Albemarle County Planning Commission
March 14, 2006

The Albemarle County Planning Commission held a meeting and a work session on Tuesday, March 14, 2006, at 4:00 p.m., at the County Office Building, Room 235, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were Bill Edgerton, Calvin Morris, Vice-Chairman, Pete Craddock, Marcia Joseph, Chairman; Jo Higgins, Eric Strucko, and Jon Cannon. Julia Monteith, Senior Land Use Planner for the University of Virginia, representative for David J. Neuman, FAIA, Architect for University of Virginia was present. Pete Craddock and Julia Monteith arrived at 4:10 p.m.

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

Call to Order and Establish Quorum:

Ms. Joseph called the special meeting to order at 4:07 p.m. and established a quorum.

Work sessions*:*

ZTA-2005-004 Phasing and Clustering, RA District - Work session to discuss text amendment outlines for phasing and clustering of development, family divisions, and two public input options. (Joan McDowell)

Ms. Joseph stated that this was a continuation of a work session held several weeks ago. She asked Mr. Cilimberg and Ms. McDowell to lead the Commission into the discussions so that they could finish this today.

Mr. Cilimberg stated that staff has targeted this for the Board during the second quarter of the year between April to June. A tentative work schedule has been scheduled for the Board of Supervisors next month in the event the Commission is able to get finished. Certainly between April and June staff would like to get this to the Board so that they can review what the Commission has recommended and then kind of set the direction. There is another meeting that the Board is going to have in May to discuss the Mountain Overlay, which again is a tentative meeting, but one that would get another matter before them during that same period that they really are anxious to see come to them. The expectation of the Board, as staff sees it, is that the Commission is going to be delivering to them the concepts for the changes that would take place in the Rural Areas division regarding phasing and clustering as well as what they recommend as the public input process for the review of the ordinance proposals. They did not expect that the Commission would be delivering the details of an ordinance. He felt that was not really where they are because they were really trying to wrap up the concepts. But, they would definitely want to make sure that the Board is aware of not only what the Commission recommends, but the things that they discussed about those details that they are going to have to spend time with when that work on the ordinance is back in their hands. The Commission has already identified a number of things that are going to be important to pay attention to. Staff is going to make the Board aware of those things so that their eyes are open as well about what those details might entail and some of the considerations as the Commission moves forward in the ordinance development and some of the things that they will probably be hearing from the public. That is what staff is hoping the Commission can accomplish. Staff has this set on a path to get to the Board for them to begin their discussion and get back to the Commission with the direction they set. He noted that this is not going to be easy because there is going to be a lot of work involved when they get into the ordinance development. This is probably the easy part in thinking through all of the things that might come up. But, it is very important.

Ms. Joseph stated that this would allow the Commission to get some public input without having the ordinance already drafted.

Ms. McDowell stated that they would continue the discussion from two weeks ago. Just to reiterate, the Commission has gone through just the framework for the phasing and the ideas behind phasing and

clustering. The Commission asked that item 14 be added to the clustering list, which is to encourage the connectivity of conservation land wherever feasible by locating conservation easements adjacent to other conservation easement properties. Tonight they will talk some more about the phasing and clustering combined. As previously requested by the Commission, staff has prepared some graphics to show what staff has been talking about. Therefore, they could get a visual picture not only as an individual parcel but as a combination of parcels to go into a cluster and what happens to them over time. Staff will present a power point presentation on phasing and clustering in the Rural Areas. (See Attachment: March 14, 2006 Phasing and Clustering Rural Subdivisions: The analysis criteria and patterning impact of phasing and clustering) Next, Mr. Kamptner is prepared to discuss the issue of vesting of subdivisions. That was a question at the last meeting. Also, they will go over the public input process. Staff has presented a couple of options to be reviewed. The Board has charged the Commission with condensing the public input, but not diminishing it. So that is a challenge. Part of the challenge is to look at combining all of these so that the public input is combined into single work sessions and public hearings instead of one per each phasing, clustering and family divisions. Family division will also be discussed concerning the issue of lengthening the time period. Next, Scott Clark will present the PowerPoint presentation.

Scott Clark presented a PowerPoint presentation that contained some real world examples instead of just the rectangular diagrams on how phasing and clustering work together. Staff picked two examples with one of a single parcel and the other of a larger area of multiple parcels to show what the basic steps will be to laying out one of these divisions. He explained what the steps would be in laying out the process. First, staff took an aerial of a property to pick out the preservation area with the resources that they were trying to protect and then the location of the development lots, etc. Then they developed the possible development scenarios using clustering and phasing over a 20 year time period. (See Attachment: March 14, 2006 Phasing and Clustering Rural Subdivisions: The analysis criteria and patterning impact of phasing and clustering)

Mr. Edgerton asked if the area designated for the development lots was being referred to as the parent parcel.

Mr. Clark replied no that the parent parcel was the whole thing. This lot shows what staff refers to as day one with that first division. There are two development lots and the preservation lot would be created at the same time. So they were showing two houses off of that initial road from the public highway and then a drive way and another house on the preservation track.

Ms. Higgins questioned going back to the parent parcel, which was excluded from the count, and when he said two in ten and this says first lot. So by doing this they were actually doing three plus the parent parcel.

Mr. Clark stated that was correct.

Ms. Higgins noted that they were only allowed to do two excluding the parent parcel.

Mr. Kamptner stated that it was the two cluster lots, the preservation parcel and the residue for the parent parcel, from which all subsequent cluster lots would be created.

Mr. Clark pointed out that the residue is not counted against the phasing, and Mr. Kamptner agreed.

Mr. Clark stated that there were two development lots and then the preservation tract is exempt because they were trying to get that on the ground at the beginning.

Ms. Higgins stated that by creating the two lots it was actually creating three lots right there. She asked what was on the other side of the road.

Mr. Edgerton stated that it was the residue.

Mr. Clark stated that there were two development lots, the residue and then the preservation tract.

Ms. Higgins stated that was four.

Mr. Cannon asked if it was built on the residue initially.

Mr. Clark stated that staff has not tied that down entirely. Theoretically, they could put one house on it, but that would limit the options for each development.

Ms. Higgins noted that their wording just does not agree with that.

Ms. Joseph stated that they were not doing the ordinance language right now, but just concepts. That is something that has to be figured out if they agree that four makes sense or the way that it is working out right now.

Ms. Higgins stated that would be three in ten years excluding the preservation area.

Ms. McDowell stated right, but that they were looking at what they would exempt.

Ms. Higgins noted that their description says two except the preservation area. But, they are looking at an example that has three except the preservation area. Someone could put a house situated so that could be divided off.

Ms. McDowell stated that might not be the best thing to link it to.

Mr. Clark agreed that there were three new lots along with what is left from the original.

Ms. Joseph stated that lot actually has development rights and that was where the rights would say.

Mr. Clark agreed that is where the development rights stay until the next phase comes through.

Mr. Edgerton stated that they would now be accessing three residences from a state road. Therefore, they would have to build the road accordingly.

Mr. Clark suggested that they might have to rewrite the road regulations to deal with those kinds of situations to make sure that they are not forcing people into building more road than is necessary to be built. If they had built the two lots right on the road, then there would a very short driveway. But, that is part of what they have to contemplate once they get to the details.

Ms. Higgins asked if both parcels were greater than two acres and they had said two acres with the possibility of going to three if need be, but to keep it at two acres maximum.

