A joint meeting of the Board of Supervisors of Albemarle County, Virginia, and Albemarle County Planning Commission was held on August 3, 2006, at 6:00 p.m., in the Burley Middle School Auditorium, Rose Hill Drive, Charlottesville, Virginia. The meeting was adjourned from August 2, 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 6:00 p.m., by the Chairman of the Board of Supervisors, Mr. Rooker, and Chairman of the Planning Commission, Ms. Joseph.

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

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Agenda Item No. 4. To receive comments from the public on the recommendations concerning a Phasing, Clustering, and Family Division Framework Plan.

Mr. Rooker stated that the purpose of tonight's meeting is to receive public comments on the proposed phasing, clustering and family division framework plan which has been put forward. The Board and Commission will not debate or discuss the issue tonight. Following this meeting sometime in September the Board will hold a work session on mountain protection and the issues being discussed tonight. He said that at that time the Board would decide which would go forward as prospective ordinances, and the Planning Commission would then work with County legal staff to develop an ordinance. Mr. Rooker said that the ordinance would then come back to the Commission for at least one work session and a public hearing, as would the Board. All of that would take place before the Board voted to determine whether or not to enact any specific ordinance.

Mr. Benish made a PowerPoint presentation. He said that the county's growth management policy and approach is to protect the county's rural area, and to create quality urban areas and communities to live in. He stated that this desired future for Albemarle County is spelled out in the vision statement adopted by the Board of Supervisors in 2004, which says the county "will feature walkable, self-sufficient communities; the countryside will be rural; the county's natural resources and natural beauty will be maintained; and the county's educational system will be world-class; and the county's quality of life will be exceptional."

Mr. Benish noted that the Comprehensive Plan – the county's guiding document for land use and resource decisions – promotes this same vision. He said that this vision has been in place since 1971, and called for the creation of designated development areas and rural areas. Mr. Benish said that the primary approach since that time has been to focus development in the designated development areas while preserving the rural character and natural features of the rural areas. He added that the development areas consist of about five percent of land area or 35,000 square miles of the county, and the urban area planning efforts focus on promoting infill development rather than sprawl, creating neighborhoods that are self-sufficient, and providing a full range of income and housing.

Mr. Benish explained that rural areas constitute about 95 percent of land area or 690 square miles, and rural areas include the important resources for protection. The county's goals for the rural area are to preserve the agricultural and forestal lands and activities, protect water supplies, and conserve

natural, scenic and historic resources. He stated that the losses of these rural resources to residential and subdivision construction can be irreversible, and the careful stewardship of these areas provides an opportunity to conserve and efficiently use other resources such as water resources, natural and historic resources.

Mr. Benish noted that the Comprehensive Plan recognizes several important resource components within the rural areas – agricultural protection (to protect the County's agricultural lands), forestry protection (to protect forests as a resource base for the County's forestry industries and watershed protection), land preservation (permanently preserve and protect the County's rural land as an essential and finite resource), land conservation (to protect the County's rural land through planned management of open space), and water resource protection (to protect the quality and supply of surface water and groundwater resources). He reported that citizen surveys indicate that residents strongly support these principles and priorities: preserving natural resources, preserving farmland and forest, and creating parks and open space. The county has made significant efforts over time to protect these resources through use-value taxation program, through voluntary agricultural and forestal district programs, and through the creation of Acquisition of Conservation Easements (ACE) Program. The ACE Program allows the purchase of development rights from willing property owners.

He indicated that in spite of all these efforts, continued fragmentation of the rural area land has negatively impacted resources defined in the County's comprehensive plan as critical for our community; development of the rural areas endangers the community's water supply, forest cover threatens diversity of indigenous plants and animals, and compromises cultural and historic resources. Mr. Benish said that the Board has identified two potential measures to address these impacts – the Mountain Overlay District (the Board and Commission heard comments on August 1st), and phasing and clustering which is slowing the rate of residential subdivisions in the rural areas and changing the designs of subdivisions to require smaller lots, more gradual development and putting most of the land under permanent conservations.

Mr. Benish explained that phasing permits parcels of land to be divided off in a small number of lots at a time rather than creating all of the potential lots at once, with the purpose of slowing the rate of lot creation in the rural areas, but does not change how many lots can be created. He stated that phasing does not, on its own, protect water resources once all the lots are developed. Mr. Benish reported that only two lots in 10 years would be allowed to be developed, and the phasing period would begin when the first subdivision is approved. He mentioned that there would be exceptions for family subdivisions, divisions of properties under conservation easement, and lot line adjustments. Mr. Benish said there is a proposal to modify the family division requirements – and would extend the two-year time period for family division ownership to five years before and five years after.

