**Albemarle County Planning Commission**
**September 11, 2007**

The Albemarle County Planning Commission held a meeting, work session and a public hearing on Tuesday, September 11, 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, Marcia Joseph, Chairman; Eric Strucko and Pete Craddock. Absent were Calvin Morris, Vice-Chairman; Bill Edgerton and Duane Zobrist. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Other officials present were Mark Graham, Director of Community Development; Tamara Ambler, Natural Resources Manager; Scott Clark, Senior Planner; Wayne Cilimberg, Planning Director; Joan McDowell, Principal Planner; Glenn Brooks, County Engineer and Greg Kamptner, Deputy County Attorney

**Call to Order and Establish Quorum:**

Ms. Joseph called the meeting to order at 6:05 p.m. and established a quorum.

**Other Matters Not Listed on the Agenda from the Public**:

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

**Review of the September 5, 2007, Board of Supervisors Meeting**

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on September 5, 2007.

**Public Hearing Item**:

**SP-2007-00025 First Christian Church (Sign # 1 & 2)**
PROPOSED: Special use permit amendment for church, to change location and size of proposed picnic pavilion and change boundary of wooded area not to be disturbed.
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre); EC Entrance Corridor - Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access
SECTION: 10.2.2.35 Church building and adjunct cemetery.
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre)
ENTRANCE CORRIDOR: Yes
LOCATION: Northeast corner of Richmond Road (US 250) and Keswick Road (Route 731).
TAX MAP/PARCEL: 79-24A
MAGISTERIAL DISTRICT: Scottsville
(Scott Clark)

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

- This is an amendment request for a special use permit request for a church to change the location and size of the proposed picnic pavilion and change the boundary of wooded area not to be disturbed.
- It is a 15 acre wooded parcel. In January, the Board approved a special use permit for this church with a condition requiring that the scale and location of the improvements for the church be in accord with the conceptual plan. The plan shows the defined boundary of woods not to be disturbed, 2 small picnic shelters next to the church with a tree line boundary.
- The amendment request is to change the design from 2 small picnic shelters to 1 larger one near the parking lot. It also changes the boundary of the wooded area not to be disturbed largely to accommodate the needs for the septic fields for the church.
- There are no significant new impacts to adjacent properties. Also, this change has been reviewed by the Architectural Review Board and they had no objections to the change.

- Staff has identified the following factors favorable to this application:
    1. VDOT and the County Engineer are satisfied that the entrance design is adequate to accommodate the traffic generated by the proposal.
    2. A church on this parcel would provide a community meeting place and opportunities for residents to take part in local community life.

- Staff has identified the following factors unfavorable to this application:
    1. Construction of the church would require clearing of parts of this wooded site. Recommended conditions are intended to reduce the visual and environmental impacts of this clearing by controlling its extent and location. There is a loss of 0.39 acres of the wooded area not to be disturbed. That is a small area over the whole 15 acre parcel. Therefore, staff felt that was a minimal change.

- Based on the findings contained in this staff report, staff recommends approval of Special Use Permit 2006-25 First Christian Church with the conditions as outlined in the staff report.

Ms. Joseph asked if there were questions for staff. Since this was such a minimal change she asked Mr. Kamptner if that was something that could be administratively approved.

Mr. Kamptner replied no, because the conceptual plan that was approved with the first special use permit by condition 1 was made part of the conditions.

Ms. Joseph said that reference to that first drawing is what held them to those areas.

Mr. Kamptner replied that was correct.

Mr. Craddock asked if staff has heard from any of the neighbors.

Mr. Clark replied that he had not heard any comments.

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

Hunter McCardell, of McKee Carson, represented the applicant. He said they have no comments at this time, but are happy to answer any questions.

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

**Motion**: Mr. Strucko moved, Mr. Cannon seconded, to approve SP-2007-00025, First Christian Church, with the conditions recommended in the staff report.

1. The church's improvements and the scale and location of the improvements shall be developed in general accord with the conceptual plan entitled "First Christian Church, Albemarle County, Virginia – Minor Amendment to the Special Use Permit" prepared by McKee Carson, and dated May 29, 2007.
2. The area of assembly shall be limited to a maximum 306-seat sanctuary.
3. No grading or tree removal shall take place within the area marked "area not to be disturbed" on the conceptual plan or within the 75-foot setback adjacent to Route 250 East.
4. No erosion and sedimentation control plan nor building permit shall be approved for the area marked "area not to be disturbed" without prior approval of a tree conservation plan complying with section 32.7.9.4 of the Zoning Ordinance.
5. All parking setbacks and undisturbed buffers required by Zoning Ordinance section 21.7, Minimum Yard Requirements, shall apply if this use is developed.
6. All outdoor lighting shall be arranged or shielded to reflect light away from the abutting properties.
7. The existing prescriptive right-of-way along this parcel's Keswick Road (Rte. 731) frontage shall be replaced with a public right-of-way at least 25 ft wide and dedicated to public use.
8. There shall be no day care center or private school on site without approval of a separate special use permit;
9. If the use, structure, or activity for which this special use permit is issued is not commenced within sixty (60) months after the permit is issued, the permit shall be deemed abandoned and the authority granted there under shall thereupon terminate

The motion passed by a vote of 4:0. (Mr. Morris, Mr. Edgerton and Mr. Zobrist were absent.)

Ms. Joseph stated that SP-2007-00025, First Christian Church will go before the Board of Supervisors on October 10, 2007 with a recommendation for approval.

**Work Session**:

**ZTA-2007-00003 - Zoning Ordinance; critical slopes; safe and convenient access**

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 access ways (including streets, driveways and alleys) and storm water 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 - Subdivision Ordinance; family divisions; contour intervals; individual lot grading**

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. Joseph asked to have a brief discussion with the Planning Commission before they start the work session. When the Planning Commission looked at this in a joint work session with the Board it did not have this form. One of the things they talked about was following the advice of the Mountaintop Protection Committee. They talked about very simple things that were going into this ordinance, which were all about environmental protection. It included erosion and sediment control and stream buffers. She asked Mr. Cannon to help explain what the Mountaintop Protection Committee came up with.

Mr. Strucko noted that he printed out the executive summary of the December 13, 2006 joint session between the Planning Commission and Board of Supervisors.

Mr. Cannon noted that he would give a recollection with the assistance of Pete Craddock who was also on the committee or citizen's group, which was organized under the direction of the Board of Supervisors.

- The committee met for at least 2 years before it came to a set of conclusions and recommendations, which were made to the Board and Planning Commission. The mandate of that committee was to look at alternates for protecting the elevated areas of the County, the Mountain Ordinance Districts. The committee came up with a series of recommendations to do that. Those recommendations were in the form of a consensus by the full committee. Those recommendations included extending protection of the critical slopes to driveway and roads as well as to dwellings in the Mountain Ordinance District. The recommendations also included increasing the extent of the buffer protection for streams within the Mountain Ordinance District. Although the committee's mandate did not extend to rural areas outside the Mountain District, the committee's

consensus recommendation to the Board and the Planning Commission was that those bodies should consider extending those protections on critical slopes and for stream buffers into the rural areas generally wherever streams and critical slopes occurred. That produced, as he understood it, a direction by the Board that such an extension into the rural area should be considered. That consideration has led to the proposals before the Commission today.

- The effort to produce a set of sound environmentally based protections for the Mountain Ordinance District and by extension into the rural areas has gone on for some time for some years. There was an earlier effort involving a committee which produced a set of recommendations which failed to be enacted. Then the committee that Mr. Craddock and he sat on was developed to come up with a different set of proposals which could be adopted. That was done. So this is a process that has been going on for years all in an effort to achieve the right kinds of additional protections for the areas that are crucial to our quality of life and happiness in this place that they share. That is his understanding of the background of these proposals.

Mr. Craddock added that at the time Jon was a citizen member of the committee and not on the Planning Commission. There are at least 3 other members that served on that committee out in the audience. He noted that Mr. Cannon gave a good recollection.

Mr. Strucko summarized the joint meeting with the Board.

