Albemarle County Planning Commission
September 4, 2007

The Albemarle County Planning Commission held a meeting, work session and a public hearing on Tuesday, September 4, 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, Bill Edgerton, Calvin Morris, Vice-Chairman; Marcia Joseph, Chairman; Eric Strucko; Duane Zobrist and Pete Craddock. Mr. Zobrist arrived at 6:05 p.m. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was absent.

Other officials present were John Shepherd, Chief of Current Development; Wayne Cilimberg, Planning Director; David Pennock, Principal Planner; Megan Yaniglos, Planner; Ron White, Housing Director; Allan Schuck, Senior Engineer; Glenn Brooks, County Engineer and Greg Kamptner, Deputy County Attorney

Call to Order and Establish Quorum:

Ms. Joseph called the meeting to order at 6:02 p.m. and established a quorum.

Committee Reports:

Ms. Joseph invited committee reports.

- Mr. Morris reported that the Eastern Connector Steering Committee met last week. They are looking at about 4 or 5 different options. The consultants have been quite creative in coming up with various options. Again, it boils down to, in whose backyard. They don't have any idea at this point where it is going. They will be meeting again in late October to narrow down the options to take out for public input.

There being no further items, the meeting moved to the next item.

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.

Paul Grady said that he lived just outside the Crozet growth area. He did not know how much more the Commission was going to delve into the Places29 consultant reports. He asked the Commission to reconsider the following matter: (See Attachment from Paul Grady)

- The 29H250 Study that was performed 4 years ago was developed before they received the money for the Meadow Creek Parkway Interchange. The 29H250 Study was not conceived to find a way to remove the stop light at Hydraulic Road and the 250 By Pass. That is what he considers to be its first fatal flaw. There were 3 options: Option A sent all the through traffic down Hydraulic Road on grade. Option B sent all of the through traffic down Emmett Street. Option C created an elevated express way down Hydraulic Road with a 2 lane Hydraulic north of the express way on grade for local traffic. Even though the interchange in Option C eliminated the stop light at Hydraulic and the 250 By Pass it was not given any extra credit for doing so. That is the 29H250 Study second fatal flaw. Through the course of the study he attended every meeting that was open to the public. At the end of the meeting he judiciously completed the questionnaires provided submitting countless ideas in how Option C could be approved so it could compete. Over the course of the study Options A and B were further developed with sub options. Option C never received any further development. So it failed because the land south of the express way was completely cut off from the 2 lane Hydraulic Road.
- The consultants recommended Option B, which destroys the 2 blocks of Emmett Street and requires the rebuilding of the Barracks Road interchange and still leave the stoplight at Hydraulic Road and 250 By Pass. That is the third fatal flaw of the 29H250 Study. He believed that early on in the study for whatever reason the decision was made not to further develop Option C. He believed this to be a crime both literally and figuratively. He believed that the 29H250 Study was

fixed to make Option C lose. There has never been a public hearing on the 29H250 Study either before this Commission, the City Planning Commission, the Albemarle County Board of Supervisors, the City Council, the CHART Committee or the MPO. Yet legislation has been passed in the Virginia General Assembly allowing proffered money from Albemarle Place to be used on the quick fix right turn lane from Emmett Street onto the 250 By Pass. This appears to be corruption and fraud when the public is denied any say in this very serious matter.

- To remove any appearance of impropriety before any money is spent on this quick fix he implored the Commission to request that the 29H250 Study be reopened and that Option C be further developed. Option C2 that provides for a 4 lane local Hydraulic Road, 2 lanes north of the express way and 2 lanes be studied as well. Option C3 would consist of an elevated express way on piers directly above the existing Hydraulic Road with not massive excavation. They would just put it up in the air. He would guarantee that Option C3 would turn out to be the least expensive solution because of the City already owns most of the land needed for the interchange. He feared that if action is not taken soon that money will be spent on the quick fix and that those who fixed the 29H250 Study will start saying well we have already spent money on this quick fix and they can't change course now and have to go on with Option B. Option B is the worse possible solution to this problem. Because of the other transportation projects that are needed there never will be any more money to construct an interchange at Hydraulic and the 250 By Pass to remove that last stop light.

There being no further comments, the meeting moved to the next item.

Deferred Items:

SDP-2007-00065 Lewis and Clark Exploratory Center *DEFERRED FROM AUGUST 14 PC MEETING*
Request for preliminary site plan approval for construction of a 15,000 square foot historical center on approximately 12 acres within existing Darden Towe Park. The property, described as Tax Map 62, Parcel 23, is zoned RA, Rural Areas, R-1, Residential, and EC, Entrance Corridor and is located in the Rivanna Magisterial District on the west side of Stony Point Road [Rte. 20], 0.5 miles north of its intersection with Richmond Road [Rte. 250]. The Comprehensive Plan designates this property as Parks and Greenway in Urban Area 3. (David Pennock) (The applicant requests deferral to October 9)

Ms. Joseph pointed out that the applicant has requested another deferral to October 9. She invited public comment. There being none, the matter was placed before the Commission.

