A joint meeting of the Board of Supervisors of Albemarle County, Virginia, and Albemarle County Planning Commission was held on August 1, 2006, at 6:00 p.m., in the Burley Middle School Auditorium, Rose Hill Drive, Charlottesville, Virginia. The meeting was adjourned from July 12, 2006.

PRESENT: Mr. Ken C. Boyd, Mr. Lindsay G. Dorrier, Jr., Mr. Dennis S. Rooker, Mr. David Slutzky, Ms. Sally H. Thomas, and Mr. David C. Wyant.

ABSENT: None.

PLANNING COMMISSION MEMBERS PRESENT: Mr. Jon Cannon, Mr. William Craddock, Ms. Jo Higgins, Ms. Marcia Joseph, and Mr. Eric Strucko.

ABSENT: Mr. William Edgerton and Mr. Calvin Morris.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry Davis, Deputy County Attorney, Greg Kamptner, Director of Community Development, Mark Graham, Director of Planning, V. Wayne Cilimberg, Chief of Planning, David Benish, and, Recording Secretary for Planning Commission, Sharon Taylor.

Agenda Item No. 1. The meeting was called to order at 6:03 p.m., by the Chairman of the Board of Supervisors, Mr. Rooker, and Chairman of the Planning Commission, Ms. Joseph.

_____

Agenda Item No. 2. Pledge of Allegiance.
Agenda Item No. 3. Moment of Silence.

_____

Agenda Item No. 4. To receive comments from the public on a proposal for Protection of Albemarle County's Mountain Resources (Mountain Overlay District).

Mr. Rooker commented that the County held public informational meetings on the proposed Mountain Overlay District and Rural Areas phasing and clustering of subdivisions last week. Tonight the Board and Commission will not engage in a discussion or comment; the purpose of this meeting is to hear from the public. Although this meeting is to receive comments on the Mountain Overlay District, the public can also speak about the phasing and clustering aspect, which is scheduled for public comment on August 3rd.

Mr. Cilimberg said that staff suggests that after receiving public comments the Board schedule a work session in September to consider those comments and proceed on the ordinances, noting that staff would also be providing information on phasing and clustering at the August 3rd meeting.

Mr. Cilimberg commented that there are several statements the Board adopted in its vision for the county that are applicable to mountain protection. Those include a rural countryside, and maintaining the county's natural resources and beauty. He said that the Comprehensive Plan is the County's guiding document for land use and resource decisions, promotes that vision and is the basis for designating development areas and rural areas in the county. By concentrating on development areas first, the county is looking at 35 square miles – or five percent of the county's area. Mr. Cilimberg noted that in that area the county has worked to promote infill and create opportunities for self-sufficiency while providing for a full range of incomes and housing opportunities. He said that the rural area comprises 690 square miles of the county – or 95 percent of the total area – and is supposed to be where important resources are to be protected and preserved. Mr. Cilimberg said, in the rural areas, the county strives to preserve agricultural and forestal lands, protect water supplies, and conserve natural and historic resources – all of which are elements of a mountain protection program.

Mr. Cilimberg reported that there are a number of components of the rural areas that guide us in principles for planning and decision-making, including protection of agricultural and forestry resources, as well as land preservation. He added that land conservation is another such principle, achieved through management of open spaces, as is water-supply resource protection for both surface and groundwater, and the general preservation and management of the rural areas natural resources. Mr. Cilimberg said that there is also scenic resources protection, and the character and economic vitality and quality of life of the county have been a part of that scenic resource. He added that the protection of the county's rural historic,

archeological, and cultural resources is also part of that effort, and many of those have a place in the mountain areas.

Mr. Cilimberg noted that the citizens of the county have consistently shown their support for these priorities, and the concept of focusing growth in the designated urban areas to prevent sprawl and protect rural character continues to be supported by a significant majority of county citizens. He reported that when asked to rank the most important priorities for strategic planning, these rural area and resource protection-related goals are all ranked in the top 10.

He said that rural resources protection is important to county residents for the reasons mentioned, and over time the county has made significant effort through use-value taxation, voluntary agricultural and forestal districts and acquisition of conservation easement programs. Mr. Cilimberg noted that in the county's Strategic Plan, there is an objective of increasing total combined acreage in permanent conservation easements and qualifying public park land by 30,000 additional acres – which is 50 percent of conservation easements now held in the county. He said that fragmentation has a negative effect of endangering community water supply, reducing forest cover, threatening diversity of the plant and animal communities, and compromising cultural and historic resources.