Mr. Clark noted that both parcels were two acres. Years later with the next phase there will be two more lots. Then ten years after that they would have six lots of roughly twelve acres. The division is then complete. Staff realized after doing this that the adjacent conservation easement is on an existing RPD, which was done several years ago. These lots are the development lots in the current pattern of RPD's and range from three to ten acres. Whereas, what you see here is a pattern with a maximum of two acres. He continued on to the second example, which was a parcel of about 228 acres. But, in their theoretical example they said that perhaps it was three parcels of record. There were three pieces of 78 acres, 66 acres and 83 acres, which had a total of 23 total development or division rights. Once again, they did the resource conservation plan first and figure out what they were trying to protect. One thing that is not shown here is the list of high quality soils in the Comp Plan. Those soils cover the entire parcel. It is not shown, but it needs to be noted that it is there. The transparent green covers 80 percent of the parcel, which are high quality agricultural soils. The creek and floodplain feed down to the water supply tributary. The orange areas are critical slopes. These are all things that are found in their current RPD design standards to protect or to stay away from. The cross hatched area is some data from the State Department of Forestry, which analyzed patches of forest in the County and tried to figure out what constitutes a contiguous piece for conservation purposes. They are trying to use that as another factor in designing the way the development should go. For their purposes this area is considered one forest

patch. So it is a little challenging because of the location of the state road. The obvious area to develop is the already clear section. But, there is not enough room there for 22 two acre lots. So this is an example where the choices are not clear cut and they would have to give up something. In hopes of staying away from the floodplain and the water supply tributary staff thought if they had to lose part of that forest the general landscape theology tells you to take it off of the edges and up the middle. So instead of taking it there staff said that this dashed line is designated as the development area and they would take a part of the forest patch from the end. That would have less impact overall. This is day one with three parcels of record, each having two lots in the first phase for a total of six lots and three lots would be parent parcels grouped together within this development area. It is about 50 acres, which could have roughly 44 lots. Again, there is a little extra in there for possibility. All six of those development lots from the three parent parcels come with the first division, as well as the remaining tract. In this case it is about 184 acres.

Ms. Higgins stated that if they can only do two in ten years, then how do they do six lots?

Mr. Clark stated that they could do two lots from each of the parent parcels.

Mr. Strucko asked if was for a single owner for three distinct parcels.

Mr. Clark stated that it was for a single application.

Ms. McDowell pointed out that the owners could be combined.

Mr. Edgerton asked if they were talking about another six lots ten years later, and Ms. McDowell stated that was correct.

Mr. Craddock stated that since it was three parcels they could put a house on each of the parcels of preservation so that the parcel to the left, upper top and the residue that is not in that development area of parcel C.

Mr. Clark stated that the assumption was that the regulations would call for a single preservation tract. So all 23 parcels total from all three parent parcels and they were assuming that 22 of those 23 lots needed to go in this area. That is something to be discussed.

Mr. Craddock stated that in the previous example he had one parcel and got a preservation house and three parcels. So why couldn't these owners have one on each.

Ms. McDowell stated that they could develop the parcels separately, but in this hypothetical they decided to use what they see over time with RPD's, which was multiple parcels and show that you could still get your preservation parcel with the two lots from the phasing altogether. It is their choice to combine them if they have separate parcels or just have one parent parcel.

Mr. Cilimberg stated that he would imagine if they had three separate owners and they were combining parcels that they would protect their interest in combining them to make sure no one was getting an advantage over the other. That is a private matter. The scenario that might occur is that they could have three different parcels that already have a house on them in this example. So what you could move into the cluster would be less than the total rights. He asked if that was correct in trying to create one cluster and preserve a tract that has those houses that were originally in existence, then they were potentially transferring less to a cluster.

Ms. Higgins stated that if A, B and C had three different owners with three different preservation tracts that the Commission in #14 was trying to create a way to make contiguous preservation area if three different owners came in over different one year periods. They want a way so that the parcels they create somehow relate to one another so that there is contiguous preservation area. This is a pure example by putting two whole parcels into the preservation tract. But, if those lots had to stay with that parent parcel, it would be interesting to see if it was possible to do. That is the part that she was having trouble with on

the implementation. If two, two and two had to be spread out with the road with the long distance to get to it, how do they make it workable? It is almost like it could be done here.

Ms. Joseph stated what she heard Ms. Higgins say is that suppose everybody comes in how do they encourage them all to cluster in one place.

Ms. Higgins stated that #14 was to say how do we get contiguous conservation areas and how do we get them to relate to each other if it was done over several years. She liked the idea of mixing some of the forest in because actually by putting all of the houses in that open field they were going in the other direction of taking away good farmable land.

Ms. McDowell pointed out that was why at the beginning they had to look at what to protect. The first example shows you that preservation tract was next to an existing preservation tract. So you do put those together. That is part of what staff would look at.

Ms. Higgins felt that the first example was going to be very typical and is a terrible example of what will happen. It will be these little two acre sliced up things jammed together.

Ms. McDowell stated that this could be an advantage to somebody that has more than one parcel or multiple owners because their infrastructure costs are far less than if they divided it individually.

Ms. Higgins asked if staff had any idea if these are three different owners and they came in one this year and one next year, what would staff be looking at or what would be most important. She felt that they might see more of that than three owners that are the same.

Mr. Clark felt that this was a bad example to try to do that from because first of all three parcels are fictional and may be developable. If staff received an actual application that looks like this with a 228 parcel and then they hand us a determination that say by the way this is actual three parcels. He pointed out that only this one piece has road access. Those other two, even though they were separate clusters, would be difficult because it is landlocked.

Ms. Higgins noted that it has a private road on the upper end.

Mr. Clark noted that there was only one public road.

Mr. Strucko stated that the first applicant would set the tone for subsequent applicants. But, staff would try to make the preservation tracts contiguous depending upon the first application.

Ms. Joseph felt that one of the questions that staff asks in here is if they want to rate any of these staff reviews. Do they want to rate the floodplain, critical slopes and do a number system; or, do they want to do it on site specific. They would look and see what the important attributes of each site is and what it is surrounded by.

Ms. Higgins stated that as they develop the ordinance that is a good discussion. She agreed with Ms. Joseph, but she was just trying to get some feedback on if it would make more sense to let that dominate or let other issues dominate. Which one is going to work out?

Mr. Edgerton stated that he had another issue. In the second scenario where they have 22 ultimate lots he could not help but look at this and wonder how valuable it would be to somehow incorporate in the adjustment of the ordinance some layout of how all 22 lots may be developed some day.

Ms. Higgins suggested that was the part about the vesting. Once someone does this they have to actually show how they can get all of the lots.

Mr. Edgerton stated that it might be a vesting thing, but it is a little worrisome if you put in one road and then come up with six lots that will be served by that road. There are couple examples of this coming up

later in the meeting tonight where they talk about how important that is. He asked when staff worked out the additional acreage if he just did it mathematical when he chopped off part of the forest area.

Mr. Clark stated that staff was assuming that the applicants are going to have to figure out pretty close where that ultimate build out is going to be.

Mr. Edgerton suggested that they may need to incorporate something in the language of the proposed ordinance change that would mandate that exercise so they don't end up with something that does not work down the road. Even though it might work mathematically, it might not work on the site.

Mr. Cannon stated that the lots would need to be buildable.

Mr. Edgerton agreed. If they have combined all of these and are trying to put all 22 development rights into that one area, they need to make sure that it is going to work.

Ms. Higgins noted that they also had the groundwater study and all of the additional conditions they have gone through to make sure the land can support a certain number of lots. But, if they are only approving six lots she asked if that could get into the vesting of the others.

Mr. Kamptner stated that they would get to that issue. But, the way they envisioned it in looking at vested rights and related issues would be that the preliminary plat would show the full build out of the property and from that point on, with the final plats for the first four lots and then the plats for each two lots that come in every ten years, those are really like phased final plats for each subsequent phase of the development of the property.

Ms. Higgins noted that they would have to meet the road standards for the ultimate number of lots on a single road.

Mr. Kamptner stated that it has already been established that the initial plat will require a public road standard.

Mr. Edgerton stated that would occur when it gets above 2 lots.

Ms. Higgins pointed out that there were categories within that, too.

Mr. Kamptner stated that they don't know if an owner desires to fully develop their property. There are a lot of intangibles.

Mr. Edgerton stated that from a planning perspective it was going to be very hard to evaluate this.

Mr. Kamptner stated that the plats could be amended over time and standards will change. It may be that once they reach a certain number of phased plats, the road will have to be upgraded once a certain threshold is passed.

