Albemarle County Planning Commission
July 24, 2007

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, July 24, 2007, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Jon Cannon, Calvin Morris, Vice-Chairman; Bill Edgerton; Marcia Joseph, Chairman; Eric Strucko; Duane Zobrist and Pete Craddock. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was absent.

Other officials present were Wayne Cilimberg, Planning Director; Mark Graham, Director of Community Development; John Shepherd, Chief of Current Development; Glenn Brooks, County Engineer; Amy Arnold, Planner; Elaine Echols, Principal Planner; Claudette Grant, Senior Planner and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Other Matters Not Listed on the Agenda from the Public:

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

Deferred Items:

SDP2005-00083 Rio Truck Repair – *DEFERRED FROM MAY 22 PC MEETING*
Request for preliminary site plan approval to allow the construction of an 8,000 square foot building to be used for truck repair on property described as Tax Map 61 Parcel 146. The subject parcel contains approximately 1.428 acres and is zoned C1 (Commercial). This site is located at the end of Rio School Lane approximately 370 feet east of its intersection with Rio Road (State Route 631). This site is located in the Rio Magisterial District and is designated as Neighborhood Service in Urban Area 2. (David Pennock) (Removed from the agenda for 7/24/07 because official determination concluded that a waiver of curb and gutter was not required)

John Shepherd noted that after a couple of years of review and work on this plan staff has come to the conclusion that the requirement for curb and gutter off site from this site cannot be required as part of this action. As a result of that this plan can be handled administratively. He acknowledged the difficulty and inconvenience this decision causes the applicant and the other people that are interested in this plan. He offered to answer any questions about that. Also, he said that Mr. Kamptner could help with that. This is based on a close legal analysis that the County Attorney's Office has worked on with Zoning to come to this conclusion.

Mr. Zobrist asked about the health, safety and welfare issues. He asked how this request can be taken away from the Planning Commission's review when they have serious concerns about safety issues.

Mr. Shepherd replied that the ordinance clearly directs staff to determine that the entrance onto Rio Road is safe. They have been assured of that by VDOT. As far as the safety of the access easement staff finds that it is simply beyond what they are enabled to regulate.

Mr. Zobrist asked Mr. Kamptner to help the Commission understand this because they saw some pretty scary photos of trucks trying to turn into the entrance with having to cut across private property to be able to get into it. Now they are being told that is not an issue.

Mr. Kamptner replied that there were a couple of premises. The first is that although the Commission's charge is to ensure that the health, safety and general welfare is addressed in site plan and subdivision ordinances the County or Board through its regulations has identified what those health, safety and

welfare issues are. So those three principles are codified in the site plan and subdivision regulations. In turn, what they can do to address public, health, safety and welfare is limited by the State's enabling authority. For subdivisions and site plans, which operate under the same enabling authority, what the localities can require, particularly off site, is extremely limited. The other issue that came into play here was that the original basis for requiring the applicant to install curb and gutter was based on a section of the zoning ordinance, section 32.7.3, that applies only when the site plan will serve 2 or more uses. This is like the Korean Community Church site plan the Commission considered several months ago, which too came to the Commission originally under that same section. The site plan in this case applies to a single use. The basis for requiring the curb and gutter on a site plan requiring multiple uses did not exist in this case. We also looked at another section of the zoning ordinance to see if that section could apply – section 32.7.2 – and again the circumstances of this application did not apply in these circumstances. Finally, they looked at whether or not the County could exercise any authority under a theory that the need for the curb and gutter was substantially generated by this project. The analysis was that there were 3 key issues – safety, primarily the entrance onto Rio Road, drainage and parking. VDOT has addressed the entrance onto Rio Road. They determined that it was a safe entrance. Parking and drainage are conditions that already existed. So we could not conclude that the need for those improvements was substantially generated by this project. In fact, although the development of this site will increase the impervious surface, 90 percent of the runoff from the applicant's site will not be going onto Rio School Road or into the drainage that is already deficient. It is going to have its own separate onsite drainage system.

Motion: Mr. Zobrist moved, Mr. Edgerton seconded, to appeal the Zoning Administrator's official determination letter dated July 23, 2007 to Peter Van der Linde regarding OFF-SITE IMPROVEMENTS-SDP-2005-00083 RIO TRUCK REPAIR- TAX MAP 61, PARCEL 146 - RIO MAGISTERIAL DISTRICT-Section 32.7.3 to the Board of Zoning Appeals.

The motion passed by a vote of 7:0.

Mr. Joseph noted that the Commission would work on the appeal application and the justification to file within the next 30 days.

ZMA-2007-00001 Hollymead Town Center Area A2 (Signs # 93 & 94) – *DEFERRED FROM MAY 22 PC MEETING*

PROPOSAL: Rezone approximately 45 acres from RA zoning district which allows agricultural, forestal, and fishery uses, residential density (0.5 unit/acre); and to rezone approximately .5 acres from C-1 Commercial which allows retail sales and service uses, and residential use by special use permit (15 units/ acre); and to rezone approximately .4 acres from NMD Neighborhood Model District zoning district which allows residential (3 - 34 units/acre) mixed with commercial, service and industrial uses; and to rezone approximately 3,000 square feet from PD-MC Planned Development Mixed Commercial which allows large-scale commercial uses, and residential by special use permit (15 units/ acre); to NMD Neighborhood Model District zoning district which allows residential (3 - 34 units/acre) mixed with commercial, service and industrial uses. The application proposes up to 1,222 dwelling units, a gross density of 26 units per acre, and up to 368,700 sq. ft. of non-residential, including a hotel.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Town Center -- Compact, higher density area containing a mixture of businesses, services, public facilities, residential areas and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre).
ENTRANCE CORRIDOR: Yes
LOCATION: West and adjacent to the Hollymead Town Center Area B, which contains Target and Harris Teeter, east of the Forest Springs Mobile Home Park and Deerwood Subdivision and north of a tributary of Powell Creek west of Route 29.
TAX MAP/PARCEL Tax Map 32, Parcels 44 (portion), 45 (portion), and 50
MAGISTERIAL DISTRICT: Rio
(Elaine Echols, AICP)

Ms. Echols summarized the staff report and presented a power point presentation.

- The proposal is to rezone approximately 45 acres from RA and C-1 to Neighborhood Model District and 3,000 square feet from PD-MC to Neighborhood Model District. The proposal is for 1,222 dwelling townhouse, condos and multi-family at a gross density of 26 dwelling units per acre and up to 368,700 square feet of non-residential uses.
- The general plan of development for Hollymead Town Center contains both areas A-1 and A-2. The A-2 contains a mix of several different types of uses. The illustration indicates what the applicant wants to do.
- There is a concern in one area with regards to having area for landscaping.
- The ARB has recommended plantings to soften the one-story building in Area B with 65' buildings on the ridge in Area A-2, which is above. The applicant has said they will make accommodation for what the ARB would like to have. Staff is trying to see if it can be done without changing the application plan if it can be done in the Code of Development. However, it needs to be done and the applicant has agreed to make the change. While that is in the presentation, it is no longer an issue.
- Previously the Commission had concerns about the walkways and steps. Staff has determined that they can't do anything to Area B to get it corrected. Although ultimately there will have to be some changes that are made there for safety sake. Right now they meet the County requirements and are approved. They can't ask Area A-1 to make changes to Area B's property.
- There are a number of unresolved issues listed at the end of the staff report. But, most of the issues that the Commission had dealt with previously have been resolved. The plan reflects a tremendous amount of consideration given by the ARB, Planning Commission and staff.
- There have been a number of changes from what is in the staff report. At the time of the staff report there were some conflicting recommendations. There was not a lot of clarity with the Places29 recommendation. Staff did not have all of the information needed.

The following issues are still outstanding:

- VDOT comments conflict with Places 29 proposal for Meeting Street cross section and Powell Creek - *Staff has worked on this further and now agrees with VDOT's comments on Meeting Street needing to be 4 lanes. The applicant says that is not a problem and will add the additional feet to the cross section and build it from face of curb to face of curb to accommodate the 4 lane section. Staff does not believe this is an issue any longer.*

- A phasing commitment is needed to complete roads in a timely fashion rather than bonding their completion. - *The applicant has been requested to build the roads Meeting Street and Town Center Drive, which are not completed yet, rather than bond them. He has agreed to do that.*

- A commitment to construct more than 5% affordable housing, or at least give the Housing Director discretion to accept cash in lieu of units. - *In the staff report it was suggested that there was only 5 percent affordable housing for which there was a commitment being made to build this. This applicant wants to build 20 percent affordable housing. He does not want to leave open the option that he could cash out on that. He wants to build and provide it. The Housing Director would like to have the units.*

- Water and Sewer service to the area are inadequate and assurances from ACSA need to be provided that appropriate agreement has been reached regarding this development as it relates to water and sewer. - *The applicant agreed to provide an agreement with the Service Authority before the Board of Supervisors meeting. Gary Fern is present tonight to discuss the water and sewer issues. Mr. Fern assures staff that they can work out an agreement and that there are no outstanding issues in that regard.*

- A commitment in the Code and plan or additional landscaping area between Area B and Area A-2 is needed to soften disparity in building heights. (ARB request) - The applicant has agreed to make necessary changes to the Code of Development.

- A phasing commitment that ties A-1 and A-2 together was requested by the Board, but is not contained in the proffers. – *The Commission made a recommendation to the Board of*

Supervisors for A-1. The Board of Supervisors felt that there needed to be some timing and phasing between A-1 and A-2 that dealt with the amount of commercial space and the timing of the residential in relation to the commercial space. The applicant needs to provide that substance. He would like to provide that to the Board. Staff can provide the form. Staff has provided the conversations with the applicants and has given him an idea about how it might be able to be done. The applicant does not like that particular arrangement and wants to work on it. Therefore, the applicant can speak to the Commission about that particular topic.

- Additional detail requested to appear in the Code in order to support requested waiver remains unaddressed.

- Cash proffers need to be put in an acceptable form that assures the equivalent of the per unit proffer amounts being provided and any allowable credits to the per unit commitment can be properly administered. – *Staff has done some work on the cash proffers, but they are not in an acceptable form. Once the credits are determined the form can be changed. The cash proffer policy expectation would be the 1,222 units less 20 percent affordable making it 978 market rate units.*

The following information describes the status of proffers for this project based on the current Board proffer policy intent:

BOS PROFFER EXPECTATION LESS VALUE OF CURRENT PROFFERS

$14,078,400 - $107,392 = **$13,971,000**

Cash Proffer Policy Expectation = $14,078,400 (1222 units (townhouse, condo, multi family) less 61 (5% affordable units the applicant is committing to provide) = 1161 X cash proffer by unit type:

TH	136	X $11,900 =	$1,618,400
MF	525	X $12,400 =	$6,510,000
CNDO	500	X $11,900 =	$5,950,000
	1161		$14,078,400

Value of Current Proffers = $107,392

Greenway Land =	7.6 acres X $12,800 (RA land per acre) =	$97,280
Recycling Center Land =	.79 acres X $12,800 (RA land per acre) =	$10,112
		$107,392

The applicant challenged staff about how they had laid out the values. Staff has done some more work and talked to the assessor's office. The property is being assessed right now at $125,000 an acre whether it is in stream buffer or not. Therefore, the applicant is providing 7.6 acres of area for greenway dedication. Staff feels that a credit needs to be given for that. There is 3 acres or whatever it takes for a recycling center that he would like to have credit for. $250,000 is what staff believes the oversized portion of Meeting Street and Town Center Drive is to make it what would not be the requirement of this development alone. Staff does not know of a value yet for the LEED Green Building Proffer. The applicant has suggested 5 percent. Staff has asked for additional information. The Planning Commission and Board will have to wrestle with this issue. If they take the 12 million dollars and subtract from that about 1.6 million they get to about 10 million dollars. Staff divided that out over the 978, which would need to be divided out over the different housing types to make approximately $10,509 a unit.

