addressing the waivers to the standards.

Ms. Joseph stated that way they were establishing the standards for the private road.

Mr. Kamptner stated that it was a request from VDOT's Mountainous Terrain Standard.

Mr. Edgerton noted that staff has been very clear that the only issue is the 16 foot width.

Ms. Higgins stated that staff did not make that recommendation. Therefore, she did not see it as an issue if the items that were before us were adequate to cover all of the concerns that staff had. She stated that the conversation was as follows:

1. Reduce Speed: The reduced speed standard of 15 mph with a condition that it have a posted sign;
2. Increase Cut/Fill Slope: The increased cut/fill slope would only be allowed to the 1 to 1, and in each case a geo-tech certification is required;
3. Decrease Horizontal Radius: Reduce minimum radius of curve in road below 95'. The 90' included in this is allowable and down to the 45' with the appropriate signage as staff recommended with the 2% super elevation and pavement widening.
4. Increase in Grade: Maximum of 17%.

Mr. Rieley stated that she was just picking out the highlights and was very likely to miss some very important information that was in the staff report. He felt that they need something that is complete before the Commission that reflects what they have talked about tonight so they could vote on it positively and not just make it as they go along. He asked that she go ahead and finish.

Ms. Higgins felt that staff gave them a thorough staff report, and that it was an admiral job. Therefore, she was going through the statement based on their conversation in establishing the maximums that the applicants were asking for waivers on. They are in agreement with the staff report. But, there were a few items that were additional, which was what she was going to include in the motion. She pointed out that the 6 percent grade is not a waiver area and they are only addressing waivers.

Ms. Joseph noted that she had brought up other things that were included in the staff report.

Ms. Higgins asked if they wanted staff to bring it back in a summary form.

Mr. Edgerton stated that he would like staff to clarify because there have been some adjustments in the conversation. He noted that if she thought that could be done now, then that would be fine.

Mr. Rieley stated that clearly he and Ms. Higgins have a different view of the width of the road. He felt that others should weigh in on that so Mr. Kelsey would have a clearer idea of where they stand.

Mr. Kelsey asked for weigh in particularly on the road width, which seemed to be one area where different ideas were being discussed as far as you either use 14 feet with pull offs using the 16 feet the entire length of the road or using 18 feet where it was obtainable and then allowing a reduction to 14 or 16 feet where it is needed.

Mr. Rieley suggested using 16 feet as much as you can.

Mr. Kelsey stated that certainly in reviewing the plan for compliance with the standards the16 foot the entire length takes out a lot of the guess work. If it is where applicable, then it was the matter of determining where it is appropriate to use a wider road versus a narrower road along the length.

Mr. Rieley asked to make it clear that he trusts Mr. Kelsey's judgment on how to apply that. He felt that it should not come back to the Commission again.

Ms. Higgins stated that she did too. That is why when it said reduce the pavement width with adding pull offs that Mr. Kelsey has looked very carefully at the pull offs and decided where they should be, how wide they should be and how long they should be. Therefore, she assumed it has been analyzed.

Mr. Kelsey stated that along the road alignment much of that road really follows right along the very top of a ridge line. Certainly a pavement width of 14 or 16 feet fits pretty well. Once you get back towards the latter sections of the road, the road actually runs through a really nice saddle between the ridges. It is very broad. In those places if you need to you could make a road wide up to 18 feet. His gut reaction is that if it was widened to 18 feet, is that thing going to encourage travel speeds greater than the design speed.

Mr. Rieley stated not with the horizontal curvature. There is no evidence to support that at all.

Mr. Thomas agreed with Mr. Rieley's suggested width of the road of 16 feet.

Mr. Edgerton agreed with a 16 foot road all of the way.

Mr. Craddock stated that it would be good if they could to put in a pull over with the 16 feet just to have it for safety, particularly when the fire trucks are coming back down the hill. It is a lot harder to stop a fire truck coming down the hill than going up the hill at 5 miles per hour when a car is coming up.

Ms. Higgins asked if she could ask the applicant a question, and Mr. Edgerton replied that she could.

Ms. Higgins stated that based on the conversation of summarizing these and the items that they have discussed can the applicant tell the Commission whether they agree or disagree to the various items.

Ms. Boyd stated that they were not entirely clear on what the consensus of the Board is. Originally, they had asked staff to do this in a work session item since it was not a public hearing and it is fairly technical. It did not end up working out that way. But, they would still be very open with meeting with the Commission in an informal work session to go through these because it is a lot more engineering information that they did not have time to present. They would love to let the Commission know. Certainly if they were going to minimize the environmental impacts of this road they feel like for full disclosure purposes it would be useful to do that. Therefore, they would like to do that.

Mr. Rieley asked where they stood on the timing.

Mr. Kamptner stated that the applicant was willing to allow time to conduct the work session.

Ms. Higgins stated that the applicant could work with staff on the technical issues.

Mr. Rieley stated that they have heard the issues and he would be perfectly happy to relegate this back to staff with the conversation that they have had and let staff bring it back to them.

Mr. Edgerton asked if that was a motion, and Mr. Rieley stated that it was.

Mr. Craddock seconded the motion.

Mr. Thomas asked if the applicant had said that they would defer.

Mr. Edgerton stated that the applicant could work it out with staff.

Ms. Higgins noted that it was not a public hearing.

Mr. Kamptner stated that the applicant has a final plat in the pipe line.

Ms. Joseph suggested that the Commission asked the applicant if they would like to defer this item to a work session indefinitely.

Mr. Rieley stated that he was not in favor of bringing this back to a work session. This has been through all of the processes that it should be. If the applicant wants to defer in order to wait to work out these things along the lines that they have talked about with staff that is one thing.

Ms. Higgins stated that they might not need a deferral if the time has not run out.

Ms. Joseph stated that they don't know that and felt that the Commission needs to ask the applicant if they would like to request an indefinite deferral to another public hearing.

Mr. Thomas asked Ms. Boyd to come back up and let the Commission know if she wanted to request a deferral.

Ms. Boyd stated that they were not requesting an indefinite deferral. They would be willing to come back in an informal work session and go through the engineering details because there was more here than they could present in 3 minutes. But, if their alternative is an indefinite deferral, then they will take the Commission's decision.

Mr. Edgerton asked if they would be willing to work with staff to resolve the differences between what is being requested and what was being recommended.

Ms. Boyd stated that they would be delighted to.

Mr. Edgerton asked if they would be willing to defer action on the request if the action by Mr. Rieley was to delegate this responsibility to staff.

Ms. Higgins suggested that it be relegated to staff and then a summary be put on their consent agenda so that they have actually acted on it. She thought that the Planning Commission has to act on it.

Mr. Rieley and Ms. Joseph disagreed.

Ms. Joseph stated that this was a very sensitive topic and deserved more review than as a consent agenda item. She requested that the request come back before the Commission.

Mr. Rieley stated that it was still confusing because they have an application before the Commission that

none of them was in favor of.

Mr. Thomas questioned how this item was back before the Commission tonight as a public hearing.

Mr. Edgerton stated that it came back as a requirement of the special use permit that has been granted with the Board's requirement.

Mr. Rieley made the motion to return this request to staff since the applicant has said that they would be happy to work with staff. The Commission has given clear direction to staff on all of these issues, with one dissenting member on the road width issue, but everybody else was in agreement on that. Therefore, staff has clear direction and the Commission hopes when it comes back that it comes back with all of the items addressed according to tonight's discussion.

Mr. Craddock seconded the motion.

Ms. Higgins asked if it need to have a specific date to defer to.

Mr. Kelsey stated that they would have to look at the submittal schedule for the next meeting. He pointed out that the after the information was worked out that there was a deadline to get it to the Commission.

Mr. Rieley asked that staff scheduled it back to the Commission as soon as they can because it depends upon the applicant's schedule and staff's schedule. He stated that his motion was that the expectation was clear.

Ms. Joseph feared that if there was a preliminary or final plat in for review and if they don't act on it what does that do.

Mr. Kamptner stated that they have the ability to go to court to compel action on the plat.

Ms. Higgins pointed out that the applicant was asking for a deferral, but not an indefinite deferral.

Mr. Edgerton pointed out that Mr. Cilimberg was not here to provide a date specific.

Mr. Rieley stated that he understood the implications that if the applicant would like to take this to court to force us to do what they were perfectly willing to do anyway. If the Commission acted on it tonight it was not an item that anyone could support. He felt that was pretty clear. Therefore, he felt that they should send it back to staff and let the applicant work with them. He felt that their expectations were very clear that it could come back as soon as possible.

The motion carried by a vote of 6:0. (Commissioner Morris was absent.)

**In summary, the Planning Commission took the following action as stated in the action memo.**

**Motion**: Mr. Rieley moved, Mr. Craddock seconded, that SUB-2003-262, The Rocks (Resubdivision) Final Plan, be deferred and the request be relegated back to staff to work with the applicant on the list of items in the "Summary of Road Waiver Request for SUB-2003-292 Newcomb Mountain Lane." The applicant agreed to work with staff to address the list of outstanding issues so that the request can be rescheduled as soon as possible. The Commission has given clear direction to staff on all of these issues. There is one dissenting member on the road width issue, but everyone else was in agreement on that. Therefore, staff has clear direction and the Commission hopes that when the request comes back that all of the items will be addressed according to tonight's discussion.

The motion passed by a vote of 6:0. (Commissioner Morris was absent.)

Mr. Edgerton stated that SUB-2003-262, The Rocks (Resubdivision) Final Plan, was deferred so that staff can work with the applicant on the outstanding issues before bringing it back the Commission.

**SUB 2005-259 Old Trail – Creekside II** - Request for preliminary plat approval to create 96 lots on 76.54

acres. The properties are zoned R-1, Residential. The properties, described as Tax Map 55 Parcels 74, 74A, 74B, 74C, 75 & 78 are located in the White Hall Magisterial District on Jarman's Gap Road [Route # 691] approximately 1.0 miles from the intersection of Jarman's Gap Road and Crozet Avenue [Route 240]. The Crozet Master Plan of the Comprehensive Plan designates these properties as District CT3 Urban Edge, CT4 Urban General, and CT5 Urban Center. (Francis MacCall)

Mr. MacCall summarized the staff report.

- The application before the Commission tonight is for preliminary plat approval to create 96 lots on 76.54 acres using the applicable and clustering and bonus provisions provided in the Zoning Ordinance. This application is located on Jarman's Gap Road across from the Wayland's Grant Subdivision and the Gray Rocks Subdivision. It is also has internal access through the Old Trail Drive and the current development that is going along the Old Trail Development in Crozet.

There are two actions before the Commission being the open space appropriateness and the waiver for the disturbance of critical slopes. Both the Planning staff and the Site Review Committee have reviewed this application and are recommending approval of both the open space and the critical slopes waivers. There have been adjacent property owners that have requested that this come before the Planning Commission. That is part of the packet. Also, he handed out earlier a petition that had been signed by a number of residents in Crozet. One of those adjacent owners has also provided some additional information for you. The applicant also provides a summary of some of the items. Both the applicant and the adjacent property owners would be willing to discuss any of those issues with you on the items that they have provided the Commission. Again, staff has recommended approval of this application with the conditions provided.

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

Ms. Joseph stated that in the staff report it talks about a 30 percent bonus density that has to be approved by the Board of Supervisors. She asked if that was something that the Commission does not act as an advisory board for them and the Commission should not address it at this time. Or is it something that the Commission would act as advisory.

Mr. MacCall stated that what they were acting on is the appropriateness of the open space that the applicant has shown as per the ordinance. One way or the other staff would take that to the Board of Supervisors for them to act on. What would end up happening is if the Board decided not to take any of it and the Commission decides that it is not appropriate, then the applicant would have to redesign to some extent.

Ms. Joseph stated that she understood that, but she wanted to know about the 30 percent bonus density. This report says that it has to be approved by the Board of Supervisors. She asked if this committee acts as an advisory commission to them concerning that bonus density or is that something that they should not consider at this point. That is what she was trying to figure out.

Mr. Fritz stated that the ordinance was specific in that it says that it was something that was the responsibility of the Board of Supervisors and it does not as other sections of the ordinance talk about upon recommendation of the Planning Commission. But, that being said that he was sure if the Commission had a recommendation, staff would forward it to the Board when they take the bonus density to them. But, they were not required to provide a recommendation.

