Albemarle County Planning Commission
June 3, 2008

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, June 3, 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, Eric Strucko, Thomas Loach, Jon Cannon, Vice Chairman; Linda Porterfield and Calvin Morris, Chairman. Absent was Bill Edgerton. Julia Monteith, AICP, non-voting representative for the University of Virginia was absent.

Other officials present were John Shepherd, Manager of Zoning Administration; Megan Yaniglos, Senior Planner; Bill Fritz, Chief of Current Development and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Committee Reports:

Mr. Morris invited committee reports.

- Mr. Strucko announced that the School's Long Range Planning Committee will meet Thursday afternoon. This group of representatives was appointed by the Board of Supervisors to discuss the school's capital budget plans and needs.
- Mr. Morris reported the Eastern Connector Committee met last Friday. The committee will recommend the three possible alignments. Where alignment #3 will go is everybody's guess, but is probably going to be close to the parkway. One of the things the committee encouraged the consultants to do is to emphasis the fact that the Eastern Connector is a connector and not a by-pass. The primary purpose is to relieve congestion going across Free Bridge. That is why there are three options. The committee is looking at all three alignments. The recommendation will put the options in order by priority, but they plan to do them all. There is not one solution alone based upon the figures they have that will solve the problem.

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

Consent Agenda:

Approval of Minutes – May 6, 2008

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

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

The motion passed by a vote of 6:0. (Mr. Edgerton was absent.)

Regular Items:

SDP-2006-00061 Northtown Center
The request is for preliminary site plan approval to allow the construction of three buildings totaling 83,990 gross square foot for retail development. This development is Phase 1 of the Northtown Center project. The property is described as Tax Map 45, Parcels 110, 110A, 111, 111A and 111B. The subject parcel contains approximately 15.9 acres, zoned H-C (Highway Commercial) and EC (Entrance Corridor), and AIA (Airport Overlay). This site is located on the east side of Seminole Trail (US Route 29 N.) immediately opposite Lowes and Kegler's. A Special Use Permit is also under review for this project, SP

2004-24 (Drive-in for bank). This site is located in the Rio Magisterial District and is designated as Community Service in Neighborhood 2. (Bill Fritz)

Mr. Morris noted that SDP-2006-00051, Northtown Center, has been deferred by the applicant and would not be heard tonight. It has been rescheduled to June 17 as requested by the applicant.

Public Hearing Items:

SP-2008-00012 Embarq-Verizon Wireless- Tier III PWSF (Sign # 9 & 14)
PROPOSED: Co-location of a personal wireless service facility on an existing tower
ZONING CATEGORY/GENERAL USAGE: CO, Commercial Office; Industrial
SECTION: 23.2.2 [15] Special Use Permit, which allows for Tier III personal wireless service facilities in the CO Zoning District.
COMPREHENSIVE PLAN LAND USE: Office Service uses in Urban Area 2
LOCATION: Tax Map Parcel 61-129C: south side of Rio Road East [State Route 631], approximately 1/8 mile east of the intersection with Route 29 North, and near Fashion Square Mall.
MAGISTERIAL DISTRICT: Rio
(Megan Yaniglos)

SP-2008-00012 Embarq-Verizon Wireless- Tier III PWSF (Sign # 9 & 14)

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

- This proposal is for the co-location of a personal wireless service facility on an existing tower. The applicant is requesting the installation of an array of antennas on an existing 250' tower that will not be flushed mounted. Therefore, it requires a Tier III special use permit. The site is located off of Rio Road adjacent to the Fashion Square Mall. The proposal consists of a full sector array containing six panel antennas with the capability of expanding up to 12 total antennas. The supporting ground equipment will be contained within a prefabricated equipment shelter at the base of the tower. The antenna will be placed near the top of the tower at 240'. There are currently approximately 4 array antennas, whip and flush mounted antennas and micro-wave dishes that are owned by other providers on the tower.
- The applicant is proposing an additional array antenna on the tower, which will require an amendment to the conditions of the previously approved special use permit that required that any additional antennas be flush mounted. The County's Personal Wireless Service Facilities Policy recommends against co-locations as well as array antennas and recommends the use of flush mounted antennas. Although the existing monopole does have an already negative visual impact by adding an additional array at the top of the monopole, staff's opinion is that it results in additional visual impact.
- The applicant is also requesting modification of Section 5.1.40.c.4 and 5.1.40.c.5, which states that a tree conservation plan be submitted prior to the issuance of a building permit and that the installation, operation and maintenance be in accordance with the tree conservation plan. There are no existing trees in the immediate vicinity of the facility that will be impacted.
- The Architectural Review Board voted to allow staff to review and approve the application if an addition of the screening shrubbery currently proposed that the Entrance Corridor be provided street trees and some screening of the dumpster.
- Staff has found that that the proposal is not consistent with the County's Personal Wireless Service Facilities Policy, and therefore recommends denial. If the Commission approves the personal wireless facility, the proposal will require the approval of modifications of Sections 5.1.40.c.4 and 5.1.40c.5 as well as the approval of the deletion of the provisions 3c from the previous approved special use permit that only flush mounted antennas be permitted. Also, the applicant contacted staff today about changing the language for condition 5. Those changes have been made. Instead of the "permittee" they requested that if this application was approved that it be changed to "current owner and any subsequent owners of the tower."