- He acknowledged his absence at the August 7 public hearing due to a family vacation. But, he read the staff report and the minutes of the meeting about the concerns. His concerns stem from what they discussed in the joint hearing with the Board of Supervisors, what they left with the Board and then what has come back to the Planning Commission. He thought the December 13 meeting conversation among the two bodies was constructive and positive. He thought they were moving in a progressive manner. The conversation involved several provisions for critical slopes. The concern was the Mountain Overlay District consideration was only looking at a specific section of the rural area and residents and land owners felt sort of segregated and being treated differently from other citizens in the rural areas. Their consideration was what they could do in the entire rural area. They were looking at ordinances that basically stated that no residential construction or related road or driveway construction, except for the improvement of a road or driveway that existed on the date of the ordinance would be permitted on critical slopes. There was from a date certain forward existing structures, driveways and road ways on critical slopes were not impacted by what they were considering. He has received a lot of comments from the public that said that was not the way the language was written and passed back from the Board. Therefore, he had a concern about that. It says that the band on construction would not apply to roads built for forestry, agricultural and horticultural purposes. Neither would this band apply to lots of record created on or before December 10, 1980. That was the year of the massive rezoning.

- Any road built on critical slopes for forestry, agricultural or horticultural purposes after the date of the ordinance would not be convertible to residential use after the approval date. He was reading directly from the report that was distributed in December, 2006. He was concerned as to what happened with the Board of Supervisors. What did they do to this language? What are they passing back to the Commission and what are they asking for. The Commission wrestles with what they will recommend to the Board or if they follow

the policies and guidelines set by the Board. He was anxious to hear the staff report. He wanted to express that he as a Commissioner was a little surprised that this was coming back to them from the Board of Supervisors. He thought that the Commission had done their work and that the Board was looking at taking their recommendations and turning them into policy. It seems that it is now coming back to the Commission for review. His intent, particularly for the critical slopes piece here, was to follow what the terms of the Mountain Overlay District Committee suggested.

- They can talk about the family subdivision proposal as well. Again, he thought that was in the same boat. He did not know where this 15 year requirement came from. Personally, he was not in favor of that. He felt that was fairly arbitrary. The Board was looking at something very different in December. The Board obviously was working and came up with a proposal and now is sending it back to the Planning Commission for review. He was ready to work through it this evening, make a recommendation and take action tonight to pass this back to the Board. He knew what they originally intended 9 months ago in December. His opinion of these matters has not really changed. He felt that they should go back to their recommendation 9 months ago, which was still his recommendation. These provisions are very different.

Ms. Joseph noted that this is a work session. The Commission had a public hearing. Therefore, this can move on to the Board with recommendations from the Commission tonight. So that can happen. But, it does not sound like the same sort of information that they had been talking about with the Board in December. One of the things that she was very concerned about is the mitigation aspects. They talked about mitigating and allowing construction within the critical slopes, not houses, but for driveways. They talked about how that can be mitigated. The expectations were that there would be some measures to allow for mitigation that were clear to the public so that everybody knew what the expectations were. That is kind of where the Commission is at this point. Tonight the Commission will be taking public comment. They want to hear what the public has to say because these documents work better if they get everybody's voice heard.

Ms. McDowell noted that Glenn Brooks, County Engineer, will start the power point presentation and discussion.

Glenn Brooks, County Engineer, said that in the last session some of the questions that asked were: Why they were doing this? Why these provisions were in place? What were the engineering reasons why they need to change the critical slopes provision of the zoning ordinance? He put together a discussion of why in the Power Point presentation as follows. (See Power Point Presentation)

Critical Slopes in the Rural Areas – A discussion of why; reasons for changing the critical slopes provisions in the zoning ordinance.

**Critical Slopes in the Rural Areas** –

1. History from Board Minutes.
2. Current Engineering Practices.
3. Examples from the field.

**HISTORY FROM THE BOARD MINUTES**:

1974 The Soil Conservation Service slope rating system referenced (Apr 24 minutes)
Gently sloping: 2% to 7%,
Moderate to strongly sloping: 7% to 15%,
Steep or strongly sloping: 15% to 25%.
Steep or severe: > 25%

1975 Amendment to the Albemarle County Soil and Sediment Control Ordinance to Protect the Quality of Water in the South Fork Rivanna Reservoir (Sept. 4 minutes)

Prohibited development on 15% slopes or steeper, except for utilities or roads, in the reservoir watershed.

Ordinance was approved at 25% as a compromise (minutes of Oct. 27, 1975, p.369)

1976 map of critical slope areas around the reservoir created, including slopes of 15% or greater within 500' (Feb 25 minutes)

1977 Runoff Control Ordinance adopted with same provisions

1979 "Critical slopes" appears for ZMA-79-06, Northridge, referring to slopes greater than 15%. (Jun 6 minutes) Ashcroft proffers stated no *septic tanks or fields* to be on lots steeper than 25% (Sept. 19 minutes)

1980 New Zoning Ordinance adopted on Dec. 10, 1980 prohibiting development on "critical slopes" of 25% or more. The year's minutes contain snippets of discussion;

May 14, from Bob Tucker, County Planner, "The purpose of this provision was to reduce the amount of soil erosion during development to protect streams and watersheds."

Sept. 22; the use of open space for recreation is cited as a reason for requiring a percentage be out of 25% slopes.

Oct. 13; a motion was made to make critical slopes 20% for drainfields. This did not appear in the final draft.

April 15, 1981 staff stated the critical slopes provision was created "to effectuate the Comprehensive Plan recommendation in regard to reservoir watersheds and mountainous areas."

1987 Oct. 21; Building site language proposed to be added to critical slope provisions

1989 Nov. 15; Building site language adopted. ZTA-89-06, amendment to critical slopes "to more clearly reflect its original intent to control improvements and grading activity to steeper areas."

1990 Aug. 8; a discussion occurred regarding the waiver for roads with regard to siltation concerns to the reservoir. Mr. Keeler, Assistant County Planner, noted that words left out of the ordinance were "provided no such activity shall occur within 100 horizontal feet of a tributary of a reservoir watershed."

Protecting and conserving is the goal. The way the ordinance is currently implemented they are not protecting and conserving because of the exemptions that are allowed. This ordinance was adopted in 1980. This language has pretty much remained untouched since 1980. The stated emphasis was to protect and conserve as listed in items a, b and c below.

**Existing Ordinance Goals**:

- **4.2 CRITICAL SLOPES**
- These provisions are created to implement the comprehensive plan by **protecting and conserving** (A) steep hillsides together with (B) public drinking water supplies and (C) flood plain areas and in recognition of increased potential for soil erosion, sedimentation, water pollution and septic disposal problems associated with the development of those areas described in the comprehensive plan as critical slopes. It is hereby recognized that such development of critical slopes may result in: rapid and/or large-scale movement of soil and rock; excessive storm water run-off; siltation of natural and man-made bodies of water; loss of aesthetic resource; and in the event of septic system failure, a greater travel distance of septic effluent, all of which constitute potential dangers to the public health, safety and/or welfare. These provisions are intended to direct building and septic system locations to terrain more suitable to development and to discourage development on critical slopes, and to supplement other regulations regarding protection of public water supplies and encroachment of development into flood plains. (Amended 11-15-89) Where modification of regulations is sought pursuant to section 4.2.5, such request shall address each concern specified in section 4.2. (Added 11-15-89)

**CURRENT ENGINEERING PRACTISES**

**4.2 CRITICAL SLOPES**

- These provisions are created to implement the comprehensive plan by protecting and conserving steep hillsides together with public drinking water supplies and flood plain areas and in recognition of increased potential for soil erosion, sedimentation, water pollution and septic disposal problems associated with the development of those areas described in the comprehensive plan as critical slopes. It is hereby recognized that such development of critical slopes may result in: **(1) rapid and/or large-scale movement of soil and rock; (2) excessive storm water run-off; (3) siltation of natural and man-made bodies of water; (4) loss of aesthetic resource; and in the event of septic system failure, a (5) greater travel distance of septic effluent, all of which constitute potential dangers to the public health, safety and/or welfare.** These provisions are intended to direct building and septic system locations to terrain more suitable to development and to discourage development on critical slopes, and to supplement other regulations regarding protection of public water supplies and encroachment of development into flood plains. (Amended 11-15-89) Where modification of regulations is sought pursuant to section 4.2.5, such request shall address each concern specified in section 4.2. (Added 11-15-89)

**Notes**: (See examples in Point Presentation)

- "Protecting and conserving" is often not possible with the current exemptions for access, utilities, and fill & waste areas"

- "Siltation and loss of aesthetic resources are the more significant issues in the rural areas."

- "Protecting and conserving" is often not possible with the current exemptions for access, utilities, and fill & waste areas"

**Regarding excessive runoff -** There are exemptions that are allowed in the ordinance that permits the cutting of trees and someone to put in driveways and fill areas. That is routinely done. It can be a driveway or a fill area. What is more important is that it does not matter where the run off originates. It does not have to originate on the slope itself, but can originate above. But, if it runs over a slope, especially in a constructed area, it can cause erosion.

