Albemarle County Planning Commission
November 29, 2005

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, November 29, 2005, at 6:00 p.m., at the County Office Building, Room 235, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members of the Planning Commission attending were William Rieley, Rodney Thomas, Pete Craddock, Jo Higgins, Calvin Morris; Bill Edgerton, Chairman; and Marcia Joseph, Vice-Chair. Absent was David J. Neuman, FAIA, Architect for University of Virginia.

Members of the Architectural Review Board attending were Candace M.P. Smith, AIA, Chairman; Duane Snow, Paul Wright, and Fred Missel. Absent was Charles T. Lebo.

Other officials present were Margaret Maliszewski, Design Planner; Brent Nelson, Landscape Architect; Mark Graham, Director of Community Development; Wayne Cilimberg, Planning Director; Lori Allshouse, Strategic Management Coordinator in the County Executive's Office and Greg Kamptner, Deputy County Attorney.

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

Mr. Edgerton called the regular meeting of the Planning Commission 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 moved on to the next item on the agenda, which is the County's Strategic Plan Presentation.

***County Strategic Plan Presentation**:*

A power point presentation on the County's Strategic Plan was given by Lori Allshouse, Strategic Management Coordinator, which included the following items:

- A quick overview was given about strategic planning, which included a discussion on Strategic Planning versus Comp Planning and the differences;
- Background – History of strategic planning in County;
- Current Plan – Current FY 03/05 Plan – progress/achievements;
- Development of New Plan -
    - Brief overview of the current "date-driven" issues facing County,
    - Board's identified priorities for FY 0/11 (and how they reflect the Comp Plan goals and Community Development's on-going work), and
    - Process to be undertaken from here forward. (Strategic Planning Cycle);
- Planning Commission Role;
- Distribution of Citizen Survey Results dated October, 2004;
- Questions and Answers.

The Planning Commission asked to participate and be involved in the County's Strategic Plan's process and that staff continue to provide updates of the plan, particularly for the new Commissioners.

Joint Work session with ARB:

Ms. Smith, Chairman of the Architectural Review Board, called the special meeting of the ARB to order at 6:45 p.m. and established a quorum. Absent was Charles Lebo.

The Planning Commission held a joint work session with the ARB to discuss topics identified at the retreat held earlier this year. A discussion was held on the following topics: how the different roles are reviewed

as they relate to ordinance requirements, an overview of the Planning Commission and ARB duties, the ARB role as it relates to the Planning Commission, coordination of reviews, representation of Planning Commission on ARB and/or ARB on Planning Commission, and other items of mutual interest.

Mr. Cilimberg stated that the preliminary site plan process is one that the ARB would like to get involved with, North Town Center being an example. Then when the preliminary site plan application is made there is no requirement that there be an application for ARB review as part of that. However, in many cases Ms. Maliszewski tells him that the applicants have already gone to the ARB for a preliminary conference even before they submit the application or after they submit the application they will go to the ARB to at least get one review that goes into the consideration of the preliminary site plan approval. That is one process. If it comes to the Planning Commission, it is coming just under 90 days that the application is made.

Mr. Graham stated that it was important to remember with the site plan that it is a ministerial review. If it complies with the ordinance it must be approved. If it does not comply with the ordinance it cannot be approved. Advisory, discretionary review is not part of the site plan process.

Mr. Cilimberg stated that there is a possibility that a site plan may get certain comments from the ARB in the preliminary process that only can be ultimately considered as part of the final site plan, which would now become part of the preliminary site plan approval because it is not part of the ordinance provision on which a preliminary site plan gets approved. Now where that can be different is when there is a case of critical slopes waiver and possibly the drive through that the Commission dealt with on North town. That preliminary site plan had other things connected to it that gave some discretionary decisions to the Planning Commission and the ARB's comment may weigh in more significantly than what you can do.

Mr. Edgerton asked if that meant if without the drive through and the critical slopes that the Commission would not have any way to deal with that.