Mr. Cannon noted that he received a letter from the applicant that responds to some of the findings and the staff report. He was trying to reconcile the staff findings with the contentions of the applicant. Staff makes a finding that there will be additional visual impact from another array on the existing monopole. At the same time staff says that there would not be a detriment to the adjacent property or a lack of harmony with the uses permitted by right in the district. He was trying to put those two things together and understand the significance, if any, of the visual impact that staff detects. There is additional visual impact because there is something that is going to be there that is not there now. He asked if that was a significant or a material visual additional impact in staff's view.

Ms. Yaniglos said that the way the analysis is done is that staff looks at Section 31 in the Wireless Policy. In the Wireless Policy review staff found that it is going to have an adverse impact since an array was discouraged as being highly visible. Staff did not think that it is going to be a significant detriment to the adjacent property because there are already existing arrays on that tower.

Mr. Cannon said that there is visual impact, which staff describes as an adverse impact but not detrimental to the adjacent properties. He asked if it was a significant impact.

Mr. Fritz noted that there are two things that are going on here. Section 31.2.4.1 speaks to whether or not the array is a substantial detriment to adjacent properties. Is it somehow going to infringe upon the ability to use an adjacent property? Staff determined that it would not. Is it going to change the character of the area? Staff found that it would to an extent, but not significantly because there is already a facility there. But, one of the other criteria is if it is consistent with the supplemental regulations and the Personal Wireless Policy. That is where it comes in to say that visibility is the key to the Wireless Policy and while it may not have a substantial detrimental impact it is not going to infringe upon the ability of the adjacent property to be used. It does have a visibility impact, which is discouraged in the Comprehensive Plan. Since it is not being mitigated, staff cannot find that it is consistent with the Wireless Policy, the Comprehensive Plan and Section 5 of the supplemental regulations. Therefore, staff is finding that it has additional adverse impacts as stated by the adopted Wireless Policy.

Mr. Cannon asked if a flush-mounted antenna would not have adverse visual impacts.

Ms. Yaniglos replied no and pointed out that there was already an existing flush-mounted antenna on the monopole. The flush-mounted antenna is only 12" from the face of the pole.

Mr. Cannon asked if the arrays look like candelabras, and Ms. Yaniglos agreed and that the proposed array would sit 10' from the top of the tower.

Mr. Fritz pointed out that the Wireless Policy refers to if the facility is going to be visible, as is the case here, methods to mitigate that impact. Some of the techniques are utilizing an opportunity site and by using the design techniques such as the color and flush mounting.

Ms. Joseph asked if the proposal would be before the Planning Commission if it was for flush mounting.

Mr. Fritz replied that it would still be before the Planning Commission as a Tier III facility.

Mr. Strucko asked if staff's opinion would change, and Ms. Yaniglos replied yes.

Mr. Cannon asked if staff encourages co-location.

Mr. Fritz replied that it was complex. The staff report says that from a visibility perspective, co-location should be discouraged. By co-locating there can be cumulative effects that cause adverse visual impacts. The Wireless Policy also identifies this as an opportunity site, which the policy encourages. But, it does so in such a way as saying that merely the fact that it is an opportunity site does not trump everything else. By having bad design, adverse visual impacts are created; and visibility is the guiding principle of the Wireless Policy. That is why staff is not able to support the request.

Ms. Porterfield asked if the applicant can achieve the same results with flush-mounted antennas that they could with the array.

Mr. Fritz suggested that they ask the applicant. But, that is not a component of staff's review at all. The component of staff's review is what are the visibility impacts caused by the proposal. If they get lesser coverage area, for example, by bringing it down and using an alternative antennae technique, they may need to have more sites. That was recommended by the Wireless Policy. The Wireless Policy also says that they are going to review those other sites to see whether they have adverse visual impacts and mitigate it that way. Staff does not look at that and can't answer the question.

Ms. Joseph asked how many 250' towers are located in the county.

Mr. Fritz replied that he did not know, but there are not a lot. This is actually pretty indicative of a maturing wireless network. The wireless facilities shown on this particular facility are not at the top. What they do is as the system matures they need to lower it to shrink the coverage area so it does not bleed into the other cells. When this particular facility was first used, everybody was up at the top; but the antenna locations have been lowered over the years. As Verizon gets more sites, they may have to lower this particular one; but that is not what is before the Planning Commission now.

Mr. Kamptner posed a question regarding Mr. Sipe's letter. The applicant is proposing to remove the existing mount, which would be about 10' above where they propose to put the array. He asked if that factored into staff's impact analysis. Also, is the existing structure a mounting one with no antennas attached.

Mr. Fritz replied that there are no antennas.

Mr. Cannon questioned the size of the mount.

Mr. Morris suggested that they get that information from the applicant. He opened the public hearing and invited the applicant to address the Planning Commission.

Maynard Sipe, representative for Verizon Wireless and attorney with LeClair Ryan, noted that also attending tonight are Mathew Winstead and Stephen Waller, consultants to Verizon. Verizon Wireless is seeking to have the same opportunity as other carriers have been given to provide quality wireless service to this particular area of the county. He made a power-point presentation and explained the proposal, as follows.

