Albemarle County Planning Commission
January 15, 2008

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, January 15, 2008, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Marcia Joseph, Thomas Loach, Jon Cannon, Bill Edgerton, Linda Porterfield, Eric Strucko and Calvin Morris. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was absent.

Other officials present were Glenn Brooks, County Engineer; Bill Fritz, Chief of Current Development; Megan Yaniglos, Senior Planner; Gerald Gatobu, Senior Planner; Summer Frederick, Senior Planner; Margaret Maliszewski, Design Planner; Joan McDowell, Principal Planner; Wayne Cilimberg, Director of Planning; John Shepherd, Manager of Zoning Administration, Lee Catlin, Community Relations Manager and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Cilimberg, serving as temporary chair, called the regular meeting to order at 6:02 p.m. and established a quorum.

Election of Officers: Chairman and Vice-Chairman:

Mr. Cilimberg welcomed the two new Planning Commissioners, Linda Porterfield and Tom Loach, and opened nominations for the election of Chair of the Planning Commission for the upcoming year. .

Ms. Joseph nominated Cal Morris to be Chair.

Mr. Strucko seconded the nomination.

Mr. Cilimberg asked if there were any other nominations. There being none, he closed the nominations and called for the vote.

The nomination of Cal Morris as Chair of the Planning Commission for 2008 carried by a vote of (6:0:1). (Mr. Morris abstained from voting for himself.)

Mr. Cilimberg turned the meeting over to Mr. Morris.

Mr. Morris first thanked Ms. Joseph for her two years of fantastic leadership and noted that the Planning Commission has moved a long way in two years.

Mr. Morris then asked for nominations for Vice Chair of the Planning Commission for the upcoming year.

Mr. Edgerton nominated Jon Cannon to be Vice Chair.

Mr. Strucko seconded the nomination.

Mr. Morris asked if there were any other nominations. There being none, he closed the nominations and called for the vote.

The nomination of Jon Cannon as Vice Chair of the Planning Commission for 2008 carried by a vote of (6:0:1). (Mr. Cannon abstained from voting for himself.)

Mr. Morris next asked for a motion to set the Commission's Meeting Time, Day, and Location for the upcoming year.

Mr. Strucko moved that the Planning Commission's meeting time, day and location for 2008 remain the same; every Tuesday of the month at 6:00 p.m. in the auditorium on the second floor, County Office Building.

Mr. Edgerton seconded the motion.

The motion carried by a vote of (7:0).

Mr. Morris next asked for a motion to adopt the Commission's Rules of Procedure for the upcoming year. He noted that the Rules of Procedure has been distributed to the Commission.

Mr. Strucko made a motion to adopt the Rules of Procedure for 2008 as outlined in the Planning Commission's packet.

Mr. Joseph seconded the motion.

The motion carried by a vote of (7:0).

***Committee Reports**:*

Mr. Morris asked for committee reports from the Commissioners.

- Mr. Edgerton noted that the ACE Committee had not had a meeting for several months. The next meeting will be held on Thursday.
- Mr. Strucko noted nothing to report since the committees that he served on had been dormant for quite some time. The Public School's Long Range Planning Committee will begin meeting soon.
- Mr. Cannon noted that he sits on the MPO TECH Committee, which would meet later this month.
- Ms. Joseph noted that a PACCTech meeting would be held on Thursday. Also, the Historic Preservation Committee has an upcoming meeting.
- Mr. Morris noted that the Charlottesville Transportation Committee met last Wednesday evening. They are starting to look at the UNJAM 5-year plan, which was moving forward into 2025/2030. The Eastern Connector Subcommittee will be meeting next week. They will be looking at what has been gained from public input. The same thing holds true on the Interchange Subcommittee on McIntire/250. Currently they are looking at possible alternate sites for the Vietnam Memorial. Also, one of the interesting things that came up was that part of the McIntire Golf Course would be affected by the current alignment. As many have seen in the Daily Progress that may have been designed and created by quite a historic figure in golf course design from Scotland. So they are looking at that. There are a number of speed bumps that they have to go through.
- Ms. Joseph requested that Mr. Cilimberg circulate the Planning Commission Committee listing.

Mr. Morris invited the two new Commissioners to take a look at this list, which could be circulated by email, to see which ones they would be interested in and then the Commission could reshuffle.

There being no further committee reports, the meeting continued to the next agenda item.

Review of Board of Supervisors Meeting – January 9, 2008.

- Mr. Cilimberg summarized the actions taken by the Board of Supervisors on January 9, 2008 and noted several items, including discussion about a Regional Transit system, which has been under study at the MPO for the City and County. There will be a joint meeting of the City Council and Board of Supervisors to review the study findings and discuss the options. Staff will advise the Commission of that date in the event there is interest in attending the meeting.

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Mr. Strucko asked if there was discussion regarding Rural Area policies, stream buffers or critical slopes.

Mr. Cilimberg noted that Bill Fritz could review what was discussed last week, which were different areas of the Subdivision Ordinance, but that the Board did not take up the prior amendments that had been before them.

Mr. Fritz pointed out the following information was discussed by the Board of Supervisors:

- There is a procedure that staff refers to as the two-step process where someone can divide their rural property into two sizeable parcels each with an entrance onto a state road and then further divide those parcels into two pieces, a front and back subdivision, served by a private street that has a road standard or a private drive. This would result in four (4) lots with two (2) entrance points onto a public street. This is done administratively. If those same four (4) lots were proposed as a four (4) lot subdivision it would have to come before the Planning Commission with a public road or for the Planning Commission to approve a private street. The Board of Supervisors proposed to have a resolution of intent drafted so that they could study amending the ordinance to not allow that to occur.
- The second thing the Board discussed was the provision in the ordinance regarding front and back division where the back lot's only frontage is the width of the easement. The Board wanted to investigate doing away with that and requiring the drive to be built 150' into the lot. The Board did not show interest in doing that.
- The third thing the Board talked about was the road standard for a two (2) lot subdivision. The Board agreed to ask staff to draft a resolution of intent to amend the ordinance so there would no longer be a two (2) lot road standard, which is currently defined as reasonable access by a motor vehicle in all but temporary extreme weather. Instead, there would be a (2) to five (5) lot standard that replaces the current two (2) lot standard and incorporates the current three (3) to five (5) lot standard. In essence, that is a 14' wide gravel drive with drainage on either side.

Consent Agenda:

SUB-2007-00407 Day Residence – Waiver
This is a request for a critical slopes waiver in order to allow the installation of a septic drainfield to support a single-family residential dwelling on an existing lot. The property is 21acres zoned RA, Rural Areas. The parcel, described as Tax Map 39, Parcel 21Z, is located in the Whitehall Magisterial District at the end of Avalon Way [Private] approximately 0.15 miles from its intersection with Saddleback Drive [Rte. 1228]. The Comprehensive Plan designates this area as Rural Area in Rural Areas 1. (Bill Fritz)

Mr. Morris asked if any Commissioner would like to pull an item from the consent agenda for discussion.

Ms. Joseph asked to pull the item and asked Ms. McCulley to give a brief explanation of the conditions that will be added to that.

Ms. McCulley noted that this is a proposed critical slopes waiver for an existing lot that is unbuilt. It is lot 26 in Emerald Ridge Subdivision. The critical slopes waiver is necessary for the installation of a septic field to serve a proposed house on this vacant lot. In this case it is a two-bedroom house. As somebody that reviews variances she is use to a lot of situations where people build the mega house and build it up on the knoll so that they can get their views. This is absolutely not the case here. It is a two-bedroom house and they are putting the house where they should according to meeting some of the certifications. They are trying to get through LEED and Earth Tech. They are putting the septic field in the only location that the Health Department will actually support as having suitable soils, which happens to be on critical slopes. It meets the Health Department standards, which are up to 50 percent slope but does not meet the County regulations. With Ms. Joseph's questions in mind trying to consider how they can minimize the actual disturbance because there is mention in the staff report of a berm and French drain she drafted some conditions to try to address that. The report as they have it now really proposes no conditions. She realized when thinking through what Ms. Joseph had asked that given that someone could largely upscale the house. This applicant does not intend to. They are talking about a two-bedroom house. She thought it would be good to capture that with conditions and to capture the fact that this berm and French drain are a requirement of the Health Department and refer to that permit number. She was not exactly sure the best way to delineate the disturbance because it is a 21 acre site and it would be really

difficult to tie down. In talking with the Health Department she realized that really this is their game and it is the septic field that they are talking about and not the house or the road. So the Sanitarian, Josh Kirtley, is very comfortable being the one responsible for minimizing the tree disturbance and he has already been on the site with the applicant and tagged only those trees that may be removed. This is one case where the first pit is just like stacked rock. It is like there was a river that ran through there. It is not critical slopes, but it is not suitable soils for the septic. Then it goes over to the critical slopes. It was not the same situation. It is good soil and not the stacked rock. The two conditions proposed were emailed to the Commission.

Staff wishes to add two conditions of approval for this waiver.