Mr. Cilimberg stated that there would not have been real leverage. So they have their preliminary site plans. They can talk internally about how to make sure the process is working so that the applicants are submitting to get an ARB review in time to feed in to the decision making on preliminary site plans. But, there is going to be some limitation on how much that preliminary site plan can reflect the ARB's comments. It may very well be that they are going to default at the final site plan before they can really be used.

Mr. Edgerton stated that the only way they could work around that was with what they have done with North Town in saying that they mandate that they would not align with the back of the buildings.

Mr. Cilimberg stated that there is a possibility.

Ms. Higgins asked if a certificate of appropriateness would be required as far as what you do with that. The ARB does a really good job with the certificate of appropriateness because all of the I's are dotted and the t's crossed. They have a lot more leverage on that than even the Commission because they have nothing.

Mr. Rieley stated that was true unless they are in the position of a special use permit, a critical slopes waiver or something along those lines. When he was talking about the requirement in these different categories it was for actions in which they have some discretionary authority. He felt that would be the cleanest way to deal with it.

Ms. Smith stated that they could still be handled administratively, but it requires that they have to go through ARB. But, if Ms. Maliszewski sees it and knows that it something that the ARB does not need to see, and then she can have that authority to by pass the whole meeting. She has lots of projects that come through that they don't even see.

Mr. Wright noted that the ARB authorizes staff to do that. There is a difference when they authorize staff to make a decision of that magnitude. She is not on the board to give an advisory opinion. It is not an unimportant distinction.

Ms. Smith asked Mr. Rieley if he said that it did make a difference getting the ARB's comments, and Mr. Rieley stated that was absolutely correct.

Ms. Smith asked what it is that makes the difference. She asked why it is helpful.

Mr. Rieley stated that sometimes it is a matter of reinforcement. Sometimes if an applicant is hearing the same thing from two different commissions it really gets their attention. Sometimes it is a matter that the ARB sees things that the Planning Commission does not. It is a different perspective because there are two different sets of conversations and sometimes an important item gets ignored. It is almost always useful.

Ms. Smith asked if it ever stream lines their work.

Mr. Joseph replied yes, because they don't have to focus on the architecture and the landscaping or whatever for a rezoning if the ARB has already done that. Then the Commission can focus on circulation and the neighbors or whatever else is going on.

Ms. Smith felt that would be important for staff, too. If they have enough people to do what they need to do, then think of the time that it saves the Commission.

Ms. Higgins stated that the ARB staff was not the major planner. If they were talking about expanding that even more and saying things that are advisory to advisory, then would that be making another category. She questioned how much time a staff person spends on a plan.

Ms. Joseph stated that what she was saying was that her expectations are not to be looking at circulation and whatever, but if those are issues that have come up in reports in the past that it they could themselves out of trouble by just putting them in some other categories.

Mr. Rieley noted that at the same time don't be shy about coming on both sides. He stated that there have been situations where he has had a very clear sense that the ARB has been very careful not to make a comment about something that is out of the view shed of the Entrance Corridor. There have, in fact, been situations in which there has been an implication that the ARB looked at it and did not have any objection to it, which may have not been true at all.

Mr. Joseph stated that they were trying to clarify that without giving staff more work.

Mr. Rieley felt that there was a really important distinction between the review the ARB makes for a certificate of appropriateness and advice that they give to the Planning Commission. Those are two entirely different things.

Mr. Edgerton stated that would be in a category called other concerns. It could just be separated out.

Mr. Missel felt that this could actually be helpful for the applicant by giving them this heads up. So the ARB would be advising the Commission along with the applicant.

Mr. Rieley agreed. He asked to make the point one more time that this was not an expansion. There are two roles with one being advice and the other the certificate of appropriateness. All they are trying to do is to separate and clarify that there are two separate ones and not deny the Commission the benefit of the ARB's comments because they are very deserving.

Mr. Craddock stated that it was helpful to the Board of Supervisors. Staff sends the Commission's comments along with our action to the Board. The ARB's comments would be helpful, also.