Ms. McDowell stated that they wanted to show in particular that it would just be available land that will be there for development.

Mr. Cannon stated that there are natural features that cross parcel boundaries that would need to be taken into account by staff in their review.

Ms. McDowell pointed out that they could only combine if they phase. It is a figure of a carrot because they would be building fewer infrastructures and still getting their phasing and the lots.

Ms. Higgins stated that with phasing they would have to build more infrastructure than the particular phase you might be developing. She felt that was going to be the rough thing to figure out to make it work. She asked if they were not considering forwarding this to the Board as clustering with all the Commissioners being in favor of it since they all know that it has worked. It is a proven tool. Then they

have phasing, which again, it is a good slow down took. Are they only going to forward it as a combined thing. The only reason she was bringing this up was that she was trying to think of the success of the final adoption. Do they not look at it both ways? She asked if it could be done separately and also be done together. She did not want to have a failure because of the implementation that they are not looking at. They are actually forwarding a concept. She felt that they need to leave that avenue open and somehow say they all agree to this and this. But, they are trying to make them work together. But, until they get to that point she did not want to regress because to go back would be worse. She asked if there was a way to keep that option open.

Ms. Joseph asked specifically what she wanted to leave open.

Ms. Higgins stated that the options were of clustering, time delay phasing and then doing both together. Is there a way to keep an option open so if the Board so chooses due to the issues that might be raised.

Ms. Joseph felt that is a discussion that the Commission can have after they have heard about the vesting. They are not quite there yet. She felt that is a big piece of it that was in everybody's mind; and, therefore requires this preliminary plat that shows the parcel that keeps the development rights.

Mr. Kamptner stated that it was the residue of the parent parcel.

Ms. Joseph asked if there were any more questions on this issue. There being none, she stated that they would move on to Mr. Kamptner's discussion on vesting.

Mr. Kamptner made the following presentation on vested rights.

- He stated that vested rights are very complicated. It is made even more complicated here because they have looked at it under our current regulations and what would probably have to happen once they get into a phased cluster subdivision program. He wanted to start from the beginning on what vested rights are. Conceptually, for those who are familiar with zoning and the idea of nonconforming uses, the owner has an existing use and the zoning regulations change after that use is established and that use/structure or lot becomes nonconforming because it is no longer in compliance with the newly adopted zoning regulations. It is allowed to continue. Vested rights is the corollary to nonconforming uses in that it pertains to a particular approved project and the use or structure has not been established yet. But, it is so far along in the process that when that zoning ordinance is changed, out of fundamental fairness the right has vested to the point where that use should be allowed to be established. So when we are talking about vested rights in the context of this kind of program, we are talking about approved preliminary plats and subdivision plats and the rights that are attached to develop the project according to that plat, recognizing that over the next 10, 20 or 100 years as these phased subdivisions may take to be fully developed, the zoning regulations will change.
- So how are vested rights established? There are three factors that have to exist.
    - There has to be a significant governmental act. Both the approval of a preliminary subdivision plat and of a final subdivision plat are significant governmental acts. That has been established by statute. Several years ago the General Assembly stepped in and replaced the body of case law that had developed and listed a number of types of approvals that are significant governmental acts.
    - The second factor is good faith reliance on that approval. The developer gets the plat approved. Based on that approval, the developer goes out and starts hiring engineers, contractors and things like that to work towards the completion of the project.
    - The third factor is that the developer incurs extensive obligations or substantial expenses in diligent pursuit of the approval. As an example, the approval of a preliminary subdivision plat has a period of validity for five years. Within that time, the owner needs to submit a final subdivision plat within the first year after it is approved. Ultimately, if the developer submits the final plat at the first anniversary, there are four more years to get that approved. They are at least assured the validity of the preliminary plat for the full five year period by submitting the final plat. So, in merely jumping from the preliminary to the final plat stage you can vest your right to develop under the approved preliminary plat.

Ms. Higgins asked what the category cost of substantial is because it could be substantial for just a preliminary plat if someone had to survey 228 acres and do all of the evaluations.

Mr. Kamptner stated that there were no bright line tests. There has only been one case that has looked at this issue since the law was adopted several years ago. In that case it was a large project and the developer had spent almost $200,000. Under current regulations that is the law that applies to preliminary plats. The preliminary plat is valid for up to five years. Therefore, vested rights can last for that five year period. The law also allows localities to extend that period for a longer period of time. One thing that we have included in our memo that the Board may want to consider is whether or not the life of the preliminary plat, provided that the applicant keeps coming in at regular intervals, should be vested for the entire life of the project until it is fully developed. That is something that they will have to study some more. But, that would insulate that development of the parcel from any zoning changes until the project is fully developed. That is something that will have to be considered. The flip side is that, if the County stuck with just the laws that currently exist with the five year period and the five year vested life, of a preliminary plat it really is just going to be the first phase that is going to be guaranteed of coming in under the approved preliminary plat. It is not subject to any changes of the zoning ordinance. Any subsequent phases will be outside of that five year envelope.

Mr. Edgerton stated that they would need to make sure that long range plan does not have the word preliminary on it.

Mr. Kamptner then spoke about what is vested with final plats. A final plat is approved and then recorded. It has a period of validity and the developer is allowed to develop as that final plat was approved. As long as extensive obligations or substantial expenses have been made, the developer is allowed to do it. The plat is vested only as to that particular phase. So for later phases, unless the life of the preliminary plat is continued, there is no guarantee.

Ms. Higgins asked if that is the case unless they have meet 1, 2 and 3. If they did come in and they had an affirmative government action on the preliminary and they relied on it in good faith and spent an extensive amount of money, then does that trump what he is saying that it expires?

Mr. Kamptner stated no, because the approval has to still be in effect. So, the preliminary plat is in effect only for its five year life. Even if extensive obligations have been made, the preliminary plat after five years expires. There is no significant governmental act after that time. That is why fairness may dictate that the county extends the life of the preliminary plat. One of the key issues for a vesting analysis is always whether or not the owner has actually incurred extensive obligations or substantial expenses. In the typical situation in a cluster development, we are not looking at a ten year phasing that we are dealing with here. Those criteria (extensive obligations or substantial expenses) would be met probably with the very first phase. It would be the initial final plat that would require sufficient infrastructure, if not all of it. That would lead to the vesting.

Ms. Joseph asked if they were actually building the road to vest it.

Mr. Kamptner stated most likely yes.

Ms. Higgins stated that ultimately you would have 20 lots and would have to do a 20 lot subdivision road and all of those standards you go out and build it. Then you just do your phase. Then you come in during subsequent years and you are basically vested for those lots and no one could ever take them away if the ordinance changed 25 years from now.

Mr. Kamptner stated that it depends on where you are in the process. They would be vested as to what they have platted up to that point unless the life of the preliminary plat has been extended.

Ms. Higgins stated that if you built a road to serve 20 or 30 lots and then the rules changed and may be some day in the future the county says they are going to take division rights away and someone already built a lot for 30 lots how could you take the lots away. That is the vesting she was trying to consider.

Mr. Kamptner stated that it is because the significant governmental act is no longer there. So that first criteria disappears. The way the law is set up right now envisions that a phased subdivision will be platted within five years. So our analysis has taken that approach. If you come in and have five phases for your project for a preliminary plat and come in on the first anniversary and get your first final plat approved. Then you build your roads for your cluster development. Then you come back in year two and the zoning ordinances have changed, he felt that they would probably find that you had vested because the first plat or the infrastructure that went in was a substantial expense. So you vested that preliminary plat. In year two, three, four and five you come in with another phase. By the time the preliminary plat is going to expire you have fully developed. Once they start extending this period out to 20, 30, 40, or 50 years the analysis changes. The concept of fairness trickles in and the validity of the preliminary plat may need to be extended as well because the owner with the first phase has made a commitment to put in this infrastructure and has relied on that preliminary approval. That is something that staff will need to look at in the next few months.

Ms. Joseph stated that it is possible that you may vest with the preliminary plat if you show good faith as you move forward with the road. It is not a guarantee that this will lock up this particular design.