The most important factor usually in excessive storm water run off is the overall pattern of development on the land; how dense it is and if there are disconnected areas. Usually in rural development it is not a big factor because the developments are fairly spread out with large lots and run off is just not a major concern unless it is concentrated in one area. If mitigation measures are taken on slopes it can't be totally mitigated. Again, the exemptions in the ordinance permits tree cutting, driveway installation and fill areas.

Regarding #5, the Health Department will allow septic installation on greater slope. If it fails the septic effluent will run off the side and surface on the ground and run down the slope. That is the failure they are talking about. The Health Department will allow building on a much steeper slope requiring some measures at about 20 percent up to about 40 or 50 percent. Typically the Health Department will ask for ditches to be dug and to spread t hem out. It gives more room to infiltrate on the bottom. Other items that can be done would be to bench the septic field and put in different pumping systems. There are ways to engineer around building a septic field on a steeper slope. It is very doable. One of the concerns the Health Department does raise now and again is the safety of contractors building these septic fields on a steep slope. That is a concern for any construction on a steep slope. Again, there are ways to engineer around it. One can use track equipment, use stabilizers on equipment and use different methods such as cutting a road in. There are ways to get around that also. It is not as big a concern as one might think.

That brings us back to the existing ordinance. To summarize, the siltation and the loss of aesthetic resources were the issues most significant in the rural areas, which was #3 and #4. The other 3 were not as significant. Protecting and conserving is often not possible with the current exemptions.

Several examples from the field were presented, as follows.
Example 1 - approved subdivision lot created with the building site next to the cul-de-sac
Example 2 – constructed driveway and site.
At the conclusion of the presentation, Mr. Brooks offered to answer questions.

Ms. McDowell presented a power point presentation and summarized the staff report on the zoning text amendment and subdivision text amendment.

- As mentioned, the Board of Supervisors wanted a complete package. The package includes not just the Subdivision Ordinance and Zoning Ordinance Text Amendments, but also a Water Protection Ordinance. Tamara Ambler, Water Resource Manager, was

present to answer questions. WPTA 2007-01 Amendment to the Water Protection Ordinance basically has 2 elements:

1. Require new construction of residences in the Rural Areas to submit an erosion and sediment control plan that will show clearing and grading. Currently staff allows agreements in lieu of plans in many cases. If they connect this E & S plan with the other ordinances they will be able to implement them. Without it, they will not be able to do so. This is fundamental to the whole package. Currently they only see the grading for the building site and not the driveway with the preliminary plan. With this staff will be able to see the whole picture before the building permits are issued.
2. It includes an 100' wide stream buffer for both perennial and intermittent streams in the Rural Areas. This is a fundamental change. Currently that is only required in a Water Protection Area. This would add the intermittent stream buffer as well.

- STA-2007-02 Family Divisions - Several comments at the last public hearing concerned staff. It seemed that the public was not aware that the family division is not the only way to subdivide in the rural area. There are other subdivision methods available. While similar in nature, the big different in the subdivision methods is the roads. There are more requirements for rural divisions and conventional subdivisions than there are for family divisions. Family divisions can use the driveway. There is a faster process for family divisions of 21 to 60 days. As the divisions become more complicated and require more information, then the process is longer.

Ms. Joseph asked if in a family division, where the land was in an Agricultural Forestal District, could a 2 acre lot be created if the land was going to a family member. Or, does the lot have to be 21 acres.

Ms. McDowell replied that she thought that it was 21 acres, but she would refer the question to Mr. Kamptner. She noted that they would come back to that question. The intent with family division is to promote family cohesiveness. It is not intended to circumvent the requirements of ordinance. It is not intended to provide short term profit motivations. There is no ownership requirement for the family division. The property could be bought today and subdivided in 21 to 60 days. The proposal is for 0 years before the division and 15 years after the division, which is the maximum allowed by the state on ownership after the division. According to the current state regulations one could own the land for 15 years before and 15 years after the family division. The parent parcel and the new parcel are subject to those ownership requirements. The alternative came from staff discussions. After the last meeting staff discussed this because there seemed to be some concerns about the length of ownership. Staff suggested an accumulative 15 years. It allows for ownership to accumulate with the parent parcel and continue into the new parcel. So if one owns the property for 2 years then they would only be subject to the remaining. So it would be 15 years for both. If the parcel is owned for 15 years before being subdivided one would not be subject to that 15 year ownership. That would have already been accomplished. This does provide some measure of the intent of family cohesiveness. It is not penalizing folks who have owned that land for a number of years by making them own it even longer. That is an idea.

Mr. Strucko said a parcel has to have division rights in order to be subdivided. He asked what the advantage is in doing a family subdivision versus a conventional division.

Ms. Joseph replied that a family subdivision has less stringent road requirements and a faster process.

Mr. Strucko said that the requirement being considered is that the ownership has to be retained for a period of time. The intent is to promote the cohesiveness of the family, but to also not encourage the development of the rural areas. They want to make sure that there is no abuse of family divisions. A family subdivision could occur and then one of those parcels could be sold commercially. That way the subdivision circumvented the rules and regulations for a conventional development. Is an alternative to the minimum years of holding the land in the family to say that as soon as a family subdivided parcel sold commercially then conventional rules would kick in?

Ms. McDowell noted that there was a fundamental problem. They have no way to monitor family divisions.

Ms. Joseph suggested that a note be placed on the plat.

Ms. McDowell said that it would be part of the deed. Mr. Kamptner has written in that it is supposed to be part of the deed. She has talked extensively to subdivision planners and the County Assessor's office about this issue. For instance, if a property was sold to a member of the family with a different last name, they have no way of knowing. They were relying on the honesty of the property owner. But, they can check prior ownership.

Ms. Joseph said that there seems like there might be another layer that would looking at, which would be the lenders when they look at the plat. When the lenders looked at the history of the property they would see that this could only be sold to a family member unless these upgrades occurred.

Ms. McDowell said that she had checked with title companies. When the title search is done they would do that. But, in a lot of cases it is for a nominal sum and the owners are not going through a title company.

Ms. Joseph noted that she was talking about when the family division is resold when the title search was done.

Mr. Strucko asked if the issue was monitoring whether or not these parcels go to family members. How do they propose to monitor whether or not they stay held for 15 years? Are they going to confront the same monitoring issues?

Ms. McDowell said that unless the process is changed they are relying on what is in the deed and what the title company and lenders discover or if someone complains. That is one of the issues. They have said that there does not seem to be a problem with family divisions, but in actuality they don't know.

Mr. Graham said that the deed restrictions could address a lot of those concerns. But, one of the real issues, as per Mr. Strucko's question, is that a lot of these family division lots that are created simply cannot be converted to a conventional lot in the future. The road requirements and where the lots are located, for whatever reason, make it impossible to ever create a public road frontage or even an improved private road frontage to these properties. Usually there is

inadequate right-of-way and there are other properties that are involved. It is just plain impossible to convert that to a conventional lot at some point.

Mr. Strucko asked if that would prevent the sale.

Mr. Graham said that the question would be raised when someone comes in after they have done improvements on that lot, such as build a house. They have heard about the hardships of people moving away from the area. Beyond the time restraint they are saying now that could never be sold to somebody else.

Mr. Strucko said if the parcel does not meet conventional subdivision rules that parcel with the house on it could not be sold.

Ms. Joseph questioned if they are required to have a provision for family divisions in the ordinance.

Mr. Kamptner replied that as a high growth locality they don't have to.

Mr. Strucko said his concern was this 15 year restriction seems a bit arbitrary. There are other mechanisms in place to accomplish the goal. It is at the discretion of the particular landowner. If they want to subdivide for a family member that is fine, but if the intent is to also leave open the option of a potential commercial sale they have to develop those family subdivisions in a certain way that meet the conventional subdivision rules sometime in the future. That is encumbered on the land owner. That gets them to the same place that they can get to with the 15 year requirement, which he personally could not support. But, he felt that if they could get there in a different way that leaves a little more discretion to the land owner.

Mr. Cannon said that he had trouble imagining a system that would effectively enforce a retrofit requirement like this. He felt that it would be vigorously resisted by the land owner if they could not sell the property without having to put a substantial additional investment into the property. There would be an issue if they were not able to sell it without the change. It is an interesting idea, but there were some issues with it.

