Albemarle County Planning Commission
February 16, 2010

The Albemarle County Planning Commission held a public hearing, work session and meeting on Tuesday, February 16, 2009, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Don Franco, Linda Porterfield, Russell (Mac) Lafferty, Duane Zobrist, Vice-Chairman; Calvin Morris, Ed Smith, and Thomas Loach, Chairman. Julia Monteith, AICP, non-voting representative for the University of Virginia was present.

Other officials present were Rebecca Ragsdale, Senior Planner; Wayne Cilimberg, Director of Planning; Rob Heide, Zoning Enforcement Manager; Amelia McCulley, Director of Zoning/Zoning Administrator; Bill Fritz, Director of Current Development and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Committee Reports: (Attached Committee list)

Mr. Loach asked for committee reports.

- Mr. Morris reported that the Pantops Steering Committee met and decided to meet quarterly. Four subcommittees were created dealing with specific areas for communication, traffic, parks, and greenways. The subcommittees will be meeting in the future.
- Mr. Lafferty reported that CHART met. They are putting together a slide presentation on transportation in Charlottesville and Albemarle County, which will go out to the community in a month or so.
- Mr. Loach reported on the Crozet Advisory Committee and the current Master Planning. A meeting was held on the Light Industrial zoning. Susan Stimart provided a status update with a presentation by Mr. Yancey on his recommended Comprehensive Plan Amendment. It was a good discussion and was well attended.

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

Review of Board of Supervisors meetings – February 3, 2010 & February 10, 2010

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on February 3, 2010 and February 10, 2010.

Other Matters Not Listed on the Agenda from the Public:

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

Consent Agenda:

a. **Approval of Minutes**: April 8, 2008, May 13, 2008, June 24, 2008, August 11, 2009, September 15, 2009, and October 27, 2009

b. **SDP-2009-00088 Pantops Martha Jefferson Medical (Building 3) - Waiver**
In accord with Sec. 18-4.17.5, request for approval of waiver for standards regulating outdoor luminaries. The property, described as Tax Map 78 Parcel 55A8 is located in the Rivanna Magisterial District on Route 250 East, approximately 0.50 mile west from its intersection with I-64. The Comprehensive Plan designates this property as Urban Density in Urban Area 3. (Summer Frederick)

Mr. Loach asked if there was any member of the public present to speak on an item listed on the consent agenda. There being none, he asked if any Commissioner would like to pull an item from the consent agenda for discussion.

Ms. Porterfield asked to pull SDP-2009-00088, Pantops Martha Jefferson Medical (Building 3) – Waiver for questions. She asked if the reason the lights don't match the current Code is because they were installed on the other buildings prior to the Code.

Mr. Fritz replied that the installed lights match the lights on the other facility, but don't meet the Code because of the upward directed light from the fixtures. The lights should not be there. The only reason the lights are not in violation was they have not turned the lights on.

Mr. Morris pointed out that Ms. Porterfield was asking about the other two buildings.

Mr. Fritz noted the other two buildings are totally in compliance since the lights are nonconforming. The reason staff is looking at this favorably is because it was intended as a single feature, the amount of up light is minimal, and it was endorsed by the Architectural Review Board.

Ms. Porterfield suggested the approval indicate the objective is to allow the applicant to match the lights with the two existing buildings so it is clear that they are not changing the current regulations except for the fact that the buildings will match.

Motion: Mr. Morris moved and Ms. Porterfield seconded to accept the consent agenda items as requested with an additional comment on SDP-2009-00088, Pantops Martha Jefferson Medical Building 3, as follows.

- The approval should indicate that the reason for approval is to allow the applicant to match the parking deck lights with the two existing buildings so it is clear they are deviating from the current regulations to allow the structures to match.

The motion carried by a vote of (7:0).

Mr. Loach noted the consent agenda was approved.

Deferred Items:

ZMA-2005-003 UVA Research Park-North Fork (Sign # 18). PROPOSAL: Request to rezone approximately 30.56 acres from RA Rural Area which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots) to PDIP Planned Development Industrial Park, which allows industrial and ancillary commercial and service uses and no residential uses), for 700,000 square feet of office and research use and 534 ± Acres to be rezoned from PDIP to PDIP to amend proffers and application plan associated with ZMA 1995-04.
PROFFERS: Yes.
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Industrial Service- warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre).
ENTRANCE CORRIDOR: Yes
LOCATION: on the north side of Airport Road (Route 649) approximately one third of a mile from the intersection of Airport Road and Route 29 North in the Community of Hollymead. TAX MAP/PARCEL: Tax Map 32 Parcels 18, 18a, and a portion of 6A requested to be rezoned from RA Rural Areas; Tax Map Parcels 32-18B, 19F, 19F1, 19G, 19H, 19H1, 19H2, 19J, 22B1 and 22B2 rezoned from PDIP to PDIP to amend proffers. MAGISTERIAL DISTRICT: Rio

AND

SP-2008-00015 (Concurrent with ZMA 05-03 UVA Research Park (formerly North Fork Research Park). PROPOSED: Parking Structure in PDIP Planned Development Industrial Park

AND

2008-00062 UVA Research Park-Laboratories, medical, Pharmaceutical (Concurrent with ZMA 05-03 UVA Research Park (formerly North Fork Research Park). PROPOSED: Allow laboratory uses in association with the UVA Research Park.

AND

2008-00063 UVA Research Park-Supporting Commercial Uses (Concurrent with ZMA 05-03 UVA Research Park (formerly North Fork Research Park). PROPOSED: Allow supporting commercial uses within the UVA Research Park, not to exceed a total of 110,000 square feet of floor area.

AND

2008-00064 UVA Research Park-Hotels, Motels, Inns (Concurrent with ZMA 05-03 UVA Research Park (formerly North Fork Research Park). PROPOSED: Allow motel, hotel or conference facilities within the UVA Research Park not to exceed 190,000 square feet of floor area.
(Rebecca Ragsdale)

Mr. Loach noted that the five deferred proposals would be discussed all at once with separate voting actions.

Rebecca Ragsdale presented a Power-Point presentation and summarized the staff report. This item was before the Commission in January. Due to inclement weather, the item was postponed will now go to Board of Supervisors on March 10.

This request was before the Planning Commission in January 2006 for a work session. Then a public hearing was held in August 2009 when the Planning Commission recommended approval. There were some advertising errors and the public hearing was scheduled for the February 2 meeting, but due to inclement weather, the request was deferred to this date. The request will go to the Board of Supervisors on March 10 since it was postponed due to inclement weather.

The requests are for a rezoning and several concurrent special use permits for the UVA Research Park to add about 30 acres to the existing UVA Research Park. They are proposing to add some property they own that is zoned Rural Areas to the Planned Industrial Park Development to bring their grand total of square footage presented up to 3,700,000 with 3,000,000 permitted at this time. It would allow an additional 700,000 square feet of building. The additional area being requested is to be added to the Research Park and noted as Area D in the staff report. They are proposing similar uses. Staff would expect to see typical development that is already in the Research Park. The parcels to be added contain an existing home and some undeveloped land located along the Airport Road Corridor and around the existing Hollymead Fire Station. The property is currently zoned Rural Areas and is adjacent to the existing Research Park, which is zoned Planned Development Industrial Park. Area D is also adjacent to the west along Airport Road to parcels zoned Light Industrial. It is designated for Industrial Service in the Comprehensive Plan so that the rezoning requested is consistent with the existing Comprehensive Plan.

The property would have the extension of Lewis and Clark Drive adjacent to it or through part of what is referred to as Area D. The portion of it on the Airport Road side is now called Innovation Drive. It does not connect to Lewis and Clark Drive yet. The entire existing park is included with this rezoning because proffers are being updated and there is additional square footage being requested in an area that was previously shown as open space in Area D. It is consistent with the Comprehensive Plan.

This proposal updates proffers but does not update the application plan except where specifically noted in the other areas of the Research Park. Therefore, they have a little more detail with this application plan since it came in recently and the other application plan was approved in 1995. Staff reviewed the general layout of the buildings. The proffers are being revised to incorporate this area and the new exhibits of the application plans all into one set. There will be one set of proffers and application plans that govern the property, which is an update. The Design Standards that apply to the rest of the Research Park with the existing buildings will be applied. There are additional transportation improvements and other updates to the proffers that the applicant has worked with that have been requested that are a part of this rezoning as well. With transportation, they are providing for additional interconnections, allowing for road improvements, and updating proffer language from the proffers that were approved in the 90's. They are providing the Lewis and Clark interconnection through the parcel from Route 29 to Airport Road sooner

than was originally provided for in the phasing plan. That is one of the more significant transportation proffers that are provided with this rezoning.

Staff recommends approval as the request is consistent with the Land Use Plan and the applicant has addressed all of the outstanding issues staff raised to address impacts. There are a few minor updates or tweaks to the proffers that need to be done before it goes to Board to reflect ownership changes that have happened in the Research Park recently, a typo and one minor clarification. There are no substantive changes, but all technical changes to the proffers. Staff recommends approval of the rezoning with the attachments including the application plan and the proffers. There is also an action associated with the rezoning to approve a modification to setbacks. There are four special use permits that accompany the project to allow parking structures, medical research facilities, supporting commercial uses and hotels, motels and inns.