Mr. Kamptner stated that the plat for the first phase under a phased cluster program is just an academic vesting because they are only vesting for that five year period. Once the next phase comes in they would no longer have that.

Mr. Cilimberg pointed out that they would have a new preliminary.

Ms. Higgins felt that would be a nightmare to process and to deal with because as years go by the floodplain could change. It could be very interesting.

Ms. McDowell stated that staff only anticipates that the road would only go as far as each phase allows an extra lot.

Mr. Edgerton stated that if it was ultimately going to serve 20 lots and you are anticipating that, then at a minimum you have to have a right-of-way to expand it to deal with that later.

Ms. McDowell stated that you need to know where it is going to go.

Ms. Higgins pointed out that to design that road was another expense.

Mr. Cannon asked if there was any legal barrier in extending the time period in which the preliminary plat would be valid.

Mr. Kamptner replied no, that the Virginia Code allows localities to extend it. Our ordinance right now allows us to extend it on a case by case basis depending on some factors.

Mr. Cannon asked if a generic amendment could be applicable to these clustered subdivisions, and Mr. Kamptner replied that he thought they could do that.

Ms. Joseph asked if they could do it without changing the language as it stands right now.

Mr. Kamptner replied no, that they would change the ordinance to specify a period because right now it is allowed on a case by case basis.

Ms. Joseph stated that Ms. Higgins had an important question. There are three issues being the clustering, phasing and then phasing and clustering. Also, there are the issues of family subdivision and public input.

Ms. Higgins stated there were two viable options, and then they were looking at them in a joint sense. They have looked at some simplistic things. They are getting into the implementation along with all of the

issues that are in the staff report. She noted that she has another list of implementation issues. She suggested that they should get public input on clustering, on phasing and on joining them together. She opposed just throwing it out there to get so much negative that they have to go back and look at it.

Ms. Joseph reiterated that she was saying that they should get comments on clustering, phasing and then on joining them. She asked if anybody else had any other thoughts on that.

Ms. Monteith stated that if the intention is to combine them, then she was not sure what they would do with the comments that are separated. It is complex.

Ms. Joseph agreed that it is complex. The Commission has always said that they want the public people to feel as though they have a say in the process.

Mr. Edgerton stated that it was a danger in keeping them separate. They are going to work entirely differently if they address the issues separately. If you just look at clustering and put your blinders on and don't look at phasing, then you have one scenario of how a piece of land will develop. If you combine the clustering with the phasing, regardless of whether our draft is the right number of years, then that changes the whole formula. He felt that they could not be discussed separately and then somehow try to combine them later.

Ms. Higgins stated that they would have them on an equal basis. They started out with clustering and phasing individually, but now they are looking at them together.

Mr. Edgerton suggested that they look at the two examples. If you look at these as clustering, that is pretty simple. That simplifies you vesting issues and they don't get into any conflict with the five year vesting versus the ten year that they are talking about.

Ms. Higgins noted that they do it now and it is in the ordinance in a basis form now.

Mr. Edgerton agreed that they have clustering, but he was not sure if they were accomplishing much of anything if they just look at clustering. Basically, they would be keeping it the way it is right now.

Ms. Joseph felt that there were aspects of this particular clustering that they were being asked to consider that were different from what they do now.

Ms. McDowell noted that the biggest change is the minimum two acre lot now and they have switched that to a maximum. They saw a huge difference in the amount of residential that would be used. She agreed that it was a much simpler task. That is kind of the way staff phrased it in the staff report. It says that you looked at phasing and then clustering, and now tonight they are looking at phasing and clustering together to see if the Commission likes that.

Ms. Higgins asked why they should eliminate the opportunity for public input on the three levels saying that they are considering them all equally and that there are pros and cons to all of them.

Mr. Strucko stated that he feared that it might be misleading to the public if they look at them individually and separately. The reality of it is that they are considering a rural area policy that has these things combined being rural area clustering and phasing. That is what the public needs to comment on it. That is the rural area clustering with phasing. To discuss them separately may cause more confusion. It may be a little misleading. Someone may comment in a vacuum and he was concerned about that. The public needs to understand that they are considering a broad policy. It is not just individual tools. But, they are considering rural area clustering with phasing. That is what they need the comments on. It may run the risk of being misleading if they look at them individually.

Mr. Cannon pointed out that he was not seeing what the disagreement was here. It seems that conceptually they have three alternatives, which includes clustering by itself, phasing by itself or both of them together. He felt that they were focusing on the option of putting them together, which takes a lot of extra work. You can't just take phasing by itself and clustering by itself and put them together and have

them work in a program because they are special issues that arise when you combine them. It seems that is where a lot of work has to be done specifically on a combined approach. But, it is also an option and will remain an option to the Board of Supervisors to have clustering and phasing separately. He felt that the public was free to comment on any of those options. But, the hard work towards our recommendation has to be on how to do what you are actually going to get.

Ms. Higgins stated that all of the staff reports have shown it individually. Plus when the research was done on various other counties she has not found one county that has successfully joined them. So she has not seen the ramifications on how to implement this. The issue of fundamental fairness might be the stumbling block. She noted that her point is that they were doing something that maybe that no other county has done. In addition she has not found one in any other states. But, to go into it with a focus on that and not have it more workable and more open all three levels she felt that they have made the leap and made the decision and left the public input out.

Mr. Edgerton stated that they did not do it in a vacuum. They did it because the County has asked us to come up with a way to preserve the rural areas and end the sprawl into the rural areas. He felt that Mr. Strucko put it very well in that the public certainly will have the opportunity to speak up. It is not going to take much public discussion for the complexity of these issues to start making that dialogue a very vital one and an important one. But, they need to remember why they are doing this in the first place. They are not doing this just to do an exercise to parallel some other county's experience. They are trying to do something that has never been done. They are trying to preserve the rural areas.

Ms. Monteith suggested that it was partially how they present it. Maybe they present it in such a way that you start with what the premise was and why they went into this exercise. Then that it seems from analysis that using the two tools together is probably the best approach.

Ms. Higgins questioned whether it was the best approach.

Ms. Monteith stated that she was speaking in a one minute thought here. But, the schematics can be doctored or changed or adjusted later. She was just trying to put a concept out there because a lot of times it is the way that you talk about something or the order that you present it in. She noted that her only concern was about understandability in that it would be presented in such a way that it is not so complex that people just glaze over it and can't understand and become confused.

Ms. Joseph asked staff to remind the Commission about why they were here.

Ms. McDowell stated that they started with the guiding principles and the visions in the Comprehensive Plan. They talked a little about this last time. The guiding principles want them to look at natural resources, historic resources and scenic resources together as important components. The Board had us take out the word "equal," but they are all listed. There were months of discussion on that and what to add and what not to have in these important components in what makes up the rural area. When they started talking about land uses in the rural area there was quite a discussion about the benefits of clustering. As you recall, they were told not to go down the road towards diffusing development. That was off the table. They were not to down zone the rural areas. So they talked about other tools to be used. Clustering was one of those tools. It does not do anything to change the number of lots. It just combines and addressing some forms of development. Phasing is another tool that would address the rate of development. Nothing changes as far as the ultimate build out. So they were not tackling the density in the rural areas. They are attaching the sprawl in the rural area and the rate of growth. There was quite a discussion about mandating clustering and providing the phasing. There was some opposition on the Commission at that time. There were one or two Commissioners that had some concerns about it. But, the majority of the Commission said that this is what we want to develop policies on and the devil is in the details later when they do this. So when they started doing the staff report on phasing and clustering and that is the implementation that the board decided on. They will do phasing first and then clustering. Then clustering was moved up to be equal with phasing about a year ago. Now they are looking at phasing and clustering and family divisions all at once.

Ms. Joseph reminded the Commission that yes they do have cluster development, but it is not required.

Mr. Edgerton noted that it was not by right either.

Ms. Higgins stated that the form was not good. She noted that fewer than 20 lots are by right and over 20 lots have been taken off the table.