The first condition is to limit the extent of disturbance, including tree removal, to the minimum necessary for installation of the septic field as determined by the Health Department. The Health Department is aware of and comfortable with this condition. Trees which may be removed have already been tagged by the Health Department. The septic system chosen by the applicant will minimize the amount of disturbance necessary, according to the Health Department. The other improvements and infrastructure will not be on critical slopes, so this is limited to the septic system. While the condition refers to a three bedroom house and we understand they may actually be building only a two bedroom house, the three bedroom house sizing is consistent with our Ordinance standard. A condition referring to the house size will limit it from expanding to a much larger house requiring a larger drainfield.

Staff was asked and wants to clarify that installation of the berm and French drain is a Health Department requirement. The second condition is to refer to the requirement by reference to the Health Department permit.

1. Health Department approval for the minimal disturbance and tree removal on critical slopes necessary to accommodate installation of a septic system serving a house with no more than three (3) bedrooms.
2. Health Department approval of the installation of a berm and French drain in accordance with the Permit Number 101-08-0023.

The applicant has received these conditions and is willing to accept them. It might be an interesting case to follow. It is going to be featured on national television. It is real cutting edge in terms of some of the measures that they are taking. It might be the kind of thing that they would want to visit in order to provide an update on the construction of the house and the use of this property.

Motion: Ms. Joseph moved, Mr. Loach seconded for approval of the consent agenda with the conditions as proposed.

1. Health Department approval for the minimal disturbance and tree removal on critical slopes necessary to accommodate installation of a septic system serving a house with no more than three (3) bedrooms.
2. Health Department approval of the installation of a berm and French drain in accordance with the Permit Number 101-08-0023.

The motion passed by a vote of 7:0.

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.

Neil Williamson said that he works for the Free Enterprise Forum, which is a privately funded non-partisan think tank in Albemarle County focused on local government. He welcomed the Commissioners to what promises to be a most interesting year. The Free Enterprise Forum looks forward to working with the Planning Commission on the many issues facing Albemarle County. From their locked out report, which highlights the regulatory obstacles to affordable housing in our community, to the local cost of government spending index to their well respected economic opportunity lunches the Free Enterprises

Forum works to engage the community. Another example of their engagement as positions become available in local government on committees and commissions they work hard to publicize these openings and increase the applicant pool. By reaching out they educate the public, promote citizen involvement and help provide choices for those making decisions. While the Free Enterprise Forum works hard to ensure fair policies they do not take positions on individual projects. They encourage the Planning Commission to be steadfast in its advisory role to the Board of Supervisors following the established policies as enumerated in the Comprehensive Plan. They believe that each application should be evaluated based on its own merits and the metrics established in the Comprehensive Plan. To make planning decision solely on the basis of a personal agenda is unfair to the applicant, the process and a disservice to the citizens of Albemarle County. Thank you for your service to the community and they look forward to working with the Planning Commission in the year ahead.

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

Public Hearings:

SDP-2007-00134 Farrell Property/Verizon Tier II PWSF – Final
The request is for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 120.5 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with a 12-foot high 300 square foot shelter/equipment cabinet that will be contained within a 2,500 square foot lease area. This application is being made in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property is 2.95 acres, described as Tax Map 62, Parcel 63, is located in the Rivanna Magisterial District and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property as Rural Area in Rural Area 2. (Megan Yaniglos)

Ms. Yaniglos presented a power point presentation and summarized the staff report. (See Staff Report)

- This is a proposal for a Tier II personal wireless service facility proposed at 120.5' steel monopole tower with three flush mounted antennas. The proposed site is located on the west side of Route 20. The supporting ground equipment will be contained within a pre-fabricated equipment shelter at the base of the tower. The shelter and monopole will be surrounded by 6' tall wood screening fence. The monopole will be painted brown to further minimize visibility from the Entrance Corridor and surrounding parcels. A balloon test was conducted and it was determined that the proposed pole would be visible for a relatively short period of time while traveling on Route 20.
- The Planning Commission can approve the monopole at 10' above the referenced tree if the owner demonstrates that there is not a material difference in the visibility of the monopole rather than at 7' above. Staff has found that there is no material difference in visibility and recommends the approval at the 10' height above the reference tree. The ARB has approved the location based on the lack of visibility from Route 20. Staff recommends approval of the personal wireless facility.

Mr. Morris opened the public hearing and invited the applicant to address the Commission.

Steve Blaine, representative for Verizon Wireless, provided background for the new Commissioners. He introduced their team Marshall Pearsaw, the overall manager from the Richmond office; Dexter Walker, RF Engineer and Stephen Waller, consultant for site acquisition. Verizon has just recently obtained a license for direct service in the county. Until this system is fully designed and turned on Verizon customers must roam with other carriers. So this is a new network for Verizon and why they are seeing multiple sites for this applicant. He offered to provide additional background and explain why monopoles need to be 10' instead of 7'.

Mr. Morris noted that there was a long agenda and suggested that he provide that information at another time.

Mr. Blaine offered to participate in a work session on the Wireless Policy at a future time.

Mr. Morris invited public comment. There being none, the public hearing was closed and the matter before the Planning Commission.

Ms. Joseph agreed that a work session would be very helpful.

Mr. Fritz noted that he would schedule a work session.

Mr. Kamptner noted that the ARB conditions were not part of the Tier II approval.

Ms. Joseph noted that there would be a tree conservation plan.

Motion: Ms. Joseph moved, Mr. Cannon seconded for approval of SDP-2007-00134, Farrell Property/Verizon Tier II PWSF with the modification to allow the monopole to be 10 feet AMSL above the height of the tallest tree within 25 feet.

The motion passed by a vote of 7:0.

Mr. Morris said that SDP-2007-00134, Farrell Property/Verizon Tier II PWSF – Final is approved.

SUB2007-00382 Mosby Mountain – Waiver

The request is for a waiver of Section 14-422(A), requiring sidewalks to be established on both sides of each new street within a subdivision creating lots for single family detached and single family attached dwellings in the development areas. The property, zoned R-1, Residential is described as Tax Map 90E, Parcels 10-23, and is located in the Mosby Mountain subdivision in the Samuel Miller Magisterial District on Hatcher Court and Turnstone Drive at the intersection of Hatcher Court and Ambrose Commons Drive. The Comprehensive Plan designates this property as Neighborhood Density in Urban Area 5. (Summer Frederick)

Ms. Frederick summarized the staff report. (See staff report)

- The applicant is requesting a waiver of Section 14-422(A), requiring sidewalks to be established on both sides of the each new street within the subdivision creating lots for single family detached and single family attached dwellings in the development areas. The "As Builts" that were included in the packet must be approved as a revised preliminary for the waiver on this project.
- The final application for this subdivision was approved with the sidewalks included in the road plans. This is a unique situation where a portion of this subdivision is in the rural area and a portion is in the development area. The sidewalks for the rural area section of the subdivision were administratively removed from the plan because it is not an ordinance requirement. The applicant needs approval of a waiver for the sidewalk located in the development area portion of the subdivision.

Ms. Joseph asked if there was sufficient area for the sidewalks.

Ms. Frederick replied yes, the road plans do include measurements and specifications for sidewalks. In this case the specifications were for 4' asphalt pathways next to a roll curb.

Mr. Morris opened the public hearing and invited the applicant to address the Commission.

Valerie Long, attorney for Evergreen Land Company, said that others present included Gaylon Beights, Justin Beights and Rob Brooks. The request is very straight forward as staff indicated. There is a small portion of the Mosby Mountain Community, essentially the Hatcher Court area, which is actually within the growth area. But, the majority of the community is within the rural area. There are 20 lots technically within the designated growth area. The applicant did not seek a rezoning or a higher density for that portion of the property. The community, which was zoned R-1, was developed in a cohesive fashion using some density bonus. They were preserving a large area of open space that incorporated a conservation plan and so forth. They started constructing the sidewalks in the Hatcher Court area, but started receiving phone calls from some of the residents objecting to the sidewalks. After talking with the

residents they decided to pursue a waiver to delete the sidewalk requirement. The subdivision is fully completed. There is unanimous support within the entire community that there are no sidewalks. One of the applicable criteria that the Commission could use is the length of the street is so short and the density of the development is so low that it is unlikely that the sidewalk would be used to an extent that would provide a public benefit. It is a relatively short area of about ¼ mile that ends in two cul-de-sacs. It is not a through street and does not connect to any other developments. At this point there are no interconnections and the neighbors do not want it. Although there are no walking trails that connect all of the lots, there are extensive walking trails throughout the community that the developer has built in conjunction with the resident's input and suggestions.

Mr. Strucko noted that one of the petitioners noted that the walking trails were mud. He asked if there are any possible improvements to the walking trails.

Ms. Long replied that it was her understanding that the walking trails were proposed to be left as they are in a very natural state. Since the terrain is steep they wanted to leave it as a wilderness trail. The representatives of the development will continue to work with the home owner's association and all of the other residents. There is a portion of an asphalt trail that will connect up to Old Lynchburg Road right at the entrance of the community, which is still to be completed. But, for the most part all of the trails are completed. She pointed out that the property management company distributed the petition that was submitted to the Planning Commission.

