Albemarle County Planning Commission
April 22, 2008

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, April 22, 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, Jon Cannon, Vice-Chairman; Thomas Loach, 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; Elaine Echols, Principal Planner; Summer Frederick, Senior Planner; Bill Fritz, Chief of Current Development; Megan Yaniglos, Senior Planner; Jay Schlothauer, Director of Inspections; Mark Graham, Director of Community Development; Glenn Brooks, County Engineer; Amelia McCulley, Director of Current Development & Zoning 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.

Other Matters Not Listed on the Agenda from the Public:

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

Neil Williamson, with the Free Enterprise Forum, said that there was a matter on the consent agenda regarding the resolution of intent to amend Section 8.5.5.2 of the zoning ordinance that does not have time allocated for public comment that he wished to comment on.

Mr. Morris noted that item has been pulled and it is going to be on the regular agenda and public comment will be taken.

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

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

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on April 9, 2008.

Consent Agenda:

AFD-2008-00001 Carter's Bridge Review
The district currently includes approximately 8.906.8 acres in 65 parcels, and is located near Carter's Bridge and Blenheim. (Scott Clark)
AFD-2008-00002 Lanark Review
The district currently includes approximately 5,821 acres in 40 parcels, and is located along Carters Mountain south of Monticello. (Scott Clark)
AFD-2008-00003 Panorama Review
The district currently includes approximately 272.9 acres in nine parcels, and is located near the South Fork Rivanna Reservoir. (Scott Clark)
AFD-2008-00005 Moorman's River Addition
The proposal was to add one parcel of 116 acres to the District. (Scott Clark) **(Attachment A)**
Approval of Minutes – 10-3-06, 11-7-06, 11-21-06, and 3-18-08

Mr. Morris asked if any Commissioner would like to pull an item from the consent agenda for discussion. Ms. Porterfield indicated she would not vote on the minutes since she was not on the Commission at the time of the meetings.

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

The motion passed by a vote of 6:0:1. (Ms. Porterfield abstained.)

Item Called Up From the Consent Agenda:

Resolution of Intent – to amend section 8.5.5.2 of the Zoning Ordinance (Greg Kamptner)

Mr. Morris said that this item originally appeared on the consent agenda, but the Commission wanted to pull it. This is strictly the first step in actually coming up with a resolution of intent. Last week the Commission requested counsel to take a look at this and draft some language. He thanked Mr. Kamptner for being so responsive.

Mr. Kamptner summarized the proposed amendment.

- Over the last ten years or so there have been several projects that came forward that were approved as planned developments, most likely with the comprehensive rezoning in 1980. Some of those were actually approved under the 1969 zoning ordinance as some form of planned development. That planned development designation was carried over. The most recent project was Clifton Lake that came before the Commission a couple of weeks ago. The current regulations under Section 8.5.5.2 allow, as an option, the owner of the property to proceed under the regulations that were in effect when the planned development was approved or under the current regulations. The zoning and subdivision ordinance regulations have changed over the years and the County has tried to improve the standards of development over time.

- The Commissioners have expressed some frustration that the applicants coming before them always select the regulations that were in effect when the planned development was approved. There will be a number of reasons why they chose those regulations. One reason is that their projects have approved application plans that accompanied the rezoning. Clifton Lake is an example where there was an approved application plan. When the applicants are developing the project, they cannot deviate significantly from the approved application plan. That might be one reason why the applicants choose to proceed under the regulations that were in effect when the planned development district was proposed. The Commission has expressed some frustrations with the old regulations.

- Therefore, they have presented the resolution of intent with the concept in mind to require that land developments proceed under current regulations unless the applicants can establish that they have a vested right under state law. There are a number of ways in which an owner can establish that it has a vested right. Particularly, the planned developments that have been approved by the county over the last several years likely have substantial cash proffers or propose to dedicate substantial amounts of land having significant value. Under the proffer statutes, that is enough to establish vested rights. Staff recognizes that there may be some circumstances where the applicant cannot establish vested rights. But, at the same time, if the current regulations applied, the owner could not stay within the parameters of the application plan. The concept is to create a safety valve in those circumstances that would allow variations to the application plan to the extent that a variation is needed in order to meet the current regulations.

Mr. Morris asked if once this is drafted would it come back to the Planning Commission for an open public hearing.

Mr. Kamptner replied yes, that the Commission could certainly ask that it come back first for a work session and it could be farmed out to community development to establish a round table type of discussion that they sometimes do with new regulations. Before it is acted on the ordinance has to come to the Planning Commission for a public hearing and a recommendation before it goes to the Board of Supervisors.

Mr. Morris opened the hearing and invited public comment.

Neil Williamson, of the Free Enterprise Forum, spoke. He strongly encouraged the Planning Commission to direct staff to hold round table discussions with folks who in some cases are unaware of the impacts this may have on them, how to mitigate those impacts and how to establish vested rights. Also, they need to have information on what is the actual scope of this amendment. He felt that the best way to move forward with this and address the frustration that exists is to involve those that are going to be regulated and have a very open conversation.

Valerie Long echoed Mr. Williamson's comments and expressed great interest on behalf of the development community and a number of clients she represents who have obtained rezoning approvals for planned district projects about the significance of this issue and the concern that it has created with their clients who have invested tremendous amounts of money in projects that have obtained zoning approval and have spent years and hundreds of thousands of dollars preparing and obtaining zoning approvals for application plans or master plans for their projects. She knew that there have been cases that have been very frustrating. She was present last week at the Clifton Lakes hearing and she appreciated their frustration about that. There are a handful of those types of projects. She asked that they don't throw the baby out with the bath water. Most of the projects of significant size that have been approved in this community are a planned district. She asked that the Planning Commission not make it too big of a solution when it is a few number of projects that are causing the problem. They would welcome the opportunity to participate in discussions on behalf of clients that they work with. Their clients would as well be interested in participating.

Mr. Morris reiterated that this will come before the Commission again. He closed the public hearing to bring the matter before the Commission.

Mr. Edgerton said that in response to the comments that it would be very healthy to have a handle on the number of projects mentioned that do not fit into this situation because they have been approved under the existing ordinance. It is the projects that are being grandfathered back 30 years that he thought they were struggling with. He very much would welcome the participation and engagement of the development community in this process. He felt that it may be important in an effort to be fair to all to try to get a handle on it by asking the development community to let us know which projects they feel would be unfairly treated under what is being proposed. In the project reviewed last week there has been no effort in 30 years to vest any rights. As Mr. Kamptner noted under state law it would not qualify for any vesting. They are trying to address a glaring loophole in the ordinance that goes back to stale zoning that does not exist any more. Certainly they need to hear about the ones that may feel that they are being challenged by this.

Motion: Mr. Edgerton moved, Mr. Strucko seconded to approve the resolution of intent to amend section 8.5.5.2 of the zoning ordinance.

The motion passed by a vote of 7:0.

Mr. Morris said that the Commission looks forward to this item coming back.

Public Hearing Items:

ZTA-2007-00001 Zero Lot Line Residences in the R-2 to R-15 Zoning District
Amend Sections 3.1 (Definitions), 4.11.3 (Reduction of building separation and side yards), 4.11.3.1 (Untitled), 4.11.3.2 (Untitled), 4.11.3.3 (Untitled), 14.3 (Area and bulk regulations, 15.3 (Area and bulk regulations), 16.3 (Area and bulk regulations), 17.3 (Area and bulk regulations), 18.3 (Area and bulk regulations). This ordinance would amend section 3.1 by defining "zero lot line" and "zero lot line development); sections 4.11.3, 4.11.3.1, 4.11.3.2 and 4.11.3.3 by revising and adding regulations allowing reducing the minimum building separation and side yards for structures where there is adequate fire flow and for dwelling units in zero lot line developments; and sections 14.3, 15.3, 16.3, 17.3 and 18.3 by revising the respective district yard regulations to allow minimum side yards to be reduced to zero feet on one side in qualifying zero lot line developments. A copy of the full text of the ordinance is on file in

the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Elaine Echols)

Ms. Echols presented a power-point presentation and summarized the staff report. (Attachment B – Power-point presentation) She noted that there was a mistake on the agenda in that it is actually zero lot lines recommended in the residential districts R-2 to R-15. The applicant asked for zero lot lines in the R-6 district.

ZTA-2007-01: Request for Zero Lot Line for Side Yard Setback

ORIGIN: Application was made in January of 2007 by Frank Cox on behalf of Hunter Craig. The Planning Commission discussed the proposed amendment on June 12, 2007 and December 14, 2007. The Commission approved the resolution, asked staff to check with the Building Official on two items and to proceed with drafting an ordinance amendment.

PROPOSAL: The proposed ordinance amendment would change the side yard setback requirement from 10 feet to zero feet, on one side of the lot only, in R-2, R-4, R-6, R10, and R-15 zoning districts under certain conditions. Definitions are provided for "zero lot line" and "zero lot line development". The zero lot line option is only available in a "zero lot line development".

Conditions for approval are:

- The proposal must be shown on a subdivision plat that shows all lots in the zero lot line development and delineating the location of each unit
- Buildings must have at least a 10-foot separation
- A 10-foot maintenance easement must be provided on the lot abutting the zero lot line side of the dwelling unit

The amendment also deletes the requirement for a reduction of side yard setback where structures are within a four-mile radius of a responding fire station and the reference that buildings must conform to the Building Code. (Conformity with the Building Code is already a requirement.)

PUBLIC PURPOSE TO BE SERVED: The proposal helps to implement the Neighborhood Model by providing more opportunities for compact development within the County's designated development areas.

BACKGROUND: After the Neighborhood Model was approved in 2002, the County began a process of amending the subdivision and zoning ordinances to help implement the Neighborhood Model and provide more flexibility in designs to provide greater density in the development areas. Since that time, the ordinances have been amended to allow for alleys, reduce the amount of required parking spaces, allow for greater flexibility in how parking spaces are provided, allow applicants to apply for a Neighborhood Model (traditional neighborhood development type) zoning district designation, require curb, gutter, sidewalks, and street trees in single-family residential developments in the development areas, and require interconnections in the development areas.

County staff had been working with the Commission on modifying front yards, setbacks, and buffers in all zoning districts but RA and VR. The applicant asked that the Commission advance this zero lot line proposal ahead of the other setback changes. Staff and the Commission broadened the zero lot line proposal to make it available in all districts but RA and VR in the development areas and simplified the applicant's proposed amendment.

At their December 4, 2007 meeting, the Commission asked staff to ask whether the Building Code would allow for a pool within a 10' side yard. Staff has ascertained that the area would be available for a pool as long as it was fenced. The Commission also asked staff to modify wording related to wall/fences that create an atrium.

STAFF COMMENT: In addition to providing the option for zero lot line development, the attached amendment removed confusing language from the last draft seen by the Commission that related to walls

and fences that create an atrium. As previously stated, the amendment also deletes the requirement for a reduction of side yard setback only where structures are within a four-mile radius of a responding fire station and the reference to the need for conformity with the Building Code. The requirement for conformity with the Building Code exists elsewhere in the County Code and the Building Code covers the construction elements necessary for building separation of only 10 feet. For these reasons, the section of the ordinance being deleted is not necessary.

Staff believes that the proposed amendment reflects all of the changes requested by the Commission and also meets the needs of the applicant who requested the zoning text amendment.

Administration / Review Process: This process will not be changed by the ZTA other than creating an additional side yard setback option that, when utilized, will have to be measured differently.

Housing Affordability: The proposed changes should not have an impact on housing affordability except to allow an additional design option to the mix of designs already available for affordable housing.

Implications to Staffing / Staffing Costs: The addition of the option for zero lot line development should not increase staff time or costs to applicants. The proposed change alters the way in which setback measurements take place; however, it did not increase the amount of work involved.

STAFF RECOMMENDATION: Staff recommends adoption of the draft ordinance found in Attachment A of the staff report.

In regards to questions staff received by email:

- A question was raised whether staff had compared the applicant's proposal to the changes that were in the ordinances. Staff replied that they had done that throughout the work sessions. The applicant's proposal compared to the changes recommended by the Planning Commission is in the attached power-point presentation.
- What is being considered Attachment A or Attachment B? Attachment A is the ordinance under consideration. Typically what is done with an ordinance request is that an applicant makes a proposal, the Planning Commission decides whether to adopt a resolution of intent to study it and then it becomes the Commission's proposal. The Commission works to make it what they want. Usually the applicant's request is set aside because it has been incorporated in some form or fashion into Mr. Kamptner's draft proposal. That is what happened here.
- Why is everything crossed out and new language provided? Mr. Kamptner pointed out that it was for a number of reasons, but one is the awkward numbering system that the zoning ordinance has used for the last 30 years. When adding text staff tries to organize it into a single section that is more easily referenced. Staff also tries to update the language and the references to various state agencies, manuals, or anything else that is in there. The new language, Subsection A, is essentially the updated version of 4.11.3.1 and 4.11.3.2. Subsection B is the new regulations for zero lot line developments. Subsection C is the grandfathering language, which is virtually identical to what is in the ordinance right now. If they refer to the resolution of intent just adopted they will see that 4.11.3 is one of the sections proposed for amendment because the grandfathering provision in this section is similar to the one that is in the planned development regulations. Staff will attach that provision with the other zoning text amendment. It is really subsection B that is the new zero lot line provisions and subsections A and C are essentially the reformulated existing provisions.
- Has any comparison been made between the applicant's request and the county's proposal for the zero lot line ZTA? Ms. Echols replied yes, that they went through that in the work sessions. There was a point made that was good, which is the Board of Supervisors will not have the benefit of having seen all of this history. Staff will put all of that history in the report to the Board so they can also see where this came from, what it has gone through and the Commission's recommendation.
- Do they want to prohibit detached garages or garden sheds from evading the setback space? Ms. Echols said that she would handle that later in the discussions.