Motion: Mr. Morris moved, Mr. Strucko seconded to approve the applicant's deferral request for SDP-2007-00065, Lewis and Clark Exploratory Center to October 9, 2007.

The motion passed unanimously by a vote of 7:0.

Ms. Joseph said that SDP-2007-00065, Lewis and Clark Exploratory Center was deferred to October 9, 2007.

SUB2007-00182 Michael Booth – Waiver *DEFERRED FROM AUGUST 7 PC MEETING*
Proposal for a waiver to subdivision ordinance section 14-404, "Lot location to allow access from lot onto street or shared driveway". The request is for a waiver to allow each of two proposed lots to access out on to separate public streets. The property, described as Tax Map 56, Parcel 35, contains 45.6 acres zoned R1 (Residential) and EC (Entrance Corridor). This site is located in the Whitehall Magisterial District off Crozet Avenue [Route 240] across from Meadow Drive. The Comprehensive Plan designates this property as Crozet Community, with land use recommendations including CT-1 (Development Area Reserve), CT-2 (Development Area Preserve), CT-3 (Urban Edge), and CT-4 (Urban General). (David Pennock)

Mr. Pennock summarized the staff report.

- Proposal for a waiver to subdivision ordinance section 14-404, "Lot location to allow access from lot onto street or shared driveway". The request is for a waiver to allow each of two proposed lots to access out on to separate public streets. Proposed Lot B would access on to Crozet Avenue, while Proposed Lot A would access on to Brookwood Road.

- At the August 7, 2007 meeting the biggest concerns that the Planning Commission dealt with was the potential future development of the property. There is a legal frontage that has an existing drive serving out to Crozet Avenue and another frontage in the back what staff would term a paper street, a 50' right-of-way extending from Brookwood Road to the rear of the property. Most of the debate had to do with the potential for future development, particularly in the rear of the parcel. There was concern as far as what might be located there in the future and what impact it might have. That was most of the concern and whether there were any limitations on the access and that sort of thing.
- Factors Favorable:
  - ◊ Property is bisected by Lickinghole Creek with associated floodplain, stream buffers and critical slopes.
  - ◊ Property has existing double frontage.
- Factors Unfavorable:
  - ◊ None identified.
- Recommendation: Staff has reviewed the request in accordance with the requirements of Section 14-404(C). Staff finds that there are unusual circumstances present on this property that may suggest the appropriateness of a waiver. The construction of a drive utilizing the access from Crozet Avenue to serve both building sites would require improvements of approximately 0.5 miles, including disturbance of critical slopes, fill within the floodplain, and impact to stream buffers. There is also a physical separation between the proposed entrances to this property, as it has existing lot frontage on two public streets. Staff finds that the request to waive the requirement of Section 14-404(A) is appropriate in this circumstance, and therefore recommends approval of this waiver.

- There are no additional plans or anything that far along. Although all of the applicant and owner's representatives are present today and are willing to speak to that matter.

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

Mr. Zobrist recalled that this deferral was requested by the applicant. The Commission seemed to feel that it was a premature request since there was no development plan in place. He assumed that was why the applicant asked for the deferral. He asked if the applicant has communicated with staff since the last hearing.

Mr. Pennock said that this is a waiver in advance of a subdivision. The proposed plan that went along with it just showed a front back split basically on each side of that flood plain area. Each side of Lickinghole Creek would be divided on the tentative plan.

Mr. Zobrist said that the issue with respect to the right-of-way is that it is a paper street that they would have to get permission from the County to use the street. They don't have the right to use it.

Mr. Pennock said that at the moment it is a dedicated right-of-way. Whatever construction that was to occur within that right-of-way would need to come through some level of approval. Mr. Kamptner has indicated that approval at least by the Board of Supervisors in order to use that street. Although Mr. Kamptner may be able to address exactly what type of construction could occur within that area.

Mr. Kamptner noted that based on the information available they just confirmed that the 50' road way that connects the site against Brookwood to this property is a public right-of-way. It was dedicated as part of the subdivision plat because it was shown as a road on the plat. The other question is whether or not the applicant could obtain a right from the County to just personally use the 50' right-of-way as essentially their driveway. The County's policy over the last few years has been to not allow public rights of way to be privately used. They would expect that the right-of-way when it is constructed would be constructed to a public street standard to be used as a public right-of-way. The other question was whether or not the owner of this parcel had an absolute right to gain their access through this 50' road way. Although an owner of land has the right to a right of easement to abutting public roads the locality has some ability to control in this case. Since there is other public access the County is not absolutely required to grant access through this public right-of-way. Although clearly as it was platted back in the 70's it was

envisioned that it would be serving this land. But, at this particular time there is no mandatory obligation that the County allows it.

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

Michael Booth, applicant, said he owned 46 acres with his wife Charlotte. Currently the land is zoned R-1. They have no interest in having it be sold, used or developed into more than two lots or dwellings. He understood that the dedicated roadway into the property was like a shared driveway. Their request was simply to divide it so that there would be no crossing of the creek for any reason. They could sell those 15.5 acres separately. They would be happy to put a restriction on it or whatever is needed to show that there is no interest in putting more than 2 dwellings on it.