Mr. Edgerton felt that Ms. Joseph's question was very important because if the Commission does take staff's recommendation and recommends approval of this preliminary plat, then it would be handled administratively from that point on and the Board would not see it, except for that one condition.

Mr. Fritz stated that was correct.

Mr. Edgerton suggested that the Commission offer an opinion on that.

Ms. Higgins asked if he could identify on one of the exhibits of this plat the portion that has already been approved and what is really before the Commission this evening.

Mr. MacCall stated that it would be the lots in the general configuration of phase one. He pointed out that there had been a separate action, which was originally 37 lots. They have come in and adjusted that to some extent to basically fit in with the other phases so we have included this in this application as a new application for those lots.

Ms. Joseph stated that they are looking at phase one and three.

Mr. MacCall stated that they were looking at phases one, two and three due to the new application.

Mr. Rieley requested to ask a question that had been sent around in various emails, but he wanted to make sure that everybody hears the same answers. He passed on a question to staff about this connection and his understanding was that connection was utilized in VDOT's analysis of the traffic capacity of the road ways. Since that is on a parcel not controlled by the applicant the practicality of making that connection is not in his hands. He asked staff to comment on the degree to which this application hinges on that connection being made.

Mr. Fritz stated that it does not actually hinge on it at all. What VDOT is doing, which is customary to do that, if a potential connection is shown they will want a traffic count on that connection. In the event that it is ever put through so that the roads are properly designed to accommodate the traffic that would potentially go on it they will also require another analysis of what the traffic splits will be if the connection is not made and require the roads to be built to be adequate to accommodate that traffic. So they have to design it both ways.

Mr. Edgerton asked which roads were they talking and would it be the subdivision roads or would this impact Jarman's Gap Road? If they were feeding additional traffic on to Jarman's Gap Road, which they know needs upgrading anyhow, then it would affect the design of that road he would believe.

Mr. Fritz stated that for a by right subdivision how VDOT is going to factor that in he did not know on Jarman's Gap Road.

Mr. Rieley stated that as a clarification if this connection is never made it does not affect what is before us.

Mr. Fritz stated that was correct.

Ms. Joseph stated that she had another question. Normally we see this kind of thing if the parcel abuts another parcel that is kind of land locked. But, this particular piece that they are looking at she was wondering why it was not considered that this go out and hit Jarman's Gap through the property that is owned by the applicant.

Mr. MacCall stated that he believed that the distance between intersections would not work for VDOT's standards.

Ms. Joseph asked if VDOT had said no.

Mr. MacCall stated that the applicant's engineer might be able to elaborate on that a little bit more. But, he thought that they have had further discussions with VDOT and have tried to look at those different alternatives. They may be able to comment on that specifically. But, from his understanding he did not believe that the proper distances can be met.

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

Scott Collins, engineer for the Old Trail Creekside project, stated that before he got into his handout which he had provided to the Board at the beginning of the meeting to summarize some of the changes

that they made to the plat to accommodate some of the concerns that the adjacent property owners had. He wanted to speak a minute about that proposed connection along Jarman's Gap Road in the phase one section, which was being discussed earlier. Originally, when the phase one and a portion of phase two was in front of the Planning Commission back in November, 2004 up to that before it was approved, they had actually looked at providing a connection to Jarman's Gap at that location on their property. They received comments back from VDOT and from Albemarle County engineering staff that was an acceptable connection. With the Crozet Master Plan they wanted to see that connection or line with the Waylands Grant. That was the reasoning back in 2004 for the configuration as shown still now in front of the Commission in 2005 associated with the rest of this project. In addition to what was provided in front of them on the application, they wanted to go over 7 of the changes made recently to accommodate the adjoining property owner's request. The first one, which is bullet 1, is tree preservation area added south of lots 2 through 10 in phase 3. That area basically ties in the 2 stream buffer areas providing a good buffer between the adjacent property owners to the south of the project from the development area. They were proposing to preserve the tree areas in the areas between the 2 stream buffers. That is not an additional requirement of saving these trees for the bonus densities. This is a step above that the applicant would like to take to provide and ensure a good buffer between the adjacent property owners to the south. In addition, the second item on the list was to go ahead and provide a landscaped tree buffer along this western edge of the property 30 feet wide consisting mainly of Leyland Cyprus and in addition to some existing vegetation that is right in that buffer along that property line to buffer the development from the adjoining property owners to the west.

Mr. Rieley asked if it was the Miller parcel.

Mr. Collins stated that was correct.

Mr. Edgerton stated that it was the Millers and Monty Wood properties.

Mr. Collins stated that the third item is to provide a 15 foot landscape buffer with Leyland Cyprus along the northern property where our development abuts Mr. O'Mallory's property. Because that road is not going to be tied into Jarman's Gap at this time, they are in hopes to provide Mr. O'Mallory with enough privacy through his lot through their development as possible. The fourth item is to provide a 20 foot utility easement for future connection to water line to Mr. O'Mallory's property. The existing water line crosses the Old Trail Creekside project in this area and they want to provide additional 20 foot easements so that he would have a water connection to that water line. The fifth item is to provide a 20 foot utility easement for future connection of sanitary sewer from our proposed development up to Mr. O'Mallory's property so that he would have connection to sanitary sewer that they are providing through our property. The sixth item has to do with the sanitary sewer shift where they have taken what was originally proposed as sanitary sewer along the back of these lots and moved it up north as much as possible to preserve as much trees as possible, but to still have reasonable buildable for the homes of these lots that back up to the south of the property. That is highlighted as the proposed and original sanitary sewer lines. The last item is that they are reserving a large area on the property where they were originally proposing to have lots on a cul-de-sac road for a future storm water management pond as requested by VDOT for the ultimate design and expansion of Jarman's Gap Road. They have been told by VDOT that they decided that this area has a great potential for storm water management for the Jarman's Gap Road improvements and they are allowing that. They are going along with that concept in that plan to give them the area on their property for storm water management. That highlights the 7 bullet points. Basically, just to summarize they have made a considerable effort to contact and to address the adjacent property owner's concerns of the development. In addition, this is an addition to the development from what was originally approved as phase one and part of phase two. This plan in front of the Commission ties in the development of phase three as one complete project. If there are any questions, he would be happy to answer them. He asked to reserve some time at the end for rebuttal.

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

Mr. Craddock stated that this was showing a road through Jackie Shifflet's property. He asked if there was another connector there.

Mr. Collins stated yes, that is correct.

Mr. Craddock asked if they were in the same boat as the Minnerly's with a dotted road going through their property that may never have any intentions of being built.

Mr. Collins stated that again, that alignment and intersection are consistent with the Crozet Master Plan. VDOT is looking with the development of this property to allow for future possible connection if Mr. Shifflett's property to the north was ever developed.

Mr. Craddock asked if they requested extra landscaping because they were facing the same stub out as the Minnerly's.

Gaylands Beight stated that Jackie Shifflett wanted them to plant everything that they can so that he can develop his property. They are providing him with water, sewer and that access point. Also, we have the first right for refusal to buy it should Mr. Shifflett want to sale the property.

Mr. Edgerton asked for public comment by the persons signed up to speak. He asked that Paul Minnerly come forward and address the Commission.

Paul Minnerly stated that he owned property adjacent to the proposed Old Trail Creekside development. The developers submitted a preliminary plat, which originally indicated a future connection and right-of-way through our property apparently in order to satisfy the requirements of the County and VDOT. Although he was not clear on what entity is requiring this. He passed out some information regarding part of phase one that was approved back some time last year and submitted on the 13th of September. As you can see, it does not indicate a road planning to pass through his property at that time. The later submittal with this phase two and three does show a road passing through. On that basis, he was objecting to the phase one original approval because it was a significant enough change in his opinion, and hopefully with the Commission, that it should require that it be reviewed with the other two phases. In addition, he was concerned as some of the Commissioners mentioned as well, that VDOT may not approve the number of vehicle trips per day calculated under fewer connections than may have been planned for. He understood that the dashed lines have now been removed from his property, and asked if that was everybody's understanding. He was grateful for that, but he still had some concerns about that stub out that is still being shown on Mountain Path Drive, which would still line up with the intersection of Jarman's Gap Road and still extends to the property line in anticipation of future development. He fears that removing the dashed line has no real effect if they still require Mountain Path Drive to extend this way. He would like to request a waiver of this future connection so that Mountain Path Drive could curb gently into Mountain Path Court without hinting at a possible future connection to Jarman's Gap Road, and in addition that no right-of-way be shown extending to our property line. It seems that at present there is no need for a connection and so requiring a dead end or a stubbed out road at this point really does not do anything but limit our freedom as property owners. Apparently, the developer does not mind making the modification as long as the County approves of this. They seem to be willing to redraw that section of the plat so that it complies with any other requirements as well. He did not believe that this change would be detrimental to the public health, safety or welfare nor would it alter the orderly development of the area where sound engineering practices. Although he understands the notion of interconnectivity, he did not believe that a rigid interpretation of the Crozet Master Plan should be imposed regardless of its impact on property owners. So what he was asking the Commission to review is having the beginning of the road sitting on the edge of his property broadcasting to everyone the notion that this road must go through if anything is done to my property. The reason that he does not want the stub out the way that it appears is that it will necessarily require me or future owners of my property to complete the connection as a condition to any future attempt at rezoning of my property. Although he does not have plans to do so right now he did not want the mere presence of a piece of road to restrict any future plans for the property. If he was to request a rezoning to put a small business or something of that nature, he would have to factor in the cost of paving out the rest of the road in doing so. Any attempt at doing something with my property becomes prohibitively expensive for me simply because of that stub out and right-of-way.

Mr. Edgerton stated that his time limit was up and that he needed to finish up.

Mr. Minnerly asked to finish the last two paragraphs and that he be allowed to take his wife's time

allowance.

Mr. Edgerton stated that he could go ahead and finish.

Mr. Minnerly stated that also the sale value of my property would go down because any protective purchaser of my property would see that the road would eventually need connection and would thus take the cost of paving into account. His concern was that his hands would be tied and his rights to do what he chose with the property would be limited because of the idea of connectivity and that the cost burden of a road connection would be shifted to me. Can there be minor adjustments made to enable the eventual growth to co-exist harmoniously with current residents?

Arin Sime thanked the Commission for allowing Mr. Minnerly to yield his wife's time to him because he felt that it was important that he gets a fair hearing with the developer here as well since it is his property also. He stated that he was a resident of Crozet and also the Chair of the Jefferson Area Libertarians and was not opposed to growth in the Crozet. In fact, he lived across the street from Paul Minnerly in the Waylands Grant Subdivision. He was also not opposed to the Old Trail Development or to the concepts of the Master Plan. Many of those were nice features when they can be accomplished. But, none of these ideals are important enough to threaten existing homeowners. Paul Minnerly and his family have lived on Jarman's Gap Road long before my neighborhood existed. He felt that Mr. Minnerly wants to be left alone to be able to live on his own property. Building a half finished road pointed across his property to Waylands Grant is clearly a threat no matter what the County states. In fact, when the planner, Francis MacCall said, "that if Mr. Minnerly wants to sell his property in the future that they would like to see an intersection there" that he contradicted his prior statement that the County is not seeking to take the land. Now the County might not be seeking to take the land now, but they were saying that they have stated that they want first dibs on the property should he ever chose to sell it in the future. Then that in effect would mean that Mr. Minnerly will only be able to sell to the County and so the County will be able to low ball him on the price. The more he has learned about imminent domain since the Kealow decision the more he has learned that is how it commonly works. Localities don't use imminent domain nearly as often as they threaten it and it is often threatened or assumed only for the sake of negotiating a lower price. He realized that no County official has actually used the phrase "imminent domain yet, but they don't need to because pointing a half finished road across Mr. Minnerly's property is threat enough and it is very clear of the intention. The situation is very simple. They have three main parties all who are all very firm in their beliefs. The developer does not want to spend money to connect to Jarman's Gap Road. The County wants a connector to Waylands Grant. The Minnerly's don't want a road in their yard. It should be very simple to decide this. Only one of those parties actually owns the land, the Minnerlys. It is time for the County and the developer to find another way to solve their dispute over interconnecting roads without putting an innocent family in the middle and pretending that is the Minnerlys problem to solve. He urged the Commission to deny the approval of this plot and tell the County and the developer to find a way to settle their disagreements without infringing on the rights of the existing property owners.

