Albemarle County Planning Commission
April 1, 2008

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, April 1, 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, Bill Edgerton, Eric Strucko, Thomas Loach; Jon Cannon, Vice Chairman; Linda Porterfield and Calvin Morris, Chairman. Julia Monteith, AICP, non-voting representative for the University of Virginia was absent.

Other officials present were Wayne Cilimberg, Planning Director; Joan McDowell, Principal Planner; Elaine Echols, Principal Planner; Scott Clark, Senior Planner; Megan Yaniglos, Planner; Bill Fritz, Chief of Current Development; Jonathan Sharp, Engineer; Glenn Brooks, County Engineer; Amelia McCulley, Director of Current Development & Zoning/Zoning Administrator and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Committee Reports:

Mr. Morris asked for committee reports from the Commissioners.

- Mr. Strucko noted that the Fiscal Impact Advisory Committee met this afternoon. Mr. Cilimberg was also present. The only topic of conversation was Senate bill 768, which has been tabled by the General Assembly. This was the bill that would have a very serious impact on their proffer policy. The bill proposes to eliminate cash proffers as a condition of residential development off-site proffers and as a condition for non-residential development it would introduce maximum impact thresholds and further restrict the implementation of such fees. The Fiscal Impact Advisory Committee worked and put forth a pretty lengthy effort last year to come up with some of the parameters that eventually worked into their proffer policy. These are the cash amounts that they estimated would cover the costs of off-site impacts of a development. So a single-family detached home would have roughly a $17,000 to $18,000 impact on infrastructure costs. This particular bill would completely eliminate a locality's ability to do that. It would put caps on what localities could get as well as put localities through a series of complex calculations that determine exactly what the impact of new development would be. The committee went through a discussion on this particular piece of legislation that went through the General Assembly House, passed the Senate in a very different form and had to go back to the House and was tabled until next year. The committee was considering mapping out how potential legislation could impact Albemarle County and the proffer policy. The committee went back and forth as to what specific action to take at this particular time. Should they do a rough analysis to show what the impact of the legislation as it exists right now would have on the county or should they wait until a little further along in the fall when the details of this revolving piece of the legislation becomes clearer. The committee questioned if they want to influence the legislative process with an early analysis or do they want to react to it. The committee decided to do a broad view rough analysis on the impact of the proposed legislation on the county. But since he had to leave the meeting early he would defer to Mr. Cilimberg.

- Mr. Cilimberg said the suggestion was made to use building permit data to get some rough estimates and to do a little research on impact fees in other parts of the country. In a preparation mode there was interest in finding out where things stand with VACO and VML who will probably be sitting on the committee that comes up with future legislation.

- Ms. Joseph reported that the MPO Technical Committee met on March 25 and discussed several issues. Glenn Brooks handed out a diagram on what some of the impacts would be on the

secondary road standards that the Highway Department is proposing. There is a big deal about connectivity within these documents. Mr. Brooks analyzed the existing Hollymead and Forest Lakes and also Biscuit Run in connectivity. Biscuit Run did better than Hollymead and Forest Lakes. Any one interested can get a copy of the graphics. It was good to see that VDOT is headed in the right direction. They talked about bench mark data and gathering that for UNJAM's 2025 projection. They also looked at the bike and pedestrian inventory at which time she brought up the 120' right-of-way within Forest Lakes that could be taken into consideration to be used for a bike path.

- Mr. Edgerton reported that the ACE committee met yesterday. The committee passed a resolution to send seven of the fifteen properties on for an appraisal. After the appraisals come in they probably won't have enough money to work with all of the properties. But, they have wonderful properties to choose from.

- Mr. Morris reported that the Interchange Committee met last Wednesday and is determined to move forward. Last Friday the Eastern Connected Committee met. The consultants were asked to look at expanding the possibilities of relieving traffic from the Free Bridge area and expanding the roads that they asked them to move from two lanes to four lanes. If built tomorrow it would be at the C, D or almost F level of congestion. They are trying to look at something that will make sense. Tomorrow the CHART Committee meets to continue with the UNJAM Plan.

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

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.

Clara Belle Wheeler, resident of Stony Point, said that she went before the Commission last year to plead her case to allow her property to remain in the growth area. The Commission heard her pleadings and they recommended to the Board of Supervisors that the designation for her property remain in the growth area. Apparently without the Commission's or her knowledge certain members of the Board on the 17th at the tail end of their meeting chose to vote on her property. She disagreed with this decision particularly since she thought the issue had been put to rest at the September Board meeting. She questioned how this happened. She submitted that the Board of Supervisors should pay more attention to the Planning Commission's recommendations.

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

Public Hearing Items:

SP-2007-00064 Camp Watermarks Amendment (Sign # 29)
PROPOSED: Amendment of special use permit for day camp to permit increase of an activity building from 800 square feet to 2,160 square feet.
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre); FH Flood Hazard - Overlay to provide safety and protection from flooding
SECTION: 10.2.2.20, Day camp, boarding camp (reference 5.1.05).
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: 1145 James River Drive, west of Route 726 and Hatton Ferry Road
TAX MAP/PARCEL: Tax Map 136 Parcels 6B, 9, 9A2, 9D, 9D1, 9E
MAGISTERIAL DISTRICT: Scottsville
(Joan McDowell)

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

The proposal is to amend an existing special use permit, SP-2007-08, that was approved last year. Camp Watermarks is a religious based camp for children extending overnight care with weekly sessions for 75 campers and 20 staff. It was originally approved in 2005. It continues its agricultural and forestal uses while allowing the children to come and enjoy those uses. One stipulation of a previous approval was the allowance of a 20' X 40' accessory building. This application would allow that building to be larger 36' X 60' building and to allow multiple purposes within the building that include arts and crafts, staff overnight stays, meetings, play areas and other uses for the camp. The applicant has stated that when the camp is not in session he would store agricultural materials inside the building.

Staff has identified the following factors favorable to this application:

1. The camp environment remains well integrated into the surrounding landscape.
2. The camp experience contributes to Rural Areas goals by heightening awareness and understanding of agricultural processes and natural resources.
3. Farming and forestry activities will continue at the current levels on the subject parcels.
4. The expanded accessory building size would not be visible from adjacent properties and would not intensify the uses on the property.

Staff has not identified any factors unfavorable to this application:

Staff's recommendation is for approval with changes to the conditions as noted in the staff report that includes having the fire marshal inspect the building. The applicant needs to amend the building permit because it is for a storage building and needs to include the camp use as well as the overnight occupancy.

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

Mr. Edgerton asked if the building had already been built that the applicant was asking for an amendment for.

Ms. McDowell replied that the building was almost finished.

Mr. Edgerton noted that speaking personally he was troubled by that because the original special use permit that allows the camp to be there was after-the-fact as well. It seems that this particular applicant has problems with doing things in the proper order. He noted that he takes offense with that. He felt that the applicant should have applied for the amendment to the special use permit before constructing the building regardless of what staff's assessment is.

Ms. Porterfield asked if the building had to have any special amenities, etc. to be able to be used for overnight stay.

Ms. McDowell replied that would be handled by the building permit process. She believed that there was a restroom in the building. The Building Division will be reviewing the uses within the building.

Mr. Cannon asked if the fact of the building came to staff's attention through an inspection or did the applicant come forward.

Ms. McDowell replied that she did not believe that it was an actual violation, but an inspector did go out and find that the building was larger than what was originally approved, but that a building permit had been issued for a storage building. Since the building was approved as part of the special use permit for a camp, the applicants were told that they would need to apply for an amendment of their special use permit. The building permit would need to be amended for the new uses, if approved. She deferred the question to the applicant, for elaboration.

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

Travis Critzer said that they received permission to build a 20' X 40' building. When they started on the building they realized that the area that they were building would be of no use for anything else and they did need more space. He came back and applied for another building permit. At that time he was told

that he would have to go through this process again and he could build it as a storage building only with the idea that if the Commission did not allow them to use it that it would be used for the farm. That is why they proceeded with building it with hopes that the Commission would pass it, but if they did not, it would be another farm structure that they would use. So he did go through the appropriate channels this time. The only inspector that came out was after they applied and paid for all of their permits. They have been straight-forward on inspections and everything is up-to-date with that.

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

Ms. Joseph asked if he was sure they were done with the growth of the camp.

Mr. Critzer replied that he was not sure they were done, but he felt very comfortable with this for a while. That is why they wanted to build the building larger. The 20' X 40' building would restrict them while the larger building would give them a little more room to maneuver and grow, particularly with rainy days.

Mr. Edgerton said that he could not believe that he had any confusion over what was approved with the special use permit. He did not think that he had gone through the appropriate channels. They should not be building buildings bigger than what they have been given permission to without checking with the county first. He felt that was the proper way to do it. If they call it a farm building it would be exempt from permits. The Commission has supported him and tried to help him increase the size of the camp. When someone comes in and asks for one thing and is given permission, but then ignores it and goes out and constructs a larger building, he did not feel they were putting him through a hardship. He asked Mr. Critzer if the Commission turns it down if they were going to use this as a farm building.

Mr. Critzer replied that he would be forced to do that. Before they built the building he came back in to change the building permits and met with zoning and building. He was told that he needed to come to the Commission if he was going to use the building for the camp. But if he does not use it for the camp he could build a 300' X 1,000' for farming. The idea was that it would be used for the farm if they disallowed it. Their hopes are that the Commission will allow them to use it for the camp.

Mr. Morris invited public comment.

Scott Moral said that he had been a neighbor of Mr. Critzer's for over 30 years with no problems. He has been operating a camp for four years. His property backed up to the camp site and they have never had any problems. Mr. Critzer is not increasing the number of campers, but just constructing a little larger building than he planned for, which he could understand having been a farmer. He did not see any problem with it.

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

Ms. Joseph supported the request. She appreciated the great staff report that provides all of the necessary background.

Mr. Strucko said that the applicant has amended the camp application several times since it was created in 2005. He questioned at what point they say this camp is large enough for the rural areas. He had no problem with the building, but wanted to note that the camp started off about one-half of this size.

Mr. Morris noted that at the second session they had a counselor from one of the churches and she stated that the response to this experience is just growing and growing. Apparently the camp is still growing. He did not have the answer to the question of how much is too much.

Mr. Edgerton noted that Mr. Critzer has been working the difference in the requirements between agricultural buildings and the special use permit required buildings. He has done this consistently and actually said that if he wanted to he could build a much bigger agricultural building. He felt that he was taking advantage of the situation. The question raised by Ms. Joseph is a good one in where does it end and if they put a cap on this. That is what the special use permit process is all about. It is a good use as noted in the staff report, but at the same time it is making a mockery of the whole system. If he comes

back next year and decides to build another agricultural building of any size, then it gets built and again comes back and tells us that it is already there and is not going to bother anybody. He would not be surprised to see that happen. He would go ahead and support the request, but was deeply troubled by the approach taken.

Motion: Ms. Joseph moved, Mr. Cannon seconded to approve SP-2007-00064, Camp Watermarks Amendment, with the conditions recommended by staff, as follows:

1. The improvements, and the scale and location of the improvements authorized by Special Use Permit ~~2007-08~~ 2007-64 Camp Watermarks, shall be in general accord with the concept application plan dated ~~*May 29, 2007*~~, February 15, 2008, prepared by Angela and Travis Critzer, and titled "Watermarks Christian Ministries Camp" (Attachment A). However, the Zoning Administrator may approve revisions to the concept application plan to allow compliance with the Zoning Ordinance.
2. Compliance with the Virginia Statewide Fire Prevention Code shall be verified by the Fire Marshall prior to issuance of a zoning compliance clearance.
3. Amendment of the building permit for a storage building (permit # 2007-2448 NNR), as shown on the concept application plan (Attachment A), shall be required to allow overnight occupancy of staff, as well as other camp uses.
4. Prior to issuance of the zoning compliance clearance, compliance with the Virginia State Department of Health (VDH) regarding minimum septic requirements shall be required. The VDH shall re-review the status of septic standards within one year of the date of the approval of the special use permit. At that time, and if necessary, systems shall be upgraded or enrolment reduced based on VDH recommendations.
5. Prior to issuance of the zoning compliance clearance, compliance with the Virginia State Department of Health regarding kitchen and food service approvals shall be verified.
6. Total number of staff (in addition to the applicant and their family) on site at one time shall be limited to twenty (20).
7. Camp sessions shall be limited to a maximum of sixteen (16), each one (1) week long, overnight sessions per year.
8. The maximum number of children per session shall be limited to seventy five (75).
9. The maximum number of bus or van trips (round trips) to and from the camp, each week long session shall be six (6). Bus or van trips shall be the primary means of transportation for the children.
10. Five food deliveries by truck shall be permitted per week long session.
11. Camp activities are permitted on Tax Map 136, Parcels 6B, 9, 9A2, 9D, 9D1, 9E.
12. Outdoor amplified sounds or bull horns shall be prohibited.
13. Compliance with the Virginia State Department of Health regarding water supply shall be verified by the Health Department prior to issuance of a zoning compliance clearing and the commencement of the special use. The VDH shall re-review the status of water standards within one year of the date of the approval of the special use permit. At that time, and if necessary, systems shall be upgraded or enrolment reduced based on VDH recommendations.
14. This special use permit does not include approval for additional lighting subject to Chapter 18, Section 4.17 of the Zoning Ordinance.

