Albemarle County Planning Commission
March 28, 2006

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, March 28, 2006, at 6:00 p.m., at the County Office Building Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were Eric Strucko, Calvin Morris, Vice-Chairman, Pete Craddock, Jo Higgins, Jon Cannon and Marcia Joseph, Chairman. Bill Edgerton 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; Claudette Grant, Senior Planner; Bill Fritz, Development Review Manager; Sean Dougherty, Senior Planner; Jay Schlothauer, Director of Inspections/Building Official; John Shepherd, Manager of Zoning Administration; David Pennock, Principal Planner; Scott Clark, Senior Planner; Glenn Brooks, Senior Engineer and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Ms. Joseph 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:

Ms. Joseph invited comment from the public on other matters not listed on the agenda. There being none, the meeting moved on to the next item.

Consent Agenda:

SDP-2006-002 Charlottesville Kingdom Hall - Critical Slopes Waiver Request - (Tax Map 76, Parcel 51 and 52A) (Keith Lancaster)

Motion: Mr. Morris moved, Mr. Craddock seconded, that the consent agenda be approved.

The motion passed by a vote of 6:0. (Mr. Edgerton was absent.)

Ms. Joseph stated that the consent agenda has been approved.

Regular Items:

SUB-2006-056 Carter/Connolly Waiver - Request for a waiver of Section 4.2.1 of the Zoning Ordinance in order to construct one (1) dwelling and associated septic drain field on critical slopes within the boundaries of an existing lot. The property, described as Tax Map 57 - Parcel 85D1, contains 2.000 acres zoned Rural Area (RA). This site is located in the Samuel Miller Magisterial District on the north side of Gillums Ridge Road [State Route #866] within the Skyline Crest Subdivision. The Comprehensive Plan designates this property as Rural Area in Rural Area 3. (David Pennock)

Mr. Pennock summarized the staff report.

- This is a request for a waiver of the building site requirements in order to construct a dwelling and drain field on critical slopes. This is in the Skyline Crest Subdivision in the Samuel Miller District. This is an existing lot that was recorded in 1976. Even though the title lists this as SUB it is not really a subdivision matter in that it is creating a new lot. It actually stems from a building permit request and this is the way to get the critical slopes waiver before the Commission.
- The front portion of the property closest to the road is the steepest. During the building permit review staff determined that there was a more adequate site towards the rear of the property that would be suitable for a structure or dwelling. Therefore, that is the reason for the waiver request. As an existing lot this was not reviewed as part of a subdivision review. It just came up as part of a standard building permit review. There has been a review of both the engineering portion and

basically the planning portion of the zoning section as far as aesthetics resources.

- The engineering analysis has come to the conclusion that the building of this dwelling at the front portion of the site would not be in keeping with the intent of this section of the ordinance. Therefore, the engineering portion of the review does not recommend approval. Glenn Brooks, Senior Engineer, who did the engineering review, is present.
- Staff cannot recommend approval of this site. However, staff has one recommended condition if the waiver is approved as submitted, which is listed in the staff report.

Ms. Joseph asked if any one has any questions for staff. She asked Mr. Brooks if they assume that someone builds on the 75 foot setback within the critical slopes area they were going to have to somehow snake the driveway in. Then there will have to be some kind of landing pad for a car.

Mr. Brooks said that most of the houses on that street have a landing pad close to the road. But, it would depend upon what kind of house is built as to where the drive or garage would be located. But, staff does not have those details.

Ms. Joseph asked if a primary and reserve septic site has been located within the area.

Mr. Brooks replied yes, that it is located within the wooded area. The primary and reserve septic site can run along the grade of the slope.

Ms. Higgins asked if based on the existing subdivision and lots with the access and location of the houses is it out of the ordinary or very inconsistent on what is being proposed with what already exists out there.

Mr. Brooks said that it may be in keeping with the houses that are along that road. A lot of the houses are built on the steep slope.

Ms. Higgins pointed out that she did not recall any erosion problems on lots in that area or houses with deterioration on the houses just because they were built on slopes with walk out basements and that sort of thing. The lots seem to be well stabilized in that area.

Mr. Cannon asked if he was to understand from this that other houses in the neighborhood are built on steep slopes.

Mr. Brooks replied yes.

Mr. Cannon asked if that was done by way of a waiver.

Mr. Brooks said that it was prior to the establishment of the zoning ordinance section in 1980. This subdivision was created in 1976. The houses were built prior to 1980 and the waiver did not need to happen with the subdivision for the creation of the lots.

Mr. Fritz stated that the ordinance prior to December 10, 1980, had a provision that talked about critical slopes, but he did not know if it applied in the rural areas, which was A-1 at that time. He noted that he did not recall.

Mr. Craddock stated that this subdivision was approved prior to whatever time residential and critical slopes became a factor and so the building lot was sold in good faith. Also, there is no way to make it less non-conforming.

Mr. Fritz stated that the issue is that the lot could probably not be created today under the current ordinance. But, that is not the issue before the Commission. If they wanted to apply for a building permit it appears to staff that there is a location where they could build that does not require a modification of the critical slopes provisions. That is the white area shown on the plat. So what is before the Commission today is a modification to allow the development to occur in the yellow portion shown on the plat. There is actually a clause in the zoning ordinance that says if you have a lot which existed prior to the effective date of the ordinance and there is no place that you can build on there, then the critical slopes section

does not apply. If this property were 100 percent critical slopes, the request would not be before the Commission today for modification for critical slopes because the ordinance specifically states that it does not apply. But, in this case there is an adequate area for a house. Therefore, the critical slopes provisions do apply and they need a modification to disturb critical slopes.

Ms. Higgins said that the reverse of that is that in essence if they denied a critical slopes waiver the house could be built, but there would be more disturbance because it would be further back into the lot and potentially inconsistent with the other houses.

Mr. Fritz said that staff could not answer that question because the only disturbance that would be in the critical slopes then would be for the access. Staff does not have that information to do a calculation if they do a road versus the house. In his opinion, it is probably more if they do the house in the area than just the road. But, staff does not have plans.

Ms. Joseph asked if there were other questions for staff. There being none, she opened the public hearing and invited the applicant to address the Commission.

David Conley, father of the property owner, Kara Conley Carter, stated that they are trying to build a house. They moved to Albemarle County in 1985 and purchased lot 5 in Skyline Crest Subdivision, which is the adjacent property to lot 4B that is under consideration. He introduced a topographic map that includes the adjacent properties. Lot 5 was built on, which has very similar slopes to what they are proposing to do here. They purchased lot 4B in 1987. It has been in the family ever since then with the intention of building a house for my daughter. At the time they purchased the lot the critical slopes provision was not in effect. In all of their conversations with the realtors at the time the property was presented it was indicated that they could certainly build a house along Gilliums Ridge Road in keeping with the house that they currently lived in at that time on lot 5 and all of the other properties that have been developed in there. Bill Fritz was a great help because he had already told him going into this that the recommendation would be not to do this. The current County approach is not to build on critical slopes. So he understands that. But, they had an opportunity to talk about this. He mentioned that the critical slope provision in the ordinance says no structure or improvement nor earth disturbing activity to establish such a structure or improvement shall be located on slopes of 25 percent or greater except otherwise permitted under Section 4.3.01. The exemption that they are requesting was in Section 4.2.6, which says that in essence it should be grandfathered based on they have had this property in the family since 1987 and it was subdivided in 1976 unless there is a place that is less than 25 percent. The County engineering contention was that yes indeed there is a place on the back side of the property that is at less than 25 percent slopes. There is no argument here because that certainly exists. But, it is my intention that a driveway to serve the back side of the property would be too steep to go straight up. It is going to have to be a series of switchbacks coming down that grade to get to it. They have not had an engineering plan done because he did not feel like it was necessary for this meeting. It really boils down to the spirit and the intent of the zoning. He asked that the Commission look at how this property was originally developed, which goes back over 30 years, and the spirit that they obtained the property and what they are trying to do here. They are prepared to have an engineering report done to show the driveway and what it would have to do going down there. But, if the Commission looks at the topographic map, which he passed around, and go out on the site that he felt that they would see that the series of switchbacks would have some safety concerns in the winter months with the snow and ice. Next door they have a short driveway, which is what they are proposing on this site. As a matter of practicality and total earth disturbance that they would be tearing that hill up a lot more and disturbing a lot more critical slopes than if they put a modest house and septic field up on top. The staff report says that no site plan was ever submitted. But, the Gooch report did show the proposed driveway, house site and primary and secondary drain field. He distributed a copy of the Gooch report. The Gooch report shows the reserve and primary drain field on the critical slopes area. Subsequently, he had Gooch do another site plan based on what it would take to put a house on the back, but they did not address the driveway issue. They have established that a house site and drain field could be put on the back of this property. But, he would like to propose that they be allowed to put our house up on the front of the property. They could certainly use the drain field on the back of the property as a reserve. They could move the house and the primary drain field further up the hill and still be within the setback and have an established secondary reserve drain field that would be on non-critical slopes. That is where they are at with everything. It is not