- The Wireless Policy, as discussed, favors using existing structures that are called opportunity sites. There is no disagreement that this is an opportunity site. There is language that discourages the full sector arrays, but it does not bar them. The Policy does not deal in absolutes, which he thought was partly because it is a policy that means it is general in nature. It is not intended to address every unique situation or every site because of particular conditions on that site. That leads to why they have the special use permit review. A site-specific evaluation is always necessary on these types of applications, in particular on cell phone tower applications like this due to the Telecommunications Act.
- The first unique factor about this site is demand. This site is anticipated to have a high demand. That is self evident because of the volume of users who will be in the area of the Route 29 and Rio Road intersection. It is also intended to serve some residents and businesses in the area. Verizon Wireless is not just targeting the mobile user in a car, but also trying to provide broad band and other services to in-building users, which are businesses and residences. This demand is what really calls for the need of a full array. It actually responds to the demand. The full arrays are needed for technical reasons in order to respond to that demand. The full array is not needed to provide coverage. The footprint from the coverage from this tower is not different with the full array than it might be with the flush mount. The difference is the capacity of calls that Verizon will be able to handle and the quality of the signal. A full array allows what the flush mounts do not allow--spatial diversity. By having the multiple antenna panels on the array, the antennas are set somewhat apart and that allows multiple antennas to receive the signal coming to them so that

they can overcome issues from interference of the fading in and out of the signal. There is more than one antenna possibly handling that. They have to be placed so they are not in the same exact line of site for the signal. It does reflect on the quality of the wireless service that they can provide to this area. The visual impact has been discussed, which is there already. That is a fundamental premise to keep in mind. The visibility of the proposed array is mitigated by several factors, which are outlined in the letter to the Planning Commission dated May 30, 2008. The applicant thinks that those factors are important.

- Staff had done the review with the special use permit criteria, which Mr. Cannon asked about. He felt that it was important that staff found that they meet the special use permit criteria. If the visual impact was significant enough, he did not think that they would be able to meet those criteria. But, they do in this case. He presented the proposed landscape plan, which Verizon Wireless is offering to do as part of the special use permit. The Architectural Review Board found no significant impact on the Entrance Corridor. The ARB did have a concern about screening the ground equipment.
- He asked the Planning Commission to approve the request with two additional conditions. One condition makes a reference to the landscape plan, which was handed out. It requires administrative approval by staff because there may be some slight changes in the specifics of it. The second is that they are willing to agree that the proposed array will not project further from the monopole than the existing arrays already on the tower. Therefore, they are limiting how far the array will project out from the monopole. That condition was in place with the Carrsbrook application recently acted upon by the Planning Commission, and they felt it was appropriate for this application as well. He suggested that the condition state that the array would not project further than the widest array. The existing arrays do not differ that much in the size even though they look different in the photos.

Ms. Porterfield asked if there are arrays currently on the monopole for other wireless providers.

Mr. Sipe replied yes, that the current providers on the monopole include AT&T, Ntelos, Nextel, Altell, U.S. Cellular, Embarq and Team Mobile.

Mr. Loach noted that the applicant said they could use flush-mounted antennas but that the array was better from a technical perspective. He asked what the factor of improvement was.

Mr. Sipe replied that he could not answer the question because it was so technical. But, the demand as noted previously was self evident. They feel the full array is necessary to accommodate the demand. He was told by their engineer that if they don't have approval of the full array, they will need additional sites in this immediate area. Of course, those additional sites potentially will have some impacts.

Mr. Cannon asked if they were to approve this with the panel array there would not be the necessity for additional sites in this immediate area. Mr. Sipe replied yes.

Matt Winstead, project manager for Verizon Wireless, said that it would be at least double, but did not know for sure. Their engineer would have a better answer. It is not necessarily a capacity issue because the engineer explained that they could get the same number of calls with flush mount, but the signal quality with the additional calls would diminish. With more callers on the line at one time, the multiple antennas will be able to receive all of those calls at once with more quality so that there is no degrading of signal. This area is so well developed that it is going to have high usage as soon as the network comes on line. This location is a good option for Verizon Wireless.

Ms. Porterfield asked if the array had to be mounted at the height indicated.

Mr. Winstead replied that their engineer had explained that they were trying to cover a larger area than most of their treetop facilities. That is why the full array is also needed in order to avoid having to build other towers.

Mr. Sipe said that there is obviously some concern for visibility for this existing tower. He asked the Planning Commission to draw a clear distinction between this existing tower and their proposal and its

additional impact. In this case the incremental change in the visual impact proposed by their array is really not significant enough to warrant discrimination against Verizon Wireless as opposed to the other carriers who have been allowed to locate on this tower. He requested the Commission's recommendation of approval so they can provide the quality of service to this area.

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

Mr. Strucko asked staff if the applicant's proposal to remove the top mounting bracket factored into their opinion regarding the visual impact.

Ms. Yaniglos replied that it did not. She was strictly looking at the arrays.

Ms. Porterfield asked if staff was literally going with what is in the ordinance.

Ms. Yaniglos said that staff went by what is in the Wireless Policy and the ordinance.

Ms. Joseph said that there was a reason in the original special use permit approval that would have to be changed for this tower because they were asking for a flush mounted because it is less visible. They are not being discriminatory in this if they would allow it for flush-mounted antennas. She agreed with staff that it would be a lot more visible unless they decided to use flush-mounted antennas. She recalled Charlotte Humphris, asking how this tower got out there. But, since it is non-conforming, they have to deal with it the best they can. She would like to deal with it with flush mounted instead of the arrays.