- Why didn't staff delete the section related to developments approved prior to January 1, 1983? Staff was concerned that if they got into that issue it was going to delay this particular ordinance. Therefore, staff recommends that the Commission hold off on dealing with that issue as they have already discussed that issue with the resolution of intent earlier tonight.
- Are there any provisions for increasing the fire rating of buildings that will be so close? Jay Schlothauer, Building Official, can speak to that question.

Jay Schlothauer, Building Official for Albemarle County, replied that as buildings get closer to property lines the fire safety regulations increase. The wall gets a higher fire rating. Openings, such as windows and doors, disappear. If five feet or greater from a property line, not another building, there is no restriction on the wall facing the property line. If less than five feet, the wall facing the property line has to have a fire resistance or rating of one hour for a fire either coming from inside or outside of the house. At that same time there is a restriction on openings such as windows, doors, soffit vents, etc. where they can only be 25 percent of the wall area of the wall facing the property line. It cannot exceed 25 percent of that wall area as openings. If less than three feet the one hour wall has fire ratings from both sides and there are no openings. The Code also goes into things such as an eave overhang and what happens when it gets close to a property line. It has to be rated for fire from underneath from the outside. The simple answer to the question posed is yes, the Code does increase the fire resistance of the building as it gets closer to property lines.

Mr. Loach asked what the requirement is at ten feet from one house to the other.

Mr. Schlothauer replied that the Code is not written in terms of building to building. It is written in terms of building to property line. If the buildings have to be ten feet apart and are both five feet from the property line there is no restriction on the wall or the openings of either house.

Mr. Loach asked if he was familiar with the NIST study that was done. A study was done by the National Institute of Standards that showed that it took less than 80 seconds for a flame exiting from a simulated house with a combustible exterior walls and a window to ignite a similar house six feet away. That is 80 seconds once the fire blew through the window to start the second house on fire.

Mr. Schlothauer replied that he was not familiar with it.

Mr. Loach noted that his concern with the ten foot separation was if there was a fire in one house two houses would be lost instead of one. If there is ten feet between two houses with a three-story structure and they had to throw a 35' ladder that means that ladder has to be situated between seven and eight foot from the house. That means that there is only two feet to work with manning the equipment and hose. Therefore, he has some problems if there were five feet and five feet between structures and there is no increase in the Code. This appears to be problematic. Therefore, he would like to get some explanation from the Fire Service of their view of being able to work within these confines to fight fires considering that he might be one of them.

Mr. Schlothauer said that he was citing from the Virginia Uniform Statewide Building Code.

Mr. Loach noted that he realized that there was a problem in getting any kind of standard. But, he did have some concerns that the ten foot would be too close if there was no fire rating for the wall to increase fire protection.

Mr. Schlothauer noted that they are using the 2003 International Residential Code.

Mr. Loach pointed out that according to the study if they get one house on fire that they are going to lose two within a short period of mind.

Mr. Schlothauer noted that they should bear in mind that they have been building townhouses for years and they touch, which is the ultimate zero lot line. He questioned if the townhouses caught on fire if the townhouses would burn each other and noted perhaps.

Ms. Porterfield clarified that since the current regulations require setbacks of five feet from the lot line, a ten-foot separation is achieved by the five and five on each side.

Mr. Schlothauer relied that was correct.

Ms. Porterfield said that is exactly what they were creating here, but they have one house on the lot line and the other one has to bump over to the ten-foot setback. She wondered whether that is going to cause builders to come in and want a variance because they are meeting what Mr. Schlothauer referred to but, the units would only be placed on the lots differently.

Mr. Schlothauer noted that what would happen in that predicament is that the house that is on the lot line will have no windows with a one-hour fire wall and the other house could be 1,000 feet away. That will still pertain to the house that is on the property line. The intent of the Code is not to penalize the other guy just because one house got built first. Their regulation might restrict that, but the Code does not.

Ms. Porterfield reiterated that he was saying regardless the unit that is built on the lot line would have to meet the regulations as far as the fire resistance as well as having no openings.

Mr. Schlothauer replied that was correct.

Ms. Porterfield questioned what the maximum height was.

Ms. Echols replied that the maximum height in the residential district was 35 feet and that there may be an additional setback. Staff will have to check to see if there is an additional step back on the side yard.

Mr. Morris asked if the Code requires any bedroom to have a window.

Mr. Schlothauer replied that was correct and that it had to be a certain size, which was called an emergency egress.

Mr. Morris said that in other words if he was on the lot line there could be no bedroom on that side, and Mr. Schlothauer replied that was correct.

Mr. Cilimberg noted that if there was a bedroom it would have to be to the front or back.

Mr. Edgerton asked Mr. Kamptner if, as Mr. Schlothauer points out, that the Building Code applies regardless of what any study says and they have no authority to adjust that without enabling legislation.

Mr. Kamptner replied that was correct that they were preempted from adopting their own materials and methods of construction.

Mr. Loach asked if the ten foot separation was implemented could they institute a new higher fire rating. .

Mr. Kamptner replied no since that would fall under altering a method of construction, which is pre-exempted by legislation.

Ms. Echols asked to correct something she told Ms. Porterfield. The definition of zero lot line only applies to single-family detached dwelling units. Therefore, an apartment complex would not be involved. It would be extremely unlikely to have a zero lot line single-family home that is 65 feet tall. Single-family homes rarely get up to 35 feet.

Ms. Porterfield asked if it said 65 feet tall because they were dealing with apartment complexes.

Ms. Echols replied that was correct. Currently in a conventional zoning district there is a minimum 15' side yard setback, which ends up being 40' between buildings in a conventional district. So an apartment would have that kind of separation for a side yard setback. This would not apply to that. The single family has the same minimum 15' side yard setback, which is a 30' separation. What they are talking

about is bringing that down from 30' to 10' in a zero lot line situation. Regarding the next question, they would not want to limit doors and windows in section 4.11.2.b.4 because it would be covered in the Building Code. Regarding the next question, section 4.11.3.b.3 would not prohibit plantings in the side yard. She noted that a rain garden would not be a structure and would be allowed. Swimming pools would be allowed in the side yard if located 6' from the property line. Ms. Joseph brought up the question about lap pools and if they could be allowed closer than 6' to the side property line. Right now swimming pools are not allowed in any side yard. She suggested that if the Commission wants to allow pools closer then 6' to the side yard line that it is brought up in the overall zoning text amendments rather than with the zero lot line situations. The Planning Commission may decide to change that, but that the wording of the proposed ordinance would have to change. But, right now the way it is written the pool is considered a structure and would have to be located 6' off the property line.

Mr. Edgerton questioned if the pool had to be fenced how that could not encroach in the emergency access way required. He asked if that should be considered.

Ms. Porterfield suggested that they not allow pools in the side yard in zero-lot line situations. She asked how a ladder would be put up to fight a fire next door.

Ms. Echols reiterated that staff's recommendation was to bring this issue up with other ordinance amendments and not zero lot line. In regards to Mr. Loach's question she noted that there are two aspects of the fire protection that they are dealing with here. One is the Building Code and the other is the fire flows. The Fire Department establishes what the fire flow or what the water pressure needs to be for water available to put out a fire for the setbacks that are shown. Staff wants to make sure that they have good references in the regulations to both the Fire Code and Building Codes. The fire flows are in the zoning ordinance, which deals with the ISO standards that establishes the type of flows needed for the type of setbacks. She invited questions from the Commission.

Mr. Edgerton noted that section C on page 3 references back to section 8, which they are trying to change. He suggested that it be taken out.

Ms. Joseph and Ms. Porterfield agreed with Mr. Edgerton to leave out that reference to section 8.

Ms. Joseph questioned why they added section A3. Unless constructed to a common wall no structure shall be less than 6' to any lot line. The Commission talked about this and decided that it makes no difference. Therefore, she questioned why it is in here.

Ms. Echols replied that it repeated what was formerly in here. She was talking about a global change that applied to all zoning districts and did not think they were ready for all of those changes. She was just trying to get the zero lot line things through and was going to bring back the whole issue about accessory structures. At the July meeting there was a lot of little issues that the Commission was not settled on, which was why that was not included. She hopes to get back to the Commission on that issue soon in the next set of amendments. Staff wants to make to make it clear that section A does not apply to zero lot lines. Therefore, she suggested instead of having "or" put "and" between adequate flows and the Building Code. Secondly, in order to make sure that people understand that the fire flows are important include "if the structure is located in an area where available fire flows are adequate under Insurance Service Offices standards to allow the reduction." Staff recommends approval of the ordinance with these two changes.

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

Ms. Joseph recommended striking C.

Mr. Edgerton asked if there is some reference to pools in the side yards.

Ms. Echols replied no that it was in a separate section of the ordinance because the accessory structure section of the ordinance would apply here.

Ms. Joseph agreed that they delete section B2 as being unnecessary and let the Building Code deal with it.

Mr. Cannon supported Ms. Echols suggested changes to the language in A and B.

Mr. Loach expressed concern about the 10' separation. It is one thing to have adequate fire flow, which means that there is pressure in the hose, but another thing with that 10' exposure to keep the fire from spreading. He noted that the study confirms what would happen if there is a fire under this situation. He would like to hear from the fire service and review their operational analysis on whether they can operate within a 10' frame and not just the fire rating of the wall. The article's name was "Is your house a fire trap?"

Ms. Echols said that staff has shared this information with the fire people, but did not ask that question. She asked if the Commission how they wanted to handle it.

Mr. Morris noted that if the Commission moves this on that it would be advantageous to make sure that copies of the study are given to the Board as well as the Fire Marshall be present at the Board meeting.

Mr. Cilimberg pointed out that the Commission can make a recommendation that separation be addressed by the fire official before the Board considers this.

Ms. Joseph said that she understood Mr. Loach's frustration, but was also listening to the Building Official. She felt that the only way to address it would be to decide that it needs to be 15' or 20' between buildings.

Mr. Loach said that he would have no problem if the side to the 10' has an adequate fire rating. He felt that setting up this situation puts fire fighters in jeopardy. He just wanted to hear from fire services. He would be fine to pass this on to the Board with the proviso that fire services make a recommendation they can operate safely in that environment.

Mr. Cilimberg noted that currently under the ordinance they have separations of 10' that are already occurring. It is not changing that potential.

Motion: Mr. Cannon moved, Mr. Strucko seconded to recommend approval of the adoption of the draft ordinance for ZTA-2007-01, Zero Lot Line Residences in the R-2 to R-15 Zoning District as submitted by staff with the following caveats and changes:

1. When the ordinance is presented to the Board of Supervisors the Fire Marshal or other expert official needs to be available to address any concerns with the 10' separation as raised by Mr. Loach.
2. The staff recommended changes in the language as shown below for sections A and B be included.
    - A. *Reductions for structures except in zero lot line development, with adequate fire flows and which are constructed in accordance with the building code*. The minimum building separation or side yards for primary structures may be reduced if the structure is located in an area where available fire flows are adequate under Insurance Service Offices standards to allow the reduction. Each primary structure for which the minimum building separation or side yard has been reduced as provided in this subsection shall be subject to the following:
    - B. *Reductions for dwelling units in zero lot line developments*. The minimum building separation or side yards for detached dwelling units may be reduced to zero (0) feet on one side for each dwelling unit in a zero lot line development if the structure is located in an area where available fire flows are adequate under Insurance Service Offices standards to allow the reduction. Each zero lot line development shall be subject to the following:
3. Section B2 be removed as unnecessary.

4. Section C be removed since it is inconsistent with the concerns intended to be addressed by the resolution of intent approved earlier in the evening.

The motion passed by a vote of 7:0.

Mr. Morris said that ZTA-2007-01 would go to the Board of Supervisors with a recommendation for approval at a date to be determined.

The Planning Commission took a break at 7:12 p.m.

The meeting reconvened at 7:18 p.m.