Mr. Strucko said that the land owner should develop the family division in such a way where the conversion would be easy if the property was to be sold.

Mr. Cilimberg noted that the 15 year recommendation from the Board was a period of retention that they felt was appropriate that was at the maximum of the State Code requirements. The Commission may want to recommend something less. Right now it is 0 years before the division and 2 years after. If the Commission feels that 15 years is too much they have the option of recommending to the Board a lesser number of years. A retroactive type of requirement for some cases is going to make it literally permanent and they will never be able to. That is a lot more than 15 years.

Mr. Strucko said that he would not use the work retroactive. He would say the family member who is subdividing for other family has to think ahead and anticipate that the way they were developing this particular family subdivision right is going to prevent it from being sold in the future or they need to change the way they are developing this family subdivision in order to keep the possibility of selling it in the future alive. The hardship case is that they subdivide and give it to a son or daughter and for whatever reason that son or daughter has to sell that this 15

years prevents that from happening immediately. There are other financial mechanisms they can take. They can borrow against the equity. But, they don't want to incur debt and want to maintain it on their own.

Mr. Cannon asked what the consequences are under the current regulations.

Mr. Kamptner said that if the land is sold after 2 years to a non-family member they are in violation of the Subdivision Ordinance. If the County identified the violation they would have to enforce it.

Mr. Cannon asked if they could correct the violation by upgrading the road to the standard subdivision requirements.

Mr. Kamptner replied that they would have to go through the re-subdivision process and do it as a conventional subdivision. There is the possibility that the original family division lot configuration would have to change.

Mr. Cannon said that would be the equivalent of the correction that Mr. Strucko is proposing. But, that would be available.

Mr. Kamptner noted that re-subdivision is always available.

Ms. McDowell continued the staff report summary. The next part is to discuss ZTA-2007-0003, Critical Slopes and the Safe and Convenient Access Zoning Text Amendment. At the last public hearing staff listened to public input and agreed with some of the things they said. Therefore staff recommends the following:

- Remove "maintenance"
- Remove "yard"
- Exempt manmade critical slopes (road embankments, railroad embankments)
- Specify VDOT standards (16% grade)
- The Planning Commission asked staff to provide information on administrative waivers. Administrative waivers to build on or disturb critical slopes (including driveway, septic fields, home sites, etc) shall be given by the County Engineer or designee upon finding that the total disturbance is less than 2,500 square feet, or may be given by the County Engineer upon finding any one of the conditions as listed in the staff report has been met.

Ms. Joseph hoped to see more specific information about mitigation measures for getting into the critical slopes similar to what the Commission has seen in reports from engineering. In past reviews regarding critical slopes sometimes the mitigation was to plant more trees or do E & S measures. When they leave these things so wide open it makes applicants feel very uncomfortable. As an applicant she would prefer that it not be left open. If there are some examples included of the kinds of the things that make sense as far as mitigation it would be helpful. Some examples are removal of trees or removal of ground cover. She hoped that it would be almost like performance standards such as if you do X, Y and Z. It would be easier for an applicant to come in and know what staff is looking for if some language and examples were included of the kinds of things that would help mitigate. She asked staff if that would be problematic.

Mr. Brooks replied that it would depend upon what the expectation is. The goal is to protect and conserve. It would not improve that much with mitigation. One of the things staff has talked about doing administratively is requiring an erosion control plan for all of the disturbances. That is the majority of the mitigation. They could talk about permanent vegetation on top of that. They can talk about what is the steepest slope they would allow. They can do all of those things by policy now. So short of that they could come up with a driveway standard or construction standard. There are problems with implementation and enforcement if that is done.

Ms. Joseph said that in the Water Protection Ordinance everybody has agreed that erosion and sediment control measures would be required for the house. Mr. Brooks was saying that it was a matter of policy that they could require that for the driveway. There were no E & S measures on the photographs.

Mr. Brooks said that part of their proposal was any disturbance over 2,500 square feet would require an erosion control plan. Currently they give an erosion control agreement for all of the lots in the rural area. With the requirement of a plan they would see the form of the grading and what the mitigation measures would be for the erosion control. They can add to that some standards on the driveway itself and the permanent vegetation. Those can be done by policy and don't have to be written in the ordinance. That threshold is currently in the proposal because that was a concern. That is a big work item. Mr. Graham can speak to this issue. Staff anticipates that would require another staff person to do that.

Ms. Joseph asked currently how someone finds out about the policy if it is not written in the ordinance.

Mr. Brooks replied that it would have to written into the Design Standards Manual.

Mr. Strucko questioned the proposed changes in the critical slopes section. One of the changes proposed would conclude therefore streets, alleys, driveways and yards could not be constructed or maintained on critical slopes without approval of a waiver or modification. He questioned the phrase "or maintained." Does that mean existing driveways, streets, alleys and yards?

Mr. Brooks replied that phrase is proposed to be removed.

Mr. Strucko said that it would be anything from this point forward that this regulation would impact.

Mr. Brooks replied yes, from the adoption date unless they wanted to enact a grandfather clause of some sort.

Mr. Cannon asked if these waivers would be in addition to the critical slope waiver requests brought to the Planning Commission.

Mr. Brooks replied yes.

Mr. Cannon said that there would be 2 stages of waivers available being administrative waivers and the other wavers that would come before the Commission. Regarding #3 there is no alternative to disturbing critical slopes. The environmental damage is minimized and mitigated. What would it mean that there is no alternative to disturbing critical slopes?

Mr. Brooks said that if they had an existing lot which could only be accessed by going through critical slopes they would have to let them do that. It is an existing lot and is buildable area.

Mr. Cannon assumed that the environmental damage would be minimized and mitigated.

Mr. Brooks said that if it was a newly subdivided lot they would come to the Commission for a waiver.

Mr. Cannon said that this waiver would not be available to a lot subdivided after the date of the ordinance.

Mr. Brooks replied that it would be available, but by formal waiver to the Planning Commission.

Mr. Cannon said that this waiver would be limited to lots in existence at the time the amended ordinance was adopted.

Mr. Brooks replied that practically speaking he felt that was right for that scenario that he just described.

Mr. Kamptner said that any lot that was created after the effective date of this ordinance should be complying with the regulations that are in place or a waiver should not be required. The lot configuration should address this issue.

Mr. Cannon said that for all lots in existence that would require access across critical slopes there is available this administrative waiver assuming that environmental damages are minimized and mitigated according to whatever criteria that would apply.

Mr. Brooks said that they would require the erosion control plan. Staff would ask them to keep the disturbance within that 50' swath.

Mr. Cannon asked if for any other lot created subsequently that would require access there would be available upon application a waiver from the Planning Commission.

Mr. Brooks replied yes.

Mr. Craddock asked if it was an administrative waiver and if it was not approved would it be appealed to the Planning Commission, and Mr. Brooks replied yes.

Mr. Kamptner pointed out that if it was approved with conditions that the applicant objects to it could be appealed as well to the Board of Supervisors.

Ms. Joseph opened the public hearing and invited public comment regarding the critical slopes and safe and convenient access.

Roger Ray agreed with Mr. Strucko's frustrations concerning the process. He asked that the Commission imagine how the public feels since they don't have County staff to try to help lead them through this proposal. The questions raised tonight and at the August 7 meeting seem to be very cumbersome and frustrating to everyone. Regarding family division, he felt that in this community they have a strong feeling for family values and part of those values are displayed in

cases where it would be nice for family members to live close by. The only advantage of the family division-subdivision rule is the access way to that family lot. There is no other advantage beyond regular subdivision. In his particular case, his son, daughter-in-law and 2 grandchildren live adjacent. That would not have been possible with this 15 year proposal. The current ordinance 2 year limitation may need to be revised and looked at. But, the 15 years would be overwhelming not only to the parcel being created for the family member but the parcel of the land being retained. He could not imagine that anyone would put a 15 year covenant on their property to be able to divide to a family member. Therefore, they may eliminate the whole option of family division if they stay with the 15 year. In Fluvanna County the family member has to retain the property for a 3 year period. Green County has a 5 year restriction that the family member has to retain the lot. There is no restriction that goes on the parent tract in either one of those counties. There are no family division restrictions in Nelson County. The Commission needs to be attentive to the family division/subdivision and make it a period of time that is more restrictive than what it is now because it may have been misused in the past. Two years goes really fast. He suggested that the restriction be for a 4 or 5 year period that would be more in line with the adjacent counties. It would be a reasonable approach to make it 4 or 5 years.