Staff does not believe that credit can be provided for the sanitary sewer service line extension. Parts of it were completed with Federal funds, but not all of it. That is because the oversized portion is something that the Service Authority provides assistance for. Mr. Fern can talk about that.

The infrastructure improvements that were proffered with previous rezonings staff does not believe are eligible for credit with this request. Staff likes the mixed use and that it is a Neighborhood Model design.

But, the Board of Supervisors has said that they expect that in all new developments. Therefore, they have not provided direction that staff can give credit on that one.

Staff recommends that the Commission decide whether or not they need to review a phasing plan before taking action. Since that one came from the Board of Supervisors the Commission may want to consider that one. The Commission may want to send it back to the Board. But, that is the Commission's decision.

The landscaping in #2 has been taken care of. If the Commission wants to work through the proffer credits before action, then they should do that. If the Commission believes that items 1 and 3 are things that the Board of Supervisors should be dealing with and all the outstanding issues raised in the staff report that staff has given the details to the applicant can be worked out before the Board of Supervisors, then staff can recommend approval with the changes.

Staff recommends approval of the waiver requests with the conditions in the staff report.

- Section 4.6.2 and 4.6.3.3, the recreation regulations, has to do with the basketball court and the dog park. The basketball court and dog court are shown in the same place on the plan. The Parks and Recreation Director want those separated. They need to find out whether or not that is something that could take place without changing the application plan by making notes in the Code or that there needs to be application plan changes. Staff recommends that be taken care of on the general development plan or spelled out in the Code.
- Section 32.7.9.8, the screening, there are buffers required that the applicant is requesting a waiver for. Staff had concerns about the land use recommendations on the adjoining properties. The applicant has agreed to make the one area residential. Therefore, staff believes that the Commission can approve the remover of the buffer there so that there are two residential uses adjoining.

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

Mr. Edgerton asked if the applicant has agreed to the substantial increase in proffers. The staff report said 14 million and somehow it dropped down to 12 million in the recalculation.

Ms. Echols replied that she did not believe so. The revised figures were given to the applicant today. There are things that the applicant feels that he should be given credit for. Therefore, he may be able to reply to the question.

Mr. Edgerton said that he was surprised to the change of tone from the staff report to what they had just been presented with. Staff had covered a lot of big changes in what is being proposed. He thought that it would be appropriate for the Commission to review both the phasing plan and the proffer work.

Mr. Cannon asked what is involved in the phasing plan.

Ms. Joseph suggested that they do that during discussion.

Mr. Craddock noted that there was a previous situation regarding the timing of roads that were not built and occupancy permits for some businesses were being held back. He asked if the developer would be in that same situation with this.

Ms. Echols replied that the Hollymead Town Center Area B proffers allow for Area A to be able to build the road. There is an option in there. If they accept the proffers, if worded properly, that they will do the completion of it, then Area B does not need to come back.

Mr. Kamptner noted that pertains to Town Center Drive. The Meeting Street proffer recognizes that someone else might end up building it. The Board may need to adopt a resolution that deems that the Hollymead Town Center Area B proffer for Meeting Street has been satisfied. That was done with Rivanna Village in Glenmore recently with respect to the open space.

Mr. Zobrist asked what if they don't build it.

Ms. Echols replied that if they don't build it within one year, then they are in violation of their proffer and the County would take action against them.

Mr. Zobrist asked what action would be taken.

Mr. Kamptner replied that the strongest enforcement mechanism for proffers is that the County withhold all permits associated with the development. In this case they would also need to proceed against Area B, which also has the obligation to construct Meeting Street.

Mr. Zobrist noted that the County has plenty of teeth in how they operate to make it happen; Mr. Kamptner replied that staff thinks so.

Ms. Joseph asked that they go back to the question on phasing.

Mr. Cannon noted that it was a general question as to what is involved in establishing a substance of a phasing plan. What is the phasing; what are the elements of it and what would be involved in developing a phasing plan. Is that something they can conceivable do here.

Ms. Echols pointed out that the Board was concerned that not all of the commercial development take place without the residential development occurring. They recognized that the residential development was all in A-2. So they wanted to make sure that the residential development in A-2 occurred along with the commercial development in A-1. It has to do with timing of units and square footage between A-1 and A-2 and it will require that both sets of proffers contain similar language. The Commission recommended A-1 for approval, but the Board wanted to hear both of them together at the same time.

Mr. Cilimberg said that the Board was trying to accomplish in these two rezoning something similar to what they accomplished with the North Pointe rezoning in timing residential and commercial development. They did not specific any particulars in terms of how many units per how many square feet. Staff has made some suggestions back to the applicant on it. The applicant is not agreeable to in terms of what staff thought might be a relationship for phasing.

Mr. Cannon said that staff has begun the discussions, but they are not complete.

Mr. Cilimberg replied that was correct.

Ms. Echols note that information was just provided late last week in terms of what would be our starting point. Staff used mathematical equations like one-half the commercial and a third of the residential as a relationship. They were just numbers and really did not relate to anything that they have timing wise in their needs. But, staff provided it to the applicant as a starting point. The applicant needs to come back and work on what they want to proffer relative to timing, which is not what staff suggested. But, it will probably have a logical relationship to their timing of development. It is something that the Board will need. Staff does not have that information yet. To be fair she did not think the applicant came prepared to speak to that issue at tonight's meeting thinking it was a Board issue. But, it may well be the Commission's issue. So staff wanted to point that one out to the Commission that one is out there.

Mr. Edgerton asked if the recycling center credit had been increased to 3 acres from 30,000 square feet listed in the staff report. If so, do they have a new set of proffers?

Ms. Echols replied that there was not a new set of proffers. That is the distinction in tone between the staff report. Staff took the proffers literally. They did not have an opportunity to go over them with the applicant. They found out that the applicant did not write the proffers the way they meant them. So what they meant with regards to the recycling center was 35,000 square feet for the center itself and all the extra land that they need in order to operate the recycling center. The applicant thinks that it will take 3 acres. Therefore, the applicant is going to change the proffers to say up to 3 acres for that recycling center. But, staff does not have that.

Ms. Joseph opened the public hearing and invited the applicant to address the Commission.

J.P. Williamson, with Octagon Partners representing the applicant, HM Acquisition, LLC, said that he had several clarifications.

- As it relates to the road, the delimina was determining the right-of-way that was going to be built. The proffer roadway was one lane in each direction. The ultimate design is one lane in each direction with parking and 10' median. So the delimina was if they build one-half the road now and dedicate it and then come back later and build it. Once that was clarified and they were allowed to build the road to the specifications as one-half of a 4 lane road it was built and opened. He did not want to get caught in that as a historical issue related to us. When they say they will build a road, they will build a road. Certainly withholding permits while building a shopping center is a substantial stick.
- As it relates to the recycling center and other proffers, no one has presented them a site plan or what the recycling center is. It was a request made by staff to accommodate a working recycling center that needed 35,000 square feet of pad. He did not know what they mean in terms of access and site. So what they agreed was that whatever the actual provision of that was that they would get credit for the land. If the County never decides to do it then obviously it is not a proffered condition. He does mean what he said when he wrote the proffer. The issue becomes that they don't always have all of the information to try to put it in prospect.
- Instead of going through the details of the presentation, he thought that he could take a minute to discuss their approach as it relates to these first three items, which seem to be the points of discussion. The proffer one is basically a new point of discussion since the last work session. It is a policy that is being applied to their property. He understands why and the County's need to fund capital improvements. But, it has been something that has been new to this project since they arrived. As it relates to credits they submitted a list of things that they thought were appropriate to consider for off sets to the full cash proffer. There is not stated fully vetted policy on what is and what is not. Staff has come back with suggestions. They don't have arguments about the dollar amounts for the things considered, but there are some improvements that have been put in place since this is part of an on going master plan that is under construction. So what level of improvements should off set this new 14 million dollar charge to kind of the last person in? They understand that is something they have to work through however that is determined by the Board. They understand that they have to abide by that to move forward. He did not know the forum to have that discussion.
- As it relates to phasing, A-1 was a separate application and moved through at the request of staff. It does not have residential in it. He understands why it was not subject to phasing. At their meeting on A-1 with the Board they did consent to a work session in August primarily specifically related to how they were going to try to tie the phases together. For a point of reference in the A-2 plan there is no stand alone retail. Retail will not be built without residential because it is on the ground floor of the buildings. The only non-residential use in A-2 is a hotel, which staff has seemed to exempt from this phasing calculation and an office building, which is a use very different from retail. It does not generate nearly the trips, provides a tax revenue, etc. They feel comfortable that they will come up with a phasing program related to A-2 possibly incorporating some build out schedule to A-1 that the Board will accept. The problem with just dividing buildings in the phasing plan as staff supported as recommended was 139,000 square feet. He did not know if he had a building that works that way. So maybe it was 160,000 or 125,000 square feet. But, they will tie it specifically it into the plan. They are working on it and hope to address it at the Board level.
- As it relates to the ARB, their original communication regarding building height was that they reduce the building height on the eastern side of Meeting Street significantly at their request. They also agreed to address the landscaping and other things at site plan phase. Staff has since recommended that they put some language into the Code of Development that makes that part of the rezoning in addition to the site plan discussion. They are agreeable to doing that.
- They have really tried to make the best effort over the last two years to confirm to the original goal of this mixed use neighborhood model plan. As noted in the staff report, they area in full support of everything that they have done as it relates to the neighborhood model, but one caveat was they wanted them not to be able to opt out of affordable housing. They put that language in at the direction of other projects. They are perfectly fine with removing opt out language for affordable housing. With the new policy they will exceed the 20 percent of the affordable housing because of the mixture of products and the nature of the development. If this is the proper forum for the

proffer discussion he would be happy to have the dialogue. But, he did not know if this is the place that dialogue is exchanged. There is a work session already scheduled specifically for those items among any other consideration the Board has for August. He was hopeful the Commission could support the project with the caveats in the staff's recommendation.

There being no questions for the applicant, Ms. Joseph invited public comment.

Morgan Butler, attorney representing the Southern Environmental Law Center, said that this proposal for Area A-2 has seen improvement over the past six months thanks to the hard work that staff, the applicant and the Planning Commission have put into it. The layout seems more in line with the Neighborhood Model than many other proposals that have come before the County recently. They have raised the general concern about the construction of non-residential space in the entire Hollymead Town Center far outpacing the construction of residential units. They hope the Board of Supervisors will help correct this imbalance as they take up the last two Hollymead rezoning requests. With respect to this specific request for Area A-2 they would like to highlight a few additional issues tonight that warrant consideration.