To address that, he said, the Board has identified two potential new measures: mountain protection, and phasing and clustering. Mr. Cilimberg said that there is a goal in the county to recognize the value of the mountains, including protecting water quality and drinking water reservoir capacity. He noted that a mountain overlay area has been identified for the county, and the intent is to protect the resources above the elevation of those areas where they become more visually prominent and development is more difficult due to concentrations of critical slopes. Mr. Cilimberg said that the benefits hoped for are protection of water quality, promotion of resource and habitat preservation, protection of scenic value and cultural resources, protection of public safety and the reduction of development impacts on natural heritage.

Mr. Cilimberg stated that the Mountain Overlay District ordinance provisions provide a framework for that opportunity, and include additional measures to protect critical slopes including: limitation of new roads and driveways on critical slopes; reducing the area in land-disturbing activities that would require erosion and sediment control plans; establishing a 200-foot riparian buffer on intermittent and perennial streams, rivers, and other bodies of water shown on survey maps; limiting building heights to equal or less than the height of adjacent mountain crests; and providing safe access for fire and rescue vehicles. He noted that all of these provisions would have a waiver or modification element that would be enacted if it is not possible to achieve the rights that are available under the underlying zoning.

Mr. Cilimberg said that the Mountain Protection Plan also includes the idea of further defining and establishing the rural area cluster in the Subdivision Ordinance – where ridge areas would be a protected resource, and additional protection for mountain resources, including programs that would add to possibilities for conservation easements, riparian buffers, voluntary reduction of development potential, and other approaches that may include leasing scenic rights and modifying the ranking criteria for ACE and the purchase of conservation easements in the county, as well as other possible measures.

At this time, Mr. Rooker explained that the Board would not be voting on the mountain protection proposal tonight. In September the Board will hold a work session and discuss the public comments, and at that time discuss how to proceed. If the Board decides to proceed with a mountain protection ordinance, it will direct the Planning Commission to work on a draft ordinance that would then go to public hearing and then come back to the Board. There is a lot of opportunities for public comment between now and when a proposed ordinance would come before the Board.

At this time, Mr. Rooker opened the hearing for public comment.

Mr. Jon Cannon, Co-Chair of the Mountain Overlay District Committee, said that the committee was comprised of 12 citizens, diverse in their interests. This proposal has the support of every member on the committee after much debate that took place in 30+ meetings over several years. He emphasized that the consensus reached was agreed to represent "the right balance between the interest of property owners in mountains, and our common interests in protecting the resources of our mountain areas." All elements of the proposal - the ordinance, clustering, and acquisition of interests in mountain land - are considered as one package by the committee. He commended the committee for its work.

Ms. Marjorie Maupin Paul said she was born in Free Union. She has eight children who will need homes in the next 20 years. Her ancestors settled this part of Virginia 300 years ago. Protecting mountain views is important, but valley views have been lost because of all the building on knolls. She said that there has been nothing brought forward that shows the mountain areas are under development pressure, whereas the valley properties have been built into sprawl. She asked about the logic for separating the requirements for the mountains from the requirements of the rest of the rural areas. Ms. Paul said if the setback from the streams in the flat-land is 100 feet, then the same should apply to the mountain properties, and vice versa. If she cannot build on the top of her mountains, then others should not be allowed to build on the highest elevations of their properties. If she cannot put her driveway over a logging road that has been there with no erosion problem for 60 years, then others should not be able to run their driveways over a cow path along a stream. She added that the damage from fertilizer that flat-land lawns dump into the watershed outweighs what runs off of the mountains. Nothing in the proposal will slow development of the 10,000 or so lots that will be able to be developed in the current system. The phasing part of this plan will not allow her to sell her property when she needs it as she grows older because of the ability to only develop two lots each ten years. This plan will cause more development than it will slow as it will cause many parcels to go on the market before the ordinance is written.

Mr. Jack Marshall, President of Advocates for a Sustainable Albemarle Population (ASAP), said he and his wife own a 100-acre parcel on Fox Mountain in Free Union. He also has a personal investment in the future of the County's mountain areas. On behalf of the 300 members of the ASAP Board, he spoke in favor of the ordinance, and asked the Board to approve all three parts of the Mountain Overlay District Committee's "thoughtful, well-researched and quite moderate proposal." It is significant that this is a consensus document which both property-rights advocates and environmentalists, on the committee, found acceptable. ASAP would have preferred the ordinance to be stronger. They would like to have seen builder restrictions on the development of the mountain overlay district rather than just the suggested "regigering" of parcel boundaries so that development rights are, in fact, lost. They would like to see some of the innovative measures from the protection section of the document incorporated into the ordinance itself. All but the most extreme voices will recognize that this document represents a satisfactory compromise that meets the community's clear wish for you to act and to act now to safeguard Albemarle County's mountains from pressures to reduce their environmental benefits and their scenic glory. Mr. Marshall said that the committee has succeeded in accomplishing what they were asked which is to craft an acceptable and effective to protect mountain resources. The committee members deserve thanks for all of their hard work. ASAP hopes the Board will implement all three parts of the committee's proposal.