John Munchmeyer, resident of Crozet, stated that it may be that the problem originated with the selection of the location of the entrance to Waylands Grant. If that had been put at the edge of the property line they probably would not be in this situation right now. In any case it was just plain rude to aim a road straight through someone's property. What is particularly disturbing in this case is that it seems unnecessary and there was no particular reason behind it. As seen in Mr. Minnerly's sketch, there is an alternative plan. He commended Mr. Minnerly for taking the initiative to devise an alternative plan. But, he should not have had to do that. He also should not have had to hire a lawyer or spent countless hours fighting this. He would not have had to take these steps had people used some common sense in the understanding of the principles of which this nation was founded. The true purpose of government is to protect our rights. He urged the Planning Commission to do exactly that in this case. Also, the question arises how to keep this type of thing from occurring in the future. He suggested that they make sure that developers understand that through revising guidelines or other means that in plans submitted that people's property rights will be respected.

Debbie Stockton, resident of Ivy, stated that she just learned about this a week ago. She understood that the only traffic flow study that has been conducted shows more than three quarters of the anticipated traffic generated by this subdivision going out over connectors that are on property that does not belong to the developer. According to VDOT the anticipated traffic can be handled by the connectors that do

exist on property that is owned by Beights, but this data has not been generated. When she asked for it, he said that data was requested to be made available by the developers several weeks ago. But, the developers have not yet submitted it. She did not understand why the first plan drawn to show the traffic flow would be over someone else's property and not utilizing the property already owned by Mr. Beights. This speaks to intent. Unless the Planning Commission has data that shows that the traffic generated by this subdivision can be handled by the connectors already on the Beights property, she felt that it would be ill advised to approve it. If it turns out that in fact the traffic will not be able to be handled by the connectors owned by Mr. Beights, then there will almost be no choice that they will have to open up these other connectors. It is very clear where those connectors are going to go. She asked that the Planning Commission deny this plan and ask them to go back and provide proof that VDOT will also concur with that the connectors owned by Mr. Beights on that property are in fact sufficient to handle the anticipated traffic generated by that. When she talked to a County planner concerning imminent domain she was told that it was in the future and would only happen if Mr. Minnerly wants to develop his own property. Well if that is about Mr. Minnerly developing his property, why is it on the site plan for somebody else's subdivision? It should be irrelevant. If Mr. Beights had gone to Mr. Minnerly and he said no, that should have been the end of it. Everything should have been designed to be accommodated by what he owns and not by what the County can force to happen. She asked that the Commission consider that information and request it of the applicant.

Ali Thys-Troplett, resident of Crozet, stated that she lived down the street from Paul Minnerly and next to what would be the first neighborhood and entrance to Old Trail Village on the Jarman's Gap side of Crozet. They were fortunate to move here before the development began and are hopeful with reservation of what this community might become. Crozet is a truly unique place to live. Her concern was the developer has too much control in guiding this little piece of heaven to what they all hope will turn out to be more than a quality place to live. The things that would make a greater quality of life in these large developments would be the generosity of proffers to help Crozet in building infrastructure, donations of quality green space and creative alternatives to include wild life, which all come with a price tag. She asked that the County give the people who already live here a break by letting them know that their efforts were not wasted in creating an award winning Master Plan for Crozet. She asked that they let the developers reflect on what they might have done better and do better by slowing it down a bit. She asked that they show the people that they really care of about their quality of life. Will the citizens rely on your judgment to guide us to places that they could never have imagined ourselves to be.

Tom Loach, resident of Crozet, stated that he wanted to restate the position of the Community Association which is since the County has not met its obligation under the Master Plan to meet with the community and develop a long range funding program that the community will not support any rezonings other than the lowest minimums. And for this it would be that property without the density bonus. He would also tell the Commission that what they found out is that this property plus the other by right property that Beights is developing already was not in the rezoning of the 2,200 or the 2,000 homes that was approved by the Board of Supervisors. So when adding in that property, which Mr. Fritz gave him the numbers, you need to add in another 378 homes plus or minus. He suggested that everyone take a ride out to the Crozet Library and look at the Master Plan that the Crozet community agreed with, which shows not 2,600 or 2,400 homes for this property, but 1,200 homes about what they agreed upon. So, again, as Ms. Joseph brought up about the density bonus, the community cannot support it under the current situation that Jarman's Gap Road which was supposed to be improved in 2003 and they are now told 2009. That is where this property's traffic will dump out to. The County has not sit down with the community to discuss the very things that they have asked for all along, which were triggers to provide concurrent infrastructure to meet the rate of development.

Barbara Westbrook stated that her family has lived in Crozet since the 1930's. She noted that her main concern was that this might set a precedent for other possible connections between Old Trail and other roads. Specifically, she was concerned about one onto Route 240. There is a dotted line on several maps that would bring traffic out onto Route 240 at a very hazardous section, which is just south of the cemetery where there is a blind curve near where Lickinghole Creek goes under Route 240. Traffic is extremely fast on Route 240 and it is a very dangerous area to bring any roads out. She felt that two connections to Old Trail should be enough when you consider other subdivisions in the County.

Katherine Russell, Albemarle County resident, stated that she was concerned about the way the roads

and connectors have been designed to go through other properties without permission or without allowing for proper planning for the other areas first. She noted that the engineer had just stood and said that they were not planning on using that yet or at this point. Therefore, he admitted right in front of the Commission that it was a thought for the future. This is without having the easement, access or the permission from Mr. Minnerly. That is a big concern because there are a great number of County residents who are in the position where it might be more convenient for the subdivision behind them to run through their property rather than go around. She would encourage the Planning Commission to consider not only what the last person said in terms of how many outputs do you need for a subdivision, but who is being infringed upon and why this would be done initially rather than do the VDOT planning on the existing land and the existing ability to take it. The road and traffic planning should have been done on what they own before they started questioning going through the Shifflett's or the Minnerly's property whether or not they had permission. If they did not own it yet, then they should not have worked in that direction. She encouraged the Commission to make sure that this plan reflects the reality of what exists now and not something that might happen in the future.

Mr. Edgerton asked if the applicant would like to make a rebuttal statement, and Mr. Beights stated that he did not.

Ms. Higgins asked Mr. Beights to come forward to answer a question. She stated that one of the speakers, Mr. Minnerly, asked for a request of a waiver on the stub out, which was within their preview to give. She asked if that was something that would be supported by the developer.

Mr. Beights stated yes, that he would support it.

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

Mr. Thomas asked staff to explain the statement made by one of the speakers that the Master Plan stated 1,200 units, but currently was referred to as being 2,400 units right now.

Mr. Cilimberg stated that the issue did actually arise at the hearing on Old Trail and last week at Wickham Pond as to the development potential of Crozet under the Master Plan as compared to the various projects that are coming through for rezoning. Staff is going back and looking at that Master Plan for the potential of units based on the ranges that were outlined in the plan for various areas. Therefore, he could not answer the question of whether it is 1,200 versus 2,400. But, that is something that staff is looking at because it is important to establish what that plan did have as possibilities not only for residential development, but also for non-residential.

Mr. Edgerton asked for one more clarification from staff regarding the earlier schematic that showed Mountain Path Drive going onto Mr. Beights property that is now being proposed as lot 22 onto Jarman's Gap Road. That sketch was a more preliminary plan that the current one. He asked if that was correct.

Mr. MacCall asked if he was referring to what was referenced in the report as the previous approval.

Mr. Edgerton stated that was correct. He asked if that was part of the rezoning.

Mr. MacCall stated that it was not. The applicant made a submittal that did show a connection to Jarman's Gap Road and staff at that time asked them to line that up as well. VDOT at that time were concurrently asking for the same thing.

Mr. Edgerton stated that he had the impression that VDOT was not going to allow a connection.

Mr. MacCall stated not directly off to the right of Mr. Minnerly's property. He believed that the original application showed the connection just to the right, which was not at an adequate distance between the Waylands Grant intersection and the entrance by VDOT's standards.

Mr. Edgerton stated that it was the distance between the Waylands Grant and this other entrance.

Mr. MacCall stated that was correct on the first preliminary plan.

Mr. Edgerton stated that there were a lot of people very concerned about this who have been very clear about their concerns. Unless he was mistaken it ought to be clarified that the applicant was not proposing this, but that this was a requirement of the Neighborhood Model for interconnectivity and that they require applicants to show possible connections to their property lines on property that they control.

Mr. MacCall stated that was correct, but again that first connection they did show would not have been approved anyway.

Mr. Edgerton stated that was correct, but now they were back to this plan. The public's perspective is that somehow the applicant is trying to run over Mr. Minnerly's right. He did not think that was a fair representation at all and he wanted to be very clear about that. He felt that the only reason why this stub was shown at all is because the County has put this in the Comprehensive Plan and this is what they ask for. They are looking for possible interconnections in the future, and Mr. Beights is not trying to set the stage for the County to take over the property. That was suggested by several of the speakers. He wanted to be very clear about that. If that is the case, he felt that they were all mislead and he did not think that was the case.

Mr. Kamptner pointed out that it was also a requirement of the Subdivision Ordinance that streets within the subdivision are extended to the property line.

Ms. Higgins stated that this goes beyond the property line.

Mr. Kamptner stated that the explanation for that is that the dashed line showed up on the preliminary plats only as a means to show that the proposed extension within the subdivision would work.

Ms. Higgins suggested that this was a case in which the Commission should consider waiving the condition to actually keep that stub out and possibly in this case it could be handled with a reservation since the probability of it happening. She has been a component in the past of not building sections of a road that might never come into being. They have heard tonight that this is probably one of those instances. There is at least one and possibly another opportunity of cooperation basically to the west. In this case she did not know if there would be much difference except for the Minnerly's to be a little happier. But, with that stub out she did not think that there would be any loss of lots. The developer just said that he would concur with that if the Commission would consider a waiver request to not include this stub out on this subdivision plat. She felt that the Minnerly's will then be satisfied and the dashed lines would go away. If the road does become a future connection, then the reservation for right-of-way can exist. If that is a way to handle it and satisfy the concerns that are before them, then she would suggest that as a waiver.

Mr. Kamptner stated that the ordinance limits the authority to granting the waiver to the subdivision agent and not to the Planning Commission.

Ms. Joseph asked what the appeal process was if the subdivision agent make a decision.

Mr. Fritz stated that it was the extension and not the connection that the agent can waive. The Planning Commission needs to modify the waiver. As a practical matter your concept of reservation would be how it would have to be handled anyway because when the road plans came in VDOT would not take that because there would be no road there. What would happen is that it would be an area reserved for dedication in the future.

Mr. Rieley stated that it was drawn as a stub, which was showing that it was a pavement actually coming to a T and turning back.

Ms. Higgins stated that right now it was just shown as right-of-way on the road design.

Mr. Fritz stated that it does not go quite all the way to the property line because of the design at the intersection. That is how VDOT is going to want that intersection designed. Staff is not requiring the

extension of the road or the physical pavement all the way to the property line.

Mr. Rieley stated that Ms. Higgins' point was that it is shown as a stub out and the right-of-way, of course, continues to the property line, which it obviously has to. But, the question is if the geometry is required with that turn back in order to have these kinds of radiuses on that turn or could it be built with that turned in and only the right-of-way.

Mr. Fritz stated that his understanding was that the geometry shown is what would need to be done, but if it is possible to do lesser because he thought he heard everybody saying that we would go do it with the curb radius as opposed to the stub out with the right-of-way reserved.

Ms. Higgins stated that they would be willing to accommodate the right-of-way.

Mr. Fritz felt that would be fine, but he felt that it was designed right at the preliminary plan in not having gotten the road plans.

Ms. Higgins stated that her understanding from Mr. Graham's information was that they had the ability to waive the requirement and that the developer could adjust his final plan. It would mean possibly adjusting one of the lots, but that he could make it work and then just have a reservation. She suggested that be done to solve this particular problem.

Mark Graham stated that if they read 14-409c, it speaks to a Planning Commission waiver with regard to the coordination of the streets, which he felt was the issue at hand. But, he would caution the Commission that section does call for the Planning Commission to have certain findings before approving any waiver and to make sure that this fits those findings. When looking at it, he was not sure if it could meet the findings.