easy to build on slopes and it is already driving the costs of this young family considerably higher just because of the foundation and site work. He respectfully asked that the Commission take this request into consideration.

Ms. Joseph invited other public comment on this request.

Kara Conley Carter, property owner, said that she walked the property a couple of weeks ago. She agreed that there was a flat area on the back of the property, but that it was mind boggling to think about what kind of driveway and access they would have to put in just to get back to the house. It would disturb so much of the critical slopes and natural habitat. All of the other houses in the neighborhood are located right on the road. As proposed, this house would be in the back yard of the other houses. It just does not go with the consistency of the neighborhood. She asked that the Commission take their comments into consideration.

Gavin Whilheide, an abutting property owner of lot 6, urged the Commission not to approve the waiver. He knew it was a little counter productive here because if you do approve the waiver they would be a little bit farther away from them. But, the reasons that he would like to see this not approved are the following: There are a lot of issues with the drainage and runoff. There is a stream right at the bottom of that. On page 10 you can see that there is a stream that begins on lot 6 and lot 5, which goes down to the Mechums River. If a house is put up on the hill there will be a lot of erosion. The back of Mr. Conley's house presently has a lot of erosion problems. If they put a house on top of the hill all of the sediment and waste will flow down to that stream which will go into the Mechums River. That is one of the reasons why he urges the Commission not to approve this waiver. Secondly, if they put a septic field up there, again, all of the waste and bacteria is going to flow into that stream and go down river. Third, there is already an existing home site back there. He asked why the county has rules and zoning regulations if they are not to be followed. They have an existing building spot. Therefore, the county should go ahead and let them build back in that spot and deny the waiver.

Ms. Joseph asked if there was any one else present that would like to speak regarding this item. There being no one, the public hearing was closed and the matter was placed before the Commission for discussion.

Ms. Higgins stated that the overall drop from the road is approximately 50 feet elevation wise to get down to the flatter area. There has been a concern raised about the stream. There is a drainage area, but it does not look like it is identified as an intermittent or stream classification. She understands the concerns, but that putting it on either side could potentially have the same effect. She was concerned about having fire trucks accessing the site due to the steepness of the hill. There is going to be a steep driveway no matter what happens. She has been a proponent of housing that is set into the land and a 10 foot drop in grade for a house is a perfect basement type site. She felt that the condition that staff proposed would be more protective than the agreement. The residential agreement would have to be signed that said they would have to do silt fence. Whereas, if an actual E and S plan is submitted, then they would have to address the issues of storm migrations and stabilization. She felt that staff has recommended the correct thing and have strictly interpreted the ordinance under the current regulations and can't take into consideration these other factors based on the perimeters of the ordinance. But, she thought that it would not be service to anyone to have the house set back exclusive from the road at that distance because there is degradation of the environment involved. Therefore, she could support this with the condition that staff recommends.

Mr. Morris said looking at the product he agreed with Ms. Higgins' completely. He felt that it would be a nightmare getting safety vehicles back into that area if they put the house back where it is proposed.

Ms. Joseph asked Mr. Brooks what would be shown on the E & S plan. Aside from the E & S measures would grading be shown on that? Is the slope of the drive going to be shown? Is a landing pad going to be shown? What type of things would be shown on that?

Mr. Brooks said that a standard erosion control plan generally would show the site grading. The finished features would not necessarily have to be shown. It would show the basic building footprint. It would

show the driveway location. Typically, there would be silt fence measures placed downstream and some sort of diversion for the driveway possibly. The stabilization and temporary seeding, etc. would all be noted in the maintenance schedule for the plan. There is a general checklist that they have to follow in the State Manual. It is more rigorous than something that would be just in the agreement.

Ms. Joseph said that it would have to follow the State Manual, and Mr. Brooks agreed.

Ms. Joseph asked if there are standards for the slope of a driveway. If it is above a certain percentage does it have to be paved?

Mr. Brooks said that the County does not regulate driveways.

Mr. Fritz noted that the zoning administrator looks at driveways. He thought that it was 16' to 18' that they were looking for.

Mr. Brooks stated that they can't actually stop the construction of a steep driveway. They can say your liability has increased because they can't get fire protection to your house. But, they could still build the driveway.

Mr. Cannon stated that staff had no basis for determining in the absence of a configuration of a driveway whether or not the construction or maintenance of a driveway would pose more of a concern from an erosion standpoint than the construction of a house near the road. He asked if that was correct.

Mr. Brooks replied that the devil was in the details. Certainly a 25 percent sloped driveway down that hill that is maintained in gravel would wash out frequently.

Mr. Cannon asked if the applicant were to provide, as the applicant has offered to do, a configuration for the driveway would staff be able to make that determination whether it was better from an erosion prevention standpoint to have the driveway at the front of the house on the steep slopes.

Mr. Brooks said that he could make some general statements. But, a lot of that is dependent upon maintenance, surface types and how well the yards are maintained. That would include the ditches and things like that. Either way there would be some disturbance. That is unavoidable. If the driveway is taken all the way to the back, then they would be putting a culvert over that swale and stream area and that is going to be just as disruptive.

Mr. Craddock pointed out that there were standards for septic fields' closeness to a stream. So it is a 100 foot stream buffer.

Mr. Fritz noted that this is not going to be a stream that requires a stream buffer, but the Health Department does have certain requirements. The Health Department will look at the site's terrain to see find the optimal location for the drain field given the characteristics of the property.

Mr. Cannon noted that it seemed that a house could be built on the lot in a manner that does not disturb critical slopes at least for the construction of the house. It seems that if they were taking the critical slopes ordinance seriously this is certainly a case where they would like to maintain it. However, there are constantly arising in these cases issues about environmental impacts of not building on steep slopes that seem to outweigh in some way the interest that are protected by the ordinance. Frankly, he did not know how to evaluate those because he did not have the information right now to evaluate it. He would be concerned if they denied this waiver and produced more environmental damage by denying it, then that would be concern. But, that is the only basis on which this waiver should be granted. That is if by denying it they would produce more environmental harm. Without that information they are just granting these waivers routinely so that the ordinance ceases to be a restraint as long as there is an erosion and sedimentation plan. That is a good thing. But, if that is what they wanted to put in the ordinance, then that is what the Board of Supervisors should put in the ordinance and not a prohibition on critical slopes construction.

