Albemarle County Planning Commission
June 19, 2007

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, June 19, 2007, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were Bill Edgerton, Eric Strucko, Pete Craddock, Calvin Morris, Vice-Chairman; Duane Zobrist and Marcia Joseph, Chairman. Absent was Jon Cannon. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was absent. Mr. Strucko arrived at 6:07 p.m. Mr. Craddock arrived at 6:09 p.m.

Other officials present were Elaine Echols, Principal Planner, Mark Graham, Director of Community Development, John Shepherd, Chief of Current Development; David Pennock, Principal Planner; Sean Dougherty, Senior Planner; Joan McDowell, Principal Planner and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Ms. Joseph called the meeting order at 6:00 p.m. and established a quorum.

Other Matters Not Listed on the Agenda from the Public:

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

Deferred Item:

SP2007-00010 Cutright Development Right (Sign #111 & 112) – DEFERRED FROM JUNE 5 PC MEETING
PROPOSED: Special Use Permit to acquire two additional development rights
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre)
SECTION: 10.2.2 (28) Divisions of land as provided in section 10.5.2.1. and Section 10.5.2.1 Where permitted by Special Use Permit
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre); Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access; Flood Hazard - Overlay to provide safety and protection from flooding
ENTRANCE CORRIDOR: YES
LOCATION: 3544 Red Hill School Road; southeast corner of Red Hill School Road (RT. 760) and Monacan Trail Road (RT 29) - North Garden
TAX MAP/PARCEL: 88-6A1
MAGISTERIAL DISTRICT: Samuel Miller
(Joan McDowell)

Ms. McDowell gave a power point presentation and summarized the staff report.

- This item was deferred on June 5, 2007 to address the Fire Department comments regarding the land that Ms. Cutright proposed to donate to the Fire Department at the corner of Red Hill School Road and Route 29.
- The Fire Department gave staff different comments and expressed a desire to have an access to the pond and dry hydrant that they use. Staff reviewed their comments and determined that access could be granted in other ways other than subdividing the property and granting additional development rights. Staff retains its recommendation for denial of this application.

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

Ms. Cutright said that she wanted to stay on the land she had lived on for 57 years. Should tax rates escalate as they recently have that she would be obligated to the County of Albemarle for some $45,000 give or take in the next 10 years? This is not practical right now because she only has a single fixed income. She has had to pay taxes from other sources than from her monthly income. There is one statement on the request that says she wants to give 2 acres of land to the North Garden Fire Company. She wants to keep 2 acres. With the selling of her present home with the required 2 acres there would be more than 2 acres for the Fire Company. She has owned the property with her husband since 1978. The area where she wants to build a house is not in a flood plain nor does she think it would make a visual impact on the Entrance Corridor. She did not know who came up with the 3 building rights on the original 14 acres, but she certainly would not have wanted 7 dwellings on the property anyway. She has difficulty with this and hopes that the Planning Commission will see fit to grant her the ability to use 2 acres so that she may continue to live in North Garden. The only reason that the third development right was sold to someone else is that her husband was no longer able to keep it looking nice as he would have liked to. Therefore, the decision was made to sell it rather than see it grow up to be an eyesore to the community. Hindsight is much clearer than foresight. She hoped that the Commission would see fit to grant this right.

Ms. Joseph invited public comment.

George Stevens, Chief of the North Garden Volunteer Fire Company, asked to point out that Ms. Cutright has indicated that she wants to donate more than 2 acres. By his calculations it is somewhere between 4.5 and 5 acres of property. The land in question has the dry hydrant that they have been using for about 25 years. But, it also serves as the same area in which they use on an annual basis for their fund raising and it provides a place where they can do hose line testing, fire stream training and such as that. It also is a place because of their rural setting they have to top off their water tanks on their fire engines at all times in the day and night. It is the very accessible and gives them more area to work. Many times adjacent property owners would not look very favorable on several fire trucks being outside of their home at 2 a.m. Again, he pointed out that this property has been used without any fees at the graciousness of Mr. and Mrs. Cutright for about 29 years for all sorts of events. This is a very unique application in the fact to the contrary of what item 1 says about being unfavorable. Any time a citizen has a desire to donate 4 to 5 property in Albemarle with its current value is certainly unique to the situation. It is instrumental in the operation of the Fire Company's day to day operations at North Garden. Again, they use it on a daily and weekly basis of topping off. About 3 or 4 days when this was deferred they pumped about 30,000 to 40,000 gallons of water out of that pond for an adjacent hay fire. It is critical for that. Last year they used this land for training for not just our fire company, but throughout the region and County. They do have a secure water site that they can lay out their lines with their trucks, which is essential to keeping up with their training. It is very little for Ms. Cutright to ask just to keep 2 acres and sell off the other as far as the division rights. That should be looked favorably upon by the Board. He asked that the Commission look at it favorably. The Fire Company is very much in favor of this. Albemarle County Fire/Rescue is in agreement with this.