Mr. Rieley agreed that they do that all of the time.

Mr. Missel asked if there were other areas that the Commission could benefit from in the way the comments are formed or stated. Is there any way that they could be made clearer?

Mr. Rieley stated no, that it seemed that the important thing is to make the distinction between the certificate of appropriateness authority and the non-authority advice. He felt that it is the category. Beyond that it is whatever they think.

Mr. Cilimberg noted what he heard Mr. Rieley say was that particular interest would be that advisory comment as connected to those items in the Entrance Corridor the Planning Commission has discretionary authority.

Mr. Rieley stated that was absolutely correct.

Mr. Cilimberg stated that was an important distinction that he might need to rely on Mr. Kamptner to help. He felt that they may through that discretionary authority already have the leverage that is necessary without even codifying the requirement. They can site the fact that someone has not addressed Entrance Corridor issues in recommending denial with the discretionary authority that you have. He asked Mr. Kamptner to weigh in on whether that was grounds for recommending denial.

Mr. Kamptner stated that it would probably be grounds, but he thought that the Board would probably want to have the ARB process completed before the Commission sends its recommendation. So he felt that justifies the change in the ordinance to require that these applications go through the advisory review.

Mr. Cilimberg noted that it is going to be a period of time of several months that it will take for a zoning text amendment to occur. If it liable to create a lot of issues in opposition that they can anticipate from the development community that may or may not lead to a result that they are looking for. If the authority is there and the Commission has the ability to take action based on what was before them, do they want to go through that process. Rather than messing around with a project for months and months finding and identifying the grounds for recommending denial of the project, they could force the issue. Basically, they would be saying to the Board of Supervisors that the applicant has not done the things that need to be done and the Commission cannot recommend approval. That way it would be moved on and does not stay stuck with the Planning Commission.

Mr. Kamptner stated that part of the concern with the denial based on the ARB review would be what the Entrance Corridor issues are. If the issues are the height of the buildings, the bulk of the buildings or the location of the buildings on the lot, those are issues where the ARB, Planning Commission and Board of Supervisors have kind of overlapping authority. The Commission can recommend that the lots or the yards be very narrow and buildings located right up near the right-of-way as close as possible with the height limits on buildings that need special use permits. But, if the basis for denial is the color of the materials of the buildings, then they are on dicey ground. It would be much better to have the process that requires them to go through the ARB.

Ms. Higgins stated that they were talking about if the applicant does not go through the ARB. They can't use the blanket excuse that they just did not go through it.

Mr. Kamptner stated that they would need an articulated reason.

Ms. Higgins noted that they would not know that unless the applicant had been through the ARB. She suggested that they pursue changing the rules.

Mr. Cilimberg stated that Mr. Kamptner had mentioned that they would have to be pretty deliberate the articulate the reasons for a denial.

Mr. Rieley stated that he did think that somebody should be able to bring something to the Commission that has a discretionary point to it that has pertinent issues that are going to have to be reviewed sooner or later by the ARB and bring it to us without that ARB advice. That should never happen.

Ms. Higgins stated that it should be required and accommodated somehow in the schedule so that it can happen.

Mr. Cilimberg stated that they must have a review schedule that will allow the ARB review before coming to the Planning Commission. Staff feels like that has been done in the past, but will look at it.

Mr. Kamptner stated that to change the language will first require a resolution of intent that staff will need to bring back.

Mr. Cilimberg stated that staff will work with Mr. Kamptner on that and bring it back to the Planning Commission. Ultimately that will trigger amendment language that will come before the Commission and Board of Supervisors. The process for that will take some time. Staff will also communicate what the implications of that change are in terms of things such as staff requirements.

Discussion was held by the ARB and the Planning Commission and there was no great interest in either an ARB member serving on the Planning Commission or vice-versa because there are other ways that they feel like they can coordinate.

Ms. Joseph pointed out that the ARB action letters are very helpful to the Commission.