Mr. Strucko agreed with Mr. Cannon's comments. He felt that they should strive to maintain the ordinance. But, if the environmental impact is worse by maintaining the ordinance, then the Commission should grant the waiver. But, he was not sure what was being proposed for this property. He questioned why a plan was not submitted. In weighing all the information tonight, he would support the waiver.

Ms. Joseph estimated that the road would be at least 400 feet. Therefore, the road does have a major impact. She supported the request.

Motion: Ms. Higgins moved, Mr. Strucko seconded, to approve SUB-2006-056, Carter/Connolly Waiver subject to the condition staff recommended in the report.

1. An Erosion and Sediment control plan will be required for any building permit for a dwelling. The County will not approve an agreement in lieu of a plan.

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

Ms. Joseph stated that SUB-2006-056, Carter/Connolly Waiver was approved.

Public Hearing Item:

ZTA-2005-005 Temporary Farm Worker Housing - Amend Sections 3.1 ("Definitions"), 5 ("Supplemental Regulations"), and 10 ("Rural Areas") of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Section 3.1 by adding definitions of "Farm", "Farm worker housing, Class A" and "Farm worker housing, Class B"; Section 5 by adding supplemental regulations for temporary farm worker housing; and Section 10 by adding temporary farm-worker housing facilities for 20 or fewer residents as a by-right use (farm worker housing, Class A), and temporary farm-worker housing facilities for more than 20 residents as a use requiring a special use permit (farm worker housing, Class B). (Scott Clark)

Mr. Clark summarized the staff report.

- In April of last year the zoning division issued a determination that temporary seasonal housing of farm workers on farms in the rural areas of the county is neither a permitted use in itself nor an accessory use to agriculture. This means that housing for migrant farm workers in the county, which is a long standing use in the county. Those facilities that already exist can not be changed or expanded. Also, no new facilities could be created. In July the Board considered a resolution of intent to pursue a text amendment to resolve the situation to make sure that this existing use was still permissible. The Board forwarded the issue on to the Commission.

- After staff worked with representatives of the farm community in late 2005, in January staff presented the proposed text amendment and the Commission accepted it except for two requested changes. The first request was to change the scale of the sketch plan required for this use. Also, some Commissioners wanted more information regarding the level of building permit review for these structures and whether they would be treated as farm structures that are exempt or if they need to be reviewed for safety features for habitation. The short answer to that is that these structures are not exempt from that building permit review because they are used for residential use. Later in the hearing Mr. Schlothauer is here to answer more questions about that if necessary.

- There are three attachments plus one new handout for tonight. The attachments include the staff report from the work session. The handout in Attachment B is in reference to the exemption of farm buildings from the Building Code and specifying that residential uses are not exempted. Then Attachment C, which was a draft form of the ordinance, is replaced by the handout that the Commission received tonight, which is the ordinance in proper legal format. It includes that scale change that was requested earlier.

Jay Schlothauer, County Director of Inspections and Building Official, stated that he was present to answer questions.

Ms. Higgins noted that the concern for the class A, which was for not more than 20 persons, and it could be for sleeping, eating, food preparation, bathing and toilets to be constructed for migrant workers. When category would migrant worker housing fall into and what would the building permit be subject to?

Mr. Schlothauer asked if she was picturing one building that has all of those uses in it.

Ms. Higgins stated that it says that it is not going to be defined as a dwelling unit, but they may include sleeping, food preparation and bathing. She was trying to understand what his job was going to be like in reviewing these.

Mr. Schlothauer said that exemption that showed up as one of the Commission's attachments uses the term residential. For any purposes he would apply that to any building where people are sleeping overnight. So if there is a dormitory thing going on that would have a residential label to it. If there are little cabins scattered around a main assembly building, those little cabins where the people are sleeping he would attach the residential label to. In attaching that label he would be pulling it away from being exempt from the Building Code. It would be subject to permits, all of the inspections and a certificate of occupancy. It would be the same as for a house.

Ms. Higgins asked if potentially it could be 20 houses.

Mr. Schlothauer replied that it could. If the building is used for sleeping he would attach the residential label to it. Across the board he would attach the residential to the bunk houses or in any areas where people plan to sleep.

Ms. Higgins asked if it was a building just used for food preparation if it would be classified as commercial.

Mr. Schlothauer noted that it might be in a category that is exempt for the Code. That use would be kind of tricky because he could not call it residential. It is a food prep area or a general assembly area. The exemptions for farm buildings when pulled out of the Building Code are very broad and have been that way for about ten years. Basically, anything that does not involve sleeping is exempt.

Ms. Higgins noted that the Health Department would be involved with the kitchen. She asked if it would be exempt for them if it did not sell or prepare food for sale. Then they will not know about the operation. But, if someone on the farm brings in some lady and she charges them $5.00 a day to eat, then she is then in the business of running a restaurant.

Mr. Schlothauer noted that one of the paragraphs in that exemption statement says that if you are a restaurant as defined by the health department, that building is not exempt either. You would have to go to the Health Department regulations to find that definition. But, the intent of that Code section when they were working on that was the wine industry when they were hashing it all out. When they got into these exemptions they wanted to have with no regulation where a caterer could come and site out their trays, etc. That is not a restaurant in his humble understanding. That is not a restaurant as defined by the Health Department. If they are preparing the food in the kitchens, with dishwashers, stoves, cook tops, other than just warmer trays that in his understanding is a restaurant that is regulated by the health department. If there is somebody there cooking food for the guys to come in and eat and it falls under that definition, then it is not exempt to the building code.

Ms. Higgins asked if anyone had ever come in requesting to upgrade an old barn or an existing migrant worker camp.

Mr. Schlothauer replied that he was not aware of anybody ever wanting to come in and upgrade the existing migrant facilities that might be out there.

Ms. Higgins noted that she knew of some that were torn down and it was very substandard. She felt that they were writing something that ends up being very complicated to interpret and to enforce. With the

idea of 20, if she understands this correctly, a farm such as her neighbor's could put up without special use could put up 20 small houses on the farm as long as it has a 50 foot side yard and a 75 foot setback and not come to the county. As long as they are only used for short term during the season they can do that without any special permission.

Ms. Joseph asked staff to jump in and explain what the 20 is all about. There is a reason behind that.

Mr. Clark stated that in the informal work session that they had late last year, staff tried to set some number that would have a fairly minimal impact for that class A. But, in discussions with representatives it determined that if they set the number too low that was going to force nearly everyone of these facilities into the full 3 to 4 month special use review process, which was more review than was warranted for a fairly minimal use given that it must be a temporary or seasonal use that cannot be creating new dwelling units. The twenty was reached as sort of a balance between the level of impact and the needs of the agricultural community.

Ms. Higgins pointed out that the list of items required to be filed with the application has lengthened, but it does not allude to what standards are going to be imposed. When someone says vehicular access and parking for the facilities do we have how many cars? When you get this much information you have to use it to interpret something. Therefore, do they have to address how many parking spaces or is it something that they have to figure out later.

Ms. Joseph suggested that they ask John Shepherd to discuss the parking issues.

John Shepherd, of the zoning division, asked to go back and answer the concern about whether someone could build 20 little houses on a property. He pointed out that the definition of farm worker houses specifically says that they are not dwelling units as defined by the Code. So the point is that these facilities would provide living quarters for the workers, but would specifically not be dwelling units. The compound overall would have all of the elements, but they would not be in one building that qualifies as a dwelling because that would require a development right.

Ms. Higgins felt that it did not read that way, even though that it what it was intended to be. What would prevent it from being small little cabin houses to house four people?

Mr. Shepherd noted that the definition includes the phrase that these are not dwelling units as defined in Section 3.1, which defines structures as dwellings that includes cooking, living, sanitation and living areas.

Ms. Higgins said that they could not call them dwelling units by definition in this, but what is to prevent someone from building a 1,000 square foot cabin with sleeping, eating and bathroom facilities.

