Albemarle County Planning Commission
February 12, 2008

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

Members attending were Thomas Loach; Bill Edgerton; Jon Cannon, Vice Chairman; Linda Porterfield and Calvin Morris, Chairman. Mr. Edgerton arrived at 6:09 p.m. Absent were Marcia Joseph and Eric Strucko. Julia Monteith, AICP, non-voting representative for the University of Virginia was absent.

Other officials present were Bill Fritz, Chief of Current Development; Summer Frederick, Senior Planner; Patrick Lawrence, Senior Planner; Gerald Gatobu, Senior Planner; Wayne Cilimberg, Director of Planning and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Morris called the regular meeting to order at 6:02 p.m. and established a quorum.

Other Matters Not Listed on the Agenda from the Public:

Mr. Morris invited comment from the public on other matters not listed on the agenda.

Review of Board of Supervisors Meeting – February 8, 2008.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on February 8, 2008.

Mr. Edgerton arrived at 6:09 p.m.

Consent Agenda:

SUB-2008-00014 Biscuit Run / Block 11 / Breeden Property – Final
Request for final plat approval to create two (2) lots on 195.879 acres. The property is zoned NMD-Neighborhood Model District. The property, described as Tax Map 90 Parcel 5 is located in the Scottsville Magisterial District on Old Lynchburg Road (SR 631) approximately 500 feet north of the intersection with Forest Lodge Drive. The Comprehensive Plan designates this property as Neighborhood Density in Urban Area 5. (Summer Frederick)

Mr. Morris asked if any Commissioner would like to pull the consent agenda for discussion. He noted that he had one question for Ms. Frederick. He asked if this area was actually part of Biscuit Run and will it be connected.

Ms. Frederick replied yes that it was part of Biscuit Run. She presented a power point presentation showing the proposed area. She pointed out Block 11 on the subdivision plat and the driveway where the easement on the subdivision plat has been overlaid.

Mr. Edgerton said that it appeared that what is being recommended here is going to disappear when the project was developed. He asked why they need to go through this step.

Ms. Frederick replied that the house will not disappear and this Block will not disappear. She noted once the public street network as seen on the exhibit is in place, then the portion of the driveway that is outside of Block 11 will go away.

Mr. Edgerton said that they will have to use the public streets.

Ms. Frederick said that this portion would remain a private driveway to the residence. In the timeline that was presented during the rezoning it was talked about that this would be the last portion that would be developed within Biscuit Run.

Mr. Edgerton said that this is providing access that already exists.

Ms. Frederick said that it is separating out this parcel for the current residence and current owners.

There being no further questions, Mr. Morris asked for a motion.

Motion: Ms. Porterfield moved, Mr. Cannon seconded for approval of the consent agenda.

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

Mr. Morris said that the consent agenda was approved.

Deferred Items:

Presentation: Rural fire protection water supply program (James Barber)

Mr. Morris noted that James Barber of Fire Rescue has requested deferral of the presentation to a later date.

Regular Items:

SDP-2007-00158 Vest Property/ Verizon Tier II PWSF – Final
Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 125 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with a 12'x 20 x 10.92' (W x L x H) shelter/equipment cabinet. This application is being made in accordance with section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property, containing 2.85 acres and described as Tax Map 109 Parcel 43C1 is located in the Samuel Miller Magisterial District off Monacan Trail [State Route 29] on Murrays Lane [Private].The property is zoned RA, Rural Areas. The Comprehensive Plan designates the property as Rural Area in Rural Area 3.
(Gerald Gatobu)

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

- Proposal: Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 107 feet tall (8 feet AMSL above the height of the tallest tree within 25 feet.)

- Based on the balloon test conducted the monopole is not sky lighted in any way. The visibility from Route 29 is very minimal. Photographs of the balloon test were presented.

- Zoning Ordinance Waivers and Requirements:

    - Section 5.1.40d Tier II Personal Wireless Facility – Staff recommends approval of this personal wireless service facility. Based on findings presented in the staff report, staff recommends approval at the proposed height of eight (8) feet above the reference tree.

    - Waiver of Section 4.2 – disturbance of critical slopes – Staff recommends approval of the critical slopes waiver. Only .1 acre is being disturbed in critical slopes.