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

Valerie Long, representative for the University of Virginia Foundation, offered to answer questions and to have the opportunity to address any public comments. She said they appreciate the Commission's consideration of their requests and asked for approval.

Mr. Loach invited public comment. There being no public comment, the public hearing was closed and the matter before the Planning Commission.

Motion on ZMA-2005-003:
Motion: Mr. Morris moved and Mr. Franco seconded to recommend approval of ZMA-2005-0003 UVA Research Park - North Fork with the proffer changes for clarify to be done prior to the Board meeting.

The motion passed by a vote of 7:0.

Motion on Modification to Setbacks:
Motion: Mr. Lafferty moved and Mr. Morris seconded for approval of the setback modification to Section 26.6 to allow a setback reduction to allow for buildings, including those exceeding 35 feet in height, to be reduced from 50 feet to 10 feet along public roads, including Airport Road and Lewis and Clark Drive.

The motion passed by a vote of 7:0.

Motion on Special Use Permits (4):
Motion: Mr. Franco moved and Mr. Morris seconded to recommend approval of all four special use permits, SP-2008-00015, SP-2008-00062, SP-2008-00063, and SP-2008-00064 UVA Research Park - North Fork concurrent with ZMA-2005-003 subject to the conditions as recorded in the staff report.

The motion passed by a vote of 7:0, as follows.

SP-2008-0015-Parking Structure- *APPROVED WITH NO CONDITIONS*

Conditions on SP-2008-00062-Laboratories, medical or pharmaceutical:
1. Laboratories shall be subject to Section 4.14 Performance Standards of the ordinance and a Certified Engineers Report is required pursuant to Section 4.14.8 of the Zoning Ordinance.
2. Laboratory buildings shall not be less than 30 (thirty) feet from the perimeter buffer areas to adjoining properties not located within the development, unless modified by the Director of Planning.

Conditions on SP-2008-00063-Supporting Commercial Uses:
1. In addition to proffered limitation not to exceed five (5%) percent of total floor area, commercial uses shall not exceed ten (10%) percent of total floor area at any time during phased development.

Conditions on SP-2008-00064-Hotels, Motels, Inns:

1. Not more than one hotel, motel, or inn shall be permitted. Such hotel, motel, or inn shall not exceed two hundred fifty (250) lodging rooms.
2. Conference facilities (other than those as may be provided by individual occupants) shall not be required to locate internal to nor on the same site as the hotel/motel/inn, but total gross floor area of lodging and conference facilities shall not exceed 190,000 square feet.

Mr. Loach said that the ZMA and four special use permits for UVA Research Park would go to the Board of Supervisors on March 10 with a recommendation for approval. The modification to the setbacks was approved by the Planning Commission.

Regular Items:

SDP-2009-00004 Elledge Property (AT&T CV313) Preliminary

The request is for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 103' 2'' tall (7 feet above the height of the reference tree), within a 20 x 30 foot lease area. This application is being made in accordance with section 10.2.1(22) of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. This application includes a request to modify Section 4.2.3.2 to allow activity on critical slopes. The site is located at 415 Key West Drive [State Route 1445] approximately 2,600 feet from its intersection with Northwest Lane [State Route 1447]. The property, described as Tax Map 62B1 Parcel E-11, is 3.4+/- acres in size, is located in the Rivanna Magisterial district and is zoned RA, Rural Areas. The Comprehensive Plan designates the property as Rural Area in Rural Area 2. (Elizabeth Marotta)

Mr. Fritz presented a PowerPoint presentation and summarized the request in Ms. Marotta's absence.

An email was sent today to the Planning Commissioners from Rich Gregory, which references two photographs that will be displayed later this evening. The request is for a Tier II Wireless Facility to be located in the Key West Subdivision near the Rivanna River. Part of the request includes the disturbance of critical slopes that is also before the Commission tonight. It is not just the approval of the wireless facility. The wireless facility is proposed at 7' above the reference tree with the proposed location behind the house in the stand of trees. The property drops off considerably down towards the floodplain of the Rivanna River. The plan shows the location of the critical slopes that are going to be disturbed.

The Planning Commission reviewed this request in August. At that time there was some information from the Bio-Diversity Work Group, The Natural Heritage Committee. The Planning Commission directed staff to go back and ask them for some additional comments. The request was also deferred to allow the applicant to submit some appraisal information. There was some information submitted by the public concerning addressing potential loss of value and detrimental impacts to the property. The deferral was to allow the applicant to respond to that. Additional information was requested from the Natural Heritage Committee who responded by saying that the review was beyond the scope of their charge as given to them by the Board of Supervisors. Therefore, the National Heritage Committee declined to provide any comment. Based upon that staff believes that the Bio-Diversity Work Group's comments are not relevant to this review, which they were considering as part of the critical slopes waiver. Based on the additional information received staff has decided that it is not a relevant factor in the critical slopes evaluation.

The applicant has submitted a review of the appraisal. That information is before the Commission. The applicant can address any comments or any questions the Commission might have about that.

The critical slopes waiver request was analyzed and staff determined it meets both the technical requirements of the ordinance and the criteria for granting approval. Therefore, staff is recommending approval of the critical slopes waiver and approval of the wireless facility itself.

Mr. Loach invited questions for staff.

Mr. Zobrist asked staff to review photographs of the balloon tests since he was not present in August.

Mr. Fritz reviewed photographs of the balloon tests taken from various locations.

Mr. Kamptner noted that the first four pictures were taken from the Dunlora Subdivision.

Ms. Long noted that was correct. She pointed out that one photograph was taken from a cul-de-sac in Dunlora Subdivision with a very strong zoom lens from the Mead property.

Mr. Morris asked if there were any photographs taken directly from the Key West area from neighboring properties since that was what was really needed. There were some photographs available at the previous meeting.

Mr. Franco pointed out the applicant had those photographs.

Mr. Fritz said that he would rely on the applicant and look for those photographs while she was doing the presentation.

Mr. Smith said that as he recalled the balloon is the same diameter as the tower, and Mr. Fritz replied that is what staff typically tries to do.

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

Ms. Valerie Long, Attorney representing the applicant, AT&T, presented a PowerPoint presentation to explain the request. Since three Commissioners were not present at the August meeting, she would skim through the same presentation to show the most relevant photographs.

- In the photographs of the property she explained the location of the driveway, Ms. Elledge's house, the short extension of the driveway where they proposed to provide access to the facility; the proposed pole location; the equipment platform; the lease area; the reference tree; all of the other trees; and the 50' tree radius. She noted the location of tree #9 and an old dog house, which was a good point of reference to use. The natural existing clearing was used intentionally to avoid ever having to remove any trees from the area. The terrain elevation increases going back towards the driveway and drops off going down towards the river. There are two extremely small trees they did not have surveyed because they were understory trees. The photographs were taken on January 26, 2009. One photograph was taken from the edge of the property when she was wearing dark brown pants and a light blue coat. They thought that served well to show the visibility from the trees. Obviously, this is winter so the leaves were not on the trees. A zoom in of the same photo was shown so the Commissioners could get a feel for the nature of the property with the woods and other vegetation.
- In a photograph taken from Ms. Elledge's property looking towards the St. Clair property, which was up the hill and through the trees, the edge of their property could barely be seen through the trees. In the same photograph, she noted the relevant height of the facility to the reference tree and some of the other trees. Because of the elevation change and the trees different ground elevations the pole is 103' tall because the reference tree is at a higher base elevation. That accounts for that difference. They have proposed landscaping to screen any views of the ground equipment and the base of the tower from the adjacent properties. There are eight trees of two different species on each side of the property line. She reviewed photo simulations they prepared and pictures from the balloon tests that they took on January 26, 2009. They feel this demonstrates that even in the dead of winter, the bright red balloon could be seen, but when it was a brown pole that blends in with the vegetation it might be visible. As the Zoning Ordinance and the Comprehensive Plan provides, any visibility would be mitigated by the brown design of the pole and its location within a grove of mature trees at a height that was only 7' above the top of the reference tree.

Mr. Morris asked how the telephone pole that was visible relates to the size of the proposed cell phone tower.

Ms. Long replied the telephone pole was a little bit narrower. The proposed pole would be 18" in diameter at the top and 3" in diameter at the base. The color is the same brown used in other facilities. It is a dark brown color that blends well in the winter with the bare trees and in the summer against the trees when leafed out. The power lines are visible in the foreground and are right up against the road.