Mr. DeForest Mellon said he has lived in Albemarle County for 43 years. The proposed ordinance is balanced, fair and critically necessary for the common good of the county and he asked the Board to give their unanimous support for the ordinance. One sense of community requires that landowners support ordinances that engage the stewardship of those aspects of our land in which the public has a vested interest. Mr. Mellon said that the forested mountain overlay district should be protected from development of residential homes and other manmade structures because of the need for protection of well and watershed recharge, erosion, and biological habitat, and stream, as well as for aesthetic beauty. In numerous brochures of diverse interest enterprises in this community, it is the mountain scenes that are pictured as the primary attraction of this region. Protecting this valuable economic resource, in particular, by supporting this mountain ordinance should be a top priority. All of the citizens of this area have a vested interest in maintaining the beautiful natural heritage that contributes so much to life in this region. Once it is lost to residential development, we will be the poorer for it.

Ms. Jerry McCormick-Ray, representing Citizens for Albemarle, said they have advocated protection of the mountains for more than 30 years. She stated that the mountains bring much pleasure to the quality of life in the county and play an important role in the economy, climate, and water supply, as half the county citizens depend on well water obtained from groundwater that comes from the mountains. She stated that the framework of the mountain protection ordinance is a "step in the right direction," as it protects the value of the mountain property for those who are passing it on to future generations, sets out modes of conduct for development on the mountains to protect against poor practices that will ultimately cost citizens in terms of higher taxes and infrastructure. The Citizens for Albemarle hope the Board of Supervisors will follow the recommendations of the committee. The committee worked hard to reach an agreement between the rights of property owners and the rights of citizens that live downstream who will receive the impact of improper development.

Mr. Keith Johnstone, VP for Business and Administration, Thomas Jefferson Foundation, thanked the

Board and Commission for considering the proposed ordinance. He stated that the Foundation supports the ordinance and believes it is vital to protect the natural beauty for current and future generations. He referenced Thomas Jefferson, stating that we must be careful stewards of the landscape for both aesthetic and economic reasons, adding that tourism is a clean industry that benefits everyone in the community. Mr. Johnstone noted that Monticello attracts one-half million visitors per year, 80 percent of them being from out of state, generating over $50 million in local economic contribution. The Foundation has been a strong leader in environmental protection. He said that Monticello has worked to keep the area around the landmark in a natural state, stating that the land is "the visual backdrop of Charlottesville," with views to the east still largely pristine.

Mr. Carlton Ray said he has been a resident of Albemarle for last 26 years. He said that he has been a member of both Mountain Protection and Mountain Overlay District committees, stating that the current proposal represents the "minimum" requirements for the protection of Albemarle's most valuable and valued resources, mountains. The adoption of this proposal is an "essential step" towards fulfilling the promise of the Comprehensive Plan. He said that the proposal advances protection of the mountains and their watersheds, protects property rights and suggests innovative mechanisms for establishing easements that could mutually benefit property owners and the environment. In some respects this proposal is a compromise; the watersheds and water quality will remain vulnerable. Mr. Ray said that stream buffers of 200 feet on either side will be barely sufficient and must be enforceable. He added that there is no way to build roads or structures on critical slopes without severely damaging natural flows. This proposals' greatest significance lies in the opening of the debate towards an effective and equitable ordinance which hopefully will increase mountain protection for the common good. The Board needs to muster the political will to protect the long term character of this county for its current and future citizens' wellbeing. The worst possible outcome would be to reject the current proposal and to adopt the status quo. In this case, accountability lies squarely at the feet of the Board which will be forced to come up with its own solution or admit that its Comprehensive Plan is only words on a paper.

Ms. Laura Horn, a County resident and member of Board of Advocates for a Sustainable Albemarle Population, said that she lives in a beautiful valley near North Garden. She is in favor of the ordinance as well as phasing and clustering in the rural areas. Ms. Horn added that she would like to see all ordinances brought into line to help manage the population in the county. She thanked the committee for its long and hard work.