Ms. Smith stated that she receives copies of the Planning Commission agenda, which is very helpful.

In summary, the Planning Commission and ARB made the following comments:

- The Commission felt that it is enormously important for the Planning Commission to have ARB comments because it makes a tremendous difference in their review.
- At least one ARB review should be required for all project reviews, both legislative and ministerial, that will ultimately need a Certificate of Appropriateness before the project comes to the Planning Commission.
- The schedule should be streamlined as much as possible and relationships between each of the review times, as presented by Ms. Higgins (see attachment), should be gone through from the perspective that, "I am an applicant and I am putting my application in and what does that mean for the schedule for all of these different kinds of situations." It was pointed out that this issue could not be solved at tonight's meeting.
- It was noted that there were sometimes things that the ARB sees on a plan that is not within their purview to approve, but the Commission wants the ARB's input on. The Commission suggested that additional comments be provided by the ARB that are purely advisory and do not relate to the issuance of a Certificate of Appropriateness.
- Discussion held on "mandatory" versus "advisory" ARB review and whether the ordinance should be changed.

Staff summarized the major points made as follows:

- There is not a great interest in either an ARB member serving on the Planning Commission or vice-versa because there are other ways that they feel like they can coordinate.

- The ARB can provide a service to the Planning Commission in its decision making process. The Commission desires that all development proposals in the Entrance Corridor require ARB review before they come to the Planning Commission. This will require changes to the zoning ordinance to be a requirement.

- Have a review schedule that will allow the ARB review before coming to the Planning Commission. This will first require a resolution of intent that staff will need to bring back. Staff will work with Mr. Kamptner on that and bring it back to the Planning Commission. Ultimately that will trigger amendment language that will come before the Commission and Board of Supervisors. The process for that will take some time. Staff will also communicate what the implications of that change are in terms of things such as staff requirements.

The ARB adjourned its meeting at 8:37 p.m.

The Planning Commission took at break at 8:37 p.m. and the meeting reconvened at 8:45 p.m.

Old Business:

Mr. Edgerton asked if there was any old business. The first item was discussion about the confusion of the action taken on the Lewis and Clark special use permit last week.

Ms. Higgins stated that relistened to the recording of last week's meeting and felt that there was one clarification that would resolve this problem for everybody concerned. Her misunderstanding began when they talked about the tower and the fort. They also talked about how to implement phasing of that. There was a lot of discussion. She would be in total agreement if consensus could be modified to say that this tower and fort are excluded in the special use permit.

Mr. Rieley pointed out that was not in the motion.

Ms. Higgins stated that this was not the intent even based on Mr. Rieley's words because he indicated that the trails in that area could happen.

Mr. Rieley pointed out only if the County implemented them. That was very important because they did not want federal money to be spent there.

Ms. Higgins pointed out that in listening to the tape there were numerous interruptions, people talking over people and she could not understand the words. The part that she read Mr. Rieley's statement says, "They could still build the trails there, but . . . " Then they went into a lot of discussions about the fort and the tower that went on for about eight minutes. She was in agreement for phasing so that the fort and the tower are not included. She believed that the discussion about federal funds being used was an issue. When Mr. Morris passed the motion he did not even say phasing, and when she seconded it she said that in phasing she understood it to mean that the fort and tower are not included, but not to separate the land from the special use permit. Another reason is that the trails are an accessory use to the historic center. If they eliminate everything north of the creek it was not what she meant when she seconded the motion. She felt that if they just limit it to the fort and the tower that she would support it.

Mr. Edgerton stated that he was under the impression that the trails as drawn exist.

Ms. Higgins stated that most of them do.

Mr. Edgerton stated that a concern was about federal dollars being applied and then tying the County's hands on being able to use that land for other public purposes after the establishment of this facility. It was a compromise and he would not have voted for it if he thought that they were not excluding the portion of the site that was actually critical to the future plans for the County.