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

Mr. Edgerton said that the entire majority of the property is in critical slopes. He asked did the applicant try to find another site that was not on critical slopes.

Mr. Gatobu replied that he could not speak to that, but noted that staff does try to encourage that there not be areas of critical slopes.

Mr. Edgerton pointed out that there were a couple of wedges on the property that were not critical slopes and wondered if the applicant had considered those locations.

Mr. Gatobu suggested that the applicant address that question.

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

Maynard Sipe, attorney with LeClair Ryan representing Verizon; Mathew Tuff, Construction Engineer of Verizon; Stephen Waller, consultant to Verizon with Wireless Resources Incorporated and Matt Winstead, Project Manager for Verizon were present to speak for the request.

Stephen Waller, consultant for Verizon Wireless, said that they wanted to place their facility closer to the one on the adjacent parcel. But, when the carrier leased the property they leased too much of the portion of the property to allow them to get their equipment on that site. The biggest speed bump is finding a willing landowner. This is one of the two landowners willing to do so in this area. They basically try to find trees on a site that allow them to meet their coverage objectives and also to have a relative cleared area so as not to disturb a lot of area. They are able to meet the setback without getting a fall zone easement. A lot of things come into play in selecting a site. Although they can tell there are critical slopes in the area they don't know how much critical slopes will be impacted until the site is laid out, the tree identified and then they get a topo survey. It is not a complete disregard for critical slopes, but more of a consideration of other things such as large groups of large trees and looking up through trees to make sure enough larger trees are left.

Mr. Edgerton took issue with the suggestion that the policy encourages the use of critical slopes. They have to grant a waiver to allow this to be built on this property. He was not satisfied that Verizon has looked at other sites to avoid critical slopes.

Mr. Waller pointed out that they were in no way trying to disregard the critical slopes, but were trying to meet the objectives of the Wireless Policy. Sheet 2A shows that the central part of the site does not contain critical slopes. Much of the critical slope is outside of where the equipment is going. They have to put in a retaining wall to flatten the area around the site. The access is the main portion of the critical slopes.

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

Discussion:
Mr. Cannon said that it would be nice to know that there was some consideration of the presence of steep slopes in the initial review. He understands that there are different considerations. Those competing considerations may outweigh the concern for steep slopes. But, he did not know from what has been said that the applicant did look at the areas that do not have steep slopes and determined that they were not appropriate for one reason or another. He was not sure if that is what the applicant said. This is more a generic question than a question about the particular site, but he felt it would be appropriate under our existing requirements that the applicant look at the presence of steep slopes and look at alternatives as Mr. Edgerton has suggested and make that part of the determination of appropriate sites. It would not to preclude the use of steep slopes, but just to make sure that is part of the determination.

Action on SDP-2007-00158:

Motion: Ms. Porterfield moved, Mr. Loach seconded to approve SDP-2007-00158, Vest Property/Verizon Tier II PWSF - Final with the proposed height of 8' above the reference tree.

The motion passed by a vote of 3:2. (Ms. Porterfield, Mr. Morris and Mr. Loach voted aye.) (Mr. Cannon and Mr. Edgerton voted nay.) (Ms. Joseph and Mr. Strucko were absent.)

Mr. Morris said that SDP-2007-00158 was approved.

Action on Critical Slopes Waiver:

Motion: Ms. Porterfield moved, Mr. Loach seconded to approve the waiver of Section 4.2 for critical slopes with regards to SDP-2007-00158, Vest Property/Verizon Tier II PWSF – Final.

The motion passed by a vote of 3:2. (Ms. Porterfield, Mr. Morris and Mr. Loach voted aye.) (Mr. Cannon and Mr. Edgerton voted nay.) (Ms. Joseph and Mr. Strucko were absent.)

Mr. Morris said that the critical slopes waiver for SDP-2007-00158 was approved.