Mr. Ray continued that the 25 percent slope is pretty heavy on property rights. The future division of land that might occur under the current rules will substantially be restricted under this new ordinance. He encouraged the Commission to look at that and see if small areas could be completely excluded. He observed that this is a paramount ordinance to property owners that have property rights. On August 7 there was a lot of confusion at the meeting because they changed the proposed ordinance up to the hour of the meeting. This ordinance has been changed from August 7, which is a lot more workable and understandable. There are 7 Planning Commission members, but there are only 4 present to make these paramount decisions to send on to the Board. That is disappointing that they don't have full representation here on such a paramount issue.

Hank Martin said that he received a letter among 1,400 other people about the critical slopes. He was very concerned and contacted Ms. McDowell. He has worked his way through to try to get an understanding on what this is going to mean. He lives on Polo Grounds Road. He has a critical slope that runs across the entire width of his property. They never looked at it as a problem. They never anticipated that it would be something that one day would be used against them. As a landowner he was all for conservation and understands that there is a lot of growth in the area. But, also as a land owner he believes in conservation and protecting the environment, but not at the expense of the property rights given by the creator. As a land owner he felt these types of policies are too restricted and very tyrannical. He could understand the slope issue on a large scale. He did not think that an individual landowner, such as himself that has less than 10 acres, is the cause of the problem with the explicit growth. He has 2 sons that he would like to be able to give family lots. The Planning Commission should work in some type of caveat for the small land owners. He would really appreciate the Commission slowing it down to a degree at least for the small person who is living, working and struggling to live and would like to have something to pass on to their family. He was very concerned as a land owner to have these issues decided against them, but yet his County taxes have increased 69 percent in 2 years. Frankly, he was very scared.

Jerry Fisher said that he had a hand in the 1980 rezoning effort, which reduced the density of the rural areas from one lot every 2 acres to the division by right of up to 5 lots by right on a large parcel and the 21 acre remainders based on the forestry standards set by the state. He

agreed with the concern about trying to make this County better and to try to protect and preserve what we have. He happens to be in a situation where the land that was left by his father and mother is down in a triangle west of Covesville that is at least 90 percent critical slopes. It is steep and rises from about a 1,000' elevation to approximately 1,900'. It is a difficult property to develop. He has known all along that it is almost impossible to put in the number of houses that are there by right under the 1980 ordinance. He would not attempt to do so. The only places that are not critical slopes are by the stream beds, along the roads and up on a few isolated spots up very high that are accessible now only by a timber trail built 30 years ago. As he reads this he could not put a small house or cabin up on any of those places and use the timber trail because it does not meet the grade requirements. The average grade is probably 18 percent and there are some areas that are steeper. He thought that it has gone too far if he can't put a single house on this property and use the existing timber trail. He did not think that this would be adopted before the election and that it was going to take a while longer.

Fred Ivory, Jr. noted his concerns about the effects on the environment. Being a fisherman, he did not want to pollute the streams, water or air. They also need to consider the rights of the citizens. Personally he would prefer to not have as much growth as this area has had. He grew up in this area.

Jay Willard, Executive Vice President of the Blue Ridge Home Owners Association., commended staff for the proposal's improvements from several weeks ago. Staff did great job in responding to the comments. He cautioned the Commission to think very carefully about the impacts placing new restrictions on the 25 percent slope. He appreciated Ms. Joseph's comments tonight about the need for specificity in the language. They are pleased with the conditions specified that would allow exemptions on critical slopes. It is much more carefully spelled out tonight. But, there are still some serious remaining questions about what would be the mitigation standards that would apply. Property owners, both builders and citizens of the County, look at land as a value and that value is affected by what they can do on that land. The more specificity and clarity that they can have the more they can all make very fact based decisions on land purchases and land proposals for the future. The impact of this proposal will reach more properties than are shown on the map. The critical slopes extend all around the County. He cautioned the Commission to be very careful about how to apply these things to that many pieces of land and that affects so many people's lives. He did not think that they were quite there yet and the proposal needs more work

David Mitchell, Albemarle County resident, said he has brought many projects before Mr. Brooks and the County. He was very cognitive of the requirements. His goal is that during and after construction that all the dirt that he disturbs stays on his property and the property of that development. Erosion is a natural process and it can't be stopped 100 percent. He has received a critical slopes waiver from the Commission. He did not understand what was being changed other than there is an administrative thing. He was told by staff that both critical slope waivers for his project were formalities. As long as the engineers thought that he did the best job possible of avoiding the critical slopes and did not cause more problems he was fine. That is what happened. He did the best job possible. He put roads around that cost more to get there, but it avoided the critical slopes. In many cases they actually improved the drainage and the sedimentation problems that are currently on a site that is undeveloped. There are many persons who are in the middle of projects where they have spent a great deal of time and money and energy on engineers and going before the Commission and staff on projects that they are almost there. But, they have started the construction, but have not platted yet. The plat is not done until everything is finished. Then they would know exactly where the road is.

He could be in the middle of a construction project that has been approved, but he has not platted. He asked what happens in that gray area. These circumstances need to be addressed. He asked not to be caught in this gray area.

Brian Ray noted that the provisions are better now if there is only one building site and they have to go through the critical slopes. If someone has an existing parcel, which they have owned for 20 to 30 years, that if the property was bought with a elevated building site and has to pass through critical slopes to get to the building and if you have a lower building site that would not require a waiver that the waiver process now would not allow you to build on that higher building site. That would be a great reduction in the value of the property to people who bought lots that intended to build on that building site. That needs to be considered if this ordinance passed.

There being no further comment on ZTA-2007-003, Ms. Joseph asked to move on to STA-2007-002, Family Divisions and take public comment.

Nancy Dresner said that she lived in Stony Point with her husband and 3 children. When they bought their property in the '80's they knew exactly how many division rights they had. When she found out that the regulation was going to go to 15 years she got very concerned. She thought it was too long a period of time. She just turned 47 and would be 62 years old in 15 years and did not know what she would be doing. Another way to look at it is that a lot of marriages don't last 15 years. The County is expecting people to stay married to a piece of land for 15 years. It is a little hard to imagine. This specifically relates to some comments made about folding family divisions if somebody in the family wanted to sell and to make them meet the full subdivision requirements. Specifically on their property that is impossible. They live on Bross Mill Road that goes back to the 1700's. It is a public road that did not have enough houses on it at the time the state took over the road system. Therefore, they elected to say that it was still a public road, but they are not going to maintain it. It is on a public road. The only way she can get a division for her children is to do a family subdivision. The road is sufficient in its width. If they adjust the regulations they could not meet the requirements because they are not on a public road that is in the state system. This proposal has a lot of red tape and it would put people like herself totally out of luck. When they bought their land in the 80's they knew they would have to do family subdivisions for their children. She suggested that they provide grandfather rights to all of the people that currently own their property in these situations. People bought land to hold on to and to do things with. If all of a sudden the County says that they will lose all of their hopes and plans because they want to make changes that are not fair. If they have to do something, grandfather the rights of all of these people who have put their money, hearts and families into their properties.

Roger Ray said that Ms. Dresner sits on a private road that if they make some ordinance that requires her to upgrade that to a public road standard, then she is unable to do that. She already is on a private road leading to her land. So she would not be able to accomplish that. He encouraged the Commission to really look at the family division again and kind of get in line with the adjacent neighbors and make something that may make circumvention difficult, but still makes it within reach of family members. He also is working for a Mr. Dollins out in southern Albemarle in a similar circumstance. He is an elderly gentleman and wants to disburse his land among his children while he is still here. With the new 15 year restriction Mr. Dollins may not be able to do that. Whatever the Commission recommends on to the Board he asked that they have some effective date in the future far enough to allow projects that are ongoing right now to finalize themselves under the rules of today. A lot of folks will have invested a considerable

amount of money in getting working started and presented that this new rule may require them to stop and not go forward. Any effective date needs to be some 60 or 90 days beyond any ordinance change if that should be. He was not encouraging the Commission to change the ordinance. He was encouraging them not to change the ordinance. The other very brief thing was that the alternative thing that is presented here of allowing family division on land that has been in the family for 15 years he thought is great for those property owners, but in the whole it might cause more circumvention in the ordinance than any rule that they have. After it is divided it would be no holding time at all. He asked that they look at that very close before considering it.

