Albemarle County Planning Commission
November 20, 2007

The Albemarle County Planning Commission held a work session, meeting and a public hearing on Tuesday, November 20, 2007, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Wayne Cilimberg, Planning Director; Amelia McCulley, Director of Current Development & Zoning/Zoning Administrator; Glenn Brooks, County Engineer; Bill Fritz, Chief of Community Development; Ron Higgins, Manager of Zoning Administration; Mark Graham, Director of Community Development; John Shepherd, Manager of Current Development; Gerald Gatobu, Planner; Jonathan Sharp, Engineer; Megan Yaniglos, Planner and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Other Matters Not Listed on the Agenda from the Public:

Mr. Morris 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 Board of Supervisors Meeting – November 14, 2007.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on November 14, 2007.

Mr. Morris recognized Allan Schuck for his outstanding work and for going beyond his normal duties. He noted that unfortunately this was Mr. Schuck's last meeting since he was leaving the County and he wanted to applaud and thank Mr. Schuck.

Mr. Zobrist arrived at 6:04 p.m.

Regular Items:

SDP-2007-00092 Cervenka Property/Verizon Tier II PWSF - Final
Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 104.5 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with a 12'x 30.42' x 10.58' (W x L x H) shelter/equipment cabinet. This application is being made in accordance with section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property contains 3.06 acres, described as Tax Map 93, Parcel 47N, is located in the Scottsville Magisterial District and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property as Rural Area in Rural Area 4.
(Gerald Gatobu)

Mr. Gatobu summarized the staff report. (See Staff Report)

- The proposed monopole is located approximately 115' from the right-of-way of Route 53. The application plan proposes the removal of three existing trees being a 10' Oak, 9' Maple and a 14' Oak to allow for the monopole and the equipment shelter.
- The applicant has provided an arborist report that is attached to the staff report.
- The balloon test was conducted on September 7, 2007. When visible the balloon was seen for a very short distance between trees. The balloon was flown from 10' and not 7' above the reference tree.

- Staff recommends approval of this facility at 7' above the tallest tree. The height approved by the Planning Commission can be up to 10' taller than the tallest tree if the applicant demonstrates to the satisfaction of the Commission that there is not a material difference in visibility of the monopole at the proposed 10' rather than the 7'. He asked the Commission to carefully consider the 7' and 10' since there has been another appeal to the Board based on the 3' difference. In this case staff would like to have definite reasons why it was approved at 7' and not the 10'. The balloon was not visible from Monticello. It is up to the Commission to decide whether to approve at the 7' versus the 10'. He presented photographs of the balloon test.

Mr. Morris asked if there were any questions for staff.

Mr. Craddock asked if they have looked at co-locating because there is a tower just down the street at Mount Eagle Farm, and Mr. Gatobu replied that he did not know.

Mr. Craddock asked if they have an easement for the fall zone.

Mr. Gatobu replied yes, that in discussions with Mr. Waller the owner of the property for the fall zone was related to the applicant and did not have any problems with it.

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

Maynard Sipes, attorney with LeClair Ryan representing Verizon Wireless, said that Stephen Waller, consultant with Wireless Resources, Incorporated, was also present.

- The Verizon site as presented in the application meets the county's policy for these types of sites and the zoning ordinance requirements. Staff has noted that they have provided all of the information and met the technical requirements listed in the staff report beginning on page 3. They meet the design, mounting and size requirements. Staff noted that the facility would be minimally visible from the adjacent parcels and streets. They also found that it would not impose any adverse impacts on open space resources nor adversely affect any cultural resources. In this application they are requesting approval of a maximum of not greater than 10' above the reference tree height. They believe they have demonstrated that is not materially different than the 7' height in the application materials and is also supported by staff.
- The ARB approved their application as presented at 10' above the reference tree as noted in Attachment E of the staff report. The most important statement is on the bottom of page 5 of the staff report that says staff has made a finding that there is little or no material difference in visibility between the proposed 10' height rather than the 7' height above the reference tree. Since staff has made that finding they think that is supportive and validates the ARB's decision. He asked the Commission to review the photographs of the balloon test that support the ARB's decision. Therefore, they request that the approval be granted for 10' above the reference tree.
- Mr. Lively, who lives across the road, has expressed some concerns. They have spoken with Mr. Lively's representative, Mr. Bain, and actually walked the site together. They offered to raise the height of the fence surrounding the facility from 6' to 8' and provide additional evergreen plantings beyond what is required in the ordinance to screen the monopole. They made specific requests to the ARB to add conditions that allow that flexibility. Conditions 4 and 5 speak to that issue and allow for the 6' to 8' fence. The ARB also allowed additional plantings beyond what is shown on the plan that the ARB approved with staff review. He asked that the Commission approve their request.