- Continuing the presentation, Ms. Long reviewed a photograph taken from Dunlora Drive. There are three places in Dunlora where it was visible. The balloon could be seen from a distance due to a break in the tree line as it goes over a creek. While taking the photographs they had a number of people drive or walk by ask what they were looking for and to point out where the cell tower was. None of the neighbors in Dunlora who happened to be driving or walking by that day expressed any concerns to them about it. Most of them expressed excitement over having AT&T Wireless coverage in their neighborhood.
- The next photograph was taken from Dunlora Farm Road closest to the Rivanna River. Because this is an open floodplain area, they did have some views of where the facility would be. It would be visible from this area at a great distance. Since the pole is brown just 7' above the top of the tallest tree, they think its visibility will be mitigated. The next photograph was taken from Penn Park, which was so far away that the balloon was difficult to find. This was the only location in Penn Park they could find it. Therefore, they included it in a photo simulation. The balloon was very difficult to see with the naked eye in the dead of winter. In a photograph from the St. Clair property, the balloon was visible through the trees.
- She pointed out the critical slopes on Ms. Elledge's property and that the lease area is just on the edge of the slopes. They tried to avoid the critical slopes completely, but balanced that goal against the goal of having the facility as minimally visible as possible. They wanted to take advantage of the natural clearing in the trees. With the down slope of the property, they did not want the pole on the highest point. If they had done that, it would have been much closer to the driveway. There is some vegetation at the end of her driveway that helps screen the facility as well. It is a minimal disturbance of 408 square feet of critical slopes with some of that under the equipment platform. They will not be disturbing or grading, but only doing a little bit of clearing the brush away to install the platform. Even that is not as significant a disturbance that they might otherwise see. The engineer's efforts to demonstrate the relative location of the facility versus the critical slopes line shows the contour of the property. It shows the gradual drop that gets significantly steeper as it goes down the hill. There are two critical slope areas. She reviewed several other photographs including a zoom in from Mr. Mead's property in Dunlora, which has an incredible view of the floodplain and the river area. At that time, Mr. Mead did not express any concerns about the facility.
- There were some materials submitted by the neighbors expressing some concerns. The applicant continues to believe that whatever visibility there might be will be significantly minimal. They have seen the pictures of the worst case scenario in the winter with no leaves on the trees. The brown pole will be far less visible than the bright red balloon would be. They try to keep the diameter of the balloon roughly the same diameter as the pole. The pole is going to be 18" in diameter at the top and the antenna panels would be mounted on either side. They find that they have the balloon a little bit larger in order to have enough helium in the balloon to keep it floating and flying straight up. Therefore, the balloon is a little bit larger, but is not as large as some people have used.
- Their appraisal review submitted concludes there will be no adverse impact on the adjacent properties due to the minimal visibility of the site in the trees. The landscaping proposed is not for fencing or a canopy. Those are some of the issues that were stated in the neighbor's appraisals. There were some inaccurate comments about that. Several realtors submitted information to the neighbors that talked about their concern regarding adverse impacts on property values. She did not believe that any of those realtors visited the property. They did not make reference to having reviewed the plans or that they understood the small scope of the proposal in that it would be a brown pole just 7' above the top of the trees in a wooded area. She acknowledged that several Commissioners took the time to come out to view the property.
- Several of the realtor letters referred to the WINA towers in Ivy, which are not at all comparable. Those are 300' towers with bright red lights that blink all night long and should not have any relevance in the Commission's review of this. The Planning staff spent a considerable amount of

time with them out at the property viewing two balloon tests and came to the conclusion that the visibility will be minimal from the adjacent properties and Key West Drive. Their appraisal review after a real in depth analysis concluded there would not be an adverse impact on either of the property values. That being said, the issue of adverse impact on properties is not relevant or part of the Wireless Ordinance, but is part of the review for the critical slopes waiver. That element applies to whether the disturbance of the critical slopes would have an adverse impact on property value. There has been no evidence submitted that she was aware of that indicates that disturbing 408 square feet of critical slopes with all of the engineering initiatives they have proposed, such as silt fencing and so forth, will have an adverse impact on property values. It is an incredibly small area and less than one-half of one percent of the entire critical slopes. Therefore, they think they have clearly met the criteria for the critical slopes waiver to be granted. The Planning staff concurs with that conclusion and they ask for Planning Commission support of that as well.

Mr. Loach invited questions for the applicant.

Ms. Monteith asked that she return to the exhibit that shows the overlap of the critical slopes with the actual construction. She questioned if they were including the drive access.

Ms. Long replied yes, it included the drive access. There are two areas of critical slope disturbance. In the bend of the driveway where AT&T is proposing to extend, the driveway to the lease area is a small area of 108 square feet of critical slopes disturbance. The other area is approximately 280 square feet for a total of 408 square feet. They were careful in the way they designed the driveway. The original design and draft of the driveway had it going further down the hill and around, which would have been a much larger area of disturbance. Once they realized that they asked the engineers to revise the plan to tuck it in and avoid as much slope disturbance as possible. Just to put the platform and pole in would technically be a disturbance of that slope, which is why they normally use a concrete pad to place the equipment on. They want to use a metal platform here to minimize the disturbance.

Mr. Lafferty asked if it showed the actual drip lines of the trees or just simulations.

Ms. Long replied that it was simulations. The tree canopy is so dense it is difficult to measure the exact drip lines. Tree protection is taken very seriously in the county ordinance. They have tree protection fencing in place around most of the trees for temporary and permanent fencing. The ordinance provides that the facility can never be more than 7' above the top of the tallest tree. If the reference tree is damaged and died, they have to lower the pole to be 7' above the top of whatever the tallest tree is. That provides an extremely strong incentive for AT&T to ensure that the trees are protected. A conservation plan is prepared by an arborist who makes recommendations and requirements for measures to be taken during, prior and after construction to ensure the health of the trees.

Mr. Zobrist asked how she concludes disturbing that critical slope by putting a pole on it doesn't disturb the value. He did not get her logic, but understood what the ordinance says. When they disturb the critical slope and put something on it that is part of what they have to consider. Ms. Long was telling them they don't have to consider the visual impact because they are only considering the dirt they cut. He was not sure that was correct.

Ms. Long replied when she spoke about not really disturbing the critical slope that was not a very well stated comment. Therefore, she apologized. The point was they were not doing any grading or clearing of that area, which normally with critical slope waivers they are talking about doing grading and clearing and that sort of thing.

Mr. Zobrist said they need a critical slopes waiver so that is not the issue. Once they put a pole on it that whatever impact is associated with the disturbance of that critical slopes waiver they have the right to look at and think about it unless anybody else disagrees with it. He asked Mr. Kamptner to comment.

Mr. Kamptner noted that one criterion in the critical slopes waiver regulations is whether or not there is an adverse impact to adjacent properties. When looking at section 4.2 it speaks about runoff, the movement

of soil and dirt during rain events, and impacts like that. The result of granting a critical slopes waiver in this case would allow the sited of the pole. That impact is considered in the context for a Tier II Wireless Facility in the requirement that the applicant must satisfy they have located the facility to minimize its visibility. He noted this is a by-right use and the wireless regulations exempt wireless facilities from the requirement that these structures be located within a building site. It is a building site that can't have critical slopes. That exemption when applied to wireless facilities is an indication from the Board that they expect wireless facilities will be located upon slopes. That is to fulfill one of the policies of the Comprehensive Plan to site facilities on the sides of mountains because it provides better wireless coverage minimizing visual impacts because in most cases when on a full mountain side there is a backdrop of trees, rocks, and things like that.

Mr. Zobrist said the explanation was helpful. He was an AT&T wireless customer. The county approved a pole for a Tier II facility in the fall of 2007 and AT&T decided to build it about 25' higher than it was supposed to be and did not tell anybody. There was an intense cost to the people who were affected thereby to have the engineers measure the pole. He asked if it would be possible to get some kind of independent certification that their pole is not higher than it is supposed to be.

Ms. Long replied that they would be happy to do that since that is actually part of the process in the ordinance.

Mr. Zobrist noted that he was affected because when they lowered the pole he could not get coverage when he drives down that road. He had an intense conflict here because he would like to get cell coverage, but on the other hand, he liked AT&T to do what they are supposed to in the process.

Ms. Long said that AT&T made a mistake in that site.

Mr. Zobrist questioned how they could make a 25' mistake on a pole.

Ms. Long replied that honestly she was not sure since she was not involved in that application. Her understanding was once it was brought to their attention after some neighbors paid to survey the height that it was found to be the wrong height and they lowered it.

Mr. Zobrist pointed out he was the lawyer for the neighbors and it took an awful lot of work to correct that. He said at that time everyone felt that no one measures the pole. He did not know anybody that could look up and tell how high a pole is.

Mr. Fritz pointed out in all types of building permit applications the zoning administrator as a condition of the issuance of the certificate of occupancy can require a surveyor's worksheet. They do it for townhouses, for example, to make sure it meets the setbacks. The same could be done with wireless facilities that the facility is constructed as agreed to.

Mr. Zobrist suggested a condition of approval that an independent engineer certifies that the pole is at the appropriate height. He pointed out that Mr. Fritz was involved and knew how much work it took. They would not have known except for the Intelos pole that was about 50' away.

Mr. Fritz said as a condition in the approval of the personal wireless facility that cannot be done because the ordinance was specifically written in a way that it is an up/down vote. Whether or not it can be attributed somehow to the waiver of the critical slopes he did not know. However, even without that staff can express to the zoning administrator the desire of the Planning Commission that there be a certification of the height of the facility.

Mr. Kamptner said that the regulations require a certification by a surveyor. The applicant has to survey and certify that the height of the pole meets the requirements of approval.

Ms. Long noted that it is part of the ordinance and they do that as part of the process.