Mr. Shepherd stated that was a dwelling and would require a development right. One of the things that run through this is that a farm can have as many dwellings on it as it can carry. Those dwellings could be occupied by people who work on the farm. That would completely a part of the ordinance.

Ms. Higgins said that she could not find a way that this reads so that can't happen.

Mr. Cannon said that farm worker housing is defined as not being a dwelling unit as defined in Section 3.1. Ms. Higgins' question is whether that is just a definitional move or are we saying that farm worker housing cannot have the characteristics of a dwelling unit as defined in section 3.1. If that is what they are saying, then maybe it would take some clarification.

Ms. Higgins asked what makes this different than a dwelling unit.

Mr. Shepherd stated that this ordinance change would permit the use that they have set forth, which would allow as a class A up to 20 people working on the farm to house there, eat there and sanitary facilities would be established there. Without this ordinance, basically it is not permitted.

Ms. Higgins said that she lives out in the rural areas and her neighbor could potentially say that he wants to hire some people to sell his Christmas trees this year and bring people in for a certain amount of time and build some small structures not to be dwelling units. As soon as they sleep there they have to get a building permit and must meet all of the Code requirements. The structures will not be counted as dwelling units as far as division rights. But, they are going to go construct them.

Mr. Clark pointed out that if the application plan shows something that is a dwelling unit that it will not be permitted.

Ms. Higgins asked what is different between this and a dwelling unit.

Mr. Kamptner stated that a dwelling unit has five components. It provides permanent living provisions for living, sleeping, eating, cooking and sanitation. So they could clarify the definition so that no single facility can contain all of those components. Usually the issue of dwelling unit comes down to whether or not it has cooking facilities. That is the typical situation.

Ms. Higgins said that they could do five little cabins that don't have kitchens. They could have a bathroom and a bunkroom. They could do five cabins in a row and have four persons to each. Then they could have one separate building with a kitchen. Would that make it so it was not a dwelling unit?

Mr. Kamptner said yes, that staff could clarify the definition so that it makes it clear that no single facility can have all of the characteristics of a dwelling as defined in Section 3.1.

Ms. Higgins pointed out that people in the county do this all the time by building something without a kitchen when they get a permit. Then later on without ever getting a permit they add a kitchen. She was just looking for ways to very carefully not something that becomes a headache to the county. She noted that there was no scale and that this could be 20 in 20 buildings. Then there is a list of requirements on the concept plan, but it does not say what those requirements are going to be evaluated against. For example, what are the parking requirements for the 20? She asked how staff would know how many parking spaces to assure? Those are the type of questions that she had in reading through all of this.

Mr. Shepherd stated that staff was prepared to make an individual determination on a case by case basis with this. It would depend on how the property owner designed the program. Then staff would review the parking on that basis.

Ms. Higgins noted that with a special use permit they could add conditions. But, if it was less than 20 she felt that they have to assume that they really cannot impose conditions.

Mr. Shepherd said that they need the concept plan, which was where they would show this. The other evaluation of this would address that issue. Our idea would be to provide the minimum parking necessary for the particular use as they propose it. So he would think that they would want to have some flexibility to deal with that.

Mr. Morris asked for some clarification on this. On the last sentence for both the class A and class B it states the facilities may include sheltered areas for sleeping, eating, food preparation and bathing as well as toilets. He asked if that was a dwelling.

Mr. Strucko questioned if that meant all in the same building or collectively.

Ms. Higgins said that it does not say.

Mr. Morris noted that it says the facilities may include.

Mr. Kamptner said that they would be looking at no single facility containing all five of those provisions because it would then be a dwelling unit. But, staff can clarify that as he previously stated to eliminate any confusion.

Mr. Morris agreed that it was confusing.

Ms. Higgins stated that the last sentence, which is the use of farm worker housing facilities were not occupied by seasonal farm workers, farm worker housing facilities may be used for any accessory use that does not include human inhabitation. That gets her back to the buildings that were once barns and people sleep in them. She was not here at the last meeting so somebody needs to explain the background on that particular item. When the farm workers are not there they can use the structures for something that is not human habitation. Human habitation is not talked about at all until the very last sentence. She asked if there was something in mind in the work session for that one.

Mr. Clark replied that staff wanted to clarify that these might be multi-purpose buildings. Simply because the buildings were not used for housing at one point of the year does not mean that they can't be used for storage or something at some other point of the year.

Ms. Higgins noted that the buildings could not be used for anything for human habitation, and Mr. Clark agreed.

Ms. Higgins asked if that means that the family cannot have guests in over Christmas and have someone sleep there or the children can't use one as a playhouse. She felt that human habitation was a very strong word. If this happened next door she would want somebody to explain what scale could happen. Without special use permit review there would be no formal review and 20 is a big number. These things are not written in the here that staff is explaining to me.

Mr. Shepherd stated that could benefit from additional thought and discussion on their part. The intent is to allow the facilities to be used for lawful purposes that are accessory to a farm.

Ms. Higgins stated that it needs to be safe and to provide housing that is needed out near their work.

Mr. Shepherd said that it would provide that, but it also would not allow them to grow beyond the bounds of what is being requested here so it could not grow into some larger use such as some kind of convention center. So it could be within the bounds without being too restrictive.

Ms. Higgins stated that the other thing that struck her was that it did not mention horticultural. In land use it is either classified as agricultural, horticultural or forestal.

Mr. Kamptner said that the definition of agriculture includes horticulture, silver culture, etc. or any of the other plant growing gardening activities.

Ms. Higgins stated that now on her farm she grows Christmas trees and grapes. But, in this it is not limited to a seasonal type or a single use. There is a farm at the end of the road that has cattle. Also, they have vineyards and then kill deer the rest of the season to keep them from attacking the grapes. What limits them to only being during the season when the grapes are being harvested or when the Christmas trees are being cut? She could see the use becoming year round.

Mr. Clark noted that staff had discussed that quite a bit with several people. Early on Mr. Shepherd and he were proposing a season within which this would be permitted. It turned out that season was unfairly restrictive to agricultural activities that they had not considered such as vineyard maintenance that might happen in February. Anytime they tried to limit it to a season it would help one use and hurt another.

Ms. Higgins agreed because she knows of some landscaping businesses that actually bring migrant workers in and they go home in December through February. Then they come back and stay the rest of the year. It is not in this county so it is not a known violation. They actually go out and work for landscaping companies, but they live on a farm. She asked what limits the workers from going out and working on other farms when they live on her farm.

Mr. Clark stated that it actually does. It is intended to limit them to work on the farm where they live.

Ms. Higgins noted that it says one or more parcels of land operated under the same management.

Mr. Clark noted that staff did not want to limit it to one parcel because there were families operating farms scattered across the county.

Mr. Shepherd noted that issue was covered in the definition that facilities are arranged or designed to be occupied exclusively by up to 20 workers employed to work on the farm on which the facilities are located for the seasonal agricultural worker.

Ms. Higgins asked how they would enforce that.

Mr. Kamptner said that it would be complaint driven. If people were complaining about vehicles coming and going every day and taking workers somewhere else, then that would be a zoning enforcement issue.

Ms. Higgins felt that it did not seem to be temporary once it was established and it has implications for rural areas.

Mr. Shepherd suggested that they consider a revision of this that would state in the positive that these facilities could only be used for lawful purposes that would be accessory to the farm dwelling.

Ms. Higgins questioned whether the 50 foot setback would be sufficient. She finds this to be very difficult to enforce and a lot of activity without any way to impose conditions and controls.

Mr. Cannon stated that there would be a special use permit required for a class B farm worker housing. For farm worker class A there would be a concept plan subject to review and approval through an administrative process. The approval of that concept plan would be necessary before any farm work class A could be built. The conditions attached to the approval of that concept plan would be applicable and enforceable against farm worker housing class A. He questioned if that was correct.