Mr. Strucko agreed with Ms. Joseph. His line of questioning was to try to get at mitigation. He believed that a bad situation could be made worse by continuing to heap on to it. One more array will make a bad situation worse. He could accept this proposal if indeed the top bracket was removed and the array was roughly the same size as the bracket since the net visual impact would be zero. But condition 11 tells them that it is not going to be, but would be a wider array than the mounting bracket itself. Therefore, he would not be supportive for this proposal for the reasons already expressed by Ms. Joseph. He questioned what an array gets us that a flush mount would not, which was brought up by Mr. Loach.

Mr. Loach noted that he did not get a feeling from the previous discussion that the full array was going to create a factor far above for which he would trade the visual impact from the flush-mounted array.

Motion: Mr. Cannon moved for approval of amendment of the SP-2008-00012, Embarq-Verizon Wireless- Tier III PWSF, to permit the array proposed by the applicant on this tower with the conditions as identified in the staff report on pages 9 and 10 with the 2 additional conditions as submitted by the applicant, including conditions 10 and 11, as amended that no antennas shall project from the monopole to a distance that is greater than the narrowest existing antenna array.

Ms. Yaniglos pointed out that staff had amended condition 5 to state "that the current owner and any subsequent owners of the tower" to replace "the permitee."

Mr. Cannon added to the motion with the amendment to condition 5.

Mr. Strucko questioned the change to condition 11 because he thought the applicant had stated the widest.

Mr. Cannon agreed that the applicant proposed the widest. But, he felt that the language is inconclusive. He was substituting a more restrictive interpretation, which was consistent with the visual representation that the applicant provided of the likely visual affect of the array. If the applicant could not accept that condition, then he would withdraw the motion.

Ms. Porterfield noted that the motion was to approve the array as presented by the applicant, except that it can be no larger than the smallest array on the pole. They are not flush mounting, but it would be an array.

Mr. Sipe responded that the Commission has the right to replace conditions. For clarity he suggested using the term “full sectored panel antennae array.”

Mr. Cannon asked if that means to exclude flush mounted arrays.

Mr. Sipe asked that the condition be made clearer so that this does not include flush mounted arrays.

Mr. Cannon asked if the 5 candelabras were accurately described.

Mr. Sipe replied that it was “full sector panel antennae arrays.”

Mr. Cannon noted that was his intent.

Mr. Morris asked if this could be made effective and keep it within the size of the current bracket.

Mr. Sipe replied that he did not have the measurements of the current bracket. To tie that down he suggested noting that it was the 5 existing full sectored panel antennae arrays. That would tie them to the 5 seen on the tower today. Condition 5 helps clarify the type of antenna array they are talking about.

Mr. Kamptner referred the Commission to page 29. The current top full sectored antenna array appears to be much closer to the pole than the other four.

Mr. Cannon noted that it appeared to be the same size, but not significantly.

Mr. Morris agreed that it was hard to distinguish it.

Mr. Fritz noted that there are five existing arrays. The way it is written, staff would interpret that the smallest of those is the one they would use.

Mr. Strucko asked what a mounting bracket is used for. He asked if the mounting bracket could be reinstalled without any action by the Commission.

Mr. Fritz replied that he did not think that the existing brackets could be reused with the existing conditions. He did not know if the applicant could reuse the mounting brackets. He did not know the conditions of it and whether it was compatible with the proposed antennae type or the holes for the mounting brackets. He could not guarantee that the mounting brackets could be reused.

Mr. Strucko asked if this application would prevent the reinstallation of that mounting bracket. He noted that the applicant could remove it, but could he put it back.

Mr. Fritz replied that if the special use permit was not approved, the answer is no.

Mr. Cannon pointed out that was his motion.

Mr. Morris restated the motion for approval with conditions as set forth by the staff 1-9 with the modifications of condition 5 and the addition of conditions 10 and 11 with further modification of condition 11.

Mr. Cannon noted that condition 11 would be that no antennas shall project from the monopole to a distance that is greater than that of the narrowest of the five existing full sector panel antennae arrays on the pole.

Mr. Strucko asked if the motion should include a statement about removing the bracket.

Mr. Cannon added that the applicant shall remove the bracket at the top of the pole as shown in the staff report.

Mr. Fritz recommended the condition read that the existing mounting bracket to be removed as shown on Attachment A.

Mr. Cannon amended the condition to adopt Mr. Fritz's version.

Ms. Porterfield seconded the motion.

As summarized in the action memo the Planning Commission took the following action:

Motion: Mr. Cannon moved, Ms. Porterfield seconded for approval of SP-2008-012, Embarq-Verizon Wireless – Tier III PWSF to permit the array proposed by the applicant on this tower with conditions 1 - 9 recommended by staff, as amended in condition 5, and with the two (2) additional conditions submitted by the applicant, as modified.