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

Mr. Morris said that everything he has read says that this has a lot of appeal. But, the problem is that it sets a precedent that goes outside of the Code and regulation. Once a precedent is set, then everyone else steps up to the plate. Because of that he was having a very difficult time with this.

Mr. Craddock said that he liked the idea of North Garden Fire Company getting this property. It would be very useful for them. He did not know if this is the avenue to how to do it. He hoped that another way to work it out would have been found since it was deferred a couple of weeks ago. He was also in a tough situation about setting a precedent. But, his great sympathy is with North Garden.

Ms. Joseph noted that due to the bad weather and the arrival of a couple of other speakers she opened the public hearing again and invited further public comment.

Kathleen Russell, a resident of North Garden, said that she lived right across Red Hills Road across from the proposed property. She encouraged the Commission to accept this proposal. It is an appeal in which

there were situations where it was appropriate. She did not see where this very unique situation is going to set a County wide precedent that will require them to base other appeals on. This property has been used since she was a child for community events by the fire department. It is an important community gathering place. The generosity of Ms. Cutright to offer this property to the fire department rather than put it up for sale at which could be a very lucrative price in this area should be considered. There is no justifiable reason for not allowing the appeal process to be appropriate when there is an appeal that would benefit the community, the property owner and the County and is an unusual situation. That is what appeals should be designed to handle.

Wayne Russell, a resident of North Garden, pointed out that the residents do receive a discount on their fire insurance by having the dry hydrant in that location. It is beneficial to all of the adjacent home owners. If Ms. Cutright put the property on the open market another person could very easily deny the fire company the use of this dry hydrant. Ironically two weeks before the previous hearing there was a fire just two days within site of the pond. It is a comfort to know that they have a water source that the fire department can get to. If they empty their trucks they can go right there and fill right up. For our community to lose that advantage not only our insurance rates would go up, but there is a safety concern of not having this deeded to the fire department.

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

Mr. Zobrist said that he was trying to figure out where the lines are. He asked if there is one existing house on the parcel now and they want to split a lot off to build a second house. Or, will this be a third house.

Ms. McDowell replied that there is one existing house on the lot. Ms. Cutright has asked to have a division of land for the existing house. Lot A has a different owner. It used to be the Cutright's, but they sold it off. They also sold another lot off in another area.

Mr. Zobrist asked if the intent is to sell one lot, build a house on one lot and give the other lot to the fire department.

Ms. McDowell replied that was correct. It is not a family division. She noted that as Ms. Cutright indicated it would supplement her income and help pay the taxes. Ms. Cutright would build her house next to it and then the front part would still be legally used by the fire department. Ms. Cutright has not indicated whether she would give that piece of land with or without this additional development right.

Mr. Zobrist assumed that part of the purpose is to get that land off her tax bill to lower the taxes.

Ms. McDowell said that the only purpose was for Ms. Cutright to sell the existing house because it is too big and build a house right next to it so that she can stay in the same neighborhood. If the property was conveyed to the fire department it would come off of her taxes. There is currently one parcel and this would create a total of three parcels with one lot going to the fire company. This would create an additional development right. But, the lot going to the fire department would be conditioned that it would not have a building right on it. There would only be one additional house.

Mr. Strucko said that they would be creating one additional dwelling unit.

Ms. McDowell replied that is correct.

Mr. Edgerton said that all of the development rights have been exhausted on the original property.

Ms. McDowell noted that the Cutrights inherited the property from her husband's mother along with acreage to the daughter and another son. The Cutrights have all divided it out and used all of the development rights.

Mr. Edgerton said Ms. Cutright has been very generous to the community and the fire company all of these years, but he could not break away from what their job is as a Planning Commission to make

recommendations to the Board. This is basically increasing the development potential of the existing zoning. He was concerned about a precedent and the fact that the Cutrights have used up all of their development rights. Even if there was a family member to give a family division to they would need a development right to do that as well. If an exception needs to be made he felt the decision needs to be made at the Board level. Unless the Commission is willing to compromise all of the hard work they have put into the Comprehensive Plan in trying to preserve the rural area, he thinks they would be working against everything that they stand for to approve this.

Ms. Joseph agreed. What she was hearing from Ms. Cutright that is disturbing is the raising taxes. The Board needs to work on tax relief also for somebody that is put in a position like that. She did not feel the answer is to just start carving up the rural areas.

Mr. Edgerton said that from a planning perspective it does not make any sense. From a personal perspective there are all kinds of issues that really are not things that the Commission has any control over.