Mr. Martin echoed Ms. Dresner's comment about grandfathering. His family has held their property for 44 years. They have been law abiding tax paying citizens. When his parents moved here from North Carolina they purchased the property and had it subdivided with the intent of one day passing it along to their children. Again, 15 years is a long time. He can't imagine giving his son a parcel of land and if he is relocated or has to have a divorce or whatever creates a situation that causes him to move and then finding out that he is being penalized by having to upgrade the road. He understands what the Board gave charge to. But, there are a lot of people who are not out here wheeling and dealing and trying to play monopoly. They are just common people and are just trying to have a legacy of some kind to pass on to his children. He asked that something be done for the small acreage owner so they can pass on land to their children without it becoming something restrictive.

Woody Baker agreed with the previous speakers except he had daughters instead of sons. He intends to give division rights to his children. He questioned why the County would want to restrict family division because they don't know what the future holds. It used to be 3 jobs in an average career and not it is 7 or 9. He would love to have his children live close by. What they are talking about with the 15 year requirement is prohibitive. One would not be able to get a mortgage or a building loan. He asked that the County not meddle with family business.

Neil Williamson, of the Free Enterprise Forum, said that there are 2 points he would like to make on the family division. The first is a question of the problem. In the discussion, the staff report, etc. plus repeated calls to staff he has not yet been informed of the number of family divisions that have occurred in Albemarle County over any span of time. They asked over the last 10 years and over the last 5 years how big is the problem they are dealing with. How long are the parcels being held. What they are trying to fix that sometimes informs the solution. The other thing he heard from the Commission tonight is that he was not sure if the Commission at this point is in favor of family division at all. As their role to advise the Board if that is this Commission's feeling he would encourage them to let that feeling known

Jeff Werner, of Piedmont Environmental Council, reiterated some of what he has said previously. None of what they are discussing this evening has come to them in a vacuum. In 2001 or 2003 an ad hoc work group was formed, which came up with a frame work for the rural area plan. He has been looking through all of the work session between March, 2003 and May, 2007 and the Board of Supervisors had at least 17 work sessions and hearings. The Planning Commission has had at least 12 meetings on this matter. What came out of this is a Comp Plan that addressed steep slopes. It talked about steep slopes throughout the entire rural area. It also addressed family subdivisions. The committee recommended some changes. In May the Board adopted a resolution instructing the intent to move forward with regulation changes on the driveways in the rural area and to extend the period prohibiting the transfer of lots created by family subdivision beyond the current 2 year period. He did not know where the Board came up

with the 15 year restriction. The Board adopted a resolution of intent to address the disturbance of critical slopes. This is not something that is coming from a small group. They were specific in the Mountain Overlay Committee that people who had that house that they have always wanted that would not be precluded. For the sake of the residents of Albemarle County and people who have repeatedly expressed interest in implementing the rural area plans, which was unanimously adopted by the Board of Supervisors, that it be moved forward. Do these proposed regulations implement the provisions that were adopted or not. If the debate is going to continue as to whether they should have a rural area plan, then they should have the courage to say that. They have spent a lot of staff and citizen time debating ordinances, which he felt that the majority of the Board of Supervisors has no intention of adopting. He would really like to see some honesty from elected and appointed officials in whether they are going to move forward with the rural area plan or not.

David Mitchell said that he did not agree with the proposed regulation, but felt that they need to make a decision. They are spinning their wheels here. A lot of time and effort has been made over a long period of time. He asked that the Commission take the proposal very seriously and consider not changing the rules too quickly. He did not support this request. He did not have the money to hire a lawyer to represent his business. He felt that they produce a product that a lot of people want.

Brian Ray said that everybody was surprised with the proposed 15 year restriction. He felt that 15 years is too long and thought that from the conversations at the last meeting that perhaps staff would be making some changes to that. He asked that the 15 year restriction be changed. With this restriction he would not have been able to live on the property next to his dad. About being able to retrofit a family division lot to a conventional type division would not be possible with his lot. The road that serves his lot also serves lots in the rear. To bring it up to the current standard would require commercial site distance at the entrance. They don't have commercial site distance at the entrance. It won't be possible to retrofit a lot of these properties to conventional development in a lot of cases.

There being no further public comment, Ms. Joseph noted that the Commission would take a break.

**After taking public comment, the Planning Commission took a 10 minute break at 7:55 p.m. The meeting reconvened at 8:09 p.m.**

The Planning Commission discussed the proposal and took the following actions.

Ms. Joseph noted that in response to Mr. Williamson's question there have been 96 family divisions since 2004 according to City View.

The Planning Commission discussed the issues and took the following actions.

**Action on STA-2007-00002, Subdivision Ordinance; family divisions; contour intervals; individual lot grading**:

**Motion**: Mr. Cannon moved, Mr. Craddock seconded, to approve the proposed amendments to the Subdivision Ordinance, STA-2007-00002, to include the proposals for changes to the contour intervals; individual lot grading provisions and to include the following amendments to the family division requirements:

- The family division requirements would have a total holding period of 15 years with the further requirement that at least 5 of those years occur after the subdivision.

Ms. Joseph asked if there was any further discussion. She asked Mr. Brooks to give a brief overview of the contour interval and individual lot grading.

Mr. Brooks said that this had to do with the critical slope provisions, but not necessarily with the family divisions. It is part of the Subdivision Text Amendment.

Ms. Joseph said that there are two different things here. They have the zoning text and the subdivision text. She wanted to make sure that it was clear what was going on.

Mr. Brooks said that in the contour interval they were looking at language less specific and referring to the actual topography that has been flown by the County instead of giving it a foot interval. The current ordinance has a 5' minimum contour. If their aerial topography that the County is supplying to the public is better than that, then they want to use it. That is the change in the contour interval.

Mr. Cannon said that was not a substantive change.

Mr. Brooks noted that it changed the look of the application, but was not substantive in changing the regulation.

Mr. Cannon asked if the individual lot grading change was substantive.

Mr. Brooks said that this change has to do with the driveways and the other disturbances. Currently the way the ordinance is implemented and written is that in a standard subdivision the grading that is being done for the house, building or the driveways does not have to necessarily be shown. It shows the general grading for the yards and that kind of thing. Typically what is shown on the plat is only for the public or private road that has to be built. This is actually being more specific with the language and saying that any grading that is planned in a subdivision needs to be shown on the plat, such as two driveways or areas planned to be graded flat. It can show staff at the planning stage whether critical slopes are going to be disturbed or not. Staff does not get that information currently.

The role was called.

The motion passed by a vote of 4:0. (Mr. Strucko voted aye in the hopes that the Board of Supervisors review the minutes of this discussion and he encourages them to consider some of the provisions outlined in that discussion.) (Mr. Morris, Mr. Edgerton and Mr. Zobrist were absent.)

Ms. Joseph noted that it was a long discussion, but the Commission hopes that the essence of the discussion and how much they are concerned about the fact that they are creating these substandard lots was forwarded to the Board of Supervisors. But, the Commission understands the need for that.

In summary, the Planning Commission held a discussion about their concerns about the proposal and requested the Board of Supervisors to consider the following provisions as outlined:

- Concerns made regarding the timing of the family division. The proposal needs to protect and balance the rights of the family and land owner, but still protect the safety and welfare of the general public to avoid the potential sale of a substandard lot with an unsafe access.
- Safety and welfare of the public that parcel hits market and the consumer has something less than safe access.
- All options (the 0 years before and 15 years following and the alternative 15 years cumulative) have limitations, which need to be understood.
- Concern about the parent parcel being under the ownership restrictions.
- When put parcel on public market, it needs to have certain safety standards (potential of having a substandard road).
- Need to assure with family division that there is a reasonable safe access and we need to make sure there is adequate access that turns it into a conventional development upon sale to a non-family member.
- Speed limit concern for safety for school buses and emergency vehicles. Could speed bumps be used to set a speed limit appropriate for the road?
- Facilitate family divisions, but with some tradeoffs.
- Question raised on how to retrofit a family division to a conventional division upon sale of the lot.

**Action on ZTA-2007-00003, Zoning Ordinance; critical slopes; safe and convenient access**:

Mr. Cannon said that this is a good, carefully thought through proposal. He appreciates very much the burdens it imposes on some property owners. He thinks that the County should only take such steps or impose such burdens where the benefits are clear. In this case they are clear. This proposal grows out of a long process with a lot of folks from a lot of different points of view coming together and trying to figure out what would be the best thing to protect critical areas in the County. Those representatives included representatives of property rights groups as well as environmental groups. It was a broad spectrum of the community. They came up with the critical slopes as the proper focus. Glenn's presentation today made it clear that there is a sound technical basis for that focus, that these provisions are appropriate efforts to try to address the concerns here, and that there are appropriate relief mechanisms, including waiver provisions, for citizens where these regulations create an undue hardship. He would be in favor of the proposal as it is being put forward here.