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

Mr. Edgerton asked if when he said divide the property into 2 lots did he envision one lot for the 15 acres and one lot for the residue.

Mr. Booth said no, what he meant by saying 2 lots or 2 dwellings was that the 15.5 acres that can be gotten to by that dedicated roadway that would have no more than 2 dwellings.

Mr. Edgerton asked if he would be willing to commit on the plat that15 acre parcel would only be used for 2 dwellings.

Mr. Booth replied yes.

Mr. Edgerton asked Mr. Kamptner regarding his comment that since it is a 50' public right-of-way public that the County would expect it to be developed as a public road. Of course, if it was only serving 2 lots it could be just a shared driveway. That would not need 50'. He asked for his assistance.

Mr. Kamptner said that with it being a public right-of-way the expectation would be that it would be constructed to a public street standard, which in turn would be accepted into state maintained system. Unless VDOT has changed its rules they would require that before they are going to accept it that it would be serving 3 lots or more. That is the dilemma we are in. The other thing is that this parcel has a more intense zoning and it has various planning designations under the Crozet Master Plan.

There being no further questions for Mr. Booth, Ms. Joseph invited comment from Roger Ray.

Roger Ray said he helped Mr. Booth prepare this plan and encouraged him to proffer this land to only have 2 dwellings or lots on the 15 acres. If they can't figure out some method to allow him to do that it looks like his only options to get to that land would be to come across a very wide floodplain and a sizeable amount of 25 percent slopes. He would hope that there was method that they can have a shared driveway within a public right-of-way to serve the 2 lots.

Mr. Morris asked if he had checked with VDOT as to the situation. Does that 50' right-of-way have to meet state standards for a public road and that dictating that it must be at least 3 lots? It is confusing.

Mr. Ray agreed that it does get confusing.

Mr. Kamptner said that is what VDOT will require for them to accept it into the state maintained system. The County owns the underlying fee to the land. They essentially hold it to the public trust. It was dedicated for a public use. There are some concerns if land that has been dedicated to public use is privately used. That is the dilemma.

Mr. Ray said that on the ground that 50' strip on both sides of it are dwellings and their yards come right up to that 50' strip. That 50' strip is a strip of mostly hardwood trees. When the subdivision plat was made in the 70's that created that right-of-way there was adequate right-of-way to dedicate for a VDOT public street. However, in this particular case it would be fairly difficult to do a VDOT design public street because there were no construction easements beyond the 50' right-of-way nor are there drainage

easements along the front of the particular lot 17. Trying to put a VDOT public subdivision street within that right-of-way would be extremely challenging when they can serve 2 lots with a private driveway.

Mr. Kamptner noted that he could not decide for the Board of Supervisors how they want to allow public property to be used.

Mr. Zobrist said that the Planning Commission could make a recommendation to the Board.

Mr. Kamptner pointed out that this item only goes to the Board if it is appealed.

Ms. Joseph asked if a public road does not go through here the Board does not have to approve that particular use of the land.

Mr. Kamptner replied no, that he was speaking to the 404 waiver that was in front of the Commission. The Commission could adopt a motion that makes a recommendation to what the Board should do at this point.

Mr. Zobrist said that he was okay with that.

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

Mr. Danny Newton said that he wanted to address the issue of this possible driveway. This could conceivably put 4 driveways in close proximity to each other. It is already a dangerous situation with everyone backing out of their driveways. That would create additional traffic on this site. Of course, there is the danger of having a road 20' to 25' from their back doorstep. They have grandchildren that come to visit and they would have to constantly monitor the passing traffic. Traffic creates problems with noise and lights shining into their home from cars passing by. With the existing slopes on the property this driveway would create additional water runoff across their property as well as their next door neighbor's property. If this is approved it will put more vehicles on a neighborhood street that is designed only for the local homeowners. There is only one way out of Crozet from this area. He hoped that the Commission will give strong consideration to the concerns of the existing property owners and deny this request so as not to disrupt their kind of quiet quality of life that they have enjoyed for 20 to 30 years in this neighborhood.

Dan O'Neil, real estate agent with Brownfield, Coffee and O'Neil, said that he had tried to advise the Booths on this property and their options for it. He pointed out that from what has been said today from the market perspective he believed that the offer that Mr. Booth has made to restrict the density and number of residences on this parcels to 2 is something that should be recognized. He has R-2 zoned property with 15 acres. It is a significant concession to the concerns that were expressed by the Planning Commission members at the last meeting. The concerns were over the density on this property. If the County is going to require that any access over this roadway is built to state standards and to be built so that it can be dedicated to the state system that is going to require that the density on this parcel be higher. As Mr. Kamptner said, the state will not take it in unless there are 3 lots out there. From a financial standpoint if someone is looking at having to pay to put a city street in there they are not going to be able to restrict the density to 2 units. He thought that there was an opportunity to address the concerns of the area property owners who are concerned over traffic and a change to the character of the property. By taking the reasonable route to accept Mr. Booth's offer of this restriction and to make a recommendation to the Board that the use of just a shared driveway be allowed over this public land is requested.

There being no further public comment, Ms. Joseph closed the public hearing to bring the matter before the Planning Commission.