Mr. Strucko said that he was wrestling with what is the best thing for the community. It is not simple just giving another development right. Ms. Cutright is going to sell her house and build another one that is more affordable. There is also this contribution to the fire company. It is a donation/contribution that would make him pause and look at the merits of this proposal. Four acres donated to a volunteer fire company increases the assets of a non-profit volunteer fire company, a public service entity. If the community is committed to strengthening the volunteer fire and rescue services here and supplementing and supporting them, here is an opportunity to do that. It is not just increasing an asset on the balance sheet for this non-profit entity. It is also offering access to a water source that serves a public good. That dry hydrant in that very rural area becomes a key issue especially with water management and water relay to fires. They have a situation facing Albemarle County. Do they look at this 10 acre parcel and add an additional development right to it and if that in any way create a detriment on this particular parcel. He did not think so, but he understands their concerns about precedence and the principal and concept of the thing. But, he was weighing that against here is this contribution to a public good. Is it worth an additional development right? Frankly, he has not made his decision yet. He was still debating the issue.

Mr. Craddock suggested that they go along with Mr. Edgerton's recommendation, but in strongest terms say to the effect that between now and the Board meeting that all the parties involved try to look at it and see if there can be another solution to this. It is the Commission's charge to go with the County Codes. Therefore, he would lean towards denying this with the hopes that there be a recommendation that the Board look at this and the two parties try to work out a compromise on this.

Mr. Zobrist asked Mr. Kamptner if to approve this that the Commission has to come to a finding. Staff has provided a list indicated that the number of times that this has been approved in the County in recent memory is that there have been 19 applications and 10 were denied and 9 were approved for additional rights. This would create one additional house that is going to be affordable. He did not know what the division history was for the property. But, they do have small lots in the County like this, which might be a single tax parcel that might have 5 division rights. There are a lot of 2 acre development rights floating around in the County. As he reads the finding they have to make it has to be found to be a unique or special circumstance.

Mr. Kamptner replied that the findings are found on page 7 of the staff report. The first one is that the special use permit can be issued upon a finding by the Board that the use will not be of a substantial detriment to adjacent property. The second one is the character of the district will not be changed thereby. The third is that the use will be in harmony with the purpose and intent of the ordinance. The fourth is that it will be in harmony with the uses permitted by right in the district. Because it is a special use permit though the Comprehensive Plan also plays an important role in the consideration.

Mr. Zobrist questioned if the Commission could make that finding under the Comprehensive Plan. He asked if there is a provision in the Comprehensive Plan that states that they can move outside of it. The Comprehensive Plan is a guide and in order to do something different than what it says they have to make a finding. What is required for that finding to not follow the Comprehensive Plan?

Mr. Kamptner said that he did not think they necessarily have to make a finding. Because it is only a guide the Commission has the ability to ignore it. But, at the risk of setting an unfortunate precedent they would want to be able to identify unique circumstances that justify deviating from the policies and recommendations of the Comprehensive Plan in a particular situation.

Mr. Zobrist said that is very helpful. They have to make the circumstances so unique that there is no precedent value in the decision if they were to recommend it to the Board that they approve it. If they want to obviate the issue with setting a precedent, which is one of the unfavorable factor, if they can create a circumstance special enough to not make it precedent setting and even say that if they wanted to approve it. He was struggling because they need to stick with the rules. It looks like about one-half of the parcel is going to the fire department, which would be the parcel right on the road. He questioned if they condition the subdivision on the conveyance to the fire department. How do they make sure it happens if they approve it?

Ms. McDowell replied that a condition would have to be added. But, she would also add that even though they are creating a development right that it does not create a building right. There will be no structures.

Mr. Zobrist noted that it would be limited to no structures as a condition.

Ms. McDowell said that is what she would suggest.

Mr. Zobrist said that the unique circumstance would be that the property is going to the fire department. It is located on Route 29, which will preserve the property without a structure forever. So there is no real change to what would be visible from Route 29. It gives the fire department an asset. It gives the community the pond. He felt that the Board would probably approve it because it is a unique situation. If they could structure it in such a way as to make it non-precedent setting by saying that they don't deem this to be a precedent that he felt they should try to find a way to do it.

Ms. Joseph said that she could see a lot of people coming in asking for extra development rights because their taxes have gone up.

Ms. Zobrist said that he was looking at it strictly from the circumstances of a piece of vacant land on Route 29 forever and nothing getting built on it. He recognized that there was always an economic impact when they take property and move it to a public entity and not have to pay taxes.

Ms. Joseph pointed out that right now the property cannot be built on. Right now they have one dwelling on that 9 acres and they have used up the development rights. So as far as not being able to build anything on there that right now they can't. Therefore, she could not see that as an advantage.

Ms. McDowell asked Mr. Kamptner if they need two development rights.

Mr. Kamptner said that what is unique about this application is that the applicant is not seeking a development right simply to create the fire station parcel. It is to create an additional home site plus the fire station parcel.

Ms. McDowell pointed out that one question was how the fire department could have permanent access to this pond through possibly an easement.

Mr. Kamptner said that the creation of that parcel is going to need a development right. There are certain classes of lots that through interpretation now do not require a development right, such as a cemetery lot and a couple of others. This use is not within that realm of special interest lots, which is the term that is being use. So a development right is needed. The access could be created without a division through the granting of an easement. But, that is only granting an easement and a right to access the property.