Ms. Joseph asked if that would include administrative approval of waiver requests.

Mr. Cannon replied that would include administrative approval of waiver requests on the terms that are included in the proposal as discussed earlier.

Mr. Strucko said that there is recourse for applicants that do not get the decision from the administrative review that they are hoping for. They can appeal to the Planning Commission? He asked if there was provision in there for that.

Ms. McDowell replied yes.

Mr. Joseph asked to see definition of the mitigation measures and whether it is confining the road to a certain area that is reasonable or it is removing excess trees or not. They need to make it easy to use for county staff and the public. It is important because if they are talking about E & S measures for all kinds of things, they need to start thinking about how this is going to work in some of these very long driveways, if there is no other ways that it is accessible. The Mountain Overlay District Committee did decide that if someone had a perfect site that they had always wanted to place a house that they would have the ability to do so with some sort of mitigation measures to get up to the site. She would like something like that worked out.

Mr. Cannon felt that the mitigation measures should be explicitly keyed to the purposes of the critical slopes ordinance that they talked about earlier, which are multiple purposes. So mitigation should not focus solely on erosion, because there are other considerations that are behind and supporting the critical slopes ordinance. Mitigation should be focused to mitigate and protect those other interests. He did not know if that was a footnote to this or just our suggestion to the Board and their proposed guidance to staff. But, he would be strongly in favor of that.

Mr. Brooks said that this is guidance on a policy that staff will put together on how to implement the ordinance.

Mr. Cannon said that they can't write that in the ordinance. They don't know enough.

Ms. Joseph asked if he was still talking policy and not ordinance language.

Mr. Brooks said yes, that is what he was clarifying. If they have to now put it into the ordinance, it is a much more difficult order.

Mr. Cannon said that he was content to have it be guidance to staff, as long as they pay attention to it.

Ms. Joseph asked that they make sure that the policy is written down some where so that people coming in know what they are supposed to be doing.

Mr. Brooks said that staff can put together a section in the Design Standards Manual specifically for erosion control plans that come in for rural subdivision driveways and lots of disturbances which is being called for in this amendment. It can go beyond erosion control. They can address the 5 items such as the aesthetics, the storm water run off, the structural integrity and all those sorts of things. If they also intent to address the safe and convenient access, then they should say so because that is not a mitigation. It may actually be sort of counter-productive to mitigation if they have to make the driveway more accessible and less steep or more secure so to say. They have some conflicting goals, if that is the case.

Ms. Joseph said that they have changed the maximum slope to 16 percent as far as the driveways are concerned.

Mr. Brooks replied that is correct. For example, the driveway that they looked at would have to be a longer driveway. To get 16 percent they would have a few more turns.

Mr. Strucko said that he wanted to make sure there is no retroactive anywhere in the proposed changes, so they are going from a date certain moving forward.

Mr. Kamptner replied yes.

Ms. Joseph asked what happens if someone is in process and this amendment gets approved.

Mr. Kamptner said that it depends on where someone is in the process. If they have a preliminary subdivision plat approval, under State law, if they have diligently pursued that preliminary approval and they have incurred extensive obligations or expended substantial funds they will have to go through a determination by the zoning administrator. But, if they have satisfied those things they will be found to have vested rights. They will fall under the current regulations that were in effect when the preliminary plat was approved. They have to be certain that preliminary plat is still valid at the time they try to exercise their rights.

Mr. Cilimberg noted that one of the things that have been done in the past was to put the effective date out a period of time. On the Neighborhood Model it might have been 180 days on that particular ordinance provisions. So the things that were in the pipe-line would have a chance to clear. Everyone would know the 180 day effective date. That is something that the Commission can recommend.

Mr. Cannon said that he was not sure if 180 days was the right period of time. That is a long period of time. He would be in favor of 60 to 90 days.

Mr. Strucko said that this one was more difficult for him to come to terms with on a variety of things and issues. This is the one thing that he thought they received good substantial conversation on December 13, 2006, in a joint Board of Supervisors work session. From the conversations that he heard among the Board of Supervisors he thought that this particular set of provisions received the most favorable review, but yet here it is back before the Commission for consideration. Again, he was not sure if his recommendations have changed in the 9 months intervening. But, he wanted to make sure there are appropriate details in here. His concern was retroactive application for existing roads, driveways and alley ways. He felt that it would be unfair to force landowners that are currently there to suddenly upgrade to a new set of rules. He was sensitive to those who have projects in the process while this thing is being considered and deliberated on. Some of the speakers tonight expressed a concern if they are going to have the courage to say that they are concerned with the rural area or not concerned with the rural areas. Collectively the Commission expressed concerns that they are looking at Albemarle County in its entirety and are committed to a set of policies and principles to preserve and protect the Rural Areas while protecting property rights and to concentrate growth into the designated growth areas for a variety of good policy reasons. In his tenure on the Commission he felt that a lot of their activities had been doing a lot of rezoning of growth area parcels, increasing the densities and the number of development rights all for the sake of this policy. Yet they have done nothing to protect the rural areas other than to encourage the purchase of development rights and conservation easements. They have not advocated the dedication of additional resources. They don't have the power of the purse. The Board needs to step up and start allocating some resources towards the purchase of development rights. There is certainly something they can do here. He questioned why they don't require the same for other structures such as roads? Some feel it is a loophole that needs to be closed. Others ask how they can get to the parcel being developed unless they have access to a building that may not involve critical slopes. Either way they are looking to protect critical slopes one way or the other. He

has come to the conclusion that here is a step they can take directly to do something to protect the rural areas small as it is. There is still opportunity for exceptions, which he agrees with. Therefore, he agreed with Mr. Cannon. He asked that the Board consider this matter.

Mr. Craddock agreed with Mr. Strucko. When working on the Mountain Overlay District Committee the critical slopes was one of the critical components of it. The fact that the political will have to be there for this rural protection is yet to be seen. He left the meeting in December fairly excited because the Supervisors brought it up that they wanted to extend the MOD provisions to the flat lands, also. Then with Mr. Brooks' presentation about the history of the critical slopes, it made it even more imperative that they do move it to the Board of Supervisors and get it off the dead center. Then they can do what they want.

Ms. Moneith said that a lot of words have been passed. As long as there is a way for an exemption they should really try to protect the critical slopes. It should be happening.

Ms. Joseph said that when they started about talking about the critical slopes, they talked about what goes on in the urban areas. In the urban areas they do allow the exemptions and thought that it made sense to allow the exemptions in the rural areas also with mitigation. The other thing she would like to ask Mr. Brooks before the Commission takes any action on this is that she hears about the policy and realizes that staff is going to write this in the manual, but she wants to know more about that process. Is there any input from the community before it gets into the manual?

Mr. Brooks replied that the way it was currently written there is a one month period of input, but they could expand that if the Commission would like.

Ms. Joseph asked if staff would put it on the web, send it out or call people in.

Mr. Brooks said that, currently, staff has an email list that contains most of the local citizens. He would send out a notice on the email list. They also put it on the web site. Staff has had an open forum on the web site in the past. The manual is on the County's web site. That is currently the process. In the past when there were big changes that staff feels has a large impact they held meetings. In the recent Design Manual changes, he advertised an open discussion meeting that was held in the County Office Building. They have not had a lot of participation in that, but they may have better participation now.

Ms. Joseph said that would be important so that everyone knows that they are listening and they hear. They want to make sure that they are doing something that really protects what they want it to protect. The Commission has received a lot of good input tonight. If staff could have at least one round table to let people know about the mitigation standards and provide it on email that would be great.

Mr. Brooks said that staff could do that.

Mr. Cannon asked if all of the administrative waivers proposed for the critical slopes were limited to lots that would be in existence at the time of the statute. Or, does it apply only to waiver #3.

Mr. Brooks replied certainly not. That is not in any of the writing. That was one scenario that he could think of for #3, but there are many others.

Mr. Cannon wanted to make sure that the proposal they might be voting on would be that at least to waiver #3 there would be availability of that waiver only for lots that currently do not exist or would be in existence by the time that the ordinance would be adopted. He asked if that was the intent.