Mr. Strucko noted that the petition is not worded as a survey. It simply says that "I support the proposed variance."

Ms. Long suggested that the homeowner's representative could clarify that issue.

Mr. Morris invited public comment.

James Peterson, resident of 1969 Ridgetop Drive in Mosby Mountain, said that he was on the Board of the Mosby Mountain Community Association as Secretary/Treasurer. He was present to report a resolution that was adopted by their Board. They came into this a bit in the eleventh hour because they had changed their mailing address. Although the individual owners on Hatcher Court and Turnstone had been individually notified, they had not received their notification until a few days ago. The Board took the issue up knowing that there was a lot of concern. The Mosby Mountain Community Association supports the elimination of the proposed sidewalks for Hatcher Court and Turnstone Drive as supported by the residents of those streets. But, this support is limited to those streets. Detailed information has not been provided regarding the impacts to the community entrance plans regarding the installation of a sidewalk connecting Ambrose Commons Drive to the existing sidewalk on Old Lynchburg Road, which is strongly supported. He sees from the presentation that the intent is to still have that extension. There are 20 residents that do not want sidewalks. There are 99 other houses in the subdivision. They hope that the Commission will approve this waiver.

Jack Wilson, resident of Montavista Avenue, said that there is no real need for the sidewalks because there is nothing to walk to in the area. He asked the Planning Commission to consider the developments along Old Lynchburg Road and to provide some places for the public to walk to in order to keep additional traffic off the road.

Donald Mitchell, resident of 1242 Hatcher Court, asked that the Commission approve the request to eliminate the sidewalks in this portion of Mosby Mountain. He objected to the asphalt path sidewalks since he had already planted landscaping.

Mr. Strucko asked if the mailboxes and entrances were constructed first and then the developer came back to install the sidewalks.

Mr. Mitchell replied that was correct.

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

Mr. Edgerton supported staff's recommendation for denial of the request.

Ms. Porterfield supported the residents since it was one big development. She suggested that the sidewalks be constructed on Ambrose Commons Drive and not on this short road.

Mr. Strucko asked if the Commission could ask Ms. Long to come back and see if her client is willing to do that in lieu of developing a sidewalk along Hatcher Court.

Mr. Morris invited Ms. Long to address the question.

Valerie Long clarified that the project that is beyond Mosby Mountain is Mountain Valley Farm, which has 37 lots. There is a portion of the asphalt path that would be completed along Ambrose, but they have worked with the neighbors to build a much more extensive nature trail than was originally shown on the plan. The sidewalks were not built prior to the lots being subdivided and the houses being built. Mr. Beights indicated that the concern was if they built the sidewalks before the houses were constructed that the sidewalks would just get torn up. The sidewalks were on the plans that were available for the residents interested in purchasing lots. At this time the applicant would not be interested in developing the Hatcher Court sidewalks. They would like to support what the residents are asking for to keep it a cohesive community.

Motion:
Ms. Joseph moved, Mr. Edgerton seconded to deny SUB-2007-00382, Mosby Mountain Waiver.

Mr. Kamptner said just for the record he would assume that would be for the reasons identified in the staff report. He asked if there were any additional reasons that they elaborate.

Ms. Joseph agreed and pointed out that knowing that Hatcher Court is destined to connect to the adjacent vacant parcel she thinks is extremely important.

Mr. Edgerton asked to add one more point about it because the interconnectivity has been brought up. Something that has not been brought up that he thought was important to acknowledge is that all of the lots on Hatcher Court are in the development area and unless it is rezoned at some future date from a planning perspective they have the responsibility to see that as a development area. The fact that the current developer did not choose to develop it per the direction of the development area and with greater density does not let them off the hook as far as what may come in the next cycle of use of this property. It is hard for anybody to think about that. But, it is one of the Commission's jobs to think about what is coming when these homes are no longer homes and it becomes a more intense use of that property or the market supports a more intensive use of that property 20 years from now. Again, he thinks they need to think about that as well as the interconnectivity.

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

Mr. Kamptner said that they need another motion.

Mr. Cilimberg noted that there were two aspects. There is the approval of the submitted as built plans for the subdivision as a preliminary plat and approval of the waiver of Section 14-422(a). He assumed that the two actions could be taken in one motion.

Mr. Kamptner replied that they could be.

Motion:
Mr. Strucko moved, Mr. Cannon seconded for approval of the submitted 'As Built' plans for SUB-2007-382 as a preliminary plat and approval of the waiver of Section 14-422(A).

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

The Planning Commission took a ten minute break at 7:40 p.m.

The meeting reconvened at 7:51 p.m.

Public Hearing Items:

SP-2007-00050 Carters Mountain (ATC)-Verizon Wireless PWSF (Sign # 75 & 80)
PROPOSED: Co-location of a personal wireless service facility on an existing tower
ZONING CATEGORY/GENERAL USAGE: RA, Rural Areas; Mountain Overlay District
SECTION: 10.2.2 (48) Special Use Permit, which allows for Tier III personal wireless service facilities in the RA Zoning District
COMPREHENSIVE PLAN LAND USE: Rural Areas uses in Rural Area 4
LOCATION: Tax Map Parcel 91-28: on Carters Mountain Trail approximately 1 mile south of the intersection with Thomas Jefferson Parkway (State Route 53).
MAGISTERIAL DISTRICT: Scottsville
(Gerald Gatobu)

Mr. Gatobu presented a power point presentation and summarized the staff report. (See Staff Report)

Proposal: Co-location of one new array consisting of six (6) new antennas at approximately 220 feet on an existing 270-foot tall guyed tower with additional supporting ground equipment and two (2) amendments to the conditions of SP 00-072.

Factors favorable:

Staff has identified the following favorable factors:

1. The co-location of antennae and equipment subject to this special use permit would not restrict any of the uses that are permitted by right or impose any additional impacts on adjacent properties.
2. No clearing or other disturbance is necessary for the placement of the antennas and equipment.
3. This proposal represents a co-location opportunity for antennae that are anticipated to have minimal visual impact.

Factors Unfavorable:

1. The existing tower is visible from various roads and properties located near this property. Visibility is greater when the antennae are not flush mounted.

The following factor is relevant to this consideration:

The existing tower was constructed for the purpose of allowing multiple carriers on one structure.

RECOMMENDED ACTION:
Staff recommends approval with the following modifications and conditions

Modification of sections:

Subsection 5.1.40(C)(3): Modification of the flush-mounting requirements in order to allow the installation of a full sectored antenna array.

Subsection 5.1.40(C)(3): Modification of the requirement to paint the antennas to match the existing structure. This is because the tower's colors are not discernable from views that are off the property.

Subsection 5.1.40(c)(4)&(5)) Verizon is requesting that the Board of Supervisors allow a modification of the requirements for a tree conservation plan, as no additional land disturbance is being proposed

Conditions of approval:

1. All work shall be done in general accord with what is described in the applicant's request and site construction plans, entitled "Carters Mountain Crown Orchard property, with a final zoning drawing submittal date of 09/17/2007.
2. This condition #2 on SP 00-72 does not apply because of a change in the zoning ordinance section related to personal wireless service facilities. Additional antennae installation on this tower will require a special use permit.
3. The facility will have only one outdoor light fixture (that complies with the County's lighting requirements) attached to the proposed shelter to be used by Verizon's technical operations staff only when night-time maintenance is necessary

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

Ms. Joseph said that what he was saying was that condition 2 will read, "Additional antennae installation on this tower will require a special use permit." Therefore, they would delete the first sentence.

Mr. Gatobu replied that was correct.

Ms. Porterfield asked if allowing the full sector array creates any kind of a problem for future requests on antennae like this since they are not doing the flush mounted as far as setting a precedent.

Mr. Gatobu replied no. He noted that as capacity demands staff likes the flush mounted because if it was a Tier II one could not easily see it. But, this is on a tower farm where there are all kinds of towers everywhere. So the visual impact is not that much. If it was a Tier II array, then they would be able to see it and people would not like that. The flush mounting usually limits the visual impact of it so that it can blend into the existing trees.

Ms. Porterfield noted that this was a special circumstance because it is in a tower farm, and Mr. Gatobu replied yes.

Mr. Morris opened the public hearing and invited the applicant to address the Commission.

Steve Blaine, attorney representing the applicant Verizon Wireless, said that Mr. Gatobu's staff report was quite thorough. They will save their discussion about the policy to the work session. He felt that this request was very straight forward and asked for the Commission's support. There is one clarification. The staff report references an elevation of 170'. If staff will go back to the previous drawing before the array, the drawings actually will show this array going at 220' elevation. That was a carry forward in a narrative where it was referenced as 170'. The plans are part of the application and before the Commission as what the applicant is requesting. It would be for the array that is between the two functionally equivalent service providers that are shown at 200' and at 242' elevation. The drawings are correct and the narrative is just in error. He apologized for that.

Ms. Porterfield asked if he was saying that this is going to be 220' on the existing 270' pole.

Mr. Blaine replied that was correct.

Mr. Morris invited public comment. There being none, he closed the public hearing to bring the matter before the Commission.

