Albemarle County Planning Commission
August 7, 2007

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, August 7, 2007, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Calvin Morris, Vice-Chairman; Marcia Joseph, Chairman; Duane Zobrist, Bill Edgerton and Pete Craddock. Absent were Jon Cannon and Eric Strucko.

Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was absent.

Other officials present were Gerald Gatobu, Senior Planner; Joan McDowell, Principal Planner; Glenn Brooks, County Engineer, Allan Schuck, Senior Engineer; Tamara Ambler, Natural Resources Manager; David Pennock, Principal Planner; Mark Graham, Director of Community Development; David Benish, Chief of Planning; John Shepherd, Chief of Current Development 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.

Committee Reports:

Ms. Joseph invited comments on committee reports.

- Cal Morris reported that last Wednesday the CHART Committee started working on a preliminary outline as to the steps that they will be taking for a 5 year update on the UNJAM Plan. In essence it is the traffic model for the entire area. It is moving along on an aggressive schedule.

- Ms. Joseph reported that the PACTEC met on July 19 to update the University and the City on the Southern Area B Study, which is going to the Board of Supervisors. Other items discussed included the following: the road through the study area; the Granger property; the expense of the bridge and the fact that the University may come in with a rezoning that may be a component to that; and Stadium Road and how it could be multi-modal. That is something the University is working on, which will be reviewed by CHART. It was noted that the City has placed affordable housing within their Comp Plan and now have an environmental section. There is another group being organized to talk about multi-modal focusing a lot on the bicycle. The University has done a study of bicycling around the campus and has a lovely map available.

There being no further committee reports, the meeting moved on 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.

Danny Newton asked to speak on the consent agenda item.

There being no further public comment, the meeting moved on to the next item.

Consent Agenda:

SUB2007-00182 Michael Zinsser Booth – Waiver
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. Zobrist asked to pull SUB-2007-00182 Michael Zinsser Booth – Waiver from the consent agenda for discussion.

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

- The property is 45 acres and has frontage on both Crozet Avenue and along a dedicated public right-of-way in Brookwood Subdivision in the rear of the property. The requested waiver is of section 14-404 of the subdivision ordinance in order to allow the property to be subdivided with multiple entrances. The language of the ordinance requires that both lots proposed would use a street created at the same time as the subdivision one street. In this case they are asking for a waiver in order to use the existing entrance serving the existing dwelling and then a new entrance in the back along the frontage they have along that dedicated right-of-way.
- The findings necessary in order to grant a waiver of this type include one pertaining to unusual circumstances with the property. In this case those circumstances all have to do with the middle section. Lickinghole Creek runs through the middle of the property. In order to extend the drive that currently serves this dwelling through to the rear of the property they would have to do some significant work on critical slopes, stream buffers and floodplain in order to make a crossing of Lickinghole Creek. The other unusual circumstance is that it has existing frontage on both the front and the rear of the property. Staff recommends approval in this case given the circumstances on the property. Allan Schuck is here from the engineering section.

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

Mr. Craddock asked if this was the last time either of these 2 lots could be subdivided.

Mr. Pennock replied no. The property is currently 45 acres, zoned Rural Areas with 5 development rights. The applicant does not have a subdivision application in place. He assumed that the additional development rights will get assigned in the front. At this time the subdivision application is not before us. The applicant is only proposing 2 lots on their waiver request. The applicant has not given the breakdown of the additional development rights yet.

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

Roger Ray, representative for the applicant, said that he prepared the request for the property owner. Mr. Pennock has adequately described the property. It is a parcel of land that fronts on Route 240 on a 50' dedicated street off of Brookwood Drive. It is separated by Lickinghole Creek, which has a large area of 100 year floodplain. Lot A and Lot B as proposed is also separated by a large amount of 25 percent slopes. To use all of that land from one entry way would require the crossing of Lickinghole Creek and floodplain and working within steep slopes. Therefore, they felt that it made the most sense to just serve the two lots from the existing streets.

Ms. Joseph invited public comment.

Danny Newton noted that he was one of the impacted land owners of this request. The right-of-way from Brookwood Road into this property runs right by their driveway. The road would be about 10' off from his back door. There is definitely a safety concern with his grandchildren playing in this area if they place a driveway into the property. There is about 30' between his house and the house next door. There would be noise and air pollution. There would be a lot of traffic in and out. The neighborhood has a real concern that the proposal right now is for 2 lots subdivided with probably a house on each, but they know that once a developer gets their foot into the door then they will want to subdivide it into more homes since they have their right-of-way into the property. The road access from Crozet Avenue would go into the whole property, but it would involve crossing Lickinghole Creek. This creek provides water to the water supply for Albemarle County, Rivanna Sewer Authority and the City of Charlotteville. They are

talking about water pollution there. Eventually this water flows into the Chesapeake Bay. They are all trying to work to eliminate pollution in the Chesapeake Bay. This area is in the floodplain, which is a concern if someone starts building houses or roads. There is a lot of wildlife that lives on the property. He asked that the Planning Commission give serious consideration to deny the requested access from Brookwood Road.

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

Mr. Zobrist asked how the 50' dedicated road got there.

Mr. Pennock replied that it was approved as part of the Brookwood Subdivision. Staff considers it as basically a paper street. It is a right-of-way that was dedicated to the County, but no improvements were ever made in that area. Mr. Ray has a copy of the subdivision plat when it was recorded.

Mr. Zobrist asked what year the plat was recorded.

Mr. Pennock replied that the plat was recorded in the 1970's in deed book 601. No improvements were ever made, but the right-of-way remains dedicated to the County. In order to do a private drive through that area his understanding from Jack Kelsey, Traffic Engineer for the County is that they would have to get permission from the County and enter into some sort of a maintenance agreement that basically says that no one else is liable for maintenance of this. They would have to get permission from the County to do that. But, it has been done in other places.

Mr. Zobrist asked if they would also have to get permission to have a private road.

Mr. Pennock replied that the proposal right now is just for a drive way. That right-of-way would count as frontage to the lot. The drive would go through that area as a way of providing access. If they wanted to do a private street or some other type of further development of the property that would involve additional levels of approval.

Mr. Zobrist asked what the Crozet Master Plan designation is.

Mr. Pennock replied that the property itself is split between several of the CT designations. The front section is CT-1. Most of the existing Brookwood Subdivision is Urban Edge, CT-3.

Mr. Zobrist felt the request was premature and ought to be deferred until they see what kind of a development was going in. There is no reason to move on this request until somebody decides what they want to do with the property. He agreed that there is going to be an impact on Brookwood. To properly evaluate it the Commission needs more information. This is piece mill planning.

Mr. Morris asked if our engineers have gone out and looked at this proposed right-of-way that would come in off of Brookwood Road. He asked if they know how that would impact the 2 existing houses.

Mr. Pennock replied that this gentleman was correct in that there is an existing drive right next to that right-of-way. The dashed area is 50' wide. The neighbor's driveway is about 60' to 70' down the road. Based on the plan submitted today it looks as though one lot being proposed would have a driveway fairly close to the existing driveway. But, the Department of Transportation has looked at both the existing entrance onto Route 240 and the entrance off of Brookwood Road and found both entrances to be adequate.