Mr. Zobrist asked if they could go with an independent surveyor.

Ms. Long replied that AT&T hires a surveyor to come out to measure the height of the pole and certify it to the County. She acknowledged that AT&T made a mistake in that case.

Mr. Zobrist noted that he had seen both sides of the issue once he left the Commission. He suggested that possibly the zoning administrator had something to say.

Ms. Long said that she happened to be present at the meeting when several neighbors raised the issue and submitted photographs. She understands and appreciates the concern that the neighbors had, but it was justified. Once AT&T was made aware of the problem, they corrected it.

Mr. Franco asked if there was a certified engineer report done to certify the pole height.

Mr. Zobrist replied that he had no idea except that the neighbors had to hire an engineer to go out and measure the pole. He was amazed at the cost of measuring the pole once it was in place.

Mr. Franco said if that is in the ordinance, they have to trust that staff is going to follow the ordinance and it will be taken care of. If someone put their stamp on a certification, he would tend to think that they are not going to lie.

Mr. Fritz pointed out the zoning administrator had just told him there was a certification made at the time of the building permit. The neighbors challenged that and ultimately the engineer that certified it originally said that he had made an error.

Ms. Long estimated that AT&T had between 40 and 50 tree top facilities like this in the community. She has been working on them since 1999. That is one of two where they have made an error over the years. She could not promise that they would never make an error again. She can assure them that as long as she was involved they will make sure they get them fixed right away. It is a challenge measuring the heights of these trees. This is a good example that it is difficult to get accurate representations. They have surveyors go out repeatedly to make sure they are accurate. They have photo simulations that they can take to a site after it is built, stand at the same location the photograph was taken from when there was a red balloon, and it looks exactly like it did in picture. They take a lot of pride in accuracy, which puts her reputation on the line. Therefore, she wants to make sure it is right. She can't promise that there would never be an error, but they will certainly comply with the ordinance if the facility is approved. If anyone has concerns about whether it was built pursuant to the plans, they will certainly have it measured and have it corrected if necessary. The point was also raised if they lower the height of the poles it diminishes the service. That is the heart of the problem with these facilities. Putting the poles only 7' to 10' above the tops of the trees they don't work as well as they would like.

Mr. Zobrist pointed out they just need to have more facilities.

Ms. Long replied that is what they are doing, which is why they need this facility. Key West has some areas of coverage for AT&T. The residents that live at the high point of the neighborhood have coverage. There are a number of neighbors lower down in Key West towards Route 20 don't have coverage. The Dunlora and Belvedere neighborhoods do not have coverage. There are gaps along Rio Road and other places. This proposed facility is intended to fill in some of those gaps. The Comprehensive Plan that established tree top facilities as the policy for Wireless Facilities in the County recognized that there was a trade off. They could either have 200' towers with great coverage like in Richmond, ugly towers that can be seen for miles, or treetop facilities that they don't see much at all with a lot more of them. It might mean that the facilities would have to be located in neighborhoods and be closer to homes where people don't want to see them. The compromise made was they would see a tiny bit of lots of facilities over seeing lots of a handful of facilities. That was a decision the Board made. They are just trying to comply with the Comprehensive Plan and implement it. It is a tremendous expense. AT&T would have to build about six of these sites to achieve even anywhere near the same coverage. She would be happy to address any additional comments.

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

The following persons spoke in opposition to the critical slopes waiver request and wireless facility.

John Clem, resident of Key West for over ten years, said he lived next door adjacent to the Elledge property. Key West was the first subdivision in Charlottesville and was built in 1958. He thought that building the cell tower would be an unwelcome precedent, which would directly affect the views off his property. He would view the cell tower directly from his eat-in kitchen. The cell tower probably would affect his property the most visually and would decrease his property value. Mr. St. Clair has submitted substantial evidence from other realtors, including a professional journal article, that shows that cell towers would have an impact on the property value. The landscape screening proposed would not be adequate. It is being proposed in a mature forest that would not grow very fast in the rocky soil. His surrounding neighbors and he are very opposed to the request. He had concerns that future services might be added into this tower, which could possibly require a high power line be put back into the facility.

Kent Sinclair, resident of 417 Key West Drive next door to the Elledge property, suggested that he misheard Ms. Long or she misspoke since there are fences around a number of those trees. The proposal would entail disturbance of the slope not included in the area that adds up to 408 square feet. He made the following two points.

1. Ms. Elledge is the applicant when Ms. Long stood up and said she was representing the applicant, AT&T. The applicant is Ms. Elledge. Therefore, she is not eligible under the ordinance to obtain a modification of the zoning. The Commission received a memo from Mr. Kamptner indicating they use the word "developer" and "subdivider" because that is used in site plans. Instead, the reality is that the Supervisors had enacted four ordinances to seek a waiver. When they want the owner to be able to seek a waiver, it says "the land owner, the owner, or her agent." That is what it says when the owner is in power to seek a waiver of sound restrictions. The owner is allowed to seek a waiver if the driveway does not fit. He has always been told the Planning Commission plays it straight and applies the ordinance as written. One almost has to say that it is just silly drafting an ordinance that says only developers and subdividers can make these applications. Section 4.2 is all about developers and has to do with whether there is a buildable site on every lot. Therefore, it makes sense for the restriction to be put in there by the Board of Supervisors. There is no definition that says that a homeowner who has lived in her home for 30 years is a developer. That does not fit with the state's statutory definition of what a development is and does not accord with plain and common usage.
2. The Commission also received a suggestion in August that was forcibly repeated by Mr. Kamptner that somehow they are permitted to ignore the effects that will flow from this because they could say no falling rocks will hit the neighboring properties when the slope is dug up. Between August and now he has read all of the decisions that have ever been issued about harm from zoning in Virginia. There is no special standard of causation. It is a foreseeable consequence that he thinks needs to be considered.

Katy Sinclair, resident of 417 Key West Drive, spoke in opposition to the request due to the harm to the neighbors by the installation of the cell tower. Potential purchasers will be disturbed by the potential health issues associated with cell towers on areas intermediately adjacent and not want to live next door. There will be fewer interested purchasers willing to consider their house. The fair market sale value of their house will be reduced and the house will remain on the market longer due to the very harmful effects of a cell tower. The tabbed letters submitted from five real estate professionals, who have over 20 years of experience, each were volunteered. They were paid. All of them agreed that a proposed cell tower would harm property values and sales of neighboring properties. She suggested that without a cell tower there would be no need to disturb the critical slope. So the tower and the critical slope waiver must be considered together.

Pat Keats, resident of 421 Key West Drive, said this application is deliberately vague in detail and specificity regarding the actual 100' steel pole that is the center of their concerns. They do not mention anywhere about how they are going to erect this pole. That information has direct bearing on the damage to the critical slope. From their diagram, it is apparent that this pole is freestanding and must be drilled into the critical slope. This means that a pole hole of 36" at least at least in diameter and approximately

25' deep would be needed. Nowhere in this application do they describe how they intend to accomplish this drilling in solid bedrock while balancing massive equipment on the critical slope. They have not been to the site nor done core samples of the rock. They don't know how they are going to do this yet according to the foundation note #4 on drawing 16 in the agenda package. It states that, "During construction AT&T will then hire a geotechnical engineering firm to verify actual site conditions and then adjust the foundation design accordingly and as necessary during construction." There is no room to adjust this site. They are physically bound by the Clem's house, the Elledge's house, and the Elledge's septic field. The critical slope gets steeper as it drops down to the Rivanna River. This application describes an area containing only 400 square feet in variance on the critical slope. Albemarle County Ordinance section 4.2.3.2 states, "No structure or improvement nor earth disturbing activity to establish such a structure or improvement shall be located on slopes of 25 percent or greater." The ordinance requires consideration of all disturbance by the construction activities and not just the final footprint. Applying the county ordinance to their complete activities including the construction phase would identify a much larger area of disturbance closer to the note on drawing 18, which mentions almost 4,000 square feet would be disturbed. The way this application is worded if they approve it they are giving them a blank check to do whatever they need to do to install this on a critical slope on a ridge line in a residential neighborhood. This installation will forever scar the landscape as a steel dagger jabbed into the earth. This is not a personal by-right property issue. It is a critical slope issue. There is no compelling reason to place this cell tower in this back yard on this critical slope. She asked the Commission not to approve this critical slope application based on the ordinance.

Stephanie Lowenhaupt, resident of 414 Key West Drive, asked to respond to the realtor with a letter not included in the packet, which was written by a realtor who was a long term resident of Key West. The letter describes how the cell tower would affect the resale value and the aesthetics of the neighborhood. She made the following comments:

- She quoted one section from the blue page Mr. Sinclair distributed. "The critical slopes Ordinance "modification or waiver" provisions require Commission consideration of the "public welfare" effect of any application and the required findings not only require the Commission to assess the effects on "public welfare", but also require findings concerning whether the proposed project would be "not detrimental" . . . to the orderly development of the area." She has been a long term resident of Key West both as a child and as an adult. The Key West Subdivision began development in 1958 for purpose of providing a residential community with single family dwellings on large lots with mountain views. Houses were built over the years with the intent of a family community with a priority to maintain natural beauty with no transmission lines or towers of any kind permitted.
- The subdivision was developed in an orderly fashion with minimal disturbance of the natural environment and preservation of critical slopes. The proposed cell tower project has detrimental effects of the environmental by disturbance of the critical slope and destruction of trees. The cell tower disturbs the environment of the residents surrounding 415 Key West Drive by having a pole that is 7' above the tree line and tree disruption for the road to be built to the tower. The alteration is detrimental to the original developmental plans to preserve the natural environment surrounding their homes and the fabulous mountain views. The cell phone tower is out of character for the neighborhood and does affect the public welfare of the residents of Key West. She urged the Commission to deny the application.