Motion: Mr. Zobrist moved, Mr. Edgerton seconded, to approve the waiver of 14-404 for SUB-2007-00182 Michael Booth with the following conditions:

1. No more than 2 dwelling units will be constructed on Lot A (13.96 acres).

2. The Board of Supervisors will either abandon the 50' right-of-way, which would access this property to the subdivision behind it or grant the applicants the right to have a single private shared driveway under County standards to access the 2 dwelling units to be built.

Mr. Kamptner clarified that they were actually in addition to and not an alternative to the motion.

Ms. Joseph pointed out that when a driveway was put in that there would be standards. The County would be looking at it to make sure the drainage is not such that it would cause problems on Mr. Newton's property, which is adjacent.

Mr. Shepherd pointed out that it would be a road that would have to be approved by the Planning Commission. It is a road serving 2 lots in the development area and would require Commission approval.

Mr. Strucko said that it would be a common driveway instead of a road.

Ms. Joseph pointed out that it was 1 road serving 2 lots in the growth area. Therefore, the request would come back to the Commission.

The motion passed by a vote of 7:0. (Mr. Zobrist voted aye with kudos to the applicant for making this great gift to the Crozet community.)

Ms. Joseph asked what the procedure would be next. Would this request go to the Board of Supervisors with the Commission's recommendation?

Mr. Kamptner replied that the waiver has been approved. There are some conditions to actually develop Lot A. The applicants needs to make a request to the Board of Supervisors as to the use of that property or to make a request that public right-of-way be abandoned in conjunction with the owners in the subdivision.

Ms. Joseph said that it is up to the applicant to make that request. The recommendation from the Planning Commission will be for them to approve that.

Mr. Ray asked if it would not be appropriate to do that when they submit the subdivision plat creating Lot A and Lot B.

Mr. Kamptner said that was fine. If there is abandonment, of course, the Booths would want to obtain an easement over that abandoned right-of-way.

Ms. Joseph acknowledged that it was a gift to the community.

Regular Items:

SDP-2007-00064 Mechums River Tower Tier II
Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 119 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with an 11-foot high 350 square foot shelter/equipment cabinet. This application is being made in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property is 32.43 acres, described as Tax Map 72, Parcel 43B, and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property as Rural Area in Rural Area 3. (Megan Yaniglos)

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

- Proposal to install a Tier II personal wireless service treetop facility with 109-foot tall steel monopole tower and 3 flush mounted antennas. It is in close proximity to 2 existing wireless facilities. The supporting ground equipment will be contained within a prefabricated equipment shelter at the base of the tower. The shelter and monopole will be surrounded by a 6' tall screening fence. Both the monopole and screening fence will be painted brown to further minimize the visibility from the Entrance Corridor and surrounding parcels.

- Access to the facility will be provided from the existing private gravel road. A balloon test was conducted and it was determined that the proposed pole would be visible for a relatively short period of time in travel on I-64. However, the degree of visibility is not expected to have a negative impact on the Entrance Corridor. The ARB has reviewed and approved the location based on the lack of visibility from I-64.
- **Factors Favorable:**
  - No clearing or significant grading is necessary for installation of the facility because the access has already been established.
  - The lease area for the ground equipment and monopole is not located on critical slopes or other significant features identified in the Open Space Plan.
  - The Architectural Review Board has approved the location.
  - Two existing monopoles are established within proximity to the proposed monopole.
- **Factors Unfavorable:**
  - None
- **RECOMMENDATION:**
  - Staff recommends approval of the personal wireless facility.

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

Mr. Edgerton said on page 2 of the report it says that the proposed monopole would be 4' higher than the identified reference tree. On the drawings it shows 10'. He asked for some clarification from the applicant to make it clear.

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

Maynard Sipes, attorney with McClair Ryan representing Verizon Wireless, presented the request. Verizon has worked very hard to adhere to the policy and to meet all of the requirements, which staff has recognized in the staff report. Staff found that there was a very low level of impact. They are requesting a pole of the specific height that would be 4' higher than the referenced tree. The drawings show the 10' as the maximum height. The approval would restrict it to the specific height requested. The Commission can condition it as such to make sure that is clear.

Stephen Waller, consultant for Verizon with Wireless Resources, Inc., was present.

Ms. Joseph asked if there were any questions for the applicant. There being none, public comment was invited. There being none, the public hearing was closed and the matter before the Commission.

Motion: Mr. Edgerton moved, Mr. Morris seconded, to approve SDP-2007-00064 Mechums River Tower Tier II as proposed with the modification that the drawings be amended to show a 4' height rather than a 10' height.

The motion passed by a vote of 7:0.