Ms. Joseph stated that they were looking here at requiring phasing. It is the only kind of subdivision that would be allowed in the rural area.

Ms. McDowell stated that it would be except for family divisions. The Commission talked about large lots. For example with 100 acres divided in half they think that the merits or the pros and cons in doing that and the Commission decided that should be taken off the table because it was more important to address the form of development and preservation tracts.

Ms. Higgins asked that they just not say that it is the only thing that they are putting out there.

Mr. Craddock stated that Ms. McDowell was correct in her recollection of where they have come from on this. On the clustering he had just looked at this as more of a refinement of something that we had put out there already. The phrasing is because 80 percent of the survey said to keep the rural areas rural. Short of taking development rights, if somebody has a better way than phasing it is still going to fill the bucket, but it fills it a little bit slower than what it can be done now. He felt that to make this work it has got to go hand in hand unless somebody has something better. That is where some good public debate would come into effect because then it could come out what everybody likes about it or doesn't like about it. Then the Commission can work on it some more.

Ms. Joseph stated that she had heard from Mr. Edgerton, Mr. Strucko and Mr. Craddock that they would really like to go out with phasing and clustering combined. She heard from Mr. Cannon that they would get the public comment on each of these issues anyway.

Mr. Morris stated that there were three areas that they were going to look, which included phasing, clustering and what they would really like to do where possible is combine them. There is always that possibility either/or.

Ms. Joseph stated that it sound like the Commission is split on this. She noted that Ms. Higgins, Mr. Morris and Mr. Cannon felt that public input should be received for each individual issue separately on phasing, clustering and the possibility of either/or of combing phasing and clustering. They felt that the combination should not be the only thing that they are putting out for public discussion. She asked what the Commission wanted to tell the Board that they would like the public to debate.

Mr. Morris stated that he would like input on all three issues.

Mr. Cannon stated that when an agency goes out for public comment on a policy decision they typically put forth a proposal and then identifies some alternatives. Then they get comments on all of them. Then they take those comments back. It seems that the proposal would be some combined version of phasing and clustering and may be revisions to family subdivision along with it. That would be the proposal that they would be working towards and they want to hear public comment on the proposal. But, there are obvious alternatives to that proposal. One is doing nothing; another is doing one or the other of those things, or doing something entirely different. He did not see why it had to be a big issue about they were going to hear from the public about. They can hear from the public about the whole range of things still understanding what they are putting forward and where they are going right now and what they hear from the public is the combined form.

Mr. Cilimberg noted that the practical aspect of anything that they have ever put out is they put out what they think is the best "strawman" so to speak. That is what people will respond to. They are not going to limit their comments to either yes or no on the "strawman." They are going to comment what they feel are good and bad attributes of the "strawman" and any alternatives that they think would work better. He imagined that they would hear a lot about what people are concerned about without phasing whether it is

part of clustering or not part of clustering. So he thought that their "strawman" is the combination. The comments will come in all over the place. The one thing that he wanted to note about phasing, and they kind of called the Board's attention to this, is our view of it is that it would slow down the rate the subdivision activity occurring. You will probably not see a big change in building permit activity. The reality is that 250 to 300 building permits just having clustering and phasing as combined or separately is not going to have a huge impact on that because there is so much out there that people can build on at least for some period of time. That is where the development areas play the biggest role in their ability to attract more of the development.

Ms. Higgins stated that the timing is perfect because the supply is up.

Mr. Edgerton felt that they needed a lot of public input. He stressed what Ms. Monteith said about the importance of the presentation. This has been such a long drawn out process and the public is going to forget why this is even coming up. He felt that it is important that in the overview to the public that they be reminded why they are even having this discussion. There is a lot of history. They need to point out the many years that several Boards have been trying to figure out a way to slow down the growth in the rural areas and all of the exercises that we have gone through to do that. They keep hearing these survey numbers that are overwhelming. He felt that they need to stay focused on that unless the public opinion has changed, which they will hear about if it has.

Ms. Higgins reiterated that it seems that they seem so focus that sometimes it appears like they have made the decision. She felt that the jury is out and she wanted the public to get that message.

Ms. Joseph stated as they go around everybody is still grappling with how this is going to work. She stated that don't have the specifics and they need to hear from people on what they are thinking and what are their concerns in that regard. The last thing they have to consider is option one and option two of the process.

Mr. Edgerton preferred option one because it allows for a lot of public input and the public wants to be involved. Option one would allow the public four opportunities for input in work sessions and public hearings. They would urge the public to come and discuss it.

Ms. Higgins asked if they were skipping over the stakeholders' meeting.

Ms. Joseph stated that they were assuming that the stakeholders would show up at the meetings. It was open for everyone. Certainly the stakeholders will be contacted and given whatever staff reports and whatever.

Ms. Higgins pointed out that the rural areas do not have a neighborhood to call on. They don't have people that have a lot of communication. She hoped that they could find ways to stipulate this because the rural area is the biggest land area of the County and there is no notifying neighborhood. She questioned how they would get the information out.

Ms. Joseph felt that staff had been very effective in working with the rural area Comp Plan and had a lot of people come.

Ms. McDowell stated that they had a focus group. It is hard in the rural areas to identify the stakeholders because in the development areas it is quite naturally the development community that identifies itself. But, staff does not identify them. Every land owner in the rural areas is a stake holder. Every land owner in the development is also a stake holder in this discussion.

Ms. Higgins asked where the focus group was now.

Ms. McDowell stated that the focus group worked with staff to develop the Comprehensive Plan. So they have not met with them. In fact, they don't all live here anymore. She meets with a lot of those members in the Mountain Overlay District. So it is not like staff has lost touch.

Mr. Cilimberg stated that was something that the Board would have to decide on whether they wanted to include a focus group. But, that is not what is being proposed in option one per say.

Ms. Joseph agreed that it was not in option one, but option two talks about a round table discussion.

Ms. McDowell noted that they would have to identify certain groups like the Farm Bureau.

Ms. Joseph noted that when they have a round table it does not mean that people will show up. When they have a public hearing she felt that more people would show up because they know it is more official than just talking to staff about some of the issues.

Ms. McDowell pointed out that she would get with Lee Catlin about the best way to notify the public.

Ms. Higgins stated that they were recommending using focus groups on the Comp Plan amendment on the rural areas, but they leave the focus group out when they actually move forward.

Ms. Joseph stated no, that they would be included and would just be invited.

Mr. Morris felt that they need public input as everyone has said. He liked the way it was laid out in option one.

Mr. Craddock stated that the focus group did what they were supposed to do. They were supposed to focus a short lived group. They did their thing and now it is time to move on with option one. If the Board did like what they heard at the very end at e), then they could put f) to start all over again. He pointed out that would be just like the Mountaintop discussions that started all over again.

Mr. Cannon stated that he would be happy to go with option one.

Ms. Higgins stated that they could go with option one because it was not much different.

Ms. Joseph stated that it was the consensus of the Commission to go with option one for public input. The next issue is about family division.

Ms. Higgins asked that the Commission vote on this issue. She pulled out the April 6, 2004 staff report attachment about family subdivision research. She could not find the attachment. But, the one sheet was basically presented by David Benish. In that research by David Benish said they had no known cases of abuse of family division rights in Albemarle County. She believed that Mr. Kamptner confirmed that no one has ever been prosecuted or they have never had a violation.

Mr. Kamptner stated that they have never had a subdivision violation based on family division.

Ms. Higgins stated that they have not had any subdivision violation with the existing rules on family subdivision. So with those two things known, they have jumped to the two extremes. One is to extend the time frame to five years, which she really has no problem with. But, they were adding this five year pre-ownership, which they have no basis that there has ever been a violation in the history of the County. She was not sure how they jumped to that. When she looked at the other counties they did not have any pre-holding requirements. In view of fairness, she a problem after some of the people she had talked with that if someone moves into the area or buys the farm next and has two teenaged son and wants to do a family subdivision what makes that person less able to do it because they have not owned their land five years. So after that extensive research and going back to her previous files to see where the violations were she could not support the five year pre-ownership. But, she could support going from the two to five years because she did not think there was any abuse. But, she shuttered to think that nobody has told them what the violation would entail and who would be punished so to speak. They are setting themselves up for potentially enforcement issues and nobody is abusing it that they can prove.