Laurel Olson, resident of 414A Key West Drive, said her house is located diagonally across the street from the proposed site. She noted her concerns about the property value. During the past several months, she has asked everyone who came to her house if there was a cell tower located across the street if they were looking for a home would they be interested in buying her home. The answer in every single case was no due to the unsightly tower that had potential health risks. Anyone can Google the internet and get a multitude of studies on cell towers. The majority of the studies in other countries concluded, especially for children who live in close proximity of cell towers, have had a much higher increase of cancer among that population. There have been no studies done like that in this country. In her research, she found that cell phone tower companies have discouraged these type of studies from being done for obvious reasons. When potential buyers perceive that homes are in close proximity to cell phone towers they perceive them as less desirable. Buyer's perceptions drive their purchasing decisions. She requested that the members of the Commission consider this inequity and deny the request.

Rich Gregory, resident of 419 Key West Drive, presented a PowerPoint Presentation. He noted that he would be able to see the tower from his bedroom window. He spoke in opposition to the request because he did not believe they need towers on ridge lines. In December 2000 there was a cell phone decision made by the Board of Supervisors. The theme in that decision was ridge lines would not be the place for cell phone towers. If they were to be considered, he thought the neighborhood's agreement and harmony should be considered. He noted that tonight there was no harmony here tonight with the applicant's attorney. In December 2009, the Board of Supervisors had an action on wind turbines, which is a similar size tower. The common theme was that wind towers cannot go on ridge lines in ridge areas and that there should be agreement between the lot owners about these wind turbines. This affects his property by lowering the property value and making it harder to sell. No one has talked about runoff. The runoff would run down the brand new driveway and the water would run down from the platform. What is not shown in any of the pictures is how beautiful it is down on the river. This area is not developed and there is a lot of wildlife such as deer, turkeys, etc. It is a floodplain that will never be developed. It is a treasure that is located in their back yard. He asked that the Commission deny the tower on the ridge line.

Mr. Loach asked if there was anyone else present to speak. There being no further public comment, he invited Ms. Long to make a rebuttal.

Ms. Long made the following rebuttal.

- She noted that this was not the first wireless application in a subdivision. There are number of facilities that exist in subdivisions or quasi-subdivisions around the community. There are two cell towers in the Bellair Subdivision, which backs up to the 250 by-pass. There were a couple of lots created right next door to it in the last two years that came to the Commission. When those lots were subdivided, the owner cleared them and opened up the views of the cell towers pretty substantially. She spoke to the developer who had no issue with those facilities being there when those folks purchased those lots. That is just one example and antidotal evidence that someone can come up with evidence and different points of view from all situations. She wanted to clarify that this is not the first wireless facility in a subdivision. Regardless, the Zoning Ordinance provides that a Tier I, and II Wireless Facility can be located in any zoning district. It was an intentional decision made by the Board of Supervisors in recognition of the fact that these facilities because they are only 7' to 10' above the tops of the trees have to be closer to the coverage objective in order to be effective. Therefore, they intentionally established the ordinance to provide that they can be in any zoning district.
- There was a comment by Mr. Clem about the landscaping. They worked hard to develop a species that was shade tolerant, but would also provide a maximum screening. Certainly if Mr. Clem or Mr. Sinclair have suggestions or requests for a different species that would be more appropriate, they would be more than willing to address those concerns and work with them on that. They have heard nothing from anyone about any requests for landscaping.
- Regarding Mr. Sinclair's comments about Ms. Elledge being the applicant that is not correct. AT&T is the applicant. It says so on the application form. She submitted the application on behalf of AT&T. The staff report refers to AT&T as the applicant. Ms. Elledge is the landowner and not the applicant. She would certainly defer to Mr. Kamptner's opinion on that issue. Mr. Sinclair has an excellent grasp of Virginia rules of evidence. He is a Professor of Evidence at the University of Virginia Law School. Therefore, she would not question his expertise on these issues. However, she did not believe he was citing the waiver provisions that are in Albemarle County Zoning Ordinance, which are the applicable provisions for the Commission's decision and analysis.

- Finally, there were comments about how the facility would be actually installed. AT&T has built between 40 and 50 of these wireless facilities in wooded areas all around the County as well as in Nelson County. They have to preserve the trees. There are strict rules in the open plans and ordinance. There are an unbelievable number of inspections, reviews, and steps that take place even before they can get a building permit issued. They have to install tree protection fencing, stake out the site, and have the inspectors come out before obtaining the building permit. The foundation would be designed later. All of the facilities are handled that way. The language does

not provide flexibility to move the pole. It does not provide the option to remove the location of the facility. It will be where it is shown if it is approved.

- There were comments from the neighbors directly across the street that they have incredible views. Certainly they do. The houses are on the top of the ridge and have extraordinary views. Their views are towards the mountain. She did not dispute the neighbor's views. Ms. Elledge's trees are what folks are looking at in this direction and she has not cleared any trees. She is not proposing to clear any trees on her property. If there is a view of the facility, it will be of a brown pole located in the mature trees that will blend in. The views will be mitigated by the color of the pole, the fact that it is located in the trees, and it is only 7' to 10' above. She would be happy to respond to any other questions.

Mr. Morris noted that Dr. Keats brought up the fact she felt to set the pole was going to require a substantial hole being drilled into the ground. Right from the beginning, he voiced his concern about any blasting because it is solid rock up there from what he has seen. He asked that she address how this is going to be constructed.

Ms. Long agreed that was one of the first concerns that the neighbors expressed in January of last year. She spoke with AT&T construction engineers and they assured her that they never use blasting when they build their sites. They said they deal with rock all the time and don't use blasting. They authorized them to put notes on the plans in two locations that state that very clearly that blasting shall not be used. Therefore, even if they changed their mind and wanted to use it they would not be able to. They do drill down and use rock armoring, where they use some wire enforcements and things like that to stabilize the rock and make sure they drill down. It depends on the specific site since every site is different. That is why they have a geotechnical study done afterwards. It is an expensive test, which is done after the fact when they know the site has been approved. They go in and figure out how they are going to make it work. They have never had a problem in any of the other locations in Albemarle County where they have built these style facilities. Usually they go somewhere between 10' and 16'. It could be more or less. So they don't know exactly. They have not had any problems that she is aware of in any location. They have never come back and had to ask the County to move the pole or move the lease area. They use contractors who know how to build these facilities.

Mr. Loach brought the matter back before the Planning Commission for further discussion.

Ms. Porterfield said the problem appears to be with things that the Commission can't take into consideration in making a decision including the fact that the community does not want the pole in their general area for numbers of reasons they have presented.

Mr. Kamptner said that there are a number of criteria that the Commission needs to look at for Tier II Wireless Facilities.

- One standard that is the critical one is the applicant satisfying the requirement that the facility shall be sited to minimize its visibility from adjacent parcels and streets. That standard does not require invisibility. It just requires that it be sited to minimize its visibility. It is admittedly a difficult standard. It is in the context of the fact that the applicant and the staff report notes that a Tier II Wireless Facility is a by-right use. They have to satisfy all of the requirements of the Zoning Ordinance, and if they do, it is to be allowed. It is actually encouraged.
- The complicating factor here, of course, is that they also need to obtain a critical slopes waiver. They need to satisfy the Commission that the five criteria that created the restrictions for prohibiting development on a critical slopes can be addressed. The regulations are for the most part fairly old regulations and he recognized that sometimes it has been difficult for Commissioners, the Board members and public to grasp and deal with. It has been the interpretation of the County Attorney's Office that when they consider the critical slope waiver that they focus on the impacts arising from disturbing critical slopes irrespective of whatever use may come of it. In this case it is what are the impacts of the 408 square feet being disturbed going to have and has the applicant appropriately addressed both the engineering standards and have they satisfied at least one of the three findings that the Commission is required to make.
- In support of the scope of the Commission's review regarding a modification or waiver regarding the prohibition of disturbing critical slopes, the Commission shall consider the determination by

the County Engineer. The provisions require the determination to be made as to whether the developer or subdivider will address each of the public, safety and welfare factors. It includes that the disturbance of the critical slopes will not pose a threat to the public drinking water supplies and floodplain areas and that soil erosion, sedimentation, water pollution, and septic disposal issues will be mitigated to the satisfaction of the County Engineer. Those are the five factors in Section 4.2 that create the reason for generally not allowing disturbance of critical slopes. That is the one specific provision in the waiver regulations that directs the Commission as to what it is suppose to be considering in a waiver application.