Mr. Jeff Werner, representing Piedmont Environmental Council, said that PEC was created in 1972 to promote and protect the rural landscape of Virginia's northern Piedmont. He stated that in 1976, the first conservation easement in Albemarle County was recorded; since then, in partnership with landowners, the Virginia Outdoors Foundation, The Nature Conservancy and others, over 60,000 acres of Albemarle's countryside has been protected with voluntary conservation easements. Mr. Werner said that in the PEC's nine-county region, over 242,000 acres are under conservation easement. In early 2004 he was asked to represent the PEC on the county's Mountain Overlay District Committee; earlier this year that group reached consensus and unanimously agreed to forward the framework to the Board. To some it was not a perfect document. "Compromise was necessary from all sides." Everyone on the committee realize there still remains hard work ahead. The committee was a diverse group that was able to reach a consensus. The proposed framework represents a sincere attempt to craft an ordinance this fair, effective and transparent. He is proud of his work on the committee and he is proud of the role PEC played in the framework. He hopes that Section "C" of the framework gets as much attention as the first two sections. The PEC urges the Board and Planning Commission to accept the work of the committee and to take this framework to the next step towards the adoption of a meaningful regulation.

Mr. John Rady said he moved here in 1973 from Palm Beach, Florida. When they moved here they were in awe of the charm, rural countryside and mountainside. He has seen a lot of growth, but the character of the city and the countryside has remained intact. He said that he is a realtor and an advocate for property rights, but during a recent visit to Los Angeles, he noticed all the houses built on mountain-tops. Mr. Rady said that some growth in the mountains is acceptable, but it should be limited.

Mr. John Cruickshank said he is Chair of the Piedmont group of the Sierra Club, and a resident of Albemarle for 26 years. He supports work that has been done on the ordinance, as it protects critical slopes, water resources, biodiversity and the scenic beauty of the rural areas. He added that the ordinance recommends financial incentives for property owners and makes it possible for more people to participate in the protection of natural resources. Mr. Cruickshank said that he also supports the proposal for phasing and clustering, realizing it will be more controversial. Phasing will slow growth in the rural areas and he hopes will cause developers to build and redevelop in designated growth areas. He noted that clustering would help

preserve important natural resources, large parcels and create “permanent conservation easements”. He also recommends expanding the ACE program which would strengthen these proposals. Mr. Cruickshank thanked the Board for their “courage and foresight” to consider these innovative ideas, and he encouraged members to vote in favor of the ordinance.

Mr. Will Crowder said he lives with his wife and two children in Ivy with a beautiful view of the Ragged Mountains from his front door. He read a statement (copy on file) which advocates for protection of aesthetic and natural resources of the rural community that encompasses the county. He supports the Mountain Overlay District, as well as phasing and clustering. Mr. Crowder said that scenic quality in the county brings money in by way of visitors, who spend an average of $170 per day per visitor, according to a recent Blue Ridge Parkway study done in North Carolina and Virginia. He is in full support of the intent of the Mountain Overlay District plan and argue not only for the incalculable conservation resources associated with the mountains, but also for the protection of the vital economic base that the mountains bring to our community.

Mr. Tom Olivier said he and his wife live in the Scottsville District. They operate a commercial farm that’s been in his wife’s family for 150 years. He is also a biologist who has worked to protect the county’s natural resources. Mr. Olivier stated that he and his wife support the Mountain Overlay District, phasing and clustering proposals, adding that there is urgency to adopting these measures. He commented the committee for proposing uses of transfers of develop rights and tax relief for mountain landowners who leaves their property undeveloped. He indicated that a report from the county’s biodiversity committee revealed that increasing development pressures are putting natural resources at risk. The current proposals are significant steps toward protecting those resources.

Mr. David Hamar expressed support for the proposed ordinance, clustering and phasing. He owns a farm in the Southwest Mountains area, approximately 100 acres located in the mountain district. This area is defined by its mountainous state. It is critical that those mountains be maintained or character of entire area will be compromised.

Mr. Jim Kelly said that he and his wife bought a 160 acre farm in the middle of the Southwest Mountains 42 years ago. They have four children; two of which have expressed an interest in building on that land. The intent of the phasing proposal is good as it was written to encourage stewardship, limit development of mountain and agricultural property, and provide for very slow growth. He thinks the priorities are wrong. He is overwhelmed with the development in the county, not development in the mountains. It seems to him if phasing was applied to commercial and residential development, the area would be better off. There is no indication of phasing in the county. With respect to the Mountain Protection Ordinance, it is hard to argue with the strategic plans, goals and purposes, or object with what is presented in the brochure. There is a lot of legislation that is good in intent, but is difficult to carry out at the detail level. He thinks there is a lot of subjectivity involved in determining what a critical slope is. He has no idea what a crest is and he is not sure what a ridge is. Before he would vote on this, he needs to know specifically what those words mean.