Mr. Benish explained that clustering is a way to divide land that groups all but one of the houses together on smaller lots, and puts most of the important resources on a parcel protected by conservation easement as a "preservation tract." He noted that the purpose of clustering is to reduce the amount of land consumed by residential construction, and increase resource protection, adding that it does not affect the number of lots created. The clustering provision does not change how quickly lots are created. The preservation tract would be designed to protect the most important resources on the land being subdivided. Mr. Benish said that the Planning Commission has recommended this framework for the rural areas clustering ordinance: the first step in the process would be to identify on the resources to be protected; the goal would be to protect and prevent the loss of fragmentation of those resources on the property as identified by Comprehensive Plan. He stated that the subdivision design would focus in on the remaining area of the parent parcel.

Mr. Benish noted that phasing and clustering combined address different aspects of rural subdivision; phasing affects the speed of development; and clustering addresses the form of development and how it would take place. In order to impact the speed and impacts of subdivisions, he said, the Planning Commission has recommended that the County require both phasing and clustering. He concluded by saying there is no ordinance drafted yet, and what is being presented here is a framework.

Mr. Rooker commented that you could have four lots in the first year on the parent tract that could each eventually have a home. Mr. Benish said there is a mathematical complication in the first ten years because the two subdivision tracts are permitted. For clustering, there would be a tract of land held for the rest of the subdivision area, and then there would be the preservation tract. With the first platting you would create the preservation tract on the two lots.

At this time, public comment was invited.

Mr. Peter Bernhardt addressed the Board, stating that he does believe this constitutes a taking of property, even though some people might argue otherwise. He thinks some of the aspects of the proposed ordinance are vague and open to interpretation. He thinks this might have the opposite effect of trying to accomplish slow growth. He commented that people like the Maupins, who spoke at the Mountain Protection hearing, who would be adversely affected. He also thinks the restrictions would limit the attraction of people coming to the County.

Mr. Roger Ray stated that he is a citizen, property owner and taxpayer of the County. He also has been a land planner for over 30 years. He favors protection of rural areas, but also favors preservation of property rights. Mr. Ray stated that he is "adamantly opposed" to the plan as submitted because it takes away private development rights and locks them away and forces a partnership with Albemarle County. This proposal will greatly affect a property owner's ability to subdivide, and in may cases totally prevent subdivision. An example is that if you cluster on one street using your four lots, you will be required to secure a permit from VDOT for a commercial entrance. He added that he has met with VDOT hundreds of times to check for planning entrances and over 50 percent of the time, the entrance permits weren't able to be secured. Personally, he owns 1740 feet of public road frontage on State Route 602 in Southern Albemarle County. It has potential development rights, but in no place on this 1740 feet of frontage can he do a commercial entrance.

Ms. Jerry McCormick-Ray addressed the Board, stating that she is representing Citizens for Albemarle and is also speaking for herself as an environmental scientist. She said that Citizens for Albemarle has worked towards this goal of clustering and phasing for a long time, and the proposed ordinance is one step in the right direction because it opens up debate on the matter. However, Ms. Ray stated that the vote for North Pointe opened the gates for massive development to pour into our region. This identified the County's priority for major development now set forth in the draft Strategic Plan for 2007-2010; the time frame for this strategy is incongruent with the proposed rural phasing and clustering ordinance which will take time to adopt and implement. She can see that big and rapid changes can be expected in the rural areas before the rural protection ordinance can be implemented. Last night's decision begs the question: "What does the County mean by rural area and natural resource protection?"

If the three Board members (who support this proposal) defined the Neighborhood Model in terms of the North Pointe development plan which County experts rejected for many reasons, they might define rural areas to accommodate overflow and road construction. Topography, the environment, and rural area impact got muted in their acceptance of the plan because biofilters will replace wetland function, housing setback will protect critical slopes, the County will oversee greenway protection when 900 new residents will recreate there, and the North Fork Rivanna's impact was passed off as trivial. Protecting rural areas by attracting massive growth to designated boundaries will hardly protect rural areas. She noted that the boundary between rural and growth areas "is fuzzy at best" and massive development will push the boundary into rural areas. If implemented rural phasing can slow the pace of development, boundary overload around the growth areas will force nature to retreat into confined space making Albemarle less than most County officials intend. The County's water resources will not be protected. The County has no idea how much groundwater there is to sustain the existing the rural population let alone to sustain the expected growth before and after this phasing and clustering ordinance might take effect. How many wells will have to go dry and reservoirs degraded before this Board perceives the risk of accommodating development without adequate understanding of the recharge susceptibility to pollution or the magnitude of the existing impact?