Ms. Higgins asked if he meant excluding it from the special use permit, and Mr. Edgerton replied yes.

Mr. Morris stated that was his intention in the motion.

Mr. Edgerton stated that once they raise their money they can come back to the Commission later and give them a good reason to add that area to the special use permit.

Mr. Rieley pointed out that they could not reargue the case. He pointed out that Mr. Morris said that his motion was to exclude everything north of Trevillians Creek. That could not be clearer. There is no point in talking about anything else because it is over. They are talking about what the minutes should reflect and what the conditions should reflect. He felt that was crystal clear and he could only assume that she was not paying close enough attention. This is not the time to go back and reargue the points of the case.

Mr. Edgerton stated that he agreed with it, but felt that they need to change one little piece in the action memo because it speaks to the height of the fort. He noted that if the fort is not a part of the special use permit that it should not be included.

Ms. Higgins stated that was not part of the motion either so it will have to go forward the way it is.

Mr. Edgerton stated that the height was one of the original recommended conditions from staff and it got reproduced in the action agenda, but it was definitely excluded from the motion.

Ms. Joseph stated that the reason staff sends action memos is that they talked nebulously about the conditions of the approval, but they were very clear about development over on the other side of the creek. There is one thing that is missing and that is the phasing. One of the things that she talked about in her list is the phase one archaeological survey. She wanted that in there and the Commission had all agreed that would have been one of the conditions of approval. But, that is not in there.

Ms. Higgins stated that staff pointed out that would be required in site plan approval anyway. She pointed out that was not in Mr. Morris' motion or her second. Therefore, they could not go back now and change it. But, it will be done.

Mr. Morris suggested that in the future that they step back at the time of the motion and ask what the conditions are. That would help clarify the motion and actual conditions to avoid future confusion.

Mr. Rieley stated that there are times that they ask Mr. Kamptner to summarize the conditions, which was not done in this case. He stated that if they missed that, then they have to live with it. He felt that it was important that the line is the creek for that special use permit.

Mr. Morris felt that was a critical element.

Ms. Higgins pointed out that the applicant could appeal it to the Board, which allows them to make the decision.

Mr. Edgerton asked if there was any further old business.

Mr. Graham stated that a gentleman came to the Commission and talked about the Hollymead Lakes. The gentleman was obviously concerned about what is going on at Hollymead Town Center. That has been going on for quite some time. He explained the history of the lakes on how they have gotten to this point. Before the rezoning was done Mr. Wood cut timber and actually started pulling up stumps in places. Mr. Wood said that he was going to change it from trees to pasture. The next thing that happened was that they came in with a mass grading plan. After the rezoning was done the way that the development was going to have to occur was by mass grading. That included both the area in the Hollymead Area B, which was part of the rezoning, and Area A, which was not part of the rezoning. Area A land is effectively a waste area for the dirt that they were going to cut out in Area B where the Target and Harris Teeter are now. What they did as part of the erosion and sediment control is put in a large sediment basin down here to capture all of the water. The next thing they did as part of the erosion and sediment control, which was one of the first things they did with the fill operation, was to build a diverter pipe of a large storm sewer down the front of the property. What that did was it took all of the water that had been going into the other Forest Lakes ponds and diverted it down to the large basin and it flowed into the Hollymead Lake. About the time that this was getting started we will in conversations with the

