Albemarle County Planning Commission
September 9, 2008

The Albemarle County Planning Commission held a meeting, work session and public hearing on Tuesday, September 9, 2008, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Rebecca Ragsdale, Senior Planner; David Benish, Chief of Planning; Megan Yaniglos, Senior Planner; Scott Clark, Senior Planner; Wayne Cilimberg, Director of Planning; Bill Fritz, Chief of Current Development; Mark Graham, Director of Community 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. Edgerton noted that the ACE Committee met yesterday afternoon. They received appraisals and due to the amount they only have the potential of making offers on the first two proposals. Potentially since there are not enough funds to cover all the proposals some of the requests will have to be rolled over.

- Mr. Loach noted that the Crozet Library Committee met and reviewed the architect's four alternative footprints.

- Mr. Morris noted that the Eastern Connector Committee met. The briefing will be presented to the Board of Supervisors and City in the near future, but not in September since the City has requested a written report first. The Board's briefing will tentatively be held on October 1.

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

Other Matters Not Listed on the Agenda from the Public:

Mr. Morris invited comment from the public on other matters not listed on the agenda. There being none, the meeting moved to the next item.

Review of Board of Supervisors Meeting – September 3, 2008

Mr. Cilimberg reviewed the actions taken by the Board of Supervisors on September 3, 2008.

Consent Agenda:

a. Approval of minutes
July 22, 2008 & August 12, 2008

b. SDP-2008-00110 Carroll Creek-AT&T/Cingular-Sweeney Property-Final
The request is for approval for the replacement of a treetop personal wireless service wooden monopole with another wooden monopole at the same height. The proposal includes the replacement of the existing wooden monopole, antennas, and lightning rod. The proposed wooden monopole will be at the same height as the existing, 88.9 feet, and will include an additional flush mounted antenna, which will increase the total number of flush mounted antennas on the facility from two to three. The facility will continue to utilize the existing ground equipment cabinets. This application is being made in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property is 516.054 acres, described as Tax Map 94 Parcel 17, is located in the Scottsville Magisterial District off of Thomas Jefferson Parkway [State Route 53] and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property as Rural Area in Rural Area 4. (Megan Yaniglos)

c. Resolution of Intent to Amend Section 30.6 (Entrance Corridor Overlay District) of Zoning Ordinance (See Attachment 1 – Resolution of Intent)

Mr. Edgerton noted that he was not at the August 12, 2008 meeting and would abstain from voting on the approval of that set of minutes.

Mr. Morris asked to pull the minutes of August 12, 2008 to next week due to technical problems.

Motion: Ms. Porterfield moved and Mr. Edgerton seconded for approval of the consent agenda with the exception of the August 12, 2008 minutes.

The motion passed by a vote of 5:0.

ATTACHMENT 1

Resolution of Intent to Amend Section 30.6 (Entrance Corridor Overlay District) of Zoning Ordinance

WHEREAS, the intent of the Entrance Corridor Overlay District (Zoning Ordinance § 30.6, contained in Chapter 18 of the Albemarle County Code) is to, among other things, implement the Comprehensive Plan's goal of protecting Albemarle County's natural, scenic, historic, architectural and cultural resources; ensure a quality of development compatible with those resources through architectural review of development; and to enhance the County's attractiveness to tourists and other visitors and to sustain and enhance the economic benefits accruing to the County; and

WHEREAS, the District regulations were first adopted in 1990 and, though some regulations have been amended since, a number of District regulations require amendment to clarify their requirements, to improve their implementation, to improve the processes for obtaining approval of a certificate of appropriateness, to better delineate the authority and processes for the review of certificates of appropriateness, to correct errors, to update references to state law and other provisions of the Albemarle County Code, to update

references to County departments and officers, and to address new classes of uses (*e.g.*, wireless facilities).

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good land development practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to amend Zoning Ordinance § 30.6 (consisting of Sections 30.6.1 through 30.6.8) and any other regulations of the Zoning Ordinance deemed appropriate to achieve the purposes described herein.

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on the zoning text amendment proposed by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

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Mr. Morris recognized the passing of one of Albemarle County's finest servants John Hood. John Hood was the Chief of the East Rivanna Fire Department for a number of years and Lieutenant in the rescue squad for nearly 30 years. He will be dearly missed by Albemarle County.