Mr. Loach said the only detriment they have to look at is what effects this critical slope would cause and not detriment in terms of what the neighbors have raised.

Mr. Kamptner replied that detriment comes in the review of the Wireless Facility and the criteria under Section 5.1.40 and probably the most relevant in this case is the one regarding whether visibility of the facility has been minimized on the site.

Ms. Monteith noted that it sounds like there is a piece missing. If they have not done the geotechnical analysis, then they don't really know what they are going to be constructing on. If they don't know what they are going to be constructing on, they don't know how they are going to construct it. Therefore, while they are being told something about the critical slopes they don't actually know the reality because they don't know how they are going to construct this.

Mr. Kamptner said that is where he gets to defer to Community Development staff because they have the expertise in that area.

Mr. Fritz said that if the request is approved, the facility could be built as shown in the location shown. Therefore, they can't move it around in order to do that. That means if they do a test and find the rock is exceptionally hard it may not be possible to build there, and they would have to abandon the approval.

Mr. Loach asked if there was any review by the County Engineer on the methodology.

Mr. Fritz replied that the County Engineer is one of the reviewers of the building permit. The erosion sediment control plans would be one component of the building permit process. All analysis will be done to make sure the limits of grading are not exceeded and the proper controls are put into place. This includes the silt fence, etc. that needs to be done in a particular situation based on the disturbance that is occurring.

Mr. Zobrist noted that the issue that Ms. Monteith and Mr. Morris are raising is do we have enough information to really know what the impact is to see if there is any impact that they ought to be assessing.

Mr. Fritz replied what the engineer has advised is that given the nature of site, location and area that is being disturbed that there is nothing out of the ordinary that cannot be with under the normal and customary practice of the erosion and sediment control plan.

Mr. Zobrist said that this is a County engineer report that the Commission has the right to rely on. The ordinance requires that they have to defer to the County Engineer and can't make their own decision on those issues.

Mr. Fritz replied that was correct that the County Engineer as a part of the critical slope review is making that review.

Mr. Kamptner asked if the information that the County Engineer relied upon did it include the possibility of the type of construction activity that may be necessary here. He asked if there is a qualitative, different between simply bull dozing or disturbing 408 square feet and drilling or doing other activities

Mr. Fritz replied there would be a difference in the protective measures that need to be put into place given the style of construction that is done. However, based upon the area and the location with normal customary practice it can be addressed as part of the building permit review.

Mr. Morris said when he looked at this a year ago and looked at the critical slopes that were going to be involved in extending the driveway it appears to be a piece of cake. Most people have that type of slopes in their yards since it is minimal. However, one of the things they discussed at that time was don't blast because everything he had seen on that ridge all the way across the ridge is rock laid ant. He was sure that they could put in the driveway without any problem at all and no real disturbance. It bothers him that he does not know more about the actual site of the pole.

Ms. Porterfield pointed out that the Commission has never had that step presented. Personally, she did not know how the Commission could now say they expect to see that. If they end up not being able to build it, as Mr. Fritz said, because the site won't allow them to do it the way they have said they will do, then it is gone.

Mr. Morris said that he heard what Mr. Fritz was saying. That was his only concern with critical slopes. Up to this point, it has been a non issue.

Mr. Franco said with respect to the construction they have a number of engineers and construction personnel on the Commission, and he thought that his experience would tell him that the design of the footers are how it is going to be mounted. If they ran into rock earlier, they would probably terminate the depth of the pole earlier because they can mount it on something solid. If it were all sandy for 100' down they might have to have a longer pole to keep it from falling over. Therefore, that is the final design aspect. He did not think it is going to change any other component of it. He did not see this as a big deal. He thought that they are drilling a hole and then will decide how the footer of the pole is dealt with in this particular situation. He did not think they were talking about major technique changes where instead of boring a hole they were now going to bring a backhoe in or a pan in and have to rip up the country side in order to build this. It is really just the depth of the footer and the actual design of the footer that is going to change.

Mr. Lafferty noted that he did not think the Commission wants to get into telling people how to construct it. They are going to built it so it is not going to fall down.

Mr. Franco noted that the protection is saying that they can't disturb anything further than the limits that are approved, which will be enough for the Commission to be comfortable with it.

Mr. Loach asked for further discussion on detrimental. It seems the neighbors have gone out and brought back at least compelling documentation that there would be some detrimental effects with regard to the value of their home when the tower is there. He questioned what the ordinance allows them to judge in the context of the critical slope waiver. Ms. Long made the point that what they are judging should be strictly related to the critical slopes and its impact, whereas the neighbors through Mr. Sinclair states that the ordinance requires that there be no detriment to the neighbors. He asked is the fact that they brought their own evidence to say that there would be financial detriment enough for the Commission to use that as a judgment point or not against it. On the other hand, does AT&T have to prove that according to the ordinance they have done enough to mitigate the visual effects that it would meet the ordinance.

Mr. Kamptner replied speaking to the critical slopes waiver for both applications the applicant needs to make their case to satisfy the Planning Commission that they have satisfied the requirements for a critical slopes waiver. The applicant has to demonstrate that the detrimental impacts of granting the critical slopes waiver, which could cause a movement of soil, rock, erosion and adverse impacts on the septic fields, will not affect adjacent properties in any of those respects. With respect to the wireless facility itself, the key finding that the applicant needs to satisfy is that they have minimized the visibility of the facility on the site. Staff has laid out all of the other criteria in the staff report. That seems to be the key issue in this particular application.

There being no further comments, Mr. Loach asked for a roll call on the critical slopes waiver.

Action on Critical Slopes Waiver:
Motion: Mr. Smith moved and Mr. Lafferty seconded for approval of the critical slopes waiver for SDP-2009-0004, Elledge Property (AT&T CV 313) Preliminary from Section 4.2.3.2 based on the findings as stated in the staff report under Section 4.2.5.

The motion passed by a vote of 7:0.

Action on Wireless Facility:
Motion: Mr. Franco moved and Mr. Smith seconded for approval of the wireless facility for SDP-2009-0004, Elledge Property (AT&T CV 313) Preliminary based on the findings noted in the staff report, which includes the applicant minimizing the visibility of the facility on the site.

The motion passed by a vote of 6:1. (Mr. Morris voted nay)

Mr. Cilimberg pointed out that both actions do not require action by the Board of Supervisors.

The Planning Commission took a break at 7:45 p.m.
The meeting reconvened at 7:56 p.m.

Work Session:

ZTA-2009-00003 Farm Wineries
The request is to amend the Albemarle County Zoning Ordinance so that its current farm winery regulations are consistent with Virginia Code Section 15.2-2288.3, and in order to promote the efficient and effective administration of the County's zoning regulations and meet the intent of the County's Rural Area Plan and Rural Areas Zoning District. (Wayne Cilimberg)

Mr. Cilimberg made a PowerPoint presentation. (See PowerPoint Presentation – Albemarle County Farm Winery Regulations Changes)

Staff hopes to conclude this tonight with an agreement to proceed to public hearing. Obviously, the Commission has gone through a couple of prior work sessions with interest in the wine industry as well as the Planning Commission.

Staff believes that Virginia Code language added in 2007 and, more recently, in 2009 by the General Assembly necessitates more detail be incorporated into the County's ordinance provisions to assure full consistency with the State Code. Amendments that better define allowed uses and activities at farm wineries consistent with the Virginia Code should provide local winery and public interests a clearer understanding of what is allowed and result in fewer questions of staff and greater efficiencies in use determinations, zoning clearances and enforcement.

Va. Code Stipulations re: Local Restriction
Local restriction . . . shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth.

Staff also believes the intent of both the County's Rural Area Plan as part of the Comp Plan guides us in how we deal with this particular matter. There are several points noted in the report in the Comprehensive Plan regarding the Rural Area that they feel tie in with the consideration with the changes to regulations in Farm Wineries.

Comp Plan Policies for Rural Area
- Protect agricultural lands as a resource base for agricultural industries
- Support local agricultural and forestal economies
- Connect local producers and consumers of rural products
- Encourage creative and diverse rural production

- Support rural land uses that provide rural landowners economic viability

Also the Rural Area zoning district has also stipulated in purpose and intent the ultimate goal of helping to enable economic viability of the County's agricultural activities such as vineyards and wineries. This is furthermore consistent with the state's policy to preserve the economic vitality of the state's wine industry.

Zoning Ordinance Purpose and Intent for Rural Areas

- Purpose
  - Preservation of agricultural and forestal lands and activities
  - Encourage residential development to locate in the Development Areas
  - Related to residential development, agricultural/forestal activities shall be regulated only to protect public health and safety
- Intent
  - Provide lot areas designed to insure the continued availability of active farms and best agricultural and forestal lands
  - Enhance the economy, and maintain employment and lifestyle opportunities
  - Encourage continuation and establishment of agriculture and agriculturally-related uses

Va. Code Definition of Farm Winery

. . . an establishment (i) located on a farm . . . with a producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine . . . or (ii) . . . with a producing vineyard, orchard, or similar growing area or agreements for purchasing grapes or other fruits from agricultural growers within the Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine . . .

. . . and classifies licensure for farm wineries.