Mr. Harold Young, of Peters Mountain, said that all his property is in a conservation easement and located in the mountain overlay district. Most of his land cannot have any buildings built on it, which includes agricultural or residential. He has no problem with phasing and clustering or the stated desire to protect critical slopes, streams, watersheds, forests and scenic areas, but he believes it is wrong to force mountain stewards to build their homes on slopes instead of flat tops. Except for the potentially subjective waiver section, no buildings are allowed on mountaintops or ridges. This will destroy what you say you want to protect. Buildings on slopes are far more visible, would displace more soil for erosion into the streams and would disrupt the forested mountainsides so that screening is nearly impossible. Under the current proposal, Jefferson’s Monticello, which cannot be seen, would not be allowed. There is no mention of encouraging or requiring that buildings be a natural color to blend in with the environment, or that visible ridge top tree lines be preserved by leaving trees around and behind buildings, and disallowing clear cuts on ridge tops. He said it would also put more sediment into streams. He said the Board should restrict developers, not mountain stewards. There is a big difference between voluntarily giving up building rights versus government seizure of building rights in prime areas such as the mountain tops.

Mr. George Howard said he does not have a problem with building on the top of a mountain. He has a neighbor who built on the top of a mountain and the house cannot be seen. If you require the landowner to build a canopy above the height of the house, then the house could not been seen. There are parts of this ordinance that he can support and then there are other parts that are prohibitive, and he does not support. He does have a problem with the restriction to building on a slope which is subjective. He owns 200 acres, of

which 60 acres is located in the mountains, and according to these regulations, he could not have a building site on the mountain because the slopes are greater than 25 percent.

Mr. John Munchmeyer, Chairman of Jefferson Area Libertarians and Crozet resident, said he opposed the proposed ordinance. The ordinances: 1) will make it extremely difficult for people to leave property to their children; 2) are too ambiguous and will be arbitrarily enforced to the benefit of the politically well-connected; 3) are non-uniform in their application, apply to some and not others; 4) will be expensive for the county because of increased lawsuits; 5) may facilitate property devaluation and development by special permit; 6) legislation is not necessary, as they are a solution in search of a problem. The County's Comprehensive Plan works hard to find an excuse; it meanders through the subjects of erosion, water, forests, mudslides, plants and animals, etc. It says that residential property threatens the forest industry. It also states that "a number of highly visible structures constructed recently have occasioned public concern". The plan lacks any solid case that there will be a problem. This plan is unscientific, poorly argued, engages in scare tactics, and is willfully inadequate. Lastly, he believes the proposed ordinance violates individual property rights, and it is unconstitutional for the government to impose these types of restrictions on landowners. The true purpose of government is to protect its citizen rights, not take them away.

Ms. Elizabeth Burdosh, an Earlysville resident and member of the Board of ASAP, congratulated the Board on its handling of the proposed mountain overlay district and ordinance. She thanked the Board for its appointment to the MOD committee, noting that it is a diverse group. She believes this proposal was the best compromise that could have been reached. She thanked the Board for this hearing where everyone was able to express his or her views.

Ms. Nancy Button, League of Women Voters, thanked the Board and Committee for its hard work and patience. In 2005, the League of Women Voters offered support for the proposed revisions to the rural areas section of the Comprehensive Plan. For years the League has supported implementation of the Natural Resources section of the Comp Plan within which is the Mountain Protection Plan. Te Rural Areas Plan states that "the ongoing conversion of rural land from farms, forests, open spaces, and natural habitats to residential uses is a central issue for the county." She added that the plan identifies the goal of "reducing the level and rate of residential development in the rural areas".

Ms. Button noted that last year the Board of Supervisors identified clustering and phasing as priorities for implementation, and the League supports moving forward with this dual objective. The Mountain Protection Plan recommends that the County pursue "additional protection measures to protect mountain resources". The proposed framework for a Mountain Protection Ordinance was unanimously approved by a committee appointed by the Board. This proposal was "designed to get development off critical slopes and out of stream buffer areas and to protect habitats and watersheds, scenic and historic resources." The League supports moving forward with the recommendation in this framework.

There is little doubt as to the fiscal, economic, and ecological impacts of the current rate and pattern of rural subdivision. To reduce the impact of this trend, the League supports rural clustering and urges that the development standards maximize the size of the preservation parcel, minimize the residential lot sizes, and protect important soils and natural resources. In addition to clustering and to reduce the rate of rural subdivision, the League supports the County's intent to simultaneously pursue phasing of development. The League has been long concerned with the health of local rivers, streams, and groundwater. Protecting the rural areas and the mountains will protect not only vital ecological resources but also those natural systems that are directly related to the health and integrity of this community's public water supply. Therefore, the League of Women Voters urges the Board to affirm its commitments to the Comprehensive Plan and its responsibility to bringing to fruition the community's vision as established in that plan by supporting the development of regulations for rural clustering, rural phasing and for mountain protection.