Ms. Higgins asked where it says that they can impose conditions.

Mr. Kamptner said that Section 2b allows the zoning administrator, the director of fire/rescue and the building official to impose conditions as part of their review of the concept plan.

Mr. Shepherd pointed out that would also be used in the review and issuance of the zoning clearance.

Mr. Kamptner stated yes, but that the conditions are imposed in relation to the information shown on the concept plan, which shows how the facilities are constructed and operated.

Mr. Cannon said that he just wanted to ensure himself that there was a mechanism by which preconstruction review is had, conditions can be imposed and those conditions can be enforced. He asked if that was correct.

Mr. Shepherd replied yes that was correct.

Ms. Higgins pointed out that the dwelling issue was troublesome the way that this reads. This means that someone can actually put a cabin or something like that for a horse riding facility and have someone that cares for the horses there. That season can go all year round. It is not temporary. It could be polo players. It could be trainers. It could be things like that. If that is what it is intended for it could be a lot less temporary than what this was intended.

Ms. Joseph asked if staff could explain what this was in response to.

Mr. Shepherd stated that this originally came up as a proposal from a farm owner who was looking to provide basically an educational opportunity. It is on the model of internships for people to learn about sustainable architectural practices, which is on a farm with hands on experiential activity. This is part of a movement that is happening all over the world, in America and Virginia. This is to give that opportunity to

people. It is a little bit different than what we think of as the traditional migrant labor setup as opposed to an internship and just labor. Part of the intent behind it is both the farmer requires labor to do the work and needs help with harvesting the crops, working the land or whatever they are doing. At the same time there is a component that ran with the Comprehensive Plan to promote agriculture with that whole educational proponent.

Ms. Higgins asked if this could be a summer camp.

Mr. Shepherd replied yes, that it could be like a summer camp. The original zoning take on this was to compare it to a boarding camp. The internship model seemed to fit exactly the boarding camp definition. But, that definition was not wide enough to really accommodate migrant worker housing in all of its forms.

Mr. Cannon asked if there was a demand separate from the demand that he had identified from farm owners for migrant worker housing.

Mr. Shepherd replied yes. He suggested that Mr. Shackleford was present and could speak to that better than he could. In their course of working closely with the folks on the Farm Bureau and others they found that many migrant workers are used in the county now. There was also interest expressed for other help for vineyards in particular, but for other uses as well. Also, there was interest expressed in this internship model as well. Staff feels that there is a desire for this.

Ms. Higgins noted that there was also the sheep shearing group that comes in and the ones that pick the grapes. Then there are the orchards that have migrant workers. Some of these workers are staying in hotels. There are places where they stay on the west side and Waynesboro. There are hotels that cater to migrant workers that come in for seasons. It is happening now and has been around for a long time.

Mr. Shepherd stated that one thing that they sought to avoid with this is that this is not permitting a farmer to establish a contract labor operation like a motel where you have lots of laborers that can be contracted out to different places. This does not allow that. That person has to work on that farm.

Ms. Higgins pointed out that the grape pickers that come in pick the grapes very fast and move on to the next vineyard. They don't move every time they move to the next vineyard. She finds it difficult that they could limit it to one farm.

Mr. Shepherd noted that particular activity would probably not lend itself to this use. Staff understands that the way grapes have to be harvested is that it has to be done very fast. Therefore, they have a large number of people who are supplied by large labor contractors so that they can pick the harvest in a day or so that the vintage is all the same for quality control purposes. That would not lend itself to this model.

There being no further questions for staff, Ms. Joseph invited public comment.

Jeff Werner, representative for the Piedmont Environmental Council, stated that since 1972 the PEC has worked to promote and protect Piedmont's rural economy, natural resources, history and beauty. Other than conservation easements few actions fulfill these objectives like those who contribute to the viability of working farms. Unfortunately, and as always the discussion of additional residential development in the rural area has to be approached carefully with a critical eye. This regulation must make crystal clear the temporary or seasonal nature of this housing. They understand the intent of this ZTA and fully support the objectives of the farm that initiated the discussion as well as the farm community that has supported it, but still the regulation leaves open the door for expectation. It is not inconceivable to imagine the construction and use of this housing, for example, for University students who meet the criteria of farm worker simply by agreeing to cut the grass on weekends. How exactly will this ordinance differentiate between a group of seasonal orchard workers and a group of second year law students? The county must have a regulation which specifically states these limitations and devise the means to confirm that the workers are seasonal and they are actually working on the farm and that the housing is, in fact, temporary. He spoke with Mr. Clark before the meeting and he explained that there are limitations and this is a small box in what this ordinance can and cannot do. So he feels bad criticizing his work and does not want it to sound that way. But, they urge the county to pursue the adoption of an ordinance and one

that fully meets the expectations of the sponsor. They urge the county to close all of the loopholes and make certain that this is not merely a tool by which landowners create additional residential density in the rural area under the avail of farm worker housing without the scrutiny of the normal subdivision requirements. He made some additional notes and agreed with what Ms. Higgins' was saying. Twenty at the orchard up by Monticello no one could argue with that. But, housing for 20 folks on a 25 acre wood lot that is not even being harvested would have to be questioned. There is a specific situation that staff is trying to address that started this. He hoped the county could grant some conditional approvals so that they can get what they have been looking for, if this gets delayed for discussion. But, he felt that they need to take the time to get this right.

Ms. Joseph asked if there was any one else present to speak to this issue.

Corky Shackleford stated that he did not hire migrant workers, but does live on a farm. He did not come to speak, but he had heard so many problems raised that he thought he ought to say something. They are not going to have somebody with 25 acres that is going to hire the people that will need this housing. But, this is the kind of agriculture that is growing and is going to be more and more a part of our local agriculture. He felt that people who raise cattle as he does are going to be fewer and fewer. There are going to be more vineyards and labor intense operations that need seasonal workers. That is the only kind of worker that a farmer can afford. The idea was to have housing for these necessary people and not make it cost prohibit for the people trying to hire them. The county has said that they want open space and an agricultural ambiance in the county. Therefore, he felt that they need to do all they can to encourage that because temporary labor is going to be one of the big factors in agriculture as they go along.

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

Ms. Higgins asked if there was a way to prevent trailers because someone could bring in mobile units without kitchens. She noted that the concept plan could show four trailers.

Mr. Shepherd stated that a trailer by itself if it had all of the elements of a dwelling can be on a property if it has a development right and a farm worker could live in it.

Ms. Higgins asked if it was a trailer that just had a bathroom and sleeping quarters.

Mr. Shepherd stated that at that point it was some kind of a structure and he would refer it to Mr. Schlothauer. The structures would be addressed on the concept plan. The structures are not four seasoned insulated buildings. He supposed it could be modular temporary buildings that could come and go.

Ms. Higgins asked if it could be modulars or trailers.

Mr. Shepherd replied yes, but it would still have to meet all of the criteria set forth in the regulations. But, it could be a stick built building, modular building, etc. A mobile home is allowed by right. He pointed out that he did not know what criteria governed a mobile home if elements are taken out and what Code it would be regulated under.

Ms. Higgins noted that she lives down the road from a vineyard and he could bring in ten non-kitchen mobile homes and park them there and have migrant workers come in. They are not preventing that.

Ms. Joseph noted that on the flip side they could discourage agricultural use in the county.

Ms. Higgins noted that the mobile homes could be moved around from farm to farm.

Ms. Joseph felt that it was expensive to move mobile homes.

Ms. Higgins said that the special use and the 20 have got her a little bit overwhelmed because it could

happen with no notice to the neighbors and not public input. Staff could allow 19 trailers to go in the front yard of a farm.