Items Requesting Deferral:

SP-2008-00030 Hall's Auto Body Tier III PWSF
PROPOSED: Co-location of antennas on an existing tower
ZONING CATEGORY/GENERAL USAGE: HI, Heavy Industry; Airport Impact Area
SECTION: 28.2.2. (18) Special Use Permit, which allows for Tier III personal wireless facilities in the HI Zoning District
COMPREHENSIVE PLAN LAND USE/DENSITY: Industrial uses in the Hollymead Community
LOCATION: Tax Map 32, Parcel 67: on Northside Drive 2500 feet from the intersection of Seminole Trail [State Route 29] and Airport Acres Road [State Route 1515].
MAGISTERIAL DISTRICT: Rio
RELATED APPLICATION: SP 199500001, SP198700001
(Megan Yaniglos)
APPLICANT REQUESTS INDEFINITE DEFERRAL

Motion: Ms. Porterfield moved and Mr. Loach seconded to approve the applicant's request for indefinite deferral of SP-2008-00030, Hall's Body Tier III PWSF.

The motion passed by a vote of 5:0.

Mr. Morris said that SP-2008-00030, Hall's Auto Body Tier III PWSF was indefinitely deferred.

Regular Items:

SP-2008-00027 Field School
PROPOSED: The request is to continue a Middle School for boys, with a request to increase maximum enrollment from 48 students to 70 students max. located in the existing community building at Claudius Crozet Park and approved with SP 2006-00043
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre)
SECTION: 18.10.2.2.5 Private Schools

COMPREHENSIVE PLAN LAND USE/DENSITY: Designated CT 1 Development Area Preserve for Parks and Greenways in the Crozet Master Plan.
ENTRANCE CORRIDOR: No
LOCATION: 22 acre parcel at Claudius Crozet Park, north side of Park St, 1500 Feet east of High Street
TAX MAP/PARCEL: 56A2-01-72 and 72A
MAGISTERIAL DISTRICT: White Hall
(Rebecca Ragsdale)

Ms. Ragsdale made a power-point presentation and explained the proposal. (See staff report)

- The school uses a shuttle bus that cuts down on some of the car trips that would come into the park. The school is using the existing community building and has the potential to use some of the fields at the park. There is a preference for public uses in terms of priority if there is an athletic program that needs to use the park.

- The applicant requested 70 students when the Field School request was previously reviewed. There was some discussion and concerns expressed at the Commission meeting about the impacts of the use in the park and compatibility of this type of use with the existing athletic programs and public use of the park. The request was approved temporarily for only 48 students by the Commission. It was reviewed the first time around and this time by staff and all of the reviewers for a maximum of 70 students. The school operation seems to be going well and staff has not heard any public concerns in the review of this request. No concerns have been expressed by the reviewers.

- The County Parks and Rec Department has commented on the use. The park is owned by the Claudius Crozet Park Board and community. The county has an arrangement with them to provide maintenance of the fields. There have been some county monies that have gone to the park and a Parks and Rec person does serve on the Park Board. There are no issues brought up by Parks and Rec about the use. There are conditions of approval recommended regarding park use of the fields to make sure that there are no conflicts.

Based on the findings contained in this staff report, staff recommends approval of Special Use Permit 2008-027 Field School, with the following conditions as listed in the staff report (noting changes from original conditions of approval with SP 2006-043):

1. Maximum enrollment shall be ~~forty-eight (48)~~ seventy (70) students;
2. Hours of operation for the school shall be from 7:30 a.m. to 6:00 p.m., Monday through Friday;
3. The school is limited to existing buildings and park grounds as indicated on the concept plan (Attachment C). Any additional building or site changes for the school use will require an amendment to this Special Use Permit (SP-2008-027);
4. ~~Prior to issuance of a Zoning clearance for the private school use, water line dedications to the satisfaction of the Albemarle County Service Authority are required;~~
5. The playgrounds and the park grounds, with the exception of the Community Building, will remain open and available for public use during the hours of school operation;
6. The athletic fields at the park shall not be available for the school's use after 4:00 p.m. on weekdays and shall not be available on weekends;
7. The athletic fields shall not be available for school use when closed by the Department of Parks and Recreation for inclement weather, overuse, fields restoration, or when any other scheduled use is authorized by the Department of Parks and Recreation;

~~**8.** The school use may begin and continue only if the Crozet Park covenants and restrictions allow the use;~~

9. Special Use Permit ~~2006-043~~ 2008-027 shall be valid until June 30, ~~2009~~ 2014; and

10. Shuttle bus service for students to and from school shall be provided each school day

Two of the previous conditions (4 and 8) have been met. The covenants have been amended so that the school use can be allowed in the park.