Mr. Kamptner stated that the coordination requirement for the waiver is that the request has to come in at the time of rezoning or with the submittal of the preliminary plat. This is not the submittal. They are past that. The applicant did not ask for it. So if they are looking at a way to deal with this issue to reconsider this particular alignment or this stub out at Mountain Path Drive they would have to ask staff.

Mr. Edgerton asked if they would ask staff to look at the allowable geometry of this.

Ms. Higgins stated that the issue was about whether there was going to be a stub out. They can achieve it whether they have to change the design or not.

Mr. Rieley stated that in fact the aggregate radius can simply be modified so that it does not have a T intersection and it has a very tight radius going into that cul-de-sac and everything else remains the same, that eliminates the grading that is adjacent to the Minnerly's property and the removal of the vegetation that is associated with that. He would be in favor of that. He was not in favor of changing the geometry of the alignment itself. He was not in favor of making any adjustment to the proposed right-of-way as it shown just to be clear.

Ms. Higgins stated that she suggested this only because of the concerns that have been raised. She noted that this would be like asking for something that the developer did not propose to do and then penalizing him because they asked him for it. The other idea here is that she understands that this particular part, phase one, that the plat for that has been approved already. They are really only looking at phases two and three.

Mr. Fritz stated that it was approved, but this is such a change that the Commission is looking at it brand new.

Ms. Higgins stated that it was her understanding that there was a phase one plat that has been approved, which could be recorded without this approval.

Mr. MacCall stated that it was only the preliminary approval and the ordinance has new regulations about the time limit for recordation.

Ms. Joseph stated that there were significant enough changes to it that came in after the preliminary that they are looking at it like it is brand new.

Mr. Rieley suggested that the Commission approve this plat and ask staff to look hard at this particular issue and make whatever reasonable adjustments that they can come to that will satisfy the new ordinance and VDOT. He asked that it be considered as a motion.

Mr. Kamptner asked if that was a motion for approval of the open space as proposed and the critical slopes waiver, and Mr. Rieley agreed.

Ms. Joseph asked if on the final plat they would not see this dashed line through Mr. Minnerly's property.

Mr. Kamptner stated yes, that you would not see it. There should be no further need for the dashed line to be shown on the Minnerly's property.

Mr. Fritz stated that was correct.

Mr. Edgerton noted that it had been taken off of some of the drawings that were delivered to the Commission this evening, but it was still on some of the materials.

Mr. Craddock pointed out that the developer had agreed to work with it also.

Ms. Higgins seconded the motion.

Ms. Joseph asked if that included the summary of changes.

Mr. Kamptner suggested that it include the conditions of approval.

Mr. Rieley amended the motion to include the summary of changes and the conditions of approval.

Ms. Higgins noted that the summary of changes were voluntary changes that the developer has proposed to mitigate some of the other issues. If they were going to talk about the 30 percent factor, she just wanted those to be considered. She seconded the motion with that addition.

Ms. Joseph asked that the motion be clarified.

**Motion**: Mr. Rieley moved, Ms. Higgins seconded, that the open space provisions and the critical slopes waivers in SUB-2005-259, Old Trail – Creekside II, be approved with the Commission asking staff to look hard at this particular issue and make whatever reasonable adjustments that they can come to that will satisfy the new ordinance and VDOT with the summary of changes and the following conditions. Also, the dashed line to Mr. Minnerly's property would be taken off of the plat.

1. Prior to final plat approval, the Board of Supervisors must approve the dedication of open space to public use and approve the density increase.
2. If there is any portion of the open space that is not accepted by the Board of Supervisors then the remaining portion(s) will have to be maintained by a homeowners association. Submittal of covenants or other such instrument which evidences the establishment of a homeowner's association and provides for ownership and maintenance of proposed open space. Such document shall be subject to County Attorney review and approval and shall be in accordance with Section 14-317 of the Subdivision Ordinance - Instrument evidencing maintenance of certain improvements.
3. Zoning and Current Development approval of the final plat that meets all applicable ordinances.
4. VDOT approval of final road plans and drainage computations.
5. Albemarle County Service Authority approval of final water and sewer plans.

The motion passed by a vote of 6:0. (Commissioner Morris was absent.)

Mr. Edgerton stated that the open space for SUB-2005-259 Old Trail Creekside II Preliminary Plat and the critical slopes waivers were approved.

***Public Hearing Items***:

**SP 2004-024 Northtown Center (Sign #8)** - Request for special use permit approval, in accordance with Section 24.2.2(13) for a drive-in window for a bank.

**AND**

**SDP 2004-045 Northtown Center** - Request for preliminary site plan approval to allow the construction of a 199,800 gross square foot retail development. The property is described as Tax Map 45, Parcels 110, 110A, 111, 111A and 111B. The subject parcel contains approximately 15.9 acres, zoned H-C (Highway Commercial) and EC (Entrance Corridor), and AIA (Airport Overlay). This site is located on the east side of Seminole Trail (US Route 29 N.) immediately opposite Lowes and Kegler's. A Special Use Permit is also under review for this project, SP 2004-24 (Drive-in for bank). This site is located in the Rio Magisterial District and is designated as Community Service in Neighborhood 2. (Bill Fritz)

Mr. Fritz summarized the staff report. (Attachment "A") The Planning Commission is being requested to take the following three actions:

1. Special Use Permit, SP-04-24: for a drive thru for a bank.
2. SDP-04-45 Northtown Center Preliminary Site Plan (The site plan has been appealed to the Planning Commission by an abutting owner. Therefore, the Planning Commission cannot approve it administratively.)
3. Modification of Section 4.2.3 to allow activity on critical slopes.

The highlights of the staff report include the following:

- The special use permit has been reviewed for compliance with the Neighborhood Model and Section 31.2.4.1. It was also reviewed by the Architectural Review Board, which cited no objection to the bank use. Typically, the ARB does not state support for projects, but instead will say that they have no objection, and therefore support the application. Based on the design, the evaluation of the Neighborhood Model, Section 31.2.4.1 and the ARB comments, staff is recommending approval of this special use permit.
- The site plan has been reviewed by the Site Review Committee and staff can approve the site plan subject to Planning Commission action on the critical slopes request.

The plan reviewed by the ARB has been colored to show the location of the critical slopes. The applicant has broken the buildings up from the previously reviewed plan. There is a different arrangement of buildings and parking.

The applicant has changed the design of the streams, which relocates the stream northward. A swale is being provided that will go through the center of the property. There is a storm water management facility at the rear of the property.

This plan does preserve some of the critical slopes. The blue color indicates a storm water pipe that will convey water. Basically, it is a two level system. The original amended plan brought in by the applicant had this pipe basically day lighted with a very deep canyon that ran through the center. The applicant has now widened that area out. The pipe will go underneath carrying water from across 29 to the rear of the property where it gets day lighted into the storm water pond. There is a second level where storm water from this site itself will flow, which eventually will arrive at the same elevation. He pointed out that there was a 12 foot difference in this area. The existing pond will be a water quality swale, which will provide water quality along its length.

The plan before the Commission was reviewed by the ARB at its meeting of October 3, 2005. He read their action as follows:

> "Based on the ARB's preliminary review of the plan submitted at the meeting and dated 10-3-05 and acknowledging staff's lack of the ability to review because of the submittal timing, the ARB

has no objection to the modification for activity on critical slopes because the loss of aesthetic resources, specifically the forest and the ravine, are regained in the new dry stream bed bridge, limited use of retaining walls, bridges, expected abundant planting and reduction of exposed foundations with additional grading."

The critical slopes modification was evaluated in light of the stream assessment plan, the open space plan and the new findings by the Architectural Review Board. Staff is recommending approval of the request to the Planning Commission.

Staff has also outlined the three areas where the Planning Commission needs to make a finding and has provided some comments. Staff is generally recommending that the Commission find this to be something that can be approved. If there are any questions, he would be happy to answer them.

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

Ms. Joseph asked Mr. Fritz to point out the location of the 18 foot retaining wall, and Mr. Fritz pointed to the location towards the rear of the property.

Mr. Thomas asked what will happen to the stream and how will it be taken care of during the construction and the disturbing of the creek bed

Mr. Fritz stated that staff has not reviewed the erosion control plan because it has not been submitted yet. But, obviously in all plans where there is any sort of a live stream the applicant's engineer would have to account for the creation of the storm water management facility before they do the work in the stream bed. So as they are relocating the stream it will be going to an erosion and sediment control facility and not a storm water facility. So in all likelihood he might want to ask the applicant if they have thought about this because they will need to start at the rear of the property, since it is the lowest point, to put in the erosion control measures and then work upstream from there.

Mr. Edgerton stated that the way he was reading the drawings the existing stream will not exist anymore since it will be a series of erosion controls and pipes connecting them. He felt that if this plan is approved it would be wrong to think that any stream is going to exist. The water will be directed down through the series of pipes.

Mr. Thomas asked what is going to happen to the stream and if it was still going to be there.

Mr. Fritz stated that the stream would in all likelihood have to be captured within various designs and would eventually end up in this storm water pipe. There is a pipe that comes across the road now. It is a less defined area that comes together, but the main flow is through the pipe. The stream gets substantially moved. That is a correct assessment of the situation. He stated that there would be a water swale through the center of the property collecting the storm water from the various properties.

Mr. Rieley stated that in the eyes of the ARB that mitigates the damaged critical slopes, and Mr. Fritz replied yes, along with the plantings that will go in and other things.

Mr. Edgerton pointed out that there was a lot less pavement than it was on the previous plan.

Mr. Fritz acknowledged that there needs to be additional storm water management facilities placed on this site as part of the final review. There will probably be multiple bio-filters that will need to be placed throughout the site. They will need to do a much more detailed analysis to demonstrate that they can achieve the storm water requirements that they have to meet. There is no waiver or modification of those regulations.

Mr. Thomas asked can an engineer who designs the bio-filters be able to get a percentage like 90 percent of waste that comes off of that paved lot to be retained in those bio-filters.

Mr. Fritz stated that he could not answer that engineering question.

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

Wendell Wood stated that the Commission was familiar with this project. The Commission made it clear at the last meeting that the site should be developed with more sensitivity to the slopes and the terrain of the property. The Commission asked that they address the critical slopes as a feature of the site, and he believed that the Commission will see that they have done that after reviewing what they have done. The plan on the board shows virtually all of the critical slopes on the site. They have requested to use the building on the right hand side of the pond next to Route 29, which is still on critical slopes. A double sided building that has architecture on both sides is being proposed, which was designed to shield the parking lot. There was a 28 foot high retaining wall on the first plan, which has been deleted. On the current plan there would be an 8 foot cut as opposed to the 30 foot cut shown on the previous plan.

Mr. Edgerton asked how the 10 foot cut would be held up without a wall.

Mr. Wood stated that they have pulled the buildings away from Woodbrook and are just using a slope. There is a 20 foot undisturbed buffer plus almost an additional 20 foot of landscape buffer with no walls before getting to any impervious materials such as parking or buildings. He noted that there would be 38 to 40 feet of buffer. He stated that Tim Miller of Rivanna Engineering and Mr. Bhatt, the engineer, have come up with a pretty ingenious design for handling the critical slope. In the middle drawing, you can see the pipe coming under 29, which is obviously at the first pond. At that point today it is about 28 feet deep to the creek to the elevation of the new parking lot. They have piped that down to the detention pond and are coming back in and filling it approximately 12 to 14 feet on top of that pipe in the critical slope area. They are technically disturbing the critical slopes, but they are enhancing the critical slopes that are there, but with no buildings. Then they are enhancing it to become bio-filters. All of that will be the same grade through there. Therefore, it will become truly a scenic visual enhancement to what is there. After this is done it will be 12 feet below the parking lot as opposed to 28 feet. The two passages are actually little bridges going across. So instead of all of this being filled and piped you get to the southern portion by going across two bridges. They really do think that they have listened to the Commission and done what they have been asked to do. The ARB was very complimentary of what they have done. He noted that his engineer was here to answer any questions. But, as owner of the property, they have to meet this criterion. Or they don't get a permit or approval to even start the project if the County does not approve the plan that says takes care of the stream while it is under construction. That is a function of which they would not get final site plan approval.