- Transit - The staff report states that the applicant is not proffering any cash for transit service with this request. Most of the $500,000 cash proffer for transit is included in the Area A-1 shopping center proposal. They feel this proposal containing 12,000 residential units and more than 350,000 square feet of non-residential space warrants it own cash proffer for transit. Transit would be key in helping to alleviate future traffic problems along the 29 Corridor. They should expect to see a total transit commitment for the two remaining Hollymead proposals that is line with the transit commitment included in the Biscuit Run rezoning proposal.

- Erosion and sediment control – In light of the denuded condition of this site over the past several years they would expect this plan to propose measures that go above and beyond the minimum legal requirements. By comparison the Area A-1 proposal contains a proffer to provide erosion and sediment control measures that exceed State and local minimum standards and another proffer limits the amount of that site that may be graded at only one time. Similar commitments to control erosion seem no less appropriate with this rezoning.

- Green Building – Staff tonight mentioned that the applicant has included a proffer towards green building. He did not see that proffer in the set of proffers that was released. The applicant is seeking a credit to do a green building, but he would ask for some clarification as to whether a proffer has been included at this point and if so what it contains. He thanked the Commission for consideration of these comments.

Neil Williamson, of Free Enterprise Forum who has not position on this application, said that his concern is the policy with regard to proffers. When brought forward the proffer policy was to provide some level of servitude to applicants. They have shifted the negotiation. The negotiation is no longer about a number. It is about credits. It is what a credit is and what it is not a credit in a policy that is not a written policy at this point, but merely direction from the Board. He asked when they were considering proffers the implications of these credits and where such negotiations belong.

Ms. Joseph closed the public hearing to bring the matter before the Commission.

Mr. Morris invited Gary Fern, Director of the Service Authority to come forward and address the Commission's questions. He asked what is the situation currently and what should it be regarding the sewer serving the applicant' property.

Gary Fern, Director of the Service Authority, said that they have actually had two meetings with the applicant regarding the project. They have looked over what they call the Airport Collector and actually this area will be served by yet another sewer. They feel comfortable that they can come to an agreement with the applicant regarding what will be necessary to serve the application.

Ms. Joseph noted that there were some strong points in staff report that says they don't' have capacity, but he is saying that it can be worked out. She questioned what that means.

Mr. Fern replied that currently there is capacity in both sewers that they are going to be considering. As the project developed they have talked to the applicant and they are pledging that they will pay for 100 percent of the improvements necessary in order for the project to continue. It would be similar to what the applicant for Biscuit Run did.

Mr. Cannon asked if the undertaking would be codified in a proffer.

Mr. Fern replied no, that it would be an agreement with the Service Authority. The draft agreement is on his desk as they speak. The intent is that the agreement will be taken before the Service Authority Board at the August meeting.

Ms. Joseph hoped that it would be before the Board of Supervisors meeting.

Mr. Edgerton asked if the applicant has said that he will pay any price that is required. He asked if that is what the contract will say.

Mr. Fern replied that it would say 100 percent of the improvements. The numbers will not be developed. Similarly as done in Biscuit Run it is sometime in the future. At that point in time they will make that decision.

Ms. Joseph asked if they would be looking at cumulative effects that when other projects come in, and Mr. Fern replied yes that they do constantly.

Mr. Strucko said that it was a race to who gets built first and who consumes capacity first on whether it is this particular project or another project.

Mr. Fern noted that Service Authority is first come, first serve. As development occurs they need to put forth what they need in order to have sufficient capacity.

Mr. Strucko said that those that get their construction done first and stay within the existing capacity are not obligated to pay for improvements. It is that project that tips the balance from now taking them beyond the capacity of the infrastructure. He asked if they have to pay 100 percent of the improvement costs.

Mr. Fern replied yes, that is what they have pledged. From the Service Authority side their feeling is that if there is already a sewer that has capacity and that is being used then it is only those who need the capacity who should have to pay for this.

Mr. Strucko noted that not all developments currently under construction in this area have made such a pledge to the Service Authority meaning again who wins the race. If a developer that has made the pledge gets there first and utilizes existing capacity they are off the hook. The developer who has not made such a pledge is the one that tips the capacity then the Service Authority does not recover monies to make an improvement.

Mr. Fern said that there was only one clarification that he would like to make. When they charge connection fees they are getting monies to put towards future infrastructure. That is where the difference would be.

Ms. Joseph said that it was troubling to read the staff report and then come in and have staff say that everything is fine. On page 11, number 6 there is talk about the cash proffer not being acceptable. There is talk about a community park and that the proffer is not acceptable. She asked if that was something that staff has discussed.

Ms. Echols replied that was not brought up. This community park is a different one. There was an error in terms of what the applicant was intending in this. On the proffers they have a one acre park and then on page 11 there is credit for a one acre park in the proffers and a proffer for 10,000 square feet. On page 4 of the proffers there is a community park of one acre. That community park and the one in 6 the applicant told us are two different things. She apologized for not explaining that to the Commission. The

community park of one acre that the applicant wants credit for is the linear park. The linear park, which the applicant is proffering as an acre, is for a potential dedication. Staff has not asked the Parks Director if this is something that he would want to accept. But, this might not be desirable since Parks does not like to take in acreage in small increments.

Mr. Strucko asked if that feature was an aspect of Neighborhood Model design.

Ms. Echols replied that it is an aspect of Neighborhood Model design. It was something that was in the Comprehensive Plan amendment as an expectation as part of the form of the development. Part of the County's Cash Proffer policy is if there is something in the Comp Plan that they are doing then they should get credit for it. The other half of that is that this development is light on recreation. The applicant is proffering $500 per unit towards improvements at one of the other County parks. The applicant wanted to take credit for this particular park. But, it is likely not to be accepted or viewed as being acceptable as a pubic park by the County. As a result staff did give the applicant credit for that. There are two community parks. The second community park is 10,000 square feet. It is a possibility that it will have a relationship to a public building.

Mr. Strucko said that parks and open space are an aspect of the Neighborhood Model. The benefit to the developer is a rezoning with more density and a use that is not currently there. Therefore, he did not see that a proffer credit was an issue here.

Ms. Echols pointed out that credit was not given to the applicant for either of those. Staff gave the applicant the full credit for the 7.6 acres of other areas of park around the periphery and the green way that is shown on the Comp Plan that relates to Powell Creek.

Mr. Edgerton asked how long it would take to resolve the outstanding issues of proffers to have some commitment in writing. He sensed that the applicant would rather have that discussion with the Board. He felt that the Commission should make a recommendation along those lines. Mr. Butler made a very appropriate statement considering the history of some of the other development that has occurred on this same area that there should be some extra concern about how much grading would occur. The applicant mentioned something about the size of a building. But, how much grading would occur and be stabilized before another phase could go on. He felt that the Commission is being asked to rush through this because of a predetermined schedule having to do with the A-1 section. He did not think it was appropriate and did not think the community is being served by rushing it through and turning all of these decisions over to the Board without any recommendation from the Commission. He felt that were being pressured to move ahead because of A-1. Frankly, he did not think that was responsible planning.

Ms. Echols replied that it was not staff's intent to make the Commission feel pressured. They have had other projects that they have been able to work through these things on and they think that they could. But, if the Commission is not comfortable, then staff is not comfortable. Our standards is four weeks from the time staff receives something until they get it back to the Commission so that they have adequate time to review and write a report. Whatever time it would take for the applicant to redo his proffers and then get it back to staff four weeks before the public hearing of the Planning Commission meeting for the decision is what it would take.

Mr. Strucko said that this was the appropriate forum to consider proffers and credits in order for the Commission to forward a recommendation to the Board.

Mr. Craddock asked if they were bound by the clock on this request.

Mr. Cilimberg replied that the applicant would need to accept deferring or request a deferral. He clarified that the Board put this on a schedule based on an anticipated schedule for A2 to get to them. That is why they specified an August work session and a September public hearing for A1 in the deferral of that. The schedule that staff had for A2 was for that to get to the Board in September.

Mr. Zobrist noted that they have not idea what the final policy will be from the Board of Supervisors. Staff has done a brilliant jog of what staff thinks the Board will allow. The applicant has agreed to the full amount of proffers the county required. Therefore, he felt that they have an obligation to move the

request along. He agreed that the phasing proffer was important and that the proffers need to be in final form, but the applicant is in the process of developing the proffers. He suggested that they find a way to move this along. Staff has given them the methodology to do so if they chose to do so.

Mr. Morris suggested that they settle the phasing issue.

Mr. Edgerton questioned how the Commission could move along a project about one-half the size of Biscuit Run without any written proffers in front of them. He agreed that the Board would agree on the numbers. But, to push this ahead without having anything in front of them other than a verbal assurance he questioned how they could be comfortable doing that.

Mr. Zobrist noted that it just does not happen that way in reality. He felt that the Commission has a responsibility on both sides.

Ms. Joseph said that she would like to see what the proffers look like.

Mr. Edgerton noted that there was a lot of wiggle in what is being proposed. The numbers given tonight are different than what is in the staff report. If it was really just between the applicant and Board to make these decisions then he questioned why the Commission meets every Tuesday night. He felt that the Board was counting on the Commission to make some recommendations. The phasing is critical in order to try to minimize past mistakes that occurred from grading over a period of time so that the ground would have a chance to stabilize. Frankly, he was not comfortable in listening to the words and hoping that it would happen. They need to take about the amount of retail going in at any one time and the scheduling of residential versus commercial as well as other matters. He did not think it was appropriate to push this request through the process.

Mr. Cilimberg clarified for the record that Attachment C was proffers submitted by the applicant from which the staff report was written. Since the staff report was written certain items they raised as issues have been addressed verbally, but not in writing or in a resubmittal. The outstanding issues are not phasing in total because there is actually a phasing proffer. On the last page of the proffers there is a phasing proffer within A2. But, what is missing is any kind of relationship to A1, which the Board had indicated they wanted to have addressed. That would probably be the more important of the phasing aspects to get resolved.

Ms. Joseph noted that the phasing also had to do with what is being denuded at any given time, too. One of the problems with the sink hole is that there was a lot of water going through that pipe that was not anticipated.

Mr. Cilimberg said that is a tie that could be brought into the phasing aspect. That is something that was done in Biscuit Run. The cash proffers as listed in the proffers given were just not workable along with some other things that needed to be totally reworked. That is still to be addressed, but he was hearing the applicant say they were willing to provide for the cash. The two other things that he was hearing that the Commission wanted addressed is erosion and sediment control somewhat like A1 addressed that. He heard reference made to LEED. It is not proffered per say, but it is mentioned as a credit should they do it. That is one of the reason that the cash proffer language just does not work. It seems like there are at least those four things that are basically the outstanding issues to be addressed. But he wanted to say that there were proffers that they were working from to get to that point basically of knowing what they did or did not have. The question was asked about timing. This is on the clock so to speak. The applicant would have to agree to defer if that is what the Commission was looking for. It would be good to make sure in asking the applicant if they would be willing to do that to make sure the Commission specifies the things to be addressed.

Mr. Strucko asked where they were on the cash proffer picture. It is $10,500 per unit. That was based upon the unwritten policy or the approach that the Board is using now at $11,900 for each attached unit, $12,400 for multi-family and then credits for that number of units as well.

Ms. Echols noted that she did not tell the Commission why the proffer numbers had changed. The applicant originally said they would proffer 5 percent affordable housing and now are offering 20 percent.