Mr. Craddock asked if this dedicated roadway is shown on plats of the neighbors.

Mr. Pennock replied that the right-of-way was shown on the recorded subdivision plat for Brookwood.

Mr. Craddock asked when these people bought their houses it showed that there was a dedicated roadway on their plats.

Mr. Pennock replied that he did not know the answer to that question, but presumably because it is a recorded plat.

Mr. Craddock asked if someone would have known that there was a potential for a road to go through there or did they just find out.

Mr. Pennock replied that it was shown on the recorded plat as a right-of-way. Therefore, the potential was always there that a road could go through there at some point.

Mr. Craddock asked Mr. Ray to give an explanation about the road way showing up on the plats of the adjoining neighbors.

Mr. Ray replied yes, that it was on the subdivision plat prepared by R.O. Snow. He did not bring the full copy of the plat, but just the area of the plat that shows the dedication of a 50' road way. It was described as shown on that map. He reviewed the site very thoroughly. This 50' road way does lye very close to the 2 adjacent houses. Both of those houses have lawns. This is an area of mature hardwoods within the 50' strip. It is a dedicated public 50' strip for access to this property. The design of a commercial road going into this property will be very challenging due to the narrow width of the 50' and having to put a public street and all of the amenities that go with. But, he was not saying that can't be done. He was saying that the likelihood is probably pretty low of that happening. Today without this subdivision this property has the right to gain access through that 50' strip. They did not know how things would go, but they would have the right to go ahead and put access into this property through there. It is not logical to force the access to this property across Lickinghole Creek and an abundance of steep slopes.

Mr. Edgerton noted that Mr. Zobrist made a good point. He asked if the applicant would have a problem with giving the Commission the benefit of knowing what their plans are going to be as far as how many lots they plan for each of these 2 parcels. There are more development rights than 2. He agreed that it was premature to make a decision of this importance without knowing how the property plans to be subdivided in the future. He asked if there was any reason why they could not up with that information.

Mr. Snow said that in his discussions with them they have not indicated any desire to subdivide this land any further. They would prefer to market it and let someone else do the development if it is developed or build 1 hours on it or however.

Mr. Edgerton said that if it was 1 house and one gravel driveway going back there that is a significantly different request from a subdivision road going in there. With almost 14 acres they would have the opportunity to put quite a few lots back there.

Mr. Snow stated that he believed the land could be used for what the zoning and subdivision ordinances allows it to be used for.

Mr. Edgerton noted that the ordinance prohibits two separate accesses, which is why it is before the Commission. It is hard for the Commission to make a reasonable decision about that without knowing what the plans are. They need to have a clearer understanding to help them in deciding what impacts are acceptable or not

Mr. Snow replied that he could not give them any more answers than he has.

Ms. Joseph asked Mr. Kamptner if they decided to put an entrance in right now could they do it and not subdivide.

Mr. Kamptner replied not without the County's permission. He noted that he has not seen the plat that dedicated the land in 1970, but if it was dedicated to public use the County owns that right-of-way in fee simple. Despite what Mr. Kelsey may have told staff over the last few years they have not been allowing private parties to use public right-of-way for a private access. They have been trying to clean that up because it creates problems long term. It may be that this site will be developed with 3 lots, which would justify the construction of a public street there. That muddled the water in both directions.

Ms. Joseph said that in other words he was not sure if a driveway could go in at this point in time.

Mr. Kamptner said that it would not be without the County's permission. That would require a Board approval because they would have to either through a contract or some kind of easement over public land to allow the private use of this land. If it is not a public road it has to be something else.

Ms. Joseph said that it would have to be 3 lots there for it to be a public road and to be used.

Mr. Kamptner said that he was not sure what VDOT's policy would be. This is essentially a stub out from this old subdivision. He was not sure what position VDOT would take in this kind of case. It has come up before, but there was not a clear answer because that stub out led into an apartment development, which was actually still just one lot. In that case they allowed it to be brought into the secondary system. That project was in the Charlottesville urban ring and not in the rural areas.

Ms. Joseph asked Mr. Zobrist if he was looking to see where they were putting the development rights at this time. Since it was zoned RA, he probably has 6 development rights.

Mr. Zobrist said that it was just premature and he was opposed to doing this piece mill to make it easier to sell it. They need to know what is going in there. This is a very sensitive piece of land located right on the creek. There is not a lot of developable land in the back. Possibly 2 or 3 houses could be built back there, but he can't build across the floodplain without coming in at this location. He did not see any reason to approve it at this time. The appropriate time to make this request is when the subdivision is done.

Mr. Kamptner said that if this waiver is not approved that the subdivision can still take place. Only the access to the second lot is really at issue.

Mr. Pennock said that is correct. The applicant still has rural area zoning on the whole property. There could many numbers of situations the front portion could be subdivided without building a public street. There could be a 2 lot division or a private street approval for something else. There are other possibilities so they could divide it into more than 1 lot now.

Mr. Craddock said that if the Commission did not approve it they would have to go to the Board of Supervisors to get access across this dedicated roadway.

Mr. Pennock said that is what he was hearing from Mr. Kamptner. Otherwise, if they extended this driveway all the way through more than likely crossing Lickinghole Creek would involve some sort of special use permit for fill in the floodplain. That was his best guess.

Mr. Morris noted that at this time it is a guessing game.

Ms. Joseph asked Mr. Ray if he would consider requesting a deferral.

Mr. Ray requested a deferral of this item for a 30 day period, but was not sure what specific questions need to addressed. He asked for some clarification on what specific things they need to address at that time.

Ms. Joseph suggested that they talk about the things that the Commission wants to see.

Mr. Zobrist noted that he was not inclined to defer, but wanted to vote on it.

Mr. Edgerton supported the deferral to give Mr. Ray an opportunity to come back. He asked for a commitment from the applicant as to the maximum amount of development they plan coming in from Brookwood Road before making a recommendation on the back lot. He was not asking that a total rezoning plan be provided. Before the Commission makes a recommendation to the Board he would like to know if they are talking ultimately about one property and one development right or a half a dozen. There are a lot of development rights on this property. He would like to know what they are granting

access to. At the very minimum the applicant needs to commit to what they are planning to do off of Brookwood Road.

Mr. Morris agreed.

Mr. Craddock asked that information be provided about the roadway and all of the Board of Supervisors approvals, etc.

Mr. Kamptner noted that would be one of the issues they would look at. First they would confirm that it is a public right-of-way and then the extent to which it can privately be used. The other little wrinkle with this particular application is that it may be a double frontage lot which may affect the legal review a little bit. There are several rights attached to land that abuts a public right-of-way. It may attach only if there is an existing constructed road rather than just a paper right-of-way. Staff will look at that issue as well.

Ms. Joseph noted that those issues would be clarified.