Mr. Thomas asked if the existing retention pond would disappear.

Mr. Wood stated that it would be in its present state, but it was going to be raised.

Mr. Thomas asked if they would still have capacity to retain some water in that also. He pointed out that he wanted the adjacent owners to be able to hear the answers to these questions.

Mr. Wood deferred the question to his engineer, Tim Miller.

Mr. Thomas asked if the capacity of the existing retention pond that VDOT put in was going to be the same.

Mr. Tim Miller, of Rivanna Engineering, stated that the capacity would be in the rear storm water management facility.

Mr. Thomas asked if they were going to do away with the retention pond next to 29 and move it to the back of the property and double or increase the size to hold all of the water that was coming off of 29 and the parking lots.

Mr. Miller replied yes, the rear facility would be more for the volume control to ensure that there was no increase in runoff to the downstream.

Mr. Thomas asked what the capacity is of the back retention pond. He asked if a thunderstorm would just blow it out or would it get deep enough to where it would ease the water out.

Mr. Miller replied yes, that the final site plan process would require calculations to be provided to the County for review to show that the post-development runoff and that the post-development runoff is at or less than the pre-development. So there will be some containment in that rear facility during a ten-year or twenty-year storm.

Mr. Rieley stated that it was limited to the ten-year storm water containment.

Mr. Miller stated that it can top to the 100-year, but the volume may increase during the 100-year storm.

Ms. Joseph pointed out that it looked like the plan had three different storage facilities.

Mr. Miller stated that was the plan during their discussions with the ARB. Now they have come up with an alternative front portion now, and have submitted that plan.

Ms. Joseph asked what happens in that plan.

Mr. Miller stated that as Mr. Wood was saying previously, this invert of the existing pipe is approximately 25 feet below 29. They made every effort in this plan to try and maintain that depth without infilling that portion. The ARB looked at that as though it would not be an aesthetic resource. Therefore, they suggested again extending the pipe through. They had this water quality swale in the middle and they wanted that continued on up through so it would be one continuous. So now they have this larger water quality swale forming from front to rear for water quality.

Ms. Joseph stated that she was seeing some pipes coming out, which was taking care of the water.

Mr. Miller stated that water would then drain into these water quality swales and removes the pollutants. But, then in here it picks up in the underground system and is carried into the rear basin, which is for the volume control. It would maintain one of the critical slope areas. This is the plan that engineering reviewed indicating that they need to have more water quality measures. That is pretty much doubling what they had. If you were to take a section, it would be an arched culvert with brick siding so that you would be able to see a stream effect from 29 looking back. It will be replacing the stream, if you will.

Ms. Joseph stated that there could be significant landscaping along the banks.

Mr. Miller stated that the water quality swale itself has grasses and shrubs that are required and then there would be additional spaces for landscaping as well. In one area they had loading spaces with a retaining wall and in response to the ARB concerns; they have moved those over on the site and eliminated that wall.

Ms. Higgins asked if there would be any retaining walls around the site.

Mr. Miller stated that Mr. Fritz had indicated that this would be an 18 foot wall from a cut section here. He believed that there would be a 12 foot wall around one portion. He pointed out that the plan was changed to address the ARB's concerns.

Mr. Rieley asked if the rear basin had been changed, and Mr. Miller replied that they did not modify the rear basin.

Mr. Rieley asked what the depth was of that and if there was a pool elevation at the bottom of it or is it strictly a storm water detention facility.

Mr. Miller stated that it was a dry pond.

Mr. Rieley stated that it looked like there were some pretty steep slopes going down to it.

Mr. Miller noted that they have guardrail along the top, which is now a fence. He commented from what he recalled that might be a 3:1 slope on one side and a 2:1 slope on the other because they were trying to maintain the natural grade at the bottom.

Mr. Fritz stated to answer the question regarding fencing, that the applicant will be required to provide a Building Code type barrier so that no one could get down over that from any of the parking areas to get over that wall. It will be more than a guardrail. He pointed out that the ARB had commented during their review that the rear basin would not be visible from 29.

Ms. Joseph noted that it might be the basin itself, but the fence would probably be visible from 29.

Mr. Thomas asked if there was a certification on the waste water that runs off of the parking lot into the bio-filters that required it to be checked once a year.

Mr. Fritz replied that as part of the approval process there is a maintenance agreement that they have to enter into. They have a monitoring program, but he was not sure what the frequency of it is.

Mr. Thomas asked if it was a requirement that the certificate be turned in periodically.

Ms. Higgins stated that Mr. Thomas was talking about testing the water runoff. She pointed out that there was no water quality testing, but the design is based on a certain end result and that design has to be verified that it does not wash out and it functions properly.

Mr. Fritz noted that the inspections verify that the systems that were designed and installed are still in place, still operating properly and if the thing needs to cleaned or repaired. But, there is no water testing.

Ms. Joseph asked Mr. Kamptner if the storm water maintenance agreement was something that was recorded at the Clerk's Office after the applicant paid his $18.00.

Mr. Kamptner stated that was correct. The storm water maintenance agreement runs with the land. The frequency of maintenance he could not recall off hand, but it is specified in the agreement.

Ms. Higgins asked Mark Graham to come forward to answer this question.

Mark Graham. Director of Community Development stated that the agreement does not have a requirement for regular scheduled inspections by the owner, but the County or staff has the ability. This is part of the Storm Water Management Program that the County Board just approved. The County actually has inspector on board to do these inspections.

Ms. Higgins asked if they do water quality testing.

Mr. Graham stated that the inspector does not test water quality. They do have the ability to test water quality if they need to, but that is part of a separate permit that they have for our municipal separate storm sewer system.

Mr. Thomas if there is a mechanism, bonding device or something that could be happening to protect the damage downstream of people's individual wells for a certain amount of years.

Mr. Fritz replied that he was unaware of any.

Mr. Kamptner stated that there is no County requirement in the site plan regulations requiring bonding for potential damage off site resulting from construction activities. It is something that the owner or developer has to deal with. The County cannot impose it because the regulations don't provide for it.

Mr. Thomas asked Mr. Wood if he would be willing to guarantee against any damage downstream for any length of time.

Mr. Wood stated that obviously he believed that under most any law that if he creates a problem that he is held liable for that. If he has done it and someone says that he has damaged their property or well that he thought that there were plenty of laws on the book that the owner that caused the damage is going to be held responsible. He suggested that the Commission ask the attorney, but he believed that was the way that it works.

Mr. Kamptner stated that generally that is the case.

Mr. Wood hoped that the Commission looked at this in the light of what they have done. It is not a very simple process to show them what they have done, but he felt that they have grasped a little of it. But, it really has been a concerted effort to meet their charge to them to develop on this site. They have been sensitive to the site. He pointed out that the engineering department, ARB and staff have recommended approved. They have taken the residents' issues that have been before the Commission in the past and think that they have pulled back from the required setbacks, eliminated retaining walls and made what is a critical slope into an enhanced feature of the site. There is a particular criterion of landscaping, etc. required for what this water quality has to meet. He asked that the Commission support their proposal. They have met with the residents over the last five years and think they know what their concerns were. The concerns were the critical slopes, setbacks, landscaping, etc. They have taken those concerns into consideration and feel that they have met them. He felt that they have satisfied the needs of the majority of the people, except those who wanted a park.

Mr. Edgerton invited comment from other members of the public. The first person on the sign up sheet was Lee Freudbrug.

Lee Freudbeug, resident of Albemarle County at 2924 Idlewood Drive, stated that in listening there were a few points that he would like to make. One of his concerns was the request for modification to the critical slopes on this property. As he reads the report there are a total of 15.9 acres and the critical slopes comprise 2.4 acres, which is 15 percent of the site. The number of critical slopes disturbed is 2 acres, which is 85 percent of the critical slopes. He further understands from his reading that this stream that is spring fed and a continuously flowing stream across the property will be buried under 20 feet of fill of 100,000 cubic yards of land that is going to be transferred from one part of the property to the other. So he fails to see how this could be characterized as an enhancement of the critical slopes when the stream itself is going to virtually disappear and turn into a pipe underneath of the property. It has been mentioned by Mr. Fritz himself that there is no erosion control plan yet. He believed that Mr. Rieley mentioned here that the existing stream will be gone. To create the impression that somehow these critical slopes are going to be enhanced by this process would amount to going on to the property and shooting the deer that are there and then putting up plastic deer as replicate for them and saying that everything is the same. It just does not look right. According from the report's conclusions, it appears that there is only one-half of the required bio-filter area possible in the proposed plan. Other shortcomings are noted. He understands that this preliminary site plan basically falls short by about 50 percent of engineering requirements in order to make all of these engineering requirements work, which he was not versed in. Issues were brought up tonight about the water quality. According to Mr. Wood, the standard for enforcement of any damage that may occur downstream would be basically for the property owner to bring a civil lawsuit for damages against him. This places the burden on the property owner rather than on the developer to take care of the water quality issues that may impinge upon the adjoining landowners. In addition, it seems that this preliminary plan should not be approved. Once it happens it is going to move to realization. He felt that there was still so much left in this plan that needs to be addressed that those should be taken care of before it is moved for approval. He respectfully requested that this plan not be approved and that the critical slopes waiver not be granted. Briefly, in the Places29 vision statement, the northern development areas will be a place where open space, the character of the surrounding rural areas and the natural environment had been preserved and enhanced. This looks like they will be stepping back in time instead of forward with the vision that they have for our County.

Professor Gobar had left the meeting, but had previously submitted written comments against the proposal. (Attachment "B")

Mary Ann Thompson had left the meeting.

Leon Gorman pointed out that Mary Ann Thompson had left the meeting, but had asked him to read one small statement. He pointed out that they had signed up together, but she had to leave because they were running so late.

Mr. Edgerton stated that the Commission's rules preclude that.

Ms. Joseph suggested that he give Ms. Thompson's letter to someone else in the audience to read.

Mr. Gorman stated that the first picture was of one of the lakes in close proximity of the proposed development. That is a very healthy lake. (Attachment "C") They believe that lake adds to the value of Albemarle County and is an asset. According to Places29, they wanted to preserve the existing neighborhoods. This proposal will damage the lake and other numerous properties and will be dangerous to personal health of the people who live there. The second picture is of VDOT that is doing work about 200 yards down the hill from this lake and they cut out the stream on the watershed side of Carrsbrook Drive. That is the side that the proposed development is supposed to be on. You can see how it is all dried up. They cut the water off. There were springs in there. He spoke with the VDOT people and the springs did not fill that part up at all. This beautiful lake and all of the subsequent lakes right close to the proximity to that property are going to look like this during the construction phase if that happens. That is horrible. It not only reflects on Albemarle County, but it is also reflective of the people who own those properties and it will look awful. What is a watershed? From the Daily Progress, a watershed is an area of land that slopes or drains to lake, river, stream, wetland, ocean or other waterways. When precipitation occurs water travels from the highest to the lowest point and usually the water crossing forest or agricultural or suburban land. Healthy watersheds are a vital component of a healthy environment. Watersheds act as a filter for runoff. As development encroaches a natural area the filtering system of the watershed is replaced by impervious surfaces such as concrete and asphalt. This creates a situation where water runs off these surfaces in sheets carrying with it a variety of pollutants. Anything on the impervious surfaces such as gasoline and oil, litter and debris is swept away by the runoff and carried directly into a waterway. He stated that he had several comments from the Water Control Act. From the Constitution of Virginia, Article 11, further it should be the Commonwealth's policy to protect it atmosphere, lands and water from pollution, impairment or destruction for the benefit and enjoyment of the general welfare of the people. On page 14 of the site plan it gives reasons for critical slopes. The provisions created implemented the Comprehensive Plan by protecting and conserving steep hillsides together with the public's interest. It is recognition of increased potential for soil erosion, sedimentation, and water pollution. That is why a critical slope is created. These provisions are intended to direct building and septic system locations to train more suitable to development to discourage development on critical slopes. Article 9 on page 9 says that a waiver can be allowed for anything that is for the public's health and safety, and they can allow a waiver for a critical slope. He challenged the Commission because gas is not healthy and will be coming down these streams. There is no guarantee on how much that filtration system is going to stop. Those streams and lakes are going to be polluted. He felt that this will be very unhealthy, particularly because he has asthma.