Ms. McDowell noted that the applicant has not been asked if she would grant this parcel to the fire department without the extra development right for her new residence. She did not know if the question has been posed. If the Commission grants a development right for the fire department without granting it for the additional residence she did not know if Ms. Cutright would be willing to do that.

Mr. Edgerton asked if there would be a tax benefit to the applicant by granting an easement to the fire department.

Mr. Kamptner replied that he could answer that question.

Mr. Edgerton noted that they would need a tax assessor.

Mr. Zobrist said that there would be a benefit to the applicant to allow us to cut off the land even though they did not give her the right to build a second house. She would still be able to move that tax over by conveying the property to the fire department.

Mr. Kamptner agreed if it was done in a fee simple transaction.

Mr. Zobrist asked if they want everybody in the County that is being pushed by taxes to come in with their rural land to cut a piece off and give it to the County for a park or something to lower their taxes. He agreed that it was a decision to be made by the Board. He felt that it was a great idea, but he was not sure if the rules were broad enough to allow them to do it.

Mr. Morris felt that the rules that they have to work on, however, are fairly clear. Because of that he felt that the request should be denied.

Motion: Mr. Morris moved, Mr. Edgerton seconded, to deny SP-2007-00010, Cutright Development Right for the reasons stated in the staff report.

Mr. Craddock asked to add the provision that the Board of Supervisors and all parties involved look at this as strongly as possible to see if they can make it work.

Ms. Joseph asked staff to get with the tax assessors to see if the 4 acres could be put in an easement to relieve the burden of taxes.

Mr. Zobrist asked for an amended motion to deny SP-2007-00010, Cutright Development Right with a request to the Board of Supervisors to look at the request very carefully because the Commission would like to approve it, but the County rules don't give the Commission the power to do so.

Amended Motion: Mr. Morris moved, Mr. Edgerton seconded, to amend the motion to deny SP-2007-00010, Cutright Development Right for the reasons stated in the staff report with a request to the Board of Supervisors to look at the request very carefully.– The Commission could not recommend approval because it did not conform to the Comp Plan and would set a precedent. Therefore, the Commission asked the applicant and Fire Department to find other ways to do this.

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

Ms. Joseph stated that SDP-2007-00010, Cutright Development Right will go before the Board of Supervisors on July 11 with a recommendation for denial, but the Commission hopes that in the interim something can be figured out.

SUB2007-00120 Pounding Branch Subdivision (Phase II) - Preliminary - DEFERRED FROM MAY 22ND PC MEETING

Request for preliminary subdivision plat approval to create 20 lots [18 development lots and two (2) preservation lots] as a Rural Preservation Development on 299.1 acres. The property, described as Tax Map 72 - Parcel 52 and Parcel 36B, is located in the Samuel Miller Magisterial District on Dick Woods Road [Route 637] approximately .07 miles [422 feet] northeast of the intersection with Pounding Creek Road [Route 689]. The Comprehensive Plan designates Parcel 52 and Parcel 36B as Rural Areas in Rural Area 3. (Megan Yaniglos) **APPLICANT REQUESTING DEFFERAL – PLANNING COMMISSION DATE TO BE DETERMINED**

SUB2007-00135 Pounding Branch Subdivision (Phase III) – Preliminary

Request for preliminary subdivision plat approval to create 20 lots [18 development lots and two (2) preservation lots] as a Rural Preservation Development on 299.1 acres. The property, described as Tax Map 72 - Parcel 52 and Parcel 36B, is located in the Samuel Miller Magisterial District on Dick Woods Road [Route 637] approximately .07 miles [422 feet] northeast of the intersection with Pounding Creek Road [Route 689]. The Comprehensive Plan designates Parcel 52 and Parcel 36B as Rural Areas in Rural Area 3. (Megan Yaniglos) **APPLICANT REQUESTING DEFFERAL – PLANNING COMMISSION DATE TO BE DETERMINED**

Mr. Shepherd noted that staff recommends a deferral for both Pounding Branch Phase II and III. The applicant has not submitted a Ground Water Management Plan, which is a requirement for the consideration and approval of the preliminary plat. He apologized to the extent that staff did not catch this sooner and are in a bit of an awkward position here of having to ask for a deferral at the last minute. The Commission's consideration of the plan will be much more thorough by having this information.

Mr. Morris noted that the proximity of this particular plot makes it essential that the Commission and applicant have this information prior to their review.

Motion: Mr. Edgerton moved, Mr. Morris seconded, to approve the applicant's request for deferral of SUB-2007-00120, Pounding Branch Subdivision (Phase II) – Preliminary and SUB-2007-00135, Pounding Branch Subdivision (Phase III).

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

Ms. Joseph stated that SUB-2007-00120, Pounding Subdivision (Phase II) Preliminary and SUB-2007-00135 (Phase III) – Preliminary were deferred to a date to be determined.