Public Hearing Items:

ZTA-2005-00009 Density Bonus Affordable Housing

Amend Sections 3.1, Definitions; 12.4.3, Low and Moderate Cost Housing; 13.4.3, Low and Moderate Cost Housing; 14.4.3, Low and Moderate Cost Housing; 15.4.3, Low and Moderate Cost Housing; 16.4.3, Low and Moderate Cost Housing; 17.4.3 Low and Moderate Cost Housing and 18.4.3, Low and Moderate Cost Housing of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Section 3.1 to add a definition of "affordable housing" and would amend the density bonus regulations for affordable housing in the VR, R-1, R-2, R-4, R-6, R-10 and R-15 zoning districts by changing the references to such housing from "low and moderate cost housing" to "affordable housing," by reducing the percentage of bonus units required to be affordable from 100% to 50% of the allowed bonus density, by increasing the period during which rental units must remain affordable from 5 to 10 years, and by establishing the minimum requirements for qualifying prospective purchasers and renters and the terms and conditions of the affordable rental period. A copy of the full text of the ordinance is on file in the office

of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Wayne Cilimberg)

BACKGROUND:
On June 1, 2005, the Board of Supervisors adopted Resolutions of Intent to amend the County's Zoning Ordinance to reflect the recommendations of the Albemarle County Housing Committee for implementation of the County's Affordable Housing Policy, specifically to amend the density bonus regulations to promote production of affordable housing. The Housing Committee's original recommendation was to allow a 100% increase in density with one-half of the additional units being affordable.

Since that time, the Housing Committee and staff have worked with the Planning Commission to get a recommendation to the Board for adoption. Several work sessions were held with the Commission from August 2005 through October 2006 with a public hearing on August 15, 2006, at which the Commission did not take action. On June 13, 2007, a joint work session was held with the Commission and the Board.

STRATEGIC PLAN:
By June 30, 2010, working in partnership with others, increase affordable housing opportunities for those who work and/or live in Albemarle County.

DISCUSSION:
The recommendation to amend the current density bonus provisions found in the Zoning Ordinance was first made by the Housing Committee as a strategy in the County's Affordable Housing Policy adopted in February 2004. Subsequent to the adoption of this policy, an ad-hoc Affordable Housing Policy Advisory Committee was created to assist the Housing Committee in defining implementation measures for the policy. The ad-hoc committee also recommended changes to the current density bonus provisions specifically to provide an incentive for developers to consider increased density in exchange for providing affordable housing. A number of interest groups were represented on the ad-hoc committee including developers, lenders, and nonprofit housing providers/agencies. The consensus of the group was that the existing density bonus which allowed up to a 30% increase in density but required that all of the units created by the additional density be affordable was not being utilized because it provided no incentive. The group and the Housing Committee recommended allowing up to a 100% density bonus with one-half of the additional units being affordable.

It was clear from the first two work sessions with the Planning Commission that a potential for doubling density administratively was not acceptable. However, the Commission did provide a favorable response to maintaining the 30% density bonus provision with one-half of the additional units being affordable.

Staff identified another weakness in the existing provisions in that it did not restrict who could buy and/or occupy the affordable units based on household income. The sales price and rental rates were restricted but the ordinance would allow anyone to purchase and/or occupy the units at those restricted prices. The proposed revisions to the ordinance will provide for the Office of Housing to approve purchasers of for-sale units created through the density bonus. The revisions also define affordable sales prices and affordable rents on commonly-accepted indices consistent with the definitions proposed as revisions to the Affordable Housing Policy. The definitions have been recommended by the Housing Committee and are currently used for affordable housing proffers.

During the June 13 work session, at least two Board members and one Commission member indicated that revising the density bonus could create an ordinance that will work as opposed to the current density bonus which has been utilized on only a few projects although it was adopted some twenty years ago.

RECOMMENDATIONS:
The Housing Committee and staff recommend that the Planning Commission conduct a public hearing and approve the Housing Committee's recommendations for amending the density bonus provisions in the Zoning Ordinance as attached and recommend approval by the Board with a public hearing set for October 3, 2007.

Mr. Cilimberg said that this particular request was discussed in prior work sessions in the past. There have been a number different proposals for consideration by the Commission and Board that would further the possibility of providing affordable housing in the County. It is the most recent joint meeting of the Commission and Board of Supervisors with the Housing Committee that spelled out some of the particular initiatives that may be forthcoming. This particular request to amend the density bonus provisions of the ordinance actually were discussed with the Commission on several occasions in prior work sessions in the past. It is intended to provide some additional incentives for the use of the bonus provisions that currently exist in the Zoning Ordinance. The amendment language is written in such a way as to address that by continuing to allow the 30 percent increase in density, but not allowing all of that increase to be affordable. Instead it would be allowing ½ of that increase to be affordable to achieve the density bonus. It is hoped to possibly increase the utilization of the by right allowances that currently exist in the ordinance for the development community as they look at the possibility of providing new housing in the County. Mr. White has worked with the Housing Committee on this and some of the other initiatives. Mr. White can add anything that he thinks is important. This is a public hearing tonight for this particular amendment proposal.

Ron White, Director of Housing, said that this proposal is coming forward to address one of the recommendations made when the Affordable Housing Policy was adopted in 2004 by the Housing Committee that was specifically to amend the existing density bonus ordinance to make it more useable. One reason for making the recommendation was to provide an incentive. The current bonus would require that all units created by additional density would have to be affordable. It has only been used in 3 or 4 relatively small projects. They have had several requests to use the current density bonus provision, which includes a nonconforming subdivision of land, Cedar Hill Trailer park and Park View rental housing on South Pantops. The other proposed revision is to bring this part of the zoning ordinance up to where the Affordable Housing Policy is. The current density bonus in the zoning ordinance addresses the sales price and the rental price of houses that are created under the density bonus, but it does not address who those units are being built for or who should occupy those units. That is another important piece of this recommended change. They need to adjust the language so it is consistent with the current Affordable Housing Policy.