Mr. Morris asked if there were any questions for the applicant.

Mr. Craddock asked if they looked at co-locating on other monopoles in the vicinity.

Mr. Sipes replied that they did and that Mr. Waller can speak to that issue.

Stephen Waller, consultant with Wireless Resources, Incorporated for Verizon Wireless, replied that they had considered co-locating. The other monopole was only 10' above the tallest tree within 25'. If they were to co-locate that would put their antennas in the trees below the existing antennas. The radio frequency engineer looks at these sites and the site is selected on how it propagates and relates to the surrounding site. In any case they always look for existing structures to co-locate on. With Tier II facilities or the treetop facilities they are mainly seen as a single user pole because the second and third user would be below the tree height. There is no guarantee that these types of facilities can structurally handle additional carriers. He noted that in this case where the site is level they are not allowed to use the natural terrain to get above the road the extra 3' is very important.

Mr. Morris invited other public comment.

Edward Bain, attorney for J.L. Lively, Jr., said that Mr. Lively owned the property immediately across the road. It is a farm on which Mr. Lively has worked since the late 1940's and he takes the ownership of this land very seriously. He wanted to make it clear that Mr. Lively does not object to the tower itself. He recognizes the requirements of the Telecommunication Act, but still believes that it is too close to Route 253. Mr. Lively's driveway is directly across from the entrance to this property where the road then breaks off to serve the tower itself. He appreciated the opportunity of going on the site to view this with Mr. Sipes. He noted that the site is all wooded. Their request is to move this tower back about 75' to 80'. The tower is about 110' from the right-of-way. If they move the whole project back 75' it moves the tower further away from Mr. Lively's property, but still gets the same height of the trees that are in the neighborhood and is more protective of the neighbor's property. Moving that distance still leaves more than 200' from the tower to the actual residence on which the people reside who are the owners that will receive the benefit from this easement. To reiterate, the balloon test shows the balloon and not the pole which will be there permanently. He did not know that there will be any substitutions of trees. They have to take three trees out now. If it was moved back three or four trees, they would still have the same protection in terms of trees surrounding the pole itself. Again, they think that extra distance will make a difference particularly with the view of the monopole during the winter months.

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

Motion: Mr. Cannon moved, Mr. Strucko seconded, to deny SDP-2007-00092, Cervenka Property/Verizon Tier II PWSF - Final, on the premise that it is not apparent that the alternative site was evaluated that would minimize the visibility from adjacent parcels, particularly Mr. Lively's property.

Mr. Cannon noted that unless and until that is done he was not prepared to support this.

The motion passed by a vote of 4:2. (Mr. Morris and Mr. Zobrist voted nay.) (Ms. Joseph was absent.)

Mr. Morris stated that SDP-2007-00092 Cervenka Property/Verizon Tier II PWSF – Final was denied. The request can be appealed to the Board of Supervisors within ten days.

Recognition of Boy Scouts in Attendance:

Mr. Zobrist asked the Planning Commission to recognize the Boy Scouts present.

Mr. Morris welcomed the Boy Scouts to the Planning Commission meeting and invited them to come forward.

Several Boy Scouts from Troop 102 of Ivy Creek Methodist Church came forward. They explained that they were working on their Citizens in the Community badge, which required them to attend a public meeting.