Mr. Edgerton pointed out that just because it has not been taken to court does not mean that it had not been abused.

Ms. Higgins stated that they had no violation on record in the County.

Ms. McDowell recalled that they had talked about this at a previous meeting that staff really does not have the tracking mechanisms to know because if it is a family member, especially with a different last name, they cannot track it. Staff does not know if it a member of the family or not. Staff has not been tracking them either.

Mr. Cilimberg stated that this was somewhat like phasing and clustering together in that they were almost putting out what you consider to be the most potentially restrictive approach. They were going to get the feedback from people on whether they feel that it should require pre-ownership for any period of time before and how long you should require ownership once you have done the division. In some way, you are not deciding whether you are going to go five and five. They are deciding whether that is the approach they are going to take to get public input.

Ms. Higgins felt that it was not the same because they could not justify what they are putting out there. They could not say that it is better or say that they are solving a problem. They can't say that they have violations that they need to stop. They have absolutely no justification.

Mr. Benish stated that one of the reasons staff brought this issue up was that when they changed the landscape of how they control development potentially with phasing family divisions could potentially go out to the ten year time frame. That is not the requirement that they are living in right now. So they don't have violations, but with phasing there is a potential for family divisions to become a loophole.

Ms. Higgins suggested that they explain that because that is the first time that she had heard that comment.

Ms. Monteith felt that they could look at areas that are 10 to 20 years ahead of us such as was indicated in an article about Prince Williams County.

Mr. Kamptner said he thought that article stated that Prince William County has the five year pre-division holding period. They could learn from them about what problems they were trying to correct, separate and apart from trying to close a potential loophole in the phasing.

Ms. Higgins suggested that staff tell the Commission what would be done with a violation of a family division if it was discovered. She had asked that question before and was told that we have not had one and no one has ever done anything about them. What is the punishment? The person is gone that sold the land and they live out of state, what happens?

Mr. Kamptner stated that one of the remedies is to vacate the plat. It is a harsh consequence.

Ms. Higgins asked for a vote because they have no justification historically to this point.

The consensus of the Planning Commission, with one dissenting vote, was to include a text amendment for Family Division for a concurrent ZTA to extend the time of ownership to 5 years before and 5 years after the creation of a family division. The dissenting vote (Ms. Higgins) was because there is no justification historically because there are no known violations regarding family division in the County. A request was made that when this goes forward that the justification be included with it.

In summary, a fourth work session on ZTA-2005-004 Phasing and Clustering, RA District was held by the Planning Commission to discuss text amendment outlines for phrasing and clustering of development, family divisions, and two public input options. Staff presented a PowerPoint presentation. (Attachment) The slides showed two examples of proposed development on a combination of parcels and an individual parcel, which demonstrated the analysis criteria and patterning impact of phasing and clustering. The Commission held a discussion with staff and provided the following comments to be forwarded to the Board of Supervisors:

1. The Commission was split on consolidating the reviews/processes for Phasing, and Rural

Clustering text amendments; (**Note:** Craddock, Edgerton and Strucko supported going out for public input with phasing and clustering combined. Higgins, Morris and Cannon felt that public input should be received for each individual issue separately on phasing, clustering and the possibility of either/or of combining phasing and clustering. They felt that the combination should not be the only thing that they are putting out for public discussion.)

2. The consensus of the Planning Commission, with one dissenting vote, was to include a text amendment for Family Division for a concurrent ZTA to extend the time of ownership to 5 years before and 5 years after the creation of a family division. The dissenting vote was because there is no justification historically because there are no known violations regarding family division in the County. A request was made that when this goes forward that the justification be included with it.
3. The consensus of the Planning Commission was to use Option 1 for the public input process as outlined in the staff report.
4. One Commissioner asked that in the overview to the public that they be reminded of why they were having this discussion because there was a lot of history. The public needs to be reminded that several Boards have been trying to figure out a way to slow down the growth in the Rural Areas.
5. It was asked that the public be made aware that the ordinance amendment has not already been written.

The Planning Commission recessed at 5:36 p.m. for a dinner break.

The meeting reconvened at 6:00 p.m.

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, March 14, 2006, at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were Bill Edgerton, Eric Strucko, Jon Cannon, Calvin Morris, Vice-Chairman, Pete Craddock and Jo Higgins. Marcia Joseph, Chairman was absent. Julia Monteith, Senior Land Use Planner for the University of Virginia, representative for David J. Neuman, FAIA, Architect for University of Virginia was absent.

Other officials present were Wayne Cilimberg, Planning Director; Keith Lancaster, Senior Planner; David Pennock, Planner; Bill Fritz, Chief of Current Development; Sean Dougherty, Senior Planner; Francis MacCall, Senior Planner; Rebecca Ragsdale, Senior Planner; Amelia McCulley, Zoning and Current Development Director/Zoning Administrator; Mark Graham, Director of Community Development and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Other Matters Not Listed on the Agenda from the Public:

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

Michael Adcock stated that he had a question concerning one of the items that is going to be on the agenda tonight as B. under regular items. His concern is a question about the waste disposal that is going to be used to serve this property.

Mr. Morris pointed out that the Commission would be handling that concern when the Commission hears that particular item. He invited him to come back up at that particular time.

Mr. Adcock stated that he would certainly do that.

Mr. Morris asked if there was anyone else that has any item not to be covered on the agenda. There being none, the meeting moved on to the next item.

Review of Board of Supervisors Meeting – March 1, 2006.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on March 1, 2006. He noted that at that particular meeting the Board did take up the Development Review Process Task Force. They will be looking for two Planning Commission representatives either from the existing or prior Commissioners to serve on that task force. He asked if the Commission wanted to decide on that tonight or wait until next week.

Mr. Morris asked if he had any particulars as to when it would meet or anything else.

Mr. Cilimberg referred the question to Mr. Graham.

Mr. Morris noted that the Commission would cover this item under new business.

Mark Graham stated that it was going to be the task force's decision how to do it. The preliminary idea was that they would meet every other week for six months. But, the task force could take a mind of its own, also. But, the idea is that they want to try to get going.

Mr. Morris stated that he had heard that it was going to be critical that if you are on the task force that you be there.

Mr. Graham stated that attendance was very important because they were trying to have a sunset on this task force and they have a lot to cover in a very short time period. They are really going to have to move along to try to get the things done within six months.

Consent Agenda*:*

SDP 2005-117 Luxor at Pantops Townhouses Preliminary Site Plan Open Space Appropriateness Determination and Critical Slopes Waiver - Requests to approve Open Space in accordance with Section 4.7.2 of the Zoning Ordinance and to disturb Critical Slopes in accordance with Section 4.2.3.2 of the Zoning Ordinance. (Tax Map 78, Parcel 12) (Francis MacCall)

Approval of Planning Commission Minutes – October 18, 2005.

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

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

Mr. Morris stated that the consent agenda has been approved.

Regular Items*:*

SUB-2005-333 Robert Aurisy 2-lot Subdivision – Waiver Request: Request for a waiver of Section 14-404(C), which requires that each lot have access from only one street, established at the time of the subdivision. The property is described as Tax Map 50, Parcel 44A. (Keith Lancaster)

Mr. Lancaster summarized the staff report.

This is a proposed 2-lot subdivision. The ordinance requires one point of access to serve this subdivision. The applicant has requested for each lot to have its own separate points of access onto State Route 615, Lindsay Road. The proposed division point would be creating a 2-acre parcel. A new property line would be established.

Factors favorable to this request include:

1. The applicant is willing to close one of the existing points of access on the residue parcel.
2. Approval would reduce the impact to existing landscaping caused by the construction of the

driveway.