Richard Arthur, resident of Carrsbrook, supported the comments of the first speaker. The first proposal for this property was very much like the new proposal and it was rejected because of the critical slope issue. He submitted that still destroying 85 percent of the critical slopes have not made this plan better. It is the same old thing, but just repackaged. He urged the Commission to reject this proposal.

Chris Honenberger, President and Chief Executive Officer of Second Bank and Trust, stated that he appeared before the Commission in the previous occasion and indicated their interest. He pointed out that the bank's proposed building was the small building on the northwest corner of the property. They are very interested in this location. Their holding company, Virginia Financial Group, is interested in a substantial investment in the building immediately behind what would be their bank. This would bring a number of executive positions for our holding company to the Charlottesville market. These would be well paying jobs or corporate jobs. He felt that their increased involvement in the community would be an enhancement to the community. They have followed this project for over two years and want to compliment the developer, Mr. Wood, for making efforts to accommodate this property with a comprehensive development that is sensitive to the site and the neighbors.

Tom Linebocken, a 30 year resident of the County and 50 year resident of Carrsbrook, asked to speak for his neighbor Michael Coppola who had to leave the meeting. His message was briefly that the notion was somehow that this plan is less bad than the plans that have come before this group for that site. As you can see from the details in the plan it still destroys most of the critical slope and the stream that is there. He felt that they would prefer a stream to a storm water swale and would prefer the critical slopes to the parking lots. If the choice is between this and other plans, maybe this plan is a little bit more favorable. But, if the choice is between this plan and what is there now, which is woods, streams and critical slopes that he felt that the residents of the County would choose what is there now.

Dean Wenger, President of Carrsbrook Association, stated that he had been the President for over six months and the thing he had heard over and over again is quality of life in Carrsbrook and largely the quality of life has centered over the lakes that exist in Carrsbrook. Mr. Wood said that he has listened to the residents of Carrsbrook in developing this plan. The one thing that is absolutely critical in listening to the residents of Carrsbrook is the quality of those lakes. Tonight they have heard that during construction he will follow the minimum requirements that are set out by law. One of the things that would go a long way to alleviating the concerns of the community is what he would do beyond the minimum. For example, that a bond will be posted during construction so if something happens it will be there to appropriately deal with those things. What about a long term bond? Mr. Thomas asked if he would put something up and there was no response. Again and again he hears from the residents that the quality of their life there is centered on those lakes and that is what makes Carrsbrook unique. In the staff report, which recommends approval of the critical slopes waiver, it say, "Staff has not found that approval would be detrimental to the public health, safety or welfare to adjacent properties." He submits to the Commission that it would be in fact detrimental to the adjacent properties without some kind of long term plan to deal with runoff to those lakes.

Ray Caddell, resident of Carrsbrook, pointed out from looking around the room he found that it was a very stable community. He stated that he enjoyed living in Carrsbrook. He pointed out that he was on public water and could not see this development from his house since his house was located at the end of Dover Road. The lights will not bother him. He just went to the meeting to support his neighbors. He stated that he was a real estate broker, a class A contractor, a small developer and a big private property rights guy. So he thought that Mr. Wood ought to be able to develop his property. He felt that the critical slopes must not be so critical if they could allow them to be moved from one spot to another. It just does not seem that critical applies in this case. People keep using words such as stream effect if you will. He felt that it was a stream or it was not a stream. Another word used water quality swale was something that he had no idea what it means. If there was not some sort of mechanism with an erosion and sedimentation bond that can be put into place that has some teeth in it that will stand for a very long time to protect the quality of the watershed of the ponds and lakes, most importantly the wells of the people who do live in this neighborhood and depend on the quality of the water that comes out of the ground, he just thinks all they can say about the plan is that it is not as bad as the last one, but it is just not good enough.

Peter Seffarati stated that he just moved into Carrsbrook ten days ago and was not familiar with all of these issues. He understands that the stream that is fed by the springs that are going to be buried feed these lakes. It was mentioned that during construction these lakes may go dry. Then he had another concern about the fact that not only you might have runoff from gasoline or oil from cars parked on those parking lots, but he had a concern about poison and toxic materials that might be on other trucks that might be damaged from accidents that might find its way into that water system. The owner of the property suggests that if they suffer damage to their properties that we have the avail of the court system to seek remedies. That may sound good on its face, however, he could envision a situation where you have a non-human entity that owns and controls that property heavily mortgaged with no equity at all in it. There would be no place to go to for damages. It is too easy to get around that legally. So if the developer is allowed to develop this kind of a project, then more power to him. But, he felt that the property owners downstream need to be protected some how by the actions of this Board or the County so that they are not forced to try to go after a straw man in court for damages and be left with this Board being responsible for a lot of dead lakes downstream. That is not unlikely to happen.

Jerry Peperson, resident of Woodbrook, stated that he had been drafted by Mr. Gorman sitting next to him to read this statement from Mary Ann Thompson. He read, "Given the history of this project I have no

confidence that Mr. Wood will be able or has any intent to rebuild the destroyed critical slopes in any way, shape or form that will come close to replicating what now exists. I will be extremely disappointed if you approve this plan. I give the rest of my time to Mr. Gorman from our Carrsbrook Committee. Mr. Gorman did mention to me that he was not aware of any opportunity to meet with Mr. Wood who said that there were meetings within the community. He said that he has been very involved with this, but he did not have such an opportunity." The only thing that he could add on his own was that everyone has seen the Carrsbrook property and the lakes. It is an unusually beautiful neighborhood and he could easily see why everybody was emotional disturbed by this and any negative impacts that may happen to those lakes. He felt that they already have some examples of this in other lakes in the area with previous developments. Therefore, he did not think that it was just a moot point that was being brought up here to argue on. These are real issues and deserve to be considered.

Joe Mason, resident of Carrsbrook, stated that he appreciated Mr. Fritz's accessibility to the residents in helping them understand the plan. He felt that the most pertinent issue is the crossroads between maximum property development and respect for the terrain. The Neighborhood Model clearly states that respect for terrain is integral to the Comprehensive Plan. This is the eighth plan by his count that has been submitted and they all require a critical slopes waiver. The Zoning Ordinance states that waivers for critical slopes may be granted, but only excluding the proprietary interest of the developer. As far as he was concerned the only reason for granting a waiver is for the proprietary interest of the developer. Eighty percent of this property could be developed without disturbing the critical slopes at all. Mr. Fritz stated that any man-made filtration system is inferior to the natural vegetation of the land. So he hoped that they could develop with foresight and be able to prevent problems before they arise because private remedies are not appropriate and may not even be feasible. He asked the Commission to please have the stamina to reject any plan that calls for a critical slopes waiver.

John Gallangher, resident of Woodbrook, asked the Commission not to approve this plan, at least not until more modifications are made to it. The plan is better, but he did not think they were there yet. He also requests when the modifications are made that this plan go back through the approval process and back through Bill Fritz. They need to ensure that they get this right. This plan has no respect for the topography of the land. The plan, as you heard, moves 85 percent of the critical slopes. Do they have an ordinance prohibiting that or don't we? It moves a stream. Will it kill the stream in the process? They do not know. Please don't move the stream killing it and the ponds downstream. Why does every square inch need to be developed? He saw in the paper lately that the buffer for the Waffle House seems to be inadequate. If you look closely here you will see a much bigger thing being stuck in between existing neighborhoods. It will be a much larger Waffle House. The buffers between Northside and Woodbrook he feels are still inadequate. He was not an engineer, but when he looked at the map he did not see the glorious 60 foot ones Mr. Wood alluded to. They are much too small and there is no fence to prevent foot traffic cutting from the commercial site through the residential area. Why more effort can't be made for larger buffers and fences. Mr. Wood is not working with neighbors. If he did he would not put a restaurant with its smells deep into the neighborhood. Wouldn't it be nicer for the neighbors if the restaurant was located out on 29 instead of in somebody's backyard? This would be along with the food, the barrels, and the loading docks and associated rats. Speaking of smells, last time he was here he told the Commission about the pump station that was not designed well. They get a lot of sewer smells through Woodbrook and it will only get worse in our neighborhood when the shopping center opens and begins pumping waste. He believed that a bank wanted to relocate here and he suspects that they were fighting some finance. They welcome their business. But, do they think that they are building bridges with the community by sticking a shopping center into our neighborhoods like this when they know they can do better with the site plan. He asked that they make modifications to the plan protecting the slopes, the stream and providing better buffers with fences. Please don't forget the families in the two neighborhoods who will bear the brunt of your decision for as long as they live in Woodbrook and Carrsbrook. Would this be acceptable in your backyard? Please fix the sewer smell! He believed that the ARB report said that they did not have adequate time to review the plan, which was not the flowery recommendation that they heard from Mr. Wood. He thanked the Commission for their time.

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

Mr. Thomas asked to go back to the discussion that he had with Mr. Wood and try to get something out of it, particularly on the runoff and the silt during the construction. He asked if this was recommended if there was anyway to stipulate that a triple, quadruple silt screen starting at the bottom could be required. He asked if they can require more that what the Code requires.

Mr. Fritz stated that the Commission could if the they feel that it is a reasonable condition to require additional erosion control measures in order to approve a critical slopes modification. He thought that those two are related to one another.

Ms. Higgins stated that they had heard a lot of reference to downstream lakes. In looking at the existing condition sheet where there is a sewer line that runs along the existing stream, she did not see any stream designation on whether there is a perennial flow. She suggested that the applicant address if there is a relocation or diversion of the stream in any way so that they can sequence it so that the flow is maintained. It would be design criteria, but it is done all of the time. She wanted to make it clear that if there is a perennial flow in the stream that should be maintained. In other words, that there is a path for it to flow before it is cut off on the other side. She was not sure if it is, but suggested that they ask Mr. Miller.

Mr. Fritz stated that he knew the answer to that question. The findings on the stream are that it is not designated as a perennial stream, although field visits to the site indicated that it has perennial characteristics. But, it is not designated on the USGS map as a perennial stream.

Ms. Higgins stated that the elusion to springs could be that the springs are not all in one location and they could be throughout the property. They could be from this location down to where the lakes are. But, they can still address either by a condition or stressing that when staff does the storm water management plan that the sequence during construction and throughout the process be addressed so that if there is a natural flow that it be maintained.

Ms. Joseph referred to page 59 where it shows the location of the lakes, the drainage patterns and how this works together. There are a lot of drainage areas that go into these lakes.

Ms. Higgins recalled that on the west side development on 29 there was some deterioration of streams and the goal would be to improve upon that. Sometimes a deteriorating condition will accelerate in deterioration in its natural state. But, if they could deal with the stress by putting a condition on the storm water management plan that during the construction sequence that they adequately address that any natural flow is maintained. She felt that was an important factor.

Mr. Rieley supported Ms. Higgins suggestion. He also thought that there was a reasonable nexus between the disturbance of critical slopes and the quality of the streams. Therefore, they should not be concerned only with the peak flow between the two- and ten-year storms. But, in fact they should be concerned with water quality. There are state accepted mechanisms that require a wet pond for at least a part of the detention area. But, there is a very simple formula relating to the number of square feet of drainage area and the amount of storage area in the pond that has a relationship with taking the sediment out. He felt that the biggest concern about these ponds was with the sediment not coming down. He agreed with Ms. Higgins and suggested that they also consider ways to deal with the water quality of these streams.

Ms. Joseph pointed out that there was a bonding process for erosion and sediment control measures on the site plan itself. She asked Mr. Graham to talk a little bit about what happens when someone is in violation and they get phone calls from adjacent neighbors because of mud in the streams.

Mr. Graham stated that with erosion and sediment control the County follows the state requirements. Therefore, our state requirements are what need to be included in an erosion and sediment control plan. Those capture most of the sediment, but he would not say that they capture all of the sediment. They will never capture all of the sediment. There will be sediment during construction that will flow down to the downstream ponds, which is just part of construction. We do see circumstances where sediment gets in the downstream property, and they look at that from the perspective if the erosion and sediment control facility is operating properly. If it is, then there is no violation of the law. There is no need for them to

require them to do anything else. If the facility has failed for some reason or if it was not properly cleaned or maintained, yes, they could stop construction and require that it be brought back to order. To the question of the downstream property owners, what he had heard from them about the possible damage to their property, that yes, as far as the County ordinances are concerned, that is a private matter between two property owners. The County enforces the ordinances that exist and require certain measures for the development to put in place during construction. If they do that, then they are in compliance with the County ordinance. But, that is not a perfect measure.