SP-2007-00054 SOCA-All Weather Synthetic Field-Belvedere (Sign # 16 & 49)
PROPOSED: Soccer Field and associated parking and spectator seating adjacent to Belvedere and accessory building near soccer fields in the floodplain
ZONING CATEGORY/GENERAL USAGE: R-4 (4 units/acre)
SECTION: Section 15.2.2.4 of the Zoning Ordinance which allows athletic facilities for fill in the R4 District
COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses in Neighborhood 2
ENTRANCE CORRIDOR: No
LOCATION: At the northern end of Belvedere Drive off of East Rio Road
TAX MAP/PARCEL: Portion of 62A3-1 and 62-2A
MAGISTERIAL DISTRICT: Rivanna
(Elaine Echols, Summer Frederick)

AND

SP-2007-00058 SOCA-Belvedere/Flood Plain Field (Sign # 16 & 49)
PROPOSED: Floodplain disturbance for 5 soccer fields
ZONING CATEGORY/GENERAL USAGE: R-4 (4 units/acre) and Neighborhood Model District (residential [3 - 34 units/acre] mixed with commercial, service and industrial uses); FH Flood Hazard Overlay District - agricultural, recreational, and utility location uses which will not pose a danger to life or property in the event of a flood
SECTION: Section 30.3.5.2.2.3 of the Zoning Ordinance which allows for fill in the floodplain
COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses in Neighborhood 2.
ENTRANCE CORRIDOR: No
LOCATION: adjacent to south bank of the South Fork Rivanna River at the northern end of Belvedere Drive which is off of East Rio Road
TAX MAP/PARCEL: portions of 62-2C, 62A3-1, and 62-2B
MAGISTERIAL DISTRICT: Rivanna
(Elaine Echols, Summer Frederick)

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

Project Name: SP-2007-00054 SOCA -All Weather Synthetic Field – Belvedere and Critical Slopes Waiver
Acreage: Approximately 7.5 acres
Special Use Permit for: Section 15.2.2.4 of the Zoning Ordinance which allows for athletic facilities, associated parking and accessory structures in R-4, Residential zoning district.
Proposal: The applicant purposes to construct two (2) facilities located at different sites; one (1) full sized all-weather synthetic turf soccer field and two (2) mini-soccer fields, with seating for 500 and a structure to include a concession stand, locker rooms, manager's office, trainer's treatment room and equipment storage. This location will also have associated parking.

RECOMMENDATION: Staff recommends approval with conditions.

Factors Favorable:

1. The facility will provide a community oriented, community-wide athletic facility serving the new neighborhood and other parts of the County.
2. The facility is proposed within the County's designated development areas.
3. The facility will augment recreational facilities already planned for the neighborhood.

Factors Unfavorable:

1. The scale of the use is greater than would be typically expected in Neighborhood Density Residential
2. Development.
3. Public streets are intended to provide on-street parking for the use. As currently planned, the streets are not wide enough to accommodate the onstreet parking. Staff is recommending a condition to address this. Staff anticipates 65 on street parking spaces will be needed. As approved in ZMA-2004-007 for Belvedere, streets are designed at 28' wide, which staff has determined is not wide enough for on street parking per VDOT standards.
4. Timing of construction of the public streets is not tied down, such that construction of the synthetic field could take place before the streets are built. Staff is recommending a condition to address this.
5. Pedestrian access from the end of the public streets to the facility does not appear to be provided. Staff is recommending a condition to address this.

Critical Slope Waiver Request

In conjunction with this special use permit, the applicant has applied for a waiver of Section 18-4.2.5. Staff review of the waiver request is as follows:

A modification to allow critical slopes disturbance is necessary to allow the construction of an access road on the property for the synthetic fields and to the proposed fields in the floodplain. The request for a modification has been reviewed for both the Engineering and Planning aspects of the critical slopes regulations. Section 4.2.3.2 of the Zoning Ordinance restricts earth disturbing activity on critical slopes, while Section 4.2.5(b) allows the Planning Commission to waive this restriction.

This request is to disturb approximately 0.3 acres of critical slopes. The critical slopes in the area of this request do not appear to be man-made. Staff has reviewed this waiver request with consideration for the concerns that are set forth in Section 4.2 of the Zoning Ordinance, entitled "Critical Slopes." These concerns have been addressed directly through the analysis provided in the staff report, which is presented in two parts, based on the section of the ordinance each pertains to.

RECOMMENDED ACTION

Staff recommends approval of the critical slopes waiver and approval of the special use permit with the conditions as listed in the staff report.

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

Ms. Joseph said that with the recommended condition four staff is only considering pedestrian access to the synthetic field and not the one in the floodplain.

Ms. Frederick replied that was correct.

Ms. Joseph asked if there was any reason for that.

Ms. Frederick replied that the special use permit boundaries for this particular special use permit only include the synthetic field. The synthetic field was not in the floodplain. The building will be in conjunction on the same site as this field.

Mr. Edgerton said that going back to the original work sessions with the developers of Belvedere one of the original requests was a relocation of the Meadow Creek Parkway. The original Meadow Creek

Parkway, if the northern end gets built, would be called the Northern Free State Connector Road. That name change had something to do with this. But, the original Meadow Creek Parkway alignment went right through the middle of the Belvedere property. The applicant came in and asked for permission to relocate that to go along the western edge of the Belvedere property. He noticed that the proposed access road as part of this special use permit goes into the area that they had dedicated as the future right-of-way for the Meadow Creek Parkway/Northern Free State Connector Road. He was wondering if they approve the special use permits and approve a road to go through that area that has been committed to a right-of-way by the developer are they in fact doing away with the ability to have that right-of-way if there is a future plan to extend Meadow Creek Parkway.

Mr. Kamptner noted that on sheet 1 of Attachment A, which shows the alignment of the future right-of-way for the Meadow Creek Parkway, it is designated and almost touches the side of the field. It is in the same proximity. The problem is this portion of the Meadow Creek Parkway is merely a concept. It is depicted on the plan, but is not expressly reserved.

Mr. Cilimberg pointed out that the proffer did not go that far north.

Mr. Edgerton noted that it said future right-of-way of Meadow Creek Parkway and none of the Belvedere community was allowed to go into that right-of-way.

Mr. Kamptner said that the Belvedere developer agreed to keep development out of the right-of-way, but it is not reserved and it is not for future dedication.

Mr. Edgerton asked if putting an access road in there would be putting development in the right-of-way.

Ms. Frederick said that the reason that this special use permit was before the Commission is because this is in a portion of the neighborhood that was not part of the rezoning. The proffer for the 100' reservation only went up to the rezoning line.

Mr. Edgerton asked what the right-of-way was, and Mr. Cilimberg replied that it was the access to the rear fields.

Mr. Edgerton noted that it was a 100' right-of-way, which was originally committed by the developer.

Mr. Cilimberg said that the commitment through proffer was to the zoning line only. This is being depicted, as Mr. Kamptner said, as the remaining portion that could be provided in the future.

Mr. Edgerton said that if they allow a road in an area that has been committed for a future right-of-way they are, in fact, doing away with that commitment.

Mr. Kamptner noted at least on this part of the property it was not part of the rezoning, and, therefore there is no express commitment on this part of the property. He would need to go back and review the proffers. But, it was not part of the rezoning and they were merely depicting it on this particular plan for illustration purposes.

Mr. Cilimberg pointed out that the Board of Supervisors removed the Meadow Creek Parkway form the Six Year Plan in this area. They referred to Northern Free State Road, but they did not any longer commit to an alignment. So this is a reservation that could allow for it, but it is not a committed alignment any longer because there is some uncertainty as to whether or not this road will ever be built beyond Free State Road in the reserved area. In fact, in Places 29 that is part of the discussion they are having about transportation. This location does not preclude the Parkway from continuing north or Northern Free State Road continuing north. If it were ever constructed what would happen is that this particular rear field area would take access from that road. The Board has said that this will not be a limited access facility. So in essence if it gets built that far north and even crosses the river it will have access to it. One of the access points in the future would be the rear field area. So in a sense this road is a provision that could be replaced by a full blown public road that provides access in the future.

Ms. Joseph noted that she was looking at this as a good thing that this road was going through there. Most of the problems that they see are areas that have become developed and then a road wants to go in and people don't want to see it. If this road is in there, even thought it might not be as wide as is going to be needed in the future, it would at least be there.

Mr. Edgerton said that it may work out to be a good thing. He remembered very distinctly the negotiations going back and forth between the applicant of Belvedere and the Planning Commission. He had said he would rather put the road up along the edge of the project instead of cutting it in half and make better project. The Commission felt that made sense. But, now they were saying that they were just kidding. It sounds like they are covered as far as the Board is concerned.

Ms. Joseph invited Mr. Brooks to address the Commission. She asked what is the possibility that sometime in the future that some improvements could be made.

Mr. Brooks pointed out that he had recommended that this road be here. The alternative on the other side of the property went down the property line of the neighbor of Belvedere. That had a lot of impacts on the neighboring property and the critical slopes. It was a difficult road. This is not an easy road, but it was in an alignment that was perhaps to be disturbed in the future anyway. It was a public road and the impacts were not as big of a concern.

Mr. Edgerton asked if he saw it as a problem.

Mr. Brooks replied no, but if they felt that way they could make a condition on the special use permit that when a public road comes through in the future that it would replace their access road.

Mr. Strucko asked if the applicant has expressed any future plans for lighting the fields or perhaps putting the synthesis field under a roof at some point in the future.

Ms. Frederick replied that lighting has been discussed and there is a note on the application plan that indicates that when the applicant proposes to light the field that they will abide by whatever lighting ordinance is in place at the time of construction of the lighting.

Mr. Cilimberg noted that the Board has passed a resolution of intent to amend the ordinance regarding the lighting of fields. That was an initiative of the Board with the idea of trying to allow for a taller light pole to light fields. Obviously, they will have to meet the dark sky provisions in doing that. That matters needs to come to the Commission before the Board hears it.

Mr. Strucko asked if there were plans to put the synthetic field under roof at some point in the future, and Ms. Frederick replied that she was not aware of any.

Mr. Loach said that this is not a Neighborhood Model project because it is on a much larger scale. He asked if this area is part of Places 29 and are there any recommendations.

Ms. Echols replied that it is part of Places 29 and the recommendation is for Neighborhood Density Residential in this particular area.

Mr. Loach asked if Places 29 covered recreational facilities in the plan.

Mr. Cilimberg said that Places29 has not gotten down to that level.

Mr. Strucko asked if someone had to join a league or pay a fee to play on these fields.

Ms. Frederick replied that the applicant will be able to answer that more specifically.

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

Chris Schooly, with Stonehaus, said that he represented Bill Muller, Executive Director of SOCA, and Bob Hauser, representative for Belvedere, and many of their consultants who have worked diligently to find a solution for this issue. He presented a power-point presentation and explained the request.

- This is an incredible amenity to have within the community. What they are asking for is on R-4 land and it is not within the Neighborhood Model. It is in conjunction with the adjacent Neighborhood Model District. The residents of Belvedere will benefit from this adjacent field. They feel that this is the right place for SOCA, which is a great organization. It is located at the end of the future Meadow Creek Parkway whenever that is built. They have a right to build 775 units. They have begun infrastructure construction. They have homes under roof at this point and will have people moving in this summer. This is a perfect time to start talking about a facility like this because people who are buying into Belvedere have been told that they have an agreement with SOCA and are seeking approval for this facility. People are buying in assuming that this facility will be there. This is not a retrofit.
- They are committed to the Neighborhood Model. It is an important component. At Belvedere they had the right to build 1,100 units by right in R-4. They rezoned to Neighborhood Model for 775 units and lost density because they believe in the form. Once this was rezoned in October, 2005 it was very clear that streets, sidewalks and beautiful houses with a Code of Development that restricts architecture does not make a community. That is simply the infrastructure. What they really need is people and a community aspect that is emotionally attached. The people at SOCA are part of a community. When they got the staff report it was clear that the 500 person capacity for the facility was causing some issues. In researching that he found that number to be a blind hope guess. Typically one game has about 94 people, which includes an 18 member team and a number of parents and coaches. They need to plan for the parking before and after and in the transition between games. So at one point they would have four teams on site with two coming in to play and two leaving. That is about 200 cars that need to be parked. From everything they have seen having more than 200 people on site for any soccer game would be incredibly unique.
- Their proposal is to reduce the capacity 500 to 240. The 240 person capacity relates to staff's parking ratio at 60 parking spaces, which is what they provide on street and adjacent to the field. So no longer is there any need to start parking people within the Neighborhood Model portion of Belvedere and to widen the streets from 28'. The new streets that would be built around the stadium would allow for 32' parking. There must be some type of event permit that they could apply for in the situation where capacity exceeds 240. They have numerous locations on site at Belvedere where they can park more cars and shuttle them to the site for larger community and county events. It is possible that SOCA may want to have some kind of festival or tournament that may have more people hanging around during the day. Their goal would be to shuttle people to the site. Therefore, they are proposing a 240 person capacity.
- They have had some concerns related to traffic from neighbors. In their traffic study they have found an increase of three percent for vehicles per day, which is a difference between 10,500 and 10,800 cars. So it is a relatively minor increase. The peak hour increase was 15 percent. It is still relatively a minor increase. They would like to have this field lit. There are no plans to have this field covered. Their proposal is that they will apply for lighting based on the conditions at the site plan. If the zoning text amendment is approved they will apply under those conditions. Sixty parking spaces are provided that relate to the 240 person capacity, which does not consider hopefully a number of people walking to this facility from Belvedere. That was the intention.