The applicant is committing to building 20 percent affordable housing. There are other changes to the proffers that are needed. There are wording changes that need to take place. If the Commission wants to see the written proffers before taking action it would contain all of that wording. It is more than just the cash. It is other elements that need to be modified, but not substantially.

Ms. Joseph asked who was willing to move this forward without seeing the proffers and the phasing plan.

Mr. Craddock noted that Mr. Cilimberg had brought up 4 good points. He suggested that it might be appropriate for the applicant to respond. He invited Mr. Williamson to come forward and address the Commission.

Mr. Williamson said that his comment earlier about forum was exactly this. It might be helpful to go through each proffer as submitted and what the issue is.

- Affordable housing – They used broiler plate language from the rezoning prior that were provided. There was a cash number in there if they did not meet it they could buy out that number. The change to their affordable housing was the removal of that number. There is no way to communicate this back and forth to the Commission because they submit it and four weeks later they get it and are here within 24 hours. The best they can do is agree to what they consider as minor changes that were just communicated to them four days ago. To defer for another 8 weeks related to some of these issues that will go through is what they asking the Commission not to do. Their first proffer came in on this project in October, 2005.

- Road Improvements – It is the cross section between VDOT and the County that they want us to proffer. They have said yes to everyone that has been submitted. He asked if he needed to wait another 8 weeks for deferral to work that out. He has committed to whatever that cross section is.

- Public transit – The proffer is acceptable.

- Cash proffer – They are not arguing whether or not that this project, which is half built, should be subject to this cash proffer. They have accepted the number. All they are arguing now is what an acceptable credit against that cash was. Staff has responded. They may build an argument in the future that may there is a different one.

- The greenway proffer is acceptable.

- Community park - This is an additional park that they were proffering in addition to the lineal park and the pocket park, which are part of the maser plan and the Neighborhood Model.

- This is their attempt to do a good project. They have covered the recycling center. The recreational facilities are acceptable.

- Phasing Plan - The piece in front of them is A2. They have already approved A1. He understands that the Commission has recommended approval on A1. A2 he understands that they would like to have phasing. They have zero stand alone retail in A2. It is all phased. It is residential above it. He cannot build retail in A2 without getting a building permit for residential. They offer to phase. They would not build anything in A2 non-residential until they build 100 units. Then they would build residential prior to retail. That has already been proffered. The rest of them are here. They have committed to everything that has ever been asked for. Therefore, it is not fair to ask for another 8 week delay to sort through these issues that they have already agreed to. Obviously, those exact things he is saying here as part of the public record that they have agreed to in these proffers are part of what will be presented and worked out in a work session in August and a public hearing in September. Their efforts are documented in here. There are specific responses to each one of these. That is why they are hopeful that they would be in a situation to move this forward.

Mr. Cannon said that there is a phasing plan in Attachment C, which was for A2.

Mr. Williamson replied that was correct.

Mr. Cannon said that they have a declaration from the Board that it is interested in phasing between A1 and A2.

Mr. Cilimberg noted that his understanding from the meeting was that the Board wanted to look at the projects together because they wanted to relate A1 to A2 for phasing purposes.

Mr. Williamson noted that it was not a resolution by the Board.

Mr. Cannon said that there was no dialogue or any substance available that allows us to have that discussion here if that was an expectation.

Ms. Joseph asked the applicant if they would be interested in formally requesting a deferral.

Mr. Williamson said that based on the communications from staff about what they need to do he would not be asking for a deferral.

Ms. Joseph noted that the Commission has heard from the applicant verbally concerning the proffers.

Motion: Mr. Edgerton moved, Mr. Cannon seconded, for denial of ZMA-2007-001, Hollymead Town Center Area A2 based on the fact that they do not have the needed information before the Commission to make a reasoned decision.

Mr. Cannon noted that there could be a motion to approve this based on some analysis with respect to the proffers, in other words to approve it with cash proffers in the amount dictated by the Board's policy with credit for exactly those things that they have said would be appropriate to provide credit for and not for credit for other things that the applicant has requested. He would feel comfortable with that as far as the size of the proffers go. He still remains troubled by this concern about integration, which he did not think they have the ability to talk about. That issue is not far enough along and he did not understand it enough to know how to talk about it or how to decide it. The Board wants the Commission to decide it, but he may be mistaken because it is not entirely clear. That is the outstanding issue. He felt that the Commission could handle it by way of a motion that the erosion control and green building proffers by putting them in as conditions of approval. But, the issue that is not ready is this integration or the relation of A-1 and A-2, which he did not know how to handle that. Absent the ability to handle that he could not recommend approval.

Mr. Craddock said that since A-1 has already gone past the Commission and is at the Board what standing do they have to then tie A2 to it.

Mr. Kamptner replied that it would be a modification of the phasing proffer for A2, which would incorporate phasing the development of both phases, but it would only be contained in the A2 proffers.

Mr. Craddock noted that in the proffers for phase 2 the applicant agreed to build 600 dwelling units before construction the 200,000 square feet of commercial. If the phasing can't be tied into A1 he was not sure what they can do.

The motion failed by a vote of 5:2 for denial of the request. (Mr. Craddock, Mr. Zobrist, Mr. Strucko, Ms. Joseph, Mr. Morris voted nay.) (Mr. Cannon and Mr. Edgerton voted aye.)

Ms. Joseph asked for more discussion. The applicant has tried very hard throughout this entire process. She was concerned that three days ago is when he got information about the proffers themselves. The staff report being so different from tonight's report makes it very confusing to everybody. It is difficult when they hear somebody say that the first proffers were submitted in 2005. She did not know why there is such confusion. During the work sessions the applicant has offered to do just about everything that the Commission has asked. There has been a huge amount of cooperation. She was really sorry that it was at this point. She would like to see the phasing plan, some commitment to erosion and sediment control

plans that limit the amount of area that is denuded on this site. It is extremely important. The applicant needs to commit to those sorts of things to make this work for the community. It is a huge development. There needs to be phasing so as this stuff comes on line it does not overwhelm the community.

Mr. Cilimberg asked to speak to the proffer submittal information. There have been a series of proffers over the period of this project that have intended to respond to various work sessions the Commission has had and discussions between the applicant and staff. He felt that they have all been in very good faith. One of the problems staff runs into is when proffers are received four weeks or less before the meeting there is no way to go back to the applicant and stay on the meeting schedule of a public hearing and have a further discussion about what to do about the proffers. Staff has to report on what they got. That was the situation here. There really is not much staff can do other than the applicant sees the staff report and then they talk about it. If the public hearing had been in another three weeks staff could have met with the applicant, gone over the proffers and pointed out the things to be change and then the public hearing would have occurred later. So while there have been a series of proffers over time there have been revisions to proffers. Over the time the working relationship between staff and the applicant has been very good. But, staff still had to basically analysis and report on what they got to get this before the Commission tonight. He understands where the applicant is in saying really they only knew about this last week, but the fact was that staff only had so much time to review and get it prepared for the public hearing. That is one of the down falls of the turn around between submittals and public hearings that get scheduled.

Mr. Strucko agreed with staff's frustrations. What he was doing was weighing whether he has enough information and assurances from the applicant through the discussions to make an informed decision. What made him comfortable with previous vote was something that Mr. Cannon said in that it was potentially possible to craft a motion to meet his level of comfort in moving forward. That is what he would like to entertain.

Motion: Mr. Edgerton moved, Mr. Cannon seconded, for denial of ZMA-2007-001, Hollymead Town Center Area A2 based on the fact that they do not have the needed information before the Commission to make a reasoned decision.

The motion failed by a vote of 5:2. (Craddock, Zobrist, Strucko, Joseph, Morris voted nay.) (Mr. Cannon and Mr. Edgerton voted aye.)

Motion: Mr. Zobrist moved, Mr. Morris seconded, for approval of ZMA-2007-001, Hollymead Town Center Area A2 subject to the following:

1. Provide cash proffers in an acceptable form as outlined by staff. The cost of the impact is expected to be $11,853,200;
2. Provide credits of $1,575,000, bringing the total proffer for impacts to $10, 278,200;
3. Make all other proffer changes identified by staff as having been verbally agreed to by the applicant;
4. Provide phasing in the proffers, to be approved by staff;
5. Include all other proffers that exist in Exhibit F to the staff report;
6. Provide an erosion and sediment control proffer similar to, but not less than the one approved for Area A1 indicating the amount of area that can be disturbed at any given time;
7. Commit that all mixed use buildings will be LEED certified. The Commission does not support the LEED certification as a credit.
8. Make the following changes:
    - Take out the cash buyout in the affordable housing proffer;
    - Change the proffer for completing Meeting Street and Town Center so that they are not bonded for completion but will be completed within a year of approval of the rezoning;
    - Clarify the proffers regarding the community park;
    - Clarify the amount of land proffered for the recycling center;
    - Amend the Code to reflect changes identified by staff;
    - Change the application plan to show the required cross sections or design for Meeting Street south of Town Center Drive.

The motion passed by a vote of 4:3. (Mr. Craddock, Mr. Zobrist, Mr. Strucko and Mr. Morris voted aye.) (Mr. Cannon, Ms. Joseph and Mr. Edgerton voted nay.)

Ms. Joseph stated that ZMA-2007-001, Hollymead Town Center Area A2 will go before the Board of Supervisors on September 12, 2007 with a recommendation for approval. A work session will be held on August 8, 2007 by the Board of Supervisors.

Motion on Waiver Requests:

Motion: Mr. Zobrist moved, Mr. Morris seconded, to accept staff's recommendation for approval of the thirteen (13) waiver requests for ZMA-2007-001, Hollymead Town Center Area A2.

The motion passed by a vote of 4:3. (Mr. Craddock, Mr. Zobrist, Mr. Strucko and Mr. Morris voted aye.) (Mr. Cannon, Ms. Joseph and Mr. Edgerton voted nay.)

The Board took a ten minute break at 8:10 p.m.

The meeting reconvened at 8:22 p.m.

Public Hearing Items:

SP-2007-00012 John Murphy – Home Occupations Class B (Sign2 # 104 & 105)
PROPOSED: Administrative office / stream monitoring laboratory; not more than two employees/volunteers
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre)
SECTION: 10.2.2.31 Home Occupation Class B; 5.2 Home Occupation
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: No
LOCATION: 841 Turner Mountain Lane, off Tilman Road north of Route 250 West
TAX MAP/PARCEL: Tax Map 58, Parcel 55
MAGISTERIAL DISTRICT: Samuel Miller
(Amy Arnold)

Ms. Arnold presented a power point presentation and summarized the staff report

- John Murphy is requesting a special use permit for a home occupation; class B to operate the administrative office and stream management laboratory of Stream Watch with the help of one part time employee.
- Old Turner Mountain Lane is a private street which intersects with Route 676, which is Tilman Road approximately 340' from the Murphy residence. VDOT has determined that the total amount of sight distance required at the intersection of Old Turner Mountain Road and Tilman Road is 390' for the proposed intensity of the use. This intersection as it exists does not meet the sight distance requirement. Because of the nature of Old Turner Mountain Lane Mr. Murphy has no control over the property across which the sight distance would have to be established. VDOT has also indicated that they have no mechanism to require Mr. Murphy to improve the intersection, but have noted their concerns about its inadequate sight distance and resulting safety concerns.
- Because of the circumstances of the ownership along Old Turner Mountain Lane staff recommends the suggested improvements to the intersection of Turner Mountain Lane and Tilman Road not be incorporated into the conditions of this special use permit.
- Because the proposed home occupation will not be visible from neighboring residences; it will not impact the character of the surrounding district; it may minimize commuter traffic and provides a community service directly addressing the quality of surface water and groundwater resources staff recommends approval of SP-2007-12 with the conditions included in the staff report. The conditions are very minor and reference the concept plan, which is essentially a plat of the Murphy property and sets limited hours for which employees can be present on site.