Mr. Arin Sime, Vice Chair of the Jefferson Area Libertarians and a County resident, said he is opposed to the Mountain Overlay District, and the phasing and clustering proposal. He stated that land holdings are people's major investment, and this is taking away individual property rights. The term "division rights" is a fiction; a term created by counties and has no relationship to real property rights. This proposal will restrict people's access to their retirement. It is not the County's decision to make with regard to how and when he accesses his property rights.

Mr. Jim Lark said he lives in the Buck Mountain area of the County, and he serves as Secretary of the Jefferson Area Libertarians. He is opposed to the proposed Mountain Overlay District, and the proposed phasing and clustering ordinances. He believes the proposed ordinances are inappropriate on both credential and moral grounds. He does not believe that adoption of these ordinances will deal with

loss of the rural character of the county and will restrict the rights of landowners, unless the purpose of the ordinances is to provide justification for future attempts to restrict rights of landowners. He stated that this ordinance will take away the rights of landowners to satisfy the aesthetic preferences of some community members. Mr. Lark said that he is a "Virginia hillbilly" and enjoys the beauty of the county, but these ordinances are bad and are not consistent with the principles of liberty and responsibility. He urged the Board to reject the proposed ordinances.

Mr. Carlton Ray commended the Board and Planning Commission for having these discussions. Referring to last night's vote on North Pointe, he commented that Board members seem to not be very good listeners, as the majority of citizens seem to be concerned and frustrated about the pace of growth. Board members seem to be inordinately concerned with traffic but are not paying enough attention to County planners who warned about the long term problems that will caused by the North Pointe development. Board members are only paying "lip service" to environmental issues. Although 95 percent of the County is zoned rural, much of it looks urban. He strongly endorses phasing and clustering and they have worked in other Virginia counties, but stated that the issue is one of equity. The Commission and Board needs to adopt stricter rural area regulations for critical slopes and stream buffers. With respect to property rights, it has been repeatedly noted that this is a constitutional right, but the Constitution places individual rights within the context of common property rights or the common good. Mr. Ray stated that Americans have historically not been good stewards, and the population of Albemarle County has grown 400 percent over the last 50 years, most of it since 1980. He said that the only measure that would work, though, is down-zoning.

Ms. Linda Harrill, representing 'Growth Areas Demanding Services', addressed the Board, stating that growth areas were set up to protect the rural areas by attracting development away from them. Development areas need infrastructure and amenities to fulfill the goals of the County's Comprehensive Plan and to meet the needs of the growth area residents. She said that rural areas should pay for the protection area, whatever form it takes. She said that land put into conservation easement would be protected from future development, and the property owner who gave up the development rights should benefit from lower taxes. Ms. Harrell said that rural area land not in conservation easement should be taxed based on fair market value of the land plus the value of the development rights. Property owners who opt to retain their development rights by not putting land in conservation easements should be taxed accordingly. She noted that last year the County lost over $13 million in tax revenue due to land use taxation, while development continued at a good clip in the rural areas, and land use taxation has done very little to slow development, is not a permanent solution, and no longer makes sense in the face of development pressures faced today. Ms. Harrell added that lost revenues could be used to help fund needed infrastructure and amenities in the growth areas and expand the purchase of conservation easements in the County's ACE program, thereby protecting portions of the rural areas permanently. The rural area property owners should not have it both ways – development rights and land use taxation – any longer, and they should not to continue to benefit to the detriment of the growth areas. She suggested that conservation easements are the only way to protect the rural areas, and all County policies should be structured with that in mind.

Mr. Van Wilson addressed the Board, stating that he has been farming in Stony Point for over 40 years. He resent being accused of not being a good steward of the land. He said that his land will have to be used for his retirement, which is coming up in just a couple years, and phasing would not work for him. Mr. Wilson stated that the quality of life he was seeking was privacy and seclusion, and the clustering idea is totally "backward."