1. The tower shall not be increased in height;

2. All antennae, dishes and their replacements attached to the tower shall be used for personal wireless service providers;

3. Additional and replacement antenna arrays may be attached only as follows:
    a. Omni-directional or whip antennas shall not exceed twenty (20) feet in height or seven (7) inches in diameter, and shall be of a color that matches the tower;
    b. Directional or panel antennas shall not exceed seven (7) feet in height or two (2) feet in width, and shall be of a color that matches the tower;
    c. Existing arrays of directional and panel antennas that are mounted with brackets that separate them by more than (12) inches from the structure may remain. This condition shall not pertain to the maintenance and/or replacement of a single panel antenna that malfunctions or is in need of repair.

4. Not more than six (6) satellite or microwave dishes may be attached to the tower at one time, and only as follows.
    a. The existing six (6) foot diameter grid dish that is subject to this request may be replaced by the specified six (6) foot diameter High Performance dish at a height that is not more than 95.5 feet;
    b. Other existing satellite and microwave dishes may be replaced on the tower by the same type of dish, provided that the diameter of the replacement dish does not exceed the diameter of the dish being removed, the color of the replacement dish matches the tower, and the mounting height does not exceed that of the dish being replaced;
    c. Other existing satellite and microwave dishes may be replaced on the tower by a different type of dish if the mounting height is no less than twenty (20) feet below that of the dish being removed, the diameter of the replacement dish does not exceed that of the dish being removed, and the color of the replacement dish matches the tower;
    d. Other existing satellite and microwave dishes may be replaced by a different type of dish if the proposed mounting height of the replacement dish does not satisfy the height requirements of condition 4c with the written approval of the Zoning Administrator. This approval shall only be granted after the submission of a microwave path survey indicating that the proposed replacement dish will be mounted at the lowest possible height that allows the system to function. In such a case, the path survey shall demonstrate the reason(s) why the proposed height is the lowest possible height, but in no case shall the replacement be higher than the dish it is replacing;
    e. All replacement satellite or microwave dishes shall be mounted as close to the face of the pole as structurally and mechanically possible and, in no case, shall the distance between the back of the dish and the face of the pole be greater than eighteen (18) inches; and
    f. Prior to the issuance of a building permit for replacing a dish, the applicant shall provide engineered drawings demonstrating the dimensions of the existing dish to be removed

and its replacement dish, and additional information demonstrating the mounting distance between the pole and the dish to the Department of Building Code and Zoning Services.

5. The current owner and any subsequent owners of the tower shall submit a report to the Zoning Administrator once (1) per year, by not later than July 1 of that year. The report shall identify each user of the tower and that each user is a personal wireless communications service provider;

6. The permittee shall comply with Section 5.1.12c of the Zoning Ordinance; and

7. The facility shall be disassembled and removed from the site within ninety (90) days of the date its use for personal wireless communications services purposes is discontinued. If the Zoning Administrator determines at any time that surety is required to guarantee that the facility will be removed as required, the permittee shall furnish to the Zoning Administrator a certified check, a bond with surety satisfactory to the County, or a letter of credit satisfactory to the County, in an amount sufficient for, and conditioned upon, the removal of the facility. The type of surety guarantee shall be to the satisfaction of the Zoning Administrator and the County Attorney.

8. All work shall be done in general accord with what is described in the applicant's request and site construction plans, entitled “Rio Road, Embarq Property”, with a final zoning drawing submittal date of 3/10/2008.

9. The following shall be submitted to the agent after installation of the antenna is completed and prior to issuance of a certificate of occupancy: (i) certification by a registered surveyor stating the height of the antenna, measured both in feet above ground level and in elevation above mean sea level, using the benchmarks or reference datum identified

10. The applicant shall provide landscaping along Rio Road East generally as shown on the Landscape Plan by J. Thomas Dalton sealed 5-21-08, with a final landscaping plan to be administratively approved by staff.

11. No antennas shall project from the monopole to a distance that is greater than that of the narrowest of the five (5) existing full sector panel antennae arrays on the pole. The existing mounting bracket to be removed as shown on Attachment A.

The motion was approved by a vote of 4:2. (Mr. Morris, Mr. Cannon, Ms. Porterfield and Mr. Strucko voted aye.) (Mr. Loach and Ms. Joseph voted nay.) (Mr. Edgerton was absent.)

Mr. Strucko supported the motion with the removal of the mounting bracket and the limitations on the array.

Mr. Morris said that SP-2008-012, Embarq-Verizon Wireless Tier III PWSF will go before the Board of Supervisors on July 2 with a recommendation for approval.

Action on the Modifications:

Motion: Mr. Cannon moved, Ms. Porterfield seconded to approve the two (2) waivers for SP-2008-012 Embarq-Verizon Wireless – Tier III PWSF, as follows.

Zoning Ordinance Waivers:

1. Section 5.1.40 (c)(4) - Requirement for a tree conservation plan to be submitted prior to the issuance of a building permit.
2. Section 5.1.40 (c)(5) - The installation, operation and maintenance of the facility to be conducted in accordance with the tree conservation plan.

Ms. Joseph asked if this would include the landscape plan that was just distributed by the applicant.

Mr. Fritz replied yes, that was in condition 10.

The motion was approved by a vote of 6:0. (Mr. Edgerton was absent.)

Mr. Morris noted that the modifications were approved.