Motion for Special Use Permit:

Motion: Mr. Edgerton moved, Mr. Cannon seconded to approve SP-2007-00050 Carters Mountain (ATC) – Verizon Tier III PWSF with the conditions recommended in the staff report, as amended.

1. All work shall be done in general accord with what is described in the applicant's request and site construction plans, entitled "Carters Mountain Crown Orchard property, with a final zoning drawing submittal date of 09/17/2007.
2. Additional antennae installation on this tower will require a special use permit.
3. The facility will have only one outdoor light fixture **(**that complies with the County's lighting requirements) attached to the proposed shelter to be used by Verizon's technical operations staff only when night-time maintenance is necessary

The motion passed by a vote of 7:0.

Motion for Modifications:

Motion: Ms. Joseph moved, Mr. Edgerton seconded to approve the modifications listed in the staff report for SP-2007-00050, Carters Mountain (ATC) – Verizon Wireless PWSF.

Modification of sections:

- *Subsection 5.1.40(C)(3):* Modification of the flush-mounting requirements in order to allow the installation of a full sectored antenna array.
- *Subsection 5.1.40(C)(3):* Modification of the requirement to paint the antennas to match the existing structure. This is because the tower's colors are not discernable from views that are off the property.
- *Subsection 5.1.40(c)(4)* Verizon is requesting that the Board of Supervisors allow a modification of the requirements for a tree conservation plan, as no additional land disturbance is being proposed.
- *Subsection 5.1.40(c)(5)* Verizon is requesting that the Board of Supervisors allow a modification of the requirements for a tree conservation plan, as no additional land disturbance is being proposed.

The motion passed by a vote of 7:0.

Mr. Morris noted that SP-2007-00050 Carters Mountain (ATC) – Verizon Wireless PWSF and modifications was approved and would be heard by the Board of Supervisors on February 13.

SP-2007-00051 Peacock(Weber Property)-Verizon Wireless PWSF (Sign # 82)
PROJECT: SP 2007-00051 Peacock (Weber Property) - Verizon Wireless PSWF
PROPOSED: Installation of a personal wireless facility with a 100-foot tall treetop monopole tower
ZONING CATEGORY/GENERAL USAGE: RA - Rural Areas; EC Entrance Corridor overlay
SECTION: 10.2.2(48) Special Use Permit, which allows for Tier III personal wireless facilities
COMPREHENSIVE PLAN LAND USE: Rural Area in Rural Area 3
LOCATION: Tax Map Parcel 07300-00-00-031D0, contains 10.31 acres, and is located on Dry Bridge Road (Route # 708) between I 64 and Dick Woods Road (Route 637)
MAGISTERIAL DISTRICT: Samuel Miller
(Summer Frederick)

Ms. Frederick presented a power point presentation and summarized the staff report. (See Staff Report)

- This is SP-2007-51 Peacock (Weber Property) – Verizon Tier III Personal Wireless Service Facility application for a special use permit. The property is located in the Entrance Corridor. It has existing special use permits SP-1999-11, SP-2000-31, SP-2000-64 and SP-2000-38. The proposal is for the construction of a 100' monopole with 3 flush mounted antennae and a 365 square foot structure to house necessary ground base transmitting equipment. The proposed lease area for all of the equipment is 2,500 square feet. The reason this is considered to be a Tier III Wireless Facility is that the section does not allow more than three (3) Tier II facilities to be located within 200' of each other without a special use permit. This is the fourth tower in the area. So that bumps it up to a Tier III review. A balloon test was done.
- Staff recommending approval of the special use permit with the conditions listed in the staff

report. The first condition is that the tower should not exceed 10' above the identified referenced tree. The second condition is that the current owner and any subsequent owner of the tower and its supporting facilities shall submit a report to the Zoning Administrator each year by July 1. The third condition is that all equipment and antennae from any individual personal wireless service provider shall be disassembled and removed from the site within 90 days of the date its use is discontinued. The fourth condition is that the personal wireless service facility be installed as shown on the plan approved by County staff. It should be noted that the plans in their packets did go to the Architectural Review Board for approval. One of the conditions of approval was that the ground equipment shed could be built as shown in the plans or could be built using hardiplank siding. That was the condition of the ARB approval, but it did not make it into the packet. The applicant has requested that be added to the Planning Commission's approval if they so choose.

Ms. Joseph asked if that would be part of the site plan conditions.

Ms. Frederick replied yes, that would be part of the site plan that is attached to this special use permit.

Ms. Joseph said that if they added that it would become a condition of the special use permit and they would have to do it.

Ms. Frederick replied yes.

Ms. Porterfield asked if it was normal in this type of application to have a motion sensitive light.

Ms. Frederick replied that it was normal in these types of applications.

Ms. Porterfield asked if the applicant could address the need for the motion sensor light.

Mr. Morris opened the public hearing and invited the applicant to address the Commission.

Steve Blaine, attorney representing the applicant Verizon Wireless, said that the staff report is very thorough. They agree with the conditions as described. As a point of clarification regarding the ARB condition they submitted an option that would involve a structure encompassing the shelter. Some of their health and safety people have pointed out that could pose a safety risk for technicians. They cleared with the ARB the option of making that structure look like a farm structure. That is what the ARB's condition is. They can do that with a particular siding and don't have to put it within a false farm structure. That is what that condition is about. There were two alternative forms of the structure in the plans. The only point is about the lighting. The lights are full cut off and don't illuminate upward and are only suppose to be on when there is a technician there or a cow walks by.

Ms. Porterfield said that was her point. This is in the rural area and she wondered if these lights were going to continually coming on.

Mr. Blaine replied that most of these facilities are going to be fenced. So there is going to only be someone setting off that sensor that is suppose to be in there.

Mr. Morris invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Ms. Joseph assumed with the condition that everything they see in this they will have to comply with. So when they see all of those trees and not just the marker tree they will all stay.

Ms. Frederick replied that there needs to be a tree conservation plan.

Mr. Fritz noted that condition four addresses that because those plans have all of that information about the color of the tower, the mounting style and the tree area.

Mr. Kamptner noted to clarify that a lot of the requirements for Tier I and Tier II facilities are carried over

into Tier III requirements. Actually conditions two and three don't appear to be necessary since they are required to be complied with as part of the Tier III special use permit anyway by ordinance.

Ms. Joseph asked to invite the applicant back up. One of the questions she had was about co-locating. She asked if it was impossible to co-locate on the other towers on site.

Mr. Blaine replied yes, that at those heights these tree top facilities are really only designed for one carrier. That is the trade off. The other carriers are just above the tree tops. So to be able to maintain that signal there is really only one array that can go on each of these monopoles and be able to serve the needs.

Ms. Joseph said that the only other thing that they could do is to extend something that was out there and make it higher than 10' above.

Mr. Blaine replied that was correct. The trade off is visibility.

Ms. Frederick noted that essentially this is a Tier II tower and is designed as a Tier II tower. So it will look like the other towers that are out there.

Mr. Strucko noted that there is one metal tower and one is wood. He asked if this one is metal that would be painted Sherwin Williams Java Brown #6090.

Mr. Fritz replied that was correct.

Ms. Joseph pointed out that it becomes visible when there are three or four towers. It starts to look like Carter's Mountain that they just looked like. This is about as far as she could go on this site.

Mr. Loach asked if there was a maximum number allowed.

Mr. Fritz replied no, but that once there are three towers on the site they jump from a Tier II type facility to a Tier III facility that requires a special use permit. There is no ultimate limit, but once it gets above three it is a much more difficult review process that requires Board approval.

Mr. Cannon asked if he needed to add a condition for the farm like appearance of the building.

Mr. Fritz replied that it was not necessary because the applicant needs to get a certificate of appropriateness in order to get their building permit.

Mr. Cannon noted that if it was not necessary he would not include it.

Mr. Kamptner suggested that conditions two and three could be deleted because they are already required by ordinance for a Tier III facility.

Motion: Mr. Cannon moved, Mr. Strucko seconded, for approval of SP-2007-00051 Peacock (Weber Property)-Verizon Wireless PWSF subject to conditions as set forth in the staff report, as amended to include only conditions 1 and 4

1. The tower height shall not exceed ten (10) feet AMSL more than the AMSL height of the reference tree.
2. The PWSF be installed as shown on plans approved by County Staff.

The motion passed by a vote of 7:0.

Mr. Morris noted that SP-2007-00051 Peacock (Weber Property) would go before the Board of Supervisors on February 13, 2008 with a recommendation for approval.