Ms. Joseph noted that it would still have to meet the 75 foot setback.

Mr. Strucko felt that this document had some shortcomings and needs some more work with the wording.

Ms. Joseph felt that it was very important that it was very clear what the intent is here. She pointed out that there was another aspect which was this sustainable organic farming. Organic farming takes a lot of people to work the land, pick the bugs or whatever else it is that they do. There are other things here that come into play. There are the vineyards, the horses and the organic aspect. So the idea was that this movement is growing in this county. Everybody is selling organic produce. The idea was that it was just one more way that they can help encourage people to keep farming is to allow this. One of the reasons that this request is before the Commission is because a determination was made that migrant farmer worker housing is not allowed in Albemarle County according to our current ordinance. So they felt that the need was there to allow this to help the farmer. If they are confused about it and it seems that the wording is not quite right, then they should ask staff to work on it.

Mr. Morris felt that this ordinance is desperately needed, but it is not ready.

Ms. Higgins noted that it does not protect the nuisance things that she could think of.

Mr. Strucko agreed that they need to find a way that farmers can accommodate their temporary labor because he agreed with Mr. Shackleford that temporary labor is one of the biggest factors to make sure that agriculture survives in Albemarle. When he thought 20 persons he was thinking about a bunk house. But, when Ms. Higgins said 20 separate individual cottages he thought that was not the intent. He agreed that was something that could be interpreted from what was presented. He suggested that to be clarified in another version.

Mr. Cilimberg said that it was important that staff understand what the Commission wants to be tightened up. He felt that it was worth establishing for the record because this kind of thing is not going to be perfect. There are always going to some kinds of potential pitfalls in the ordinance provisions. That is just the way they are. Any ordinance has that possibility. So staff can try to write this to the lowest common denominator of concern, but there still will probably be something there. So if the Commissioners can say what it is that they are looking for to be tightened up, then staff can work towards trying to do that.

Mr. Cannon felt that this was something that they should pursue. It is important to support economic use of rural lands as a way of adding incentives to preserve and use rural lands as rural lands rather than for development purposes. So he is behind the concept and agrees with Mr. Werner's comments from earlier. He was also concerned about what he has heard about the capacity of this kind of ordinance to create loopholes which could drive further development in the rural areas, which is not what they want. The three things that he heard folks be concerned about are:

- Some intention to make sure that it is clear on the face of the ordinance that the workers for whom this housing would be supplied would have to be employed on the farm on which the facilities are located and that it be in the definition that they cannot work elsewhere. He felt that the language there comes close, but is not sure if it is sufficient. That was an issue that was raised and maybe it could be strengthened.
- The second item is to make clear that the facilities provided can not have the features of dwelling units. Mr. Kamptner has already agreed to address that.
- The third item raised is what does human habitation mean. That is when the farm workers leave that there is some use that can be made of these facilities and that use is not to include human habitation. He heard Ms. Higgins ask what does human habitation mean. He would suggest that to be construed in a way that does not encourage people to anticipate that they are going to be using these things for purposes like human habitation.
- The fourth thing that he would suggest, which refers to Mr. Werner's comments, is that partly they are dealing with expectations here and this kind of creeps along that they see people building

these things and deciding at some point that they are no longer in the farming business, but in the development business and would like to develop their property. Then they have these buildings that might be used or might be the basis for development. He could imagine people under these circumstances trying to use the fact of the existence of these buildings as a wedge to do things that they would otherwise not be allowed to do. That is a real concern. He would like to see some effort to address that by stating that these facilities will not in the future be able to be converted to other uses, except under provisions that would otherwise be applicable to the use of the land for those uses including the use of development rights, subdivision rights and all of that.

Ms. Joseph pointed out that there was an affidavit that the applicant is supposed to sign and agree to.

Mr. Cannon pointed out that had been taken care of.

Ms. Higgins asked about the number of structures. She asked if there was a way to get to scale when they were talking about 20 workers so that there are not 20 cabins.

Mr. Kamptner stated that staff could look at that. He asked staff if they envisioned having 20 different structures for 20 workers.

Mr. Clark stated that staff envisioned a number of one structure to three workers, which would be bunk type structures.

Ms. Higgins suggested that there be a number of structures identified that would require a special use permit. She noted that 10 workers could bring their families and then go up to the main house to get dinner. She questioned if they live here during the school year if the children have to be educated. She asked if they have an address to tie this down because they do not get to temporary in here. She suggested that the affidavit be specific to the use and not be open ended.

Mr. Shepherd pointed out that zoning does not regulate the farm labor. There are laws that govern labor practices, but the zoning ordinance does not do that.

Ms. Higgins pointed out that they were creating a residential use here in the rural areas that would create more people. She suggested that these were things that they need to be aware of.

Ms. Joseph said that this is subject to all kinds of other review by federal and state agencies.

Mr. Kamptner noted that the ordinance regulations are tied to the land use.

Mr. Schlothauer pointed out that the Building Code now calls mobile homes manufactured housing. That unit is what they would call a mobile home. It has a kitchen, bathroom and people are supposed to live in it. It has a label that is fixed by HUD. Those are meant to be lived in. They have all of the amenities of a house. There are other things called industrialized buildings, another Building Code term. That addresses the things like classroom units that show up at some of the schools. Also, it includes contractor trailers that show up on construction sites. They are typically not intended for habitation. When you order those you tell the company building them what you want them to be and they build them accordingly and actually put a label on it saying it is a classroom unit or office unit, etc. The building inspectors have to look at that label to know what is going on. If they saw the label indicating that this is a class room and there were a bunch of beds in there with people sleeping, then that would be problematic. But, there is another category that includes the recreational travel trailers. They have kitchenettes and sanitation facilities in them. But, they have a license plate that means they are not regulated by the Building Code. Those items are out there and can be lived in for a short time depending on how large the holding tanks are, but they are not regulated by the Building Code and are vehicles.

Ms. Higgins noted that recreational travel trailers have not been excluded in here. She questioned if she wanted to live some place and have a mini travel park come in because the people occupying them are migrant workers. She was just asking the question. Without notice to adjoining property owners, she felt that they could be opening us up to a lot of issues.

Ms. Joseph suggested that was something that could be excluded in the definitions. She suggested that this might want to reference more permanent things. Mr. Cannon mentioned the four issues. She asked if all of the Commissioners were in agreement with what he said. Then they have some other issues that have come up.

Mr. Cilimberg stated that Mr. Cannon said that the workers must be employed on the farm only. That needs to be very specifically indicated in this. He said that they could not have all of the features of a dwelling unit, which needs to be very specifically referenced. They need to further define what human habitation means.

Mr. Kamptner stated that was in subsection b. He suggested that it stated that it will be occupied by seasonal farm workers. The farm worker housing facility may be used for any use accessory to a primary agricultural use.

Mr. Cilimberg stated that they need to remove human habitation as a reference. Also, the statement that the facilities will not be permitted to convert to uses that are not consistent with the ordinance, which they feel can be dealt with by an affidavit.

Mr. Cannon asked if there was a way to have that run with the land.

Mr. Kamptner stated that it would be recorded.

Mr. Cilimberg stated that initially what he heard was to determine a limit to the number of structures. Also, that seasonal agricultural worker is defined more specifically. The last thing was that they want to indicate what types of units structurally were permanent versus temporary to either be included or excluded.

Mr. Kamptner noted that another thing they would look at is having a threshold on the number of structures that would further the need for a special use permit.