Mr. Brooks replied that it was not, but they could add that. It was sort of an open ended waiver. The way it was written was if they found a case in which staff agreed with the applicant that there was no alternative it would be allowed to be administratively waived. He could not think of all of the scenarios. One of the things he has learned in doing text amendments is that they can not think of all of the scenarios that might happen.

Mr. Cannon said that makes this more important.

Ms. Joseph said that what they have been hearing from people is that not allowing the waiver would make any further subdivision of their property impossible.

Mr. Cannon said that he needs to understand Ms. Joseph's comments about mitigation. He understands by minimization and mitigation that there are two things that would be required. First, all adverse impacts would be required to be minimized. Then those that could not be eliminated through that minimization process would be fully offset by mitigation. That minimization and mitigation would occur across the range of concerns stated in the critical slopes ordinance in the passage they looked at in the beginning.

Mr. Brooks replied that is clear.

Mr. Cannon noted that is essential if this is to work.

Mr. Kamptner asked to go back to Mr. Cannon's first question regarding waiver #3. That is corresponding to waiver #C1 in the proposed regulations. It is on page 2 of the September 5, 2007 draft.

Mr. Cilimberg noted that it was Attachment 6 in the packet.

Mr. Kamptner asked to which lots that waiver would pertain. It does include that it would apply to a proposed dwelling unit on a lot of record created before the effective date of the amendment to this section.

Mr. Cannon asked if it would not be applicable to lots created after that.

Mr. Kamptner replied that the lots being created after that should not be creating the situation requiring a waiver. There would still be a waiver that would be allowed.

Mr. Cannon asked if his initial understanding was correct, and Mr. Brooks replied yes.

Ms. Joseph noted that she felt the same when the Commission talked about the Rural Areas part of the Comp Plan. They spent a lot of time talking about the residential use of the land itself. That is exactly what they are doing here. It is a little disconcerting to think that what they expect of our rural areas is to be residential.

Mr. Cilimberg noted that they might need to make one more recommendations that did not show up in the amendment.

Ms. McDowell said that one discussion held at staff level was about the concern on page 2 about the land disturbing activity, the waste and the fill areas authorized by Section 4.3.01. They talked about removing that. Mr. Brooks can address a little bit about what happens with fill and waste areas. But basically, if they had 2 hills they could top them off, fill the area between and then put the house on the fill area.

Mr. Brooks said that was correct. Fill and waste areas is an existing loophole in the ordinance. It is a fairly broad definition. It means that someone has to turn in an erosion control plan on an agricultural piece of property and they can fill.

Mr. Cilimberg noted that #7 is the reference that they are covering. The suggestion is that would not be an administrative waiver.

Mr. Brooks agreed.

Ms. Joseph said that particular one would not be an administrative waiver.

Mr. Brooks said that was correct. They would eliminate #7.

Mr. Kamptner said that under current Section 4.2.3 it is completely exempt anyway. So this would be shifting it over to a section 4.2.5 waiver.

Mr. Brooks agreed. It would have to come before the Planning Commission. It is difficult to do this because it is grading and it is disturbance. It is just a matter of what you call it. Instead of calling it a foundation for a house or a driveway or a future roadway, if they suddenly call it a fill and waste area no matter what its shape or appearance then it is exempt. So it is difficult as a staff person to say no I don't believe you, I think it is a driveway if they are calling it a fill and waste area.

Ms. Joseph said that it came from the fact that they did not want to regulate the rural areas in this manner. So now they are thinking about this in terms that it is more of a residential use.

Mr. Brooks said that staff does not see very many fill and waste areas that are of a rural nature.

**Action on ZTA-2007-00003, Zoning Ordinance; critical slopes; safe and convenient access**:

**Motion**: Mr. Cannon moved, Mr. Strucko seconded, to recommend adoption of the proposed changes of the Zoning Ordinance, ZTA-2007-00003, to the Board of Supervisors, which includes the proposals for changes to the critical slopes; safe and convenient access with staff's recommendations, as amended, as follows:

1. Specific guidance be prepared on mitigation measures necessary to qualify for [section 4.2.3(c) (4)] and placed in the Design Standards Manual.
2. Guidance by staff to be prepared after the adoption of the ordinance with opportunity for public input and written to be consistent and forward the concerns underlying the critical slopes ordinance that the Commission talked about earlier.

3. Subsection 4.2.3(c)7, as recommended by staff, should be deleted as listed on Attachment 6 regarding the land disturbing activity that occurs in a fill or waste area authorized by section 4.3.01.

Mr. Cilimberg asked for a clarification when they were talking mitigation policy they referred to a particular waiver #3.

Mr. Cannon replied that it was to implement that waiver as he understood it.

Mr. Cilimberg suggested that they look at page 2 of Attachment 6 to make a reference to a section that they feel that is applying to. There is a list of 6 administrative waivers since #7 was deleted, which would not be included in the recommendation. The question is where they connect the mitigation policy standards. Do they connect them to all of the administrative waivers or to a particular one or more?

Mr. Cannon asked if other waivers involve mitigation.

Mr. Kamptner noted that [section 4.2.3(c)] #1, #4 and #6 require mitigation. Subsection #3 requires reasonable conditions imposed by the County Engineer to assure that the erosion condition is corrected.

Ms. Joseph said that is where that policy needs to come in so that people won't be worried and that Mr. Brooks has some guidelines to work with.

Mr. Cilimberg said that in #C3 they are looking for reasonable conditions.

Mr. Kamptner said that #3 that Mr. Cannon referred to on the screen does not correspond with the numbers in the ordinance.

Mr. Cilimberg said that Ms. Joseph was mentioning this #3 and staff was trying to make sure they know which one it was connected to. It is a detail that was important in order to understand what the expectation is.

Mr. Cannon noted that administrative waiver #3 [as it appeared on the screen] applies only to lots in existence at the time that the ordinance is adopted.

Ms. Joseph replied that is in there.

Mr. Kamptner asked for discussion on the delayed effective date.

Mr. Cannon amended the motion that the delayed effective date be 60 days.

Mr. Strucko seconded the amended motion.

The motion passed by a vote of 4:0 with the following recommendations: (Mr. Morris, Mr. Zobrist and Mr. Edgerton were absent.)

1. Specific guidance be prepared on mitigation measures necessary to qualify for [section 4.2.3(c) (4)] and placed in the Design Standards Manual.

2. Guidance to be prepared by staff after the adoption of the ordinance with opportunity for public input and written to be consistent and forward the concerns underlying the critical slopes ordinance that the Commission talked about earlier.
3. Subsection 4.2.3(c)7, as recommended by staff, should be deleted as listed on Attachment 6 regarding the land disturbing activity that occurs in a fill or waste area authorized by section 4.3.01.
4. The effective date of the ZTA should be 60 days after the date of adoption.

Ms. Joseph stated that ZTA-2007-00003, Zoning Ordinance; critical slopes; safe and convenient access will be sent to the Board of Supervisors with their recommendations for approval. But, the Board date has not been set.

**(The Board of Supervisors has scheduled a meeting to hear these matters on October 10, 2007 at 6:00 p.m.)**

**Old Business**

Ms. Joseph asked if there was any old business.

**Consent Agenda -** Approval of Planning Commission Minutes - December 12, 2006

- Ms. Joseph asked that the Commission not take an action on the consent agenda and put the approval of the minutes on next week's consent agenda. It was the consensus of the Commission to delay action on the consent agenda.

There being no further items, the meeting proceeded.

**New Business**

Ms. Joseph asked if there was any new business.

**Appoint Planning Commission Representative to the Joint City/County Housing Task Force**:

The Joint City/County Housing Task Force Planning Commission will be identifying necessary resources. The Task Force shall also make recommendations on coordination of activities that may result in more efficient and effective methods for dealing with housing issues. The work of the Task Force shall include a broad spectrum of housing both by tenure and income levels defined as:

| | |
|---|---|
| Moderate income | 80 – 120% AMI (often referred to as workforce housing) |
| Low income | 60 – 80 % AMI |
| Low Income | 30 – 60% AMI |
| Very-low income | under 30% AMI |

The Task Force may convene one or more meetings with state, federal, and private funders to assist in identifying resources.

Mr. Cilimberg asked the Commission to appoint a representative to the Joint City/County Housing Task Force.

**The Planning Commission unanimously appointed Bill Edgerton to the Joint City/County Housing Task Force.**

There being no further items, the meeting proceeded.

**Adjournment**

With no further items, the meeting adjourned at 9:20 p.m. to the Tuesday, September 18, 2007 meeting at 4:00 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.)