Regular Items:

SDP2007-00048 Crozet Gateway Center – Critical Slopes Waiver
This proposal is for a waiver of Section 4.2.1 of the Zoning Ordinance in order to allow the disturbance of critical slopes for purposes of construction of 2 buildings totaling 29,680 square feet for commercial and office use on 1.99 acres zoned HC Highway Commercial and EC Entrance Corridor. The property, described as Tax Map 56, Parcels 32 and 32A are located in the Whitehall Magisterial District in the northeast corner of the intersection of Route 240 (Brownsville Road) and Route 250 (Rockfish Gap Turnpike). This is currently the site of a convenience store. The Comprehensive Plan designates this property as Crozet Community. (David Pennock)

Mr. Pennock presented a power point presentation and summarized the staff report.

- This is a critical slopes waiver associated with the Crozet Gateway Center plan. The request is in association with a proposal to redevelop the site to include two buildings both are a combination of office and commercial space.
- Analysis was done from a planning and engineering perspective. From an engineering standpoint the slopes in question are really around the side closest to Route 240, around the two corners and some additional critical slopes area in the VDOT right-of-way. Most of the slopes highlighted were a result of the road construction projects that have previously been done out there. The site is surrounded by all sides by public roads. However, there are no site plans on file that show the creation of these slopes. Therefore, staff was not able to grant an exemption as man made slopes. But, it is a small portion of the site. The actual on site area is .03 acres. There were no engineering concerns related to the disturbance of those slopes.
- This is a fairly visible site. It is in a double Entrance Corridor from both Route 240 and Route 250. From an aesthetic standpoint the biggest concern would be what the Architectural Review Board would have to say about it. They have seen all phases of this plan already and actually granted their Certificate of Appropriateness already. The aesthetic concerns have been addressed.
- The Crozet Master Plan designates this area as CT-5, which is an urban center designation. This office/commercial type of use proposed for the redevelopment of this site is in line with the

recommendations of the Master Plan. For all of those reasons staff is recommending approval of the critical slopes waiver.

Ms. Joseph asked if there were any other questions for staff.

Mr. Edgerton asked about the buffers on the property.

Mr. Pennock replied that the Crozet Master Plan shows a buffer along Route 240. Through their review with the ARB and also through some of the landscaping requirements in the ordinance they are providing some street trees all along the frontage of Route 250 and Route 240 supplemented by shrubs and some ornamental trees. The landscape plan shows landscaping in both of those areas as well as some along the rear of the site. That landscape plan has been revised once more since that, but it is the same general concept.

Mr. Zobrist asked if the ARB has already signed off on the landscaping plan and screening.

Mr. Pennock replied yes.

There being no further questions for staff, the public hearing was opened and the applicant invited to address the Commission.

Sam Saunders, Civil Engineer with Timmons Group, said that they prepared the plan. Others present were Amy George, Landscape Architect and Danny Yousef, who is the applicant. He did not have any thing to add because Mr. Pennock's report was pretty complete. They hope that the Commission will look favorably on the critical slopes waiver.

Ms. Joseph invited other public comment. There being none, the public hearing was closed and the matter before the Commission. This is a request for a critical slopes waiver. To mitigate intrusion into the critical slopes in the past the Commission has asked for more plants.

Motion: Mr. Strucko moved, Mr. Morris seconded, to approve SDP-2007-00048, Crozet Gateway Center – Critical Slopes Waiver.

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

Ms. Joseph stated that SDP-2007-00048, Crozet Gateway Center – Critical Slopes Waiver, was approved.

Public Hearing Item:

ZTA-2007-0002 New enabling authority for accepting proffers: Amend the Zoning Ordinance to accept proffers under the enabling authority of Virginia Code § 15.2-2303 rather than under the currently utilized authority of Virginia Code § 15.2-2298.
Proffers - Amend Sections 2.3, Conflicting Ordinances; 3.1, Definitions; and 33.3, Proffer of Conditions, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend the references to the state enabling authority for conditional zoning, amend the definition of "proffer," and would change the state enabling authority under which the County accepts proffers from Virginia Code § 15.2-2298 to Virginia Code § 15.2-2303. (Wayne Cilimberg)

Mark Graham, Director of Community Development, presented the staff report for ZTA-2007-0002 in Mr. Cilimberg's absence. This is a fairly straight forward request. In the last General Assembly there was legislation passed under 15-2-2303 to allow Albemarle County and other high growth counties to take advantage of the conditional zoning legislation for accepting proffers. As soon as staff became aware of this they brought it to the attention of the Board who was very anxious to see this go forward. Staff has put together an Attachment B that shows some of the advantages of switching to this form. A couple of things have been noted where it has been hard for staff to show a direct impact under the old authority where they could ask for proffers for things such as affordable housing, green buildings and other types of

issues. With that he would leave this to the Commission with a note that staff is recommending approval. If there are any questions, he would be happy to do so.

Ms. Joseph asked if there were any questions for Mr. Graham.

Mr. Morris said that it was great to read this and have a guideline.