Motion: Mr. Morris moved, Mr. Craddock seconded, to defer ZTA-2005-005, Temporary Farm Worker Housing to April 18. The Commission asked that the following issues be addressed:

- The workers must be employed on the farm only. That needs to be very specifically indicated in this.
- The facilities cannot have all of the features of a dwelling unit. That needs to be very specifically referenced.
- Remove “human habitation” as a reference in subsection d. Subsection d. should be rewritten.
- The facilities will not be permitted to convert to uses that are not consistent with the ordinance, and this can be addressed through the affidavit. The affidavit will be recorded and run with the land.
- Determine a limit to the number of structures. Determine a threshold for the number of facilities which will trigger the need for a special use permit.
- “Seasonal agriculture work” should be defined more specifically.
- Indicate what types of facilities are considered permanent versus temporary, and whether temporary facilities will be allowed.

The motion passed by a vote of 5:0. (Commissioner Edgerton was absent.) (Commissioner Joseph abstained.)

Ms. Joseph stated that ZTA 2005-005, Temporary Farm Worker Housing, was deferred to April 18.

The Planning Commission took a ten minute break at 7:58 p.m.

The meeting reconvened at 8:06 p.m. in room 235.

***Work Sessions**:*

ZMA-2002-004 Cascadia (Signs #30, 91)
PROPOSAL: Rezone 55.71 acres from RA (Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) to NMD (Neighborhood Model District - residential (3 - 34 units/acre) mixed with commercial, service and industrial uses); and rezone 5.06 acres from R-6 (Residential: 6 units/acre) to NMD to allow for up to 330 dwelling units and 20,000 square feet of non residential in a planned district.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses.
ENTRANCE CORRIDOR: Yes
LOCATION: Tax Map 62, Parcel 25, Tax Map 78, Parcels 59 and 59A, and Tax Map 78E, Parcel H1 located along Route 20 North, across from Darden Towe Park, north of Fontana Drive and south of Broadus Memorial Baptist Church.
MAGISTERIAL DISTRICT: Rivanna
STAFF: Sean Dougherty

Mr. Dougherty summarized the staff report.

- The Commission has a copy of the Mr. Barnes' presentation and a memo summarizing the viewpoints from the last public hearing. The sheet includes the waivers that are requested, staff's position and any conditions for those requests. (See Attachment)

- The request is for ZMA-2002-004, Cascadia, which located along Route 20 North across from Darden Towe Park. It is a request to rezone 55.71 acres from RA (Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) to NMD (Neighborhood Model District - residential (3 - 34 units/acre) mixed with commercial, service and industrial uses); and rezone 5.06 acres from R-6 (Residential: 6 units/acre) to NMD to allow for up to 330 dwelling units and 20,000 square feet of non residential in a planned district.

- There were a number of things identified as being outstanding or problematic for the proposal in the last staff report. Those things pretty much remain. With respect to the last time the Commission met, staff has compiled the key points and seven unanswered questions from that discussion. The objective of this meeting was to let the information have a little more flexibility in discussing their issues and thoughts about the proposal.

- Mr. Barnes has prepared a presentation to address some of the Commission's questions or least some of the larger issues related to the rezoning. Then staff can go through that and get into some of the more specific questions.

Michael Barnes and Don Franco were present to represent the applicant.

Michael Barnes stated that last time they took the comments and felt that the Planning Commission needed a little more guidance on how some of the decisions were made to arrive at this point so they could have some context to better understand the project. Then they could move forward with some of the other more technical issues that they were trying to address last time. Basically what they are trying to work on a here is context for a policy at the neighborhood level and the discussions will focus on that. Then they will get into a site design level to talk about the constraints that sort of created the envelope within which they developed. Finally, they will talk about some of the grading issues and how the twelve principles go. He felt that they were pretty strong on all twelve principles, but there were some concerns last time on working with the terrain. That will be the focus of this discussion. He presented a power point presentation.

- What they were trying to show on the bar graph is that the 12 units per acres on the left hand side are the ranges that they are in. The Code permits a density of 330 dwelling that put them up at

the 5.4 dwelling units per acre, which is shy of the 6 dwelling units per acres that is the cap of this designation. The illustrious plan on the table is showing about 304 units, which is about 5 dwelling units per acre. The difference in that they really think is primarily going to be extra capacity for carriage units, efficiency units and other affordable housing units up and above what they are already proffering. There were a lot of concerns that surfaced last week. They are willing to racket back a little bit to close to 300 units if that resolves some of the concerns of that the staff and the Commission would have.

- There are also issues of potentially removing multi-family and live/work. If they do that it would move it down to 3.9 units. There was also something talked about last time about the single-family home option. They think that potentially they could end up with 100 units on this site. From an economic standpoint it would still work for us, but it might work from the policy aspect. The policy aspect that they heard from the Planning Commission was to try to be on the higher end of that.
- On the right hand side they were trying to compare it to the developments around the site. One interesting thing is that some of the public transportation advocates in our community are talking about 7 dwelling units that is the density that starts to support public transportation. He pointed out that Avemore was off the chart there.
- The next issue deals with mixed uses and beyond the residential would it be advisable to have non-residential uses. Pantops has around the 250/20 intersection down to the bottom of the site they have the intersection there that is a regional center. Another one is developing on the upper portion of Pantops on 250 around the new hospital on State Farm Boulevard. What they were talking about with Cascadia is should there be these type of services in the northern part of Pantops. The decision was made that yes, there should be some mixed use components early on in the process and they should be at a neighborhood scale serving the northern part of the neighborhood. The Comprehensive Plan defines a neighborhood center as 40,000 square feet of non-residential. Avemore, which is on the bottom part of this site, is roughly 20,000 square feet of office and retail type uses. They are matching that with up to 15,000 square feet in their portion of the northern part. Basically, using those two elements of what they got from the previous Comp Plan and from the land use decisions he felt that what they took early in this process was that they were supposed to have relatively high density and have a mixture of uses on the site. With those two goals in place, how do they fit those in? He felt that one of the earlier comments from the Planning Commission in their earlier work session was that density was okay as long as it looked good. Working with the environmental envelope and making it look good is what their goals are.
- Logical factors fall into 6 major groups: environmental concerns, the Planning Commission's from earlier on, the ARB, the Service Authority, the transportation concerns and the citizen's concerns.
- The environmental constraints that they have on their site include critical slopes, important woodlands and the 100 foot buffer on the stream. That is not a regulatory requirement because technically it is not an intermittent stream. By ordinance it is not required to have the buffer. As part of their plan they are working to provide that buffer at least for the building setbacks. He noted that they had labeled three areas of environmental constraints as ones that maybe can be balanced against other goals of the Comprehensive Plan obviously to try to get density and utilizing the site was a goal that was set earlier on. There are two question marks on the left hand side are critical slopes that are not immediately associated with the stream system. Based on an earlier discussion they were talking about critical slopes he knew there was talk about revising the critical slope ordinance, which was put in the process several years ago when this project started four or five years ago. It was to sort of highlight critical slopes that were adjacent to streams as relatively more important in balancing especially in the development area against other goals. They look at the critical slopes as something as a design challenge to work with, but potentially they could be disturbed in serving the other goals. So they have taken those sort of away.
- Regarding the forests it is not clear where these things were derived from originally in the Land Use Plan. Neighborhood 3 is the only neighborhood that has important forests identified in it, except those shown in Neighborhood 6 around Ragged Mountain Reservoir. It seems to be something thought with the Monticello view shed. This issue came up just last month in the staff report, but it had not been an issue before. So they are trying to address that. Some of the ways that their project does do that is that this part of the site where they have single-family homes and the possibility to come back and plant trees in this area and ameliorate the impacts to Monticello.

It will not be any worse than Fontana because this development is further away. Therefore, they think that they can address those concerns. They plan to focus in on the three areas noted to try to protect them.