Factors unfavorable to this request include:

1. There are no physical barriers which effectively prohibit or prevent compliance with the ordinance.

Recommendation: Staff finds that the request to waive Section 14-404(B) is not appropriate in this circumstance and therefore recommends denial of this wavier.

If the Commission grants approval of this wavier, staff would recommend the following condition:

1. One of the existing entrances on the "horseshoe driveway" serving the "Residue" Lot must be closed prior to final plat approval.

Mr. Morris opened the public hearing and invited the applicant to address the Commission.

Robert Aurisy was present to speak for the request.

Mr. Morris invited public comment. There being none, the public hearing was closed and the matter before the Planning Commission.

Motion: Ms. Higgins moved, Mr. Cannon seconded, to approve SUB-2005-333, Robert Aurisy 2-lot Subdivision – Waiver Request from Section 14-404(B), as requested with staff's recommended condition.

1. One of the existing entrances on the "horseshoe driveway" serving the "Residue" Lot must be closed prior to final plat approval.

The motion was approved by a vote of 6:0. (Commissioner Joseph was absent.)

Mr. Morris stated that the waiver request was approved.

SUB-2005-314 Central VA Capital - Lots A, B & C: Request for a waiver of Section 404 of the Subdivision Ordinance (access requirements). The property, described as Tax Map 55 Parcel 57, is located in the White Hall Magisterial District on Lanetown Road [Route #684] approximately 0.6 miles from its intersection with Railroad Avenue [Route #788]. The Comprehensive Plan designates this property as both Neighborhood Density in Rural Area 3 (North of Lanetown Road) and CT-1 and CT-2 in the Crozet Community (South of Lanetown Road). (David Pennock)

Mr. Pennock summarized the staff report. (See staff report)

Mr. Morris opened the public hearing and invited the applicant to address the Commission.

Robert Armstrong represented the request.

Mr. Morris invited public comment.

Tom Thomson and Mike Adcock were present to speak concerning the request.

There being no further public comment, the public hearing was closed and the matter before the Planning Commission.

Motion: Ms. Higgins moved, Mr. Edgerton seconded, to approve SUB-2005-314, Central VA Capital – Lots A, B & C, request for a waiver of Section 404 of the Subdivision Ordinance, as requested with the conditions as stated by staff.

1. VDOT approval of entrance locations;
2. Closure of existing entrance on lot C located nearest the existing dwelling; and
3. Health Department approval.

The motion failed by a vote of 3:3. (Commissioners Edgerton, Cannon and Strucko voted no.) (Commissioners Morris, Higgins and Craddock voted aye.) (Commissioner Joseph was absent.)

Mr. Morris stated that the motion failed due to a split vote. He asked if there was another motion.

Ms. Higgins asked if they would need to make a request to deny the request.

Mr. Kamptner suggested that the Commission could make a motion to grant the waiver for lot C and to deny it for lots A and B.

Mr. Morris noted that in other words that motion would go along with the staff report.

Motion: Mr. Cannon moved, Mr. Edgerton seconded, to grant the waiver for lot C and to deny the waiver for lots A and B on SUB-2005-314, Central VA Capital – Lots A, B & C subject to the following three conditions.

1. VDOT approval of entrance locations for lots A and B jointly;
2. Closure of existing entrance on lot C located nearest the existing dwelling; and
3. Health Department approval.

The motion passed by a vote of 4:2. (Commissioners Craddock, Morris, Cannon and Edgerton voted aye.) (Commissioners Higgins and Strucko voted no.) (Commissioner Joseph was absent.)

Mr. Morris stated that SUB-2005-314, Central VA Capital – Lots A, B & C request for a waiver of Section 404 of the Subdivision Ordinance was approved for lot C and denied for lots A & B.

Public Hearing Items:

ZMA-2005-015 Hollymead Town Center, Area A (Signs# 15,73,51,53)
PROPOSAL: Rezone 31 acres from RA - Rural Areas (agricultural, forestal, and fishery uses; residential density (0.5 unit/acre)) to PDMC - Planned District Mixed Commercial (large-scale commercial uses; and residential by special use permit (15 units/ acre)) to allow for 296,000 square feet of office and retail.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Town Center -- Compact, higher density area containing a mixture of businesses, services, public facilities, residential areas and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre). The Comprehensive Plan's Town Center designation is accompanied with the "Conceptual Master Plan & Design Guidelines for the Hollymead Town Center".
ENTRANCE CORRIDOR: Yes
LOCATION: Tax Map 32, parcels 42A, 42C, a portion of Tax Map 32, parcel 44, a portion of Tax Map 32, parcel 45, and Tax Map 46, parcel 5, located to the south of the southern entrance to the Hollymead Town Center along Route 29 North.
MAGISTERIAL DISTRICT: Rio
STAFF: Sean Dougherty

AND

SP-2005-027 Hollymead Town Center – Drive up Window for a Bank (Signs# 15,73,51,53)
PROPOSED: Drive-up banking facility with three lanes.
ZONING CATEGORY/GENERAL USAGE: A rezoning application has been submitted to rezone these parcels from RA - Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) to PD-MC Planned Development Mixed Commercial (large-scale commercial uses; and residential by special use permit 15 units/ acre).
SECTION: Section 25A.2.2 of the Zoning Ordinance which allows for drive-in windows serving or associated with permitted uses within PDMC.
COMPREHENSIVE PLAN LAND USE/DENSITY: Town Center -- Compact, higher density area containing a mixture of businesses, services, public facilities, residential areas and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre).

ENTRANCE CORRIDOR: Yes
LOCATION: Inside the Hollymead Town Center, along Town Center Drive (Southern entrance to Hollymead Town Center) approximately 300 feet from Route 29 North.
TAX MAP/PARCEL: A portion of Tax Map 32, Parcel 42A (exact location on file in the Department of Community Development) and a portion of Tax Map 32, Parcel 42C (exact location on file in the Department of Community Development) equaling .5 acres.
MAGISTERIAL DISTRICT: Rio
STAFF: Sean Dougherty

Mr. Doughtery summarized the staff report.

- HM Acquisition Group, LLC is the owner and applicant. The applicant is represented by J.P. Williamson.
- The applicant is requesting a rezoning of 31 acres (out of a total of 78 acres) in Area A of the Hollymead Town Center from RA (Rural Areas) to PDMC (Planned Development Mixed Commercial) to allow for 296,000 square feet of office and retail. The applicant has submitted a second request to rezone the remaining acreage, 47acres, to Neighborhood Model District (ZMA 2006-00002), allowing for 960 dwelling units and 400,000 sq. ft of office and commercial. (The area covered by the second request is referred to as Area A-2.) The applicant has requested a work session at a later date for ZMA 2006-00002. As soon as all required materials are received from the applicant that work session will be scheduled.
- Four rezonings for separate sections of the Hollymead Town Center were submitted in 2001 and 2002 and three of the four were approved in 2003. The applicant of the portion not rezoned (Area A) indefinitely deferred action on Area A in 2003. The rezoning proposal under review as ZMA 05-15 includes the same area that was indefinitely deferred in 2003 and it is the same area reviewed by the Commission during a work session on October 25, 2005. It is now broken into two rezoning requests: 31 acres to PDMC and 47 acres to NMD.
- At its October 25, 2005 work session, the Planning Commission anticipated further review of the plan in a work session. The Commission's comments were general. With respect to area A-1 the Commission spoke specifically to the following:

1. A travel way through Blocks A-1 to accommodate circulation within Area A-2 should be shown in front of the large department store allowing connection to Route 29.
2. Illustrate pedestrian connections between buildings across the central parking area and connecting into the other blocks (where residential uses are proposed).

a. Generally, the Commission offered the following:

1. The location of buildings should facilitate a better relationship between buildings and open space.

- The proffers for Area A-1, in conjunction preliminary proffers for Area A-2 and road improvements already proffered for the Town Center (some of which are built and others are to come) address the impacts anticipated with the initial traffic study that was conducted for the entire Town Center area. However, the proffers related to road construction require some refinement before they are acceptable. The proffers also commit to participation in a Community Development Authority; funding for transit when service is extended to the area; and a regional transportation study. In addition, the applicant is proffering to dedicate land to the County along Powell Creek. However, the acreage of this area is unspecified and not delineated on a plan.