Ms. Joseph asked if there were any questions for the applicant.

Mr. Morris asked why there was a difference in the hours of operation, 8:30 a.m. to 6:00 p.m. and the hours for employees from 9:00 a.m. to 5:00 p.m.

Ms. Arnold suggested that the applicant answer that question.

Ms. Joseph opened the public hearing and invited the applicant to address the Commission.

John Murphy, applicant, pointed out that he requested the hours of operation to be 8:30 a.m. to 6:00 p.m. Therefore, he assumed that it was staff's recommendation to operate it on more constrained hours. He did not ask staff about it.

Mr. Morris asked if it just limited the hours for when his assistant would be there that was different from the hours of operation.

Mr. Murphy noted that he did not bring that issue up with Ms. Arnold and assumed that there was some rationale for restraining the hours. But, it is acceptable.

Mr. Zobrist asked who was financing his project.

Mr. Murphy replied that there were a number of sponsors including Albemarle County.

There being no further questions, Ms. Joseph invited public comment. There being none, the public hearing was closed and the matter before the Planning Commission.

Mr. Zobrist said that it was important to point out that they were waiving the sight distance requirement here because the applicant is not asking to subdivide his property. There is going to be one car a day coming in and out for his employee. They certainly do not want this to set a precedent because sight distance is very important for those who want to subdivide rural property.

Ms. Arnold noted that the sight distance problem was not at the entrance to the Murphy property, but at the intersection of Tilman and Old Turner Mountain Road.

Mr. Cilimberg noted that the property incorporating the home occupation if it were to be subdivided could not be held to the condition of the improvement of the Tilman and Old Turner Mountain Road intersection because that is not actually on site. In a subdivision case that would be going down a public road to another location and can't be required as part of a subdivision. There is not an acceptance occurring in this situation. Any rural subdivision's requirements for sight distance are going to be at their access to a public road. This is a separated public road intersection off site from the Murphy's entrance.

Mr. Zobrist asked that they make it clear that this is a different case than in a subdivision.

Mr. Strucko asked how many residents currently use this road.

Mr. Murphy replied that there are 4 households that use this road.

Ms. Joseph pointed out that there was only one person coming to the site and they will be cautious. The applicant is not asking the public to come to the site.

Motion: Mr. Cannon moved, Mr. Strucko seconded, for approval of SP-2007-0012, John Murphy – Home Occupation Class B, with the conditions set forth in the staff report, as follows:

1. Special Use Permit 2007-12 shall be developed in general accord with the concept application plan, a survey plat by Thomas D. Blue, dated 12/19/94 and received February 26, 2007 (Attachment A.) However, the Zoning Administrator may approve revisions to the concept application plan to allow compliance with the Zoning Ordinance.

2. The presence on the site of employees shall be limited to 9:00 am until 5:00 pm Monday through Friday.

The motion passed by a vote of 7:0.

Ms. Joseph stated that SP-2007-0012, John Murphy – Home Occupation Class B was approved and will go before the Board of Supervisors on September 5, 2007with a recommendation for approval.

ZMA-2006-00009 5th Street Avon Center (Signs # 48 & 67 & 68)
PROPOSAL: Rezone 86.895 acres from LI - Light Industrial zoning district which allows industrial, office, and limited commercial uses (no residential use) with proffers and RA - Rural Areas zoning district which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre) to PD-SC - Planned Development Shopping Center zoning district which allows shopping centers, retail sales and service uses; and residential by special use permit (15 units/acre) Approx. 468,623 sq. ft. of commercial uses.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Community Service/Mixed Use-community-scale retail wholesale, business and medical offices, mixed use core communities and/or employment services, and residential (6.01-34 units/acre) Neighborhoods 4 & 5
ENTRANCE CORRIDOR: Yes
LOCATION: Northeast intersection of Interstate 64 and Fifth Street Extended (Rt 631), bounded on the east by Avon Street Extended. Access is Bent Creek Road.
TAX MAP/PARCEL: 76/M1-2A, 76/M1-2B, 76/M1-4A, 77/11E
MAGISTERIAL DISTRICT: Scottsville
(Claudette Grant)

AND

SP-2007-00004 5th Street Avon Center – Parking Structure (Signs # 78 & 81 & 91)
PROPOSED: Parking Structure
ZONING CATEGORY/GENERAL USAGE: LI - Light Industrial - industrial, office, and limited commercial uses (no residential use)
SECTION: 5.1.41 Parking Lots and Parking Structures
COMPREHENSIVE PLAN LAND USE/DENSITY: Community Service/Mixed Use-community-scale retail wholesale, business and medical offices, mixed use core communities and/or employment services, and residential (6.01-34 units/acre) Neighborhoods 4 & 5
ENTRANCE CORRIDOR: Yes
LOCATION: Northeast intersection of Interstate 64 and Fifth Street Extended (Rt 631), bounded on the east by Avon Street Extended. Access is Bent Creek Road.
TAX MAP/PARCEL: 76/M1-2A, 76/M1-2B, 76/M1-4A
MAGISTERIAL DISTRICT: Scottsville
(Claudette Grant)
Ms. Grant gave a power point presentation and summarized the staff report.

- The applicant proposed to rezone 86.9 acres from Light Industrial zoning to Planned Development-Shopping Center. The purpose of hearing is for Commission to act on the applicant's request for the rezoning to accomplish the goals of the Comprehensive Plan Amendment for a retail development with future development pads and a special use permit for a parking structure in the development areas.
- The Comprehensive Plan Amendment was approved in September, 2004 changing the land use designation from Industrial Service to Community Service – Mixed Use. As mentioned in the staff report this rezoning came to the Commission last October as a public hearing item, which was deferred and presented for a work session in December. A follow up work session occurred in March.
- The applicant proposes 476,355 square feet of commercial uses in 2 pad sites for future development. An area for passive open space, a trail head park and a trail are also located on a portion of the site. The proposed access would include the Bent Creek Road access as well as access from Avon Street Extended. The proposed project includes an 84,500 square foot grocery store, a home improvement store with 150,000 square feet, a major retail store with 150,000 square feet, 19,000 square feet of small retail and an 11,000 square foot restaurant. A 48,134 square foot parking structure with 65' in height is also proposed to be located between the

home improvement store and the major retail store. A special use permit for the parking structure is also being requested.

- There remain outstanding technical and substantive issues. An update on these outstanding issues will follow as staff anticipates changes with some of them as a result of a recent meeting with the applicant.
    - Proffer 2 – Staff was told recently that this proffer cannot be done. As it is worded this proffer goes against the Zoning Ordinance.
- Staff has found the following substantive matters for this rezoning that are still outstanding:

    1. This request is located within the I-64 and Avon Street Entrance Corridors. Several of the ARB comments remain unaddressed. As previously described in this report, some of the ARB's concerns may be able to be addressed during the site plan process and these would require technical fixes, but staff has also recommended ARB issues/concerns in this report that need to be addressed with the rezoning and are substantive matters. (**This item remains outstanding.)**

    2. Similar to number 1 above, the Comprehensive Plan Amendment features regarding architecture, urban design, and landscape treatment still need to be addressed. **(From discussion with the applicant staff feels the applicant is willing to make some changes to that concern.)**

    3. A completed work plan approved by DEQ regarding environmental concerns relating to the old landfill remains outstanding. A proffer has been provided that will ensure that the work plan is completed and approved by DEQ prior to approval of the first final site plan. **(The Commission has received a letter from one of the attorneys working on the project that gives the status. It shows that the work plan is in process and they are working with DEQ. They hope to get that to DEQ in several weeks for their approval.)**

    4. Cultural resources remain to be addressed. **(That issue, while it is outstanding, the applicant has indicated an interest in making some changes to that proffer that would most likely satisfy staff.)**

    5. In order to avoid the old landfill, the Greenway trail crosses a stream in a manner that is unknown and goes off site on property not owned by the applicant. Completion of the work plan approved by DEQ is needed in order to provide feasible guidance regarding the location of the trail. **(The applicant has indicated a possible change to the trail location, which they will show in the slide show presentation.)**

    6. Language for the Road Improvements Proffer needs to be revised so that such improvements are satisfied by construction. **(That issue remains the same, although the applicant may be interested in making some changes there.)**

    7. Pedestrian access from Avon Street needs to be addressed. **(The applicant has indicated an interest and will also show a possible location for pedestrian access to Avon Street.)**

    8. The potential for a proposed pedestrian interconnection to the adjacent Willoughby development needs to be provided. **(That is an issue that remains outstanding and will warrant further discussion.)**

a. The following lists technical issues, some of which regard the proffers, are still outstanding:

    1. Critical Slopes Waiver request. With additional revised proffer language staff feels that this issue can be recommended for approval. **(Basically what the engineer is saying is that with some additional language to the proffers that he believes that the critical slopes waiver could be resolved now rather than later. A critical slopes waiver has not been requested at this time. It is completely up to the Commission whether to do that now or later or ask for the proffer language.)**

    2. Location of all stream crossings needs to be identified on plan, including the crossing for the greenway trail. **(As mentioned the greenway crossing will probably no longer be an issue with a possible relocation. That leaves 2 stream crossings with one**

that has been shown and one that the applicant will show on the slides presented this evening.)

3. Language regarding tree conservation areas and the forest stewardship plan need to be provided. **(That issue remains outstanding.)**
4. Additional details regarding the passive open space/trailhead park area are needed, such as size, and types of amenities being proposed. **(The applicant has indicated that they would be interested in adding or enhancing a proffer that would give a little more detail to this issue.)**

- In order to get an idea of the areas that are on the site that are around the landfill, staff presented several slides. The slides include some of the area that shows some of the erosion and the leakage around the old landfill. Taylor Ambler is available to discuss this further.

- **Factors Favorable:**
  1. The road connection from 5th Street via Bent Creek Road to Avon Street Extended creates an additional east/west connection in this portion of the County and City.
  2. This development will add additional commercial/retail uses to a portion of the County (Southern Urban area) where there are currently not many of these uses for the residents.

- **Factors Unfavorable:**

  Staff has found the following substantive matters, as well as all of the items previously mentioned, unfavorable:
  1. This request is located within the I-64 and Avon Street entrance corridors. Several of the ARB comments remain unaddressed.
  2. The Comprehensive Plan Amendment features regarding architecture, urban design, and landscape treatment still need to be addressed.
  3. A completed work plan approved by DEQ regarding environmental concerns relating to the old landfill remains outstanding. A proffer has been provided that will ensure that the work plan is completed and approved by DEQ prior to approval of the first final site plan.
  4. Cultural resources remain to be addressed.
  5. In order to avoid the old landfill, the Greenway trail crosses a stream in a manner that is unknown and goes off site on property not owned by the applicant.
  6. Language for Road Improvements Proffer needs to be revised so that such improvements are satisfied by construction.
  7. Pedestrian access from Avon Street needs to be addressed.
  8. The potential for a proposed pedestrian interconnection to the adjacent Willoughby development needs to be provided.