Mr. Kamptner stated that in the critical slopes waiver process, the conditions the Commission can impose may open up some avenues to protect the downstream property owners.

Mr. Thomas stated that those lakes have filled up with sediment. One pond, which is to the right of Carrsbrook Drive, is filled up to the extent now that it is no longer just a lake because it also has wetlands in it. When he checked into cleaning the lakes out and DEQ got into the environmental aspects of it, he found that they could not do it because it was wetlands. He asked if the property owners who own those lakes could have gone to Lowe's, Woodbrook or whoever built all of those places that caused that silt or is that silt just a everyday occurrence of the water flowing through this field.

Mr. Graham stated that it was both, which was one of the complicating factors. What they have seen in past circumstances is that it is extremely difficult for the downstream property owners to be able to bring something against the upstream property owner. You can't determine how much of the sediment came from which site and how much of the sediment was natural stream bank erosion that was occurring versus what was associated with construction activity. Therefore, it is a combination of things. For example, the upstream pond there that was constructed as part of the VDOT construction that he had been told institutively that thing blew out at least once during construction and dumped a load of sediment in the downstream pond.

Mr. Thomas pointed out that it was full of sediment now.

Ms. Higgins stated that ponds do require maintenance over time, and if not cleaned they don't retain their capacity. The issue with silting in on the upper end as the water slows down and drops sediment can grow vegetation and becomes wetlands and in itself become a water quality feature for that pond.

Mr. Graham stated that her point was excellent that ponds naturally will fill with sediment without anybody doing anything particularly onerous above them. It happens all of the time out in the rural area.

Mr. Thomas asked if that was the maximum that they could get the developer to do.

Mr. Graham stated that as Mr. Kamptner said that it appears that some conditions could be to require erosion and sediment control measures above and beyond those required by the ordinance as a condition of approval of an item.

Mr. Rieley asked if he could talk about the issue of a long term mechanism to decrease downstream sediment flowing into the ponds.

Mr. Graham stated that in that regard ironically the development answers some of that question with the storm water management facilities that he would be putting in they would capture by the nature of getting pollutants much more of this sediment than is currently being caught.

Mr. Rieley asked if the normal state requirement for water quality typically involves a ration between the run off of paved areas and the volume of wet storage.

Mr. Graham stated yes, that is correct that there is a ratio. The water protection that the County requires is required through the State storm water management regulations. It is directly correlated to the amount of impervious cover that is on that property such as parking lots, buildings, sidewalks and things of that nature.

Mr. Rieley stated as this project is currently designed would it meet that criteria. He asked if it would be required to meet the wet storage.

Mr. Graham stated that it would be required to meet the criteria. He pointed out that they don't specify the mechanism, but the result. It will be required to demonstrate that the impact associated with the development and the additional pollutants that would run off as a result of creating this impervious cover have been addressed through onsite storm water management measures.

Mr. Edgerton asked how that is demonstrated to satisfy the County's requirements.

Mr. Graham stated that to satisfy the County requirements there is a calculation formula, which is called the simple method, which works with the amount of impervious cover. It establishes a percent of the pollutants that would be washing off. Then they have a range of facility types that would meet that pollutant loading that was being created by this particular development.

Ms. Higgins stated that they would of course have to address not just what was created by this development, but by the VDOT pond that it is displacing also.

Mr. Graham stated that was correct.

Ms. Higgins stated that the two would have to be added together.

Mr. Edgerton stated that in that calculation they obviously have a pipe coming across 29 feeding into this site right now. That pipe is going to continue to be there. Unless he was mistaken, there is probably some stuff coming off of the parking lot from the other side that is also going to be contributing to this. He asked if that was correct.

Mr. Graham stated that actually upstream from this basin the County has its own regional storm water basin, which is called the Kegler's basin. Most of the development in that area runs into that basin.

Mr. Edgerton stated that therefore the water from Better Living or Jim Price, etc. was not coming through this pipe.

Mr. Graham stated that the County routinely cleans out that basin.

Mr. Thomas asked to go back to the bond issue and ask the applicant to come forward so he could ask him if he would be willing to extend the bond for a couple of years to protect the wells downstream.

Ms. Higgins pointed out that the bond for the E & S plan would address anything that was not included on the E & S plan.

Mr. Thomas pointed out that he was talking about a type of voluntary bond offered by the applicant to protect the wells for two or for some specific period of time.

Ms. Higgins suggested that they ask Mr. Graham how this would relate to the wells because wells are sub service wells and E & S plans would cover surface, and they have not drawn any relationships between those two issues.

Mr. Graham stated that staff would have a very difficult time finding any direct link or nexus that the sediment coming from this site was in any way impairing anybody's well. It would be very difficult for us to predict that accurately in advance.

Mr. Rieley stated that it would be hard to find any links between the critical slopes or the drive-in window to that issue as well.

Ms. Joseph felt that it was a personal matter between the applicant and the neighborhood.

Mr. Thomas asked if there would be any dynamiting on the property.

Mr. Wood stated that the site has been test bored and the depth to which they would be cutting there was no rock.

Mr. Thomas stated that there was a concern that the dynamite would cause damage with the shaking.

Mr. Wood stated that rock was not hit any dept. To answer the question, he stated that there would be no dynamite.

Mr. Edgerton noted that the Commission has several decisions to make.

Mr. Wood asked to respond to the request, and Mr. Edgerton invited Mr. Wood to address the Commission.

Mr. Wood stated that Mr. Thomas had mentioned something about providing extra measures. He stated that they would be willing to proffer a double row of silt fencing that the County would suggest them to provide.

Ms. Higgins noted that it would have to be a condition because they don't take proffers.

Mr. Rieley stated that central to his concerns in the past have been the fact that Carrsbrook and Woodbrook are such great communities and deserve whatever protection that they can reasonably and legally give them. He certainly agreed that a natural environment is more desirable than pavement for the adjacent property owners. One of the speakers said that if the choice was between this and the previous plans, that this plan is better. If the choice was between this and what is there now, then what is there now is better. But, that is not the choice. This property is zoned commercial. When they met in a work session with Mr. Wood the Commission raised several concerns. They asked that the stream corridor be opened up and not have parking or buildings located on top of the stream, and he has done that. They asked him to break up the massing of the building into smaller scale buildings, and he had done that. They asked him to take it to the ARB before he brought it back, and he has done that. They asked for diminution in the scale of the walls on the perimeter of the site, and he has done that. Therefore, he felt that this has come back to the Commission with a genuine attempt to address the specific issues that they raised. He did not think that whatever shortcomings, since they could always find things to be done better, but he did not find anything that would need to be made better by this plan rises to the level of denying a critical slopes waiver or denying the drive-through window. Those two issues are the only matters before the Commission. He hoped that they would concentrate their attention on crafting the conditions for the critical slopes waiver that would reasonably address very legitimate concerns about the ponds downstream.

Ms. Joseph stated that this was the first plan that she has seen on this property during the past ten years that she could support. She felt that there has been a genuine effort to look at the existing topography and try to respond to that by the fact that they don't have a retaining wall circling this area anymore and the fact that they were using some of the natural slope to feather in to some places and actually keep the 20 feet buffer. The 20 foot buffer could be larger, but that is all that the ordinance requires. She felt that Mr. Wood has tried to respond to everything that they have talked about. There would be three water quality places on this site. It may sound a little bit ridiculous, but there is more of a spirit of the place with this plan than she has ever seen on the previous plans.

Ms. Higgins agreed with Ms. Joseph's statements. She pointed out that on page 20 it showed an existing sewer line installation that ran along the side of the stream. In a previous meeting she had pointed out that had already been put in and affected the natural environment. Sometimes along streams when you have VDOT come in and do a basin and then you have a public sewer line put in and a public pump station or a station of some sort, sometimes you are in a deteriorating situation and nobody realizes it because it is in the woods, but there is probably generally siltation occurring from the point the pipe comes under road at VDOT to where it leaves this property, and based on the significant storms that they have had over a period of time there is not way that this one is in any type of pristine situation at this time. Although the downstream property owners do not want to look at it this way, this might be a way to capture and alleviate what is happening over a period of time. The water quality ordinance does not take

this lightly. Bio-swale and storm water quality swales are very good devices and can be aesthetically pleasing and achieve a great deal to eliminate the impacts that are potentially happening between the upstream basin to where this comes under Rt. 29 and then on this property itself. Over the long terms it might have benefits. She agreed that there were a couple of conditions that they need to craft to make sure that they mitigated it as much as possible during the construction sequence because that is never easy when you see the trees go down and the grading start. It is always disruptive. There was one thing that she would say about the retaining walls that was brought up by one of the speakers was that now there was no fencing. At one time they had a very large difference in the grade of this development and the grade of the adjacent properties. By leveling the grade and not having this great retaining wall to her it makes it more in alignment with the neighborhood, which has pluses and minuses. It also decreases that barrier. So that is a pro and con. But, this plan is more respectful of the terrain and there is a minimized retaining wall situation. Therefore, she supports the request.

Mr. Craddock felt that this storm water swale was a great improvement over a 175,000 square foot big box sitting there. He felt that the extra sediment control measures that have been offered as well as standing in the back side of the property; he felt that the sediment and water run off can be minimized.

Mr. Thomas stated that he was still not satisfied. He asked if there was any way that they could get more buffers between the Woodbrook houses and the back of the stores.

Mr. Edgerton stated that he was not satisfied either. He agreed with a lot that his colleagues have said in that this was certainly better than anything that they have seen. But, in his opinion he felt that there was far too much development on this piece of land. Mr. Wood did respond specifically to their requests, but he is still using a far greater portion of this site than he was comfortable with. In response to Mr. Thomas' question, yes they could ask for more buffers and he felt that it would be appropriate. But, he was not sure if the rest of the Commission would agree. Just because it is zoned commercial does not mean that they have to approve it. He felt that the applicant could do less impact than 85 percent of the critical slopes. He stated that he could welcome more sensitivity. Therefore, he could not support the request in its present condition. He opposed the scale of what the applicant was proposing.

Mr. Thomas stated that the residents of Woodbrook need to be protected a little bit better.

Mr. Edgerton stated that the Woodbrook residents in the southeast are going to be staring into the back of those buildings.

Ms. Joseph asked Mr. Fritz if there was a requirement for screening of service areas.

Ms. Higgins noted that there was undisturbed buffer and then there were trees. She asked if staff could point out exactly what the buffer would consist of.

Mr. Fritz stated that there would be the undisturbed buffer. What they have not done and don't do at the preliminary stage is that they don't have the final landscaping. But, loading areas are deemed objectionable fixtures that they would have to provide screening from. There are a variety of ways they can provide screen gin such as fencing and plantings.

Ms. Joseph stated that that it was a double row of evergreens 10 feet on center.

Mr. Fritz stated that staff has made the determination that separately from the ARB they will be looking for the location of roof top equipment because of the grade difference. Staff will consider that as an objectionable feature, too. Therefore, staff will be looking for parapet walls and other screening measures for any roof mounted equipment there. In relationship to the buffer requirements, they have some increased protective measures to verify the undisturbed buffer.

Mr. Thomas felt that a fence would not help because they would have to put the fence on the property owner's property to even shield the buildings.

Mr. Craddock noted that was needed when there was a grade difference.

Mr. Edgerton stated that there was still a significant grade difference because there was an 18 foot difference on this side and an 8 to 10 foot difference on the other side.

Mr. Fritz stated that there was a 10 foot grade difference, which is the finished floor elevation. Obviously, the building going up was going to be higher than this grade. But, they want to make sure that they know where the roof top equipment is going to be located.

Mr. Thomas pointed out that on the Carrsbrook side their houses are quite a distance from the property line.

Mr. Rieley stated that he was at a loss of how to articulate a desire to exceed the minimum standards for things like the water quality as well as the run off requirements. He would feel comfortable saying that they expect the minimum standards to be exceeded. He felt that they could do the same thing with screening and ask to see the final site plan. If a double row of staggered evergreens is difficult, then they could let staff work with the particulars because they could not figure out everything tonight. He suggested that they give that to staff as an assignment and then they expect to see it when it comes back on the site plan.