Mr. Loach asked if the school's proposal has the support of the Park Board, and Ms. Ragsdale replied yes.

Mr. Loach asked if the school still averaged about one-half of the students on the shuttle bus, and Ms. Ragsdale replied yes that is what the applicant has indicated.

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

Dr. Todd Burnett, Head of the School and founder, presented a power-point presentation to show the improvements the school has made to the park. He noted that Field School is a middle school for boys, which started last year with grades 5 and 6. This year the school has grades 5, 6 and 7 and will add 8th grade next year. The school had 23 boys last year. This year the school will have 30 boys. The idea is for the school to grow to 65 to 70 students. The school has followed the rules set out last year and has been a benefit to the park. They renovated the building, picked up trash and planted trees and grass. The school's presence has deterred some of the vandalism that historically has been a problem for the property. The park remains open to other groups in the evenings and weekends for such events as park meetings, birthday parties and weddings. The use of the building has increased this past year according to Brian Campbell.

Dr. Burnett continued noting that the school has various drop-off and pick-up points. Two-thirds of the children ride the shuttle. There really is not that much traffic generated. There are three cars and two buses that sit on site during the day. Therefore, the traffic seems to be a non-issue. They have lived up to the county's expectations in the past year and have surpassed the hopes of the Park Board. The park is a better place for everyone who uses it. They have provided an alternative all boys' school and have not spent any tax money in educating the children in their independent school. Most of the students are county residents. They have provided 100 percent of the demonstrated financial aid need. They have a student body with both ethnic and socially economic diversity. However, they do need to grow. Their goal is to remain at Crozet Park for another four years before moving on to their own facility. He hoped to bring a proposal for their own facility to the Commission soon. He asked for approval from the Commission to allow a maximum of 70 students in the school.

Mr. Morris invited questions for staff. He asked what the increase in the traffic would be with the increased enrollment.

Mr. Burnett replied that about two-thirds of the families will use the shuttle to get to the school. Currently they have three sets of brothers. Therefore, if they are making two trips per day that is 44 trips plus they have 6 faculty members, which totals about 50 car trips per day. With the high gas prices he felt that number would go down because many parents are eager to find ways to car pool. He realized that it adds traffic on the road when the students are not riding county or city school buses, but the traffic in the park seems to be a non-issue during the school day.

Mr. Morris invited public comment.

Robbie Maupin, President of the Claudius Crozet Park Board, spoke in support of the school. He agreed with everything Mr. Burnett has said and that the school has been a great addition to the park. The improvements made by the school to the building have been very beneficial to the park. It is great having somebody in the park year round to help with security in the park. The school's present has deterred vandalism to the park. Regarding the traffic concerns, there is very little traffic in the park during the off-season while the school is open. During the summer when the pool is open the school was closed. Therefore, that was not an issue. Therefore, the Claudius Crozet Park Board supports the school.

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

Motion: Mr. Loach moved and Ms. Porterfield seconded to recommend approval of SP-2008-00027, Field School with the conditions recommended by staff.

1. Maximum enrollment shall be seventy (70) students;
2. Hours of operation for the school shall be from 7:30 a.m. to 6:00 p.m., Monday through Friday;
3. The school is limited to existing buildings and park grounds as indicated on the concept plan (Attachment C). Any additional building or site changes for the school use will require an amendment to this Special Use Permit (SP-2008-027);
4. The playgrounds and the park grounds, with the exception of the Community Building, will remain open and available for public use during the hours of school operation;
5. The athletic fields at the park shall not be available for the school's use after 4:00 p.m. on weekdays and shall not be available on weekends;
6. The athletic fields shall not be available for school use when closed by the Department of Parks and Recreation for inclement weather, overuse, fields restoration, or when any other scheduled use is authorized by the Department of Parks and Recreation;
7. Special Use Permit 2008-027 shall be valid until June 30, 2014; and
8. Shuttle bus service for students to and from school shall be provided each school day

The motion passed by a vote of 5:0.