- **Recommendation**: Without resolution of the aforementioned outstanding issues, staff cannot recommend approval. Should the PC wish to recommend approval of this proposal to the Board inclusive of proffers and the application plan, staff recommends that this recommendation be based on resolution of the outstanding issues before the Board acts on this rezoning.

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

Mr. Edgerton said that he was surprised that staff did not note the commitment to LEED Standard Core Shell as a favorable factor of the project.

Ms. Grant agreed that it was a good point.

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

Frank Cox, representative for New Era Properties and Avon Holdings, said that they received the staff report Thursday evening and have been working on it diligently since. There are a few things that he feels are either inaccuracies or misrepresentations provided in the staff report. Steve Blaine is present tonight since there were many comments that were raised that relate to proffer adequacy or inadequacy. Mr. Blaine should certainly bare on those issues. In a power point presentation he noted the following:

- One of staff's comments was that the stream crossings were not delineated. The slide showed the stream crossings existing and proposed. To the east is the new parkway crossing for the major collector road that will link 5th Street and Avon Street. On the western side of the site is the existing Bent Creek Bridge, which will be upgraded and the second crossing. Tied in with that is a parallel pedestrian bridge crossing.

- The greenway and trail system has drawn some comments. There are some substantial proffers related to that. The proffers include specific language regarding landscape replacement and the types of improvements that are going to be incurred in the greenway park area, which is roughly 14 to 15 acres primarily oriented towards the pedestrian way system. They are also looking for the possibility in the area that is designated as the trailhead park and activity area as such uses that are permissible by right such as a farmer's market and things of that sort that could on occasion be used in a festival sort of atmosphere. Those are uses that the County has more than adequate control of. But, the primary purpose of the greenway park is to provide a passive area that is complimentary to a greenways trail system.

- A concern about the trail system was mentioned in the staff report, which he thought that they had adequately addressed in June. After the DEQ meeting there was a concern related to the portion of the property known as the landfill property. At that location after both staff and the applicant spent extensive time in a meeting with DEQ it was obvious that DEQ would prefer to see the stream valley trail on the opposite side of the creek. In keeping with what they understand as the Comprehensive Plan's objectives to have a trail system that runs along the stream they have shown a possible rerouting of that on the eastern side of the property to the north side of the creek on the Willoughby tract as an option to that.
- An option that they should have brought forward sooner is a pedestrian connection that they now show on the plan up to Avon Street. They noticed this and overlooked it from the first staff report, but now they were depicting a trail system that would be complimentary with the right-of-way in a private dedicated easement that would provide the staff requested connection to Avon.
- A concern in one of the inquiries was the level of specificity that they were intending to give to the greenway park system. The Type A Trail is kind of an off the shelf documented piece of geometry that most everyone embraces these days. They intend to meet or exceed the Type A Trail. The trail would be made to accommodate bicycle movement.
- Another concern is the entrance feature. There was an existing rock outcropping that was brought to their attention as part of the Comprehensive Plan Amendment. They have spoken of it on a regular basis. It is their expressed desire to preserve that in its existing form and also to incorporate it into the entry or gateway feature for the parkway.
- Regarding the transit plan, they have met with Bill Waterson and Eric Smith of CTS to talk about the potential for internal routing and internal stops within the project. In the conversation the CTS folks were enthused to have a connection between Avon Street and Fifth Street. They reviewed the riding and circulation plan, which certainly acknowledged that there would be a substantial increase in ridership and economic return as a result of being able to make this interconnectivity. Park and ride was a concern. They have a proffer related to that. The park and ride spaces will be tied into the location of the on site transit stop that will actually be interior to the proposed center.
- In February they went through the ARB process. There was a 4:1 recommendation in an advisory review. The ARB had 7 key points. In the most recent staff report there were 8 points related to urban design features. All of the ARB requirements as far as their Design Guidelines are concerned, in fact, would cause them come back to the ARB with designs for the fronts as well as the backs and sides of the buildings that would be potentially visible from I-64 for

whatever reason they would not be able to grow vegetation between their property and I-64. They have already worked through a series of sections from the critical view points where a vehicular moving down the road at the design speed of the road would be looking into the center.

- The buffer encroachment, the 100-year floodplain update as well as the slopes and the stream crossings are all integrally tied to final engineering. It will be more appropriate to seek those permits at a time when they have the engineering particulars and the geometry related to the final design.

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

Steve Blaine, attorney, asked to preclude their presentation and allow the rest of the public to speak. He would like an opportunity during the dialogue to address the specifics about the proffers. They did have a meeting with staff today and talked about not just an interest in changing proffers. They actually had some concrete suggestions. The lists of outstanding issues are of the type that if the Commission is willing to hear our concrete proposals he believed that would be more productive.

Ms. Joseph invited public comment.

Mr. Morris said that they would hear from the public first. He invited hear form public fir

Morgan Butler, attorney representing the Southern Environmental Law Center, said that tonight's rezoning request is a significant one. This project will serve as a precedent setting the standard for future commercial projects that will no doubt be proposed in this area of the County as it continues to grow in the coming years and decades. Rather that mimic the pattern of shopping centers on Route 29 North this project should chart a different course for this part of the County by incorporating a more innovative design in making stronger commitments to reduce its environmental footprint. While the applicant deserves credit for proposing features like the parking structure and the LEED certification this project still needs more work. For example, much could be done to create more of a "compact density high density area" that the Comprehensive Plan calls for at this site. Currently the plan shows 3 massive retail stores facing each other across the vast parking lot. Two of the stores are big boxes that scrape the ceiling of what the Comprehensive Plan allows on the site both in terms of the size for individual big box stores as well as for aggregate big box square footage. The layout could be made more compact if the giant big boxes were proposed as multi story or by reducing the overall size of the largest stores. Further the capacity of the parking structure should be increased to help reduce the size of the huge parking lot. More could be done to relegate the parking by rearranging the buildings on the site and orienting them towards the internal road rather than the parking lot. In addition to improving the layout they should expect a strong commitment to control erosion and manage storm water. A number of recent rezoning proposals in the County have proffered to go beyond the minimum of what the County Ordinance requires for storm water and erosion control. A similar commitment seems especially appropriate in the context of a major new big box shopping center. Regarding transit, while the plan shows a bus stop on the site there includes a proffer towards a lot in the parking lot. A cash proffer could be used towards transit. Other appropriate proffers he has seen in other recent rezoning proposals should be used here. In closing, this project still needs improvement. The idea that some retail may be appropriate in this area in the County should not cause them to recommend a flawed project that would bring giant parking lots and spawning shopping center to a new area of the County. He encouraged them to help set a better example by seeking improvements to this project.

There being no further public comment, Ms. Joseph closed the public hearing to bring the matter before the Commission. She invited Mr. Blaine to address the Commission.

Steve Blaine, attorney for the applicant, addressed the issues identified in the staff report.

- Regarding the question about the ARB oversight for this project and the Comprehensive Plan reference to guidelines for various architectural treatments it was the first that they were aware it was an outstanding issue until Thursday. They could address that in a number of different ways. The project will be subject to ARB review as part of an Entrance Corridor. That purview or jurisdiction they could expand voluntarily in a proffer that would give the ARB oversight of the entire first phase of the shopping center. The other thing they could do if that mechanism proves problematic is to craft guidelines. He recommended that the guidelines would be from the ARB

guidelines since they are going to be subject to ARB guidelines for that which can seen from the Entrance Corridor. He would feel comfortable recommending to his client adopting those guidelines throughout the project. Otherwise, they may find themselves with two conflicting sets of guidelines. It is really an item they can discuss. It is something that really should be their preference. It would be a concrete way to address it.

- He was very surprised that they met as recently as midday and was first to learn tonight that proffer 2, which is their entire road proffer, is not appropriate. He felt that must be an overstatement. As being confronted in other projects, the deliverable for the road proffer should it be sufficient for bonding to satisfy the proffer was something they were not seeking. What they can do with the County Attorney and the Engineering Department is to craft a proffer that requires substantial completion of all the road improvements that are warranted upon the completion of the shopping center or the improvements under the site plan. It is in the interest of the client to have the Bent Creek Parkway to have that completed when the shopping center is opened for business. They have the same interests as the County. What they need to do to protect their client is build in what is commonly known as what are those things which they cannot control and why they cannot agree to a proffer that requires acceptance of the road by VDOT as a condition for opening the center. There are about 6 different ways they can write it, but conceptually they are not trying to merely satisfy the road proffers by posting a bond. They understand that is problematic from an enforcement standpoint, but it can be addressed. He questioned what other that the road proffers have because he was not aware of any other than the deliverable as he described.
- In terms of the trail link, Mr. Cox pointed out the alternative. They can craft a proffer that will characterize the nature of that trail link and refer to it as being coterminous or running with the Bent Creek Parkway.
- In terms of transit they do provide for a park and ride and a transit stop. In terms of additional contributions it is important to point out that the bus routes do approach at the front of this property on Fifth Street. They would maintain that their 10 million dollar cost of the Bent Creek Parkway is a considerable contribution to improving transit by providing that route, which the CTS folks are enthusiastic.
- They have a proffer on tree preservation enforcement management plan. He was not aware of any other projects where in land disturbance the applicant has agreed to replace 2 trees for 1 tree that has been displaced. If they can point to any examples because they would like to have more specificity about the materials or the replacement plants they are open to that. They would be willing to craft that tonight. He pointed to the existing ARB guidelines on the size of trees for planting and landscaping. It is a minimum of 2.5" in diameter.
- They heard about the work plan. They got a status report from Channy Martin. The work plan will have to be completed to the satisfaction of DEQ. DEQ has jurisdiction over landfills such as this. They are the agency that will dictate the treatment of that area. This has implications for the road as well as the future development area. In terms of the future development areas, which are shown as pad sites, they are open if there is a desire for more specificity about the uses there or precluding certain uses they can proffer uses out. They need to get some direction from the Commission tonight.

Ms. Joseph asked Mr. Kamptner about the ARB review. She asked if the ARB could look at something that was outside of what they normally look at.

Mr. Kamptner replied that they have always been reluctant to expand the ARB's jurisdiction through a proffer. But, there are other ways they can address the concern. Mr. Blaine mentioned one way - that the ARB design guidelines could be incorporated. Part of that proffer could be that the County's Design Planner could review the portion that is beyond the ARB jurisdiction to determine that it is consistent with those guidelines and what the ARB has approved. So the could approach it that way.
Mr. Blaine noted that they would be comfortable with the latter as proposed.

Mr. Cannon asked if that is to address #2 and #1 among the factors outstanding the Comprehensive Plan Amendments regarding architecture, urban design and landscape treatment.

Mr. Blaine replied yes.

Mr. Cannon said that if the design guidelines were applied outside of the areas of the ARB's jurisdiction would allow the County to make determinations or come to conclusions that might require design changes or different landscape treatment.

Mr. Blaine replied that is correct. There was particular interest about the scale and massing in design because it was recognized in approving these size of uses for this particular location that treatment was important. That is why it is in the Comp Plan. But, if they have a guide post with existing guidelines that the ARB Planner could interpret based on the Comp Plan they would be comfortable with that. He felt that was the board's directive.