Public Hearing Items:

SP-2007-00045 Flow Automotive Sales and Display (Sign # 17)
PROPOSED: Expansion of the Flow Volkswagen-Audi-Mazda outdoor automobile sales and display parking areas in the Entrance Corridor
ZONING CATEGORY/GENERAL USAGE: HC - Highway Commercial - commercial and service uses and residential use by Special Use Permit (15 units/acre); EC Entrance Corridor Overlay District - overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access.
SECTION: 30.6.3.2 (b) which allows for outdoor storage, display and/or sales visible from an EC street in the EC Entrance Corridor zoning overlay district
COMPREHENSIVE PLAN LAND USE/DENSITY: Regional Service - regional-scale retail, wholesale, business and/or employment centers, and residential (6.01-34 units/acre).
ENTRANCE CORRIDOR: Yes
LOCATION: 1307-09 and 1313 Richmond Road, south side of Route 250 East, approximately 1060' east of Riverbend Drive
TAX MAP/PARCEL: 78/15E and 78/15D
MAGISTERIAL DISTRICT: Rivanna
(Margaret Maliszewski)

Ms. Maliszewski presented a power point presentation and summarized the staff report. (See Staff Report.)

- This is a proposal to establish additional outdoor storage, sales and display of vehicles for the Flow Auto Dealership on the Route 250 East Entrance Corridor. Flow Auto is one of many auto dealers established on Route 250 East in the Pantops area. So the proposed use is compatible with the surrounding and nearby uses. The new display area is proposed on parcel 15E as noted in the display. That parcel is located directly west of the existing Flow Auto Dealership. All of the spaces on Parcel 15E are for display. The spaces at the front of the existing parcel also have display places.
- A special use permit is required for this use specifically because it is proposed in the Entrance Corridor. The intent of the requirement for the special use permit is to review the visual impacts of the outdoor storage, sales and display activity on the Entrance Corridor. The Architectural Review Board reviewed this proposal and had no objections to the use with the recommended conditions. The conditions are primarily related to landscaping, lighting and general method of display. Those are standard conditions for this type of application.
- Staff recommends approval with the conditions listed in the staff report.

Mr. Morris asked if there were questions for staff.

Ms. Joseph said that in the past VDOT has requested an additional 12' lane. Therefore, she worried about the proposed landscaping if that is what they are going to ask for on this.

Ms. Maliszewski replied that this proposal is similar to one that was approved just a few months ago. The turn lane that was required then is required with this as well. That is also shown on this plan.

Ms. Joseph said that she was a little perplexed because it seemed with the Car Max site there was a brick wall placed around the outdoor sales and display. She wondered if there was any discussion about that.

Ms. Maliszewski replied that there was no discussion about adding a wall for screening. At the Car Max site they normally had some type of fence, which was their standard. That fencing was changed to coordinate with the building on the Car Max site. What is different about this particular proposal is that there is no building on this parcel. In this case there is significantly more landscaping than the ARB has normally required.

Mr. Cilimberg noted that the operational model for Car Max is that their display area is actually secured. The public cannot just drive into it, which is different than most auto dealerships. He believed that the

wall was in place for a security fence in that case. That is not the case here because they are not securing a display area.

Ms. Joseph said that she assumed that the ARB had required that so that the cars would be screened, which was why she wondered what was going here. On page 11 in condition 20 it talks about putting a note on the landscape plan that all site plantings of trees and shrubs shall be allowed to reach and be maintained at a mature height, etc. She asked if staff thinks that condition will be effective in keeping the plants healthy and intact. They are relying on these plants a lot to mitigate the effects of this use.

Ms. Maliszewski replied that was a standard condition that the ARB has been using.

Ms. Porterfield asked if the ARB has said in the past if any plant material dies, it has to be replaced at the size of the rest of the plantings are at the time.

Ms. Maliszewski said that if the site plan shows a plant and it dies it needs to be replaced. On certain occasions the ARB has indicated that existing mature trees have to be replaced with a tree of similar size when lost due to construction.

Ms. Porterfield asked if it would be to a similar size to what the plant has matured to at the time or of similar size to when planted.

Ms. Maliszewski replied that the trees would need to be replaced at the size that was on the plan. In other words anything that is shown on the site plan is required. So if it dies it has to be replaced.

Ms. Porterfield asked at what size it has to be replaced.

Ms. Maliszewski replied that the site plan does not say that.

Mr. Cilimberg noted that is not very typical. Normally trees and landscape materials tend to die in their early years and when they reach the more mature years it is less likely. But, it is also much more difficult to find a replacement then. If they have to replace trees to comply with the site plan they are going to replace it at a size that has a potential for survival.

Ms. Joseph asked if they would be replacing it at the size that the site plan calls for. So if it is 2.5" or 3.5" caliper that is what they would have to plant.

Mr. Cilimberg replied yes, if that size was considered appropriate in the beginning for making a new planting for it to survive.

Ms. Porterfield noted that they were relying very heavily on this landscaping for screening. If they lose some of it, then they would not have the screening.

Mr. Kamptner noted that they have been told by some tree experts that when trees over a certain size are planted, they don't do as well. More recently they have depended on that recommendation for replanting.

Mr. Cilimberg said that there has to be a replanting. It is going to take some years to get to a level of maturity where you would not be able to replace with pretty close to the size that was originally planted. At that many years out it would be difficult to find a replacement that would survive or have a better potential to survive. Normally they go back to the planting sizes so the trees have the best chance.

Mr. Morris opened the public hearing and invited applicant comment.

Scott Collins, engineer representing Flow Automotive, said that the staff report was very thorough in what they are requesting. They agree with all of the conditions of the staff report. He was present to address any questions. He noted that there is a full turn lane. VDOT did review this earlier and approved it. It was built as a full 12' lane across the whole front so if they ever plan to expand Route 250 they have it built across this property and it won't affect the landscaping. As far as landscaping there will be a bond in

place that first year in case anything that dies would be replaced. That is a good start in ensuring that what is planted out front for the screening of this project for display would make it.

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

Ms. Joseph noted that the special use permit for outdoor sales and display is something that the ARB is thoroughly responsible for. Therefore, she was in favor of the request.

Motion: Ms. Joseph moved, Mr. Strucko seconded, for approval of SP-2007-00045, Flow Automotive Sales and Display, with the conditions as outlined by staff in the staff report.

1. Vehicles shall not be elevated anywhere on site.
2. Vehicles shall be displayed only in areas indicated for display shown on the plan entitled "Flow Automotives", identified as Sheet 3, prepared by Collins Engineering, with revision date of 12/18/07. Display parking shall be only in designated striped parking spaces, as identified on this plan. No parking shall occur in travelways.
3. Final site plan approval is subject to ARB approval of the lighting plan (submitted with the site plan). Maximum light levels on site shall not exceed 30 footcandles.
4. Final site plan approval is subject to ARB approval of the landscape plan (submitted with the site plan). Landscaping shown on the plan will be required to be in excess of the minimum requirements of ARB guidelines and/or the Zoning Ordinance to compensate for the negative visual impact of the proposed use, including but not limited to the use of larger caliper trees, additional evergreen shrubs and continuous interior planting islands.
5. Final site plan approval is subject to the recordation of easements for ingress/egress and for the installation, maintenance and use of planter islands and landscaping on adjacent parcels (Tax Map 78, Parcels 15, 15D and 15E).

The motion for approval passed by a vote of 7:0.

Mr. Morris stated that SP-2007-00045 Flow Automotive Sales and Display, would go before the Board of Supervisors on February 6, 2008 with a recommendation for approval.

SP-2007-00047 Graceworks Expansion (Sign # 1 & 56)
PROPOSED: Amend SP 2001-24 to expand after school care from 2-days/week to 4-days/week; increase enrollment (max. 10 per day); on three parcels with total of 58.469 acres
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre)
SECTION: 10.2.2.(5) Private Schools
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre)
ENTRANCE CORRIDOR: No
LOCATION: 1040 Ownesville Road (Route 678), west of Andrew Lane
TAX MAP/PARCEL: TMP 58-82; TMP 58-76B; TMP 58-77
MAGISTERIAL DISTRICT: Samuel Miller
(Joan McDowell)

Ms. McDowell presented a power point presentation and summarized the staff report. (See Staff Report)

- This special use permit is an amendment to a special use permit that was approved in 2001. At that time it was Baker Afterschool Care. The name has changed to Graceworks. There are 3 parcels involved with a little over 58 acres. This is off of Owensville Road. The area is a combination of farm land and large lot/medium lot residential. The name of the farm is Split Rock Farm.
- There are a couple of issues involved with this. The expansion is to allow 15 children enrolled for 2 days per week. In this request it is 10 children each day for 4 days per week. In the staff report an explanation was given of why it was more important to have the number of children each day

as opposed to an overall enrollment. The applicant said that they have never had more 10 children a day even though 15 children were approved with the original application. They would be doubling the operation to 4 days a week.

- Photographs are included in the staff report, which were taken by Glenn Brooks, County Engineer. Mr. Brooks is here tonight. There seems to be some considerable erosion on the property by all of the earth moving activities. On site visits Mr. Brooks could not see any commercial/agricultural activity. But, in discussions with the applicant staff found that they are discussing putting in orchards in some of the terraced areas. It is apparent that there is a little beach area they have carved out where the children have the opportunity to swim in the lake and sit on the beach. So it is integrated considerably with the activities of the children.
- Staff has suggested that a condition be placed on the approval that if there are earth disturbing activities and it is defined in the condition that they would require an Erosion and Sedimentation Control permit. That also gives the children an opportunity to learn about protecting our water and streams. That is an educational opportunity as well as an opportunity for the applicant to protect the water and stream before the neighbors complain. There have never been any complaints with Zoning regarding the afterschool operation with the children.