Motion: Mr. Zobrist moved, Mr. Edgerton seconded, to accept the applicant's request to defer SUB-2007-00182, Michael Zinsser Booth – Waiver to the next available date, not to a time specific, subject to the following conditions:

1. The request should not be brought back to the Commission until such time as the applicant has provided a clear view as to what development rights they want to attach to the property.
2. There has been a legal review of the applicant's ability to use the right-of-way.

The motion passed by a vote of 5:0. (Mr. Strucko and Mr. Cannon were absent.)

Ms. Joseph noted that SUB-2007-00182, Michael Zinsser Booth – Waiver was indefinitely deferred.

Review of the Board of Supervisors Meeting – August 1, 2007

Mr. Benish summarized the actions taken by the Board of Supervisors on August 1, 2007.

Regular Items:

SUB2007-00204 Patrick & Jill McCann - Waiver

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 change the access from an existing joint access easement to a separate new entrance onto an existing external public road, Garth Road [State Route 614]. The property, described as Tax Map 41, Parcel 43A3, contains 3.052 acres zoned RA (Rural Areas). This site is located in the Whitehall Magisterial District off Garth Road [State Route 614] approximately 800 feet away from the intersection of Garth Road [State Route 614] and Lake Albemarle Road [State Route 675]. The Comprehensive Plan designates this property as Rural Areas in Rural Area #1. (Gerald Gatobu)

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

- This is a 404 waiver request as stated in the staff report. The 2 parcels were created as a 2 lot division in 1996 with a joint access easement. Parcel D is owned by a trust since the owner is deceased. Mr. McCann is proposing to have his own entrance off of Parcel E.
- In trying to get the joint access easement staff found that the applicant can not just go in and clear out the sight distance easement without first getting permission with the trust holder of parcel D. In an email the applicant asked the lawyer of the trust if they could share the cost of the joint access easement. The answers are contained in the email in which they chose not to.
- Staff recommends denial of the waiver. The findings are on page 3 of the staff report. The subdivision originally was approved as a 2 lot subdivision with a joint access easement. The sight easement was placed there so they could share the joint access easement. That was the whole idea of creating this. During this process staff did not find any maintenance agreement to that access easement. Staff did not find anything in the deed that gives Mr. McCann the right to go in and actually clear the sight distance. If he wants to do the work he has to get permission from the trust to do that.

- Engineering could not recommend an alternative standard. There are no physical barriers except the fact that there is a sight distance easement. There is a lot of clearing that would take place for the sight distance easement. If Parcel D decides to do anything in the future they have to use the sight distance easement. VDOT has already approved that. On the other hand, Mr. McCann has got VDOT approval for an entrance on the opposite side of it.

Ms. Joseph asked if there were any questions.

Mr. Edgerton asked Mr. Kamptner about the sight distance easement not having a maintenance agreement.

Mr. Kamptner noted that the sight distance easement was shown on the plat, but there was no requirement or nothing that transfer any interest. So it is really something that is memorializing where this sight easement should be. He understands that the owners of parcel B have not denied the McCann's permission to go on to parcel D. It has not been fully pursued at this point.

Mr. Zobrist felt that someone has the implied right to clear an access easement. The sight easement was only important at the time the lots were subdivided. He asked if there was a safety issue now.

John Shepherd said that the plat was approved with a required joint access. The sight easement that is shown on this plat comes from a sketch from VDOT, which showed the requirement that they would have in order to create a safe access at that point. Before a permit for the entrance here is granted by VDOT this area will have to be cleared because there is not sight distance at that point. It is located on the inside of a curve where the vision is blocked. So the easement would be viewed as a VDOT requirement for the permit. If this request went forward staff would recommend a condition not to allow 2 entrances onto one parcel.

Mr. Edgerton agreed with staff that the ordinance does not allow the Commission to do anything but deny this request.

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

Patrick McCann, applicant, said that he went to VDOT to talk about the proposed access. They indicated that it was a safer access than was current on the plat. It obviously requires much less work and less cost. It requires virtually no intrusion into the forested canopy on Garth Road. The current sight easement area provides a very attractive forested canopy over the curve length of Garth Road. All of the trees on the left side of the road in that area would have to go in order to execute the sight easement. He has not asked the trust whether he has permission to do that. He assumed that he has permission to do that. That is not his particular issue. The sight easement if over 400' of Garth Road frontage, which is heavily forested with very attractive large hard wood trees and pine. According to VDOT it would require the removal of 30' to 40' within the forested area. He asked Rick Richmond, the attorney with the trust, what the plans were for that lot. That lot has been there since 1996. There are not plans to develop the lot per his discussion with Rick Richmond. The property is not currently being marketed. It is held in a trust which generates sufficient income to hold the property indefinitely. The trust would not be opposed to him constructing alternative access as long as there was a driveway and easement that survived the process for some time in the future. The trust specifically indicated that they are not willing to share in any cost of a joint driveway. He noted that the property was on the market and he wanted to find another alternative from having to cut down the trees.

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

Mr. Zobrist felt this was a tough issue because he liked the trees along Garth Road.

Mr. Morris said that this is a very tough issue simply because he would agree with the applicant's common sense approach that he has taken in making this lot, parcel E, marketable. But, he also understood that this is a subdivision lot with dual access, etc. and as far as the law is concerned it is clear.

Mr. Craddock said that it does make sense. It was mentioned that there was no access, but there is joint access. He was not sure of the legal requirements about the sight easement. The ordinance talks about limiting driveways to public roads. This may be another request that should go on a back burner for a while and find out about the sight easement. He was in favor of the joint access.

Ms. Joseph agreed with Mr. Craddock.

Motion: Mr. Edgerton moved, Mr. Morris seconded, to deny SUB-2007-0024, Patrick & Jill McCann - Waiver for the reasons stated in staff report.

The motion passed by a vote of 5:0. (Mr. Cannon and Mr. Strucko were absent.)

Ms. Joseph stated that SUB-2007-00204, Patrick & Jill McCann - Waiver was denied. She pointed out that the applicant could appeal this decision to the Board of Supervisors within ten days.

The Planning Commission took a break at 7:08 p.m.

The meeting reconvened at 7:27 p.m.