- In 2002, the Planning Commission asked a series of questions at a work session. To recap on that the principles things were trying to protect this area associated with Route 20 and trying to bring some of the rural corridor into the development area and not start the development area until they got to at least their entrance or across from Montessori School, which is a little closer in. That was one of the things that the Commission supported early on.
- The connection to Lake Ridge was assessed and again the idea of a road connection to Lake Ridge that is to the west of our site and put a joint storm water management pond down in that area. That idea was rejected. The concepts of trying to get the connections to Fontana were supported and the idea, of course, back to the mixed use in the neighborhood was supported. There was talk about how it should be mixed and a lot of design issues that the Commission can see before them in the plan today. There was also support at that time for a relatively hard edge to the pool area and density as long as it was well designed and it looked good. So hopefully the plan today looks good. That plan involved into this plan.
- The ARB had concerns about the high visibility of the larger buildings on the upper slopes creating a visibility issue. It was a major problem from their standpoint on how it impacted the Entrance Corridor and elsewhere having larger buildings higher than the site. The ARB did support the idea of rural areas extending in along Route 20. The ARB raised a major concern about the commercial area. The plan has always been trying to deal with this problem of trying to create a commercial street internal to the site and front that, but at the same time trying to have a good relationship to the Entrance Corridor. This plan has also tried to tackle that concern.
- The Service Authority has design constraints with Lake Ridge, which is to the west and up hill. It is a development that is in the review process now with the county. They attempted to try to reflect the provision of sewer from Lake Ridge to the rest of the system. The existing system is shown on the plan in red. To serve Lake Ridge with gravity they basically have to serve it through our site between crossing the stream corridor. They can serve their site and not disturb the corridor. This is a discussion that the Planning Commission needs to have. But, the Service Authority desires for gravity.
- Regarding the opportunities for interparcel connections they saw basically 8 connections. One connection was supposed to connect to the potential stop light at the Lewis and Clark Center. As you know, the Planning Commission and Board chose to take Lewis and Clark and route it back around the site to the existing light at Fontana. That has gone away. They continue to work with the church to determine the viability of vehicular connections where our Code of Development does provide pedestrian linkages to the church. That may be evolving as time moves forward. The sixth connection to the rural areas, which is the boundary between the rural area and the development area. For policy reasons and topography reasons that was never really considered. Again, the connections to Lake Ridge that was shown as 4 and 5 are direct connections to Lake Ridge, but would impact the stream. From the discussion of last time there is a question mark for the connection with Fontana. At least now they were left with connections at the first and second locations and they can work from that from the site plan standpoint.
- To put all of those factors together, they have areas of high visibility. They have areas of environmental impact or sensitive areas that the need to be concerned about. Also, there are issues along the Entrance Corridor that need to be addressed. But, they feel that their plan has done that. In many respects he thinks that staff supports that from their comments. That creates a design envelope and they put their site plan underneath that, which is how it matches up. They have tried to be sensitive to that design envelope.
- With the principles of the Neighborhood Model, again, one of the major ones that came up was how they were working with the terrain. It was okay to try to put density on the site, but at the end of the day have you created something that is workable. The site itself sits on two plateaus. The reason that there are 10 to 15 iterations of this plan is how you work your way up there so that it will ultimately work. One of their major strategies when they were grading in the roads was to try to create a series of terraces. So they have a lower and upper terrace and have worked in a third terrace in the middle as a way to work up the site. The main road starts in at an elevation at the bottom and the max height they can get at the top is 380. When the road leaves to go to Fontana it is at about 530. There is a 150 feet difference. This is a fair amount of grading to try to make up

as you work up the site. Their strategy to do that is to create this long serpentine road to allow them to work up the grades. Between each of those they are trying to push the road to the highest grade that it can so that it can go work its way up the site. The roads that run with the grade are relatively flat from 2 to 4 percent slopes. The residential use is fronting on those streets. The main road serves as a way to get from the bottom to the top. It creates a road approvable by VDOT and it creates a level plane for these houses to sit on each of these terraces. As opposed to using retaining walls, they are trying to use the buildings to hold up the grade. He stated that they were trying to minimize the visibility of the houses from Darden Towe Park and other places.

- Our concern is did we make the right choices as they went through the plan. Did they balance all of these different factors to the satisfaction of the Planning Commission? At the last meeting they by passed this issue because they thought it was a settled issue. Hopefully, this presentation will help the Commission understand that they did work with staff. They will continue to work with the concerns as they arise.

Ms. Joseph stated that Mr. Dougherty has written down some questions in his memo that the Commission will review and provide guidance on. (See Attachment – Memo dated March 28, 2006 to the Planning Commission from Sean Dougherty.)

In summary, the Planning Commission held a discussion with staff and the applicant and provided feedback on the rezoning proposal and preliminary discussion topics as follows:

1. Does the design adequately reflect the principles of the Neighborhood Model?

   The Planning Commission generally felt that the design adequately reflects the principles of the Neighborhood Model, but the waivers need to be revised to support it. Discussion was held on providing public streets versus private streets.

2. Is the density appropriate?

   The consensus of the Planning Commission was that the density was appropriate. Also, they felt that the distribution of the density was appropriate.

3. What is the appropriate solution for the proposed interconnection to Fontana?

   The consensus of the Planning Commission was that they would like to see the road stubbed out to provide some sort of connection for emergency and pedestrian access to Fontana at the back of the site. Currently, the Commission could not support the actual road connection because of the road conditions in Fontana.

   The Commission stated that the road should be built to the extent possible. A complete stub out to the property line will not be possible until the adjacent property is rezoned or necessary grading easements are obtained. The applicant clarified that the adjacent owner is opposed to the connection and is opposed to providing the necessary easements. Therefore, the portion of the connection that is not possible to build without off-site easements will be bonded for future completion.

   The Commission discussed how the connection through Cascadia may provide an alternative to Fontana Drive, which may provide access to Lake Ridge, a proposed by-right subdivision to include roughly 100 units. Though the Cascadia connection may serve as an alternate route in the future, the Commission agreed that the current concerns on behalf of Fontana residents relative to the rural cross section of existing roads in the Fontana subdivision outweighed the notion that this connection should be made now.

4. Are connections to Broadus Memorial Church / reengagement of the church in the rezoning

critical to the overall quality of this rezoning decision?

The applicant indicated that they are working towards an agreement to incorporate the church into the plan. The Planning Commission generally agreed that this was not critical to the overall rezoning decision, but that it was something that would have to be worked out between the applicant and the church.

5. Do the proffers mitigate the impacts of 330 dwelling units on Route 20 and the Route 20 / 250 intersections?

   The Planning Commission concurred that they don't know what to base their decision on because the County does not have a policy on cash proffers. There was some discussion on what they need to take into consideration in making this determination for this specific site. Since there was no consensus, the Planning Commission asked staff to work on this issue and bring it back for further discussion.

6. Is the applicant's program (15 for sale / 28 for-rent accessory units attached to a primary structure) for affordable housing adequate?

   The Planning Commission requested the applicant to increase the number of affordable units to meet the 15 percent threshold. The Planning Commission was concerned about the applicant's proposal and asked the applicant to work with Ron White. Greg Kamptner was asked to review and provide comments about rental affordable housing as described on page 25.

7. What is an appropriate treatment of the edge of the Rural Areas?

   The consensus of the Planning Commission was that the proposal showed an appropriate treatment of the edge of Rural Areas.

- The applicant will submit a revised plan that will be more in depth, and will also further address the proffers and revised waiver requests. Staff will then schedule the rezoning for a public hearing.

Old Business:

Ms. Joseph asked if there was any old business. There being none, the meeting moved on to the next item.

New Business:

Ms. Joseph asked if there was any new business.

The Planning Commission will not meet on Tuesday, April 4, 2006. The next Planning Commission meeting will be held on Tuesday, April 11, 2006.

There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 9:54 p.m. to the April 11, 2006 meeting.

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V. Wayne Cilimberg, Secretary

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