The motion passed by a vote of 7:0.

Mr. Morris noted that SP-2007-00064, Camp Watermarks Amendment would go before the Board of Supervisors on May 7 with a recommendation for approval.

SP-2007-00065 Herring Property - Verizon Wireless Tier III PSWF (Sign # 30 & 72)
PROPOSED: Installation of a personal wireless facility with a 73-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 05300-00-00-00600, contains 83.417 acres, off of Green Hill Lane approximately 1/2-mile northwest of the Route 64 West overpass of New Town Road [Route 690]
MAGISTERIAL DISTRICT: Whitehall (Megan Yaniglos)

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

- This is a proposal for a special use permit Tier III personal wireless service facility with a proposed 73-foot tall steel monopole and three flushed mounted antennas. There are four existing personal wireless service facilities on the property within 200' of the proposed facility, and therefore requires the approval of a Tier III special use permit. The current submittal site for this facility is located approximately 600' north of I-64 near the VDOT memorial overlook. The supporting ground equipment will be contained within a pre-fabricated equipment shelter at the base of the tower. The rock retaining wall with a maximum height of 6' is proposed for the stabilization of the slopes. The monopole will be painted brown to further minimize the 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 relatively a short period of time when traveling on I-64. It would also be visible from the VDOT memorial overlook. As shown in the photographs. Surrounding trees provide a backdrop for the balloon. It was determined that there was a material difference between 10' and 7' above the referenced tree. The applicant has submitted a revision to the original application and is now requesting the top height of the monopole at 7' above referenced tree.
- The Architectural Review Board has approved the location with conditions. Staff found that the degree of visibility is not expected to have a negative impact and recommends approval of the facility. If the Commission approves the personal wireless service facility the proposal will also require the approval of a critical slopes waiver.
- More research has been done concerning the critical slopes associated with the existing facility since the staff report was written. Staff prepared a packet that was distributed at the beginning of the meeting. There were four other special use permits on this property for personal wireless service facilities none of which staff required critical slopes waivers for.
    - The first was a special use permit in 1999 and the plan that was submitted for that permit did not show topography. There was a condition in the staff report that stated that a site plan would be required if activities on the slopes of 25 percent or greater was proposed. This condition did not get approved at the Board of Supervisors meetings and no site plan was submitted as shown in the minute meeting on page 10 of the packet.
    - There were two special use permits in 2000 on the property. Both submitted plans for the permits showed critical slopes being disturbed. However, no critical slopes waivers were required or submitted. A condition in both of those staff reports states that the site plan application shall be required if activity on slopes of 25 percent or greater is proposed. Again, this condition was not approved by the Board of Supervisors and no site plans were submitted.
    - In 2003 another special use permit was approved. However, this plan did not show the disturbance of critical slopes.
- The current proposed personal wireless service facility in order for the placement of the tower to allow a backdrop of trees disturbance of critical slopes is necessary. The amount of disturbance is minimal since the access exists and the lease area is only 2,400 square feet. However, the applicant has not proposed an alternative that would satisfy the purposes of Section 4.2 and denial of the waiver would not prohibit or restrict the use of the property, staff has found both favorable and unfavorable factors. The favorable factors are not sufficient for staff to make an overall positive finding for the approval of the critical slopes waiver.

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

Ms. Porterfield asked if of the four current towers three of them are built on critical slopes and one tower is not built on critical slopes.

Ms. Yaniglos replied yes that it appears from what was submitted for the special use permits.

Ms. Porterfield asked do you have the diagram that shows which ones talking about. She noted that the 1999 special use permit did not have a plan that showed topography associated with it. So there was not a determination made on it. Three out of the four towers were built on critical slopes and one tower was not. So there is an area that did not have to affect critical slopes.

Ms. Yaniglos said that the last tower built in 2003 was built without disturbing critical slopes.

Ms. Porterfield asked if there is topography that might allow it, and Ms. Yaniglos replied that possibly yes.

Mr. Edgerton asked how the Commission can approve this site without allowing disturbance of the critical slopes.

Mr. Fritz said that it could be constructed without the approval of the modification to allow disturbance on critical slopes, which staff is recommending against. Staff broke it into two analyses. One is the site itself using Section 5.1.40 in the Wireless Policy on whether or not the site appeared to be appropriate in terms of its impacts. Staff is able to recommend approval from that standpoint due to the way this particular facility is sited and has access to it. But, they can't divorce that from the critical slopes. Therefore, the Commission has to take action on both. Staff has no concerns over the siting or the placement of the facility other than the critical slopes, and for that reason they are recommending denial of the critical slopes. That is tantamount to recommending denial of the whole application.

Mr. Edgerton asked if the measurement of the reference tree went by the August 22 advisory ruling of the zoning administrator that they could use the drip line as opposed to the trunk. He felt strongly that shift in policy is too significant for him to be comfortable with. So he wanted to make sure that this is measured from the drip line and that this reference tree is not within 25' to the trunk of the tree of the tower.

Ms. Yaniglos replied that was correct.

Ms. Joseph asked if staff was asking for certification from the surveyor as to the drip line.

Ms. Yaniglos replied yes, that the drip line must be shown on the plan.

Mr. Fritz noted that post development after it is constructed if there is a question prior to the issuance of the certificate of occupancy or the final zoning approval staff has gotten additional surveys to make sure it is placed correctly and the height is correct.

Ms. Joseph said that they were looking at this proposal as a special use permit because there are more than three towers.

Ms. Yaniglos replied that is correct.

Ms. Joseph asked staff to discuss the visibility during the winter time noting that for six months of the year there will be no leaves on the trees. She questioned why they can approve more than three towers in this one area along I-64.

Ms. Yaniglos replied that basically it would look like a brown tree pole and unless you were looking for it she did not think it would be noticed.

Ms. Porterfield questioned if there was another spot it could be located outside of the critical slopes.

Mr. Cannon assumed that the existing towers were reviewed under different administrative procedures.

Mr. Fritz said that it is possible that the existing towers are on critical slopes. Staff did not go back and fully analysis every provision. It is possible that once the finer grading detail was obtained that there were no critical slopes. He did not know that for a fact, but wanted to throw that out.

Mr. Cannon said that it was not determined whether the existing towers were on critical slopes or not as part of their review.

Mr. Fritz replied that he did not know the answer. That was his way of saying that he cannot say that it was under a different interpretation of the ordinance. It may have been an error that was done or there may have been a determination that there were no critical slopes. But, he was unaware of any conscious decision to treat it differently.

Mr. Cannon asked if staff has been out to see how those critical slopes are doing with those three towers.

Ms. Yaniglos replied that she did not know if she would be able to determine that even if she did go out there.

Mr. Cannon said that staff has not determined that there may be non-critical slopes out there that would be appropriate for the siting of this tower in lieu of the site that was selected.

Ms. Joseph noted that the ordinance had changed. So the four prior towers were approved under a different ordinance. What she heard staff say was that this came before the Commission and the Commission recommended not disturbing critical slopes and that condition was removed by the Board of Supervisors.

Mr. Fritz said that the other special use permits were all done as special use permits done prior to the adoption of the Personal Wireless provisions in the ordinance. One of the facilities was built prior to the adoption of the Personal Wireless Service Facilities Policy. In the actual policy is a photograph of this particular site that says like this and in essence this is the kind of way that one can mitigate impacts and still be located in areas that have substantial possible negative impacts. So by careful siting one can do that, which is why staff can support the request if the critical slopes are approved, but they can't support the critical slopes request.

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

Stephen Blaine, representing Verizon Wireless, presented a power-point presentation.

- He noted that they are working out a network that will provide wireless services to citizens throughout Albemarle County. Until a license was approved by the FCC, Verizon customers who locate from other areas to this area or maybe traveling through the Albemarle County area are roaming at all times. When this project is completed they will be able to receive direct service from Verizon Wireless that will also increase the number and type of services that are available. He wanted to spend some time on the critical slopes waiver request. He felt the staff report does support a finding that they have met the requirements of the Wireless Ordinance to show that they have taken steps to mitigate the visual impacts. The photographs were taken during the leafy season. But, this is a heavily traveled way and one would be hard pressed to find these four existing four facilities, which makes this a unique opportunity site because it is so well suited for camouflaging the location.
- In terms of the critical slopes they want to make some points about the overall approach. To staff's credit they have noted that they do take into account critical slopes in siting these locations. In the relative search area it is predominantly critical slopes that they are dealing with. In the area in question around the VDOT overlook and the existing facilities there are few places, as Mr. Fritz pointed out, the only few places available are closer to the ridge line and they would have to cross significant areas of critical slopes to gain access to those areas. So it is a multiple factor approach in that they look for the predominant feature, which is to mitigate visual impacts. Certainly they are going to look for those sites that avoid critical slopes because it avoids the analysis, but also mitigates the measures that will describe this application that must be extra taken into account in how they protect those critical slopes. That gives a picture of the challenge.
- Regarding what is on the grade, as staff noted, they would have to go back almost ten years back to see what was going on. The initial CFW, no Ntelos permit, actually contained in the staff report and minutes stating that the site and the facility is located on critical slopes. So they would have to reference for the record SP-99-10 CFW just to make sure that the record is clear. There was a condition allowing a 75' cross section to be cut in order to allow the path for the facility to be beside an old 20' logging road. So this is the cross section they

were seeing today built out. Originally there was a logging road and then cutting into the critical slope to create this pad. It is an ideal pad because it is located behind the large trees. That is the first approval, which clearly involved critical slopes. There was a critical slopes ordinance in effect at that time. The critical slopes ordinance goes back to 1989. If there is an application for critical slopes it would apply to this site as it is being applied to their site.

- Next was the ALLTEL site. The plans that were submitted clearly showed disturbance of critical slopes. There was a waiver of the site plan requirement. But, the waiver was granted on the condition that if critical slopes were encountered then they would submit a site plan. The records revealed that a full site plan was never filed for SP-0030 ALLTEL. Then the Triton, which is now AT&T, again the staff reports are modeled after the one previously that contained waivers of site plan requirements with the condition that if on the ground they encounter critical slopes that a site plan would be required. In no case was a site plan submitted. So clearly Verizon Wireless is being held to a different standard. They have other evidence such as the site plan from ALLTEL where they did a slope analysis that shows that the area in yellow was in critical slope. It was clearly encountered with the facility in question.
- In SP-0041 Triton it says in that note that the leased area is within critical slopes. This was submitted by the applicant. So it is part of that record. To answer Mr. Cannon's question about how those critical slopes are doing, this is ten years later and he guessed they were doing okay. There is some erosion going on here. If they contrast that with the Verizon application where they are actually taking steps through the site plan by submitting an erosion and sediment control plan, which is otherwise not required when disturbance is less than 10,000 square feet. They are taking measures that the engineering department has noted in the staff report on pages 10 and 11 as their basis of approval of the critical slope waiver are going to mitigate this type of erosion that is seen there. Beginning on page 10 it suggests by using finished grade stabilization with retaining wall, which are detailed on sheet C3 of the site plan. It states avoiding excessive storm water run off or using gravel surface for specific measures that were not the standard at the time of these applications. Verizon has no problem with exceeding the standard of what was submitted in those applications. But, they ask that the Commission not deny the application by applying some new standard that is being created for Verizon Wireless. They don't have to do that.
- The Commission can grant the waiver because the engineering department has given a basis for that finding. The analysis in the staff report was based on the statement that the existing facilities were located in an area where no critical slopes are present. He felt that the record clearly refutes that. That is the central focus of their finding under 4.2.5. He asked the Commission to approve their request since the engineering department says they can address the issues and stabilize and achieve the purposes of the critical slopes ordinance. They want to uphold the integrity of the critical slopes ordinance. The way to respect and uphold it is to consistently apply it by using the criteria that the engineering department has set forth.