Mr. Morris said that SP-2008-027, Field School will go before the Board of Supervisors at a date to be determined with a recommendation for approval.

AFD-2008-00004 Free Union

Review of the Free Union Agricultural/Forestal District: Periodic (10-year) review of the Free Union Agricultural/Forestal District, as required in Section 15.2-4311 of the Code of Virginia. The district includes the properties described as Tax map 7, parcels 6, 7, 8A, 9, 9A, 9B, 9B1, 9C; Tax map 16, parcels 4B, 4C, 13A, 13D, 15A, 15A3, 15C, 15E, 15G, 16B, 17, 26, 30B, 36, 37, 38, 39, 52B1, 52B2, 54; Tax Map 17, parcels 8, 8B, 8C, 17C, 18H, 20A2, 22, tax map 29, parcel 1H (part). The district includes a total of 1,401 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas.

Mr. Clark made a Power-point presentation

- This is the ten year periodic review of the Free Union Agricultural/Forestal District.

- Staff has received two requests to withdraw from the district. The first is tax map 17, parcel 8, which is 21 acres. The owners are considering reentering the district later after they apply for a special use permit on that property. They wanted to make sure that the district did not cause them any additional complexity. There is a little over 7 acres consisting of two small parcels withdrawing to the southwest of that. At this point the total acreage would be just over 1,370 acres remain.
- Staff is recommending that the Planning Commission recommend renewal of the district to the Board of Supervisors.

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

Motion: Mr. Cannon moved and Mr. Loach seconded to recommend renewal of AFD-2008-00004, Free Union for another ten-year period as proposed.

The motion passed by a vote of 5:0.

Mr. Morris said that AFD-2008-00004, Free Union will go before the Board of Supervisors on October 8, 2008 with a recommendation for approval.

Work Sessions:

Wind Turbines (Mark Graham)

Mr. Graham made a power-point presentation and summarized the executive summary. (See power-point presentation and executive summary)

- The purpose of the work session is to review a proposed approach for allowing some wind turbines in the county and to seek Planning Commission guidance on the extent of regulation. Currently, wind turbines are not allowed as a use in any zoning district. Recognizing the County's interest in promoting renewable energy sources, the Board has expressed interest in considering changes to the Zoning Ordinance that would allow wind turbines to be allowed.
- The Planning Commission on May 13, 2008 advised staff that there was no interest in pursuing an ordinance amendment for large commercial wind turbines at the time. This was primarily in recognition that there were limited opportunities for commercial wind turbines in the county and those opportunities conflicted with other county values. The Planning Commission did express interest in pursuing an ordinance amendment that would allow smaller wind turbines that are accessory to other uses on a property. With respect to issues related to wind turbines, the Planning Commission recognized the limited wind speeds in the county that made it appropriate to provide flexibility with respect to constraints, but provided little additional guidance.
- Staff recommends in the executive summary that wind turbines be classified as an allowed accessory structure. That would mean that the wind turbine is only allowed on the property to support another use. For example, for the house it would be allowed to support the electric demand by that house. It would not be allowed as a stand-alone facility for commercial sale of electricity.
- Turbines would be exempt from the height requirements that are in the Zoning Ordinance. Height would be controlled by prohibition on lighting, which under FAA regulations would effectively set a maximum height. Most importantly for other things there will be a need for certain exceptions through supplementary regulations. Staff

recommends supplementary regulations for wind turbines. Among those supplemental regulations there would be no lights on the towers. It sets the maximum height at 200' or less. If it is in the Airport Corridor along certain mountain regions that height is actually reduced. There would be a minimum setback on the height of the tower plus 20'. In other words, there would be a 20' buffer in case the tower collapsed since the tower should be captured within the property.

- Staff has also recommended no wind turbines in the Entrance Corridors. In the staff report it was noted that there was some question as to whether the Planning Commission felt that was the appropriate border or if an additional buffer was necessary. In circumstances where it looks like it may fit, the Planning Commission by the use of the supplemental regulations could modify or waive that requirement.
- With that said, staff requests comment from the Planning Commission on the questions posed in the staff report, as follows.