SUB-2007-00186 Pounding Branch Phase IV – Preliminary

Request for preliminary subdivision plat approval to create 14 lots [12 development lots and two (2) preservation lots] as a Rural Preservation Development on 207.63 acres. The property, described as Tax

Map 72 - Parcel 32A is located in the Samuel Miller Magisterial District on Pounding Creek Road [Route 689] approximately 0.38 miles southwest of the intersection with Dick Woods Road [Route 637]. The Comprehensive Plan designates Parcel 32A as Rural Areas in Rural Area 3.
(Megan Yaniglos)

Ms. Yaniglos summarized the staff report. (See Staff Report)

- The applicant is requesting preliminary plat approval for a total of 13 lots with 12 development lots and 1 preservation parcel. In the legal ad it stated that there were two preservation parcels. However, their request for the two preservation parcels was denied by the agent. Therefore, the applicant came back with revisions with only one preservation parcel. The property does contain critical slopes and would need a waiver. The applicant has proposed that this subdivision be considered for a rural preservation development; and therefore needs Planning Commission approval.
- Staff has reviewed the by right plan and as shown it proposes roads within the stream buffers. The Water Protection Ordinance prohibits the crossing of stream buffers if the parcel has reasonable use of the lot that does not necessitate the disturbance of the buffers. The Program Authority has determined that this parcel does have reasonable use of the lot. Since a by right plan is not approvable as shown the maximum number of lots for the rural preservation plan is not the same as may be achievable. Therefore, staff is unable to recommend approval of the rural preservation because it does not meet the requirements of Section 10.3.3.2.b and 10.3.3.3.a which pertain to the intent and design standards of rural preservation development proposals and maximum lots achievable by right.
- If the Commission approves the rural preservation development the proposal would also require the approval of a critical slopes waiver. The proposed roads will require that disturbance of critical slopes and the realignment of the public streets would lessen the amount of critical slope disturbance, but may reduce the number of lots in the subdivision. The applicant has not provided an alternative location or alignment of these streets. Also, the critical disturbance for lot 13, the preservation parcel, could be avoided if the building site was relocated. Therefore, staff recommends denial of the waiver of Section 4.2.

Mr. Morris asked if there were questions for staff.

Mr. Edgerton presumed that staff pointed out to the applicant that the by right layout was not a legally allowable plan and yet they wanted to go ahead with this.

Ms. Yaniglos replied that was correct.

Mr. Cannon asked how many lots would be legally developed on this parcel or is that something staff cannot tell until she gets a permissible by right representation.

Ms. Yaniglos replied that was correct.

Mr. Cannon asked if staff's finding here was just negative. That is that the by right plan that was submitted does not show adequate conditions to accommodate the lots that are represented.

Ms. Yaniglos replied that was correct.

There being no further questions, Mr. Morris opened the public hearing and invited the applicant to address the Commission.

Justin Shimp, representative for the project, asked to talk about the by right plan and the disturbance of the stream buffers. He asked is the ordinance that it could not be allowed for that disturbance under any condition or could it be allowed.

Ms. Yaniglos asked that Allan Schuck answer that question.

Allan Schuck said that he was an engineer that helped review this plan. To answer the question brought forth, under the Water Protection Ordinance in Chapter 17 the Program Authority has the determination to decide if the disturbance of stream buffer is allowed and do they have adequate use of the property without crossing the stream buffer. With this particular plan the Program Authority has reviewed that and determined that they do have reasonable use of the land without crossing the stream buffer for the proposed street in this subdivision. Staff gets the power to under Chapter 14-305b of the subdivision ordinance. Under that ordinance they are required to ask the applicant to submit a stormwater management plan or a mitigation plan if stream buffer disturbance is shown on the plan. Under section 17.3.2.2 of the Water Protection Ordinance staff is allowed to determine if they are allowed to cross the stream buffer. That is one of the ordinance requirements that staff will look at with all preliminary plats. That is where staff has the authority to do that review with the preliminary plat.

Mr. Shepherd pointed out that in fairness to the applicant that in the past staff has taken a more liberal interpretation on how to apply the criteria of the by right plan to rural preservation developments. In the past they have said that if a parcel could be developed with crossings that could be mitigated that the requirement that the preservation development produce no more lots than could be produced by right would be satisfied. Staff has changed that interpretation on the advice of the County Attorney and the current Program Authority for the Water Protection Ordinance. That makes staff's findings more stringent than in the past. It is true that this is an interpretation that over the years has changed. But, this is the way it is done now.

Mr. Morris asked Ms. Yaniglos if this was discussed with the applicant, and Ms. Yaniglos replied yes.