Public Hearing Items:

ZTA 2007-00003 Critical Slopes, Safe and Convenient Access (Zoning Ordinance Text Amendments)
Amend Sec. 4.2.3, Location of structures and improvements, Sec. 4.2.4, Location of septic systems, Sec. 4.2.6, Exemptions, and Sec. 4.6.6, Lot access requirements, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would prohibit the disturbance of slopes of 25% or greater ("critical slopes") in order to establish or maintain a street, driveway, or a yard on a lot in the rural areas zoning district, and would reorganize the section (Sec. 4.2.3); would require that septic systems, including the drain field, be located within the approved building site for the lot and, in the rural areas zoning district, prohibit disturbing critical slopes to establish or maintain a septic system, including the drain field (Sec. 4.2.4); would eliminate for lots within the rural areas zoning district the conditional exemption allowing the disturbance of critical slopes to establish accessways (including streets, driveways and alleys) and stormwater management facilities and the provision allowing such improvements to be located outside of the building site (Sec. 4.2.6); and would establish vehicular access requirements (minimum standards for grade, width, distance from dwelling unit, clear zone) for lots in the rural areas zoning district to assure that safety vehicles have safe and reasonable access to dwelling units (Sec. 4.6.6). (Joan McDowell)

AND

STA 2007-00002 Family Divisions (Subdivision Ordinance Text Amendments)
Amend Sec. 14-212, Family subdivisions; conditions of approval, Sec. 14-302, Contents of preliminary plat, and Sec. 14-309, Soil evaluations, of Chapter 14, Subdivision of Land, of the Albemarle County Code. This ordinance would require that a lot created by family division be held by a member of the immediate family for 15 years and recordation of a restrictive covenant prohibiting transfer of the lot to a non-family member for such period (Sec. 14-212); would amend the contour intervals at which topography must be shown on a preliminary subdivision plat and require that, in the rural areas zoning district, the preliminary subdivision plat must include the proposed grading showing all individual lot grading, including access, clearing and all other lot improvements (Sec. 14-302); and would require that in the rural areas zoning district, the soil evaluation to determine the suitability of the soil for septic systems with a conventional drain field be conducted within the building site shown on the approved preliminary plat (Sec. 14-309). (Joan McDowell)

Ms. McDowell presented a power point presentation and summarized the staff report to explain the history of the proposal. (See Staff Report)

- In 1980 the Zoning Ordinance was changed and the Rural Area District was created. Included in that zoning district there are throughout the county there are critical slopes regulations.

- Between 1995 and 1998 the Board of Supervisors appointed a Mountain Overlay District Committee. That committee met for a number of years. The result of their meeting was that a Mountain Protection Plan was adopted into our long range plan, the general guidelines, the policy guidelines and the Comprehensive Plan. In that it recommended protection of critical slopes.
- In 2003 the County held some open houses to discuss the creation of a Mountain Overlay District, a zoning district. That would include protection of critical slopes.
- Between 2004 and 2006 a second Mountain Overlay District Committee was appointed and they met for over 2 years. In 2006 they presented a consensus report. It was a 13 member committee. In that consensus report it had provisions to protect critical slopes. The Board and Planning Commission held 2 very large well attended public input meetings and moved to a new direction to move from a Mountain Overlay District to the Rural Areas. This is important. Over time the Board heard again and again from the public that if it was important to protect the critical slopes in the mountain areas that it was also important to protect those slopes in the rest of the Rural Areas.
- The Board directed staff to look at the provisions in the Mountain Overlay Ordinance or proposal by the committee and see what would fit the rest of the Rural Areas. Not everything did. The 3 things that did are the protection of critical slopes, changing the Water Protection Ordinance to include additional streams, perennial and intermittent and also to have safe and convenience access for emergency vehicles.
- In May the Board adopted resolutions of intent to specifically tell us what their intent was regarding these ordinances. Now staff is in public hearing stages. This is the first public hearing with the Planning Commission. The Board of Supervisors has a scheduled meeting for September 19.

- **What does the proposed ordinance not do?**
  - It does not change an existing house or residence. No one is saying they need to relocate their house. This ordinance does not say relocate or do anything to existing roads and driveways. There are no changes to existing septic systems. Agricultural and forestry roads are exempted. The waiver provisions have not been changed, but remain as is. Lots created on or before December 10, 1980 is exempted for the first residence provided a building site can be established.
  - Roads and driveways would no longer be exempted from critical slope requirements.
- The second part of this ordinance is safe and convenient access for emergency vehicles. A driveway grade would not be allowed to exceed public street grade. It would have to be within 50' of a residence. It would need a rectangular clearance of 10' X 14'. That would allow emergency vehicles to access a home.
- As part of this presentation the ordinances in front of the Commission is a little different than the ones received with the staff report. The public has been given copies of these new ordinances. These changes came about primarily due to the conversations that staff had with the public. A lot of the concerns were about maintenance. Would they be able to maintain their driveway and septic system without having to ask permission if it interferes with critical slopes? The changes staff is recommending tonight is to omit the word "maintenance" from the requirements. In other words if it is not regulated they can maintain it without a waiver.
- The second thing is that building sites and driveways identified on a preliminary plat, final plat or approved by the county engineer, which would be an administrative decision, and the building site changes from one place to another and it does not interfere with any of the zoning or subdivision regulations and is consistent with those, then the county engineer could approve it. Man made critical slopes would be exempted, but disturbance may require some kind of mitigation if that is appropriate. The main reason they are recommending this is that a number of the parcels that staff looked at when they were talking to these land owners had slopes that were created due to roads and railroads. It was just the banks of the roads and the railroads. So some of them reached all the way across their road frontage. Rather than asking people to come in to get a waiver this would be exempted. There are some housekeeping changes as well.

Ms. Joseph asked if there were any questions.

Mr. Kamptner said that in looking at the one change that is proposed the current regulations allow the exempt roads and driveways from the critical slopes requirements. It is only if there are no reasonable alternatives available. Although that exemption is being deleted in the proposed ordinance the landowners would still be able to apply for a critical slopes waiver. It is jut not an administratively approved exemption.

Ms. Joseph asked if the idea was that the waiver would come before the Planning Commission or would the waiver be something that would be governed by some supplementary regulation that staff could actually grant waivers.

Ms. McDowell said that in staff's discussions with the Board and Planning Commission during joint work sessions they discussed about having administrative waivers and an appeal to the Planning Commission. But in the final decision the Board did not give clear consensus on that. So staff did not touch the waivers. Right now the waiver requests go straight to the Planning Commission.

Ms. Joseph said that there would be no staff approval and the waiver requests would come straight to the Planning Commission.

Ms. McDowell replied that is correct.

Ms. Joseph said that staff was talking about showing where the building sites and roads are on a plat. So staff is saying that when they come to actually build they don't have to build in those locations that they have shown on a plat.

Ms. McDowell said that almost meets the current regulations right now. If they have a building site and it is shown on the preliminary plat there is nothing to say that it can't be moved. However, all of these regulations work together and the changes being recommended would allow if somebody wants to move it 12' to the east and it still meets all of the regulations the county engineer could review and approve it.

Ms. Joseph asked if that was written clearly enough if it was not 100' or 200' away where they find another pad that could also conform to the ordinance requirements.

Ms. McDowell said that she just used a measurement as an example. There is nothing in it that says someone can't move it 200' away.

Ms. Joseph noted that was the way it was being done currently.

Ms. McDowell said that currently the roads are allowed to go across critical slopes. The final does not show the building site. The Building Department does not ask for the building site to be shown when they issue building permits. This links it back altogether so that procedural wise it would show up and the county engineer could approve it or not.