    1. Does the recommended approach appropriately balance the interest in the County in promoting wind energy with other County values?
    2. Are Supplemental Regulations an appropriate way of establishing conditions for wind turbines?
    3. Should wind turbines be restricted in the Entrance Corridor as staff has recommended?
    4. Should wind turbines be restricted on the mountain ridges, which is not something that staff is recommending at this point?
    5. Should collocation of cell phone antennas or wireless facilities be prohibited on the wind turbine tower, which is something staff has recommended?
    6. Are there other concerns that need to be addressed such as tower types and colors?

- Assuming getting through the questions, staff proposes to bring back a resolution of intent to amend the Zoning Ordinance to hopefully go on the consent agenda. At that point staff would begin drafting the ordinance language.

Mr. Morris invited questions for staff.

Mr. Cannon noted that Mr. Graham mentioned that there are more stringent FAA requirements for towers that are located on ridge tops.

Mr. Graham replied that it could be, but he was not sure how the FAA makes the determination in which ones are important or not. Staff looked at the Comp Plan and other things for guidance and that the primary concern would be with the lighting of the facility. If they could avoid the need to light the facilities they thought that they had addressed a lot of the concerns. Staff's recommendation was to use supplemental regulations. If the Planning Commission feels that the circumstance is warranted, they could waive the lighting provision.

Ms. Porterfield said when she read the two sections from other areas that proposed language for Albemarle County seemed way too loose. When information provided indicated that Albemarle County was not very windy, she felt that the logic of people using these turbines is pretty slim. A 200' structure would be visible for a long distance. She noted that they are having enough trouble with cell towers, which approach 100'.

Mr. Loach questioned how to resolve the difference between the cell tower and wind turbines. He noted that monopoles are 30' above the trees. He asked if they would propose a balloon test.

Mr. Graham noted that this goes back to the challenge of the balloon test, which costs approximately $2,000.

Mr. Cilimberg noted that it was a public purpose question.

Mr. Cannon suggested that there might be some middle ground. The Rockingham Ordinance had limits of 65' or 80', but something considerably less than 200'. Maybe it is not technically or economically feasible, but at least land owners would have the choice to put on their land something that many land owners consider a traditional option for them.

Mr. Graham pointed out that the most effective area for wind turbines in this county will be along ridge lines. When one gets on the ridge line there are options. If the wind turbine can't be put up far enough above the trees to make it efficient the alternative is either don't build a wind turbine or cut all the trees down. Cutting the trees down would be by right.

Mr. Loach noted that it would bring limited benefits to a limited amount of people. Therefore, they can't base it on ratios. He would like to hear from any rural organizations such as Farm Bureaus that might have more experience in dealing with this. .

Mr. Morris agreed with Mr. Cannon. From what he heard at the seminar at James Madison University many of the wind mills, as they know them, are down in the valley. It is like a valley that they might find if they walk down the mall that they have a tunnel of wind or a wind situation that is caused if one is in the valley. If a farmer or whoever wants to erect a wind mill/wind turbine at a certain height that is not extrusive, etc. he would like the people to at least have that legal option to pursue this with restrictions. He commended staff for bringing this subject back up again. There are a number of Commissioners that think there might be a place for wind turbines in Albemarle County. But, he did not think that it has to be on the ridge line or on the Entrance Corridor. He asked staff to also take a look at solar power, which is the question that he felt needs to be addressed.

Ms. Porterfield said that if they are going to draft ordinance language for wind turbines that it really needs to have specifics in it. The Rockingham County ordinance has all kinds of specifics. She really believes that is what they have to do. There have to be reasonable heights with the ability to get a higher limit if you come in and explain why it has to be. One would need to have a minimum number of acres. One would have to be so far from neighboring properties. There has to be a sound limit because these could be quite noisy. What happens if a turbine becomes derelict? What should be done with them such as how quickly do they have to be taken down. If they don't come down, what is the county's alternative. They should not be able to be climbed so possibly after 12' in height there are no ladders. She thought that was the biggest difference in what was being suggested. She was not against turbines. She remembered Mr. Edgerton's comment that he had been watering his cattle by solar energy. She thought that they need to make sure that there are teeth in the ordinance language.