Mr. Zobrist said that this only applies to the bonus units and does not have anything to do with the 15 percent they require in the rezoning.

Mr. White replied that this is only in by right development. It would not be in rezoning.

Mr. Cilimberg noted that on a rezoned property that had this proffer associated with it they would have to create the 15 percent affordable housing. This is for zoning that exists where the developer may want to entertain an option to up density to provide affordable housing. It would have to be within the confines of the Comprehensive Plan density called for in that area.

Mr. Zobrist said that it also lowers the threshold of 30 percent of income. The definition of affordable housing to get the bonus is the housing costs do not exceed 30 percent of the gross household income.

Mr. White said that is correct and is consistent with the Affordable Housing Policy. That is consistent with the same language that would be used in looking at a rezoning.

Mr. Zobrist asked where they came up with the number of 80 percent of the median average income.

Mr. White said that the 30 percent is considered to be the housing affordability index for a household. In other words they should not pay more than 30 percent of their income towards housing expenses.

Mr. Zobrist said that this does not look at the unit, but it looks at the person who gets to occupy it.

Mr. White said that it is both.

Ms. Joseph said that was how they figure out the cost of the house. It is 30 percent of their income, but it is 80 percent of the median income.

Mr. Strucko said that they were trying to calculate the sales price of the home to meet the definition of affordable. He asked if this policy applies to by right development anywhere in the county including the rural areas.

Mr. Cilimberg said that the zoning districts that are covered start with VR, Village Residential and then goes through the highest of the zoning categories. Therefore, it applies to non rural area zoning.

Mr. Cannon said that it is by right and available without further action by Commission or Board. Is there a restriction on the ultimate density that could be achieved through the operation of this? Is the ultimate density constrained by the Comprehensive Plan or is it just 30 percent additional where ever this applies without restriction.

Mr. Cilimberg said that it is 30 percent above what the density allows for in the zoning district. The parameters also are not to exceed the application of the density regulations. The other part of the ordinance says they are not to exceed that which is allowed under the Comprehensive Plan for that particular area.

Mr. Cannon said that there is a range so that it would still be within the range of density allowed under the Comprehensive Plan.

Mr. Cilimberg replied yes.

Mr. Cannon said that would be determined by the Comprehensive Plan map and not by the zoning map.

Mr. Cilimberg said that would give them the ceiling basically.

Mr. Strucko asked if they could benefit from this if there was an R-1 designated parcel within the growth area.

Mr. Cilimberg replied yes, that R-1 is the least dense of the zoning districts from VR on through R-15 that can benefit.

Mr. Strucko asked why they could not explicitly state inside the designated growth areas and leave it at that.

Mr. Cilimberg replied that they can attach the zoning provisions to the Comprehensive Plan in that way, but he believed that they would have to do it based on zoning district.

Mr. Kamptner said that there is already land that is in the development areas as R-1, R-2 or R-4 land that is in the designated rural areas under the Comp Plan. But, the zoning regulations have to be triggered by zoning district and not by Comp Plan designations.

Mr. Strucko questioned if they are dealing with the non rural areas. His concern was that they may be encouraging development in the rural areas with the density bonus.

Mr. Cilimberg said that the real effect is mostly as it regards VR zoning because there is VR zoning in old villages that are not rural areas, such as North Garden, Earlysville and Stony Point. They can theoretically exercise the density bonus under this provision. Those would be most of the examples. There is very little other zoning of urban type in the rural areas. Land that is in the development area zoned RA won't be able to utilize this bonus provision. From staff's experience those lands are going to come through the rezoning process.

Ms. Joseph asked if there is any reason to keep the VR in there. Is there any reason that they should have bonus density in VR?

Mr. Zobrist suggested that VR be taken out.

Mr. Cilimberg said that he did not think there was any VR in Rivanna Village. All of the other Village designations have been removed. So it would only be new villages that go to VR or VR that might be applied for in the Rivanna Village that would not have the opportunity to utilize the density bonus. It is up to the Commission to decide whether to include VR.

It was the consensus of the Planning Commission to take Section12, VR out.

Mr. Kamptner questioned if there were any Comp Plan or Affordable Housing Committee Policy issues that might be affected if the VR District was removed. He said that he could not recall any.

Mr. White said that he could not think of any. Frankly, when they are talking about affordable housing most of the time they are looking in areas that have existing water and sewer capacity because of the expense of developing raw land. It might not be something that could be used in that area very often because it would not be financially feasible in a VR zone.

Mr. Zobrist asked Mr. White to explain the mathematical formula.