Mr. Morris invited public comment.

Tim Scruby strongly encouraged the county officials to take into account what this special use permit application may mean to the welfare of rural residents in Albemarle County. He was concerned that the residents in our area will be tolerating another cell tower in a scenic environment and on a critical slope the very presence of which may worsen the changes of rural areas being served by reliable wired or fiber optic high speed internet services. For the past 15 years internet access has been essential to his home based business in rural Greenwood. His internet options are extremely limited and of inadequate speed and reliability to efficiently service his needs. Many of the residents in the area have similar complaints and have had problems running businesses out of their homes and difficulty in selling their homes. He urged the county not to approve this special use permit application without first giving their consideration to the welfare of the residents in the area. Perhaps there is room to negotiate a winning situation where the increased revenue to Verizon from the cell tower network could be used to help provide reliable wireless high speed service to area residents.

Paul Cantrell echoed the previous speaker's comments. The reason this is an issue specific to the people in the western part of the county is because Verizon is the provider for their land based telephone service. This is unlike the rest of the county who gets their service from Embarq. They have been talking with

Verizon about providing land based DSL service. He asked the Planning Commission to help the people who live here by denying their application and asking them to meet and to work to address the needs of the residents of the area as well.

Charles Pickanof, resident of Greenwood for 20 years, asked the Planning Commission to deny the permit on the basis of its visual impact. He has a home business which depends on a reliable broad band service. He has many problems with this and supports the previous speakers.

Mary Buford Hicks, representative for her brother Frank Bocock and herself, said that they own property contiguous to this property. There are not buildings on the land. She was confused about the height of the proposed pole. The reference trees have gotten her confused and she was curious about what the final height is.

Ms. Yaniglos said that the pole would be 73'.

Ms. Hipps said that height would appear much higher when it is on a critical slope. She supported the other comments made by the previous residents. She felt that the residents deserve better from Verizon. The pole would be an eyesore and she was against the request.

James Herring, property owner, said that there appears to be a question about the critical slopes. Those four towers are all setting on what at one time would have been a critical slope. The towers are located on what was a pad that was cut out back in the early 80's when this piece of property was allowed to be clear cut. That whole piece of property was completely clear cut. In the balloon test the line of trees was visible in that area. The line is actually where that timber was cut. He bought the property in the 90's. The pad was completely cut out from a pad where logs were loaded back in the early '80's and the log trunks took the logs out of the area. Each cell area has a 30' X 40' or a 40' X 40' leased area, which are all lined up in that space.

Ms. Porterfield asked if there is more land in that area that has already been clear cut that could be used for one more tower, and Mr. Herring replied no.

David Boothe, resident of Greenwood, said that the residents of Greenwood are the only folks in Albemarle County that can't get high speed DSL broad band services. He asked as part of the special use permit under public health and safety concerns that Verizon be requested to provide DSL service for the 1,800 customers in the Afton and Greenwood area. The general welfare of the community would be improved by this service. He hoped by the discussion tonight that it would bring Verizon to the table to negotiate with them. They are outraged that they are being asked to host a cell tower in Greenwood to actually serve a wide section of the community. This tower will not serve their DSL service needs. Therefore, the special use permit will not protect the public health, safety and general welfare of the community if it is approved.

Laurie Patkin, a realtor and resident of western Albemarle since 1976, said that just to give them an idea of how this affects people in reality she was doing an open house a month ago for a family that needs to sell their house. She had four families look at the house that day. Not one of them would consider the house because it did not have high speed internet. She lived in the first house after Embarq service stops. She has problems maintaining her home business without a reliable internet service. She noted that they need reliable service.

Mr. Morris closed the public hearing to bring the matter before the Commission.

Mr. Strucko asked Mr. Kamptner if in this instance if they look at the critical slopes issue, in his opinion, is Verizon held to a different standard if they make an issue of the critical slopes, particularly if they are taking erosion mitigation measures. He asked if this is a violation of the Telecommunications Act if they say critical slopes are an issue in this particular case.

Mr. Kamptner replied that critical slopes should have been an issue in all of the applications because the critical slopes regulations have not changed. If the prior applications were not subjected to the critical slopes waiver he could not give them an answer as to why they were not. The obligation of the county is

to apply the ordinances as they exist. He felt that the critical slopes waiver is appropriate to be considered in this case. He could not give them a clear cut answer as to whether denial of the critical slopes waiver in this particular case runs afoul of the Telecommunications Act. The two criteria that would be most concerning in this case is whether or nor the denial of this one particular facility constitutes the prohibition of services. That is one of the restrictions on the zoning authority. The Federal Court decisions in our federal circuit would say that the denial of a single facility would not be the prohibition of services. The other factor would be in this particular circumstance would be whether or not they are discriminating amongst various carriers. At this point it does not appear that there is any discrimination going on. If any thing the worse case scenario back when the original applications were considered for some reason Section 4.2 was overlooked. The third thing they will look for is that the decisions have to be supported by substantial evidence. In this case, particularly when this goes on to the Board of Supervisors, he hoped that the analysis is a little clearer. The conclusions were kind of ambiguous as to whether or not any of the findings required for the Commission could be satisfied. They provided some additional information.

Mr. Strucko said that he had a question for staff. In the section on the staff report analysis of the special use permit request one of the criteria will the use be of substantial detriment to adjacent property. They heard one speaker, Mary Buford Hicks, who owns land contiguous to the property and she is concerned about the height. In staff's opinion does that change their conclusion regarding the standard and will it be of substantial detriment to adjacent property.

Mr. Fritz replied that he did not believe it would be a substantial detriment that it would deny the ability to use the property or severely limit or restrict. Staff is looking at it in terms of the visibility of the site. Staff believes that it would not be a substantial detriment with the 73' reference tree and its siting.

Mr. Loach asked that the Verizon applicant be asked to come forward and address the issue of the level of service.

Mr. Morris asked Mr. Blaine to describe where Verizon Cellular falls within the family of Verizon Companies.

Stephen Blaine replied that they operate as two different companies. They are sensitive to the questions and concerns raised by the residents. In their application the other services that they provide are mentioned, which include data services that are actually higher speed than DSL. They are not here to sell the residents of Greenwood on wireless. They are not here to suggest that approving this application is any way to extend the service. If they make a case and there is a business reason for the land line company to extend DSL, then they will. They are not refusing to extend service. They are making a business judgment that it does not pay for itself. With the advances in wireless it may be no longer necessary to have land line services. They just throw that out there as a possible future alternative. They also have propagation information. The record has shown that they are not just interested in customers who are passing through this county, but also to serve the citizens of Albemarle. They are here to provide a reliable service, which is the competitive edge that Verizon has on other carriers. That is why they have 24-hour service emergency generators enclosed in the units. The main point he wanted to make was that they are here to provide data services to the entire community. As a follow up to Mr. Strucko's comments, he would urge them not to approve this because there is a discrimination going on. But, he had to make sure that the record is established. In his remarks earlier he noted that they expect to have to meet the requirements and the criteria of the critical slope ordinance. They did not expect to be exempted from it, like these other companies. In the staff report he believed there are recommendations from engineering that are what the critical slope ordinance is about. They feel they can address the critical slopes with the mitigation elements in their site plan, which are not in the other site plans. He felt that the Commission can make the findings applying the critical slope ordinance.

Mr. Loach if for the record he was saying by implementing the cellular tower he would be able to offer these residents equivalent data services that they would have had under DSL or land mines that would have come in.

Mr. Blaine felt that was a bit of an overstatement. They can't say with this site that they are going to provide services, but they know that they have a network and they are leasing sites in and around the

Yancey Mills/Parsons Green area. If they get those sites approved then they will be able to provide this voice data wireless service to mostly all of the 456 exchange. That is reliable service, but there may be marginal service. They are happy to sit down with the residents and explain those services. But, he did not want to say that they were here to sell them on this service as an alternative. It is something that they have to recognize that the technology is ever changing. They would like them to have as high speed services as available out there.

Mr. Edgerton said that last week the Commission was surprised to learn that the determination of the measurement from the proposed tower and the reference tree had been changed back in August without any notification to the Commission. He did not think that the reference tree serves in the role it is suppose to with the new interpretation that allows the 25' to be measured not to the trunk of the tree as it was up until August 22. A colleague last week agreed to relocate the tower by the old standard rather than waiting until they had a work session, which was scheduled at the end of April. He asked if he was prepared to make that same offer.

Mr. Blaine replied that they were. He asked that they not lose site of what they just talked about. They want to have reliable criteria so that they can go out and set their parameters. If they are changing interpretations in mid-stream it does not help them either. The willingness is there, but he asked that they just get a rule and stick with it.

Ms. Joseph noted that she lived in the rural areas, has a home business and receives big files. She has a satellite dish that is very reliable. One problem she had was that it was hard to support additional more urban services in the rural areas. They are not here to make sure that this area gets services.

Mr. Cannon said that he was in a similar situation in that he did not have internet services. He was sympathetic. His question for counsel is whether this provision of service or failure to provide service is a consideration that the Commission that they may take into account in ruling on this application or they precluded from considering that.

Mr. Kamptner replied that his counsel would be that the Commission and Board of Supervisors are precluded from considering this. Even if Verizon Wireless provided land mine services what a condition would be to propel an applicant to provide a particular service. The conditions that are attached to special use permits have to be designed to reasonably address the land use related impacts resulting from the approval of a special use permit. This kind of condition touching on what the courts would call social economic zoning. This one is obviously is more of the economic side of it and would require a business to provide a particular service that is not related to the application.

Mr. Loach said that they cite the public health, safety and general welfare in the community to be protected if the use is approved.

Mr. Kamptner replied that language needs to be read in the context of where it is in the zoning ordinance. Those issues are limited to land use related issues applying again what the courts have described as applying sound zoning principles. Certainly the condition that addresses the height of the facility is appropriate. But, imposing a condition that is in effect going to be impossible would be struck down as an invalid condition. Verizon Wireless license is limited to providing a particular type of service.

Mr. Strucko asked if was feasible that they could grant the critical slopes waiver contingent upon Verizon either itself or its subsidiary providing services to citizens of the county.

Mr. Kamptner replied no, that would be an improper condition attached to the critical slopes waiver.

Ms. Joseph asked if staff was able to go on adjacent properties to view the visibility or did they use topo to analysis whether or not it would be visible from the adjacent properties.

Ms. Yaniglos replied that staff did look at the topography. But, staff was not able to go on adjacent properties. It was difficult to get to the site itself. There is a ridge line that borders the adjacent properties.

Mr. Porterfield asked how many poles in one area is enough? This proposal is before the Commission is because there are so many towers. She asked if they want to create "pole" neighborhoods or have less towers and stick with the Tier II restrictions.

Mr. Kamptner said that one possible solution to that question may be the criteria that are applied for special use permits. One is considering each application and whether it creates a substantial detriment to adjacent properties and whether or not it changes the character of the district. The other is that the use is in harmony with the district. But, the first two are standards that the Commission can consider in determining whether or not the cumulative effects eventually reach the point where there is a substantial detriment or the character of the district is changed.

Mr. Fritz noted that in the development of the Wireless Policy there was a great deal of discussion about just that in where should the tipping point be between Tier II and Tier III. There were many long meetings and the analysis was three. The question did arise was there ever a maximum number that could occur in any particular location. The answer that came out was no that there is no magic answer. They have to look at each application on the merits of it given the totality of the site. The question has been asked and there is magic answer. That is why it is a special use permit. In this particular case the staff analysis is that this is appropriate. But, it goes through a Planning Commission review and a Board review and they can review it and make an analysis.

Ms. Yaniglos pointed out that one of the other approved towers is taller than this one that is being proposed. The existing tower is 91' tall. This tower is proposed at 73'.

Mr. Cannon noted that the counsel for el for applicant referred to engineering reports that supported in their view the critical slopes waiver. Staff has recommended against granting the critical slopes waiver. What are the relative differences between staff's recommendation and the engineering analysis if the engineering analysis as represented supportive.