SUB-2007-00396 Clifton Lake, Phase I Subdivision – Preliminary
Request for preliminary plat approval to create 30 lots on 62.44 acres. The property is zoned PRD, Planned Residential Development and will be reviewed in accordance with the zoning and subdivision ordinances in place when the property was zoned. The property, described as Tax Map 79, Parcel 23 and Tax Map 79C, Parcel 1 is located in the Scottsville Magisterial District and will gain access via an extension of existing Shadwell Road [Rte. 709] in the existing Shadwell Estates Subdivision. The Comprehensive Plan designates this property as Rural Areas in Rural Area 4. (Patrick Lawrence)

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

This is a proposal for 60 lots on 62.44 acres in the Scottsville District. This was originally done under ZMA-1977-24, which provided for a Residential Planned Neighborhood, RPN. In 1980 the RPN transferred into a Planned Residential Development. Staff reviewed the request and originally started out with a recommendation for denial. However, after further analysis staff finds that it is compliant with the original zoning map amendment and the ordinances provided. Bill Fritz will provide additional information.

Bill Fritz said earlier today he emailed to the Planning Commission an additional analysis.

- There were 2 main issues that staff saw for this particular application. One was an issue with the entrance, which is referred to as the VDOT review. The other is the building site requirement. Staff's conclusion is that the 2 conditions from the original rezoning in 1978 are that the approval of the entrance facilities has been done. The entrances are, in fact, in place. So that has been met. The other issue was improvements to the intersection of Route 250 East and Route 709. It is staff's conclusion that VDOT can require those or request studies and require improvements at any time. It is not dependent upon an application. It is also staff's interpretation or advice of many cases throughout the state that those are off site improvements and the County as part of this subdivision cannot require those off site improvements nor could they have actually done that in 1980. Again, they are working under the 1980 ordinance in this particular case. That is very clear in the staff report. In summary, staff believes that the VDOT issues have been addressed. If VDOT wants to request any additional studies they can at any time. The County cannot require improvements to those entrances or intersections because they are off site improvements.

- The other issue is an issue of the building site requirements. It is important to note that when this project was originally approved in 1978 there was no critical slopes ordinance in the County. That came into being in 1980 when the County adopted the current ordinance. Because this is reviewed under the Planned Development requirements it is staff's opinion that because this current proposal complies in all respects with the 1978 action or the conditions of the 1977 rezoning, which has a very specific regulation requirement dealing with critical slopes, which

states no dwelling units nor septic fields to be built on slopes in excess of 25 percent. Because of the specificity in the rezoning action it is staff's finding that a modification of the building sites standards is not required. That is because of the very specific language cited from Section 8.2 that there is a specific standard adopted for this Planned Development District. Therefore, those regulations shall apply.

- He noted that there is a third ordinance that is in play here. This was put in the ordinance simply to put the applicant on notice regarding the Water Protection Ordinance. It does apply even though it is not shown on the plat. They cannot locate or build structures, improvements or drain fields within 100' of the pond or perennial streams. That is something that will have to be dealt with at building permit time. It cannot be required to be put on the plat because the ordinance that was in effect in 1980 obviously does not refer to a WPO that was adopted in the 1990's.

Mr. Morris asked if Section 4.2.2.1 apply.

Mr. Fritz replied that it was staff's finding that it does not apply. Again, because of the specificity in ZMA-1977-24 that was approved because it has a very specific requirement about critical slopes. Because of the specificity of that condition it trumps the Section 4.2.

Mr. Edgerton felt that there was a huge loophole here where the legal interpretation is that the applicant gets to choose which ordinance to apply. The applicant has chosen the 1980 ordinance. But, he heard staff say that they are to ignore the 1980 ordinance when it comes to critical slopes for building sites and septic fields both of which are impacted in the drawing that the Commission is being asked to review. The drawing shows critical slopes in the proposed building sites and for the septic sites. If they chose the 1980 ordinance why wouldn't those provisions of the 1980 ordinance apply.

Mr. Fritz noted that they are complying with the 1980 ordinance. The language in the memo sent today is the language from the 1980 ordinance. It is because of that highlighted section. Staff had not taken that into consideration when they did the initial review of the project and wrote the staff report. It is because of that language that it trumps the other language.

Mr. Kamptner said that it was language in the 1980 zoning ordinance section 8.2, which applied to Planned Developments, that provides that the standards that are adopted as part of the Planned Development rezoning trumped the other regulations that might otherwise apply.

Mr. Fritz noted that the specific language was at the top of the second page of the memo sent out today.

Mr. Morris agreed with Mr. Edgerton that it was confusing bouncing back and forth between things.

Ms. Porterfield asked if staff was saying that they could go 30 years and they can't put into place what they have learned in 30 years.