Ms. Joseph noted that the ARB was very specific in the list of items that they would like to see. One item has to do with buffering and screening in areas impacted by critical sight lines.

Mr. Blaine said that is correct. The presentations of the cross sections are going to be critical to achieving that approval.

Ms. Joseph said that one of the cross sections he did not show sliced through I-64 and went right up to the building where there is about 20' from the property line to where the pavement starts and then probably a 35' retaining wall. So they do have vegetation between the pavement on I-64 and the property line, but it is all in the VDOT right-of-way. In that area they discuss that it will be an enhancement area. She asked if he had anything in writing from VDOT that says they can come back and replant in this area.

Mr. Blaine replied no, that they don't have anything currently. It is something that VDOT would have to see some fairly specific proposals. They have some precedent on this throughout the County. The Route 29 tree planting in the median was a similar arrangement. They would pledge to reach that agreement. It is important to point out in that area that they may not be able to make the buildings invisible, which is why the ARB is very concerned about the treatment of the backs of buildings. One of the things they are prepared to commit to is architectural treatments that make the functional rear of the building as attractive to the Entrance Corridor as though it was the front of the building. They are prepared to do that. They would attack the guidelines in terms of architectural treatment as well as existing landscaping and do whatever they can with VDOT.

Mr. Strucko noted that the road connection to Fifth Street proffer statement says this road will be a 2 lane with a right-of-way sufficient for future expansion of 4 lanes and the parkway may be a rural section in design without curb or gutter. He asked if staff has any concerns about that.

Ms. Grant said that staff has had some concerns about it, but the Comprehensive Plan Amendment is fairly specific in saying that a rural section with no curbs and gutter is okay. Therefore, staff had to go with that.

Mr. Strucko asked if this was a parking lot road or a road for through traffic from Fifth Street to Avon Street.

Ms. Joseph noted that the speed limit is in the Comp Plan. It is 35 miles per hour.

Mr. Blaine noted that VDOT would say that they would determine the design speed on the road plans. But, the character of it was designed in the Comp Plan to minimize the disturbance. It recognized that it really has to be located approximate to the stream buffer area to reduce the impervious surfaces that they have with the curb and gutter to give it more of a natural treatment. That was the basis for the Comp Plan depiction.

Ms. Joseph questioned if they refer to industrial uses what could they use that for. Does it have to be designated now or have to be referenced back to the Comp Plan?

Mr. Kamptner replied that he would review it.

Mr. Morris noted that there were some beautiful trees on the property. From the plan it looks like there is not much possibility for saving some of those beautiful trees.

Mr. Blaine replied that they have a limited footprint with which to address the development. But, that was the thinking of the design between having a conservation area designated and to recognize that they would replace trees on a 2 to 1 basis in those conservation areas. He has seen the huge Poplars. Through landscape enhancement they would do and they anticipate as part of the ARB guidelines they would do significant parking lot treatment such as trees in the parking lots. They are going to look for as many environment benefits in addressing the site. They had agreed that it shall be certified by LEED. There are some trade offs.

Mr. Edgerton noted that seems to be a significant difference in what staff said in the staff report and what the applicant has presented. There was concern about some of the areas that have been identified as conservation areas and whether in fact it would be possible for them to actually be conservation areas because of some of the grading that would have to occur that would be adjacent to it. He was speaking specifically to some of the vegetative areas to the
south of stream wrapping between Bent Creek Parkway and the stream. There was concern whether any of that could be treated as a true conservation area because of some of the grading that would have to occur. Staff represented that the conservation areas have disappeared on the plan since that time. He asked if that was accurate.

Mr. Blaine said that they have defined terms in the ordinance. They have preservation areas, which the ordinance says must not be disturbed except for trail systems. They have used that in the gold standard in Biscuit Run. Then conservation areas recognize that there may be disturbances whether by utilities, etc. Preservation areas, if they exist, will be fairly nominal because of the narrow footprint with which they have to deal they can't commit to absolutely no disturbance. They will commit to if there is a disturbance to replacing it consistent with the definition of conservation area.

Mr. Cox pointed out that the grading plan shows based on the preliminary studies required by ordinance the general extent of grading in and around the areas that bleed into the conservation area. The intent given their analysis of the character and age of some of the trees that there are many that shall be and will be conserved. There is a lot of aging and half dead vegetation. Their intent with stream valley corridor trail system is to weave that trail system through there in such a way that the major vegetation remains. They have expressed a willingness with the staff to work in determining a good and bad tree. They were reluctant to use the word preservation because it put a little too much onus on us making a commitment at the zoning when they did not know precisely the final grades on the parkway. The parkway road is in generally consistent with the same section as the Meadow Creek Parkway.

Mr. Edgerton said that the Comprehensive Map Amendment actually specifies that it should be located pretty much in the areas as shown. He agreed with Mr. Morgan's commit that he would like to see a more compact development and 2 story buildings, but he was feeling that was not going to happen any time soon. On the first proffer on the application plan says development shall be in general accord with the application plan entitled Fifth Street Conceptual Master Plan sheet 6 or 14, which is basically what is shown on the screen. There are lots of other beautiful drawings. He asked if the rezoning was tied to any of the other drawings.

Mr. Blaine said what constitutes the application plan is however many sheets are in the application plan.

Mr. Edgerton asked if the applicant would be prepared to linking any rezoning to what has been presented.

Mr. Blaine replied absolutely. It would include all of the sheets that they have shown the Commission tonight. That is pretty standard language in the proffers.

Mr. Cannon said that the application plan then becomes defined if they take action.

Mr. Blaine agreed.

Mr. Edgerton asked that the Commission link any action to what they have seen tonight. He liked the newer ones shown by Mr. Cox, which answered a lot of concerns expressed by staff.

Ms. Joseph suggested that the 2" replacement tree in the conservation might be a little big. It might go 1 ½" to 1 3/4". If they are looking at species it should be something that is indigenous.

Mr. Edgerton noted that most big box businesses will not consider 2 story buildings except in urban areas where land is more precious.

Mr. Blaine said that if they recognize trees as a renewable resource they could pledge to harvest those if they are merchandisable commercial timber so that it is at least not waste. He did not know if they would receive any credit for that for LEED, but they could make that commitment. Chris Pine from the Bond Company has been helping them with some of the retail on this. He has quite a bit of experience with Whole Foods and other companies on the LEED Certification. They think some credit could be given for that.

Mr. Morris said that previously some concern was expressed about the situation that exists in the former landfill as far as getting a road across it. He asked if there was any new information on that.

Mr. Blaine replied that they have the status of the work plan. From day one it was no surprise that there is an existing landfill there. But, from day one they knew that the agency that oversights landfills in this situation is DEQ and that there would be a permitting and review process. They have begun that process. The process is progressing. They have not received any indication from DEQ that type of use, like a brown field use, should be prohibited. It will be expensive and will have to be addressed in a special way, but they are not concerned whether it can be done.

Ms. Joseph asked about the cultural resource and what they have agreed to do.

Mr. Blaine replied that in an effort to define the scope he was not clear. The simple remedy to that, which is what they did in the Biscuit Run, is to attach a map to the proffer that describes it. They don't want the archeologist to go into the landfill area. They want to be clear that when they proffer to do a Phase 1 they are doing the area that at least engages the former Willoughby Mansion property. That is a simple easy way to do it. There is not a lot of mystery to it.

Ms. Joseph said that it continues as a Phase 1 with a map attached. So Phase 1 will happen before the grading happens.

Mr. Blaine replied yes.

Ms. Joseph asked if any one have any problems about the mass grading of this site. She asked if they have thought about how this will be phased.

Mr. Blaine said that a preliminary grading plan was in the packet. They are building the center at one time and the appropriate grading will be done at one time.

Ms. Joseph said that phase 1 is everything.

Mr. Blaine agreed. It will be to build a grocery store, home improvement store and a retail store at one time.

Ms. Joseph asked Mr. Brooks to come forward and address the E and S plans. She asked whether there are some other proffers approved in the past that are a little more restrictive than the State guideline that they could impose upon this or they could offer to impose upon themselves.

Glenn Brooks, County Engineer, replied that there are a few examples. There is one example with North Pointe. There is one currently under review with Biscuit Run that is simpler than the one for North Pointe, but along the same lines. They are talking about one for Hollymead Town Center that was proposed with A1 for A2. Only the one for North Pointe has been approved. It had 2 components. One to have erosion control above and beyond what the ordinance requires. It also had a component for overlot grading plans, which would not apply in this case. He has not seen the proffer for A1 of Hollymead Town Center.

Jack Kelsey worked on that one. The one for Biscuit Run is simpler. It just says that their goal would be 80 percent removal rates for the site. That was both for permanent storm water management and for temporary erosion control.

Ms. Joseph asked is something like this would be appropriate in its proximity of Moore's Creek.

Mr. Brooks replied certainly especially if they are going to open the entire site at once. One of the things they have learned with Pantops, Hollymead Town Center and large sites like this is that there are 2 things that can make a big difference on a site. One is how much area that is opened or denuded at once. The other is how long it sits there. If a project goes very quickly, like the University's North Fork Research park, then the exposure to a major rain fall event was not as great. Hollymead Town Center is going on years. These are 3 that could be used to craft a new proffer. The things that would have the greatest impact are both the area that is disturbed at one time and the amount of time it is left disturbed.

Mr. Cilimberg reiterated that the Biscuit Run proffers in part were designed to address that.

Mr. Brooks agreed. He noted that he would have to review it to see which of those models would work for this site.

Mr. Zobrist asked what they can ask the applicant to do to minimize the E & S impact other than what the basic guidelines would be on a smaller property. He asked if Mr. Blaine had any suggestions.

Mr. Blaine said that he was quite familiar with the Biscuit Run proffers and this client could be comfortable adopting the erosion and sediment control proffer and storm water management that sets a higher standard than what is currently under the ordinance. He pointed out that Biscuit Run is unique because that is a 20 to 25 year project. This project to be viable has to be completed immediately. This project is not going to be graded 3 to 5 years in advance of the zoning, which is another distinction with the Hollymead Town Center. They will get the permits before they grade the site. They would be willing to work with engineering and design to that higher specification

Mr. Zobrist asked if he would be willing to condition any grading on having all the permits in hand and no grading without the permits

Mr. Blaine said that in response to the concern that the longer you leave the site open is not going to happen in this situation as in the Hollymead Town Center A2. As heard tonight it is still in the entitlement phase. But, yet it was graded under a loophole that existed 6 to 8 years ago. This site will be entitled and likely tenants will be signed up and construction financing before the site is opened up. Then it will be developed and built upon, landscaped and completed. He said that no grading will occur until all grading permits are issued. There is a process in place. They would not get a grading permit until preliminary site plan.

Ms. Joseph asked Mr. Brooks to respond.

Mr. Brooks said that there are a couple of ways to do that. This would be a Planned Development Section 8 of the Zoning Ordinance. It is eligible for a grading permit with a mass grading plan as soon as the zoning is approved. One does not necessarily have to do a preliminary site plan and could go directly to a final site plan. It would not be reasonable to condition it upon that.

Mr. Zobrist said that he heard Mr. Blaine saying that he was willing to waive that. He asked how he would fill in the blank that there would be no grading plan until when or until site plan approval.

Mr. Blaine said that there is about a 25 million dollar site packet, which will be implemented in due course. They may want to get grading started on the road portion prior to the site plan, but he was not sure if that would be approved. He note that is not typical. They could lose some important timing in the time of year they were doing their construction.