Hollymead residents and Forest Lakes residents. Staff actually had a meeting with them back in November, 2003 advising them about what erosion and sediment control they could require and what it would do and it would not do. One of the things they were conscious of with them is making them aware back then that a sediment basin satisfies the requirements of the erosion and sediment control law in the County's ordinance. But, it only captures about 60 percent of the sediment that comes to it. That means 40 percent of the erosion and sediment that is washing off of this site goes through that basin and just passes it on through and ending up in their lake. It was an important to us to make sure that they understood that they could be in full compliance with the law and their lake was still going to get discolored. He also spent a lot of time with them explaining what they had to do. They spent time walking on the property. The next thing they have done is invited the State Department of Conservation and Recreation Erosion and Sediment Control Program, who are the people who oversee the County's program for compliance with State law, to visit the site and walk through the site to make sure that they felt that the County was doing everything in compliance with the law and that they were doing things right. They have been. There were a few little incidents and they subsequent not that it complies. That is a reported violation that they are required to remedy and they did. The applicant has remedied all of those violations. The one thing that had happened that started this fall is that they were grading on out here and they started diverting from their approved plan. The grades were obviously not matching their approved plans. The County staff sent out a notice to comply saying either stop grading and stabilize the site or submit a revised plan that shows the grading that matches the way they were grading the site. They did not do it. County staff issued a stop work order and told them to seed and straw the site and stabilize to which time they could get a grading plan that will do that. That is what they have done at this point. The whole site has been seeded and strawed to stabilize it. That is where they are at this point in time.

Mr. Rieley asked when it was seeded.

Mr. Graham stated that it was done in early November. They started on November 10 and 11. It took them about a week to do it because it is about 60 acres of area. One of the issues that they have also brought up with the Hollymead people about Lake Hollymead is that he told them that he would have no problem testifying that sediment from this development has entered your lake. But, he would never be able to testify how much sediment is in your lake as a result from this development. Even during this process it would have been hard. The reason is that there has been so much other activity going on out here. Airport Road has had major reconstruction. There was a phase 1 Route 606, Dickerson Road that was done by the Airport Authority. There was a phase 2 Dickerson Road, which was a project done by the Airport. There was an extension of the runway that was done by the Airport. There was a Deerwood phase 2 and 3 development that was occurring out here at the same time.

Ms. Higgins pointed out that the same thing happened in Forest Lakes during its development because the Hollymead people came in. That is how old that dam and pond is.

Mr. Graham stated that is an excellent point. The other points they tried to make with them is when Hollymead was developed and this dam was first constructed it was constructed specifically so that this could be used as a sediment basin for the construction of the project. It was also used as a sediment basin for Forest Lakes. This thing is 37 years old and it has never been dredged. One of the things that naturally happen with any man made impoundment of a pond or a lake is that it fills with sediment over time. That is what they see. Has this project accelerated that? Yes, he would have to say that it has. But, he could not tell you how much it has accelerated. That would be very difficult for any professional to be able to show that in court or any place else. He just did not know of any way that you could do it.

Ms. Joseph stated that from what he said that 40 percent of the silt is going to be relocated. The gentleman at the last meeting asked if there was any way that they can upgrade out standards.

Mr. Graham stated that was the State's minimum standard. The County can upgrade our standards. He has spoken twice with the Board of Supervisors and he said that they could do that. The 60 percent minimum standard is the minimum to comply with the State law. He said that they could go to an 80 percent standard. But, in going to an 80 percent standard they should recognize that it is probably going

to double the developer's cost for erosion and sediment control. If they wanted to go to 90 percent true state of the art they would probably multiply their erosion and sediment control cost by an order of magnitude. It will be ten times greater. The other point as far as discoloration, he said that they would still have the discoloration. This discoloration is caused by the small sediment particles that stay suspended the longest. If you go to 80 percent those are still the particles that are going to drift down to this lake. The particles stay suspended for weeks.

Mr. Edgerton asked what the Board's reaction was to his request.

Mr. Graham stated that the Board has not expressed an interest in stiffening the requirements. In 20/20 hindsight what he wished they had done was that when this rezoning was taking place try to recognize that and deal with it in the proffers.

Mr. Rieley suggested that they file that away for future reference.

Ms. Joseph asked if staff was going to meet this gentleman.

Mr. Graham stated that staff was setting up a meeting with these property owners in this area about the situation. Ironically, in 2003 staff asked the property owners to do a study and federal documentation and they did not do any of it.

There being no further old business, 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 9:26 p.m. to the next regular meeting on December 6, 2005.

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V. Wayne Cilimberg, Secretary

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