Mr. Morgan Butler addressed the Board as an attorney for the Southern Environmental Law Center. He said that his organization believes more needs to be done to protect the natural areas of the County. Everyone has heard the statistics where more than one-half of new single family dwelling units in the County are being built in the rural areas despite the County's earnest efforts to direct growth into the development areas where the infrastructure will hopefully exist to support it. As land outside of these growth areas continues to be converted from farms and forests to residential subdivisions, all of the County's residents are paying the price, both in terms of the expenses necessary to create and maintain public services and facilities to servicing the new residential pockets, but, also, with respect to increased traffic, overburdened schools, and pollution of the water and air. We cannot ignore the significant damages development does to the scenic landscapes, forests, farms and mountains. No one can argue with our rights as property owners to do with our property what we see fit until our use of the property begins to injure those around us. The rapid and haphazard development, we are experiencing every day

in our rural areas, is harming and will continue to harm every one of the County's residents. He applauds the Board and Commission for taking a hard look at ways to slow down this damaging development and to pattern it in a way that is more sensitive to rural resources. In that spirit, he encourages everyone to continue to dialogue about the concepts being discussed tonight. Phasing and clustering are two tools that have tremendous potential for helping to slow down and improve rural development without extracting in return a single development right from any property owner. These tools have to be implemented in an extremely thoughtful manner to insure that they accomplish their desired purpose. The broad concepts presented tonight lack the specifics needed for adoption. If these potential tools are given serious consideration and the details are carefully thought out and worked through, the SELC are confident that they can emerge as invaluable instruments for reshaping the rural subdivision forces and channeling growth back into the development areas where it can be better handled. The SELC hope to work with the Board to insure that these concepts materialize into proposals that will effectively slow and reshape the development pressures on the County's rural areas in a fair and workable way.

Mr. David Bass said that the maximum size lot shown in the phasing example staff presented was 115 acres, which would take 30 years to use all development rights. If there were a 325-acre parcel, he said, the formula would be 80 years, and a 536-acre parcel would take 130 years. To him, that is a de facto taking if not a legal one. He added that it would create a scarcity of parcels available in the rural areas and basic economics say that prices will increase as supply decreases. The staff counters that there are 10,000 existing parcels in the rural areas today; not all those parcels are for sale, desirable or buildable under the County's development code. Life in the rural areas is a very appealing life. Many Supervisors live in the rural areas. Mr. Bass said, if a rural landowner needs to downsize or diversify, the only option, under the proposed phasing, would be to sell the entire parcel. It would make it even more difficult for the rural areas to be affordable to County residents. He believes phasing will change the character of Albemarle. He thinks there will be negative consequences and asked the Board to think about how many years it would take for someone to realize the value of their property.

Mr. William Yancey said his family has deep roots in Albemarle County. His family owns significant real estate assets in the County. They have never developed or sold for purposes of development a single acre of land. He asked that the Supervisors reject the Mountain Overlay District and the phasing and clustering proposals now before the Board, as they would "effectively gut the equity his family now has in this land" and "would drastically reduce their ability to borrow money for improvements at various businesses that employ County residents." Mr. Yancey said that the proposals "directly threaten many landowners' peace of mind, their financial security and their future." He applauds individuals who put their land into easements, but if you do not own anything, it is easy to tell someone else what to do, and then when you are caught in the middle like his family, these proposals are a real squeeze. With regard to his family, adoption of these proposals would force them down a path that they have no desire to tread, but they cannot stand idly by while their property rights and equity are radically diminished.

Mr. John Adams said he is adamantly opposed to phasing. It is cost prohibitive to many people to develop their property if they cannot pay for infrastructure upfront. If you can only use part of your property, you cannot sell it for a high enough price to pay for a decent road, bridges, culverts, etc. or to even access buildable lots. He said that phasing would mean a developer cannot recoup his investment in infrastructure, so he would do the least mandatory and create "substandard subdivisions."

Mr. Keith Ford said that residents would be insane to let the County take away property rights. "How much is enough. When are we going to be left alone?" If he is polluting the property or putting something in his soil, then do something about it, otherwise, leave him alone. The County residents do not need phasing or clustering.

Ms. Mary Ford said she is totally opposed to the plan for phasing and clustering. She has lived in the White Hall area her entire life. Her family has always taken good care of their land and has always paid taxes on the property. She asked why the county feels it should have control over what they have paid for. She asked what this proposal does to the value of their land. If they are not allowed to do what they want, when they want, then in her opinion the property does not hold its value. She asked if the county is going to lower the assessment and taxes on the property to compensate for the loss of their control. What is proposed is akin to how communist countries operate.