Mr. Graham noted that one of the things that there was a lot of discussion with the Board about was the fact that what is called an agreement in lieu of a plan is used for the erosion control permit that goes with the single detached building permit. There is no agreement in lieu of a plan. There is not a plan that is actually submitted. There is nothing that actually shows where the driveway is going or where the grading is for that driveway. It does not even show where a house is going to go. It is basically saying that as long as they do these things as far as sediment control and in maintaining erosion protection that it is acceptable to do this. It was pointed out to the Board that staff had that discretion. The County's Program Authority under the Water Protection Ordinance has that authority right now to decide not to allow an agreement in lieu of a plan. But, staff felt that was such a significant change in policy they did not want to go there without direction from the Board to go there. That is where they ended up on this. So the idea is that for those properties that have critical slopes in the rural area by no longer allowing that agreement in lieu of a plan they would have the ability to recognize when critical slopes were being disturbed. That does not happen right now.

Ms. McDowell said that is going with the Water Protection Ordinance. It will go to the Board on September 19. The Water Protection Ordinance changes do not go to the Planning Commission. But, that is part of the package.

Ms. Joseph asked if there were other questions.

Ms. McDowell said that the second part of the request is an amendment to the Subdivision Ordinance. It pertains to family divisions. The Board discussed at length about family divisions. Even though this was not part of the Mountain Overlay District Committee's proposal the Board wanted this change. In the existing Subdivision Ordinance the family does not have to own the land any length of time before the division takes place, but they have to own it a minimum of 2 years after the division. The proposed still requires the immediate family ownership, with no change in the number of years required before the division, but the change is the maximum the State allows that is 15 years ownership after the year of division. That change is fairly simple in the zoning. There are some provisions about the topography, but it all ties together in a packet.

Mr. Edgerton said that on the family division language of the ordinance he was asked by a member of the public whether extending the family division required holding time from 2 years to 15 years would preclude an individual from getting financing on their property. Under section A it said that for purposes of securing any purchase money or construction money including bona fide refinancing. He asked if that covers that.

Mr. Kamptner said that what this language does is it also allows the family member who is the grantee to add a spouse even though under the definition of family they area not allowed to be a co-holder. But it does allow them if the lending institution requires them to be added. Certainly if he was the grantee he has the right to obtain financing.

Mr. Edgerton thought that it was a very legitimate concern that he was hearing from this individual of the public. What if the legitimate family member, such as the son or daughter, got the parcel, borrowed against it, built a house and then fell behind in their payments and the bank foreclosed on it. Would the bank be limited as to whom they could sell it to?

Mr. Kamptner said that the second round does recognize that a parcel created by family division may be transferred by devised dissent or operation of law. So a foreclosure procedure would probably fall under the operation of law that would allow the bank to obtain ownership and convey it including anybody else outside of the family.

Mr. Edgerton asked if something happened to that individual then the same thing would happen. He asked where the 15 years came from.

Ms. McDowell replied that was the direction from the Board.

Mr. Morris questioned if the change to 15 years would put an undue stress on the population. He thought that they would kick it up into increments of 5 years.

Mr. Graham pointed out that in the discussions with the Board they talked about having an ownership period before the division could occur. There was some concern by Board members about that. The Board thought if they were going to allow someone to sell the property the day after they take ownership the tradeoff to assure that there is no intent to subvert the process by using the family division would be to lengthen the period of ownership for that family member. That is how they got to the 15 years.

Mr. Kamptner noted that Albemarle County is in a class of localities under State law that is not required to allow family subdivisions. But, the Board has decided to allow for them. The 15 year period is based upon in part at least on new enabling authority that came into effect July 1 that applies to all the other localities. The enabling authority allows localities to require up to a 15 year holding period by the grantor and 15 years by the grantee.

Mr. Zobrist said that the 15 years came because Richmond is permitting it. The Board could decide not to allow family divisions in the County. It is important that they point out that family subdivisions are the way that the rural areas and subdivisions are being subverted for a number of years. People do family subdivisions and then 2 years later they sell the lots to a developer and can develop on substandard roads and so on. They tried to take care of it with the '05 amendment where family division has to apply with the VDOT road standards. He felt that if they all agree that they want to keep the rural parts of the County rural then they need some trade offs. This is one of the. They have plenty of room for development in the development areas. People who want to do family subdivision can continue to do so under this provision. If they want to do subdivide then they can do it under the regulations of the Subdivision Ordinance.

Mr. Graham agreed that there are other ways to subdivide a lot other than using a family division. The family division was a mechanism of convenience to recognize when families were trying to create a lot for a family member and keep the cost to a minimum for that with the idea that family member would hold the property.

Mr. Zobrist said that their current ordinance does not have a mechanism in place to monitor family divisions.

Ms. Joseph opened the public and invited public comment.

Carlton Ray, an environmental scientist, said that there are a lot of stream buffers that do not exist where they really should. The bad news from a scientific point of view is that a 25 percent slope is really not enough. Also, a 100' buffer is not enough. He made a power point presentation. He presented a slide showing Spring Creek at Albemarle lake where they built roads. About 3 weeks ago there was a gully washer which caused sediment in the stream. This was after all of the best practices were followed with the BMP. The sediment going into Albemarle Lake is one concern. They already have a problem when using the best practices and management. The other concern is the loss of species in the stream. Therefore, the strengthening of these regulations should be a requirement. He questioned if property rights give someone the right to muddy the streams or eliminate the species.

Greg Graham said that his family had owned Edgehill Farm for over 50 years. They have been good stewards of the land. He sees the proposal as a taking of land use and property rights.

Fred Ivory, Jr. said that he was one of 14 heirs of West Leigh Estates that contains 85.3 rural acres in the White Hall District. All of the parcels have critical slopes. All 14 heirs stand in opposition to the proposed zoning text amendment. They have 5 basic objectives to this amendment.

1. Loss of property value and marketability in property that cannot be put to its best use to its owners and to its potential owner The assessments are based on fair market value of land as measured by its potential value on the highest and best use. Normally that would be for full development. Under this provision the assessment office has determined that their land should be developed. However, the proposed amendment translates to something different. The critical slope constraints would certainly put a portion of their property into a less than best use category.
2. Reduction in development rights. As currently configured their property has 14 development or division rights. The number of these rights that would be lost or rendered useless under the proposal is undetermined at this time. Loss of these rights limits their marketability.
3. Inequity in tax burden – The proposed amendment would not apply to existing residences, roadways, access ways, etc. The property owners in the exempted category would enjoy an unfair advantage over others in a similar situation that has not developed their property.
4. Their current tax burden has increased from $4,677 in 2002 to over $10,800 in 2007. They would have no way if this goes into effect of having any way of recouping that value. Inequitable sharing of responsibility for preserving developments. The owners subject to the amendment would carry an unfair burden of trying to protect these areas.
5. Increase cost to builders. Any one who builds in the critical slopes areas would incur substantial costs to comply with. If they were able to comply it would greatly increase the cost to build. Therefore, he urged the Commission to abandon the proposed amendment.