ZTA-2008-00001 Pole Lighting
Athletic field lighting – Amend Sections 4.10.3.2 (Exceptions – limited) and 4.17.5 (Modification or waiver) of the Zoning Ordinance (Chapter 18 of the Albemarle County Code). This ordinance would amend (1) section 4.10.3.2 by adding poles that support outdoor luminaires for lighting athletic facilities as a class of structures exempt from the zoning district height regulations, provided that a modification is approved by the Planning Commission and (2) section 4.17.5 to establish procedural and substantive requirements for the commission to modify the height of such poles. 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. (John Shepherd)

Mr. Shepherd presented a power-point presentation and summarized the staff report. (Attachment E – Power-point presentation)

- This is a zoning text amendment to provide a waiver process for the height of athletic poles providing lighting. The proposal is to provide an amendment to two sections in the Zoning Ordinance. One is Section 4.10.3.2, which adds athletic light poles as a class of structures that would be exempt from district height regulations. The other is the lighting regulations in Section 4.17.5 that will give the procedural and subjective requirements that the Commission would have to account for to modify the height of such poles.
- Structures in the Rural Areas, Village Residential and lower residential districts are limited to 35'. Structures in the other districts and commercial districts and higher residential districts are limited to 65'. Athletic pole heights for the class of play on county fields and also soccer fields that SOCCA and others range from 40' to 80'. Appropriately sized poles can't fit into these districts as it is now.
- On June 9, 2006 the Zoning Division made a determination that poles were structures whose height can only be modified by variance. This is a small technical point, but it causes a real problem in this situation. It means that while the Planning Commission can modify the fixture of an athletic lighting luminaire, it would take the action on the part of the Board of Zoning Appeals to provide a variance for the height regulation. For the Board of Zoning Appeals to approve a variance they have to find three criteria that includes hardship among others. It would be very hard for them to find that one did not have lack of property use due to lack of tall light poles. It would be assumed that a variance could not be approved under that process. The reason this is before the Planning Commission is to basically take care of that problem. In the past there have been other athletic sites that have been approved with modification that the Planning Commission assumed that the light poles, as well as the light fixture were all part of the same thing and they were modified.
- The purpose of lighting is to provide safe and effective use of athletic fields. They are looking at this as getting enough light on the field, which is accomplished by the height of the pole, the angle and the intensity of the entire system. It also includes the number of poles and their location. Staffs feels these should all be reviewed together and not have the Board of Zoning Appeals be ruling on the appropriateness of the height and Planning Commission ruling on the appropriateness of the angle of the fixture and the amount of cutoff. The proposed ordinance would add the same standards for the waiver approval that are applied to the fixture and that are found in the Illuminating Engineering Society of North American Standards which deals with virtually all of the levels of play of different sports. The Planning Commission will know that a modification that they are granting would be limited to the lowest appropriate level. The Commission, of course, could also consider the impact of the lighting on neighboring properties and the district as a whole. If the Commission has further questions about exactly how these standards would work with the lighting, Tim Hughes from the Parks and Recreation Department is present to address those technical issues.

- There are four amendments being proposed. One is from Section 4.10.3.2 that exempts the pole height from the district regulations. Then there are three revisions to the lighting regulations in Section 4.17. Section 4.17.5.a would be amended to add the height of the pole supporting an outdoor luminaire lighting and athletic facility to the standards that may be modified or waived by the Planning Commission. Section 4.17.5.a to be further amended to direct the Commission to base the waivers for light pole height for athletic facilities on the recommended practices adopted by the Illuminating Society of North America. That section is further amended to provide that the Commission may impose conditions on such a modification which it deems appropriate to further the purposes of the outdoor regulations.
- Staff recommends the Planning Commission recommend to the Board of Supervisors that this amendment request for ZTA-2008-1 be passed.

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

Ms. Joseph asked if staff has talked to any of the expert lighting people who have been working on lighting issues for years, such as Phil Ianna. She asked if they had any part in coming up with this concept.

Mr. Shepherd replied that he did not.

Mr. Strucko asked how do these proposed standards differ from what is currently at the high schools and other facilities.

Mr. Shepherd replied that for facilities that the Commission has reviewed, those standards were reviewed against the Engineering Society's standards so that they were sized to the lowest level that would provide safe lighting. Those same standards would be applied in the future. The only difference is explicitly adding the pole height to the standards that the Commission can look at.

Ms. Porterfield asked if the Planning Commission could impose a condition concerning when the lighting could be used including specific hours.

Mr. Shepherd replied yes, the Commission could address that issue and impose conditions.

Mr. Loach asked if the county has lighting at the middle school fields. Right now when on Jarman's Gap Road, he can look down across Old Trail and see the glow in the sky when Western Albemarle High School is having a football game. He asked if the lights they are talking about are predominantly at the high school level or are they looking at lighting middle school fields, which would become more problematic with neighbors.

Tim Hughes, with Albemarle County Parks and Rec, said that at the present time they don't have any plans in the capital improvement budget to light athletic fields on middle school property. That is not to say that would not change. As they run out of field space, the middle schools would become the next stepping stone down from the high schools. The two fields at Henley that he speaks of now are large rectangular fields that they are in the process of improving with Bermuda grass and irrigation. If they needed more lighted fields in the Western Albemarle area, those two fields would be the most logical. That being said they don't have any plans to do it in the next ten years.

Mr. Morris asked what about other Parks and Rec areas, such as Darden Towe Park.

Mr. Hughes replied that the only project that has been recommended at Darden Towe Park currently is to light the tennis courts. That came from a citizen recommendation. The only two fields that they currently have plans to light in the next five years would be another rectangular field at Monticello High School and one at Albemarle High School.