Mr. Fritz replied yes. The ordinance is very specific that it gives the benefit to the applicant of which ordinance they want to put in place. There have been very few applications that are like this. But, every time that it has happened the applicant has opted to use the 1980 ordinance. In some cases there have been projects that are not subject to the Architectural Review Board or not subject to critical slopes or lighting provisions. It has happened in the past. There has been no resolution of intent to amend the ordinance ever put forth.

Mr. Kamptner said that the Section 8.0 regulations that apply to all Planned Developments allow the applicant to decide whether or not they want to have their previously approved Planned Development grandfathered back to the 1980 regulations for both the Subdivision and Zoning Ordinance. This particular preliminary plat shows building sites. But, the 1980 Subdivision Ordinance did not require that building sites be shown on preliminary subdivision plats.

Mr. Fritz noted that the applicant has tried to show a 30,000 square foot area on each lot. What is important to remember is that they are still subject to the regulation of the rezoning, which is that they

cannot put dwellings or drain fields on the critical slopes. That provision applies. It is just staff's finding that they don't need the 30,000 square foot building site exclusive of areas of critical slopes.

Mr. Kamptner said that the other thing that this particular approval included was a condition that they be able to provide a primary and a secondary drain field site on each lot. That was condition 12 or 13 of the approval.

Mr. Fritz noted that the applicant will still have to do that. In many cases significant areas that are in critical slopes are also within the 100' Water Protection Ordinance Resource Protection Area. They are protected both by the conditions of the initial rezoning and by the current Water Protection Ordinance and cannot be disturbed or built on.

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

Mr. Kelly Strickland, with Dominion Development Resources, said that he was present with Greg Baldwin, the applicant. He would be happy to answer any questions.

There being no questions for the applicant, Mr. Morris invited public comment.

Mr. Fritz noted that Mr. Bowie was the author of the letter distributed.

Rick Bowie, resident of Shadwell Estates, said that he was an abutting property owner to this particular application. Shadwell Estates only has 26 houses that were built primarily in the 1960's. Only 3 houses have been added within the last 25 years. Five of the units are occupied still by the original builder. It is a very quiet secluded subdivision and, of course, they would like to keep it that way. They recognize property rights and that they don't own that land. The owner of the land has the right to do what he can do within the applicable law. They want their right protected to be safe. Public safety is their only concern. There have been many applications over the years since 1973 up to 150 townhouses, which were all denied. In 1977 ZMA-77-24 was identical to this for 30 units to use Route 709 as sole access for this particular plat. It was approved by the Planning Commission with 17 conditions about ½ of which related to public safety. VDOT's position was that it was not a safe intersection because of sight distance. When it got to the Board of Supervisors Mr. Tucker, who was then Director of Planning, reported the Department of Highways position and added that it is considered a hazard. He saw no reference in the minutes that the Board of Supervisors said that the road had to be installed across the dam to provide a separate entrance so that they did not jam Route 709. That was 30 years ago. They could have built this thing anytime in 30 years. It is the same request now. This could be considered a way to get away from having to take care of the public safety requirements. They feel that it must have some protection from those who live there. They have not built it in 30 years. They request that this be denied and that the 1974 plan, which called for a separate entrance, be the one that stands. He did not recommend that the County approve any subdivision on Route 709 without improvements in place that allow for adequate site distance and it says or some other way. It is a bigger separate subdivision and gives them their own entrance.

Bill Perry, resident of Shadwell Estates, said that what he had to say was redundant because VDOT has already answered their concerns. They did traffic studies on the intersection at 709 and 250. With the increased building in Fluvanna and what have you it has gone up considerably. Ten minute counts from 10:00 a.m. to 2:00 p.m. there were 100 to 120 vehicles both ways, which is 1 vehicle every 6 seconds. During rush hour they get 160 to 202, which is 1 vehicle every 3 seconds. From personal experience in trying to get here tonight, if it was not for the light going to the school he would never get out of that intersection. It would increase the traffic so much that he thought that another access road should be provided if this subdivision is done.