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

Ms. Joseph asked why they decided to use a synthetic field.

Mr. Schooly replied that the synthetic field would allow for more public use for the residents of Belvedere. Basically, this will be open as a high school football field. When SOCA is there and using it they would have rights to it.

Ms. Porterfield noted concerns about the spilling over of parking into the residential area with the seating capacity of 500. She asked if he was thinking in terms of residential parking permits and signs that indicate that no one without a permit can park on those streets.

Mr. Schooly replied that when they say that they are going to designate parking in the dark gray for SOCA their intention is to put up signs that say SOCA parking and have times such as 3:00 to 7:00 p.m. That is a fairly standard way to designate parking.

Ms. Porterfield said that she was not worried about that area, but was worried about the parking spilling over into the residential area.

Mr. Cilimberg said that there are going to be some limitations to what could be done on the Belvedere Streets because they are public streets. There is no permit parking capacity in the county on public streets. They don't know what the size of the facility is ultimately going to be. They gave a figure that sounds like it may be more than they anticipate that they will actually need. The special use permit condition was structured so that if parking was necessary on street to support the facility, then they would get the adequate design of the street to accommodate that. If it is not necessary because they are not going to have that number of people, then that condition is not going to require the streets to be upgraded for parking because of the limitation as to the size and the number that will be gathering there. That will be determined at the site plan stage when the specific facility design is reviewed. That is where they can make the judgment of whether the parking is adequate on site and that no off site parking will be necessary on the street. Or, this could be conditioned such that the size is to be no more than what can be accommodated by on site parking if they don't want that possibly at all off site.

Ms. Porterfield said that she had a problem with thinking that all those streets could literally become parking areas for a soccer field that could run at all hours of the day and night if it gets lights. She questioned if there was no other area where they could build a bigger parking lot.

Mr. Schooly said that there is going to be a limitation that SOCA has with Belvedere in that they can only run lights until 9:30 p.m. They feel that there is adequate parking proposed and there is no need for a bigger parking lot.

Mr. Cilimberg pointed out that they would not know the particular size until site plan stage. The Commission could consider a condition that it is only sized to what can be accommodated on the site if they want. He felt that the condition that is being offered is one that would require adequate street size width if they are going to count on parking on the streets.

Mr. Morris noted that is where the 32' would kick in.

Mr. Cilimberg agreed if it was necessary to support their parking. The applicant is indicating that they will not need that because of the facility size, which can be determined during site plan.

Mr. Schooly apologized for the confusion of the 500 people. Clearly that has caused some gray areas, which was something that they should have caught before they sent it in. They honestly don't think that would ever happen.

Mr. Morris invited public comment.

Heidi White, resident of Albemarle County, supported of the South Fork Soccer Park and asked that the Planning Commission grant the special use permit. SOCA will make sure that the field is not used past 9:30 p.m. so it will not impact the Belvedere neighborhood and surrounding areas.

Clark Coleman, resident of Albemarle County, parent and occasional coach at SOCA, believed that in all of the alternatives they will have to look primarily to develop new athletic fields in the designated growth area where they have the ability to handle the traffic. But, not all subdivisions within the designated growth area are equally suitable. In Belvedere they don't have prior residents who would be caught by surprise that suddenly they are going to have an athletic complex. This was announced months ago that

this land was being donated for this use and there are several months before the first residents move in. He could not imagine where they would come across in the future a better combination of circumstances than to have a growth area subdivision that has not started yet with a developer that wants it there and with residents not having any expectations that it would not be there.

Bob Forsyth resident of Albemarle County said that he had lived for the last 18 years Forest Lakes North. He has been a volunteer coach for SOCA for the past four or five years. This county does not have enough field space to accommodate the growing needs of the young. He volunteers at Hollymead School and there is a growing problem of young children getting a lot larger than he remembered when he was their age. SOCA with the help of Belvedere is stepping up to provide a way to minimize the obesity factor in this area. He asked that the Commission grant the special use permit. During Memorial Day when all of the fields are used the South Fork Soccer Park parking lot is not overflowing. Lighting is a significant issue, but it can be addressed in the future.

Patrick Grant, resident of the Charlottesville/Albemarle area, spoke in support of the SOCA proposal because of the desperate need for playing fields in this community. He hoped that the fields would be built so his children could play on them. He supported the use of the fields by the entire community and not just SOCA. He represented three other families in the Still Meadow community who would be thrilled to be able to potentially walk or bike to the facility.

Don Mathes, resident of Dunlora and the father of four children involved in SOCA, spoke in favor of the request and the ability for the community to use the fields at any time. He reiterated that this will be a big plus to Belvedere and the surrounding community. He did not see an issue with noise. The lighted field is a plus as long as they use appropriate controls, which sounds like SOCA has taken that into mind. The SOCA staff are very good stewards to the community and the children.

Gavin Rose, resident of 2405 Northfield Road, spoke in support of the facility. He was currently a referee for SOCA. He has three children that play soccer and love it. They need more facilities like this.

Stephen Coss, resident of Charlottesville, said that he was on the Board of Directors for SOCA. He spoke in support of the request. SOCA would be a great asset to the community.

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

Mr. Strucko questioned when so they look at some of the restrictions for the use of these fields with respect to the neighborhood. He did not see anything in the staff report about decimal levels or hours of operation.

Mr. Kamptner replied that decimal levels would typically be addressed just through the Noise Ordinances.

Mr. Cilimberg suggested that the hours of operation could be included as a condition of the special use permit if the Commission chooses.

Mr. Cannon said that this is a good project and the goal is to work towards something that they all could agree to. The parking issue has been raised. He would take it that it would be appropriate to place a condition in the motion in approving this that would require at the site review phase that necessary parking is accommodated on site. That is what the applicant thinks they can do and that would be subject to a demonstration at the site review phase.

Mr. Cilimberg said that the Commission did not want to have on-street parking occurring in association with the parking structure.

Mr. Cannon said that was not an issue because he heard the applicant saying there won't need to be parking on the streets of Belvedere. He heard the Commissioners saying that they did not want parking on the streets. Therefore, he did not see the conflict. So there ought to be a way they can condition that so that does not have to occur and the applicant will be able to make that demonstration. There is a

series of recommendations that he wants to make sure that they have looked at. The conditions include that the synthetic field be developed in accordance with some specification.

Ms. Echols noted that the conditions that are shown in the staff report are slightly different from the ones shown on the screen. Mr. Kamptner had not had a chance to look at the conditions before they went into the staff report.

Mr. Cannon asked if the second proposed condition had been taken care of.

Ms. Frederick replied that it had not been taken care of. It is the issue of the streets that are shown in the area adjacent to the proposal. There are not plans under review for those streets.

Mr. Cilimberg said that the conditions actually intended to make sure that the streets that provide access to the field are constructed as part of the public use of the field. It is just to address the issue.

Ms. Porterfield suggested that condition two be changed to "be constructed prior to construction of the field." The streets would be put in first and then they could build the field.

Mr. Kamptner suggested that it read, "Shall be constructed prior to public use of the field."

Ms. Joseph noted that once they start construction they want to do it all at once instead of disturbing twice. They can disturb it once and get it stabilized.

Mr. Strucko asked if public use means SOCA use.

Mr. Kamptner replied no, that he would consider that to mean that it is open to the public.

Ms. Joseph suggested that it should strike "public" use.

Mr. Cannon noted that condition three would not be an issue if there was no on street parking in Belvedere

Mr. Cilimberg suggested that condition three be replaced with what they had been talking about if they were intending to make it all on site parking.

Mr. Schooly asked to make sure that it is clear. The areas in gray on the site plan would be dedicated to parking. There is one street that is adjacent to the fields that has on street parking that would be included, which would be 32' wide. Condition three as written is fine, but they don't expect any parking to happen on the streets in Belvedere that are more narrow.

Ms. Frederick noted that a separate sheet had been passed out with the revised conditions listed. Staff has another topic to address once they go through the conditions.

Mr. Cannon asked if others have comments on these conditions. He asked if the conditions were acceptable with converting "public use" to "use" and adding an additional condition which relates to a demonstration that adequate on site parking will be provide to avoid the necessity of parking on the Belvedere streets.

Ms. Joseph asked that a condition be added for the hours of operation. Also, the applicant talked about capacity being 500 and 200 people, but she did not know if that was enforceable.

Ms. McCulley noted that it would have to be assumed to be self enforcing. That would be extremely difficult to enforce.

Mr. Morris invited the applicant to come forward to address the hours of operation.

Mr. Schooly said that they normally start on week days at 4:00 or 5:00 p.m. and on weekends at 9:00 a.m. In the summer they end at 9:00 to 9:30 p.m.

Bill Newark Executive Director of SOCA, noted that games are scheduled to begin at 9:00 a.m. on weekends, but that people will start arriving to warm up typically one-half hour prior to that. Therefore, the hours of 8:00 a.m. to 9:30 p.m. would be acceptable.

Mr. Schooly said that they would prefer if the condition just said the time that the lights need to go off. This is a public use for people in Belvedere.

Ms. Joseph noted that her concern was about the lighting and the soccer games themselves and not someone walking their dog.

Mr. Morris noted that it would be 8:00 a.m. to 9:30 p.m. for formal operation for SOCA events.

Ms. Porterfield questioned how the condition could be worded so that the facility can only be built to the size that the onsite parking will accommodate.

Ms. Frederick replied that condition had been revised to address that issue.

Mr. Cannon said that the condition would be that at the point of site plan approval the applicant would be required to show that sufficient on site parking was provided to handle the expected people without the requirement of parking off site.

Ms. Summer noted this was a conversation staff had with the applicant. There is a signal that is proposed at the intersection of Rio Road and Belvedere Boulevard, which is in county plans. Staff has started discussions about proportionate payment into the fund to pay for the construction of that signal. The exact dollar figures have not been calculated. But, that is a conversation that can be ironed out between this meeting and the Board of Supervisors hearing. The Commission should be aware of that and should consider putting a condition on the special use permit that would address it.

Mr. Edgerton agreed that should be a condition and addressed before it goes before the Board. But, he also wanted to add one condition that if the North Free State Road becomes a reality that the right-of-way would be available even if a private road has been built on it. From a planning perspective he did not want to close that option.

Mr. Kamptner noted that staff would look at that condition between now and the Board date.

Mr. Morris asked if it was the right time to put a condition on this for that traffic light in that it was just in the discussion phase at this particular time.

Mr. Cilimberg said that the issue is that the traffic light is off site and this would be a special use permit that would be contributing potentially to the need for that light. Getting the proportional share established would be part of the special use permit, which is the only place to get this project to pay. They could not do it at the site plan stage. It is also a light that is only going to be put in when the warrants are met. So they don't know when that light is going to be installed.

Mr. Morris asked the applicant to come forward and advise if they have any concerns about this. He asked if he was aware of the discussions that are going on and does he have any problems with that in working out a fair share.

Mr. Schooly replied that they don't have any problems with the discussion. Working out a fair share is something that they would like to discuss with the Board. There seems to be slight confusion about on site parking and on street parking. There is going to be on street parking that is adjacent to the site. There is a graphic that shows the parking in gray on the street for this project.

Mr. Cannon asked if the street is in the Belvedere Subdivision.

Ms. Frederick noted that the gray area is where they have 26 parking spaces in one area and then 17 parking spaces on either side of an access way, which is parallel parking. She felt that Mr. Schooly was saying that the confusion is when they say on street parking they are considering the 17 parallel parking spaces on both sides of the street. Staff has considered these spaces as on street and on site. The public street is proposed to end in the location so that they would consider those spaces as on site. With the conditions, as written, when they come in with their site plan application the size of their facility would be dictated by how many on site parking spaces they can provide to accommodate the use.

Mr. Cilimberg said the on site parking would include on street parallel parking.

Mr. Cannon said that if they make the condition refer to on site parking that is showing sufficient on site parking capacity to handle their expected use, which would be consistent with their understanding of what on site means.

Mr. Schooly agreed since there are minutes kept of the meeting.

Ms. Porterfield said that there would be no public street parking for this facility.

Mr. Schooly noted that they expect that those could become public streets. That is why he wanted to make sure that this is clear.

Ms. Porterfield said that they were saying that they can't use those streets to calculate the parking. They have to put the parking right here on site, on street. If they don't have enough they have to find some more spaces there or they have to downsize the facility.