Mr. Craddock asked what the benchmark was for a high growth locality.

Mr. Kamptner replied that it depends on the legislation. For proffers it is 5 percent between the next to the last and the last centennial census. It used to be 10 percent.

Mr. Craddock asked if they go under 5 percent does it revert back or will it always be like this until it is changed again or get State legislation.

Mr. Kamptner replied that he did not know because it would be hard to imagine going back to that point. They have not looked at that.

Mr. Graham noted that if it dropped below 5 percent that means that the annual growth rate is going to drop to below ½ percent per year. That is hard to imagine that happening.

Mr. Kamptner added that in the table in Attachment B under item 1, proffers under 15.2-2298 that statute expressly requires that proffers be voluntary. Section 15.2-2203 does not have the same language. But, about thirty years ago the Virginia Supreme Court said that proffers are voluntary. Although the language is not in the statute the practice will continue to be as it has been. They will be perceived as voluntary. It is up to the applicant to continue to decide whether or not it wants to address the impacts from a rezoning.

Ms. Joseph asked if there always has to be some sort of connection between the proffer and the rezoning application request.

Mr. Kamptner replied yes, because the proffers do have to be reasonable. Even though Section 15-2-2303 does not expressly require that the conditions have a reasonable connection to the rezoning that for a condition to be reasonable there has to be some kind of connection. The strongest reason to shift to Section 15.2-2303 is that it gives us the express authority to accept proffers for matters that are not necessarily generated by the rezoning. The two areas that they have struggled with include LEED and the affordable housing. State law requires that the Comp Plan address affordable housing. But, if they take a market approach to housing and approve a rezoning that has residential development they are increasing the supply, which in turn should reduce having a negative impact on individual house values. So this legislation gives them a better authority to tackle more social related issues like affordable housing and LEED. There are a number of other issues also.

Mr. Zobrist said that in reality he thought that it exempts them from litigation if they don't give a rezoning if they don't like the proffer.

Mr. Kamptner replied that it probably gives us a better position, but the two cases that are noted in the table being the Chesterfield case and the Powhatan case are the two key proffer cases. The distinction between the two was that Powhatan said that they are not going to approve the rezoning because they did not proffer $4,000 per dwelling unit. The approach that Chesterfield took was that their Board decided that they would not approve the rezoning because they did not proffer X number of dollars and they failed to mitigate the impacts resulting from the rezoning. Staff had identified all of those impacts that go unaddressed. That will continue to be the practice here as well.

Mr. Zobrist noted that they have lots of tools to get their proffer policies to where it needs to be as he understands it.

Mr. Kamptner said that the voluntary aspect of proffers is not that the County is simply sitting back and waiting for the developer to proffer something. They have a cash proffer policy and identify the impacts.

The voluntary aspect is that the applicant in the rezoning does not have to proffer that cash amount. It does not have to address affordable housing. The result may be that the Board may not approve the rezoning because impacts are not addressed.

Mr. Zobrist asked if the developer has the right to offer something different than that to mitigate.

Mr. Kamptner noted that the Board will be considering the cash proffer policy tomorrow. The Board will be taking a first look at what other types of things should be counted as a credit towards the cash proffer. The applicant may try to provide other benefits to the community that will off set it in a different way.

Mr. Zobrist said that it remains voluntary to the extent that the developer can use the developer's own creativity as to how it wants to satisfy what the impacts are.

Mr. Kamptner said that they could choice whether or not to address all of the impacts that have been identified or take their chances with the Board and convince the Board and the Commission that this project has other merits that justify it being approved for other reasons.

Ms. Joseph opened the public hearing and invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Motion: Mr. Morris moved, Mr. Strucko seconded, to approve ZTA-2007-0002 New enabling authority for accepting proffers to amend the Zoning Ordinance to accept proffers under the enabling authority of Virginia Code §15.2-2303 rather than under the currently used authority of Virginia Code §15.2-2298.

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

Ms. Joseph stated that ZTA-2007-0002, new enabling authority for accepting proffers will go to the Board of Supervisors on July 11 with a recommendation for approval.

Work Session:

ZMA-2007-00004 Oakleigh Farm (Sign # 62)
PROPOSAL: Rezone 8.8 acres from R-6 Residential zoning district which allows residential uses at 6 units per acre to Neighborhood Model Zoning district which allows residential uses at 6– 34 units/acre mixed with commercial, service and industrial uses. A maximum of 101 dwellings are proposed with a density of approximately 12 units per acre.
PROFFERS: No (to be submitted later)
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses
ENTRANCE CORRIDOR: Yes
LOCATION: Rio Road West (Route 631) directly across the street from Woodburn Road (Route 659) in Neighborhood 1
TAX MAP/PARCEL: 45-26A
MAGISTERIAL DISTRICT: Rio
(Sean Dougherty)

Mr. Dougherty gave a power point presentation and summarized the staff report. (See Staff Report.) In summary, the applicant's additional questions for Commission consideration include:

- VDOT and the County Engineer have said that the entrance road should line with Woodburn Road across the street. Staff and the applicant want to make sure to have clear direction that is the way they should proceed. That will generate a design change.
- Parking between the buildings on and along the Entrance Corridor. The ARB has preferenced to not have parking in between buildings along the Entrance Corridor and on the Entrance Corridor itself. There may be some reasons why it is more appropriate here.
- There is a slip ramp the applicant has shown. Engineering has requested to remove it. The applicant has said they might want to retain the slip ramp as an emergency entrance.