Mr. Fritz replied that the engineering analysis is really addressing the specific provisions of Section 4.2. It is the purpose and intent of the critical slopes provisions. When you go to the review of the request by current development planning staff that starts on page 11 they are going through the various specific criteria by which the Planning Commission can grant the waiver. The Commission has to make a positive finding on one, two or three. They don't have to make a positive finding on more than one of those sections. He pointed out that item one has 2 provisions to it. It is that the strict application of the ordinance would not forward the purpose or that the alternatives proposed by the developer would satisfy the purposes of Section 4.2 to at least an equivalent degree. The area where they may be able to make their positive finding, which is why staff provided mixed findings, would be in that the protective measures proposed by the applicant of an erosion control plan, the gabions they are proposing to use and the limited area provides an equivalent level of protection to the critical slopes. It accomplishes the protection of the critical slopes better identified in Section 4.2. Typically staff has limited recommendations of approval for the purposes of the alternatives proposed by the applicant to situations where they really have active erosion and where they would actually improve the situation by stabilizing it with fill and otherwise maintaining it. However, the engineers in this case have made a finding that it has limited impacts on some of the criteria that are outlined in Section 4.2. That is one area where the Commission might be able to make a positive finding.

Mr. Cannon asked if engineering has concluded that the impacts of this on critical slopes would be neutral given the mitigation measures that are adopted.

Mr. Fritz noted that engineering staff was here, but he would summarize what they have said. They said that they believe that the applicant has appropriately mitigated the impacts.

Mr. Cannon asked what appropriately mitigated means.

Mr. Morris invited the engineering representative to address the Commission.

Jon Sharp, with engineering staff, noted that for appropriately mitigating they have to meet all five of the criteria listed on pages 10 and 11. It talks about movement of soil and rock, excessive storm water run

off, siltation of natural and man-made bodies of water, loss of aesthetic resource and septic effluent. Under each of those it lists whether that criterion applies and what the applicant is doing to mitigate.

Mr. Fritz said for example on the movement of soil and rock they are minimizing potential movement of soil and rock by utilization of gabion retaining walls, which is shown on the plan. For the run off they are proposing the geo-synthetic fibers for the siltation. They are doing an E & S plan even though they are not required to do one because of the limited area. Those are the measures they are taking. The loss of aesthetic resources is always tricky.

Mr. Morris asked Mr. Sharp if based upon his analysis it says that engineering recommends approval of the critical slopes waiver.

Mr. Sharp replied that was correct.

Mr. Cannon asked if it was his opinion that the mitigation measures satisfy the purposes of Section 4.2.2 to an equivalent degree as no disturbance. Is there any net damage flowing from the disturbance of critical slopes here in any of the relevant dimensions that he examined?

Mr. Sharp said that this is kind of tricky because mitigation assumes there is some net damage and they are taking corrective steps.

Mr. Cannon asked if their corrective steps equivalent to off set the damage.

Mr. Sharp replied yes, that the engineering analysis has concluded that is correct.

Ms. Joseph asked if there is anything else that they could do to improve their mitigation measures.

Mr. Sharp replied possibly one of the biggest steps is to complete the project as soon as possible. The quicker it is in and stabilized the quicker the control of any run off sediment.

Mr. Strucko asked if ultimately moving it to a site that does not disturb critical slopes is the best mitigation.

Mr. Sharp replied that is correct.

Motion: Ms. Porterfield moved, Mr. Strucko seconded, for denial of SP-2007-00065 Herring Property/Verizon Wireless Tier III PWSF based on the fact as supported in part of this that five monopoles is too many and that they were not willing to create another Carter's Mountain any place right now until they figure out whether it is better for monopoles to be grouped together or to be spread out to be less obtrusive.

Ms. Joseph asked to clarify and add an amendment to the motion to add a reference to Section 5.1.40.d.3 that it does adversely impact the county's open space plan.

Ms. Porterfield accepted the amended motion, which was seconded by Mr. Strucko.

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

Mr. Morris noted that the motion for denial did not carry. Therefore, he asked for another motion.

Motion on SP-2007-00065:

Motion: Mr. Loach moved, Ms. Joseph seconded, for approval of SP-2007-00065 Herring Property/Verizon Wireless Tier III PWSF subject to the conditions recommended by staff.

Mr. Edgerton asked for an amendment to the motion that the applicant has agreed to move the tower closer to the reference tree as desired by the Commission.

Mr. Morris pointed out that the distance is going to be taken from the **trunk** of the reference tree instead of at the dripline, and Mr. Edgerton agreed.

Mr. Loach amended the motion to include Mr. Edgerton's suggestion, which was seconded by Ms. Joseph.

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

Mr. Morris noted that SP-2007-00065, Herring Property/Verizon Wireless Tier III PWSF would go to the Board of Supervisors with a recommendation for approval on May 7. He noted that the Commission needs to take action on the critical slopes waiver.

Motion on Critical Slopes Waiver:

Motion: Mr. Strucko moved, Ms. Porterfield seconded, for denial of the waiver of Section 4.2.5, the disturbance of critical slopes, for SP-2007-00065 Herring Property/Verizon Wireless Tier III PWSF as per staff's recommendation in that the Commission can't make any of the three alternative findings under Section 4.2.5.b.

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

Mr. Morris noted that the critical slopes waiver request for SP-2007-00065, Herring Property/Verizon Wireless Tier II PWSF would go to the Board of Supervisors with a recommendation for denial on May 7.

The Planning Commission took a ten minute break at 8:07 p.m.

The meeting reconvened at 8:18 p.m.

ZMA-2007-00025 Wavertree LLC (Sign # 104 & 105)
PROPOSAL: Rezone 145.33 acres from PRD Planned Residential District zoning district which allows residential use (3 - 34 units/acre) with limited commercial uses to RA Rural Areas; residential density (0.5 unit/acre) zoning district which allows agricultural, forestal, and fishery uses and 0.5 unit/acre.
PROFFERS: No
EXISTING 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: Plank Road (Route 692), approximately 0.75 miles west of the intersection with Dick Woods Road (Route 637).
TAX MAP/PARCEL: Tax Map 70 Parcel 39
MAGISTERIAL DISTRICT: White Hall
(Scott Clark)

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

Proposal: Rezone 145.33 acres from PRD to RA

Factors Favorable:

1. The requested zoning is consistent with the Comprehensive Plan.
2. The property is protected by a conservation easement that limits development potential.
3. Access to open space for the PRD residents will not change.
4. The rezoning would make the subject parcel eligible for the same tax rates available to other similar farms in the Rural Areas.

Factors Unfavorable:

1. Reduced tax revenue for the County could result through eligibility for use-value taxation

A straight rezoning would effectively increase the development potential. However, the applicants have made a proffer that would reduce that potential to the existing three dwellings units plus one more. There is also the concern about open space access to the trails on the property for the residents of the remaining PRD lots. The proffers also stated that trail access would remain.

RECOMMENDATION: Staff recommends approval of this Zoning Map Amendment, with proffers.

Mr. Morris invited questions for staff.

Mr. Edgerton asked if the property was currently under a conservation easement, and Mr. Clark replied yes, that it was under an easement to the Virginia Outdoors Foundation.

Mr. Edgerton asked with that in mind how rezoning the property to RA would be considered an increase in the use of the property. He thought that the rezoning would supersede any rezoning.

Mr. Clark replied that whichever was more restrictive would control the level of development.

Mr. Edgerton said that there was no development potential there.

Mr. Clark noted that unless for some reason in the future that they decided to amend the easement for some reason. It is unlikely, but it could happen.

Mr. Cannon said that there should be no difference in taxation between these two classifications because the easement currently prevents and will continue to prevent the remainder of the property from having development value. He asked if that was correct. The one down factor was that by this rezoning there could be reduced tax revenue for the county through eligibility for use value taxation. His question is with the easement in place why would there be that difference.

Mr. Clark suggested that the applicant could better address what they qualify for now.

Mr. Kamptner said that he did not have a simple answer and hopefully the applicant can explain. But, typically the open space easement would severely restrict the uses. Because it restricts the uses the valuation would go significantly down to approximately 10 percent of its pre-easement value.

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

Richard Carter, representative for the applicant, said they would think that the easement would result in a lowering of the evaluation, but it has not been that way. They met with the county and asked how they could get into land use taxation. The county said that all they had to do was to be zoned RA and meet the other requirements. But, they are zoned PRD and meet the other requirements. So that is why they are here. They are here to try to get the taxation that this farm is entitled to under the Code. In 1979 the property was purchased by a religious group and the main house where Mr. and Mrs. Gladden live was going to be the gathering place or the meeting house. Then the rest of the farm was going to be for the walking trails and so forth. Then they divided the property up into different lots and members of the groups were going to buy the lots and live in the houses. For whatever reason that use did not get off the ground. Now they find themselves in the middle of the rural areas with this planned residential development that never happened. That is what they are trying to cure tonight. They want to bring the zoning in line with the use. The use is a farm. Therefore, the zoning should be RA. Further evidence of the use is the conservation easement that the Virginia Outdoors Foundation holds in perpetuity on this property. The advantage to the owners of this is obviously the zoning is cleaned up to match the use, to match the Comprehensive Plan and to make the property eligible for land use taxation. The restrictive covenants will remain in place and will still provide protection for owners of the lots. The restrictive covenants call for the 20' walkway and the bark mulch paths. Since 1979 the paths have not been built, but they are still there if someone wants to build them. The proffers further restrict the use of the property by recognizing these restrictive covenants.

Mr. Edgerton asked in terms of the easement are there any development rights reserved on this easement.

Mr. Carter replied that there were no more than what they have proffered, which is one more house.

Ms. Joseph asked if that would make the total number of houses four, and Mr. Carter replied yes.

Mr. Loach questioned why the tax assessment did not decrease when the conservation easement was placed on the property and it stripped the development potential.

Joe Gladden said that his wife and he were the shared owners of Wavertree Hall, LLC. The easement was on the property when they bought it in 2004. They have been in the process of restoring it ever since. The idea behind this is to get the zoning square with the use. But the real objective is to put every protection they can on any sort of development beyond that one house that probably will never get built anyway. In any event, that is the point of this request.

Ms. Porterfield said that there was a very small piece of property on top that is disconnected from the rest of it. She asked if that was also farmed.

Mr. Gladden said that all of the areas that are outside of the red line were the lots that were sold by this religious organization. There is a road off of Plank Road serving those lots. The original easements were intended to connect all of those lots with the main house, which they also owned. But, that has never happened. The part outside of the red line is developed with houses and it forest and not farm.

Mr. Morris invited public comment.

Kimberly Robeson said that they built the first house on Kingsway Road. They were part of the religion group, which was a non-denominational group of believers who had our church services at Oak Leigh. It was a Christian community. Part of the land was given to them and part of it was purchased. It was divided into pieces of property that they purchased. The walk way easements have gone by the way because it would cost to build and maintain them. Since the community did not develop as it was planned that has never happened. She questioned where the one house would be located.

Mr. Gladden said that one house is a bit of a stretch. This comes from the original covenant when Christian Retreats was subdivided. It provided for a residence within the equestrian area. That presumable was intended to be a residence for the equestrian manager. The covenants make it clear that it is within the equestrian area, which is just off Kingsway.

Ms. Robeson noted that she did not know of any house that was supposed to be there. She thought that a meeting place was in the original plan. The main house, Wavertree, was going to just be people living in there.

Mr. Morris closed the public hearing to bring the matter before the Planning Commission.

Discussion:

Mr. Kamptner said that there was a question about the little piece of land at the top shown in red. In looking at the map on page 6 it is possible that little piece is part of is part of tax map 70, parcel 39 and that is why it is being shown as being rezoned to Rural Areas as well. It may be part of the same tax map.

Mr. Cilimberg said that staff will investigate that before the Board meeting. It may be a piece left over in the divisions of the properties that are actually part of a larger piece and not a separate parcel. It is immaterial to the decision. It is something that staff will clarify for the Board.

Motion: Mr. Strucko moved, Mr. Edgerton seconded to recommend approval of ZMA-2007-00025, Wavertree LLC, subject to the proffers attached to the staff report in Attachment C.

The motion passed by a vote of 7:0.

Mr. Morris noted that ZMA-2007-00025, Wavertree LLC would go before the Board of Supervisors with a recommendation for approval at which date has not been determined.