Mr. Schooly said that they don't agree to that.

Ms. Frederick said that the applicant has agreed to put the parking spaces on this portion of the street. The confusion is that Mr. Schooly and Stonehaus anticipates in future time that this street will become a pubic street. She believed it was when the Northern Free State Connector Road is built and connects to this access into Belvedere that this would become a public street.

Mr. Schooly said that they have 50 acres of R-4 land that they may or may not rezone. If they do not rezone they would expect both of those streets to become public.

Mr. Cilimberg said that staff can work out the wording of the conditions before the Board meeting. He felt that they were trying to write conditions. He reiterated that the Commission was willing to accept what is shown on the plan.

Mr. Cannon agreed that was the intent of the information he had put forward.

Ms. Porterfield said that the size of the facility cannot depend upon on street parking in their residential areas.

Mr. Schooly asked if it was as shown on this plan does that preclude them from making those streets residential.

Ms. Porterfield asked that the parking not be put into the other sections.

Mr. Strucko said that personally he had no problem with using the residential streets for parking for this facility.

Mr. Schooly said that they could use the residential streets for parking in the R-4 district. They will not include any Neighborhood Model streets for parking.

Ms. Porterfield agreed that wording made it clear. She asked that it be clear to the Board.

Mr. Kamptner said that he needed to look at whether or not approving the soccer field generates the need for this applicant to do something with the 100' strip. But, if all they are doing is asking that they continue to illustrate it as they have noted on the site plan, then that is fine. They are not reserving anything and are not giving up any rights. They are merely depicting it. If that is all that is being asked, then that is fine. They are only illustrating it as it has been shown to this point.

Mr. Edgerton replied said that is fine.

Mr. Kamptner noted that the applicant made a comment early on in the presentation that it will take a couple years before they install this particular field. Since special use permits have a 24 month life he suggested that the applicant might want to request that the 24 month period be extended a little bit.

Mr. Morris invited the applicant to address the question.

Mr. Schooly requested that the special use permit be extended out five years since they have to raise the money to build the fields.

Mr. Morris said that he saw no problem with extending the special use permit for five years.

Motion on SP-2007-054:

Motion: Ms. Cannon moved, Mr. Strucko seconded, for approval of SP-2007-00054, SOCA-All Weather Synthetic Field-Belvedere with the following amendments to the staff recommended conditions:

1. The location of the synthetic field shall be in general accord with the conceptual plan entitled, "Belvedere – SOCA Special Use Permit: All Weather Synthetic Turf Field", and dated March 28, 2008.

2. Public streets which provide access to the synthetic field and to the parking area shall be constructed prior to ~~**public**~~ use of the field.

3. Public streets which provide on-street parking to accommodate parking requirements for the synthetic field shall be a minimum of 32' in width or other width as may be required by the County Engineer and approved as a variation by the Director of Planning.

4. Pedestrian access shall be provided from the end of Belvedere Boulevard to the synthetic field in accordance with the Albemarle County Design Manual standards for permanent paths.

5. In conjunction with its review and approval of a site plan or subdivision plat that pertains to or includes TMP 062A30-00-00-00100, the County may require that Belvedere Boulevard be extended to provide public street access to TMP 06200-00-00-002A0.

And the following to be covered by additional conditions (language to be finalized before the Board of Supervisors' meeting):

6. The applicant shall demonstrate as a condition of final site plan approval that the on-site parking provided for the use, including on-site on-street parking, is adequate for the proposed use.

7. The hours of use for organized activities and events are limited to the time between 8:00 a.m. and 9:30 p.m. **(The language to be worked out prior to Board of Supervisors meeting.)**

8. A pro-rata contribution to the traffic signal at Belvedere Boulevard and Rio Road, the primary access to Belvedere, to be worked out before the presentation to the Board of Supervisors.

9. The proposed route of Meadow Creek Parkway (Northern Free State Road) to be designated on the site plan consistent with the alignment that is shown in the documents.

10. If the use or structure is not commenced by May 14, 2013, this special use permit shall be deemed abandoned and the authority granted by this permit shall terminated.

Mr. Strucko asked for one clarification on the hours of operation for SOCA sponsored soccer events. He asked if other type events are being planned for this facility other than SOCA for the synthetic field. He suggested that the condition be amended to say SOCA sponsored events or broader kinds of events.

Mr. Kamptner noted that SOCA might not be here forever. He suggested that they use language like organized activities and events or something like that. He would like to work with the zoning administrator to come up with language so that it is not organization specific.

Mr. Cannon accepted the amendment to the motion, which was seconded by Mr. Strucko.

Mr. Loach said that one of the speakers' best defined this project as a large scaled sports facility. He did not agree with the applicant that this has anything to do with the neighborhood model. The proof of this is that they have been talking about 65 parking spaces plus. Unfortunately, this proposal fails to provide facilities at the neighborhood level. With that said he would support the project because he believed, as the gentleman said, that there is an epidemic of obesity and he hoped that this would help in fighting that epidemic. Finally, he would hope that the approval of this project would not be seen as an endorsement for future facilities of this size, but rather show that they really need to get back to providing facilities at the neighborhood model level.

The motion passed by a vote of 7:0.

Motion on Critical Slopes Waiver:

Ms. Joseph noted that the critical slope was a very small intrusion in this area.

Motion: Ms. Joseph moved, Mr. Cannon seconded, for approval of critical slope waiver for SP-2007-00054, SOCA-All Weather Synthetic Field-Belvedere.

The motion passed by a vote of 7:0.

Mr. Morris stated that the critical slope waiver was approved. SP-2007-00054, SOCA-All Weather Synthetic Field- Belvedere will go before the Board of Supervisors on May 14 with a recommendation for approval.

SP-2008-SOCA – Belvedere/Flood Plain Field

Ms. Echols presented a power-point presentation and explained the staff report for SP-2008-00058. (See staff report)

- This special use permit is for fill in the flood plain for the playing field. This activity is by right. Therefore, they don't have to get into the use.

- SOCA (Soccer Organization of Charlottesville Albemarle) has requested permission to do grading in the floodplain for cut and fill, to create 5 soccer fields and associated parking adjacent to the Rivanna River in the Belvedere development. The location of the proposed fields, parking, and access way to the fields is shown in the staff report. A proposed all-purpose building outside of the floodplain is also shown on the plan which is an accessory use to the soccer fields. The all-purpose building will have storage, restrooms, and a small concession area.

- The fields would be accessed by a drive from the end of Belvedere Lane. This drive would extend past the driveway for the Levenson property (Tax Map 62 Parcel 2A) and down the hill to the floodplain. The access way is not part of the special use permit application except where grading will take place in the floodplain for access to the parking lot. The majority of the access way is outside of the floodplain in an area reserved by the applicant for the Northern Free State

Connector Road, should the County decide at some point in the future that such a road is desired at that location.

- Staff talks about a condition relative to an old rock wall in the staff report. The Design Planner has recommended conditions for preservation of the wall. It relates to the kind of construction activity that might go on in the flood plain. A portion of the wall has been destroyed. She asked that the stones be put at the end of the fence or to repair the fence in other places.

Staff did the normal assessment for fill in the floodplain in looking at the increase of what the flood levels might be as a result of the cut and fill activity in the flood plain.

Staff has identified the following factors, which are favorable to this request:

- No impact to neighboring properties is expected as a result of this special use permit.
- No increase in flood levels will result from the construction of the access road.

- Staff has identified no factors which are unfavorable to this request for fill in the floodplain.

RECOMMENDED ACTION

Staff recommends approval of the request with the conditions listed in the staff report.

Mr. Morris asked if there were any questions.

Ms. Joseph asked Mr. Brooks what is happening since the plan was so small.

Mr. Brooks replied that there was nothing in the fields themselves. The fields should be a gradual flattening of the area that is already fairly flat. The particular places staff was looking at with the special use permit had to do with where the little building is along with some of the road way fill. It is very minor.

Ms. Joseph asked if they have talked about how they will maintain this area in terms of fertilizers. She asked if that was something the Commission should consider.

Mr. Brooks replied that it was something they could consider through the mitigation plans with the Water Protection Ordinance. They have not done that extensively so far.

Ms. Porterfield noted that she read in the staff report that these fields could be expected to flood every two years.

Mr. Brooks replied that was generally correct.

Ms. Porterfield asked if there had been any thought of putting in a gate, if it was in a flooding stage, to preclude anybody from driving down and getting into this area.

Mr. Brooks replied no, that there has not been any discussion about that. He assumed it is an idea that the applicant could consider.

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

Chris Schooly, representative for Stonehaus Development, said the gate that was one of the things that they had discussed with SOCA and Parks and Rec. The building and associated parking with that building would also function as a trail head for the trail system for public use. It would be their intention to gate off the road at that point so that people would not have free access to drive down and go onto the fields. Their goal would be to install a gate at that point so that people could drive down to the building and parking lot to use the trail head, but they could not go down and destroy the fields.

Ms. Porterfield asked if the gate would be opened when the fields were in use because there was parking below the gate.

Mr. Schooly replied yes, the gate would be open during the field use. SOCA would open the gate while the fields were in use. There are some issues about vandalism surrounding the gate issue.

Mr. Morris noted that this is a popular four wheel area.

Mr. Schooly noted that there are trails all over the property.

Ms. Joseph asked if they have considered adding a little extra pavement to the road so that people could get their bikes down there.

Mr. Schooly said that the issue is that it gets fairly steep down there on that side. They would rather encourage people because of the steepness to come around the loop on the east side. That is a better pedestrian and bike connection. They hope to open up the trail system and offer all types of trails.

Mr. Morris invited public comment.

Don Mattes, resident of Dunlora, said that one advantage to the neighborhood is to be able to bicycle to these fields.

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

Motion on SP-2007-058:

Motion: Ms. Porterfield moved, Mr. Strucko seconded, for approval of SP-2007-00058, SOCA-Belvedere/Flood Plain Field with the conditions as recommended by staff.

1. The fill in the floodplain shall be as shown generally on the plan entitled, "Belvedere SOCA Special Use Permit: Flood Plain Fields" prepared by McKee Carson and last dated March 25, 2008.
2. If required by the Federal Emergency Management Agency (FEMA), the applicant shall obtain a map revision, letter of revision, or letter of amendment. The County Engineer shall be copied on all correspondence related to changes to the floodplain.
3. Army Corp of Engineers, Virginia Department of Environmental Quality, and other necessary state and federal agency approvals must be obtained prior to issuance of grading permits.
4. Natural Resources Manager approval of a stream buffer mitigation plan prior to the issuance of a grading permit prior to placement of any fill in the floodplain, and County approval an erosion and sediment control plan prior to the issuance of a grading permit for placement of any fill in the floodplain.
5. The 700'-long section of dry-stone wall bounding the inner edge of the floodplain west and northwest of the proposed flood plain fields as identified in the *Phase I Archaeological Survey and Geoarchaeological Investigation in Two Portions of the Belvedere Development Property, Albemarle County, Virginia* dated February 6, 2008, shall be retained and preserved. The wall shall be clearly identified and labeled on the plan of development. The 50' at the northern end of the wall may be disturbed for the proposed road construction as currently illustrated on the plan. The stone that is disturbed by the road construction shall be used to repair remaining portions of the wall or to extend the wall at its south end. A plan detailing the proposed re-use of the stone shall be submitted for review and is subject to the approval of the Director of Planning prior to the commencement of road construction. Methods for protecting the remaining wall during construction and for preserving the remaining wall following construction shall be submitted for review and are subject to the approval of the Director of Planning prior to the commencement of road construction.
6. Additional archaeological testing, as recommended in the *Phase I Archaeological Survey and Geoarchaeological Investigation in Two Portions of the Belvedere Development Property,*

Albemarle County, Virginia dated February 6, 2008, shall be conducted to more fully assess the extent of cultural resources in Area B of the Belvedere project area. Based on the findings of this additional testing, additional archaeological studies and/or treatments may be required. The additional testing shall be conducted by a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. Additional studies required as a result of the findings of the testing shall be completed prior to disturbance of the site. Treatments required as a result of the findings of the testing shall be outlined in a treatment plan that is subject to approval of the Director of Planning.

The motion passed by a vote of 7:0.

Mr. Morris stated that SP-2007-00058, SOCA-Belvedere/Flood Plain Field will go before the Board of Supervisors on May 14 with a recommendation for approval.

Mr. Strucko left the meeting at 8:58 p.m.

The Planning Commission took a break at 8:58 p.m.

The meeting reconvened at 9:11 p.m.