Roger Ray, property owner and citizen of Albemarle County, said that he picked up this information yesterday and has studied it. He has discussed it with many friends and neighbors the implication of that. He gets to the meeting tonight and is told that there have been major changes in what was given to him yesterday. So he gets these new rules tonight and they are expected to make some type of constructive comments. He felt that the ordinance was overwhelming. It is unwarranted. It is not needed. They have a 25 percent slope in existence now. That 25 percent slope ordinance if administrated vigorously would provide protection without affecting their property rights. The requirement for doing a VDOT design slope of a road way and a driveway to serve the residence will be most overwhelming to hundreds or possibly thousands of parcels in Albemarle County. VDOT is currently administering the public street in Albemarle County as a maximum of 10 percent grade. That will require hundreds of variances from this rule to be able to construct on existing parcels. Some folks don't realize that the 15 year restriction on family subdivision not only goes to the parcel that is deeded to the family member, but it also goes to the retained parcel. The 15 covenant goes with the residue parcel, which he felt is most unreasonable. Maybe the rule today is too lax, but maybe a 5 year period would be a better number. But, a 15 year period is most unreasonable. This proposed ordinance needs to be shredded and every copy of it destroyed and then starts over again.

Paul R. Brockman read from a booklet. He donated the booklet to the Commission and Board. It is titled "Do Profits Promote Pollution? The Myth of the Environmental Race to the Bottom" and written by Robert Fleck & Andrew Hanssen. It says essentially that they are dealing with an economic development ordinance, not an environmental ordinance. The beauty of an environment has a major impact on the economic development. "Quite obviously workers prefer clean beautiful settings to polluted ugly ones. Consequently a firm will find it easier to attract good workers if it locates in a clean beautiful place. Firms thus have a strong incentive to choose locations with good environmental conditions." Therefore, he commends the Commission's efforts to preserve those conditions in this County. Virtually all of his property has steep slopes. He commended the Board and Commission for their efforts to control development and the alternation of any of the steep slopes. The best use of these slopes is typically forestal.

Jim Kennan said that he lived on a small acreage at 3157 Garth Road. He agreed with the comments of Mr. Ivory and Mr. Ray. Please seek and consider the unintended consequences of what they are proposing. This amendment will disenfranchise his two children and their many years of hard work to preserve their home place. His daughters had to seek employment elsewhere and are beginning as they get older to think about returning. This amendment as written dashes their plans. They have paid decades of taxes based largely on the development potential of this wooded and well located site. It is not suited for agriculture, but ideal for thoughtfully sited very few homes in the woods. It now appears that these sites will be inaccessible in the overall value of the property very significantly decreased. He calls that a taking of property rights. This amendment arbitrarily limits property rights, drastically lowers property values and negatively impacts many folks who live like his family as good citizens in a modest environment. He was against the 15 year provision. He was a retired army officer and had made 19 moves in 20 years. People don't stick around for 15 years not because they don't want to, but because they can't. Many people have to seek their fortunes elsewhere. What happens if someone dies? What happens if one of our major businesses leave and our children can't stay there? Please give this very careful consideration. There are some unintended consequences here that really need to be examined.

Shirley McNulty, resident of Stony Point since 1972, preferred not to see subdivisions on every mountain, but urged the Commission not to pass the amendment because to build on her property it would require putting a driveway on critical slopes. She noted that her property would be landlocked and useless if this amendment were passed. She asked that the consideration be given to reconsider the time on family divisions between 2 and 5 years.

Diane Gilford felt the County was taking away their right to give their 3 children and 3 grand children property. They have worked hard to maintain their land and pay their taxes in hopes of passing their land on to their children.

John Paul said that he moved to Albemarle County 2 months ago. Their intention was to redo their yard that was on critical slopes. He questioned how this would affect his plans. He asked if he as a citizen would be allowed to file for waivers and continue with his plans for his back yard.

James Dean agreed with most of the speakers tonight. He represented the little people in the County. His home and property represents his future and urged the County not to take away his rights. He questioned whether Mr. Jefferson would have been able to build Monticello under these provisions. He urged the County to have a little more compassion for the people in the County that can't afford to move to other areas. Most of the land this is called piedmont region is at the foot of the mountain and has slopes. He urged the County to not adopt these provisions.

Jim Burns said that he owns 5 acres near Advance Mills Bridge. He has quietly been enjoying his critical slopes for years. His driveway is on a critical slope. As he understands that if his septic tank was located on critical slopes that he could not dig up the lid to get it pumped. He hoped that the maintenance issues could be addressed in the proposal.

Albert Tyree said that he owned property in Stony Point of about 40 acres and had not had enough time to digest this material.

Ed Gibson said that his family has lived in this area since 1700. They have lived on land with slopes greater than 25 percent. He spoke against the proposal.

Corky Shackleford spoke against the critical slope regulations, the access and the 15 year restriction on family division. He agreed with the previous speakers. He wondered when they will have enough restrictions on their land, and he thought that time has already come.

Joe Jones, life time resident of Albemarle County and White Hall and current President of the County Farm Bureau, said that he had some mixed emotions regarding the critical slopes. In the Mountain Committee they discussed critical slopes and waivers. The committee tried to come up with some criteria on the waivers, but could not reach a consensus. There needs to be some work done on critical slopes and criteria to have an ordinance like this. He could understand the environmental benefits of it, but there is part of it that will take away property rights and property values. Regarding the family division he felt that the 15 year period was too long should be 3.5 years. On the proposed amendments if he wanted to give a lot to his children it says that all individual lot grading, community access and clearing would be required when he submitted the plat. Therefore, there would be $10,000 of engineering work that would have to be at the plat stage, which he thought was unreasonable and should not have to be done until a house permit is presented. The family subdivision should only require a survey and not all of these amendments.

William Nesbit agreed with everyone else that felt that the amendments were neither necessary nor desirable. The 15 year period is extremely undesirable. He has worked for the same company for 36 years and moved 7 times because that is where his salary went. He was concerned with the proposed variation changes and what do with exceptions. He has owned property in Turner Mountain for 15 years and wanted to know how the County was going to deal with the economic loss. He did not see the property values decreased. He opposed any changes to the ordinance.

Kirk Gloeckner said that 35 years ago he was on the Planning Commission when they discussed slopes. The concern was putting septic tanks and fields on slopes greater than 25 percent. The Health Department said that was a no, no unless engineers got into the picture and actually designed septic fields that work on slopes of greater than 25 percent. That is where the 25 percent slopes came into being. He pointed out that the 25 percent slope was not that great. The proposal was taking away people's rights. This ordinance ought to be thought about in this term and redefine critical slopes from 40 to 50 percent, which are mountains. But 4:1 is our yards.

Neil Williamson, of Free Enterprise Forum, felt that the proposed ordinances go too far. A family division at 15 years was extreme. Staff indicates that the new state law allows 30 years with 15 years on either side. The 30 year period really blows his mind. He appreciates Mr. Kamptner's explanation with regards to foreclosure. He had spoken with 3 or 4 different underwriters who had a different read on that. But, he

was sure Mr. Kamptner's read was correct and that they would be able to achieve financing. Lenders had indicated that it might be a difficult loan to sell. With regard to the rural areas zoning with the slope, currently the waiver provision is available through the Planning Commission. In the committee there was a lot of discussion, as Mr. Jones referenced, about concepts and ideas to setting up some standards and best practices. He would think that an administrative waiver with specific standards would be preferable. He feared putting forth a Planning Commission hearing would overburden the engineering department and create a political scene for approval of a rural division. He believed that it can be done. He thought that an administrative waiver would be the best policy. He asked the Commission to reconsider these ordinances.