Mr. Edgerton said that he was very pleased with the staff's enthusiastic staff report. He attended the seminar at James Madison University. He came away discouraged by the economic potential. Right now if someone wanted to put up one of the smallest packages someone would be looking at about $20,000. That is what they heard pretty clearly at that seminar. So he felt that the requests were not going to overwhelm them. As far as the benefit to the community he wanted to respond to Mr. Loach's comment. They are right on the edge of seeing a change in attitudes nationally on how energy is produced and the impacts of that

production on the community. As a community they need to figure out a way to put some teeth in it to make sure that they are responsible to the neighbors. He really hoped that they could think about the impacts. The more people that are able to generate energy using the sun, wind and water the less power plants have to be built and the less impact on the global climate. He noted that Mr. Morris made some good points about the location. He would like to find a way to pursue this without it becoming too onerous.

Mr. Loach asked how they are going to resolve the difference between what they have been doing for cell towers and what they are not going to be doing for wind turbines. He remembered the first cell tower arguments they had in the county where the towers were going to be 200'. They were told not to worry because they would look like a Loblolly Pine. He remembered those debates. It gets back to what Ms. Porterfield said.

Mr. Morris said that it was clear that they would have to have clearly defined requirements. He invited public comment.

Morgan Butler, representing the Southern Environmental Law Center, thanked staff for looking into this issue. He offered some preliminary thoughts and questions. One question concerns the prohibition that would prohibit selling back energy to make sure that they don't actually facilitate or allow for commercial wind facilities. He wondered if there was any potential problem with how that might overlap with the state's regulations. It is complicated. But, he understands that if one put a wind turbine on their property and generates an excess of electricity one would be able to enter into contracts with power companies and sell that power back. He wondered if the two present any problems with any inherent incapability. Secondly, he wanted to make one comment about the co-locating of wind turbines with cell towers. He thought that it is a real threat, which staff has identified, which they certainly should try to avoid. He wondered if they should go so far as not to allow a waiver in that particular situation to avoid cell tower companies to get waivers to avoid the height restrictions applied to cell towers and to take the more lenient one applied to wind turbines. In the supplemental regulations he wondered if that provision could be differentiated from the others. He felt that the 200' seemed very high. He did not want to establish an incentive for people to go out and clear cut their property. This is one issue that should be looked into further. He noted that cell tower companies could possibly get into the business of wind turbines with the potential of putting cell antenna on it to get the morel liberal height.

Jeff Werner, representative for Piedmont Environmental Council, voiced concerns about wind turbines. He asked the Commission to consider the options in future work sessions.

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

Mr. Graham clarified that the net metering was looked at on an annual basis that there would be no net production of electricity. Part of the reason staff had included that was to recognize that they were not trying to limit the number of facilities anybody could build on their property. So by trying to define it as an accessory to the primary use they were effectively limiting the number of these things and making sure that they were not inadvertently creating a utility wind farm.

Mr. Loach noted that he worried about the unintended consequences of allowing wind turbines. On one hand they are trying to minimize the requirements for experimental purposes to reduce the greenhouse effect and also what to do with cell towers.

The Commission discussed the proposal and commented to the questions posed by staff, as follows.

Question 1 – Is the Planning Commission comfortable with the approach outlined by staff in the executive summary? Does the recommended approach appropriately balance the interest in the County in promoting wind energy with other County values? Are Supplemental Regulations an appropriate way of establishing conditions for wind turbines?

The Planning Commission was concerned that this approach is not providing enough limits on how the wind turbines could be established. The Commission suggested that staff start by obtaining feedback from Rockingham County and the Farm Bureau. They were concerned about unintended consequences and valued opinion on how people investing in such facilities think it would work.

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Question 2 – Should wind turbines be allowed within the Entrance Corridor or restricted to great distances from the Entrance Corridor?

The Planning Commission preferred not to have the Entrance Corridor be a natural prohibitor of wind turbines. It was suggested that wind turbines be setback a reasonable distance and not be right on the edge.

Question 3 – Should wind turbines be limited within the Mountain Overlay District?

The Planning Commission did not want wind turbines to be sky-lighted, which would keep them off the ridges. They did not want to encourage trees to be cut down.

Question 4 – Should personal wireless antenna be allowed to collocate on wind turbines?

The Planning Commission suggested allowing collocation as Tier 1 facilities as long as there are restrictions to ensure that the wind turbines otherwise are accessory to the primary use on the property.