ZMA-2006-00008 Berkmar Business Park (Sign# 88 & 89)
Rezone 5.67 acres from R-6 zoning district which allows residential uses and up to 6 units per acre to Neighborhood Model District (NMD) for up to 275,000 square feet of commercial use and up to 190 units. NMD allows residential (3 - 34 units/acre) mixed with commercial, service and industrial uses. PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Regional Service - regional-scale retail, wholesale, business and/or employment centers, and residential (6.01-34 units/acre) in Neighborhood One.
ENTRANCE CORRIDOR: No
LOCATION: Along the east side of Berkmar Drive between Woodbrook Drive and Hilton Heights Drive north of Planet Fun.
TAX MAP/PARCELS: Tax Map 45 Parcels 112, 112 E, and a portion of 112G.
MAGISTERIAL DISTRICT: Rio
(Elaine Echols)

Ms. Echols presented a power-point presentation and summarized the staff report. (Attachment – power-point presentation) (See staff report)

- The rezoning is a request for up to 275,000 square feet and 190 units on a little under 6 acres. The property is currently zoned R-6 and C-1. The request is to the Neighborhood Model District. In this particular option or plan it shows that there is a desired face of buildings to Berkmar. Also, the parking lots behind the buildings would be relegated. One option represents a possible parking structure where the parking lots are, which explains the drive way entrances. It moves down the hill towards Schewel's and Better Living with a similar arrangement. There is a main street area. It has a four block lay out for office and retail. Townhouses or apartments are optional. The applicant is proposing one to five stories.
- There is an internal main street. The perspective drawing, which is in the packet, illustrates the kind of streetscape the applicant is interested in achieving at this location. There would be somewhere between 26 and 39 dwelling units theoretically could be built under the R-6 zoning. Under C-1 use by-right theoretically would be 28,750 square feet. There is a math error in the staff report Twenty-five percent of 275,000 is actually closer to 69,000, which is in excess of what the property could support.
- The proffers right now include 15 percent for affordable housing, cash proffers for the impacts of residential units, to design and construct a continuous right turn lane on Berkmar, and design and construct a public street to the end of Schewel's Drive. These proffers need clarification updating before they were in a legal form because some of the wording is not in keeping our standards.
- The Places 29 Plan recommends the connector road as part of the parallel road systems and perpendicular road systems to help improve transportation along the 29 Corridor.
- Staff has some major concerns about this particular project. It is not because staff does not think it is a well designed project, but because there are some outstanding issues. One is a connector road to Route 29. She explained the two entrances and the location of Better Living. This intersection becomes quite complicated if they make this an interconnecting road because of the driveway. Improvements would be needed in order for that connection to become a public road, which is the desire of the county at this time.
- Stormwater Management is a concern. Staff does not think there is viable solution just yet. Another concern is for spatial enclosure on Berkmar Drive. There is no provision for spatial enclosure on Berkmar Drive. Staff feels that there needs to be more than one-story on Berkmar Drive to help create a sense of spatial enclosure here.
- Staff has another concern about off-site grading, which affects the street. The proposed grading plan does not work with all of the options that are available for this. The work also requires off-site easements. Right before the meeting the applicant provided some information from the adjoining property owners, which indicates that they will provide the off-site easements for the work that needs to be done.

- Staff feels that there are some really good aspects to this particular development. It will be compact and urban and reflect most of the design elements of the Neighborhood Model. The uses are conforming with not just the current land use plan, but also with the proposed Places 29 plan. There are some big issues that affect their ability to come to some conclusions tonight unless the Commission feels with the applicant they can make some conclusions. Staff does not think that the connector road is proffered adequately. The stormwater management is unresolved. The need for spatial enclosure. The problem with the off-site easements. The commitment for not more than 25 percent retail, which the applicant has agreed to. Staff does not have it in writing. There needs to be a greater commitment to landscaping and tree planting to deal with the loss of the trees identified on the open space plan. The open space plan is calling for the woods along the ridge line.
- There are a bunch of smaller issues that need to be managed:
    - A commitment for a higher level of storm water management and E & S.
    - Staff has the standard language needs for the cash proffers and commitments for bus shelters for transit, which the applicant said they would do.
    - Staff needs to deal with some of the details on the uses and get a better aspect of how the amenities for the residential uses would be provided.
- The applicant is proposing to build a portion of the connector road with their proffers. They will build the remainder of the connector road at which time that VDOT would allow the public road connection to take place. The portion of the property where they have the entrance problems is on a fairly steep hill. This section of the road needs major upgrades in order for it to become a public road. They are not committing to make this upgrade or make the changes that would need to occur at the entrance in order to bring it to a VDOT standard so that the full connection could be made. Staff feels that is important. They talked this afternoon to get a better feel for where they are in terms of staff, the applicant and VDOT. They have come up with the position, but differ in terms of what is appropriate for this use right now. But, the applicant will want to speak about that. Joel DeNunzio, of VDOT, is present tonight. Glenn Brooks, County Engineer, is present and can speak about road transportation and stormwater management.
- Staff recommends deferral of action until the outstanding issues have been resolved.

Mr. Morris invited questions from the Commission

Mr. Edgerton asked if the applicant has the legal ability to make the connection and the recommended improvements.

Ms. Echols replied that there is apparently a 40' right-of-way that exists in this particular location. She was not sure how far it goes down. The applicant has talked to the adjoining property owners about how to make the connection. The applicant would like for the connection to be made. There is no doubt about that. They just don't believe they can be responsible for making the connection.

Mr. Edgerton asked if a 50' right-of-way was needed for a VDOT standard road connection.

Ms. Echols replied that it depends on what the road is. She suggested that Mr. DeNunzio could answer that question.

Mr. Edgerton noted that seems to be the most major concern listed. He felt that it was a great idea, but if the applicant does not have the legal ability to do that they needs to determine that.

Mr. Cilimberg recalled that several years ago Pantops Place, which is now Virginia National Bank on Pantops, came to the Commission. It was a somewhat similar circumstance where there was a real need for a connection back to South Pantops Drive from 250, which utilize their access and then extent on through property that applicant did not own. Ultimately, the Commission and Board were very insistent that connection needed to be made. That required the applicant in that case to work with those adjacent owners to ultimately get an agreement and create that connection.

Ms. Joseph asked if there was a right-of-way with that also.

Mr. Cilimberg said that they did have access.

Mr. Brooks said that Spotnap Road was an existing private road. Some of it was owned by Dr. Hurt and some by the Service Authority. They had to work it out.

Mr. Cilimberg noted that it was not public right-away.

Mr. Cilimberg noted that in this case this portion is owned by Better Living. They would have to work with those folks, and hopefully they will be cooperative.

Mr. Morris asked if that is the area parallel to 29 that is owned by Better Living or are they talking about the road itself.

Mr. Brooks said that it was the road itself. A big portion of that road is within the Better Living parcel.

Mr. Cannon said that it would require, therefore, the agreement of Better Living to be built.

Mr. Brooks replied yes, that has been one of the difficulties.

Mr. Cilimberg said it is similar to what was in the Pantops Place project.

Mr. Brooks said that VDOT, on the other hand, has been very flexible with the ultimate right-of-way required. They just require that all of the improvements be within the right-of-way. They are not necessarily saying that it is 40' or 50', but whatever it takes. It is more getting cooperation from the two property owners and moving their entrances around, doing their grading and that kind of thing.

Mr. Morris invited Joel DeNunzio, of VDOT, to provide some input on this topic.

Joel DeNunzio, representative of VDOT, said that regarding right-of-way requirements 40' typically is a good right-of-way for a two-lane road with sidewalks and curb and gutter. But, it is not necessarily the minimum requirement. Their requirements are that they need to have enough space behind the outermost item that they need to maintain, which is 3' behind the curving and 1' behind the sidewalk. So if they can get an acceptable road in there and they can get a right-of-way width that is 3' behind the curving, they can accept that.

Ms. Joseph asked what kind of improvements they are looking at for the entrance itself.

Mr. DeNunzio said that the entrance is there now. The road that goes up between Schewel's and Better Living was built with the 29 widening project as a commercial entrance. It does not meet the standards for a street connection. It is too steep. It also does not have a flat landing area where cars can come to a safe stop without sliding into the interconnection if there are bad conditions. The third thing is the two access points where Schewel's parking lot and Better Living's frontage road access are too close to the 29 intersection for a road connection.

Ms. Joseph asked if that meant that Schewel's would have to close their entrance.

Mr. DeNunzio replied that in order for that to be a public road both the Schewel's connection to that entrance and the Better Living entrance would have to be closed. Both entrances are too close.

Mr. Cannon asked where the entrance to the road would go.

Mr. DeNunzio noted that the current requirement for the commercial entrance, assuming that it was a public road connecting to 29, the minimum standard now is 50' from the radius of the curb ends to where the radius of the entrance begins. The design standards are changing this year. That requirement will be 225'. Assuming that this will be a collector road that requirement will take effect July, 2009.

Mr. Echols asked that he speak to the Rivanna Plaza site plan that they have looked at and how that may relate.

Mr. DeNunzio said that he has been looking at a site plan with Rivanna Plaza which is just south of Schewel's. In the latest revision they will be relocating the Kegler's entrance a little closer to Schewel's entrance on 29. They are going to cut off the access that Schewel's has to the private connector road. They are going to give them an access to the south with their entrance. It is about 275' south of the existing entrance where Schewel's and Better Living share that connection right now.

Mr. Strucko asked if that would accomplish cutting Schewel's off from that access road to the north.

Mr. DeNunzio replied yes. The south side of the parking lot where it comes out to Route 29 will actually access through Rivanna Plaza. It will come back out to Route 29. Kegler's will also access through that point under the current plan.

Mr. Morris asked with the proposed connector road and looking at what is required at the intersection of Route 29 is it doable to make it meet the standard.

Mr. DeNunzio replied that engineering wise it is doable.

Ms. Joseph asked if it was doable and still maintains the Better Living access at that point.

Mr. DeNunzio replied it would not for a public road standard. They had a discussion about that today and whether they could get a signal to work there to have another phase at Better Living. He actually called their traffic engineers in the northwest regional operations who now manage all of the signals in Albemarle and a lot of the surrounding counties. He was told that it would be very difficult to make a signal work at this location. He had safety concerns with that leg right there going into Better Living. He said that the traffic would not permit that type of signal.

Mr. Strucko said that if that was the case and if this connector road would be built people coming from Berkmar down it would only be able to make a right hand turn on 29 just to head south.

Mr. DeNunzio said that it would be full access. The frontage road from Better Living is separate from Route 29 and runs parallel to it. In order to make a signal work there for a road connection they would need to have a phase for those people coming out to 29. There would be a three leg intersection right there.

Ms. Echols said that the Better Living access would have to be reworked.

Mr. DeNunzio replied yes, that there are a couple of options there. He also looked at the original VDOT plans for the 29 project. Originally at this connection they provided a 4' median strip on the connection there. So the frontage road could not make a left turn to get to 29. He understood that they did not install that because of a concern with truck traffic. However, if the connection were to be made back to Berkmar it would be a possibility of keeping that connection there, but they would not allow them to come back out to 29. They would have to go back around to Berkmar and maybe come out either north or south of here onto 29.

There being no further questions for Mr. DeNunzio, Mr. Morris asked if there were any other questions.

Glenn Brooks, County Engineer, asked to add one more piece of information that they have not heard. The North Town Center development is located right across the road. That would be a fourth leg to this intersection. Part of their plan is also to build another face on that signal and turn lanes into their site. So that grows the intersection. It just complicates matters.

Ms. Echols added that staff has not received the first set of written comments from the traffic study from VDOT because they have not finished their review of it. The indications they have gotten from them, as seen in the email, are that this particular development according to the traffic study generates the need for this connector road because the connector road is being offered as the mitigating measure for the impacts. So at the level of 275,000 square feet and 190 units staff believes that this road is necessary. The applicant may discuss some lesser amount where it may or may not be necessary. They talked about that this afternoon. They discussed what opportunities or solutions there might be to this particular

problem. But, right now with the traffic study they have it appears that the development is creating the need in part for the connector road.

Ms. Joseph asked if staff has had discussions with the Better Living people and if they have been involved in this.

Ms. Echols replied no, that the applicant has, but staff has not initiated any discussions with the Better Living people on behalf of the applicant for this connector road.

Mr. Edgerton said that in the staff report on page 15 staff makes the point that more time is needed to address these issues in a substantive way. Staff suggested that the applicant request a deferral to allow for that. The applicant has been working on the request two years. He asked how much longer it would take for them to be able to address it to the satisfaction of staff.

Ms. Echols replied that it would be hard to tell because they don't know what they might get back. If they were to propose a change or reduction in the amount of square footage or number of dwelling units then they would need to provide the traffic study that relates to that which would suggest what improvements were necessary, if not the connector road. So it really all depends on what they would come back with. There are two very big issues being the storm water management and the issue about the connector road. Staff asked for the traffic study to see whether or not the project generated the need for the connector road. So there has been a lot of conversation on the traffic study until staff finally got the requested traffic study. The traffic study came in about four weeks ago. The staff report was completed about one week, which gave a minimal amount of time to review the traffic study. While it has been going on for a while staff did not have all of the information needed to do the appropriate review over this whole time period. There has been a lot of time spent on coming to an agreement on what is necessary for this review. Once the connector road is sorted through and the storm water management the rest of the details takes whatever time they take. It depends on how the applicant gets those things done and then staff has a review period for making sure that everything is right. The proffers are not in very good shape. They can spend a lot of time on proffers. Staff could not tell the Commission that within a month or two that this would be done. If the applicant gets the big issue pictures taken care of, then the little ones should not take that long.