Regular Items:

SUB-2008-00022 Bellair #5- Preliminary
The request is for preliminary plat approval to create 2 lots on 2.066 acres. The property is zoned R-1 Residential. The property, described as Tax Map 76C-02 Parcel 5 is located in the Samuel Miller Magisterial District on Deer Path Road [Route 809] at the intersection with Old Farm Road [Route 846]. The Comprehensive Plan designates this property as Neighborhood Density in Urban Area 6. (Megan Yaniglos)

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

- This is a request for preliminary plat approval to create 2 lots on 2.066 acres. The plat was called up for review by an adjacent property owner. The plat has been reviewed by the Site Review Committee and has been found to meet all of the requirements of section 14-206a of the Subdivision Ordinance. Staff recommends approval of this subdivision.
- Some questions have been brought up concerning the access for the adjacent property parcel 4. An access easement is proposed off of Deer Path Road that does not disturb critical slopes. This easement is allowable and will cross the proposed lot A, but will only serve lot 4. There have been some questions raised by the public concerning the drainfields for the proposed lots. A representative from the health department is here to answer any questions after the public has spoke regarding the item.

Mr. Morris asked if there were questions for staff.

Mr. Edgerton asked if this was the replacement driveway for the one put in on critical slopes that has to be taken out, and Ms. Yaniglos replied yes.

Mr. Edgerton asked why the proposed driveway went all the way around the property.

Ms. Yaniglos replied that in order to avoid critical slopes the driveway comes around and joins into the existing drive.

Mr. Fritz noted that gives access from parcel 4 to Deer Path Road. There is no way to get from Deer Path Road without going onto adjacent property without going on critical slopes.

Mr. Edgerton asked if there was any concern about using part of the development area or building envelope with that easement. There is 33,000 square feet of buildable area shown and this easement is going right across it.

Mr. Fritz replied no, that there is no prohibition because driveways and other such amenities can be located within the buildable area.

Mr. Edgerton questioned if that included driveways to other properties.

Mr. Fritz replied yes, that in some cases it included shared driveways.

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

Justin Shimp, representative for Mr. Bonner, noted that he did not have a presentation. He asked if the easement would be a condition of the plat approval since he was not sure how it would affect their subdivision.

Mr. Fritz replied that staff had received some questions about the easement and was just trying to show where it is located.

Mr. Shimp agreed with staff's assessment noting he did not have anything further to add.

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

Ms. Porterfield suggested making it a condition of the plat approval since they were having trouble with the next lot and did not want to close off access from Edgemont Road with the new proposal. The Commission needs to know that there is access to the other lot without a problem because there is a house on that lot.

Mr. Shimp replied that he would prefer to tackle that issue at another time. He did not think that this parcel should be burdened with the access to a separate parcel and a separate application that is reviewed under its own guidelines to provide a shared driveway for these two lots.

Ms. Porterfield noted that the Commission had a major problem with the other lot because the driveway was put in without authorization and has to be taken back out again. Now the applicant wants to close the access to that lot that it has had for years. She asked how they would get to that lot.

Mr. Shimp replied that it has been their intention to provide an easement through this lot in one manner or another around the critical slopes to serve the neighboring lot. He questioned how this could be attached to this preliminary plat approval.

Mr. Fritz noted that a condition could be placed on the plat approval that might address everybody's concern that read, "Provision of an easement to provide access to tax map 76C, block 2, parcel 4 and this easement would serve only tax map 76C, block 2, parcel 4."

Mr. Morris invited public comment.

Katherine Almy questioned where the drainfields would be located since this is the first time that she has seen this proposal.

Ms. Yaniglos noted that the drainfields are located in the rear of the property. The driveway does not go over the drainfields.

Ms. Almy said that specifically the neighbors have had concerns from the beginning about the drainfields and the seemingly conflicting regulations between the state and county in regards to residential sewage treatment systems. They have asked Mr. McDaniel of the Health Department to use the general provisions of the Code to revoke its approval of the drainfields. They do not believe that what is being

approved complies with the minimum requirements of regulation 15.2.-2157. They asked Mr. Fritz to have the County Attorney review this to see how it would affect the county ordinance. This Virginia Code, which was adopted in July, 2007 and is in effect until July 1, 2009, defines long conventional systems and references other regulations. But, it also requires counties that have a record of these systems to have notified their owners of their maintenance responsibilities and civil penalties. To try to interpret the county's ordinance has left them very confused. Their understanding of the county ordinance is that if a conventional drainfield were to be required to handle effluent and drain lines in what is absorbed in the soils and pressure distribution drift systems, and in addition other non-conventional systems are allowed, it would not hold up under current Code. By default this definition would fall into a non–conventional or non-traditional category. In fact, it is almost stating that anything goes. They do not believe that the County Code is consistent with the law that was signed last year. To add to the confusion they noticed that with every cover letter that comes with the accepted drainfield approvals from health department for approved drainfields says this subdivision approval is issued in reliance upon a certification that approved lots are suitable for traditional systems.

Ms. Almy continued that because of some unforeseen argument that may challenge this she would like to express some further concerns. Traditional septic systems have been around for over 100 years and if properly installed they will work for decades without maintenance except for a periodic pumping of the tank. Alternative or non-conventional systems are used normally in areas not served by public sewer systems or on soils that cannot support conventional septic systems. These original three lots can support a conventional septic system, but the county seems to be using non-conventional alternative systems from a long planning perspective. Is this technology going to drive the current development trend? Are these systems going to be regulated and what will their impact be? Most of this technology is less than ten years old. Is there enough history to show how these alternative systems work without major problems? The most common cause of failure is lack of maintenance. But, it would be mandatory after July 1, 2009. The annual maintenance of these systems cost between $150 and $400 a year. If someone has limited financial resources, the cost of maintenance could be a problem. She asked how these systems would affect neighboring properties and the environment. She asked if they should be required to post a bond. She asked who is maintaining the follow up records for these alternative systems and should it be used as a growth management tool. There should be a permitting process in place and maintenance requirements process and there are none.

Joe Loving, of 17 Deer Path Road, said that they are all back here once again considering another small piece of this larger development with no plats for the adjoining owners to review. This is the first time that they have seen this. There is no clear understanding of non-traditional septic systems that would be going into these tiny runway-style proposed lots with wetlands, critical slope problems and illegal driveways. The list of unsettled items goes on and on. They have been here before making this same song and dance. The neighbors who have to live with the decision forever have only three minutes to convey how seriously flawed each of these proposed subdivisions are. This becomes obviously once you look at the big picture. Mr. Bonner purchased a house on a 6 acre lot about a year ago. Rather than renovating and moving in his family, which he assured the seller that he was going to do, he immediately developed the property. He started by adjusting lot boundaries to create three lots of two acres each. Through separate proposals he divided each of these lots again. Each split adds more stress to the environment. There would have been plenty of room for legally placed single residence driveways, traditional septic systems, and avoidance of critical slopes and greenway that would muffle the sounds from the very busy freeway. These desirable outcomes become impossible if this property is totally subdivided as proposed. If they would consider each of these poorly planned proposals but carefully planned proposals as a whole it would be easy to see what is going on. The developer is playing the system here. He felt that by not reviewing this big ugly plan as a whole that they were getting the short end of the stick. He asked that the Planning Commission look at the complete packet. When the puzzle was put together it was no pretty picture.

Marie Mojie, of 39 Old Farm Road, said that she saw no reason to accommodate Mr. Bonner's request since he has not resolved the last order and has made no effort to remove that driveway. As of this afternoon the driveway still exists. She believed that the development on Deer Path needs to be addressed as one whole parcel as Mr. Loving said. She asked how the subdivision of parcel 5 could be approved when it directly affects another parcel's access. The request for maximum density created the

problem to access both the old Priest house and the two proposed lots on parcel 5. Therefore to access all three potential lots contained in parcels 4 and 5 should be considered prior to the subdivision of lot 5. They need to figure out how to get to all 3 lots if they want to do all 3 lots. She contended that this lot should not be subdivided. It is at maximum density and could fit driveways for all parcels. She requested that the Commission deny this request since parcel 5 is already saturated.

Frank Featherson, of 15 Deer Path for 30 years asked to read a letter he wrote to Ms. Yaniglos yesterday. As an abutting property owner he asked the Commission to deny Mr. Bonner's request.

Thomas White, of 12 Deer Path Road, noted that he did not have much to add to what his neighbors have said. He expressed his concern about the report that says that he has complied with the technical minimum necessary to get this application before the Commission. He viewed this type of behavior as lot poaching. He asked the Commission to deny the request. Down stream of the intermittent stream, which he felt was not an intermittent stream, is a major drainage of Observatory Mountain. There is a very large flow that comes down there, which has not occurred in recent years. That means that the development of these lots could cause serious drainage problems for those who live down stream. All of the lots that face on the south side of Deer Path are a part of that floodplain. In his view the Commission should take a caution approach to the approval of these kinds of applications. Those who live there have the right to rely on the previous subdivision that was there when they did this activity.

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

Ms. Joseph requested to ask Mr. Kamptner a question about the right-of-way access. When the Commission looked at the critical slope request last time she thought someone said that it was impossible to use the existing driveway to get to the house. She asked if they could consider that to be a valid easement even though it had not been platted because it has been used for so many years for the house. She noted that it was a separate parcel.

Mr. Kamptner replied that it would be a prescriptive easement, assuming that there is nothing of record, and that it would have to be established at this point through a conveyance to grant a right that way or through a court proceeding to establish a prescriptive easement, which requires certain findings to be established. In it is 20 years in Virginia. There are one or two other requirements as well. It may or may not be an enforceable easement by the dominant estate.

Ms. Joseph noted that issue is not before us, but she did not want to dissolve that easement if it still exists. She felt that is what is being asked when the Commission looks at that plat.

Mr. Edgerton said that it is before the Commission and for whatever reason that original driveway shows on the soils maps and subdivision plat before them. He asked if it is not to be used then why is it there. It does exist. There was some earth moving behind the house, but obviously they think they can get back with that same access as shown on the drawing.

Ms. Joseph noted that they were looking at two more stream crossings to access that and they have one existing road that does not cross the stream. She could not ignore that.

Mr. Edgerton said that the access to all three lots is already there.

Ms. Porterfield agreed with Ms. Joseph that they could get to these a different way. She was concerned with closing that easement, which is what they would do if they accepted this.

Mr. Edgerton asked staff why the buildable areas are required to be shown and what is the purpose.

Mr. Fritz replied that it would be the all inclusive area for the location of a house, the driveway, the parking areas, the drainfields and septic systems and areas not served by public water for the wells, accessory structures, gardens, etc. He noted that 30,000 square feet is required by ordinance.

Mr. Edgerton said that he had a great deal of trouble with the existing right-of-ways cutting into the 30,000 square foot area. There is a 25' road easement that goes up the old driveway to Edgemont Lane that cuts through and reduces the 30,015 square feet by 15 square feet.

Mr. Fritz said that has been brought up as an issue in other cases. He noted that the ordinance reads in determining the building site that it is exclusive of certain things and easements are not exclusive of the building site. For example, easements for sewer, water, access or power lines can be included in the 30,000 square foot building site. The ordinance says that a building site cannot include critical slopes, areas within stream buffers and areas that are under water in certain areas around the reservoir. All other areas can be included.

Mr. Edgerton asked what right the future owner of this lot would have to use the existing driveway that remains showing on this plat to Edgemont Lane.

Mr. Fritz replied none because condition 3, as noted in the staff report, would require its closure.

Mr. Edgerton asked that the health department representative address the concerns expressed about by Ms. Almy about the septic studies. He asked if Mr. Craun was present.

Ms. McCulley pointed out that Jeff McDaniel was present for the health department.

Mr. Edgerton asked if there is any relationship between William Craun and the person that did the soils study.

Jeff McDaniel replied that Michael Craun is William Craun's nephew, which was one reason why he was present tonight.

Mr. Edgerton asked if it was because of the perceived conflict, and Mr. McDaniel replied yes.

Mr. Edgerton noted that they were being asked to make decisions based on representations from William Craun that Michael Craun's study is appropriate. He noted that he had some problems with that as a potential conflict of interest.

Mr. McDaniel said that he took that into consideration and went and did some review on these lots.

Mr. Edgerton asked if he was willing to put his engineer seal on this.

Mr. McDaniel replied that he was not an engineer, but has worked with the health department for 30 years. He had their regional soil's consultant from the Richmond office, which was out of Virginia Tech and completely independent of the local health department come out with him yesterday to look at some holes on one of these lots. He said that he would be happy to answer questions.

Mr. Edgerton said that in the staff report on page 24, which is part of the soil's study, Michael Craun shows drainfields on the two proposed lots. He saw six boring locations on parcel Z, but no boring locations on 76C residue. He asked if borings were taken on both.

Mr. McDaniel replied yes, that there is another submittal on the next parcel. This is the first time that he has seen this staff report. He had with him information on the soils on the two sections or two halves of this lot. He noted yes, that there were soil studies made on both sections.

Mr. Edgerton asked that he explain some of the concerns raised by Ms. Almy that the soils study are requiring some type of alternative system or non traditional septic system.