- The request is found to be generally consistent with the Land Use Plan and with the Neighborhood Model in general. The plan generally reflects the Planning Commission's work session comments. However, required information is missing from the plan. Features, such as storm water quality ponds and other features illustrated on the plan are not shown in a standard that is acceptable to Engineering staff. In addition, ARB recommendations have not been addressed.

- <u>Factors Favorable to this request</u>

- The plan reflects changes requested by the Commission.
- The applicant has made modifications to better reflect the intent of PDMC zoning and the previously approved Guidelines for the Town Center.
- The layout will facilitate further development in the future.
- The revised layout provides two areas that illustrate spatial enclosure in keeping with the Neighborhood Model.

- Factors Unfavorable to this request
  - The application plan is missing required information.
  - Detail regarding the public space shown at the northwest corner of the plan is lacking.
  - The application plan and the applicant's rendering are in conflict.
  - Vehicular transportation networks require revisions.
  - The proffers require revisions.
  - The network of sidewalks is incomplete.
  - The application plan does not show an alignment for the greenway trail.
  - Storm water quality issues remain.

- Staff cannot recommend approval at this time. Staff may be able to recommend approval once outstanding issues are resolved.

Mr. Morris opened the public hearing and invited the applicant to address the Commission.

Jim Williamson, representative for the applicant spoke for the request.

Mr. Morris invited public comment.

Jim Grace, resident at 2964 Cove Track, spoke in opposition to the request due to grading and erosion problems on the site.

Kay Slaughter spoke in opposition to the request.

There being no further public comment, Mr. Morris closed the public hearing to bring the matter before the Planning Commission.

Motion: Ms. Higgins moved, Mr. Craddock seconded, to approve the applicant's request for an indefinite deferral of ZMA-2005-027, Hollymead Town Center, Area A and SP-2005-027, Hollymead Town Center – Drive up Window for a Bank.

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

Ms. Joseph stated that ZMA-2005-027, Hollymead Town Center, Area As and SP-2005-027, Hollymead Town Center – Drive up Window for Bank were indefinitely deferred.

Mr. Cilimberg stated that it was not the applicant's interest nor staff's either to delay this any more than necessary to get the right information before the Commission. Staff will schedule it as soon as they can.

Ms. Higgins asked that when this comes back she would like to see the ARB's staff report attached along with the Planning Commission's minutes from the last time they reviewed this and the analysis of how it fits in the big picture.

SP-2005-033 Westfield Road Center (Sign #62)
PROPOSED: 3-Story approx. 9,500 Sq. Ft building for office use with 2 residential units on approx 0.55 acres.
ZONING CATEGORY/GENERAL USAGE: C-1 Commercial-retail sales and service uses and residential uses by special use permit; EC Entrance Corridor overlay.
SECTION: 22.2.2.6 Special Use Permit, which allows for residential uses allowed in Section 18 R-15 Residential (15 units/acre) in the C-1 Zoning District.

COMPREHENSIVE PLAN LAND USE/DENSITY: Community Service-community-scale retail, wholesale, business and/or employment centers, and residential (6.01-34 units/acre).
LOCATION: Tax Map 66W, Section 2, Block B, Parcel 1A; on the south side of Westfield Rd. (Rt. 1452), approx. 300 ft. from the intersection of Seminole Trail (Rt. 29) and Westfield Road.
MAGISTERIAL DISTRICT: Rio
STAFF: Rebecca Ragsdale
CONCURRENT APPLICATION: SDP 2005-00136

Ms. Ragsdale summarized the staff report.

- This is a special use permit request that also has a critical slopes waiver that goes along with it. The property is .5 acre site located on Westfield Road. Westfield Road is a road that connects Route 29 to Greenbrier Drive. It is on the east side of Route 29 North. The applicant is proposing a multi-story mixed use building for office use and two bedroom condominium units for the top floors. The site is zoned C-1 Commercial, which requires a special use permit for residential uses. The applicant also submitted a preliminary site plan along with the special use permit application, which has been reviewed by staff.
- Staff provided the staff report that tries to focus on the issue of the special use permit itself for the two residential units and any impacts from that. The typical special use permit analysis is what the additional impacts would be for the residential use added to that office setting. The building as proposed could be built by right within the commercial zoning district. Staff found the mixed use aspect of this as a favorable factor. Staff did provide a Neighborhood analysis and commented on some of the design aspects of the project.
- The ultimate recommendation is for approval with two conditions for the special use permit.
- For the critical slopes waiver staff also recommended approval. There is a small portion of the site that contains critical slopes. There is a band in the back of the property that is about 7 percent of the site, which are critical slopes. Ten percent of those critical slopes will be impacted. They are not critical slopes identified on the Open Space Plan or part of an important natural system. There will be no loss of aesthetic resources. Engineering recommended a condition if the Commission chooses to approve the critical slopes waiver that peak rate and velocity from the site should be controlled to pre-development levels. Apparently that is not something that is required for sites under 1 acre such as this one, but is a condition if you grant the critical slopes waiver.

There being no questions for staff, Mr. Morris opened the public hearing and invited the applicant to come forward.

Charles Hendricks stated that he works for the architectural firm representing this project and is available for any questions the Commission might have about the proposal.

Mr. Morris asked if there were any questions for the applicant. There being none, he invited public comment. There being none, he closed the public hearing to bring the matter back before the Commission.

Ms. Higgins asked staff if this parcel was within the limits of review for the ARB.

Ms. Ragsdale stated yes, that this request went to the ARB as part of the site plan review. Staff referenced the ARB regarding the retaining walls. The request has conditional approval from the ARB regarding the architecture. There are a few things that the applicant has to run by the ARB staff such as the retaining walls with regards to the critical slopes. But, it has been to the ARB with favorable recommendations with conditions.

Action on SP-2005-033 Westfield Road Center:

Motion: Ms. Higgins moved, Mr. Strucko seconded, to recommend approval of SP-2005-033, Westfield Road Center, with the following two conditions as recommended in the staff report.

1. The site shall be developed in general accord with all sheets of the plan entitled "Westfield Road Center," date February 28, 2006 and prepared by The Gaines Group;
2. A maximum of 2 residential units may be permitted

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

Mr. Morris stated that SP-2005-033, Westfield Road Center, would go to the Board of Supervisors on April 5, 2006 with a recommendation for approval.

Action on Critical Slopes Waiver:

Motion: Mr. Edgerton moved, Mr. Craddock seconded, to approve the critical slopes waiver for SP-2005-033, Westfield Road Center, with the following recommended condition.

1. Peak rate and velocity of runoff shall be controlled to pre-development levels

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

Mr. Morris stated that the critical slopes waiver was approved.

Old Business:

Mr. Morris asked if there was any old business. There being no old business, the meeting moved on to the next item.

New Business:

Appointments to Development Review Task Force:

- Mr. Morris asked if there was any new business. He pointed out that after some discussion Ms. Joseph had said that she would be willing to serve on the development review Task Force if fellow Commissioners want her to.

- Nominations were taken and the Planning Commission unanimously approved Eric Strucko and Marcia Joseph to be members of the Development Review Task Force.

- Mr. Edgerton stated that he made a trip to Arlington, Virginia and met with Joan Kelsh who runs the Green Building Program in Arlington. Ms. Kelsh provided some really great information. Arlington County is the only county in Virginia also bound by the Dylan Rule that has been able to implement the Green Building Program. Much of it is voluntary, but it is an educational initiative that he very much wanted to figure out how to get Albemarle to begin this process. It is going to take a little time for him to digest the information, but he hopes to come back to the group at a later date with additional comments.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 8:08 p.m. to Tuesday, March 21, 2006 at 6:00 p.m. at the County Office Building, 401 McIntire Road.

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V. Wayne Cilimberg, Secretary

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