Mr. Loach noted that if schools are located in a residential neighborhood, the lighting is something that has to be considered. When Western Albemarle High School's fields are lighted, it lights the sky up around a large portion of the area.

Ms. Joseph asked when the lights were put in at Western Albemarle High School

Mr. Hughes replied that the baseball field was lighted about seven years ago. The football field was relit two years ago. The technology changes daily in the lighting industry as far as the spill light. Part of the problem they have with a football stadium at a high school level is that they are trying to light the entire stadium with the lights for the football field. The poles have to be further away and taller so that they are getting more spill-over light. There are ways to light high school stadiums so that the poles are brought in closer and the seating is lit with auxiliary lighting that would cut down on the amount of sky light.

Ms. Joseph asked if this ordinance will help with that.

Mr. Hughes said that this ordinance, in his opinion, will help the next time a high school is built because without the change they will not be able to light the baseball fields, tennis courts, softball fields or football fields without having to go before the Board of Zoning Appeals.

Ms. Joseph noted that the Planning Commission would be looking at how this would affect the neighborhoods. Spill-over light and how much light goes up into outer space will be concerns.

Mr. Hughes noted that the way this proposal was being presented is that it is going to tie it all together in the lighting ordinance. The Planning Commission would be looking at the proposal anyway. It is just not going to be two separate things. It is going to put the poles in with the lights, for which they have to get a waiver for any project.

Mr. Loach asked what process they had to go through two years ago at Western Albemarle High School to increase that lighting.

Mr. Hughes said that they did not do that. It was the school division that did it. But, he was sure that since it was a retrofit probably they had to go get a waiver because the County's Lighting Ordinance now calls for a full cut-off fixture. They had to request a wavier for the fixture itself because there is not a full cut-off fixture that will light a football field.

Mr. Morris noted that he did not recall it coming before the Planning Commission.

Mr. Hughes pointed out that the last project that Parks and Rec lighted was the multi-use field at Western Albemarle that also serves as their practice football/lacrosse field. They had to get a waiver on the light fixture itself.

Ms. Joseph noted that was about six years ago.

Ms. Porterfield pointed out regarding the time-usage issue that from previous experiences in Arizona, lighting of athletic fields created a major neighborhood problem because of the light proliferation. She wondered if there is any way to address that in the ordinance so that the issue becomes a known quantity. When a request is submitted to light a field, the time frame for lighting the field should be addressed and be included as a piece of the action.

Mr. Kamptner noted that the zoning text amendment would give the Planning Commission the authority to impose conditions on the modification or waiver, which it deems appropriate to further the purposes of the ordinance. The purpose of the ordinance includes not only dark skies, but also spill-over, glare and all those other factors. All of those are related to the length of time that the lights are on.

Ms. Porterfield asked if someone made application, would staff inform the applicant up front that all those factors have to be addressed. It would be easier if the application came in with that information at the beginning.

Mr. Shepherd said that he would assume that would be an important part of the review.

For staff analysis and through the public review process that would be a primary concern to the neighbors in how it would be seen from their property and the impact from the timing as well. It would be of prime importance. They are directed to consider other appropriate conditions. That is always an issue with these lighting requests.

Mr. Loach felt that the language is good, however what is missing is that there is no requirement for technical specifications for the things that he just mentioned such as spill-over light, how many luminaire and the technicalities of putting these in so that the neighbors are not adversely affected.

Mr. Shepherd noted that the standards address the appropriate levels of lighting for the different levels of play. With each application the spill-over calculations and the luminance would be part of the application and could be reviewed and commented on with each application. Spill over calculations are done during the site plan. The same thing would be applied to this. He pointed out that he was involved with the lighting out at St. Anne's Belfield that was visible from the by-pass. There was a lot of modification to the hoods on the lights to control the spill-over with a very close technical review. He would expect that with any of these types of requests.

Ms. Joseph asked if they would actually be looking at foot-candles and photometric plans.

Mr. Shepherd replied yes.

Mr. Morris invited public comment.

Neil Williamson, with Free Enterprise Forum, said that he was most appreciative that this was coming forward. It has been a gap for some time. The one concern he has in reviewing the ordinance very briefly is with regard to the reference to the association and how much guidance the Planning Commission must take whereby there may be opportunities where they need more or less and whether that helps or hurts what they are trying to do with the ordinance. He just brings that up just clarification.

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

Mr. Strucko asked Mr. Kamptner what he thought about Mr. Williamson's comment.

Mr. Kamptner said that his question was whether or not this standard gives the Commission sufficient flexibility. He felt that it does since it focuses on the minimum standard. He did not think that the Commission is going to approve a lighting system that is below the recommended illumination for a particular sport. The Commission has the ability to work in an unlimited range once they establish what they are approving is safe.

Mr. Cannon said that they are permitted to incorporate by reference standards promulgated by a non-governmental association.

Mr. Kamptner replied that is what they rely on. That is the organization that the lighting ordinance has always relied on.

Mr. Canon asked if they are binding themselves to their determinations in some sense.

Mr. Kamptner said that in the absence of any other identified expertise they are basing their minimum standard on this organization's standards.

Mr. Shepherd pointed out that they could also consider other evidence if a recommended practice if not applicable.