Mr. Shimp asked if this plan is denied on the ground that the by right did not show the same lots that he had in the rural preservation plan if he could then resubmit the plan showing a by right lay out that met that standard. So they could review this plan for those other merits and give a decision on that. If the by right plan does not meet the standard, then he could then resubmit and possibly if he had to take a lot out of the rural preservation plan to match the by right plan would that be an option.

Ms. Yaniglos replied that the applicant could resubmit revisions that do not impact the stream buffers and show that on the by right plan.

Mr. Shimp felt that the plan meets the standards otherwise other than the change in determination that came along. As it is now the current plan at some time back would have been acceptable to county staff. The rural preservation development itself does not propose any disturbance of the stream buffers meets the criteria.

Ms. Yaniglos said that the issue comes up when they try to determine the maximum allowable lots for the rural preservation development. Staff looks at the by right plan in order to determine that. They cannot determine that with the by right plan as shown. So staff is looking at lots that are not necessarily achievable by right, which is the issue.

Mr. Shimp asked if staff could review the plan with that problem acknowledging that, but review the other portion.

Mr. Morris noted that the Commission needs to take a look at the current proposal. If it is denied, then the applicant has every right to resubmit and work with staff on that.

Mr. Shimp asked that the Commission review the request and make a decision.

Mr. Morris invited public comment. There being no public comment, the public hearing was closed and the matter placed before the Commission.

Action on SUB-2007-00186:

Motion: Mr. Edgerton moved, Mr. Zobrist seconded, to deny SUB-2007-00186, Pounding Branch Phase IV - Preliminary, based on the stipulations in staff's representation in the staff report.

Mr. Strucko noted that the issues are outlined very clearly in the staff report. No additions or adjustments are needed.

Mr. Kamptner noted that the reason for the motion to deny was because the proposal does not meet Section 10.3.3.2 (b) and 10.3.3.3 (a) for the reasons stated in the staff report.

- These sections pertain to the intent and design standards of Rural Preservation Development proposals and maximum lots achievable by-right. The by-right plan as shown is not feasible, as it impacts the stream buffers. The waiver discussed in the following section is also necessary to support the current proposal.
- In addition, staff recommends that the proposed building site for the preservation lot could be relocated to avoid disturbance of areas designated in the Comprehensive Plan as Mountain Overlay.
- The plan as shown is not consistent with the criteria of Section 10.3.3 for granting approval of the Rural Preservation Development.

Mr. Edgerton agreed with Mr. Kamptner.

The motion for denial passed by a vote of 6:0. (Ms. Joseph was absent.)

Action on Critical Slopes Waiver:

Motion: Mr. Zobrist moved, Mr. Edgerton seconded, to deny the critical slope waiver from Section 4.2.5 for SUB-007-00186, Pounding Branch Phase IV - Preliminary, for the 3 reasons outlined by staff in the staff report.

The motion for denial passed by a vote of 6:0. (Ms. Joseph was absent.)

Mr. Morris stated that SDP-2007-00186, Pounding Branch Phase IV – Preliminary critical slope waiver was denied for the following reasons as outlined in the staff report.

1. *Strict application of the requirements of section 4.2 would not forward the purposes of this chapter or otherwise serve the public health, safety or welfare, or that alternatives proposed by the developer would satisfy the purposes of section 4.2 to at least an equivalent degree; or (Added 11-15-89)*
   Strict application of the requirement of section 4.2 would not forward the purposes of this chapter. The applicant has not provided an alternative location or alignment of these streets or lots. While no alternative location or alignment of these streets has been proposed, it appears that realignment of the public streets would be possible, and would avoid significant areas of disturbance.

2. *Due to its unusual size, topography, shape of the property, location of the property or other unusual conditions, excluding the proprietary interest of the developer, the requirements of section 4.2 would effectively prohibit or unreasonably restrict the use of the property or would result in significant degradation of the site or adjacent properties. Such modification or waiver shall not be detrimental to the public health, safety or welfare, to the orderly development of the area, or to adjacent properties, or be contrary to sound engineering practices; or (Added 11-15-89)*
   Denial of this waiver would not prohibit or restrict the use of the property. While no alternative location or alignment of these streets has been proposed, it appears that realignment of the public streets would be possible, and would avoid significant areas of disturbance; however it appears that it would result in the reduction of lots.