Mr. Robert Buford said he first acquired land on top of Bucks Elbow Mountain in 1964 and have since accumulated a total of 1400 acres all on top of Bucks Elbow Mountain. He opposes this ordinance because he feels it is not necessary. Mr. Buford stated that the "ridge area" definition is problematic, as Albemarle has gently sloped mountaintops. The top of his mountain is all pasture. If we use the definition of 100 feet elevation or 200 feet of horizontal distance, it would include in the ridge area over 300 acres of his property. This ordinance does not forbid construction, but the limitations make it virtually impossible to construct anything. He suggested that rather than saying within 100 vertical feet or 250 horizontal feet of a crest, whichever is more restrictive, that you say whichever is less restrictive. A corridor of 500 feet wide centered on the ridge would provide at least as much protection and not require the taking of land. "And, it is virtually

taking." It seems to him that the limitations on the construction of structures of 35 feet or less would be a substantial advantage over this proposal. You allow construction of structures outside of the ridge area much higher than 35 feet.

Mr. Morgan Butler, an attorney with the Southern Environmental Law Center, said SELC supports increasing mountain protection and the valuable natural resources they contain. The proposed ordinance is a culmination of a serious commitment of time and effort on the part of the members of the MOD committee. The committee represented interests from all sides of the spectrum and managed to emerge from their prolonged deliberations with something tangible to show for their trouble. The proposal put together from the committee strikes an effective balance between added protection for our county's mountain resources and safeguarding the interest of mountain property owners. He applauded the efforts of the committee, County staff, the Planning Commission and the Board of Supervisors. He urged the Board to continue to advance the draft proposal.

Mr. Butler said the headwaters of some of the County's most important streams and rivers are located in the mountainous regions including those that fill the County's drinking reservoirs. It is imperative to maintain healthy buffer areas between land disturbances and the streams because a buffer area would serve to filter out pollutants and sediment that would otherwise enter the streams. The County's current ordinances require a 100 foot buffer along all streams in the County; the proposed ordinance would prohibit the construction of houses and roads within 200 feet of streams in the MOD. This is a reasonable and justifiable expansion but in cases where the expanded buffer zone might cause special hardship on property owners, the proposed ordinance includes exceptions and allows for special use permits to overcome the hardship. In addition to the exceptions included in the stream buffer section, the proposal contains broad overarching provisions specifically referencing administrative waivers and variances for which property owners could apply when operation of the ordinance might preclude the realization of all of their existing division rights. In summary, he believes the current proposal while rather modest in the improvement it offers over the County's current protections, it is nonetheless a commendable and much needed effort to ensure some added protection for our County's mountain areas while at the same time providing ample safeguards to mountain property owners. He encouraged the Board to continue to advance the staff's proposal and SELC hopes to work with the County to ensure that the final ordinance achieves these important objectives.

Ms. Clara Belle Wheeler said her family has lived in this county for 300+ years, was raised to recognize the importance of taking care of the land and being a steward rather than an owner. She said that what happened to Pantops Mountain was unconscionable. The most beautiful entrance corridor in this country was defaced and destroyed because large land developers saw a monetary gain. The gross overpopulation of our county has brought us to this discussion tonight and the fact that there are too many people in this county has raised the problems we are discussing. She asked if the views of the population are so important that we must sacrifice the individual landholders' rights. As has been spoken earlier, the landholders support their land, they pay taxes and they vote. "We should be allowed to do with our land what we want as long as it is not harmful to anyone else." Ms. Wheeler noted that she does support taking care of the environment, but the people in the flatlands need to be told the same thing as the people in the mountains. All the development on the flatlands has a much greater impact than one house sitting on a mountaintop. She asked the Board to not discriminate between the people who live in the valleys and the people who live on the mountains.

Mr. Neil Williamson, Executive Director of the Free Enterprise Forum, said Albemarle County is determined that mountain lands are a significant value to the public. Policy makers believe it is in the public's best interest to reduce the impact of residential development on mountain lands. To achieve this goal the MPO Committee proposed a three-legged stool approach that strives to preserve the land and preserve property rights. Although not a member of the committee, he did attend the vast majority of the meetings, often as the only member of the public present. Based on what he heard at these meetings the Forum wishes to support a mountain overlay district that honors the designs of the committee. However, the Forum is very concerned regarding the details of waiver provisions contained within the ordinance, and the actual implementation plans. Ordinances by their design must be objective.