Ms. Joseph asked if there were questions for Mr. Dougherty.

Mr. Strucko asked if there would be a public central green behind buildings K and L or private property.

Mr. Dougherty replied that it would be shared as open space for the community. There was a subdivision plan in the Code, but off hand he could not answer that. The applicant might be able to do a better job. The land itself would not be public, but it would be public in terms of public property and would be shared open space. It appears that those would be individual lots adjacent to the common area or shared open space.

Mr. Edgerton noted that staff had mentioned the ARB's concern about the parking between building B and Rio Road. Is that the area that the ARB is concerned about?

Mr. Dougherty replied yes.

Mr. Edgerton noted that conveniently lines up with the non-relegated parking on the adjacent property, Berkmar Crossing. He asked if Berkmar Crossing was developed before the Neighborhood Model.

Mr. Strucko replied yes, it was developed many years before the Neighborhood Model.

Mr. Morris asked where staff and VDOT would like the applicant to move the entrance.

Mr. Dougherty replied that when there are two intersections that come somewhat in close proximity to each other when a new entrance is proposed generally for a host of reasons the intersections would be lined up. VDOT and the County Engineer both recommended that to be lined up. There has been some confusion from the applicant, but staff wants to make sure if the Commission affirms that the applicant gets a clear message that needs to occur. That will probably generate the need for some redesign. As a rule intersections are to line up to each other. This will be a public road that provides access to the back of this property. Woodburn is a public road. For a number of reasons those intersections need to be lined up, which staff is requesting the applicant to do. In response to a question on the plans for Woodburn Road staff pointed out the following:

- Woodburn Road defines the edge of the development areas to the east and the rural areas to the west. It is also the boundary of the water shed for the Rivanna River. Uses to the west will remain those of a rural nature, i.e. residential development and agriculture. To the east of the road there is Agnor Hurt Elementary School and some older homes.
- The need for a traffic light is not warranted by the vehicle trips to be generated by this proposal. Agnor Hurt Elementary School does not connect to Woodburn Road and has access off of Berkmar Drive.

Ms. Echols added that the shifting of that driveway is not huge, but it does start to change things at the front of the site as well as what the Commission may recommend relative to that parking lot.

Ms. Joseph invited the applicant to address the Commission

Valerie Long, representative for the applicant, Oakleigh Albemarle, LLC. Others present include: George Ray, principle with Oakleigh Albemarle. LLC as well as Marilyn Young; Mark Keeler, Terra Concept – the land planning and engineering firm; and David Roseen, with Van Yahres Tree Company – the arborist who will prepare the tree preservation plan. Mr. Dougherty covered all of the major issues in terms of the layout and design. In a power point presentation she walked the Commission through the major components of the project.

- To address one of the comments regarding the alignment of the main entrance into the project with Woodburn Road, they are more than willing to take a look at working out a way to shift the entrance for the project so that it does align with Woodburn Road. The land planning consultants feel fairly confident that they can do that without having a major impact on the design on the design of the property in the front. They are certainly willing to use their best efforts to look into that if that helps address that question.
- In the front of the property are buildings A and B with combined non-residential space of 28,800 square. It is proposed to be mixed use buildings each with commercial or office space on the first

2 floors and residential on the top floors. Currently they are looking at planning on having as many as 8 in that area to make best use of those buildings.

- Buildings C & D are residential condominium building.
- Buildings K & L along the central green are 2 cottages essentially single-family detached units.
- The buildings along the outer edges, building I and J are townhouses.
- Buildings G & E are townhouses.
- Building F and H are condominiums.
- Building H has underground parking. Buildings G, F and E have some underground parking and garages. The same can be said for buildings I and J. The units in buildings C and D and A and B will share parking among the surface parking shown around those buildings. They will also share parking with the non-residential uses, the commercial office space. That will work very well to be able to have those mixtures of uses there together and share the space.
- The key feature of the property is the central green that is sited around the existing trees that the arborist has identified as the trees that are most worthy of protection and that are most likely to be able to survive the construction project. They have designed the project and the site layout around those trees. The 39 trees shown on the plan are to be preserved and are indicated as such in the Code of Development.

Ms. Joseph invited other public comment. There being none, staff was requested to lead the Commission through the questions.

The Planning Commission reviewed the questions posed by staff and provided their comments as noted in the following summary of the meeting.