Factors Favorable:

1. The proposed additional children enrolled in the after school care program would provide a service to the community.
2. The proposed additional days of operation from two days per week to four days per week would not compromise the integrity of the community or the Rural Area.
3. No additional structures would result from the proposed expansion.

Factor Unfavorable:

1. Land disturbing that is related to activities for the children has resulted in stream sedimentation.

- Staff recommends approval with the conditions listed in staff report.

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

Ms. Joseph noted some concerns about condition 6. What happens if they want to do some sort of agricultural activity and they are disturbing more than 10,000 square feet? Agricultural activity is one of the things that they allow people in the rural areas to do. She asked if condition 6 is directly related to the activities for the children. They want to encourage people to put in orchards.

Ms. McDowell said that this would be all earth disturbing activities of 10,000 square feet or greater. The excavation of a pond and construction of a dam was all done with the agricultural exemption. This would allow them to continue to grade if they need to, but would require an E and S permit.

Ms. Joseph asked if this was specific to the pond itself and not anything else out there.

Ms. McDowell replied that it was not just for the pond.

Mr. Kamptner noted that the condition is specific to the use. So if they desired to engage in agricultural activities that are independent of the use and the children are not taken to the orchards to engage in some kind of educational activities, this condition would not apply. This only applies to the use. If the orchard is being established to provide a learning experience for the children who come to the site under this use, then he felt that this condition applies because really the orchard was being established as part of this use. If it is being created completely independent and it is purely an agricultural use and has no relationship to this educational experience, then this condition would not apply.

Mr. Morris asked if that would preclude the owners from taking the children out to the orchard eventually.

Mr. Kamptner said that is going to be a tough call. In this case they have the experience. They have seen how this site has operated up until now. That is why this condition was put into place.

Mr. Edgerton said that his read was that a neighbor complained about some of the erosion issues.

Ms. McDowell asked Glenn Brooks to address that issue.

Glenn Brooks said they have had several complaints for the last year and a half. He said that Sally Thomas has been involved personally. When he took the job in February he was told to go out and look at this site because it had been a problem for 6 months to a year. Therefore, he visited the site. Speaking to the agricultural exemption, they can always do an agricultural use. What this does is say that they will provide erosion measures. What they have seen in the past is that their agricultural uses are not being good stewards of the land or not providing protection for the streams. That is all that they were asking. They were not saying that they can't do agricultural activity or they can't take their children to it. They can do all of those things, but please provide erosion control measures, too. In the past they have been unsuccessful in getting them on this site and others. So they placed the condition on it that they will do an erosion control plan for the site. They can still do their orchard, the pasture and whatever, but provide some protection measures.

Ms. Joseph pointed out that they don't have an application plan. She asked how will staff know what is going on.

Mr. Brooks replied that usually what happens is that staff gets a complaint. Then one of the inspectors goes out and sees the disturbance and determines if it is over 10,000 square feet. Then they inquire of the owner if this is an agricultural use or not. He noted that most of the time the owners say they are doing pasture. Staff then asks where the cows and horses are. It goes on like this. A few years ago staff started asking people to write down what they are doing and sign it. That has had mixed success. They have a screening form for this site that was done a year ago that said that it is agricultural use. A month ago he went out to the site and saw no agricultural uses and a whole lot of disturbance. Therefore, being in it a year or more he just does not believe it anymore.

Ms. Joseph asked if they have a plan that said that they are going to build a pond, put it in an orchard and are going to do this and that or something else for the children if it would work.

Mr. Brooks said that it might be denied in this case because this is a water supply protection area. They don't want people disturbing the stream buffers and putting ponds in for uses that are not bona fide agricultural uses.

Ms. Joseph said that it sounds like maybe a condition that keeps those sorts of uses out of those sensitive areas might be helpful.

Mr. Brooks said that it is too late for that. They are just asking for it to please stop or to do it right.

Ms. Joseph said that they don't have any kind of idea of what may happen in the future as far as expansion is concerned.

Mr. Brooks said that even if they take that condition off if there is any disturbance in the future and staff receives more complaints from the neighbors he would have to make a determination whether it is a bona fide agricultural exemption or not. He may or may not make that determination in this case.

Mr. Edgerton said that if the applicant wanted to do something and it was legalistically for agricultural purposes that they are adding a condition saying that they want them to address the erosion.

Mr. Brooks replied that was correct.

Mr. Edgerton said that was all that was happening. They were not prohibiting any agricultural activity. Just based on their track record, which has not been good here, they are saying that they want to stop the

kind of activity that has occurred. They want to stop the earth moving without any erosion control measures being followed. That was his understanding of what this condition is trying to address.

Mr. Brooks agreed.

Mr. Strucko asked what is happening out there.

Mr. Brooks replied that it was best to direct that to the applicant.

Mr. Morris opened the public hearing and asked the applicant if they would like to address the Commission.

Julie Baker, Director of Graceworks, said that Graceworks has been in existence for seven years. She felt that the turn that this discussion has taken with the engineer is a bit misleading and she needed to clarify some things. She hoped that the Commission had a received a letter from the guidance counselor at Agnor Hurt by the name of Sue Tansey. That letter was submitted a couple of weeks ago.

Mr. Morris noted that he did not recall seeing that letter.

Ms. Baker said that if they don't have that letter that she felt that this was not a proper hearing. What that letter addresses is that affordable housing in this community is greater for low income families. What happens is that the children in these families are forced to live in poor areas. The children that they serve have little opportunity for afterschool activities. Their parents are often working. They don't have transportation and don't get the chance to take advantage of the beauty of the county that they are all trying to preserve. She lives on a family property that has been in her husband's family since the 30's. They are trying to preserve the beauty of that land. This does not look very beautiful in the pictures, but they have done a lot of work. In the spring if they come and take pictures it will be a very different looking place. But, the point is that they are trying to serve this community. It is all volunteer work. She has spent a lot of money building the facility for these children. She has spent a lot of personal time doing these things. They are trying to do something good for these children. In the letter Sue Tansey speaks to this need. The children that they hope to serve come from the trailer parks around Rio Hill and behind the Rock Store. They serve other children from Greer Elementary School. They have been doing this for six years. She just wanted to speak to the need.

Ms. Baker submitted the brochure for Graceworks noting what this is really about is serving these children and giving them opportunities. She did not see any pictures of the children being shown. They have a web site entitled BakerGraceworks.org, which she asked staff to bring up. She felt that it was unfair to talk about this whole program without showing the Commission what they do and the children that they serve. She was disappointed that none of the Commissioners have the brochure, letter or petition that they submitted. The petition was from a number of their neighbors who are very supportive and volunteer and serve on their Board.

Ms. Baker continued that they have owned the property for about 15 years. They bought it from her husband's family to preserve it. They built a pond. They followed the County's advice by asking the County to come out to look at what they had done. The county made a couple of recommendations on erosion and sediment control. They followed those on the day that they were recommended. But, they still got a lot of complaints. She thought that most of those complaints were about the noise. There was a lot of noise and a lot of trees coming down. A lot of the trees were dead, but there was some grinding of mulch, which created a lot of noise. She understands that it is in the backyards of a lot of people. There are neighborhoods very close to the property. Her heartbreak was that what they did personally upset people. Therefore, she would be happy to pay any penalties that they owe. But, if they look at the statistics and the facts they don't really owe any penalties because they did not violate any ordinances. She did not want the children in the County who have no resources and no place to play to be penalized because of what they did personally. They have five children that have many friends. The beach shown in the photograph is right behind their grandpa's house, which is for her children to play on. There has been 100 hours that they have invested this fall with a group of children. Out of those 100 hours the Graceworks children have been on this property 1.5 hours fishing in the pond. Graceworks is not about

this land disturbance. They will probably take a hike a couple of days this spring. They might fish again. The reality is that most of their work does not involve this land at all. They hope to have a garden, but it is not in this particular area of the land. They hope to plant some trees and some day those kids can come and pick some fruit from those trees. But, really that is the extent of it. This is a private project. The neighbors are upset and so they are using Graceworks as leverage to stop what they are doing personally. Personally she finds that a little offensive. This should be about the kids and what they are doing here. It should not be about what she is personally doing on the property. If they are doing something inappropriate, personally they are happy to fix it. They have fixed things that were not done properly in the past. They fixed them the day they were told to fix them and will continue to do so. She did not think that it was appropriate to link these together without telling them what they really do. She did not know where the oversight was in why the Commission does not have a petition from the neighbors, the brochure or the letter from the guidance counselor.

Mr. Morris noted that those items are going around right now. He asked if there were any questions for Ms. Baker.

Mr. Cannon said that he hoped that she did not take any comments that have been made as suggesting that what she was doing was not highly valuable. This is a wonderful service from everything he could gather from the report. He questioned whether she would agree to the proposed condition as part of the approval to have an erosion and sedimentation control plan for earth disturbing activities of more than 10,000 square feet. He asked if that would be an acceptable condition.