David Mitchell, an Albemarle County resident in the White Hall District, said that this was not about 25 percent slopes, family ordinances or access by emergency vehicles. This was about not building another single family home in the rural areas again. He was not totally opposed to that, but the County can't take people's property rights without proper compensation. The only thing he has heard that makes sense is the transferable development rights because it compensates people for what you take. It is fair and the private market place can help compensate these people without the tax dollars having to go into it. If the driveways have to be built on 10 percent slope, then they might as well make the waivers for 10 percent. He opposed the 15 year period for family division due to the potential conflicts, particularly in a divorce situation. It is not American to take things from people without proper compensation.

Paul Garden agreed with the owner of Edgehill and other property owners that the proposal should not be passed. He wanted to pass his property on to his children. He has been a good steward of his property for years and would like to have the opportunity to continue doing so. The County should not take away their rights to pass their property on to their children. He has owned his property for over 50 years. It is unfair to take away property rights. The 25 percent slope is not enough.

Phillip Davis said that he owned 10 acres with Doris Bruce in White Hall. This property would not meet the proposed critical slope requirements. They would probably not be able to build on the property or sell the property. The last time the property was appraised it went up 40 percent. This proposal would now make his property worthless. He agreed with Roger Ray that this proposal should not be passed.

Morgan, of Southern Albemarle Law Center recommended the critical slopes for Board of Supervisors approval. Despite preserving Rural Charlottesville Tomorrow's research process, this proposal has important improvements to cut down on the ways critical slopes are now being disturbed. He urged that the Commission recommend these changes to the Board.

Jay Willard, representative for Blue Ridge Homeowner's Association, said that they don't oppose the nature of what was being done, but that they have some serious concerns. The language is not clear as written and they have come up with some possibilities. They want to take some time to rethink these things. The staff has come up with some changes since yesterday. There have been a lot of improvements made. What they were hearing tonight from the residents was that there were some other things with this proposal that could use more consideration and more clarify about what waivers might be and what issue should be discussed here. They urged the Commission to take careful consideration of the proposal and defer the proposal tonight. The Homebuilders would be happy to work with staff to help find ways that things could be built and still address the critical slopes. They are very concerned about preserving environmental impacts, but don't' want Albemarle County to become an undesirable place to build. There are ways to build on critical slopes that don't contribute to massive erosion. Tonight when he got out of his car and walked up to this building the slope from the lower parking lot is greater than a 25 percent slope. The County does have a driveway coming down that slope with adequate engineering to do that.

Paul Beyer, representative of R. L. Beyer, said that they were the developer of Ashcroft. They have other rural property in the County. He agreed with Mr. Willard that this needs to be deferred for further study. He could not say at this point whether it was a good or bad thing because what it is intended to accomplish intended or otherwise they don't really know. He has spoke with Ms. McDowell over the last week. The major changes made over the last week by staff from phone calls makes it clear that this thing needs more study due to its impact on everybody. This thing needs more study and a broader analysis. This proposal has not been looked at by the broader community, which includes the mortgage lenders.

Staff has said that they have not looked at mortgage lending community and major builders. The family division changes are blaring. The 15 year limitation is a deed description and is going to present problems with the lenders. The critical slope waiver process needs more analysis. To have to come before the Planning Commission is a waste of time. He asked that this not be a political football and that it should not go to the Board until further study was done. Therefore, he asked that the Commission defer this item.

Stuart Kessler said that a poll that shows that people don't want anything in their back yard does not impress him. A poll that says that we don't want anything in your backyard impresses and scares him. It was either Mark Twain or his mother that said the road to hell is paved with good intentions. What they are looking at is good intentions. But, he felt that the County was going after the wrong people. There have been policies that occurred in the '80's that restricted what they could build. A lot of developers went out and received zoning approval and subdivision approvals, which is what the County is dealing with now. It is something that they are now reacting to. He asked that the Commission please reconsider going after the wrong people. He has owned his land for over 25 years and has been a good steward of the land. He opposed the 15 year restriction on family division that would take away property rights and put burdensome restrictions on the land, particularly with mortgage lenders.

Joe Flamini, retired policeman, said that he was an engineer for 30 years and Chairman of the Sierra Club for 3 years. Looking at pictures of a muddy creek does not impress him. Any couple of flat lots will put a lot more residue into a stream. He has been a good steward of his land and has respected the 45 percent slopes on his property when building. He opposed the family division changes. He asked that if approved that the County at least provide some grandfathering because he has owned his property for 27 years. He asked the Commission to reconsider this.

Marianne O'Brien, resident of Batesville, agreed with Mr. Flamini 100 percent. She was glad that staff agreed to change the proposal to allow maintenance after her email. Maintenance is important because on her property in Batesville there was no where else to put a septic if it failed. It would have to be modified on a slope. Over ½ of her property would be considered critical slopes. She did not see the County reducing her property taxes in a corresponding amount. They were going to charge her as if her property was useable. The County was just going to tell her that she could not use it. She was very concerned when she read the proposal on line today because it did not take maintenance out. Therefore, the changes must have been made since lunch. She asked that they add grandfathering for people that already have homes and to make it so they could maintain and replace if necessary our driveways and septic fields. Otherwise they have just rendered her entire home worthless.

Claude Monger said that he was against everything everybody is for at some time. The County has too many too many regulations. He has 14 or 15 acres that he intends to give his children, but he has go up 25 percent grade to get on the back side of the property. He did not want to have to go through a lot of permits. He did buy and pay for the land years and ago and would think that he should be able to call it his own. He felt that the less governmental intervention the better off everybody would be. He hoped that they would have a good day.

Charlotte Shelton agreed with the objections to this. Her family has bought 4 parcels and the unintended consequences of this would be unfortunate. It renders a devaluation of the property. She asked that the Commission reconsider this and find other approaches. If this passes her son cannot build on the back part of the property. She hoped that they would reconsider the 15 year restriction. This needs to be studied more and do what is right for the family division and mountain overlay aspects.

Linwood Ayres, resident of Earlysville, said that his family has a 150 acre parcel. He was a third generation out of four. If this was passed he would not be able to afford to put a road in for his son to build on the back side of the property. He hoped that the Commission would reconsider all of this, particularly the 15 year restriction. If it was not broke, don't fix it.

Dave Watkins, resident of Covesville, echoed those who said that this amendment was not well thought out yet. He felt that Mr. Gloeckner addressed it well. The 25 percent slope is easy to understand, but what is the base. The slopes in his flower beds are raised and are much greater than 25 percent slopes. Would this prevent him from working in his flowerbeds? The amendment does not seem to define this.