Mr. White said that they take 30 percent of a household income. They are talking about 80 percent of the area median income. They would take 30 percent of $60,000 and that would be what a family could theoretically afford for housing expense. That could be done in a couple of ways. One is how much mortgage that income could buy. The second way is what they are working off of now in some of the proffers that had language that says sales prices will not exceed 65% of the VHDA maximum mortgage limit. They are trying to use an index rather than using a calculation so that it is easier. Right now 80 percent of the area median income could theoretically buy an affordable $191,000 mortgage at today's rates.

Mr. Strucko pointed out that number changes each year as conditions change.

Mr. White said that if they use the VHDA index that number would change when the VHDA index changes.

Mr. Edgerton agreed that it was confusing. The 30 percent would vary with different communities. He thought that it all comes from HUD standards and works it way down. In certain communities the AMI is going to be considerably different. So 80 percent of it is going to be considerably different. But, the 30 percent is still there. The definition of housing costs for homeowners are principle interest real estate taxes and home owner's insurance. It is intended to pay utilities. That is where he got excited. He questioned why that is not part of the home owner's policy. Is there a reason it can't be?

Mr. White replied that it was the way that the industry looks at it. There is no reason that it could not be with the exception of the difficulty in determining what utility costs would be for an individual in a house that may vary from 1,000 square feet to 2,500 square feet.

Mr. Edgerton asked if they could urge the industry in the right direction. Would they be allowed to put a standard in the ordinance? They have a national standard right now called Energy Star which mandates a 30 percent reduction in energy usage over a standard house. If they put that in there that an affordable house had to be Energy Star would they be allowed to do that?

Mr. Kamptner replied that the short answer was yes. They can define it however they wish to. But, he thought that all of the analysis that the Affordable Housing Committee and Housing staff have up until now was based upon a particular set of defined terms. They are changing the defined term.

Mr. White asked to tell them about how the lending industry has tried to deal with Energy Star rated houses and houses that have low maintenance. They might use a higher percentage than 30 percent. That is being done in the private sector and the mortgage industry. Let's say that family could afford a $190,000 mortgage, but they have an Energy Star rated house with demonstrated savings. They might be able to get a $200,000 mortgage rather than $191,000 with a recognition that they are going to have savings on their energy side. He did not know if they would want to do something like that in policy or it something that they encourage. Energy Star is likely to be adopted as an industrial standard. They

questioned if they should leave it to the private section to do that with some encouragement rather than putting it in a policy. That would be the only question he would have.

Mr. Cannon asked if they really want to make Energy Star the standard. They would want to do that for affordable and non-affordable units, too. He questioned whether this was the right vehicle.

Mr. Edgerton noted that he was trying to figure out how to change the building code a couple of years ago to mandate a certain energy performance in a building. As a Dilland rule state they are not allowed to adopt that.

Mr. Kamptner said that the language in the Building Code is regulated by the state. They could not regulate the manner or the materials used in construction over the State Wide Building Code.

Mr. Cannon suggested that they could have an Energy Star Bonus Policy.

Mr. Edgerton agreed with Mr. White that as things continue as they are all of the building codes and energy codes will probably get here at some point. But, personally he worried about how affordable is affordable housing if you can't afford to pay the energy bill. Historically, they have built cheap housing instead of truly affordable housing. The decision about the energy performance of a building is a very easy way to save money in the construction cost of a house. That is the deli mina.

Mr. Zobrist suggested that they tie the Energy Star standard to the bonus.

Mr. Edgerton said that if that is legal he would love to see it. That is one thing they could argue for.

Mr. Zobrist said that if it was affordable and Energy Star they should tack both things to a bonus.

Ms. Joseph asked Mr. Kamptner to look at it.

Mr. White said that there are several standards out there now. Energy Star is probably the lower of all of the standards.

Mr. Zobrist said that they have to start somewhere.

Mr. White said that Earth Craft is working on standards, but have not finalized them yet. Then there is the LEED Certification. He thought that Mr. Edgerton was correct that as those things come in, things get certified and they get people out in the field that can do the certification and inspections required, it would likely become a part of the building code at the national level.

Mr. Kamptner said that they are enabled under State law to customize the definition of affordable housing. So to the extent that they can integrate these concepts under the definition of affordable housing they can take a look at that.

Mr. Cannon said that it would be more affordable because it is energy cheaper. They could afford to rent it or the mortgage better.

Mr. Edgerton said the language refers to housing office in that they will pay utilities with the maximum allowances being adopted by the County's Housing Office. He asked if the Housing Office determines what the acceptable maximum utility bill is.

Mr. White replied that they get their figures from VHDA for this region. They print them out for the entire region. Otherwise, they could do them. But, it is very exhaustive to do so when there are multiple electric companies throughout the county. It makes it even more difficult.

Mr. Kamptner said that in this version they were trying to come up with a policy that somebody might be interested in. In the past 12 years he could recall 2 people use this program. Mr. White recalled a third one. So this has been a very little used program so far.

Mr. Zobrist said that if they made it a little more restricted they might make it even less used.

Mr. Kamptner agreed.

Mr. Cannon said that the down side would be that it would be used less.