Mr. Jack Marshall, on behalf of the 300+/- Advocates for Sustainable Albemarle Population

(ASAP), said there is poorly controlled population growth in Albemarle. He said that nearly everyone is concerned with growth's negative impacts. Responsible stewardship for this community and environment requires that the leaders think large. The proposals for phasing and clustering are a step towards thinking large. There is a price to be paid for the effort to create a sustainable community, and not all will pay the price equally, just as not all the residents share equally all the benefits of living in this community. Those who have rural lands already have their freedom constrained in some ways: they can't use their land for a dump, erect billboards, hold open-air rock concerts, or build condominiums. For most people, the imposition of the restraints about when and how they can develop their land is not unreasonable, if it advances the long term good and maintains the long term freedoms of the whole community. Where phasing and clustering create special hardships, there should be means to seek redress through waivers. ASAP believes that the economic, social and environmental costs of not doing something effective and something large will be far greater than the costs of imposing requirements to phase and cluster development. The County needs to move quickly because the pace of growth is fast moving us to a tipping point beyond which we may not be able to control our demographic fate. He asked that the County develop phasing and clustering ordinances "with teeth" so that this marvelous place can be passed on to other generations.

Mr. Steve Walton said that his family has been in this County and owned property since 1732, for almost 300 years. He has heard tonight the difference between the people who own the land and the people who do not and want to control it. They should not be subsidizing developers and property in the growth areas. He does not support County control over how private land can be used.

Mr. Joey Ford said he is part of a multi-generational resident of the County. He pays his taxes and is a good steward of the land. He wants to do what he wants to with his land. The purpose of having this land is to pass it down through generations. He wants his children and grandchildren to be able to live and prosper in Albemarle, not somewhere else. These two ordinances effectively set up a "land war." This is just making it more difficult every day for people to live in Albemarle County.

Mr. Rhett Ripplinger said that 60 percent of people in the County have their land in land use which is subsidized by people in the growth area. That means that 40 percent of the people are paying more taxes to keep the rural area undeveloped. If you oppose clustering and phasing, then you should also oppose this subsidy.

Mr. George Howard said he owns Red Brook Farm located on Carter's Mountain. He said there are two problems with the proposed Mountain Overlay District Ordinance. Unless the slope issue is addressed, there will not be a building site on mountain property. You cannot build a road on a critical slope. He thinks the best place to build is on the mountaintop. If you have a canopy, it will hide the building. He said that erosion, when building on a mountain, is nowhere near the problem as it is when building further downhill.

Mr. Stuart Kessler, a County resident, said that the proposals for clustering and phasing of development in rural areas seem to be "clear gestures" toward no-growth advocates. Not too long ago, motivated by a similar fear of development and growth, the County created a rural zoning ordinance which is unusually restrictive and somewhat bizarre. One of the County's current exhibits demonstrates the use of this zoning in that it shows that a typical 100 acre property will currently produce a total of only eight lots; four of these at approximately two acres in size, larger than most residential lots in the county, and four, two-one acres in size. If there is a problem, it is not with development in rural parcels such as these; the problem lies with the development of 100 acre or larger parcels with a density approved by the County which could theoretically produce 1000 dwellings as opposed to the eight dwellings. That is where your efforts should be devoted. He said that at best the County would face dozens of lawsuits if phasing goes into effect, and courts have historically found in favor of landowners. There is no justification for controlling the right of an owner to sell his property or develop it according to law. Even in communities where water has not been available or roads not paved, courts have generally found that a community cannot deny the rights of the landowner. There is not even an excuse here for denying these rights other than not wanting further growth. Clustering can be good but should not be mandated. If you work with incentives clustering can be useful. On the whole, he asks that the Board reconsider this proposal.

Mr. Hensel Morris said he owns some property that has been in his family for several hundred years. He was born and raised on the property, and he has maintained the property. He is 70 years old and before he could do anything with his property, under this proposal, he would be dead. He asked the

Board to leave it alone.

Mr. Eric Morris said he was born and raised in western Albemarle County. He thinks that the landowners should have the right to make decisions about their property. In the 32 years he has lived here, the mountains and farmland in their area have changed little thanks to the good stewards who own the property. He asked why they cannot be trusted to continue to be good stewards in the future. Most of the people who spoke in favor of the Mountain Overlay District land were not landowners of mountain land, and the phasing and clustering proposals are "socialist" in nature. He would like to see a list of the people who were supposedly polled and determined the 70 percent support for these proposals. He asked the Board to vote no to all of the proposals which are a direct assault on property rights of the rural landowners of the County.