Ms. Baker assumed that it would be an acceptable condition. They are willing to do it, but think that the condition is unfair. It unfairly ties that condition to Graceworks, which really is not what that is about. They have the right as private landowners in Albemarle County to do agriculture uses on their land. Mr. Brooks said that he did not see any agricultural activities. She was not sure if he saw much of the land. They do have horses, a donkey, a herd of sheep and chickens. They use their land by taking hay off of it. She felt that he went to the one area where they were working, but they have other acreage there. It is within their right to use the land appropriately. They care about the environment, too. They care about this land, which is why they are preserving it and not developing it. They want to do right by their neighbors. If erosion control is necessary absolutely they want to do it. If it is not necessary she felt that it was an unfair burden to label them just because she runs an afterschool program. She felt that is what happened here.

Mr. Morris said that counsel had noted that this stipulation is only related to those things that relate to Graceworks and what happens with their agricultural use of her property does not apply. He asked if that was correct.

Mr. Kamptner replied that is correct. The County's Program Authority, Mr. Brooks, will need to make a determination when he learns about what the activity is as to whether or not it is an exempt activity. That will have to be made on a case by case basis.

Ms. Baker said that it is a little challenging because they plan to plant some trees. It is one of the things that they want to do personally. If the children can benefit, that is great. They are not doing it for the children, but the children benefit from their work. She asked how they decide. They have on order some Asian pears and blueberries. If they take the children to pick blueberries does that mean that anything that the children have touched they have to do something? It just gets a little bit tricky. She wanted to do right by the county and her neighbors. If that means the erosion control, then she would do that. But, if it is more than what is necessary and more than what is asked of other farmers in the area, then she thinks that is unfair.

Mr. Loach asked the age of the children.

Ms. Baker replied that they were fourth graders. They work with the children for 2 years. They are picked by family support workers at their schools as children that don't have other opportunities.

Mr. Loach asked with the increase what would be the number of vehicle trips that might occur.

Ms. Baker replied that it will stay the same per day, but will increase two days a week to four days per week. They will still have the 10 children. They have a 15 passenger van. She has two staff members. There will be two other cars and a van. So that stays the same every day.

Mr. Loach asked what the certifying agency to run the school is.

Ms. Baker replied that she did not have a certifying agent because they operate under a certain number of hours. The Health Department came out early on when they started the program and waived them as being exempt because they are under a certain amount of hours.

Mr. Loach asked why the Health Department condition was crossed off on number six.

Ms. McDowell said that the comments received when staff sent this out for review from the Health Department was that they had no issues or objections.

Mr. Loach said that the only other concern that he would have in regards to agriculture is just the health and safety of the children around an agriculture enterprise. That is why he asked those questions.

Ms. Baker said that was their concern as well. They have tried to follow all insurance and fire recommendations. The children are not around any heavy equipment or anything like that.

Ms. Joseph asked what she was planning for the future for the children. She asked if her expectations for the site would stay the same except for other agricultural activities that they might do.

Ms. Baker replied yes for the site itself. They would like to do some more farming on the land. She hoped that they would have some cows at some point. They would also like to do some small scale farming on some of those terraces. They have some Asian pears and blueberries and possibly might want some peaches and pears. They have a person from UVA come out to do some organic farming. Right now she was writing a grant for swim lessons. They play YMCA basketball. They are raising chickens. They do all kinds of activities. It is not all about farming.

Mr. Morris invited other public comment. There being none, the public hearing was closed and the matter before the Commission. He pointed out that the question was whether to expand afterschool care to four days a week from two days a week.

Mr. Edgerton felt that there was some confusion. The staff report is very clear. Personally he was very clear about the good work that is being done here and had no difficulty with the request for adding a couple more days. One of the things that was troubling him about this is that they were in a water protection area and erosion is a real issue. Our ordinance and the State Code, which mandates a lot of what is in our ordinance, has two different sets of rules. For legitimate agricultural practices they are exempt from a lot of good practice such as soil erosion measures. This has been used by this particular applicant to do some work that if it was done just for personal enjoyment would not be allowed. The current ordinance requires that any dirt disturbance over 10,000 square feet for non-agricultural use requires an erosion permit. Unfortunately, this is one of the hardest pieces of the ordinance to enforce. What happens is that a lot of earth moving takes place until a neighbor notices it and calls the Inspections Department. The Inspections Department comes out and looks at it and says that it is over 10,000 square feet and to stop work. Then they go back and get a soil erosion permit. It would be nice if they did not have to rely on the complaining neighbor to get the enforcement. He felt that if the Bakers want to fix the place up for their enjoyment he did not think that should be considered the same as the agricultural practices. He did not think that the agricultural exemption is wise especially in areas where they have water protection issues and erosion is filling up our reservoirs and the siltation is real.

Mr. Strucko said that he was in full support of including condition six to ensure that if no commercial/agricultural use is currently on that property and that earth disturbance has something to do with the school operation that the county and our water sources are protected. The school can continue

its good work. If the earth disturbance is related to the commercial/agricultural use, then it is fine. But, let's ensure that this happens.

Mr. Edgerton said that if there was no school there at all and it was just related to the residential component that they would be required to get an erosion permit if they moved more than 10,000 square feet of dirt.

Ms. Joseph asked for a clarification on that from staff.

Mr. Brooks felt that they were correct that the connection was tenuous. He wanted to inform the Commission that this was happening because they were having complaints from the neighbors and one of the Board of Supervisors members was involved. So for staff not to inform the Commission about what was going on with an application like this he felt would have been negligent on their part even though the connection is fairly tenuous.

Ms. Joseph said that the question is if you are zoned rural areas and you are disturbing 10,000 square feet do you need an erosion and sediment control plan.

Mr. Brooks replied that it depends on the purpose of that disturbance.

Ms. Joseph asked if you were tilling a field do you need an erosion and sediment control plan, and Mr. Brooks replied no.

Ms. Joseph asked if you are grading an area level so that you could play bocce ball.

Mr. Brooks replied that you do. He noted that he has received mixed reasons for this grading activity. Some of it has been for ornamental ponds. He was told at one point that it was going to be soccer fields. Now he was told it was an orchard. It has been various things. Personally, he has been working at these kinds of sites for some time and this amount of grading activity is really not necessary to establish an orchard, a pasture of any of these things. He had a lot of questions about it when he first saw it, which was in December.

Ms. Joseph asked that they have a plan that shows designated activities. Then it would be a lot easier to determine whether or not 10,000 square feet was going to be disturbed and whether or not it was related to the activity proposed by the special use permit.

Ms. Porterfield asked if they could table it and ask for a plan.

Mr. Kamptner asked Ms. McDowell where they were in the calendar. Assuming that they are running out of time or close the Commission can include in its recommendation a condition to the Board that a plan be required.

Ms. McDowell said that it has not been deferred and they are right on schedule for the Board to hear it on February 13.

Mr. Cilimberg noted that the schedule was set up so that the issue is coming to the Commission pretty close to the 90 days without a deferral. The other thing is that if there is an expectation that there be a plan before the Board meeting, they were not going to make February 13. It would have to be delayed at the Board hearing. But, they could certainly express that. The applicant then has the responsibility of providing that and getting it reviewed by staff to determine how it advises the Board in making their decision.

Mr. Kamptner pointed out that the Board has 12 months to act. So the Board can release this February 13 date until they have what they want in front of them.

Mr. Morris said that they could recommend that as part of the packet that goes before the Board, but they send it forward.

Mr. Cilimberg noted that they could ask the applicant to agree to a deferral so that the Commission could see it. The applicant may or may not agree.

Ms. McDowell asked what the Commission would like to see on the plan.

Ms. Joseph noted that the Commission had Camp Watermarks that came before them to show the kinds of activities they were doing out there.

Mr. Strucko said that the Commission was having trouble discerning whether this land disturbance is part of the school activity or not.

Ms. Joseph said that she did not want to stop anyone from doing an agricultural use.

Mr. Strucko said that the staff report says that there is no evidence to indicate that the ponds and fields have any existing commercial/agricultural use. So that raises the concern that this activity is related to something else. He asked if they want to expand the operation of an afterschool program here that may be associated with disturbing land uses in the water protection area. They certainly don't want to stop this good work from happening, but they also want to make sure that the County is not assuming additional risks here. If the applicant can demonstrate that disturbance is indeed related to an existing commercial/agricultural use, then all is well. But, if that disturbance is related to the activity that they are thinking of expanding, he would like to make sure that they are safeguarded and that there is an erosion and sediment control permit.

Ms. Joseph noted that they would not know unless someone complains because siltation occurs.

Mr. Edgerton felt that the applicant has been very direct that this is not part of the Graceworks operation, but it may enhance it at a later date. They are providing an enormous service to these disadvantaged children who don't ever get a chance.

Mr. Kamptner asked that condition six be revised so that it more closely tracks the language used in the Water Protection Ordinance. The condition would read, "Prior to all land disturbing activities of 10,000 square feet or greater and/or for the excavation of a pond and/or for the construction of a dam the owner shall obtain approval of an erosion and sediment control plan by the County's Program Authority."