Chris Pine, of the Bond Company, felt they would be willing to commit to not grading prior to getting zoning. The scale of the site work for this project is pretty immense. They would be sensitive to the time

table as discussed for many reasons. By starting after the zoning with this would actually expedite capping and being able to put the buildings on the exposed pads. An appropriate trigger is after zoning, which is what is outlined in the ordinances.

Mr. Cilimberg said that is normal process. The zoning has to be in place before anything else would happen anyway.

Mr. Bond said that they would be willing to comply with that.

Ms. Joseph said that one of the problems with Hollymead is that the grass just won't grow. Is there something they could do to ensure that there is some kind of ground cover that is established? What could have been done with Hollymead so there would not have been all of that run off?

Mr. Brooks said that they could apply permanent seeding. Most of what has been done on Hollymead is temporary seeding, which has not been fertilized or tilled. It is not meant to be a good stand of grass for very long. That type of rough seeding over a bare compacted surface is good if there is a lot of rainfall for one summer season and then it dies out. It is difficult to require someone to apply final seeding particularly when they know they are not at final grade. They don't want to spend that kind of money when they just have to tear it up. The regulation allows them to apply it within a certain amount of time of the last grading activity. So when the inspectors say that it is time they do a little more grading to extend the timeline out. It does not work that well.

Mr. Blaine said what they are seeing is a loophole. If there is a perceived loophole he recommended that they proffer to plug that so after a period of time they would have to permanently seed. They have a lot of confidence that once they start this project and finance it that they can't delay. As they did with the erosion and control in increasing the standard there is a perceived loophole, our clients are not seeking a loophole.

Mr. Brooks noted that the proffer crafted for A1 in Hollymead does address that Issue. They could model it after that.

Mr. Edgerton said that there are a couple of different grading issues. This is not a parallel to Hollymead because it is one developer and is all going to be done at one time. There is no incentive for them to sit around and wait on any of it. He was concerned about the significant erosion that could occur and clog up Moore's Creek. He asked if there was some extra care that they could take. Are there more stringent methods to protect Moore's Creek?

Mr. Brooks noted that was where they got the 80 percent for Biscuit Run as a goal.

Mr. Edgerton asked that at a minimum they should try to do that.

Mr. Cilimberg said it seems to be the matter of stabilizing what is graded and whether it will sit for any period of time. It is also dealing with the impacts of the grading on the runoff. The Commission wants those 2 things addressed. Between Hollymead A1 and Biscuit Run there is probably language to do that. They won't be able to craft that tonight, but if it is an expectation that is what they need to say as part of any action.

Ms. Joseph asked Mr. Blaine if he has had any contact with the City about some of the improvements that they have proposed in the proffers.

Mr. Blaine replied that they have met with the City Traffic Engineer, Jeannie Anderson. They have been giving them updates on the project. They have met with Mr. Tolbert. They understand that they are reviewing the latest version of the proffers. They understand that they don't control the zoning, but they do control the street frontage. They have somewhat significant leverage that they have to satisfy their requirements for the frontage improvements on Fifth Street in particular. They have been in communication with them for years,

Ms. Joseph pointed out that they have not received any correspondence from Mr. Tolbert. She called Mr. Tolbert today and he said that he had not seen what the latest was and did not want to make a public statement.

Mr. Blaine pointed out the proffers contemplate that they still must review the detailed road plans. They have to meet their requirements.

Ms. Joseph asked if there were other questions.

Mr. Kamptner noted that a question was asked about the employment based uses. In the PD-SC zoning district it is going to be offices. The Comp Plan appears to indicate a desire to have light industry use opportunities. There are some that would be allowed in the PD-SC zoning district, which incorporates the by right uses in the CO, C-1 and the HC. There are not many light industry uses.

Ms. Joseph asked what would happen if the applicant came back and asked for a rezoning to light industrial. The Comp Plan contemplates that sort of use. Would the County have to say okay at that point?

Mr. Kamptner said yes, but they would not have to because the Comp Plan is advisory. Or it could be a zoning text amendment to change the PD-SC regulations to incorporate some benign light industry uses in addition to the limited number that are there now.

Ms. Joseph noted that when they reviewed the comp plan amendment it was important to keep some sort of industrial use on the Avon side. She wanted to make sure that would stay intact if they ever decided to come and use it.

Mr. Cilimberg noted that would be if they were to seek rezoning. Right now it is a PD-SC rezoning and they could have the uses that are allowed under PD-SC. They would be limited to those uses until they requested a rezoning. Light Industrial zoning could be consistent based upon uses that were being asked for in relation to what the Comp Plan says.

Mr. Zobrist complimented Mr. Blaine, Mr. Cox and the applicant on responding to the staff issues. They made a nice presentation that was very helpful. He felt that things were written in such a way that they can condition an approval on the things which were presented tonight.

ACTION ON ZMA-2006-09, 5th Street Avon Center:

MOTION: Mr. Zobrist moved, Mr. Strucko seconded for approval of ZMA-2006-09, 5th Street Avon Center subject to the following:

1. All proffers to be submitted in writing acceptable to County counsel as stated in the discussions between staff and the applicant.

2. The proffers shall include, but not be limited to, urban design. The applicant agrees to build the entirety of the project in accordance with ARB urban design and landscape standards. The portion of the property that is outside of ARB jurisdiction will be overseen by other staff members.

3. With respect to roads, there shall be substantial completion of all road improvements before the center is occupied.

4. With respect to the trail link issues, the commitment regarding the pedestrian link on Bent Creek Parkway, as shown in the power point presentation graphics presented tonight, will be complied with.

5. With respect to transit, the park and ride and transit stops as proposed are adequate. The Bent Creek Parkway satisfies any cash proffer with respect to transit.

6. The proffer with respect to tree preservation shall be two trees for every tree removed in the conservation area.

7. A licensed arborist will be engaged and assist throughout the construction project for the maximum preservation of trees on the project.

8. The DEQ work plan will be completed and in place prior to the first site plan.

9. The stormwater proffers are to be drafted consistent with the Biscuit Run standard of 80 percent erosion control.

10. The reseeding necessary and timing of reseeding will be crafted to meet the stormwater commitment in the Hollymead A1 rezoning.

11. The applicant shall satisfy the City with respect to frontage and street improvements.

12. The cultural resources will be designated satisfactorily to staff by a map attached to the proffer. A Phase I Study will be done prior to any grading.

13. The applicant will use its best efforts to work with VDOT with respect to enhancement of the VDOT easement area along I-64.

There was no vote at this point.

Mr. Cilimberg asked to clarify what Mr. Zobrist has outlined. Based on the recommendation, staff will not be addressing the specific ARB issues or comments that they raised at the rezoning level. Therefore, it will basically be handled by the ARB at the site plan stage.

Mr. Edgerton noted that the applicant offered to meet all of the ARB Guidelines.

Mr. Cilimberg said that is going to be a requirement of the site plan anyway. The ARB Guidelines are what all of these comments originate from.

In response to a comment by Ms. Joseph, Mr. Cilimberg noted that he was talking about the external, not the internal items. The Commission asked that the Design Planner or staff deal with it based on ARB Guidelines.

Mr. Cilimberg said because of the landfill, the greenway trail shown as crossing over onto an adjacent area is okay with the Commission if that is what has to happen.

In response to a comment by Mr. Edgerton, Mr. Cilimberg clarified that is okay based on the commitment to connect the trail to the pedestrian facility on Bent Creek parkway.

Ms. Joseph agreed, but suggested that staff have a discussion with Dan Mahon to make sure this is working with whatever bigger scheme he has for greenway trails.

Mr. Cilimberg said that the bottom line is if they are not able to continue the path through the landfill area they will show a place where it could cross. That will be someone else's responsibility, but they will have the pedestrian path coming down from Avon Street that will connect at that point. He said that the Commission mentioned that all of the plans and illustrations shown tonight would be incorporated as part of the application plan.

The Commission did not indicate an expectation that the applicant show a proposed location for an interconnection to Willoughby.

In response to a comment from Ms. Joseph, Mr. Cilimberg replied that while a connection might be made from the greenway trail crossing, there is nothing that clearly defines where a connection can be made.

The Commission does not think that the critical slopes waiver is necessary at this point and is willing to wait on that. The applicant has indicated that they will show stream crossings. They have already talked about tree conservation areas. The applicant showed the trail head park area in their illustrations.

Regarding the trail head park area shown in the applicant's illustrations additional details regarding the passive open space/trailhead park area are needed, such as size, and types of amenities being proposed. The applicant indicated that the proffers would include specific language regarding landscape replacement and the types of improvements that are going to be incurred in the greenway park that would give a little more detail to that particular issue. The applicant is also looking for the possibility in the area that is designated as the trailhead park and activity area as such uses that are permissible by right such as a farmer's market and things of that sort that could on occasion used in a festival sort of atmosphere. But, the primary purpose of the greenway park is to provide a passive area that is complimentary to a greenways trail system. The Commission asked that the proffers be clear.

Mr. Kamptner requested that the applicant provide a copy of the DEQ work plan to staff and the County Attorney's Office as soon as possible because Bent Creek Parkway is one of the key components of this project. It will be dedicated to public use. They need to figure out whether there will be any potential liability with that land being transferred to the County.

In response to a question from Ms. Joseph, Mr. Kamptner replied the County owns the fee simple interest in the right-of-way for public roads. A public road in the secondary system only means that VDOT is obligated to maintain the road itself.

MOTION: Mr. Zobrist moved, Mr. Strucko seconded to amend the motion for approval of ZMA-2006-09, 5th Street Avon Center to add the following expectations:

14. The ARB's Guidelines and comments from their report shall be adhered to. If the view shed from the EC cannot be mitigated the applicant shall make the back of the buildings look like the front of the building.

15. The application plan referred to in the proffers will constitute all of the graphics. All of the plans and illustrations as presented on 7-24-07 would be incorporated as part of the application plan.

16. The applicant shall provide a copy of the DEQ work plan to staff and the County Attorney's Office as soon as possible. Bent Creek Parkway is one of the key components of this project and it will be dedicated to public use. The County Attorney's Office needs to figure out whether there will be any potential liability with that land being transferred to the County.

The motion passed by a vote of 6:1. (Mr. Edgerton voted nay.)

Ms. Joseph said that this item will go before the Board of Supervisors on September 12, 2007 with a recommendation for approval.

Motion on special use permit:

Motion: Mr. Morris moved, Mr. Zobrist seconded, for approval of SP-2007-0004, 5th Street Avon Center – Parking Structure, with no conditions.

The motion passed by a vote of 6:1. (Mr. Edgerton voted nay.)

Ms. Joseph stated that this item will go before the Board of Supervisors on September 12, 2007 with a recommendation for approval.

Old Business

Ms. Joseph asked if there was any old business.

- The meeting on Thursday, 7/26/07 and next Tuesday will begin at 6:00 p.m.

There being no further items, the meeting proceeded.

New Business

Ms Joseph asked if there was any new business.

In the next month a couple of planners will be leaving. Sean Dougherty and Amy Arnold are leaving in August.

There being no further items, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 10:03 p.m. to the Public Work Session on Thursday, July 26, 2007 at 6:00 p.m., Lane Auditorium, County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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