Question 5 – Are there other issues for the Planning Commission?

The Planning Commission asked staff to use the Rockingham County ordinance as a framework.

In summary, the Commission requested staff to obtain comment from the Farm Bureau and Rockingham County and proceed to draft a resolution of intent to bring back for review on the consent agenda. No formal action was taken.

The Planning Commission took a break at 7:38 p.m.

The meeting reconvened at 7:44 p.m.

<u>Elements and Features within Building Sites</u>

The discussion was of the elements and features within Building Sites to consider the impact of easements serving other properties within Building Sites. (Amelia McCulley)

Mr. Fritz presented the executive summary in the absence of Ms. McCulley. This is a follow up to a prior conversation. There was a subdivision that came before the Commission with an easement that went though a building site. That raised some specific concerns. The Zoning Administrator confirmed that access easements and other easements serving off-site properties

are permitted within a building site. It is important to note that what the whole purpose of a building site is:

1. The construction of the dwelling.
2. The installation of the septic system of both the primary and reserve area.
3. Outside living area, which includes the garden, swing set, etc.
4. The construction of accessory uses on the property, such as sheds, garages and pools, etc.

Of the four listed elements two involve construction, which includes the construction of the dwelling and the accessory structures. The second involves the below-ground activity, which includes the drain field. The third element does not necessarily involve construction of any kind. It may have retaining walls or terraces for a garden, etc. It is important to note that a well does not have to be within the building site. Whenever a subdivision is proposed they are looking at it to determine if a building site exists on that particular lot. The ordinance does not specific what a building site is. It does it in reverse. It says what a building site can't include. For example, it cannot include any areas of critical slopes, floodplain or areas that are under water, areas within 200 horizontal feet of the 100-year floodplain, of a drinking water impoundment or within 100 horizontal feet of the edge of a tributary stream to such impoundment and any area designated as a resource protection area that comes through the Water Protection Ordinance. In other words if it is not one of those four things, it can be within the building site.

A building site can include the setbacks. The reason is that within the setback the drain field can be placed underground. Also, a garden could be placed there or other activities. Commonly that is seen within the setbacks. That is a fairly common thing. Staff has been able to identify some minimal areas necessary for building. A typical house size is going to give roughly a 1,200 square foot footprint. Obviously there are bigger or smaller houses. So staff giving a reasonable number that they have seen a lot of. The area for the primary and reserve drain field is roughly 10,000 square feet. It can be reduced if one uses pre-treatment. What that means is that roughly two-thirds of the building site is available for the other uses. That includes the outdoor living area and for everything else. Easements on a property, which serve another property, may be created between the parties as a private matter not requiring the county's approval. This happens all of the time. Private easements are relative common for access and utility easements. As a matter of fact utility easements are almost always going to be within the building site because they are necessary in order to get to the dwelling. An access easement serving another property would typically restrict building construction within the easement. It would eliminate construction, but not other activities. There have been cases where the drain field is actually under the driveway. There have been some cases where the drain field is actually under parking lots. Staff is not encouraging that, but just simply saying that it sometimes does occur.

When staff considers an ordinance amendment one of their responsibilities is to articulate the public purpose to be served. On this subject staff is unaware of any cases in which our current allowance of easements serving off-site properties and the building site led to difficulties or complications to the reasonable use of property. Ms. McCulley put in the report that in her 19 years as zoning administrator and in his 20 years that he has been here he is also unaware of any cases where easements have presented a problem to the use of the building site. Therefore, staff is recommending that no change be made to restrict off-site easements within the building site. This recommendation is based on there are no identified problems resulting from the current ordinance provisions. Off-site easements will allow the use of two of the building site elements, the septic systems and outside activity area. Third, the off-site easements are commonly a private matter not requiring county approval. It may therefore be

difficult to inform parties of this requirement before they create an easement and alert the county that easement encroachment to the building site has been created.

Mr. Morris invited questions for staff.

Mr. Edgerton noted that it was a very informative report. He was one that was particularly concerned about the inclusion of a driveway easement across a required building site. He felt that placing a drain field under a driveway was not the most desirable thing to do, but there is no danger involved. There is a potential safety issue when putting a driveway across a play area. The math is very interesting and suggests that perhaps they are requiring too large a building site area if the only things that they physically need to place in it involves only 11,200 square feet. He asked for background on where the 30,000 square feet came from. He noted that he always thought the 30,000 square feet involved the need for a primary and a secondary septic site.