Mr. Thomas and Ms. Higgins felt that would work.

Mr. Kamptner stated that regarding the additional conditions for E & S and storm water, if the Commission wants to listen to the conditions that it worked on four years ago, he could read them. At that time, the Commission tried to deal with the impacts at both the development stage and post development with the downstream ponds. The conditions are rather lengthy, but he would be happy to read them.

Mr. Rieley asked that he read the conditions.

Mr. Kamptner stated that the condition dealing with erosion and sediment control read, "In addition to all other erosion and sediment control measures that may be required by the Water Protection Ordinance, the applicant shall provide erosion and sediment control measures to assure, to the satisfaction of the Program Authority that it is providing high levels of effectiveness in controlling sediment during construction. These measures shall include, but not be limited to:

a. A construction schedule that minimizes the duration of disturbance (e.g., phasing of the erosion and sediment control plan).
b. Using high efficiency sediment basins designed to include the use of flocculants.
c. Matting exposed slopes as determined appropriate by the Program Authority.
d. The contractor shall have a certified Virginia Erosion and Sediment Control Inspector on the site throughout the period during which the site is under construction. The Inspector shall maintain a daily erosion and sediment control inspection log demonstrating that erosion and sediment control measures are being closely monitored and deficiencies are being quickly repaired. The Inspector shall assure that all control measures are being maintained in optical condition. The log shall be made available for inspection by the Program Authority at any time during regular business hours.
e. If determined to be necessary by the Program Authority, the surety required by Albemarle County Code Section 17-207 shall include an amount determined by the Program Authority to be reasonably necessary to take corrective action to repair or restore downstream properties damaged during construction by runoff or sediment.

The condition that they worked on dealing with storm water management read as follows:

In addition to all other storm water management requirements that may be required by the Water Protection Ordinance:

a. The storm water management plan shall include additional measures determined by the Program Authority to be necessary in order to capture to the maximum extent practical, the runoff from the site, both during and after construction.

b. The storm water management plan shall include measures to prevent, to the fullest extent possible, damaging conditions to downstream properties and receiving waterways from occurring as a result of the development of the site, both during and after construction.
c. In order to allow the Program Authority to develop appropriate measures to satisfy paragraphs (a) and (b) of this condition, the applicant shall submit data demonstrating the peak flow of runoff from the site and the peak flow of runoff coming onto the site. [Albemarle County Codes Sections 17-31, 17-314(D)]

Mr. Rieley suggested that they add something similar to address the screening to allow staff to look at the specifics of the site.

Mr. Rieley stated that if staff has any suggestions that it would be a condition as far a part of the critical slopes waiver and not the drive-through part.

Mr. Edgerton suggested that the buffer be changed to 60 feet.

Ms. Higgins did not feel they could draw a nexus between the buffer and the critical.

Mr. Rieley felt that the loss of the vegetation on the critical slopes and the fact that they were backing up even though it is going to be replanted is directly related to the views onto the site, which he felt was very clear.

Mr. Kamptner stated that they would need a screening requirement that the Commission would want to have staff determine to be appropriate to mitigate the increased clearing resulting from the critical slopes waiver.

Mr. Fritz asked for some guidance from the Commission. Ironically enough planting additional trees within an undisturbed buffer require a modification. He asked if that was something the Commission wanted staff to look at the possibility of using that area for additional plantings knowing that they may have to grant the modification to the standards.

Mr. Rieley stated that under planting deciduous trees with hollies or something like that which naturally grows underneath trees that would prevent the views. He felt that they could have a big canopy of trees.

Mr. Edgerton stated that an undisturbed buffer could be a bunch of dead trees.

Mr. Fritz stated that was fine, but he just wanted to make sure that he knew what they were working with. He felt that staff can work with that.

Mr. Kamptner stated that staff needed to have particular screening areas identified now.

Mr. Fritz noted that it was very clear that the Planning Commission is looking at staff working with the applicant to develop a landscape/screening plan for the property, which exceeds the requirements of the ordinance and provides for a substantial screening buffer to adjacent residential properties.

Mr. Rieley stated that sounded perfect, and the other Commissioners agreed.

Ms. Higgins pointed out that in the first item Mr. Kamptner read d) that said certify the E & S, which would need to be changed from a certified E & S person but now would be a RLD. She asked that the action include all of the conditions that Mr. Kamptner suggested in the action.

Mr. Edgerton asked who would set the surety, and Mr. Kamptner stated that it would be the program authority, which essentially was the County Engineer and his staff.

**Motion for SP-2004-024 (drive through associated with the bank)**:

**Motion**: Ms. Higgins moved, Mr. Rieley seconded, that SP-2004-024, Northtown Center, be approved with the staff's recommendation subject to the following condition.

1. A by-pass lane, 16' minimum width shall be provided. Striping and lane widths must be shown on the final plan.

The motion passed by a vote of 6:0. (Commissioner Morris was absent.)

Mr. Edgerton stated that SP-2004-024, Northtown Center, would go to the Board of Supervisors on November 9 with a recommendation for approval.

**Motion for Modification of Section 4.2.3 to allow activity on critical slopes**:

**Motion**: Ms. Higgins moved, Mr. Rieley seconded, to grant a modification of Section 4.2 to allow activity on critical slopes on SDP-2004-045, Northtown Center, with the following conditions:

- each of the conditions that Mr. Kamptner stated with a change to d. to the "responsible land disturber";
- add 1) That in the plan during construction that the sequence of the storm water management addresses the switching over of the stream flow, if any;
- add condition as per Mr. Fritz's wording that staff work on the buffer landscaping to allow planting within an existing undisturbed buffer to the satisfaction of staff; and
- all of the other conditions recommended by staff in the staff report.

**Amended Motion**: Ms. Higgins made an amendment to the motion that based on the conditions that they have imposed that they are granting the modification to Section 4.2 because the strict application of the requirements of Section 4.2. would not forward the purposes of the chapter that otherwise serve the public health, safety or welfare, or that alternatives proposed by the developer would satisfy those purposes at least to an equivalent degree, because the Commission has proposed conditions to satisfy those purposes to at least an equivalent degree.

**Second to Amended Motion**: Mr. Rieley seconded the amendment to the motion.

The motion passed by a vote of 5:1. (Commissioner Edgerton voted no.) (Commissioner Morris was absent.)

Mr. Edgerton stated that the critical slopes waiver for Northtown Center was approved as follows:

The critical slopes waiver for Northtown Center was approved based on the finding that the strict application of the requirements of Section 4.2. would not forward the purposes of the chapter that otherwise serve the public health, safety or welfare, or that alternatives proposed by the developer would satisfy those purposes at least to an equivalent degree, subject to the following conditions:

1. In addition to all other erosion and sediment control measures that may be required by the Water Protection Ordinance, the applicant shall provide erosion and sediment control measures to assure, to the satisfaction of the Program Authority, that it is providing high levels of effectiveness in controlling sediment during construction. These measures shall include, but not be limited to:

    a. A construction schedule that minimizes the duration of disturbance (e.g., phasing of the erosion and sediment control plan).
    b. Using high efficiency sediment basins designed to include the use of flocculants.
    c. Matting exposed slopes as determined appropriate by the Program Authority.
    d. The contractor shall have a Responsible Land Disturber ("RLD"), on the site throughout the period during which the site is under construction. The "RLD" shall maintain a daily erosion and sediment control inspection log demonstrating that erosion and sediment control measures are being closely monitored and deficiencies are being quickly repaired. The "RLD" shall assure that all control measures are being maintained in optimal condition. The log shall be made available for inspection by the Program Authority at any time during regular business hours.
    e. If determined to be necessary by the Program Authority, the surety required by Albemarle County Code Section 17-207 shall include an amount determined by the Program

Authority to be reasonably necessary to take corrective action to repair or restore downstream properties damaged during construction by runoff or sediment.

2. In addition to all other storm water management requirements that may be required by the Water Protection Ordinance:

   a. The stormwater management plan shall include additional measures determined by the Program Authority to be necessary in order to capture, to the maximum extent practical, the runoff from the site, both during and after construction.
   b. The stormwater management plan shall include measures to prevent, to the fullest extent possible, damaging conditions to downstream properties and receiving waterways from occurring as a result of the development of the site, both during and after construction.
   c. In order to allow the Program Authority to develop appropriate measures to satisfy paragraphs (a) and (b) of this condition, the applicant shall submit data demonstrating the peak flow of runoff from the site and the peak flow of runoff coming onto the site. [Albemarle County Codes Sections 17-31, 17-314(D)]

3. In the plan during construction the sequence of the storm water management addresses the switching over of the stream flow, if any;

4. In conjunction with the final site plan, sufficient landscaping and screening shall be provided to screen adjacent residential properties from areas of disturbed critical slopes; and

5. All of the other conditions recommended by staff.

**Motion for SDP-2004-045**:

**Motion**: Ms. Higgins moved, Mr. Rieley seconded, that SDP-2004-045, Northtown Center Preliminary Site Plan, be approved with conditions recommended in the staff report; based on the other actions just taken and an additional condition that the final site plan come back for Planning Commission review.

1. Architectural Review Board issuance of a Certificate of Appropriateness.
2. Virginia Department of Transportation approval of entrance design, signal improvements, frontage and turn lane improvements as well as any associated road plans and drainage plans.
3. Albemarle County Service Authority approval including approval of the design of the relocated sanitary sewer meeting ACSA standards with no portion located within storm water management facilities.
4. Current Development Division approval of:
   a. Minimum sight distances within parking areas/travelways.
   b. Design/location of curbed islands in the parking lot.
   c. Stormwater BMP plans and calculations.
   d. Stream Valley design which is acceptable to the Architectural Review Board. Based on the plan reviewed by the Architectural Review Board at its meeting on October 3, 2005 and included as Attachment A marked WDF, 10/09/2005.
   e. Approval of revised parking calculations to account for any parking lost by condition d, to include if necessary, a reduction in building space.
   f. Retaining wall designs for any walls of 4 feet or greater.
   g. Landscape plan, to include a conservation plan for all trees proposed to remain.
   h. Lighting plan.
   i. Subdivision plat combining the parcels into a single parcel or realignment of existing parcel boundaries to result in lots meeting minimum requirements for building construction.
   j. Necessary access, utility easements.
   k. The 18' retaining wall on the northern side of the site cannot disturb the undisturbed buffer for a footing or reinforcing grid. The plan must be revised as necessary, or provide computations, details and construction methods to avoid disturbance of the buffer.
   l. Grading to the edge of the undisturbed wooded buffer on the sides of the site will likely cut tree root systems, damaging and eventually killing trees. On final plans, the grading

should be moved back, or specific trees surveyed and marked on plans to ensure survivability of trees within the undisturbed buffer.

5. Fire Marshall approval.
6. Building Official approval.
7. The final site plan shall be subject to Planning Commission review.

The motion passed by a vote of 5:1. (Commissioner Edgerton voted no.) (Commissioner Morris was absent.)

Mr. Edgerton stated that SP-2004-024, Northtown Center, would be heard by the Board of Supervisors on November 9.

***Review of Board of Supervisors Meeting*** – October 12, 2005.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on October 12, 2005.

***Old Business:***

Mr. Edgerton asked if there was any old business.

- Ms. Joseph noted that she was disappointed that the Commission did not talk about the 30 percent density bonus during their discussion on SUB-2005-259, Old Trail – Creekside II.
- Mr. Edgerton supported the density bonus on Old Trail's request because Mr. Beights had done everything that they had asked him to do.
- Mr. Cilimberg stated that the message had been heard loud and clear by the Board, the County Executive's Office and staff about making some projects happen in Crozet. There are accumulated funds in the CIP to pursue some projects, and staff has some better resources in place to do that now. Staff plans to introduce the Commission to the new General Services Director and Business Facilitator. This is something that staff is working on very seriously. Furthermore, staff is working with VDOT to try to push forward and find a way to get Jarman's Gap Road started as soon as possible.
- The Commission held a discussion about concerns raised on requiring stub-out roads on plats for future interconnectivity and how to educate the public on the issue.

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

***New Business:***

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

***Adjournment:***

With no further items, the meeting adjourned at 9:35 p.m. to the 4:00 p.m. work session on October 25, 2005.

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V. Wayne Cilimberg, Secretary

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