The regulations proposed for driveways, if enacted as written in the proposal, would outlaw driveways to most of the parcels in the overlay district. When the committee discussed this issue at length, the relief that was always offered was that waivers would be available. He said that gaining waivers for critical slopes in the development areas have been a challenge, and to suggest they will be granted freely in the rural areas is disingenuous. He said that the Forum recognizes the benefit of rural mountain land to the community regarding watershed recharge and biodiversity, but other lands serve this purpose, and mountain landowners

"should not bear the burden of this cost alone." This is why the committee's proposal includes significant innovative and flexible financial programs to protect Albemarle's mountains. As has been stated this evening, these mountains exist in the condition they are in today thanks to the good stewardship of the land by mountain landowners. If Albemarle County believes it is in the public's interest to extinguish private property rights in the mountaintop overlay district, they should pay for it. Albemarle has the ability to identify each parcel that may be affected by this proposal. Will the County send a postcard to every potentially affected landowner prior to the next set of public hearings? He has been impressed with the amount of work that has gone into publicizing the open houses and this hearing, but he believes there is more work to be done. If the County is unable to identify the potentially affected parcels how will Albemarle ever enforce such a regulation? If the County is able to identify the parcels, why wouldn't it want to notify those landowners? The committee has done a good job bringing forward a proposal it believed was politically viable. Now, it is time to engage the larger community to determine if, with all three legs attached, this proposal can stand or fall on its own merits.

Mr. Wendell Wood said special interest groups like to consistently put the burden on others. He described this ordinance as "frightening" to what this country stands for. This ordinance can be best described as a lion in sheep clothing. He agrees with Mr. Williamson that the County has a duty to notify the approximate 2000 landowners this ordinance would affect, not the special interest groups that are here tonight. Mr. Wood asked what happened to people that have followed the rules all along, and now those rules are changing. He commented that there is not a mountain in the county that you can build a driveway on, under this ordinance, because you cannot build a driveway on 25 percent slopes. This ordinance is flawed. This is a taking away of people's rights.

Mr. Howard Bishop said he owns 10 acres in Greenwood, which runs up the side of a mountain. He has owned the land for 23 years, and it was allowed to be subdivided by-right. He said that the land belongs to him, and he should be able to do what he wants with it.

Mr. Greg Graham said his family has owned Edgehill Farm for the last 50 years. They have been good stewards of land and feels this ordinance is over-reaching and negligent to personal property rights. He said that the ordinance was opposed several years ago, and now it is back under the guise of environmental causes. The ordinance still affects the landowners and it is still a taking of their land.

Mr. Jeff Sobel, a resident of the Samuel Miller District, said he is here to speak as a private citizen, but he also serves as Executive Director of Advocates for a Sustainable Albemarle Population. He urged them to support the Mountain Overlay District proposal. He thinks it is a good step in the right direction and he urged the Board to take into consideration some of the issues raised tonight. He commended the committee for their work and felt that they did a good job. He also commended the committee on their willingness to reach a consensus.

Mr. David Wood said his family has lived here for nearly 300 years, and he has practiced law here for 45 years. He supports the proposed ordinance, but he also has a complaint about part of the proposal. He owns 200 acres near Meriwether Lewis School, between Tilman Road and Mechums River. On the 200 acres is an elevation of 814 feet called Clark Mountain, or 14 feet within the governing elevation. The land that is within the governing elevation is somewhere between one-half acre and one acre that comes within the ordinance. He said the ordinance is good, but flawed in some aspects. His land consists of 15 parcels of land that he has acquired over the last 50 years. The land is totally undeveloped and almost all forested area. Within this one-half acre is an area he has often dreamed of building a log cabin and he would like to protect that right. He is here to ask that this small parcel of land be excluded from the ordinance.

(At 7:32 p.m., the Chairman called a recess. The Board reconvened at 7:44 p.m.)

Mr. Tom Hurst, a resident of western Albemarle County, expressed support for the proposed ordinance. He commended the Board for undertaking this initiative. He heartily endorses the measure, stating that the ordinance will be following the will of the people – who have demonstrated in "poll after poll" that they highly value the natural environment and consider unspoiled landscapes to be a major component of their quality of life. The County's beautiful natural environment, which the mountains are the most dramatic feature, makes the area a magnet for tourism and recreational activities. This impact on the economy is dramatic. Tourists do not come here to view subdivisions. It is not only Albemarle's ridges that are in danger. The slopes of the Shenandoah National Park, which anchors the western region, are also under the threat of development, and a new park management plan is currently being developed. He said that the ordinance is

an example of "reasonable regulations," similar to restricting building away from streams and water bodies. Mr. Hurst said that protection of watershed and viewshed is a similarly compelling interest, and this ordinance will ensure that the mountains remain a ridgeline, "not a silhouette of a Mcmansion."