Mr. Canon noted that it would only be if it was not applicable. That is fine as long as it is an established practice that is consistent with their mandate as a public agency.

Ms. Porterfield asked with reference to section b, if five days is the standard notification for something coming before the Planning Commission. She felt that five days was not much notice.

Mr. Kamptner replied yes, that is actually the minimum required notice for special use permits, rezonings, site plans and subdivision plats. For site plans and subdivisions that is to meet with staff. But, even for rezoning the state law only requires five days written notice.

Ms. Porterfield pointed out that neighboring properties for this item would only have been notified at the end of last week. She asked if that was correct.

Mr. Kamptner said that if there was an application coming tonight for a modification or waiver that is correct. A number of applications require published notice. But, for individual notice, five days is pretty much required across the board.

Ms. Porterfield said that there was going to be a lot of neighbor comment on some of this. She asked if there is a way to give a little more notice than that.

Mr. Kamptner replied that they could amend the ordinance. But, this is a minimum standard that has to be satisfied.

Ms. Porterfield suggested that in this particular case the notification requirements should be longer, published or both. She felt that the proposed lighting could generate a lot of discussion depending on where it is being proposed. She certainly wanted the neighborhoods to be able to be here.

Ms. Joseph felt that anything is like that. She felt if the Commission decided that lighting is more important that they would be making a mistake. If that is the minimum standard for everything, she felt it should be followed. There have been some massive rezoning and five days is five days. They would need to change the entire ordinance for that and not just on this. Rezoning are little different. She suggested that they wait and see what happens. If it becomes a problem, then they can change the ordinance. But, she did not foresee that at this point.

Mr. Kamptner noted that rezoning is different.

Mr. Shepherd pointed out that there would be some public knowledge of it because for school projects it would be part of the budgeting process.

Mr. Strucko supported this request because it was well written. The language has a lot of safeguards for the community.

Motion: Mr. Strucko moved, Mr. Loach seconded to recommend approval of ZTA-2008-00001, Pole Lighting as recommended by staff.

Ms. Joseph noted that one of the reasons she brought up Phil Ianna is because he is the one responsible for the county's lighting ordinance. Lately Mr. Ianna has noted that he wishes that the county would allow taller poles because there would be less lighting. This would be effective in cutting off light pollution. She expected to see Mr. Ianna here.

Mr. Shepherd noted that he would add that to the comment that goes to the Board.

Mr. Strucko pointed out that there is a need for athletic facilities in the community. While land may be an issue, he thought that lighting can certainly widen the use of existing fields by extending usage hours reasonably. This is why he supported the zoning text amendment.

The motion passed by a vote of 6:0. (Mr. Edgerton was absent.)

Mr. Morris said that ZTA-2008-00001 Pole Lighting will go before the Board of Supervisors on July 9 with a recommendation for approval.

Old Business:

Mr. Morris asked to clarify an issue that was brought up at the joint Board/Planning Commission/ARB meeting. One of the things brought forth was that there was a lot of time wasted simply because the Board of Supervisors overturned the things that the Planning Commission had done and cited seven items. He reviewed the seven items. Of the seven items, the Planning Commission sided with staff on four of them. It was the Board's decision to go against both of them. The other three were a combination of things. There was a request for modification for what had been approved for a public road. The applicant wanted to make it a private road in a subdivision in the rural area. The Commission recommended that it not be approved, and it was subsequently approved. Also, there was a difference in items regarding critical slopes. The Commission has to understand what their role is in the review of it. The Commission has to analyze staff's recommendation and what is before them and send it forth. Their roles are different.

Mr. Loach noted that a lot of things take place between the Planning Commission and Board of Supervisors hearings.

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

New Business:

Mr. Morris invited new business.

The Planning Commission asked staff to take a look at the agenda to see if items could be juggled so there is no meeting during the week of July 4.

Crozet Library Steering Committee - Appointment of Planning Commission Representative

Motion: Mr. Strucko nominated Tom Loach to the Crozet Library Steering Committee, which was seconded by Mr. Cannon.

The motion was approved by a vote of 6:0. (Mr. Edgerton was absent.)

THERE WILL BE NO PLANNING COMMISSION MEETING ON TUESDAY, JUNE 10, 2008. THE NEXT REGULAR PLANNING COMMISSION MEETING WILL BE TUESDAY, JUNE 17, 2008.

Mr. Morris pointed out that the Planning Commission will adjourn to the joint Board meeting on June 4, 2008 at 6:00 p.m. regarding the Crozet Downtown Rezoning.

Ms. Porterfield noted that she would be absent because the Village of Rivanna Study is meeting at 7 p.m. that evening with the Stakeholders.

Mr. Kamptner pointed out Wednesday's meeting was a joint public hearing on the Downtown Crozet District. Consideration will be of a zoning text amendment and a zoning map amendment. Staff met with the Crozet Community Association representatives last night, and they are going to propose some minor changes. There will need to be consideration by both the Commission and the Board. The Board may or may not take action tomorrow night.

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

Adjournment

With no further items, the meeting adjourned at 7:35 p.m. to the Tuesday, June 4, 2008 Board of Supervisors joint public hearing at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

(Recorded and Transcribed by Sharon Claytor Taylor, Clerk to Planning Commission and Planning Boards)