Mr. Ronnie Morris said he objects to the proposed MOD and phasing and clustering provisions for rural Albemarle County. The landowners object to having to spend valuable time and resources to come before this Board to decry the efforts of special interest groups trying to take away their property rights. The landowners want to continue to be good stewards of the land they own and love. He is opposed to clustering because on his family farm, the division rights would have to take place on the lower portions of the farm, and would take away hay land and pasture, rendering the property useless as a farm. There are buildable sites along the ridge lines that would be invisible to those who live below. Access to these locations would create less environmental impacts than many of the county's state roads. The phasing portion of this plan will inevitably create hardship on many landowners should they need to sell lots for income or to pay for other unexpected expenses. It is unfair to penalize these landowners who have labored to own and maintain their property. He has no objection to purchase of development rights from interested property owners; however, he thinks the cost of this plan should be borne by those who benefit from the viewshed that is being preserved and not the entire tax base. Developers, real estate brokers, and other property owners who advertise scenic views should not expect the owners of these views to be penalized for their benefit. He asked the Board to vote "no" to these proposals which sacrifices the rights of the usually quiet and often uninvolved rural citizens who want no more than to work and live on their land without the constant threat of special interest groups trying to take away their rights for their own personal gain.

Mr. Tom Loach said he agrees with property rights. He no longer wants to subsidize property rights. Since 1984 the County has given over $134.0 million in tax subsidies to rural residents. A landowner, this year, owning 367 acres with a market value in excess of $2.0 million got deferred tax breaks of over $16,000. He will leave property owners alone with their property rights, if he does not have to subsidize them. He believes in rural protection and is willing to pay for it in the form of ACE. He is willing to pay for those people who want to farm. He did not inherit his farm but had to work for it. He commented that people who think they have special privileges because they have lived here longer are mistaken.

Mr. Carl Tinder noted that he manages Adventure Farm LLC, which owns and leases 2800 acres in Albemarle. The lands they own are their greatest asset. They choose to maintain and increase the productive value of this land because they believe in the value of agriculture. Agriculture has a deep history in the county which reflects the beauty of the rural areas. This choice is not without costs which residents of Albemarle are unaware of as they drive by or build next to, and steal the pastoral views of the labor and commitment. Many of the neighbors have given in to these costs and sold their land, often to planned communities, which is their choice. The proposed phasing ordinance is a slap in the face to those who own the land. This land is privately held and should not be subject to further public restriction, adding that those in favor of phasing probably live in planned development communities. Adventure Farm stands with the Albemarle Farm Bureau and other farm families and ask that the Board vote "no" on phasing.

Mr. Joseph Jones, a resident of White Hall, producer of food and fiber, and current President of the Albemarle Farm Bureau, encouraged everyone to say "no" to phasing. It is an unjust and unfair policy that penalizes 95 percent of the rural area landowners in the county. He understands why phasing is being proposed but good intentions have bad unintended consequences. He talked about how this area has grown significantly in the last 30 years, and nobody likes to see sprawl and accompanying environmental consequences, but the phasing would remove the rights of landowners and create a hardship on a lot of them.

Mr. Richard Cogan commented that he picked up the framework plan – which contains 23 point

summaries. He said that the phasing portion of this plan does not work for the elderly "because they'll never be able to realize the sale of their land." For many of them, this land is their security, investment and retirement. He thinks that phasing is age discriminate. Mr. Cogan said that the clustering document requires individuals to approach the County in order to accomplish anything related to land use, and the preservation tract – which is the best part of the land – would be "condemnation without compensation." This proposal is an exercise in taking of land.

Mr. Mercer Garnett said he is opposed to phasing and clustering. Getting by-right developments is already problematic because County staff always says VDOT is holding up the road approvals. He said that his mother is elderly, and this proposal might force them (his family) to sell their entire parcel. All of their assets are tied up in the land. If you're concerned about the farmer and the rural people that own land, then work with them and help them be able to preserve the land. The cost is already prohibitive. He thinks everyone needs to work better together.

Mr. Tony Vanderwarker said he is speaking on behalf of Voters to Stop Sprawl. All you have to do is go to one of the counties up north (Loudon, Prince William and Fairfax) and see the tremendous amount of pressure those folks are under because of the uncontrollable effects of growth. The question is how we keep the life we have here that we enjoy, keep it from being beset by higher taxes, by building more schools, and spending hours in traffic jams. All of these ills come about from uncontrolled growth. He said that the Mountaintop Protection Ordinance is a "no-brainer," as any legislation both Jeff Werner and Fred Scott both support should be approved as they are on opposite ends of the spectrum. Mr. Vanderwarker said that clustering doesn't really slow down growth but makes it more pleasant to look at. He stated that phasing needs to be understood. If phasing is approved, it probably means that property values will increase. Phasing is a measure that would help stop huge outside developers from coming in, taking over a huge farm, and building 500 houses on it without local builders.