Mr. Fritz recalled that it was a number that was achieved that they needed a little over 10,000 square feet to accommodate the core uses. That number was seen as a little bit low since they also need to tack on some additional area to put in the driveway and where they park the car. They also wanted to make sure that they had this outdoor living area. Another factor is that critical slopes are not allowed to be disturbed in construction. In order to put a house in it may involve some grading. So the footprint of the house may be 1,200 square feet, but the grading to put in proper drainage and the like may increase the size of that. The 30,000 square feet was seen as a big enough number to include the grading.

Mr. Edgerton wondered if they should minimize the actual required building site instead of encouraging people to grade more than they need or to commit more than they need to yards.

Mr. Fritz noted that he would look into that issue with Ms. McCulley.

Ms. Porterfield noted that the reason this came up was that the developer got rid of the easement going across two other lots and therefore had a lot that had no access.

Mr. Fritz said that was not what led to the question that is before the Commission. The building site that he was proposing there was a new access easement that he was proposing that went through the building site. If he had not done that and instead had kept the old access that went through the property that easement would have also gone through the building site.

Ms. Porterfield noted that the problem was that the applicant did the new access without getting permission.

Mr. Fritz noted that the applicant has since abandoned it and has not done it.

Ms. Porterfield asked if the applicant had removed the driveway and put it back in again.

Mr. Fritz replied yes noting that the applicant never perfected the easement. He noted that there was a violation and there were conversations about the removal of the driveway and the culverts. The applicant has gotten approval from DEQ on the placement of the new pipe, the new grading and how to remove and restore the existing pipes and stream. The alignment for the drive has been figured out where it can go without disturbing critical slopes. It does not involve an easement on an adjacent property. But, he did not know if that work has been done. The foundation has been laid to do it, but he did not know if the work has been completed.

Ms. Porterfield asked if he had seen that type of situation in the past 20 years where a developer literally got rid of an easement that went across two lots and had a lot that had no access. She asked if the PC was stuck. Was there nothing they could have done with that situation.

Mr. Fritz replied that in the few cases where there were problems with easements the current ordinance provisions have taken care of the problem.

Mr. Cilimberg pointed out that there was a practical aspect to the 30,000 square foot building site. It is in a lot of ways a paper exercise of showing that there was at least one location to build a house. In reality people don't clear all 30,000 square feet. It is shown, but they only clear what is necessary to build a house and put the drain field in. What might be considered the outside living area is where one makes the decision as to whether they clear any or all of that based on their circumstances. If they reduced the building site size they would introduce the opportunity for more building sites on a parcel and they would still clear the same amount of land. The applicant was going to clear the land based on what they want to use and not what the building site size is.

Mr. Edgerton said that it would only work if they actually reduced the size of the actual lots and moved more towards clustering where they could be diminishing the resource of real estate more efficiently.

Mr. Cilimberg noted that in their rural area work the Commission had recommended one to two acres as an alternative size for rural area lots, particularly under clustering.

Mr. Morris opened the work session for public comment. There being none, public comment was closed and the matter before the Planning Commission.

Mr. Morris thanked staff for addressing the issue noting that no action was necessary.

In summary, the Planning Commission held a work session on the elements and features within building sites. The Planning Commission discussed the issue, made comments and took public comment. No formal action was taken.

Old Business:

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

New Business:

Mr. Morris invited new business.

- The next regular meeting of the Planning Commission will be Tuesday, September 16, 2008.
- The joint ARB/PC/Board of Supervisors meeting will be held on September 10, 2008 at 2:00 p.m.
- The Piedmont Area Preservation Alliance Annual Gathering of the Historic Preservation Community meeting will be held on Thursday, September 18 at 6:00 p.m.

Adjournment

With no further items, the meeting adjourned at 8:04 p.m. to the joint meeting of the Board of Supervisors, Architectural Review Board and the Planning Commission on Wednesday, September 10, 2008 at 2:00 p.m. at the County Office Building, Room 241, Second Floor, 401McIntire 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 and Stephanie Mallory, Planning Assistant)