Mr. Kamptner said that his suggestion would be if the Commission is satisfied with this as it is written recognizing the desire to move to the next level with Energy Star development with the proposed revision of deleting the change to 12.4.3, let staff proceed with this one and let them further study it. Everybody recognizes that dealing with affordable hosing is going to be an ongoing evolving progress. They are trying to get something on the books that somebody might be interested in.

Mr. Zobrist asked if this was a public hearing. He asked if it should be turned into a work session if they feel they need more time.

Mr. Kamptner suggested that they proceed with the public hearing.

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

Mr. Edgerton said that he could speculate why the existing bonus has never been pursued. He felt that the market has been so strong for market rate units. With the high cost of land it makes it difficult to build affordable houses. Mr. Kamptner's point is well taken. If the idea of this is to encourage people to build affordable housing adding another restriction to it may be would work against it. His problem was when they would have another chance to do it.

Ms. Joseph said that they could play with the numbers. If they did Energy Star Rated Housing, then they could do more market and less affordable. She did not know if that appeals to anyone. It might get at least some decent houses out there.

Mr. Edgerton said that it would be a 30 percent increase in density if ½ of those units are affordable. They are getting the market rate and they can build that to any standard they want. Mr. White's other point was that there has been a real push in the last year and ½ on Earth Craft because the home builders decided that was something that would respond to some of the market demand. None of it has been affordable. During the first year they built about 5 or 6 houses, which were all sold before they were finished. The market was there, but they all sold for over a million dollars. They are not even close to affordable. But, there is a segment of the market saying they want an energy efficient house. The biggest problem is that there are not a lot of people available in our area or in the State of Virginia who have this training right now. That would be a bit of a problem. He was optimistic that within a year there will be more people trained locally to do the inspection and the certification in Earth Craft and Energy Star. To put it in perspective one can't begin the Earth Craft process until you have an Energy Star Rated House. That is a mandatory requirement for Earth Craft. Then they add more on to it. It is coming along. He asked how VHDA calculates what my utility costs would be.

Mr. White said that they are supposed to go out to the utility companies and get average usage. They would not calculate the actual utility costs. They would calculate based on the type of heat and a variety of things in a house. For a total electric house they would go down a list and pull out all of the electric items. If it totals up to $80 a month, then the assumption is that house on average will use $80 a month in utility costs. It comes right off the chart and is an average. There are a lot of variables based on the number of bedrooms. They use the utility costs to help bargain with property owners on the rent.

Ms. Joseph said that Energy Star is a good idea, but do they think it will do more to discourage or encourage this.

Mr. Zobrist suggested that they accept Mr. Kamptner's recommendation to approve it eliminating the VR and allow staff to work on it some more. This is an evolving situation. They could add a strong recommendation that staff work on methodology for calculating a way to reduce energy costs in the houses that come under affordable housing.

Mr. Edgerton agreed. It may be a little premature, but he was so excited about it.

Mr. Cannon said that it was an excellent discussion. He would be anxious to look for an opportunity more generically, given the restrictions in state law, to try to find an opportunity for a more generic policy to encourage energy efficiency more broadly and not just in affordable housing but other housing as well. May be the market will take care of some of that. May be there are ways they can encourage it.

Ms. Joseph pointed out that this started off at 100 percent. So they have come a long way. She really appreciates the fact that the committee was willing to work with the Commission and come to something that was more palatable at this point in time. The other question they asked in the joint work session is that this only applies to land that is zoned R-1, R-1, etc. and it does not apply to rezonings. That is what people get worried about is that their expectations are a specific density and this may make it go up. She pointed out that one comment she received was that they need to change the bulk and density charts in the ordinance, too. It talks about bonus densities in the charts.

Mr. Cilimberg said that in each section there is a table.

Ms. Joseph questioned if the affordable housing changes should be reflected on the charts.

Mr. Cilimberg said that everything in the ordinance now refers to a 30 percent bonus. So the actual number that someone can get in bonus is not going to change. It just is how much of that would be market versus affordable. He did not think the bulk density changes. Staff will look at Ms. Joseph's question.

Ms. Joseph said that she liked the change from 5 years to 10 years.

Motion: Mr. Strucko moved, Mr. Craddock seconded, to recommended approval of ZTA-2005-00009, Density Bonus Affordable Housing, removing the amendment to Section 12.4.3, with a strong recommendation to the Board that they would love to see some Energy Star standards for affordable housing, but realize that it may be premature.

The motion passed by a vote of 7:0.

Ms. Joseph stated that ZTA-2005-00009, Density Bonus Affordable Housing will go before the Board of Supervisors on October 3 with a recommendation for approval.

Old Business

Ms. Joseph asked if there was any old business.

- Mr. Cilimberg noted that next week will the Rural Area Amendments follow up to the public hearing. Staff has been working very hard to provide good answers to the Commission's questions. Mr. Kamptner is working on an updated version of the ordinance that shows the changes from what they were seeing originally to what is now recommended. The packet will be delivered on Thursday morning and be made available to the public. The other staff reports for next week are in tonight's packet. Public input will be taken next week.

There being no further items, the meeting proceeded.

New Business

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

Adjournment

With no further items, the meeting adjourned at 7:30 p.m. to the Tuesday, September 11, 2007 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

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