Mr. Michael Weber said that he and his family are committed to keeping the County open and green. He noted that his parents bought Malvern when it was derelict and in disrepair, and has worked to make it a property that is on the National Register of Historic Places. Recently they purchased an adjacent piece of property with the purpose of trying to slow development. He agrees with the overall goal of the phasing and clustering plan which is to prevent the suburban homogenization where there is a "McMansion" every hundred yards or so. Clustering allows heterogeneous development which can be done as this process goes forward. Mr. Weber said phasing is the enemy of intelligent planning for land use. Mr. Weber said that they would like to see a community where there is not piecemeal development, but the phasing concept is counter-productive and misguided because it does not allow for larger-scale planning. That concept needs to be eliminated.

Mr. Corky Shackelford, a resident of the Rivanna District, said he has been asked to give up his rights for the common good. His question is "who's good is it?" The results of surveys depend on who is conducting the survey. Currently the largest parcel on his farm has eleven division rights. If this proposal is adopted, the County would have the final say in the location of his parcels and the county would tell him how to manage the remainder of the land. With these eleven divisions, he will get them all back by the time is 135 years old. He asked what people, who do not own land, would be willing to give up from their life's estate to accomplish these things. He asked if they would be willing to give up their home equity or retirement fund. Preservation should be dealt with through downzoning. He asked the Board to look for a less Draconian approach than this.

Mr. Jeff Werner, of the Piedmont Environmental Council, said that his family farm in western Pennsylvania is under conservation easement because that is what his grandparents wanted. He said that over 60,000 acres in Albemarle County have gone under easement since 1976, but over that same period almost 90,000 acres have been lost to subdivision. Annually over 300 new homes are built in the rural areas; most, if not all, go on small lots having little or nothing to do with bona fide agricultural activity. This community is losing farms and forests faster than they can be protected. He noted that a lot of people do not understand conservation easements; he is disappointed to hear that people still believe it is for wealthy landowners. The Commonwealth of Virginia has a model program for selling conservation tax credits. If you are not a wealthy person you can put your land in easement and you can benefit financially by selling those tax credits. He noted that in 2005 the Board unanimously approved the Rural Areas portion of the Comprehensive Plan which clearly states an objective of "reduce the level and rate of residential development in the rural areas." Mr. Werner said that the issues being discussed came out of the Comprehensive Plan that the Board adopted; the proposed revisions do not belong to any organization

or any individual. The Board's obligation is to the community as a whole, not to any individuals. There is a growing tension in this community relative to growth, development and the steady loss of the countryside which the rural areas specifically intended to protect. He stated that speculators will "reap the rewards" of rural land deals, but all of Albemarle's residents will foot the bills for a suburbanized rural area.

Mr. Neil Williamson, of the Free Enterprise Forum, said there has to be a better way than this proposal. The Forum believes phasing is illegal, as there is no authority for a locality to impose an effective moratorium on the filing of subdivision plats. There is also no authority permitting local government to establish different subdivision procedures in the rural areas. He asked why phasing and clustering has to be considered jointly. The two growth tools present vastly different and challenging economic and legal issues. The Forum believes the clustering concept to be worthy of further examination, but they cannot support an ordinance if it is tied to phasing. He said that the Forum believes that the aims of protecting the rural areas and protecting property rights do not inevitably conflict. It is the County's challenge to produce a plan that protects both the rural areas and its stewards.

Mr. Sean Flynn said he is a lifelong resident of the County and does not support these measures. He said that clustering is already being addressed by the planning and staffing department, and land use encourages people to hold their land in large tracts. This is downzoning. The County needs to continue to encourage farming which keeps the area rural through tax incentives. The County needs to continue to fund conservation easements. The County has enough staff and enough laws now to control what is being done.

Mr. Jim Cannon, of White Hall District, said his family has lived in the County for over 75 years. He will not be impacted by this proposal. He knows first hand how tremendously important it is to farmers and rural families to "have control over their most important capital asset," particularly in time of major need. He asked the Board to consider human beings as natural resources in County planning. He thinks that the unintended consequences of this proposal will be the loss of land to agriculture's dedicated farm families who will be forced to sell their entire property because they will be unable to wait ten years to meet pressing financial needs. He added that managing this program would be "an administrative nightmare," and encouraged the Board to vote against these measures because of the potential for very damaging impact. Mr. Cannon also said that there should be an agricultural impact study done for future planning.