Ms. Joseph asked that the Commission offer a recommendation to the Board of Supervisors that they look at getting a plan for this so it will be a lot clearer to everybody what is going on. She supported the proposal, but felt that this would avoid confusion in the future.

Mr. Edgerton asked what sort of plan she was looking for.

Ms. Joseph asked that the plan show the different activities that they expect to be connected with the school.

Mr. Morris said that an excellent example would be what was done for Camp Water Marks.

Ms. Porterfield suggested that be added as condition seven and if this is adopted that it cannot go into effect until staff receives that plan. She felt that staff should know what the Commission was looking for from their discussions and make sure that they have a plan that shows what is happening.

Mr. Cilimberg said that such a condition would say that before the special use permit could be exercised a plan needed to be provided that shows where the agricultural activities versus the activities associated with the school would be located. That would be in lieu of needing to have a plan before the Board sees it. He asked Mr. Kamptner if that would be an enforceable condition.

Mr. Kamptner replied yes. Staff can work on the language between now and February 13.

Motion: Mr. Edgerton moved, Mr. Cannon seconded, for approval of SP-2007-00047, Graceworks Expansion, with the conditions recommended in the staff report, as amended.

1. A maximum of 10 children shall be allowed on the site at any time.
2. A minimum of three adults shall supervise the children at all times.
3. The children shall be transported to and from the property as a group. The pick up and drop off of individual children shall not be permitted except for medical, family and weather-related emergencies.
4. The days of operation shall be limited to four days per week, Monday through Thursday, and the hours of operation shall be limited to 2:30 P.M. to 5:30 P.M. on the days of operation.
5. Expansion of the facilities for the private school shall require an amendment to this special use permit.
6. Prior to all land disturbing activities of 10,000 square feet or greater and/or for the excavation of a pond and/or for the construction of a dam the owner shall obtain approval of an erosion and sediment control plan by the County's Program Authority."
7. [THE FOLLOWING IS DRAFT LANGUAGE THAT NEEDS TO BE FINALIZED BEFORE THE BOARD'S PUBLIC HEARING] Before the special use permit can be exercised a plan needs to be provided that shows where the agricultural activities versus the activities associated with the school would be located.

The motion passed by a vote of 7:0.

Mr. Morris stated that SP-2007-00047 Graceworks Expansion, would go before the Board of Supervisors on February 13, 2008 with a recommendation for approval.

The Planning Commission took a break at 9:22 p.m.

The meeting reconvened at 9:30 p.m.

Work Sessions:

SDP-2007-153 Oxford Properties, LLC
The request is for preliminary comments on the possible development of a 24.2-acre parcel with 308 apartments in 9 buildings, a leasing office, a swimming pool and recreational amenities. The existing comprehensive plan land use/density for this parcel, Tax Map 76-45, is Urban Density Residential - (3.01-34 units/acre) in Neighborhood 5. It is in the Entrance Corridor, Flood Hazard and Airport Impact Area overlay districts. The parcel is located on the west side of Old Lynchburg Road just north of the Route 64 overpass in the Scottsville Magisterial District. (John Shepherd) (See Staff Report)

In summary, a work session on SDP-2007-00153 Oxford Properties, LLC was held by the Planning Commission.

In a power point presentation, John Shepherd reviewed the applicant's proposal. The use is permitted by right. However, the project requires multiple waivers. He requested the Commission's input on the following four issues:

- The Commission's general reaction to the plan.
- The Commission's inclination to support a critical slopes waiver.
- The Commission's inclination to support a waiver that would allow a single point of access to Old Lynchburg Road.
- The Commission's opinion on the need to disturb the buffer of Moore's Creek.

Valerie Long, representative for the applicant Oxford Properties, made a power-point presentation. Also present was Bill Hall of Oxford Properties.

Public comment was taken from the following persons.

Jack Quinn, resident in the Fry's Springs area, noted that there were many things wrong with the project. He supported preserving the wetlands and the area around Moore's Creek, particularly the critical slopes. He discouraged the development due to the additional traffic impacts on Old Lynchburg Road that included poor site distance, no shoulders and increasing traffic from already permitted developments. The development of some of the walls and buildings are too close to the streams and wetlands. The development is lacking access during a 100-year storm flood. A single entrance will need a flood plan impact permit. Mitigation requires protection and stabilization of Moore's Creek. Erosion control measures will be difficult. Moore's Creek is a high volume stream.

Larry Jones, resident of 301 Middletown Lane, expressed concerns about the number of new developments on Old Lynchburg Road, which is a little narrow road. He had lived on this road for ten years at the four way stop signs. The cars travel at a high rate of speed making it difficult for those persons living on Old Lynchburg Road to get out of their driveway. In 24 hours there are 4,200 cars. He noted that on Saturdays when there is a UVA football game the road is blocked. He asked that the Planning Commission consider the traffic volume on Old Lynchburg Road before approving any more new subdivisions or development in this area.

Jeanne Chase, of 223 Old Lynchburg Road, noted that she lives with their decisions 24/7 of the development that they have planned or are planning south of Azalea Park and across from Azalea Park. She noted with all rights they have responsibilities. They are given the right to use natural resources, but not to destroy them. They have the right to drive their vehicles, but not to disregard the safety of all who share the same pathway. Our rights are only protected as long as our responsibilities match them. She asked how one equates developing steep slopes that damage and/or wipe out wooded areas with responsibility. She asked how one justifies knowingly building on a flood plain and all the potential ramifications that come with this decision. She asked the Planning Commission to take all of these concerns into consideration because they reap what they sow.

Peter Headlin, President of the Frye's Spring Neighborhood Association and resident of 204 Todd Avenue, asked the Planning Commission to defer the consideration of this project until they have worked out with the University and City the necessary infrastructure that would be necessary to support the traffic that will be generated by these proposed 308 units as well as the other developments in the area already built or approved. He has sat in this room in the past and heard county staff endorse the recommendations of the Southern Urban Area B Study. These recommendations included the construction of the Sunset Fontaine Connector, which could potentially alleviate the increasing and burdensome traffic that currently uses residential streets to get to the University and other points within the city. While occasional lip service is paid to this road by the city, county and University officials nothing moves forward. Until a firm and clear commitment is made to solve the traffic caused by the extraordinary growth in this part of the county he has no choice but to recommend deferral of this project.

Jack Wilson, of Monte Vista Avenue, said that he had lived off of Old Lynchburg Road for 25 years. He spoke in opposition noting that this was the most ill conceived building project. He asked that the county work with the city to designate arteries for traffic coming into the city to address the traffic hazards. He asked that they respect the critical slopes and land. There is no place for 300 houses.

Eric Guilford said that he lived across the stream bed from Eagles Landing. He was a life time member of the Rivanna Trails Foundation and the Potomac Appalachian Trails Club and the trail overseer for the Appalachian Trail. There is a gap in the trail system with this property. Whoever develops this property or if nobody does they still need to bridge that gap. The Granger property up the stream is another gap in the trail. He asked that the Commission note in their minds these gaps in the trail in their neighborhood. Any applicant should have as a requirement that they provide a deeded easement at the absolute least that allows this fantastic trail to bridge the gap so that this trail can be complete and there will be places to walk to so the city will have a complete trail around it.

James King, resident of 2607 Jefferson Park Circle, noted that it was hard to internalize the cost for this project. There are impacts that basically can't be made out by money or any other kind of internalization. He heard ten different problems mentioned tonight related to developing this project. Therefore, he asked that the Planning Commission follow the staff report recommendations.

Janice Jones, resident of the corner of Milton Lane and Old Lynchburg Road, spoke in opposition to the request due to the horrible traffic situation on Old Lynchburg Road. The road is so busy that it is very dangerous and already overtaxed. There are drainage problems on the road. They need road repairs. The road cannot handle any additional vehicles.

No formal action was taken. The Commission reviewed and discussed the proposal, made comments and suggestions by answering the questions posed by staff as noted in the following summary.

In consensus, the Planning Commission in response to staff's questions felt that the site was overdeveloped and was not inclined to support the critical slopes waiver or the one point access and were very concerned about the wetlands and the impact of the proposal on them. The Commission also agreed that the Neighborhood Model Principles should be adhered to. The Commission declined to offer a density that they could support. Rather, it suggested that the applicant revise the plan so as to better fit on the site.

Old Business

Mr. Morris asked if there was any old business.

Update on Village of Rivanna Master Plan.

- Lee Catlin provided an update on the Village of Rivanna Master Plan. A Stakeholder Group has been formed as suggested by the Planning Commission which has met twice. There is good representation from Glenmore, Running Deer Subdivision and people both outside of and within the development area. They will meet before every public event to help with the planning. The next community meeting will be held on January 30. The Commission will be further updated after that meeting.

There being no further old business, the meeting proceeded.

New Business

Mr. Morris asked if there was any new business.

- Mr. Cilimberg asked that all real estate disclosure forms be submitted immediately as they are due today.

There being no further business, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 10:50 p.m. to the Tuesday, January 23, 2008 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, Clerk to Planning Commission & Planning Boards)