3. *Granting such modification or waiver would serve a public purpose of greater import than would be served by strict application of section 4.2. (Added 11-15-89)*
   Granting the waiver would not serve a public purpose of greater import.

Request for Reconsideration of Deferral for SDP-2007-00092 Cervenka Property/Verizon Tier II PWSF - Final

Ms. McCulley pointed out that the tower owner asked for deferral to allow additional information. She asked if the Planning Commission would open the item back up and discuss the request.

Mr. Kamptner said that it might be helpful for the Planning Commission to see photographs of this site from the Lively property and other properties if they move the tower 75' further back as there might be different impacts to different properties.

Mr. Edgerton asked if they would be able to see another balloon test from the Lively property. He asked if that would be difficult.

Mr. Kamptner pointed out that Mr. Sipe or Mr. Waller might be able to answer that question. He noted that Mr. Lively's representative, Mr. Bain, had already left the meeting, but staff would inform him of this conversation.

Mr. Sipe said that they would be willing to do another balloon test, but since Mr. Lively's representative is not here he did not know if they could get on the property. But, he felt that was a possibility and would certainly ask.

Motion to Reconsider the Denial of SP-2007-00092:

Motion: Mr. Zobrist moved, Mr. Strucko seconded, to reopen and reconsider the denial of SDP-2007-00092, Cervenka Property/Verizon Tier II PWSF - Final.

Ms. McCulley pointed out that the adjoining property owners, including the one that has left the meeting would be renotified.

Mr. Morris asked if that would include the Monticello folks, and Mr. Kamptner replied yes.

The motion passed by a vote of 6:0. (Ms. Joseph was absent.)

Motion for Deferral of SP-2007-00092:

Motion: Mr. Zobrist moved, Mr. Strucko seconded, to accept the applicant' request for deferral on SDP-2007-00092, Cervenka Property/Verizon Tier II PWSF and to be reset as time permits in accordance with staff's management of their calendar.

Mr. Cannon added to the motion that they accept the request for deferral with the understanding that the applicant will take the time and effort to document alternatives including the additional 75' setback and bring back information to make reasonable determination based on that information.

Mr. Zobrist and Mr. Strucko accepted the addition to the motion.

The motion passed by a vote of 6:0. (Ms. Joseph was absent.)

The Planning Commission took a break at 7:10 p.m.

The meeting reconvened at 7:15 p.m.

Mr. Strucko noted that he had to leave the meeting at 8 p.m.

Work Session.

Waivers
Discussion of Implementation of Development Review Task Force recommendations for certain Administrative Approvals in the Development Areas.
(Amelia McCulley)

Amelia McCulley, Director of Current Development & Zoning/Zoning Administrator and Ron Higgins, Manager of Zoning Administration presented the staff report. (See Staff Report)

In summary, the Planning Commission held a work session for discussion of Implementation of the Development Review Task Force Recommendations for Certain Administrative Approvals in the Development Areas regarding the current legislative review process for improvements in efficiency, effectiveness, quality and adequate public participation. Staff presented a power point presentation and explained their recommendations. The Planning Commission discussed staff's recommendation and provided comments and suggestions.

- Generally the Commission was comfortable with staff's recommendations for everything except the critical slopes. Administrative approval for critical slopes could possibly be acceptable if they were man-made.

- Staff indicated that Ms. Joseph had provided comments on the critical slopes. Staff made some changes in the power point presentation that were not included in the staff report in response to her comments.

The consensus of the Planning Commission was to request staff to go ahead and codify what they are proposing for artificial slopes. Staff should also come back with some criteria that would clearly delineate the values that they want to protect associated with critical slopes, including measures that might be considered for remediation or mitigation for critical slope disturbance. Based on the present proposal the Commission was more comfortable with option c) than a) and b) regarding critical slopes. Staff was requested to draft ordinance language based on their discussion.

Old Business

Mr. Morris asked if there was any old business.

- Mr. Morris agreed to continue to serve on the CHART Commission, but questioned if it should be reconsidered after January when the new Commissioners are present.

There being no further old business, the meeting proceeded.

New Business

Mr. Morris asked if there was any new business. There being none, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 8:22 p.m. to the Tuesday, November 27, 2007 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

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