Mr. Joseph Jones said he has grown up in the western part of the county and was on the Mountain Protection Committee. He said that the committee strove to get "acceptability, flexibility, and intent in what we decided on." Mr. Jones stated that he appreciates the larger economic interests balanced with the individual economic interests of property owners. He said that it should not be onerous for a homeowner to acquire waivers and build on their own property. He hopes that the waiver modifications will satisfy and be acceptable to the public.

Mr. Rick Beyer, of Beyer Construction, said that clustering is important, but numbers used in this overlay district are arbitrary, and seems like an attempt "to shut somebody off." He thinks that the timing of this ordinance is poor. He thinks the top of the mountains provide a big buffer. He does not think the ordinance is justifiable.

Mr. Ron Morris, a resident of the western part of Albemarle County, said he does not think the people being affected by this ordinance are being polled. His family owns 360 acres in the Fox Mountain area and over 100 acres on the opposite side of Route 810. Much of this land has been owned by his ancestors for over 75 years and they have been good stewards of their property. He plans to pass the property on to his descendants. He does not feel that having the county dictate how they use their property is necessary. Many mountain properties have never been developed, and these property owners do not want to have to pay for rich estate owners' property value. Landowners can take care of their own stewardship. It seems like they (in the rural areas) are forgotten citizens until someone wants to take away their rights. The mountains are a desirable place to live. He asked that the Board reject this proposed ordinance. They do not think it has any benefit to mountain landowners.

Mr. Corky Shackleford said he has farmed land in the foothills of the Southwest Mountains on property his grandfather bought in 1817; all but one-third acre falls in Mountain Overlay District. He said that this ordinance makes it seem like this is public property, but this is people's private land and requirements should be limited to what is scientific not aesthetic. "Let's restrict the urban parts of the county as well as the mountain parts if that's our real goal." The county needs to respect the owners of the property who are responsible for paying the taxes. He agreed with the earlier suggestion that the property owners be notified and given an opportunity to come and speak before the Board.

Mr. George Davies said his family has lived in the County for hundreds of years, and firmly believes in protecting it. He believes in protecting mountain lands. He noted that had this ordinance been passed long ago, there would not have been a Monticello, Ash Lawn, the Rotunda or many of the buildings at the University of Virginia. All of these buildings are in violations of these regulations either height, elevation, or view shed restrictions. He agreed that there are unattractive properties being built in the mountains, but there are also some ugly properties on the Entrance Corridors which is constantly being approved by the County. He asked if Board members have considered that mountain owners do not want to look down on 4,000 rooftops where they use to see a nice valley with horses, land and cattle. He asked the Board to vote "no" on the proposed ordinance and instead concentrate their efforts and taxpayers money on things that will benefit all of the County citizens such as current traffic and water supply problems.

Mr. Bud Smith said he is a property owner in western part of county. He thanked the Board and committee for all their efforts. He owns 139 acres and better than three-quarters of it would be affected by the ordinance. He values the mountains as a resource but this seems a little lopsided. He would like to have his sons be able to build homes on the land someday. He values a view and if the county wants to impose restrictions, they should be done across the board. Mr. Smith said that the county should ask the people who are directly affected by the ordinance what they think, not those responding to a general poll.

Mr. Tom Hartzell said he had been away from the area for 35 years, and what the county is doing now has affected his family. His family purchased 43 acres on Buck's Elbow, and it's important to his family to be able to build on their land. Because of what the county is doing, his family fears that they will lose their lifesavings. It is important to them to live in the County. Their house is located in the mountain overlay district and you might see the roof of the house at 1800 feet, if there are no leaves on the trees. They are not violating the view of the people in the valley. This is about property rights.

Mr. Harold Spainhour said he owns a piece of land that falls in the overlay district. He said that the county does not own his land, and he doesn't believe they have the right to dictate what he does with it, unless he is doing harm to the environment or a neighbor. This is not a democracy because in a democracy majority rules. The county wants to take people's rights. He believes that what the county is doing is very close to subversion.

There were no further public comments, the public hearing was closed.

Mr. Rooker noted that the Board and Planning Commission would be reconvening on Thursday night to discuss phasing and clustering, and there would be a work session in September on both of those items.

_____

Agenda Item No. 3. Adjourn.

At 8:09 p.m., Mr. Boyd **moved** for the Board to adjourn until August 2, 2006, 12:00 noon. Ms. Thomas **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dorrier, Mr. Rooker, Ms. Thomas, Mr. Slutzky, Mr. Wyant and Mr. Boyd.
NAYS: None.

_____

Ms. Joseph asked for a motion from the Planning Commission to adjourn to Thursday, August 3, 2006, 6:00 p.m., Burley Middle School. Ms. Higgins so moved, which was seconded by Mr. Cannon. On a voice call vote, all Planning Commissioners voted aye. There were no nays.

_____
V. Wayne Cilimberg, Secretary