David Saulsburg, resident in Milton Hills of Shadwell Estates, presented a petition from Milton Heights and Shadwell Estates with 39 names who strongly oppose SUB-07-396, Clifton Lake Phase 1 application. (Attachment – Petition of 39 names) It will double the traffic on Route 709 greatly increasing the risk at the already unsafe intersection at Routes 709/250. Additionally, there are school children in the

neighborhood some of which walk Route 709 to get to the school bus. The bus stop is on Route 709. It is an unsafe intersection and increased traffic on Route 709 places their children an increased safety risk. Therefore, they urge the Planning Commission and the Board of Supervisors to deny this request.

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

Motion: Mr. Edgerton moved, Mr. Porterfield seconded to deny SUB-2007-00396, Clifton Lake, Phase I Subdivision – Preliminary because the plat as presented is not consistent with the approved rezoning because the preliminary plat did not meet the requirements of Condition 16 of that rezoning: "The developer is to install a road across the dam (non-dedicated) to provide access to Route 729." (Condition 3 on Page 048 in January 18, 1978 Board of Supervisors minutes.)

Mr. Kamptner noted that the basis was the failure to comply with Condition 16 of ZMA-77-24.

Mr. Cannon offered specifically Condition 16 as recited by one witness, Mr. Bowie, and as Mr. Bowie further clarified that condition from the Board's minutes when it approved ZMA 77-24. The minutes indicate that construction of the second access was to be available to the residents of this subdivision for their use. Mr. Cannon stated that he understands from the applicant that they are not prepared to fully meet that condition in the current subdivision plat.

Mr. Morris said that he heard emergency road only.

Mr. Cannon agreed.

Ms. Porterfield asked that the record read the exact minutes from that meeting 30 years ago.

Mr. Edgerton added to the motion that an additional resolution that the Board please revisit the loophole in the ordinance that is putting us in this terribly awkward position where they have to go back and do bad planning 30 years later.

Mr. Cannon asked that to be made a separate item.

Mr. Edgerton agreed.

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

Mr. Morris said that SUB-2007-00396, Clifton Lake, Phase I Subdivision was denied.

Mr. Cannon proposed that a resolution be forwarded to the Board of Supervisors which would recommend amendment of Section 8.5.5.2 of the existing ordinance in the aspect of that which allows applicants to reach back in time to 1980 for their benefit.

After discussion with staff, the Planning Commission directed staff to prepare a resolution of intent to revisit and amend Section 8.5.5.2 as discussed and bring it back to the Planning Commission for action.

Old Business

Mr. Morris asked if there was any old business.

- Mr. Cilimberg said that the Commission has talked about one of the recommendations to the Board from the Development Review Task Force last year that would have the Board meet with the Planning Commission and the ARB to discuss roles. He talked with Robert Tucker, County Executive, and determined that the Board will first need to get through its budget process. Staff will try to set up this joint meeting sometime in May based on the Board's schedule. He will work with the Clerk of the Board to establish a date. Once scheduled staff will advise the Commission.

- The Commission requested staff to provide an updated list of Planning Commission contact information via email.

- Ms. Porterfield said that before the Clifton Lake applicant and the other nearby property owners left the Planning Commission meeting, she invited them to join the Village of Rivanna master planning discussion regarding traffic on March 3. She thought that their input as nearby property owners would be helpful. The meeting will be held at one of the churches in Keswick. Mr. Cilimberg noted that information is on the County's website or a member of the staff can be contacted to get the information regarding the meeting.

- Ms. Porterfield asked that staff address the questions raised last week on Route 250 East in a timely manner. Mr. Cilimberg indicated he would bring this to the Board's attention when the rezoning for Cavalier Mini-Storage goes to the Board of Supervisor's on March 12.

There being no further old business, the meeting proceeded.

New Business

Mr. Morris asked if there was any new business.

Mr. Edgerton noted that he had received an email from Sally Thomas about SB768 regarding the elimination of cash proffers. He suggested that if anyone felt so inclined they should contact their representatives to make sure that this effort does not hurt the County's efforts to require the development community to pay for the impacts of development on our community.

Mr. Cilimberg noted that the Senate passed the bill today by a vote of 21 to 19. He noted that he would send information on the bill via e-mail to the Commission.

There being no further items, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 7:55 p.m. to the Tuesday, February 19, 2008 meeting at 6:00 p.m. at the County Office Building, Lane Auditorium, 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)

Attachment: January 18, 1978 Board of Supervisors minutes submitted by Mr. Bowie.