Mr. McDaniel said that these soils are showing that it is shallow to either rock or the water table. In this area there is a question about the water table. The design criterion includes a pre-treatment before dispersal into a drainfield. What they understand and what they have been doing with similar things

during past seven to nine years is following those procedures in Albemarle County. They have been approving the same type of systems in Albemarle County over the past seven years or longer.

Mr. Edgerton asked if there have been any problem with those systems.

Mr. McDaniel replied no that there were none that he was aware of.

Mr. Edgerton asked if he was not aware of any of the issues stated in Ms. Almy's report about the annual maintenance and the additional costs involved.

Mr. McDaniel replied that he was aware that there are concerns if you look at completely alternative septic systems going in that it would be a good idea to look at monitoring and maintenance agreements. A house bill was passed this last year that is going to address that. There have to be regulations in place by 2009. They are working on that right now. The bill will require operation and maintenance performance information for alternative systems. The purpose is that it will continue to function well into the future.

Mr. Edgerton asked if by the General Assembly passing that bill that it indicated that there have been problems.

Mr. McDaniel noted that bill handles traditional systems as well. There is a risk every time a drainfield is put into the ground.

Mr. Edgerton said that there are requirements of the health department on how close a well can be to a septic site. He asked if there were regulations on how close a house can be to a septic site.

Mr. McDaniel replied yes that that for footings and basements they would have some setbacks. It would require the septic site to be 10' from the footings and 20' from the basement. It would generally require 100' to the well from the septic site.

Mr. Edgerton noted that he had a problem a number of years ago on his property where septic sites were proposed along his property line where the 100' requirement for a well meant basically the development on the adjoining property basically took away 100' of his property that could not be used for a well. He asked if there is a current regulation on how close it can be to a property line.

Mr. McDaniel replied that is true when it comes to farm land. This is all served by public water and there are not any wells infringing on this.

Mr. Edgerton said that the adjoining land is rural and that does not mean they might prefer to have a well. He noted that the subject lot is served by public water, but he questioned if the adjoining lot or tax map 76C -10E2 was served by public water. He asked if it did.

Mr. McDaniel replied that he did not know.

Ms. Yaniglos said that she did not know.

Mr. McDaniel noted that the setbacks being proposed for the subdivision sites are adequate according to current standards. He said that it would be a potential problem if the adjoining land was agricultural or farm land.

Mr. Loach asked if the health department has done any studies or evaluations on these non-traditional septic systems since they have been using these systems for the last seven to nine years.

Mr. McDaniel said that the State Health Department and their district have. They have looked into some in Louisa County. They did a small study and the results of that showed that they could not find any evidence of failures or problems. Even some of the systems that had gone beyond the factory

maintenance monitoring agreements some of them had kept those in place after that time. Others did not. That was not a formal study, but something that they did in their office.

Mr. Loach asked if the system requires pre-filtering.

Mr. McDaniel said that what is being proposed on these lots is a treatment system that cleans the effluent up to limit as opposed to what comes out of a septic tank. Therefore, it can be put into the ground either closer to the water table or maybe in a little smaller footprint area.

Ms. McCulley added that in Albemarle County they do not allow experimental or provisional systems. Since 1989, since she has been zoning administrator, they have allowed only systems with general Health Department approval. Before it can obtain the health department's general approval status it has to have been through a study and testing period.

Ms. Joseph noted that one of the requirements of the Subdivision Ordinance is to have all of the easements shown on the preliminary subdivision plat. She thought that an easement exists there and was not comfortable with this.

Mr. Kamptner asked if all three parcels are under the same ownership.

Ms. Yaniglos replied no, that parcel one was owned by Mr. Harding.

Mr. Edgerton noted that parcel has already been subdivided into two.

Mr. Fritz noted that during the review of the critical slope waiver for parcel 4 the applicant's attorney provided information that it was his conclusion that there was no easement on parcel 5. It was staff's recommendation to the Commission that the property was under the applicant's control and even though no easement existed he had an opportunity to address the situation. That is what he is now attempting to do. The applicant is going to come back and say there is not an easement based on their understanding. He pointed out that he did not know.

Mr. Morris asked if this is an item that needs to be cleared up before they take action.

Ms. McCulley said that perhaps they should discuss to what extent this affects what is being proposed. If there is a recorded easement it is required to be shown on any final plat. It is required in the ordinance and State Code. If it is material to your decision here and they need further information she suggested that they ask the applicant if they have it.

Mr. Edgerton asked if the easement they saw for the first time this evening accessing the other lot would have to be shown as well.

Mr. Fritz said that if it were an easement that it would have to be shown.

Mr. Edgerton said that it has been represented that is the way they will access the other lot without getting into critical slopes. When the applicant was asked about it he said it should not be part of this review.

Mr. Morris asked if the applicant would like to address this.

Mr. Shimp said that originally he looked at this, knowing the issue with the neighboring lot and the critical slope disturbance; it was his intention to share a driveway between the new lot and the existing house. He would use the existing driveway off Edgemont lane to the parcel to the west. The problem is that would require a waiver in accessing two driveways to one subdivision. If the Commission is willing to grant that they would be willing to provide one driveway for the existing house around the critical slopes to access the parcel to the east and maintain the existing driveway to the parcel on the west side.
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Mr. Morris asked if there are existing easements on this property.

Mr. Shimp replied no that they have just completed boundary survey and research on this piece for the final and did not find anything.

Mr. Edgerton asked if it was with the exception of the 25' road easement along the far western corner that parallels Edgemont Lane.

Mr. Shimp replied that is an easement, but not as far as a driveway easement.

Mr. Edgerton asked if Edgemont Lane is a state maintained road.

Mr. Shimp replied that it is not.

Mr. Edgerton asked who that easement is to.

Mr. Shimp said that he understands that this parcel has access to that easement. It is for access to the parcel behind on tax map 76, parcel 10E2.

Mr. Fritz noted regarding a prior question that tax map 76, parcel 10E2 has no dwelling or structures and is in the jurisdictional area for both public water and sewer.

Mr. McDaniel asked to clarify that there are regulations for where wells can be sited, but none for where drainfields can be sited other than 5' from the property line. He wanted to clear that up.

Ms. Joseph said that even though the easement was never recorded that driveway that may be a prescriptive easement may be there since it has been used for so many years. She could not support the request since this plat shows that removed.

Mr. Morris invited Ms. Featherston to address the Commission about the easement.

Jane Featherston, of 15 Deer Path, said that she could see the driveway that Mr. Bonner put in out of her window. The driveway is dangerous because the slopes are so severe. She did not know why Mr. Bonner had to do that because the Priest property had its own driveway. This Priest property has existed for a long time.

Mr. Kamptner requested to ask several questions. He asked if at any point Mr. Bonner owned all three of the proposed parcels on which the driveway exists.

Mr. Lane Bonner said that he still owns all three parcels.

Mr. Kamptner noted that he was not an expert on prescriptive easement. But, it may be possible that if anybody ever had a claim prescriptive to a prescriptive easement over this property when the title was held by Mr. Bonner any claim would be extinguished. That is something they would have to research. If he still owns the property and owns the house to which any claim could be asserted over this driveway, if any such claim exists it could be cleared up by recording an instrument tomorrow. He encouraged them not to hang their hat on that issue because Mr. Bonner owns all of these lands right now. Whatever it is may or may not exist. The Subdivision Ordinance does not necessarily lead to good planning but establishes minimum standards for development.

Mr. Morris asked that the Commission concentrate on the preliminary plat.

Ms. Porterfield asked if Mr. Bonner was still using the driveway that was put in without authorization.

Mr. Bonner replied that they have removed the dirt from the critical slopes as requested and are not using that driveway to access the house right now. They are using the old driveway until they build a new driveway.

Ms. Porterfield was concerned that they are going to close off the access to the house and wanted to avoid the same situation occurring again. She wanted something that shows exactly how they would take care of that other lot.

Mr. Bonner noted that this driveway has been looked at by engineering and Ron Higgins and they have been given permission to put the driveway in as shown in pink on the drawings.

Ms. Porterfield suggested that the pink drive should go on the plat.

Mr. Fritz said that approximate alignment can be done if it avoids the critical slopes.

Mr. Edgerton said that he heard staff say loud and clear that all easements have to be shown. If that needs to be part of this plat, then it needs to be shown with something more than a magic marker. He would like some assurance that it really has been looked at a little bit more than the critical slopes if there are other issues. With that in mind he was going to recommend denial. Mr. McDaniel has given us an interpretation how it is against the regulations to have a septic site any closer than 5' to the property line. It is hard to determine that from the free hand drawing that shows the potential septic site. He asked that the Commission be provided with some clear engineering on that. He would very much like to have both Mr. Crauns here to explain exactly what sort of engineering they have done on this.

Motion: Mr. Edgerton moved, Ms. Joseph seconded, for denial of SUB-2008-00022, Bellair #5 Preliminary as the plat does not comply with the ordinance. It needs to show all of the easements and clear engineering needs to be provided for the potential septic site.

The motion carried by a vote of 6:0. (Mr. Strucko was absent.)

Mr. Kamptner noted for the record that the denial was because the preliminary plat does not meet the requirements of Section 14-302.a.4 showing the location and dimensions of all private easements.

Ms. Joseph noted that it also included the septic location.

Mr. Morris stated that SUB-2008-00022 Bellair #5 Preliminary was denied.

Work Sessions

Personal Wireless Service Facilities
Presentation and discussion of Albemarle County's Personal Wireless Facilities Policy. (Bill Fritz)

Mr. Fritz presented a power-point presentation and staff report on Albemarle County's Personal Wireless Facilities Policy, which is a component of the Comprehensive Plan. It was developed in 2000 after extensive input from the public, the wireless industry, Planning Commission and Board of Supervisors. After extensive work sessions and hearings those changes were made to the zoning ordinance in 2001. All wireless facilities are reviewed in accord with the 1996 Telecommunications Act. They are also reviewed for compliance with the zoning ordinance, in particular Section 5.1.40 that contains very specific regulations for wireless facilities. That is the section that was added to the ordinance to reflect the recommendations of the Wireless Policy.

The 1996 Telecommunications Act reserves the localities' authority to regulate the placement and construction of wireless facilities with some limitations. One, being that it shall not unreasonably discriminate among providers of functionally equivalent services. The county serves all service providers equally. They don't state a preference for any particular service, type, frequency, analog, digital, PCS, cellular, etc. or for a particular level of service that might be proposed. The act also says that they shall not prohibit or have the effect of prohibiting the provision of personal wireless services. The denial of a single facility does not represent a prohibition of service necessarily. The county's ordinances and policies are intended to permit service providers to locate and design facilities in a manner to provide service without adversely impacting the community. Whenever the Planning Commission or Board are interested in a denial staff asks them to carefully construct some information to address the concerns.

The county needs to act on it within a reasonable time period after the application is filed. That is done by reviewing them by either the site plan or subdivision schedule that keeps them on a regular timeline.

Denials have to be in writing and supported by substantial evidence contained in a written record. County staff prepares the staff reports for all applications that require review. In the event of a recommendation for denial staff will ask the Planning Commission or the Board to clearly articulate the reasons for denial and then staff prepares a written decision for later approval by the Planning Commission or Board. That is also to try to address that prohibition of service issue. They are not allowed to review based on environmental effects of radio frequency emissions to the extent that they are regulated by the FCC. They do not have the expertise to evaluate radio frequency emissions; and, therefore they do not. This deals with the process in the event that there is a denial with court proceedings. Staff hopes not to have to use this.

Wireless policy has three main components to it being: 1. location, 2. siting and 3. design (general areas, the specific location and the details of construction). There are avoidance areas, which are areas where visible wireless facilities should not be located. Avoidance areas are not prohibited areas. They have no such things as prohibited areas because staff believes that there is the possibility that a wireless facility could be located anywhere if is properly sited and designed. They also have opportunity sites, which are areas where the placement of personal wireless service facilities is encouraged by the county. Those include man-made places, rooftops, transmission towers, existing towers, church steeples, water tanks, etc. Another opportunity site is actually wooded areas, which represents some unique issues. They can be avoidance areas because they want to preserve them. They may be shown in the open space plan, but they could also be opportunity sites because they provide screening facilities. This is noted in the Wireless Policy.

The Wireless Policy really beats the drum of visibility. That is what the review is all about. By siting it can be put in such a way that it is not visible by avoiding open spaces. A poorly sited facility is one that has significant visual impact. They look at the mitigation that can be done. They talk about visibility and not aesthetics because visibility can be measured and aesthetics cannot. The design is the method by which the wireless facility is ultimately constructed. In measuring visibility impacts staff will frequently use the terms obtrusive, intrusive and incompatible. Definitions of these terms are included in the Wireless Policy.

In the history of reviewing these types of applications there have been a number of questions the Planning Commission has raised. One is the distance from the referenced tree. Staff currently measures it 25' from the drip line. There is a question of whether or not it should be done from the tree trunk, the drip line or the crown or tallest part of the tree. There is a concern about tree damage and where the facility may be constructed with its relationship with the tree. The farther it is from the reference tree the less potential there is for damage to that tree. The closer it is to that tree the greater the screening potential of the tree and also the greater potential of damage to that tree.