Mr. Edgerton said that at the scale of what is being proposed staff's determination is that this connector road is required.

Ms. Echols agreed.

Mr. Edgerton asked if staff could give a rough idea of how much the applicant would have to reduce the proposed density or the scope of the project. He questioned if the applicant cut the proposal in half would that eliminate the need for the connector road.

Ms. Echols replied that she could not answer that. The applicant has provided some traffic information early on, but it was a much smaller project. She urged the Commission to talk with Glenn Brooks on any more of those details about the traffic study.

Mr. Morris asked if anyone wanted to address the storm water management issue.

Ms. Joseph pointed out that in reading through the staff report it looked as if this detention basin was sized for a lot of the properties out there. She asked if it included this property.

Mr. Brooks replied that it was at the time that the Berkmar Road was built.

Ms. Joseph why they don't feel comfortable accepting this property if the detention basin was sized for this property.

Mr. Brooks said that the detention basin was not sized for this entire property, but there is a line somewhere through the middle of the site. It covers the Planet Fun portion and a little more, but it does not cover the entire rezoned portion. They are adding a little drainage area to the Berkmar basin, which

is also called the Kegler's basin. That basin was built before the current Water Protection Ordinance, which made the standards more stringent. So it does not cover a lot of what the new ordinance requires. It requires storage for a lower volume storm that can be done. That is the retrofits that they are talking about. It would require a little more volume in the basin. They are trying to do that with regarding the basin itself. The new ordinance requires water quality measures, which they propose to do on site with the manufactured facilities.

Ms. Joseph asked if he felt that they can't expand the size of this basin.

Mr. Brooks said that there is debate. Certainly they can. They talked to Jack Kelsey who did some work previously with this as the County Engineer and with Greg Harper who is with our Maintenance Division. They go out to the basin every year. It is their feeling that there is quite a lot of bedrock in that basin and it would be very difficult to expand it. It could be blasted and expanded. If that was the case there would be some risk to the buildings and walls right next door. But, they felt that if that was the case it would make the basin more difficult to maintain for them. They might try to put some top soil in there to make things grow a little better. This kind of a basin is not the ideal basin for General Services because it only does volume control. It is just a big hole in the ground and does not provide any water quality benefits. It is very hard to retrofit it to provide water quality benefits because it is a steeply shaped hole and there is rock where a lot of planting cannot be done. It can't be made nicer in ways like that.

Ms. Joseph asked if the water quality would have to take place on site.

Mr. Brooks replied yes, that the applicant proposes to do that. They are proposing to the storage in here. That is a county decision on many levels with the Commission's approval and General Services accepting the changes in the maintenance to a county facility. They don't have a clear answer on that from General Services. They feel that it would be more difficult to maintain. They have thrown out the suggestion that the applicant take back the basin. It originally belonged to Kegler's. The owners of Kegler's gave the basin to the county for a regional basin for county maintenance. General Services has said if they take it back so the county does not have to do maintenance they can do with it what they will.

Ms. Joseph asked how many regional basins the county takes care of, and Mr. Brooks replied that there are nine or ten.

Mr. Cannon said that there is the ability to take care of the storm water flow from this property. That is he has in mind an engineering solution that would be adequate to that task. He asked if that was correct.

Mr. Brooks replied yes, but with caveats. Their proposal can work if the county allows them to make modifications to the basin and if the blasting and improvements in that regard can be done physically.

Mr. Cannon asked if there is a fall back option.

Mr. Brooks said that if the county says they don't want them blasting in their facility and won't give them permission, the fall back option they assume is large storage reservoirs under their parking area. But, nothing has been proposed.

Mr. Cannon said that staff has questions about their proposal and staff and the applicant have not examined alternatives that might avoid those questions.

Mr. Brooks said not in detail, but their narrative does say that they can provide it on site in reservoirs.

Ms. Joseph asked if the county owns the basin or assumes maintenance for the basin.

Mr. Brooks said that in this case there is varying ways that this is done. But, he believed that it was an easement that the county has.

Mr. Kamptner pointed out that they have not determined that yet. He received an email a couple days ago from Greg Harper indicating that one of the proposals is for the county to convey or at least grant the

right of maintenance to the applicant. But, they have not determined ownership or anything else at this point.

Ms. Echols said that it is not a separate tax map and is not a separate tax parcel that staff is aware of. It is in some other form of ownership.

Mr. Brooks said that it appears that some of it is on the Lowe's parcel.

Mr. Kamptner said that it was probably an easement to allow the county to enter Kegler's and the adjoining parcel to do the maintenance.

Ms. Joseph pointed out that the Board of Supervisors can decide that it is okay modify this basin and continue maintenance.

Mr. Kamptner said that the county has the ability to do that if they so chooses.

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

Frank Stoner, of Stonehaus, provided the history of the project.

Nat Cunningham, with Stonehaus, presented a power-point presentation and explained the proposal.

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

Mr. Cannon asked staff if they had seen the revised traffic study

Glenn Brooks said that the new information at the meeting makes his job extremely difficult. The traffic study he saw was completely different and he only had a short time to review. The day before the meeting the applicant submitted a completely different study. It has not been vetted. His initial reaction was he didn't think it would be built out by 2010 and the planning horizon should be to at least 2016.

Mrs. Porterfield said that the County is asking them to do something that they have no control over. She said this is a moot point. Do we want to hinder development in the county based on something the applicant can't do? They are saying they will do what they can do. Does the county have to get involved?

Mr. Brooks said that is the Planning Commission's decision.

Ms. Joseph said that if it is in an approved master plan, then staff needs to ask for it. She asked what are the ramifications if the applicant' doesn't do the connector road? Could it be phased?

Mr. Brooks said yes, it could be phased to time improvements at a certain point of square footage. The first plan did not spell that out. The applicant made a good effort to show a connector road because that is what the county wanted to see.

Mr. Cilimberg said that the Planning Commission has spent untold hours on rezonings over the last several years really focusing on having the adequate infrastructure to support the proposed development. Sometimes the applicant can't control all of that and it would have to be phased. He said it isn't unfair imposing something on a development when the County has gone through the proffer policy and many reviews to make sure the infrastructure is being adequately addressed with rezoning. Maybe with sufficient information we would know what can be built with the infrastructure. Completion of the connector road may be in the hands of VDOT or the County or other developers of Schewel's.

Mr. Cannon asked why a cash proffer wouldn't be appropriate. Why wouldn't we look at the limits of what the applicant can achieve here? VDOT can get involved and compel others to be part of the improvements.

Mr. Cilimberg said that the County's approach is that you can take a proffer for the completion of the improvement or only have enough development for what it can support.

Mr. Cannon said that the County would be getting density of development inside the growth area and the applicant has done a conscientious job of trying to meet the County's needs. He said he had concern about the already stressed infrastructure that won't accommodate that development. There must be some alternatives rather than insisting on something that does not appear to be possible for the applicant to do, i.e., the connector road. But we need more information on the traffic study.

Mr. Edgerton felt that Mr. Cannon had a good idea. He had hit on key considerations. But, this project will not be built out in 2010. To look at a traffic study showing completion of the project in 2010 is inconceivable. Staff needs more time. Phasing might solve this problem long term. It is a good plan and is going in the right direction. It fits with the Comprehensive Plan, but he was not ready to recommend approval at this time. Staff needs more time. The applicant should come up with phased development and proffers to contribute to intersection work. He would like to encourage the applicant to work with staff on this. But, we can't legally defer the project. The 90 days are up.

Mr. Kamptner reminded the Commission that failure to act would deem recommendation for approval of the project.

Mr. Loach said the project with this many outstanding questions is problematic. We need to make sure infrastructure is there. Otherwise, there will be degradation to everyone's quality of life. He would like to be more cautious.

Mr. Morris invited the applicant, Frank Stoner to speak.

Mr. Stoner said that they need to address the fact that the project reflects a 50-year plan. In traffic planning there is a voodoo science about what will happen on Berkmar Extended and 29. He said that, in terms of a traffic study, it took three months to get agreement on scoping. He said he is in the unfortunate situation of running out of extensions with property they have under contract. If they can't secure the rezoning by June 1, 2008, they are done. As he tried to work with Ms. Echols to get this moved along by June 1 it became clear that he needed to get before Planning Commission tonight. He could address some of the issues of the traffic study and a phasing plan, which may be the solution.

Ms Joseph said there was just too much outstanding information that she needed answers on before she could support it.

Mr. Cannon asked Mr. Stoner if he was proposing downscaling the project.

Mr. Stoner said the plan will essentially be phased because it will not be built out in his life time. He said he was trying to provide a durable code of development looking over 50 years.

Ms. Joseph said if gas gets higher people will want to be closer to town. There is a benefit to that.

Mrs. Porterfield said she can't go with any of the suggestions of the rest of the Commission.

Ms. Josephs said she wants a phasing plan.

Mr. Loach agreed with Ms. Joseph.

Mr. Kamptner said that the applicant was willing to contribute to maintenance, but not take over full maintenance of the basin. He said the applicant said he would proffer his share.

Mr. Stoner said he was happy to proffer money towards maintenance of the pond or take the pond back.

Mr. Kamptner noted that the details of maintenance still needed to be worked out and the project is scheduled for the Board of Supervisors for May 5. He said that Mr. Brooks indicated that VDOT has had

the current traffic analysis for 4 weeks. How would the new traffic analysis be done in time for staff review to incorporate into a staff report by April 20?

Mr. Cilimberg said that final information has to be submitted 23 days before the hearing. If the Commission forwards this to the Board that list has to be addressed 23 days before May 5.

Mr. Loach asked if staff had heard from any adjacent owners.

Ms. Echols said staff has not heard from anybody, which is surprising.

Ms. Joseph asked about whether verbatim minutes would go to the Board.

Mrs. Porterfield said that the additional traffic study could be required as part of the site plan.

Mr. Brooks said that certainly we can require the study, but what can you do with it once the rezoning has been approved.

Mr. Cilimberg said that they can't require anything. They have to accept the proffer and what is the proffer going to be to cover that stipulation.

Joel DeNunzio, representative with VDOT, said they sent the traffic study to the Culpeper District Office. He talked with the Culpeper engineers today who were happy with the study because the mitigation for the project -- the connector road --would be constructed. It is hard to say what VDOT will say with changes or no connection. They are happy with the mitigation shown in that study.

Ms. Joseph asked if Mr. DeNunzio had seen the Butch Davies letter.

Mr. DeNunzio replied no.

Ms. Joseph said that the letter says you are responsible for improving the intersection.

Mr. DeNunzio said the intersection is adequate for a commercial entrance. They just don't like the configuration of the entrance. VDOT did not make those connections. They were made off of our right-of-way. They widened the road and when it came to the entrance, whether a private or commercial entry, they put that standard back in. They don't own the right-of-way along that road. Looking back at the plans it is hard to say it is VDOT's responsibility.

Frank Stoner said that they will reevaluate the traffic study and if it comes back that no improvements are needed until 150,000 square feet are constructed, then this mitigation is not necessary until then. There is not a lot of value that can be gained with either proffer or not depending on the capacity.

Mrs. Porterfield said this is the kind of thing that designs like this get hung up on. They can solve the runoff problem somehow and the other issues are minor, but will take a little bit of time. The connector is a problem. It can't be made because it needs Better Living to get involved and they need to have a reason to get involved.

Mr. Loach asked what the traffic impact is now.

Mrs. Porterfield asked what could be built on it right now.

Mr. Edgerton answered 39 units.

Mr. Strucko said if there is an impact on the roads and traffic he wanted to know what it is. If the Commission wants to tie a figure to square footage they need to know about traffic

Mr. Morris stated that the applicant wants to take his proposal to the Board of Supervisors with a recommendation for denial or approval.

Mr. Stoner said preferably with an approval. He questioned if they agreed to a deferral and then went back and fine tuned the traffic study and found it was deemed that there was not a traffic impact to justify the connector road what would happen. He asked if they removed that from their proffers would that be acceptable to the Commission.