In summary, the Planning Commission held a work session on ZMA-2007-00004, Oakleigh Farm to discuss the major considerations listed in the staff report. Staff presented a power point presentation, summarized the information associated with this project and posed several questions for the Commission. Staff pointed out one change to the staff report that the applicant is considering potentially adding 8 development units to the front of the property, which would increase the unit count from 101 to 109 or 115. The applicant's representatives, Valerie Long and George Ray, gave a power point presentation, explained the proposal and answered questions. Public comment was taken. No formal action was taken. The Commission provided feedback to the discussion questions posed by staff, with 3 additional questions posed by the applicant, as follows:

1. ***Does the Commission Support the applicant's approach to residential density, open space, and non residential uses?***

The Planning Commission supports the applicant's approach to residential density, open space and non residential uses and the applicant's proposal to limit the retail commercial use to 14,400 square feet. The non residential uses need to be worked out.

Several concerns were expressed including:

a. The applicant has agreed to work with VDOT on the reconfiguration of the entrance. The reconfiguration is going to make Building B larger, which could potentially become more retail area. The applicant has committed to the 14,400 square feet of retail commercial space. The scale of non-residential use and how much of that space should be there is a concern. There is a concern about how much retail has been approved in rezonings and the absorption rate of 20 to 30 years. Should additional retail space be added to that in this project? The Commission was struggling with all of those things. The major concern was the parking located in front. Relegated parking was preferred to on street parking.

b. Woodburn is a public road and the roads in Oakleigh, including the entrance road, are being proposed as a private road.

2. ***Should the applicant be providing a buffer along the common property line with Heritage Hall (where existing wooded areas are located) so that if screening of the backs of***

townhouses proposed there would be possible should Heritage Hall expand and remove existing wooded areas.

Four Commissioners (Joseph, Edgerton, Morris and Strucko) agreed with staff that a parking-driveway setback of 10 feet and a continuous screening buffer would allow for screening in the future should the existing wooded areas on the Heritage Hall property be eliminated.

Two Commissioners (Craddock, Zobrist) were in favor of the applicant not providing a buffer.

- The applicant was asked to discuss this issue with Heritage Hall. Since Heritage Hall owns both sides of the property they can abandon the lot line any time they want.

3. ***Given the applicant's detailed analysis of existing trees and plan to preserve those identified, should the applicant make a commitment to bond trees to ensure their survival.***

The Planning Commission agreed that the applicant should make a commitment to bond trees to ensure their survival and requested staff to investigate what has been done in the past.

4. ***Should the applicant attempt to provide a pedestrian connection to Berkeley?***

The Planning Commission agreed that the applicant should **attempt** to provide a pedestrian connection to Berkeley by meeting with the residents of Berkeley to determine the feasibility. The Commission supports interconnectivity.

5. ***Should the massing of the two buildings proposed to front Rio work relate better to the neighboring properties along Rio Road?***

The Planning Commission felt that there was not enough information submitted to answer the question. The applicant needs to submit drawings and elevations to be reviewed prior to the Commission commending on this question. This request has not been before the ARB. Due to the lack of elevation drawings the Commission requested that the ARB review this request and provide their recommendation to the Commission.

Other Matters

The Commission provided the following responses to the additional questions.

1. The Commission agreed with VDOT and the County Engineer that the entrance road should align with Woodburn Road across the street.
2. There is a slip ramp the applicant has shown. Engineering has requested to remove it. The applicant has said they might want to retain the slip ramp as an emergency entrance. The Commission asked for input from Fire Rescue on whether the slip-ramp would be beneficial as an emergency access only. The Commission asked staff to verify with VDOT that it was possible for the slip-ramp to be an emergency only access.

Old Business

Ms. Joseph asked if there was any old business. There being none, the meeting proceeded.

New Business

Ms Joseph asked if there was any new business.

- A request was made to add on an upcoming agenda a presentation by Greg Kamptner regarding the new VDOT rules and guidelines pertaining to traffic studies. Mr. Kamptner replied that it would be more appropriate for the engineers to discuss the technical issues regarding the traffic studies, but that he would cover the procedures.

- Ms. Echols reported that Avinity and Rivanna Village requests were approved by the Board of Supervisors.
    - One issue changed from the Planning Commission's recommendation for Rivanna Village regarding the preservation of trees at the perimeter. The Commission had asked the applicant to work with the adjoining property owners on that issue. Staff pressed for the applicant to show a strong commitment to show the trees that were going to be preserved and where they were not preserving trees that there was a legitimate reason documented. The applicant did not feel that they could commit to that. Staff talked to the adjoining property owners and realized that they misunderstood which trees would be preserved. So the anticipated changes did not get in the Code of Development, but the adjoining property owners were satisfied.
    - The applicant's cash proffer amount for Avinity was increased to address the Board of Supervisors expectations for cash proffers.

Adjournment:

With no further items, the meeting adjourned at 8:47 p.m. to Tuesday, June 26, 2007 Planning Commission meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

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