In summary, there is a suggestion that the facility should be located at least 25' from the trunk of the tree, but always outside of the drip line. There has been some comment about the relationship and whether it should be 5' or 10' within the drip line. Staff would like for the Commission to discuss and provide a little more guidance on that.

Another question that has arisen is amendments to older special use permits. There are a lot of sites that were approved before the Wireless Facility was adopted and the ordinance was amended. They were done by special use permit. They have very specific conditions as to the location and the design in whether it was a wood or metal pole. The wireless industry is finding that the wood poles due to age, pests and other problems they need to be replaced. If those had been done as Tier II facilities, under the current ordinance they could simply replace that facility. It would be an administrative building permit to switch a rotting pole out with a new pole. But, because these were approved as special use permits, even if they want to put the same thing back up as was approved by the prior special use permit they can't. That is because of the change in the ordinance. Staff would like the Planning Commission to consider whether or not they would support an amendment to allow previously approved poles to be administratively replaced with poles that met the prior approvals.

Another issue has been the notice for balloon tests. They conduct balloon tests for all these sites. There is a question about notification and how long the balloons should fly. Staff would appreciate the Commission providing some additional information on how to improve the balloon test. Specifically, they would like to know if the Commission would like to be notified so they can attend a balloon test and whether or not notice should be provided to a wider adjacent property owners or area. Staff does have some concerns that a similar argument could be made to other types of applications that have a wide spread or off site impact and whether the question of notification should be looked at more comprehensively than simply a balloon test. Because all of their public notices follow legal requirements defining who qualifies as an adjacent owner may be more difficult to administer, staff would like to have more information on that. Also, how far should they go with this notification? After this was prepared there were also some additional comments about the length of time that the balloon test occurs. That brought up some other questions he would like the Commission to consider while discussion this. Frequently they have to reschedule the balloon tests. They plan it for a certain day and the weather conditions change. In windy conditions they simply cannot fly the balloon. If they send out a notice stating a certain date and the weather turns bad how do they re-notify that balloon test is not going to occur and how do they reschedule it. Another option brought up is how long the balloon should be floated – 12 hours a day or two weeks, etc. The balloon tests are conducted in the morning when the wind calm. Lengthy balloon tests would be difficult.

Because these facilities are in hilly areas they Impact critical slopes. They are looking at the specific application before us as opposed to looking at all the other options. Again, the Wireless Policy is about visibility and not do they need the site or do they need it there. It is whether or not that particular location is visible and to what degree is it visible and how have they mitigated it through the design.

Staff would like to know if there should be different criteria applied to the review of critical slopes disturbance related to personal wireless service facilities to avoid potential conflict with the policy and the ordinance as relates to critical slopes.

Mr. Morris invited public comment.

Steve Blaine, representing Verizon Wireless, submitted that at this hour it is not a good time to engage in what they had hoped to be a work session. They appreciate staff's approach to this. Hopefully, there can be a follow up opportunity to have a more in depth discussion. He asked to underscore something in Mr. Fritz's presentation. He introduced Stephen Waller who is their zoning and site acquisition consultant. Stephen has experience with having been on this county staff when the Wireless Policy was adopted. He was one of the authors of the wireless ordinance. Therefore, they felt that he was critical to their program and project. He presented a power-point presentation that showed over 80 sites that they have identified that will be necessary. The design is based upon this ordinance. He asked to underscore the staff report the need for predictability and certainty. Most of these are designed Tier II treetop type of facilities. They start with a design that starts with co-locations, opportunity sites and then they try to find fill in locations, which are raw land sites or new applications. It is very important that they talk about these challenges at a future night. He turned it over to Stephen Waller who can illustrate some of the challenges that the industry faces in this.

Stephen Waller said that as a former member of county staff he worked on the Wireless Policy. The industry faces challenges in looking for these sites. The most difficult part in trying to build a reliable network in any jurisdiction is the process of finding willing land lords who have land or an existing structure that can actually accommodate a site that meets the local requirements and the radio frequency engineer's coverage requirements. At this point in representing the wireless carrier they are not really in the business of building towers, but actually in the business of building antenna sites upon which the service they provide relies on. When looking at raw land sites the things they are looking for a site that meets the setback requirements and also offers what the ordinance terms as adequate area for screening. They have come to find that the only way to find those sites is to look at past approved sites. That is one of the things that they look at in judging whether a site can actually go in and meet the requirements to limit visual impact. They struggle with the term visibility because the opposite is invisibility. There is no way to build a site that is going to be totally invisible and work from a radio

frequency standpoint unless it is within an architectural feature. They also try to do co-locations under the Tier I section. They try to find a site that is structurally capable to handle the added weight of the antennas themselves and also the coaxial cable. If they can't find a site that can handle the weight of the antennas, then they are out of luck as well.

Mr. Waller noted that many of the older tall buildings that don't meet current height limitations also don't have rooftops that are structurally sound enough to carry the weight of the antennas, cables and the equipment building. That is another one of their challenges where a lot of the taller buildings that they would like to use are pretty much off limits. A lot of the newer buildings are under the current height restriction of 40' to 65' in height, which was another challenge in building a reliable network. They think the policy and the ordinance are definitely items that can work if they can go back into that area that Mr. Fritz and Mr. Blaine touched on as far as having some amount of predictability. They look at the differences in the terrain and in the availability of existing structures and things of that nature, which are things that make us appreciate Albemarle County so much. But, they are also some of the things that create such a large challenge for the industry in finding sites that will actually work to build those networks.

Mr. Morris invited public input.

Mr. Kirby Farrell, resident of Albemarle County, said that he was before the Commission several months ago about a cell tower that was build on Wild Turkey Road and all of the problems with that. He made the following recommendations, which was sent via email:

- **Towers must be within 5 feet of the drip line of the reference tree**. The ordinance and policy currently provide that the monopole be built within 25 feet of the reference tree, without specifying what part of the reference tree. It was recently reinterpreted to mean within 25 feet of the drip line, rather than the trunk, which places the tower far from the reference tree and greatly increases its visibility and likelihood of skylining. Five feet of the drip line would protect the roots yet meet the need to decrease visibility of the monopole.
- **Towers on ridgelines must be no taller than the reference tree.** The policy and ordinance provide that monopoles be up to 7 feet without special permission, and up to 10 feet higher than the reference tree with Planning Commission approval. Although the policy discourages towers on ridgelines that permit skylining, this is not well-enforced in the planning process. As cell companies prefer ridges of all types to increase coverage, we suggest that they be permitted provided such monopoles are no taller than the reference tree. The companies can trade a better location for reduced height to better respect the skylining issue.
- **The 7-10 foot rule must only apply if there is a background other than the sky**.
- **Balloon tests must be conducted for at least 12 hours**, to include a time when residents with visibility can be home to see it. Otherwise, notice of the time of the balloon test must be given to all neighbors and neighborhood associations within 2 miles of the site so they have an opportunity to view it.
- **Notice to the neighbors should be standard and specify procedures for objecting to the proposed tower or its location or proposed height**.
- **Survey methods must be specified to get some uniformity and accuracy**. The tree height must be verified by the balloon test.

Martha Reddinger, a neighbor of Mr. Farrell, asked to make two recommendations. In notification of the tower she was not notified because her property did not touch the property where the tower was going. She was not sure if her property was one or two miles away due to the terrain. She suggested that they notify everybody in the Samuel Miller District that a pole would be going up and that they could see a balloon floating at a certain date. Since balloons pop she suggested that they use a recyclable better quality balloon, which might be useful. She was grateful that the Wild Turkey site was being rectified.

Valerie Long asked to provide some additional input.

- She has been working with the wireless industry since 1999 or 2000. She has worked on a number of tree top facilities in Albemarle County. At her last count it was about 35. She had the pleasure with working with Mr. Waller over the years as they worked with the Wireless Policy when it was being drafted. She worked on some of the early sites. They are really back to a lot

of the same issues they have been struggling with for many years. She echoed some of the comments that Mr. Blaine and Mr. Waller made particularly about the predictability of the ordinance and the importance of that. She represents Intelos Wireless, Cingular Wireless and AT&T. They are spending hundreds of thousands of dollars to develop a network and to expand their coverage in our community. It is all based on the ordinance as it is written now. It does not mean that they would not be willing to work and improve the system, but they are all working to comply with the Wireless Ordinance that is in place. They have a very strong track record of working with the county and following the policies even from long before they were in effect. Intelos was the first carrier in our community to actual implement the tree top style of design.

- She asked to address a couple of the questions that were in the staff report. Specifically, the concept of allowing poles to be replaced administratively. Intelos, because they did start building wood poles as early as 1998 and 1999, has a number of poles that are literally being eaten away by termites from the ground up and by woodpeckers from the top down. They have several facilities that are literally about to fall over they are in such need of repair. The administrative challenge of trying to replace those in an expeditious fashion has been a challenge. They are working with staff to try to address that. They would like to replace some of those wood poles with steel poles. They appreciate that in the last few years the staff has been supportive of allowing steel poles instead of wood.
- The issues with the balloon tests always have been a challenge. She has worked hard to try to expand the scope of neighbor notification. They send letters to what they think is a reasonable scope of neighbors. They try to identify or predict as best they can those neighbors who they think are going to be able to see the facility. They try to overreach a little bit and notify as many neighbors as possible. They want to hear from those neighbors early on. She appreciates some of the challenges the staff report raised about where do you draw the line and how do you identify what is an appropriate scope. She felt that they can have the applicants work on that. With regard to rain dates and things like that, Mr. Fritz was exactly correct, the challenges of trying to fly the balloon and find a date that works for the staff and the applicant with the weather can be very challenging. Flying balloons for more than a few hours really does not work very well unless there is perfect weather. They have often worked to try to have back up days that they establish early on. The mornings are the best time of day for balloon tests due to the wind, but it is very challenging. They would welcome the opportunity to have a more give and take discussion at a future time. They want to work with the county and neighbors to continue this policy and find solutions to some of these issues.

Mr. Farrell pointed out that one of the challenges for county staff is that they cannot look at all perspectives during the balloon test. The longer the balloon test can go the more the county can rely on the citizens and the neighbors to look at it versus putting all of the pressure on the staff to try to take pictures from the many angles.

David Boothe, resident of Greenwood, said that at you home your telephone service is regulated, which basically means that they all get about the same service at the same price. Internet and broad band is not regulated by the FCC. That means that your telephone service provider can or cannot give broad band service based on their preference. In Greenwood the telephone provider is Verizon and they are asking them to pay $240,000 to get the service. It is essentially a switch in an existing building. Once the FCC decided not to regulate the broad band service it threw all states and communities into turmoil because they are relying on their service provider to either provide the service or not. The state of Virginia has a governor's council on broad band, which is a round table going on right now, to deal with how to get that data service out to the communities. He asked the Commission to have Albemarle County submit their telecommunications expert to Richmond to work with the governor's council on broad band to help understand the total package of both the cellar and land line options that are out there. He thought that they would find that there are communities that can get the land line service if the providers push the service out to them. The information given from Karen Jackson who works with the Office of Telework and Broad Band in the Commonwealth is the contact for that service. He asked that the Commission help get broad band service into Greenwood.

Mr. Morris noted that the discussions had been very helpful. He asked the Commissioners what they want to do.

Due to the late hour, the Planning Commission requested staff to set up another work session in another meeting room at an earlier hour to finish the discussion on the questions and issues presented.

Ms. Joseph asked regarding the question about the distance from the reference tree that staff provide an estimate of how many are out there. Regarding the notice to neighbors she asked how far away one can see 7' above the tree. She suggested that staff develop a method about notification of balloon tests on line and tell the public to look on line for the schedule. The critical slopes item is something that the Commission needs to talk about more in depth.

Mr. Loach asked what mechanisms does staff use to follow up to see if the tower got put in at the right height or that nothing has changed in the area that would cause them to re-evaluate the situation.

Ms. Joseph asked that Mr. Kamptner give a synopsis as an overview.

Mr. Morris said that asking for another meeting would be extremely helpful to work out these issues.

In summary, the Planning Commission held a work session to review the Albemarle County Personal Wireless Facilities Policy. Presentations on the history of the policy and its application were given by staff (Bill Fritz) and several members of the public (Steve Blaine and Stephen Waller). Staff presented several questions and asked for the Commission's input. The Commission received public comment and provided comments and suggestions. Due to the late hour, the Planning Commission requested staff to set up another work session in another meeting room at an earlier hour to finish the discussion on the questions and issues presented.

Old Business:

There being no old business, the meeting moved to the next item.

New Business:

There being no new business, the meeting moved to the next item.

Adjournment:

With no further items, the meeting adjourned at 10:56 p.m. to the Tuesday, April 29, 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)