Mr. Cannon said that he did not know how they would insist on a proffer if he did not have an impact that would cause the proffer to be required. It would be sad, but he did not know how they could require it. The basis for the requirement now is that the conclusion is that they would have an impact sufficient to require that the road be built.

Mr. Stoner said that they were suggesting that either the data will show that it does not need to be built or the square footage will be reduced.

Mr. Cannon said that in that case it seems that the conceptual basis for the problem disappears.

Ms. Joseph said that they were looking at this road that is in a master plan that has not been adopted. It is something that they anticipate because it is in some comprehensive plan that really is not part of their comprehensive plan right now. That was why she was confused. In normal cases if this were in a master plan that had been approved, the Commission would absolutely positively require this connection.

Mr. Morris noted that was one of the reasons that he liked the alternative that is being presented by the applicant that will create this road down to a certain point, and then if it is needed they will connect it.

Mr. Strucko noted that the slide indicated the road in three colors.

Nat Cunningham asked to make it very clear about what they have proffered. They have proffered that with a site plan for this site they would build this portion of the road in such a way that it could be connected down to this interconnection in the future. They would include a study of the center line and the grading necessary so it could be approved at that time. They also in the proffers say that they would build the portion of road shown in green at such time that they were granted a public entrance permit by VDOT. That way when the road is able to be used they would construct the road. They would be willing to put aside funds for that. What they have not proffered to do is build any portion of the road shown in purple, which is not on their property that they control and they have numerous issues regarding access management, grade and adjacent land owners. So that is what they have currently proffered.

Ms. Joseph asked if she could assume they were going to be building the green space and take into account the steep portion there to design it to make sure that connection could be made.

Mr. Nat replied yes that the issue is really that the grades that they are most concerned about are in this area. So they would want to build this portion when this has been resolved so that they could tie it in appropriately. That is why they don't want to build this portion in green because they could have a situation where they are building a portion of road that comes down and dead ends into an existing road 5' or 6' below what the current road is and so they won't require any bollocks, it will be unusable. They want to build the road when it is useable. They have made the commitment to do that even though it is not required by their traffic impact. He emphasized that it would be unfortunate if they went back and found that they had very minimal impacts.

Mr. Cannon said that they had given some consideration in lieu of actually being required to construct a road through to 29. He asked if the additional proffer keyed to the ultimate construction of the purple part or was that related to the faint pea green section.

Mr. Nat replied that it was related to the pea green section because they felt that they did not want to construct a road that is not going to be use. So that is a way to provide the bollards to hopefully create a situation where they were 75 percent of the way there and hopefully the rest could come in and put those funds aside. They have not at this time included any monies in their proffer related to making these improvements in here to do the purple area.

Mr. Cannon asked if that is not something that they would consider offering here now conditional on the approval of the intersection.

Mr. Nat replied that he would be hesitant because it would be hard to put a dollar amount to it. Part of the reason they were concerned about the purple area because there was potentially a lot of money to correct the existing condition there. They know the cost for the green section. They could proffer some small additional amount, but he could not tell them whether it would be 5 percent or 50 percent of what it would take to correct the purple section.

Mr. Strucko said that seemed reasonable with that arrangement.

Motion:
Ms. Porterfield moved to approve ZMA-2006-00008, Berkmar Business Park with the staff reporting indicating the major and minor issues being attended to, as shown on the screen, with the exception of the connector road; they are not asking the applicant to build it in entirely, but to build the first section and then to agree that when the road could be connected to Route 29 that they would build the second section as shown on the applicant's drawing. They would request that if the applicant felt so magnanimous they might help contribute to the purple section. They would let them take a look at how they might feel about that. Also, the unresolved stormwater management is worked out with staff. There were at least two different arrangements that could be handled to work this out. They might recommend that if the applicant is willing to take it back the drainage basin and if the county does not want it that might be one way to resolve the issue. Regarding spatial enclosure, the applicant has said that they would to a 20' high building on Berkmar if they have to stick with the one floor. The off site easements have been taken care of with a letter to staff. The applicant is committing to no more than 25 percent retail. The applicant is committing that they will come up with landscaping plan that meets staff needs and thoughts. The applicant is also committing on this that they will phase the building and that they are basically committing to approximately 150,000 square feet, which is shown on their initiate plan.

Mr. Kamptner noted that Ms. Echols just put the smaller issues. He did not know if all of those were addressed.

Ms. Porterfield added that the applicant would work out the smaller issues with staff with the correct verbiage and the items that are needed to be taken care of.

Mr. Cilimberg asked if she was expecting the higher level of stormwater management and E & S in the recommendation.

Ms. Porterfield said that they were expecting the two-year.

Mr. Cilimberg noted that the 80 percent removal is what the Board has been requiring on all of the urban projects that they were getting now.

Ms. Porterfield said that they were able to go to 74 or 76 percent. She asked for a suggestion.

Ms. Joseph pointed out that those were different issues. She suggested that whatever verbiage they have used on other rezonings.

Mr. Porterfield added the recommendation that they use whatever verbiage they have used on other rezonings.

Mr. Morris noted that it was a complex motion. He asked if there was a second to the motion. The motion died due to the lack of a second.

Ms. Joseph asked the applicant if he would like to ask for a deferral one more time.

Nat Cunningham replied that he did not want to belabor the issue, but wanted to emphasize that they would be comfortable taking a deferral if the sense of the Commission was such that if there are no traffic

impacts to mitigate under their current plan then none would be required. That specifically relates to the connector road.

Mr. Cannon asked if they could work with the applicant's overture here. In his view staff says that they have recommended that the completion of the connector road be a condition because traffic studies at the level of development at full build-out indicate that the connector road will be necessary to avoid unacceptable traffic impacts. It seems that logic is if they go back and reduce the size of this thing and are able to demonstrate to staff and VDOT that there will be no impacts that necessitate a connector road and that the connector road is no longer a requirement. It may be desirable, but by the logic of the staff's recommendation it would no longer be a requirement.

Mr. Edgerton felt that Mr. Cannon was being very logical and Ms. Joseph's point was well taken. It is interesting because staff has reviewed this as if this master plan for Places29 has been adopted. It has not been adopted. Right now they don't have the authority to mandate this connection. But, that said they are in the final throws of adopting this master plan. It will be adopted with some variations within maybe months or a year. It is anybody's guess how long it is going to take and what sort of form. There is no telling whether that connection road will be part of it when it is finally adopted. But, they have paid for with tax payer's dollars a consultant who has told us that road should go there. They have an expert, which is already hired, that says a connector road is needed there. That is not based on this specific project, but on a bigger impact that will benefit from that road. What he was struggling with was what he was saying is absolutely logical. Under the current situation they don't have the right to require that connector road because it is not in any of our master plans. It is just a line on a piece of paper. He was struggling in how they can push this ahead. The applicant is saying if our studies today with our project being the only thing they are looking at shows no need for that road, then let them off the hook. He was not comfortable with that at this point.

Mr. Strucko noted that the master plan has not made it to policy yet. He felt that was the triggering point. He would like to see the traffic study. He questioned if going from a level B to a level C triggers a proffer. If asked if going from a level C to a level D trigger a proffer. He felt that there was going to be an off site impact. There are going to be more cars on Berkmar Road as a result of this project. He asked if they mitigate the costs of that whether Berkmar has the capacity to handle that traffic now or not. He was struggling with that. He was uncomfortable making this conditional arrangement based on that fact alone.

Mr. Cannon said that his preference would be to have the plan as it is with the proffer of the road and at least some substantial contribution towards the purple thing. But, he did not know if they were in the position to know what to ask for there.

Mr. Edgerton said that they were not going to be able to determine that tonight.

Mr. Cannon said that he did not have the basis for even exploring that issue.

Mr. Edgerton asked at what point the impacts require this connection road. Curiously enough if he heard correctly they have heard two conflicting reports this evening. The applicant in their review of the adjusted traffic study this evening gave us a cut off point of Level E as an acceptable level. Staff's statement was anything below a Level C. He asked if that was correct and what is the cut off point. He asked what is acceptable to VDOT.

Joel DeNunzio replied that the current policy out of the Culpeper District is Level Service C as Mr. Brooks said. Generally acceptable in an urban an area is Level D and in a rural area is Level C. As the new regulations take effect that were written in December, 2007 it does not state either one. It reads if the proposed entrance will cause the system of state highways to experience degradation and safety or an increase in delay or a significant reduction of capacity beyond an acceptable level of service the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of such mitigation measures.

Mr. Edgerton said that a one second delay would qualify for that.

Mr. DeNunzio noted that is why he would say that it is up to the Commission. Currently the policy before this goes into effect is Level Service C. This regulation went into effect January 1, 2008. However, part of it takes place in July, 2008, another part takes effect in January, 2009 and the last part gets implemented in July, 2009. So it is very difficult to say. To expect the Level Service C is a little unrealistic all around here.

Mr. Strucko clarified that he did understand that certain sets of infrastructure, whether roads or schools, have existing capacity. He was trying to find the point where cost mitigation is triggered. That was what was just discussed and whether it was Level C, D or E. He did not know. If additional cars on the road have no change in the grading he did not think they should expect the cost mitigation. But, if it moves then they should expect something.

Mr. Cunningham asked to clarify what he presented. What he presented today was he had gotten from Mr. DeNunzio that a Level D was an acceptable level of service. So when he said that a Level E was failing those are the ones he had flagged. There was only one marked at a Level E service. He emphasized that he agreed with Mr. Strucko's stronger statement that all property owners should bear some of the costs of the impacts they put on the roads. Unfortunately, the situation they are in is where there is no clear guidance from either the state or the local level about when traffic impacts need to be mitigated, in what way they need to be mitigated and what sort of dollar amounts. He would much prefer for this to be a science much like the proffer policy has become per unit in which it is clear once you drop below a certain level and based on certain levels of delay that you provide money in order to off set those impacts. That would give the county a lot greater flexibility. He took a very conservative approach in terms of evaluating their impacts. The worse they had on one intersection was a ten second increase in delay on a secondary road. Overall, what they will find that it is very minimal impacts and they can certainly take more time to discuss this. He wanted to be clear if the Commission was willing to give them clear guidance in terms of what impacts they would want them to mitigate and what sort of dollar amounts would be associated with those impact, he felt that they would be very comfortable deferring.

Mr. Edgerton said that the Commission has given them a clear indication of what they would be comfortable with. The Commission wants that connection as much as they can give, but what he has heard this evening is that all of a sudden if they can prove that with this particular project and the study on this particular project there is no need for this connection, then they don't want to be required to do it.

Mr. Cunningham asked to clarify their position. They included the road because they felt it was a positive addition.

Mr. Edgerton noted that he heard Mr. Stoner say that he wanted to withdraw that proffer.

Mr. Cannon pointed out that was a response to his argument that down sizing might be a way out. He heard that he was happy to down size, but he did not want to down size with the continued obligation of the road. So he would be willing to back off his current proposal, which he assumes he would stand behind, with that as an alternative.

Mr. Stoner replied that what he wanted to demonstrate as well was that the proffer they have offered really because it is in the county's interest and in their interest long term to get that road built would be even under a scenario in which they determined that there were some traffic impacts, it would be a fair proposition for the county if they said they would build that section of the road that they can control. That is why he rephrased it.

Mr. Edgerton said that he would be comfortable going along with his idea if they had the capacity at this late hour with the limited amount of information they have to make a determination at what scope or how much commercial space his project is going to have. They don't know that and will not be able to figure that out tonight. The Commission has been told that they have run out of extensions on their option to purchase or develop. He was not convinced that they will be able to get the answers to the questions that they need answered in a timely fashion. It does not sound like VDOT or the county can perform fast enough to meet the May 7 date. The Commission is struggling with this because this is the kind of project they want to see there. The applicant has done exactly what they want to do. They want to finish it up, but want to do it responsibly. They cannot do it responsibly without more time and more study. That

forces him to recommend a motion for denial unless the applicant is willing to request a deferral. He likes the project and would like to see it happen. He made a motion for denial.

Mr. Stoner asked to make a response. If they accepted the 275,000 square feet and the traffic impacts as presented subject to verification by the county engineer so they don't have to find the threshold and assume that is what it is, and they look at the proffers they have offered up, if it was determined that there was some impact they still would not have the ability to fix that intersection. What they can do is either proffer money.

Mr. Edgerton said that they have already heard that. Every single Commissioner has stated in one way or other that they can't ask him to do what he can't do.

Mr. Stoner said that they are willing to proffer money. They are willing proffer that they will build the section of the road that they can control. But, the traffic study ultimately won't change anything because if it determines that there are modest impacts on these intersections he is still in the same boat. He cannot build the entire thing. All he can offer up is what they have already offered. So they are back trying to make a decision based on new traffic data.