Casey Williams said that she works on a preservation project in the County. She has some questions and concerns that were not discussed in earlier discussions. First, she understands from discussion with one of the rural area planners that the effective date of this measure, if adopted, would be the date of the Board vote. Because it is an amendment, the effective date would be the date of passage of the original chapter. For this reason land whose final plat approval was granted recently would not be exempted from these requirements. One development project in particular that has been designed to protect the productive uses of farm land and preserve the rural character has made design decisions based on the County's ordinances and policies that were in place at the time of approval some of which conflict with the provisions of the proposed ordinance. This proposed ordinance would hinder the project from fulfilling its mission. Second, the proposal requires that structures be built within the approved building sites. The County now requires during subdivision that the applicant provide a 40,000 square foot box, which is suitable for construction of a home and separately it requires that a suitable drain field area exists. Historically this box was required to simply prove that a sustainable building site and drain field exists outside of the critical slope area. The new ordinance will require home sites to be platted simply as a test of County build ability and actually squeeze all of the build able area into this tight envelope. She asked if this was correct and what the Planning Commission intends. Lots with woods may have to clear more trees or move out into the pasture that will take farm land out of production particularly due to not being able to cross small areas of critical slopes. While she supports efforts and commends the County for protecting the quality of their natural resources and keeps the rural areas beautiful, she wonders if this is the most effective and fair approach.

Dan O'Neil, owner of 40 acres, asked to speak on the family division restrictions being considered tonight. He asked primarily to underline the point Roger Ray. There are a lot of people that don't understand the restriction on the sale of a parcel created under the family division ordinance that the restriction would also apply to the residue parcel. He did not agree with that or the 15 year limitation on family division because it would be too restrictive. He wants to give 5 acres to his daughter. They need to look at reducing that time limit to 5 years. He questioned that the time restriction should apply to the residual parcel.

Gary Beck, resident of Albemarle County for 12 years, said that based on the overall criticism and that he was compelled to applaud their efforts to maintain the quality of life in the area that he wanted the County to move forward on improving their quality of life.

Heidi Dorson, resident of White Hall, said that a lot of people have critical slopes on their property. Her property was mostly critical slopes and she wanted a garage. She worried how she could do that. All of this is for permanent structures. It would be better for the environment if everybody goes through the permit process and gets it approved by engineers.

Rich Sorenvot said that no one has said a word about the impact statement. He has property that he wanted to build on that would be affected by this change. He asked the Commission to consider these major impacts. This proposal will impact his family.

Jeff Werner, with Piedmont Environmental Council, reiterated that what they were looking at tonight was not achieved in vacuum. The Mountain Protection Committee felt that they came up with some good ideas that went before the Board a year ago. There are always some questions on how to clarify it. People need to know how this will or will not affect them. Quite often when people are not sure they get into the stressful situation they are in now. There have been some good questions raised. The reason they were here is that in March of 2005 the Board of Supervisors unanimously adopted the Rural Area section of the Comprehensive Plan. There is only one new Board member. There may need to be further discussion. The Commission is responding tonight to something that has come from a long process and not just out of staff's office.

Dale Spurzem said that in May of this year he purchased a 110 acre tract in Covesville. The front 40 acres would still be buildable under the ordinances. He looked at this as an estate tract with a buildable tract on the back of the property. But with this change he would lose the ability to put a home back there at least mid way on property. Further review is necessary on the proposed changes and the impacts it would create for property owners.

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

Ms. Joseph pointed out that there were a couple of things the Commission needs to discuss. The Commission needs to set up a work session sometime before September 19 when the Board of Supervisors has a work session scheduled. She asked if the Commission can come to some conclusions

The Planning Commission reviewed and discussed the information and provided direction as noted in the following summary.

- After considering the comments, the Planning Commission deferred action and scheduled a follow-up work session on August 21st.
- Staff advised the Planning Commission that a September 19th Board public hearing had been scheduled as a special meeting for the specific purpose of completing the ordinance amendments. The Planning Commission appreciates the interest in a timely completion of this effort, but expressed concern whether they could complete their work in this timeframe. With this work session date and the possibility of revisions to the ordinance amendments as a result of the work session, there is some uncertainty as to whether the ordinance amendments would have a Planning Commission recommendation at the time this would be advertised for a September 19th Board public hearing. Therefore, the Commission asked Mr. Graham to forward a request to the Board of Supervisors to allow them additional time to work on the subject.
- The Commission asked staff to work on the following concerns, as reiterated by staff, prior to their work session on August 21:

  STA-2007-00002 Family Divisions – The Commission asked for clarification on what sort of advantage does one get if they are doing a family division.
  - A concern was expressed about the 15 years limitation and how it applies to the parent (residue) parcel. The Planning Commission asked that the time period be shortened as it applies to the residue. Why is the residue parcel subject to some kind of holding period and how can it be married.
  - Staff was asked to look at whether it was possible to provide some sort of recognition for those parcels which have been held for some period of time.
  - A question was raised about the impacts of these holding periods on the mortgage industry and in particular on the loans in particular situations such as divorce, death, etc. and how the holding period would affect it on both the subdivided and residue parcel.

  ZTA-2007-00003 Critical Slopes and Safe and Convenient Access – The Commission asked staff to look into waivers and provide some supplemental regulations in order to make the process easy and clear so someone would have to take a hard look at it.

  - The Commission wants clarification on what is a yard. What can a person do in that yard to make it more usable?
  - Staff was requested to provide a graphic if someone can move the 30,000 square feet somewhere else on the site or where the driveway goes. What is staff talking about?
  - The Commission wants to make sure that the public understands the breath and scope of grandfathering. The ordinance should be clear what the public can continue doing with their house and yard.

Discussion:

Ms. McDowell asked Mr. Kamptner if the September 19 Board date is moved if they need to send out 14,000 more notices.

Mr. Kamptner replied that individual notices were required for the Planning Commission meeting. There will be advertised notice and people should check the newspapers and contact staff to find out when this will be coming to the Board if that date changes, and to confirm the date of the work session.

Ms. McDowell pointed out that staff would put everything on the web page.

Ms. Joseph suggested that everyone should get on A-Mail because it tells you what is going on in the County. She invited everyone to come back to the next meeting to provide input and to see the changes that are made. That information should be provided about a week prior to the hearing. The next work session will be held on August 21.

Old Business

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

New Business

Ms Joseph asked if there was any new business.

- Bill Edgerton noted that he had received information in the mail about a course to become a certified Planning Commissioner, which he had taken several years ago. He distributed information concerning the role of a Commission in local government from one of the books from the course. He asked that the Commission discuss this information at some time in the future.

- Mr. Zobrist questioned the construction activity on Barracks Road that had a lot of filling on slopes. He suggested that the public should drive by and look at it as something that the Commission as trying to avoid happening near Ivy Creek.

- Mr. Morris and Mr. Edgerton will be absent on August 14 and 21.

There being no further items, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 9:40 p.m. to the Tuesday, August 14, 2007 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

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