Va. Code Limitation on Class A and Class B Farm Wineries

Class A - at least 51 percent of the . . . agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced on such farm and no more than 25 percent of the . . . agricultural products shall be grown or produced outside the Commonwealth.

Class B - 75 percent of the . . . agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced in the Commonwealth and no more than 25 percent of the . . . agricultural products shall be grown or produced outside the Commonwealth. No Class B farm winery license shall be issued to any person who has not operated under an existing Virginia farm winery license for at least seven years.

Opportunities for variation from the % of on-farm production and % of out-of-state products utilized under certain supply conditions through petition to the Department of Agriculture and Consumer Services.

As a result, in the County's proposed amendments that have gone through the evolution of an initial concept that was reviewed by the farm interest and winery interest and others back in the summer time and then came back to a November work session. Thus, the proposed zoning amendments:

- Define a farm winery in a way that is simpler and easier to administer because it depends merely on licensure as a farm winery by the state.

The amendments also:

- Exempt farm wineries from the general rule that accessory uses and structures must be on the same lot as the primary use.
- Add a definition for agritourism that is the same as the definition of "agritourism activity" in Virginia Code § 3.2-6400.
- Redefine farm winery events by incorporating a number of the "usual and customary" uses delineated in HB 463 back in 2008, a bill that failed, but that the farm winery industry indicated it would rely on as a model for usual and customary uses.
- Add farm wineries to the provisions allowing agricultural product signs.

Definitions

- Accessory Use, Building or Structure
- Agritourism

- Farm Winery
- Farm Winery Event
- Agricultural Product Sign

Generally, the uses in subsection (a) (1) through (6) of the proposed amendments must be allowed by-right and without regulation under Virginia Code § 15.2-2288.3(E) (1) through (5). Regarding (a) (6), Virginia Code § 15.2-2288.3(D) requires that this use must be allowed consistent with how the County regulates other private gatherings under its zoning regulations.

Uses Permitted By-right as Primary Uses

1. The production and harvesting of fruit and . . . manufacturing of wine including . . . activities related to the production of the agricultural products used in wine . . .
2. The sale, tasting, including barrel tastings, or consumption of wine within the normal course of business of the farm winery.
3. The direct sale and shipment of wine . . . to consumers in accordance with . . . the Virginia Code and the regulations of the ABC Board.
4. The sale and shipment of wine to the ABC Board, licensed wholesalers, and out-of-state purchasers in accordance with . . . the Virginia Code, regulations of the ABC Board, and federal law.
5. The storage, warehousing, and wholesaling of wine in accordance with . . . the Virginia Code, regulations of the ABC Board, and federal law.
6. Private personal gatherings of a farm winery owner who resides at the farm winery or on property adjacent thereto that is owned or controlled by the owner, provided that wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.

Staff feels that they have reflected the State Code's intent in these primary uses that would be permitted by right.

There are also a number of uses permitted by right that are related to agritourism or wine sales. The Virginia Code § 15.2-2288.3(A) requires that local regulations consider whether allowed "activities and events are usual and customary for farm wineries throughout the Commonwealth" and then continues: "Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety or welfare of the public." Items (b) (1) through (11), although not all have been usual and customary at farm wineries in Albemarle County, are all related to agritourism or wine sales in a way that promotes the particular farm winery or farm wineries in general. In addition, traffic safety, health and sanitation, and noise impacts that could be expected from each use would not have a substantial impact on the health, safety, or welfare of the public as they are covered by existing state and/or local regulations. Because HB 463 would have limited usual and customary activities to those which were for fewer than 200 persons at any time due to potential impacts, this threshold should be used for (b) (2), (10) and (11) as attendance for these uses is event driven and has the potential to be in addition to people coming and going throughout the day associated with the other uses listed in (a) and (b). The limitation is also similar to, although somewhat larger than, the 150 person maximum for festivals at historic centers and for special events in the Rural Area.

Uses Permitted By-right Provided Related to Agritourism or Wine Sales

1. Exhibits, museums, and historical segments related to wine or to the farm winery.
2. Farm winery events at which not more than two hundred (200) persons are in attendance at any time.
3. Guest winemakers and trade accommodations of invited guests at a farm winery owner's private residence at the farm winery.
4. Hayrides.
5. Kitchen and catering activities related to a use at the farm winery.
6. Picnics, either self-provided or available to be purchased at the farm winery.
7. Providing finger foods, soups, and appetizers for visitors.
8. Sale of wine-related items that are incidental to the sale of wine including, but not limited to the sale of incidental gifts such as cork screws, wine glasses, and t-shirts.

9. Tours of the farm winery, including the vineyard.
10. Weddings and wedding receptions at which not more than two hundred (200) persons are in attendance at any time.
11. Other . . . agritourism uses or are wine sales related uses . . . determined by the zoning administrator to be usual and customary uses . . . which do not create a substantial impact on the health, safety or welfare . . . and at which not more than two hundred (200) persons are in attendance at any time.

Attendance at uses in subsection (c) (1) through (3) is event driven and has the potential to be in addition to people coming and going throughout the day associated with the other uses listed in (a) and (b) and, thus, attendance exceeding 200 people at any time has the potential for impacts that should be evaluated through a special use permit.

Uses Permitted By Special Use Permit Provided They are Related to Agritourism
At which more than two hundred (200) persons are in attendance for the use at any one time:

1. Farm winery events.
2. Weddings and wedding receptions.
3. Other uses that are agritourism or wine sales related . . . determined by the Zoning Administrator to be usual and customary uses . . .

Staff feels that the three uses identified, which they believe are event driven, have the potential to be in addition to people coming and going throughout the day associated with the other uses of a farm winery.

Subsection (d) requires specific information and a sketch plan to be submitted with an application for a special use permit so that the impacts of the use can be best evaluated. An existing site plan could be used as a sketch plan if it provides the information required in submitting a special use permit application. Typically, those kinds of things would be noted in site plans.

Information to be Provided for Special Use Permit
1. The proposed uses.
2. The maximum number of persons who will attend each use at any given time.
3. The frequency and duration of the uses
4. The provision of on-site parking.
5. The location, height, and lumens of outdoor lighting for each use.
6. The location of any stage, structure or other place where music will be performed.
7. A sketch plan . . . depicting:
    - all structures that would be used for the uses.
    - how access, on-site parking, outdoor lighting, signage and minimum yards will be provided.
    - how potential adverse impacts to adjoining property will be mitigated so they are not substantial.

Other Provisions
1. Sound. Sound generated from most activities at a farm winery use shall be subject to the noise regulations of the Zoning Ordinance (which currently exempts agricultural activities); sound generated by outdoor amplified music shall be subject to the general noise regulations of the County code.
2. Yards. The minimum front, side and rear yards of a farm winery shall be as provided in the Rural Areas section of the Zoning Ordinance. Minimum yard requirements shall apply to all primary and accessory structures . . . and to all tents, parking areas and portable toilets used . . . to serve any use permitted at a farm winery, and all yards shall be measured from structures and off-street parking areas.

Restaurants are expressly prohibited because they are commercial in nature, not otherwise allowed in the Rural Areas zoning district, and can be viewed as contrary to the statutorily established (Virginia Code § 15.2-2288.3(A)) agricultural nature of farm wineries. To County staff's knowledge, helicopter rides are not

usual and customary activities at farm wineries and County staff is aware of a farm winery in Fauquier County that offered helicopter rides that generated significant controversy. Staff determined that the previously prohibited hot air balloon rides have negligible impacts and currently exist in the County in association with other uses.

Staff notes the following in response to Planning Commission direction on November 10.

Changes in Response to PC November Work Session

- Agritourism definition is the same as "agritourism activity" in Virginia Code.
- Deleted requirement that farm winery lots be contiguous; consistent with Zoning Ordinance's definition of "farm." The definition is otherwise unchanged and easy to administer as it depends merely on state licensure as a farm winery.
- Reference to hours of operation deleted; use "normal course of business" to determine compliance.
- References to attendance changed to "persons at any one time."
- Requirements for between 51 and 200 persons in attendance have been removed. A special use permit is only proposed for certain uses where more than 200 persons attend at any one time; those considered to be event driven and typically in addition to people coming and going throughout the day associated with the other typical farm winery uses.
- A sketch plan is now only required for a special use permit application so that the potential impacts of the use can be best evaluated. An existing site plan can be used as a sketch plan if it provides the information required.

Mr. Cilimberg offered to answer any questions. He requested further Commission direction on any particular items. Staff would hope the Commission would authorize proceeding to public hearing hopefully on March 16th.

Mr. Morris asked if the events and activities that a winery is currently authorized to partake in would be grandfathered.

Mr. Kamptner noted that if what is currently allowed by special use permit is now essentially by right and the special use permit is no longer in enforce or effect, they don't have to comply with the conditions. They would just need to comply with the new regulations.

Mr. Franco asked to be clear on the uses that are 51 to 200 the frequency criteria is gone as well.

Mr. Cilimberg replied that the regulations would not address between 51 and 200, but just beyond 200 for only the three uses.