Mr. Harry Wellons said he supports clustering development, but not phasing. It does not matter if 70 percent of the county supports this proposal, but the important people are the ones who own the property. He and his family own sizable property in the Buck Mountain area that is being used for raising cattle. He asked the Board to not proceed with the phasing aspect of the proposal.

Ms. Liz Palmer said she is an Albemarle County resident and owns property in the rural areas but is not affected by this property. She said that her family has family subdivision rights. Ms. Palmer stated that there is so much misconception about this proposal in this room. To her understanding this does not affect family subdivision rights. The details of this plan have not been completely ironed out. She understands that they can change the number of lots that can be sold at a time. There are hardship clauses. She said that she hopes people will take time to find out more information about this proposal.

Mr. Wendell Wood said that landowners are tired of being told what is good for them. He said that the ordinance is flawed, and what the County is trying to achieve cannot be done with these measures.

Ms. Kathy Welch said that she owns a parcel in the development area, and also owns 56 acres in the rural area in Batesville. She thought this problem was solved back in 1980. She cautioned the Board that the County would likely encounter many lawsuits as a result of these proposals.

Ms. Clara Belle Wheeler said this is an issue of individual property rights. The Planning Commission recently recommended two environmentally destructive, high-density housing projects over the very vocal objections of the people who live near these projects and the Board of Supervisors passed these projects. She commended the two Board members who voted against them, and commended them for asking the developers to "pay for their transgressions." Ms. Wheeler said that the Master Plan was set in stone without any notification of the population who lived on the land that was being put in the high-density area. Her family's farm was put in this high density area. There is going to be 350 units built down the road from her which will have a huge environmental impact, a lot more than her four little cattle. She

asked that the Board pay attention to what these people are saying.

Mr. Bud Smith said that Albemarle County has a huge task in trying to manage growth, but the Mountain Overlay District and phasing and clustering proposals fall short and do not address the real pressures. There is a lack of consideration for the true impact on the people's lives. He is concerned about the lack of details in regard to compensation for the landowners in the MOD. He emphasized that he would never deface his own property, and it is not right to take a person's home or property rights in the name of common good. Mr. Smith said that people in the mountains were run out years ago, and these proposals have a similar ring to them.

There being no one else to come forward to speak, Mr. Rooker closed the public hearing.

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NonAgenda.

Mr. Rooker commented that before the Board adjourns, it has some appointments that need to be made.

Motion was offered by Mr. Boyd to make the following appointments/reappointments to boards and commissions:

- **REAPPOINT** Bill Edgerton to the Acquisition of Conservation Easement Committee (ACE) with said term to end August 1, 2009.
- **REAPPOINT** Sherry Buttrick to the Acquisition of Conservation Easement Committee (ACE) with said term to end August 1, 2009.
- **REAPPOINT** Jay Fennell to the Acquisition of Conservation Easement Committee (ACE) with said term to end August 1, 2009.
- **REAPPOINT** Charles Martin as the joint City/County representative to the Commission of Children and Families with said term to end June 30, 2009.
- **REAPPOINT** Steven Rosenfield to the Jefferson Area Community Criminal Justice Board with said term to end June 30, 2009.
- **REAPPOINT** Rosa Hudson to the Jordan Development Corporation with said term to end August 13, 2007.
- **REAPPOINT** Bonnie Samuels to the Route 250 Task Force with said term to end September 5, 2009.
- **REAPPOINT** Diana Strickler to the Route 250 West Task Force with said term to end September 5, 2009.
- **REAPPOINT** Martin Schulman to the Route 250 West Task Force with said term to end September 5, 2009.
- **REAPPOINT** Richard Kast to the Route 250 West Task Force with said term to end September 5, 2009.

Mr. Dorrier seconded the motion. Roll was called, and the motion carried by the following recorded vote:

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

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Ms. Joseph stated that the Planning Commission will be holding an informational work session on affordable housing on August 29, 2006, at 4:00 p.m., in the County Office Building. There will be representatives from the Piedmont Housing Alliance, Habitat for Humanity, Albemarle Housing Improvement Program (AHIP), and the County and City Housing Departments, to speak on the issue.

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Agenda Item No. 3. Adjourn. There being no further business, the meeting was adjourned at 8:25 p.m.

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V. Wayne Cilimberg, Secretary

Approved by the Board of County Supervisors

Date:: 12/06/2006

Initials: EWC