Mr. Edgerton noted that he was confused. He thought that his offer had been changed to if the traffic study shows that this particular project does not require mitigation that he would withdraw that part of his proffer.

Mr. Stoner replied no, that he said if they had a deferral and they came back would that be acceptable. It was hypothetical. Obviously, the goal is to try to get through the process.

Mr. Edgerton asked how the Commission was suppose to deal with the fact that staff says they can't possibly perform a responsible review to meet the May 7 deadline. He questioned how they are supposed to respond to that.

Mr. Stoner said that ultimately it won't make any difference. Whether it is 150,000 square feet or 275,000 square feet they have offered everything they can offer in the way of traffic improvements on that connector road. They can offer cash to mitigate other impacts that they want to address elsewhere. But, regardless of what the traffic study says it won't change their ability to proffer. The purple section and the intersection they can't fix.

Mr. Kamptner asked to correct one thing. They have had projects where there were impacts that were identified and in order to address those impacts the applicant was asked to resolve those off site impacts. They might not have had control over the property, but that was a condition that they proffered. If there is an impact that can't be mitigated one of the options is that the Board of Supervisors would deny the rezoning. They try to work to come up with solutions that address the impacts that have been identified. But, they are not working in a scenario where there is an impact that is identified, the applicant says he can't address it and the project gets approved. That is not the absolute way that this course has to go.

Mr. Cannon reiterated that he was saying one option is to say here is an impact and the applicant is only able to partially address it because the means to address it are not fully within the applicant's control and therefore they deny the application.

Mr. Kamptner replied yes that is one of the options. The other option at the other end of the spectrum is that this is a Neighborhood Model project and it satisfies a lot of things they are looking for and they area willing to forgo addressing that particular impact because this project has a lot of significant benefits. That is the other end of the spectrum.

Mr. Stoner asked to clarify their offer. If there was a motion tonight for approval they would build 90 percent of the connector road at such time that they had an entrance permit. He could have their traffic engineer speak about the level of impacts that are currently shown in the study that have been reviewed by staff and are currently being reviewed by VDOT are more than outweighed by what they are currently offering. Although, staff has recommended that they need to build the entire connector road that from a

dollar perspective for the impacts that they are making and what they have offered it significantly outweighs the impacts that they are currently having even without the changes as shown tonight.

Ms. Joseph asked if it was the entrance permit on Berkmar or Route 29.

Mr. Stoner replied the intersection on 29 at Schewel's Furniture Drive.

Mr. Strucko asked what if they never get it and have to make improvements at other intersections at other lights. He asked if they would see that in the proffer.

Mr. Stoner said that was why initially they would have preferred to offer money that the county could use to the best of their judgment to off set the impacts from their development.

Mr. Strucko said that if they never received the entrance permit and they had impacts on other intersections along Berkmar what would be the results of that scenario.

Mr. Stoner replied that VDOT's current estimate for a two-lane road to be constructed by public dollars is 4 million dollar a mile. So for the section shown in the salmon color that is a value of roughly $260,000. The section shown in the green portion is roughly $720,000. In total they are offering close to a million dollars.

Ms. Joseph noted that they need the salmon colored section just to get into the site.

Mr. Stoner pointed out that for access they actually have an entrance that comes off of Berkmar Drive.

Ms. Joseph said that this is too little information.

Glenn Brooks pointed out that this is why they need staff review in his opinion.

Motion: Mr. Edgerton pointed out that his motion for denial is on the table.

Second: Mr. Cannon seconded the motion.

Mr. Cilimberg asked if the Commission should cite the reasons for denial.

Mr. Edgerton said that they don't have enough information to responsibly make a decision.

Mr. Kamptner pointed out that they needed more information regarding the traffic impacts, which pertains to the first bullet regarding the connector road. It may be that it is adequately proffered. Staff just does not know at this point.

Ms. Porterfield asked to go on record as saying she thinks that it is much better for the Commission to put a positive motion on the table with all of the pieces that have been discussed and then if they want to vote it down do so. That would at least be sending to the Board of Supervisors the best that they can do in a motion because there have been things discussed here that are not in the staff report.

Mr. Morris noted that there has been a motion and second on the floor.

Mr. Kamptner asked Mr. Edgerton to cite the reasons for denial.

Mr. Edgerton said that staff had noted all of the reasons for denial.

Mr. Kamptner noted that it would be for the Board's benefit. They were looking at the first three bullets and the last bullet on the screen.

- They have no way of knowing if the connector road has been proffered adequately.
- They have not way of knowing if the unresolved stormwater management issues have been addressed.
- The need for spatial enclosure has been resolved.

- The traffic study needs to be analyzed by staff and by VDOT.

Mr. Cilimberg noted that it was really the first two bullets.

Mr. Edgerton said that it was the connector road and the unresolved stormwater management. He said that there needed to be a greater commitment to landscaping.

Mr. Stoner asked if they were to agree to a deferral it would be subject to further review of a traffic study. He asked if that is the only thing.

Mr. Edgerton replied no, that he wanted the unresolved stormwater management addressed.

Mr. Stoner asked staff if the stormwater was unresolved in their mind because that is not what he heard the other day.

Mr. Brooks said that he did not know what he meant by resolved. He thought that it was workable. Ms. Porterfield in her motion mentioned that they would use the wording from the previous rezonings about the 80 percent removal rate and providing extra erosion control. But, he was not sure if that has been worked out. He asked which issue they were talking about.

Ms. Joseph noted that is the point. There are too many unresolved issues.

Mr. Brooks agreed.

Mr. Morris said that is part of the reasons for denial.

Ms. Joseph said that even if they had the traffic study they would still not know whether or not there was funding that would be necessary to do the final connection or if there was some way they could fund something off site that would make this better.

Mr. Edgerton said to be fair to the entire Commission he asked if he was legally allowed to withdraw his motion.

Mr. Kamptner replied yes if the second was withdrawn also.

Mr. Edgerton asked to withdraw his motion.

Mr. Cannon withdrew his second to the motion.

Mr. Morris asked if the applicant had a request for deferral.

Mr. Stoner said that he was still a little unclear about what they would want to see other than the results of the revised traffic study. Their engineer has provided a tremendous amount of data with regard to the storm water. He was not sure what else they could provide that would provide comfort. They have offered to take that storm water pond back if there are maintenance concerns. He said that whatever could possibly happen in the storm water detention pond they have offered to address. What they have offered in the way of a proffer related to this road is in excess of whatever potential impacts they may have on the system. If they go back and revise the traffic study and it shows that their impacts will reduce the scope of the project, but they can't proffer up any more.

Mr. Morris said that what he was hearing from the Commission is that they would like to hear from staff as to their analysis of the stormwater plan and the traffic.

Mr. Cannon said that would allow the Commission to determine the adequacy on the proffer on the road.

Mr. Stoner asked what information they need on the storm water pond that they have not provided.

Mr. Brooks said that he again would go back to what the goal is. If the goal is the additional removal rates and that is the direction the Commission wants to go they would need to see something more in that regard. Otherwise, there was an unresolved issue about the ownership and there was a question into the County Attorney's Office about how maintenance might be handed back to the applicant. He thought that was the preference of the General Services Division rather than a cash proffer for the county to do maintenance in the future. That needs some resolution from other departments in the county.

Mr. Morris noted that could be hammered out.

Mr. Stoner said that would be hammered out between now and the Board hearing. There is no issue with regard to the ownership. They know who owns it. It is on record that they own it. The Kegler's property owners own that pond. It was given to the county for maintenance at the county's request. They provided more than enough design criteria to determine whether in fact they can use the pond or not. That is really at a rezoning stage. That is the threshold that they need to cross.

Mr. Morris asked if he has addressed everything for a deferral.

Mr. Edgerton noted that he had withdrawn his motion.

Mr. Stoner said that he was not sure what data they could provide that would change this decision matrix at all.

Ms. Porterfield said that it sounds like they can hammer out the stormwater issue. The Commission really wants to see the traffic study and evaluated by staff.

Mr. Edgerton said that he would like to see the storm water analyzed by staff, too.

Ms. Porterfield agreed that the storm water needed to be analyzed, too. She asked that the traffic study be looked at in two ways. One would be at the 275 and the other would be the 125 to 150 to see how much phasing they might have to go through if they come back with the traffic study at 275 that has a big impact.

Mr. Strucko said that it would be with the road and without the road

Ms. Porterfield agreed.

Mr. Edgerton requested that the matter be brought back for discussion and close the public hearing. He liked project and welcomed a positive motion.

Motion: Ms. Porterfield moved for approval of ZMA-2006-00008, Berkmar Business Park, with the factors that the connector road is being proffered by applicant; they will build the first section that was in orange and then will either proffer and give the county the amount of money needed to build the green section or they will build it themselves when there is a connection to Route 29; the storm water management will have the verbiage that has been used in previous motions and that it will be worked out to the satisfaction of the county engineer and staff. In addition, the spatial enclosure along Berkmar will be not shorter than 20' high if they opt to go to a one level building. The off site easements or commitments will be given to staff in writing. There will be no more than 25 percent retail in the project. There will be a greater commitment to landscaping and tree planting in the Code of Development, which will be worked out to the satisfaction of staff. The remaining small issues will all be worked out to the satisfaction of staff. The applicant has indicated that they will phase the project depending upon the traffic impacts and when they are able to see a connection to Route 29 for the connector road.

Mr. Cannon asked what is meant when they say phase the project in relation to the traffic study and when there will be a connection to Route 29.

Ms. Porterfield said that if the current roads cannot sustain more than 150,000 square feet of construction that they can't any more than that until they have a connection. That is the maximum that the project can be.

Mr. Strucko asked to what level of sustainment the roads would need to be.

Mr. Morris pointed out that they were asking Ms. Porterfield to do things she can't.

Mr. Kamptner suggested that they leave the level of service to the county engineer.

Ms. Porterfield agreed with Mr. Kamptner.

Mr. Cannon said that it was a wonderful motion, but where they got bogged down is precisely where they need the additional information analysis. He could not see it clearly and did not think they could give adequate instruction based on the information they have.

Mr. Morris asked if there was a second to the motion. The motion died for a lack of a second.

Ms. Joseph suggested that they go back to Mr. Edgerton's previous motion.

Motion: Mr. Edgerton moved, Mr. Cannon seconded, for denial of ZMA-2006-00008, Berkmar Business Park for the reason that the Commission does not have the information needed to address the factors as outlined in the staff report as unfavorable which were identified as the following:

1. Appropriate proffers for constructing the connector road.
2. Resolution of the stormwater management approach since the applicant wishes to modify and use the regional pond that is currently maintained by the County.
3. Provision for spatial enclosure along Berkmar Drive.
4. Off-site easements for grading and construction of the connector road (Applicant provided letter to staff agreeing to off-site easements immediately prior to the hearing).
5. A commitment for no more than 25% retail uses for the development.
6. A greater commitment to landscaping and tree planting in the Code of Development to deal with loss of trees identified on the Open Space Plan.
7. Information on special conditions for Tier III wireless facilities and commercial recreational establishments or removal of these uses from the proposal.
8. Information on how the amenities for a significant residential use would be provided where buildings are shown on the General Development Plan.
9. Provision of a conceptual grading plan which works with the connector road as well as with any option constructed that conforms to the General Development Plan.
10. Provision for a higher level of stormwater management and erosion and sediment control.
11. Provision of standard language for cash proffers for off-site impacts.
12. Provision of commitment for bus shelter for transit.
13. A number of other small technical changes are needed to the Code of Development, General Development Plan, the Context Map showing Option 1 from Rezoning Narrative dated 2/18/08, and the Project Narrative.

The motion for denial passed by a vote of 5:2. (Ms. Porterfield and Mr. Morris voted nay.)

Mr. Morris noted that ZMA-2006-00008, Berkmar Business Park will go before the Board of Supervisors on May 7 with a recommendation for denial.

Mr. Edgerton emphasized the importance that complete minutes are provided to the Board of Supervisors on this matter in order that the Commissioner's comments are heard.

Old Business:

Mr. Morris asked if there was any old business. There being none, the meeting moved to the next item.

New Business:

Mr. Morris asked if there was any new business. There being none, the meeting moved to the next item.

Adjournment

With no further items, the meeting adjourned at 11:12 p.m. to the Tuesday, April 8, 2008 meeting at 6:00 p.m. at the County Office Building, Room 241, 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)