Mr. Franco noted that his understanding on a lot of these farms or wineries that reuse of buildings, like barns that might be within what is now being considered the yard, if those are reused for the winery events can that be done or would they be excluded. He questioned how that would work if the structures were closer to the lines than the setback provisions. Since a barn was an accessory use to a farm it could have been built 6' from the property line. If that barn was converted to the winery use or used for one of these special events can that be done?

Ms. McCulley replied that it could be done. The way it is structured now, it would require Planning Commission modification. However, the Commission may recall a similar issue came up with farm stands. If the setback was one with respect to a side or rear property line that was affecting a neighbor and that neighbor was able to give permission to go closer, then staff is going to write in the ordinance that is an administrative approval without somebody having to come before the Commission to get that approval. If the Commission is so inclined, they could do the same thing here.

Mr. Franco said that personally he would be in favor of writing that in. The other answer is that the applicant can always come for a modification of that setback for an existing building to be used for an event.

Ms. Porterfield asked if they were making an assumption that all of their entry and exits are able to handle the traffic for 200 persons at any one time for an event plus whoever is coming to use the winery. She asked if the County would have to look at that.

Mr. Cilimberg replied they would be addressing entrance and exit at the one level if there were any kind of site plan requirements associated with the farm winery itself no matter whether or not they were having, as an example, weddings over 200 people in attendance. That would be a level at which that kind of matter would be addressed. Site plan requirements only kick in under certain circumstances. Certainly with the three uses identified that would exceed 200, the applicant would be providing information, and staff would be advising them as to any particular needs for entrance and exit from the facility associated with that request.

Ms. McCulley said the VDOT approval is one of the state approvals that is separate and aside from the zoning and planning exemption in the State Code. Therefore, the VDOT requirements still apply. Even for the uses under 200 trips VDOT approval of the entrance is required. This would not be the standard VDOT commercial entrance one might see in the development areas. Joel DeNunzio states in his letter the wineries will need to have a commercial entrance. The most important item will be that they have adequate sight distance at their entrance. As far as the design of the entrance, Mr. DeNunzio felt that most could use a private subdivision road/street design. That is a 24' wide entrance. He thinks that this is adequate because they typically have a long driveway to the winery that serves more like a street connection than an open entrance. If VDOT commercial entrance standards apply, they will review it on an individual basis to allow for which standard is adequate that will allow us to consider the type of road they are connecting to and have the appropriate geometry and material requirements to ensure a safe entrance. She hoped that would help in the response to Ms. Porterfield's question.

Ms. Porterfield asked if she was saying that any winery would have to have VDOT approval of their entrance.

Ms. McCulley replied yes.

Ms. Porterfield noted essentially that comes before the wineries having any events.

Ms. McCulley replied that was correct. She would guess that many of the wineries already have VDOT standards at their entrance adequate to accommodate the trucks and so forth that go to and from the site.

Mr. Loach questioned if someone could open up a farm winery without actually having a farm. He asked if there was an industry standard or percentage. The license talks about the percentage of fruits and juices, but does not talk about the quantity. He asked if there was a definition of a vineyard.

Mr. Cilimberg replied that staff is referring to the State licensing procedure for what they call a farm winery, which says to be a Class A farm winery at least 51 percent of the products used by the owner/leasee to manufacture the wine shall be grown or produced on that farm or such farm. No more than 25 percent of the products shall be grown or produced outside of the Commonwealth. There could be a case where a non-contiguous properly is where that 51 percent is being grown.

Mr. Loach asked if the 200 people at an event happening on the property are aside from the usual business going on.

Mr. Cilimberg replied that is correct.

Ms. Porterfield questioned if there had been any thought as to when the amplified music should end.

Mr. Cilimberg pointed out that amplified music would be regulated under the general Noise Ordinance, which was adopted by the Board in December.

Mr. Kamptner noted that the standard that would apply for outdoor amplified music is a standard that is based on audibility by a person of normal hearing unattended by any devices. The criteria is audibility

100' from the property line of the noise source or from within a dwelling. That is fairly consistent for all of the noise sources under our new general Noise Ordinance. Meeting with zoning staff and the police, they are going to most likely end up fine tuning it based on experience. There may be some classes of noise that were not included. They may find that particular noise sources were either too lenient or too restrictive. That is the standard right now. It may be modified over time as staff received feedback from the Police Department, who enforces that particular ordinance. There is no limit for this particular noise source. They do have some time limits for what is classified as sound sensitive types of facilities, such as hospitals, schools, etc. due to specific health effects that can impact people who are ill or small children. Therefore, there are time limits for that class.

Ms. Porterfield noted that the Commission had received a letter from at least one neighbor of a winery over the past year and a half or so about this person's perception that the noise is affecting his quality of life. She wondered if they should be a little more proactive to specify a time limit by which amplified music outside of a building should cease.

Mr. Kamptner pointed out that they were balancing the directive from the General Assembly that localities are to treat these activities as being agricultural in nature. It includes looking at that and the purpose and intent of the rural areas zoning district, which says that residential uses not associated with agricultural activity are to be secondary in consideration. Promoting the agricultural activity takes precedence at least in the purpose and intent section of the rural areas district. Staff would recommend what they have right now, but would certainly fine tune as they get some experience with this new ordinance.

Mr. Zobrist noted that when someone can hear the amplified music they could complain to the Police Department and get it stopped. He thought that was a great standard.

Mr. Morris said that the hours of operation are controlled by the ABC Department.

Mr. Kamptner deferred to someone in the industry that was familiar with the ABC laws.

Mr. Morris noted that it was state regulated.

Mr. Lafferty questioned if under the regulations if he could have two events at the same time with 199 people.

Mr. Cilimberg replied theoretically yes.

Public comment was taken from the following persons:

David King, of King's Family Vineyard in Crozet, spoke in support of the zoning text amendment.

Matt Conrad, representative for the Virginia Wine Counsel representing the farm wineries across the Commonwealth of Virginia, said they were appreciative of the professionalism and hard work by staff. They believe what has been created here is likely to be a model ordinance that could be repeated and used across the state.

Ms. Porterfield asked if there was a self-limiting time because of the ABC rules regarding when wineries would have to close as far as selling alcohol.

Mr. Conrad replied that was covered by administrative code. For licenses in counties that have adopted liquor by the drink it is 2:00 a.m. In other counties, it is 12:00 a.m.

Neil Williamson, Free Enterprise Forum, echoed the sentiments with regard to the positive changes that have been made in this ordinance moving forward. The Free Enterprise Forum believes that the frequency of the events considered under the special use permit is perhaps a challenge. He was concerned with the reality of the situation in coming in for a special use permit. He questioned if a winery would come in to ask for a special use permit to have 52 events a year so they could have a wedding every weekend. He asked how the Commission would respectfully go on that. He was concerned that

element was not really linked to the zoning clearance that would be addressing parking, the VDOT regulations, and the other restrictions that are clearly part of the health, safety, and welfare. He was challenged by the frequency of events. The Free Enterprise Forum felt this was about maintaining the economic viability of the rural areas in encouraging rural economic development that preserves open space and promotes positive tax tourism revenue.

Mr. Cilimberg said that the direction they are going is that once the event exceeds 200 it is a special use permit and there is no assumed limit on frequency. That can be a judgment based on the circumstances when it is before the Planning Commission. Staff expects the requests not to specify limitations on the number.

Mr. Franco said that the ZTA has come a long way. He liked the aspect of it being simplified for enforcement purposes and for being used. He would like to see the setbacks changed to reflect the farm setbacks as discussed in the farm stands. Other than that, he felt that it was going the right direction.

Mr. Morris said that the ZTA was ready to go to public hearing.

Mr. Cilimberg reiterated that other than the setback matter there were no other changes to be made prior to the public hearing.

Ms. Monteith questioned how this ordinance would be enforced.

Mr. Cilimberg replied that enforcement is generally complaint driven. It would probably be a case where someone believes that there are events happening at a farm winery that are in excess of what the ordinance calls for and they don't have a special use permit. Then it would involve going out on the site and counting.

Mr. Kamptner noted the proposed ordinance would make it easier for farm wineries to administer and staff to enforce if they receive a complaint because switching from the number of people per day as compared to at any given time. Staff recognized that made enforcement virtually impossible unless there was an inspector on site the entire day.

Ms. Porterfield noted possible concerns as Mr. Lafferty had expressed with cumulative events at one time.

Ms. McCulley noted that any of the events that would be over 200 people are subject to a special use permit and the concurrency of other activities more than one event with over 200 people on site at the same time could be discussed with that special use permit review. However, they are not assuming that there would be only one event with 199 people there and tasting. On any given day, they don't have control over how many come tasting.

Mr. Cilimberg said that they were getting into a difficult area. The only way they might be able to address the over 200 case would say cumulatively any of those three uses together could not have over 200. However, even at that it may be very difficult. It was an area that would be hard to enforce and write into the language that works for what they were saying. He felt they have to assume a certain level of activity that is going to occur and in some cases there might be more than one of those things going on that is not reaching 200, but in combination with the normal activity of the farm winery may have several hundred people there at one time.

Ms. Porterfield said that she did not think they should create an ordinance that forces the neighbors to get it enforced. She suggested they try to close a number of the loopholes so that the neighbors or people in close proximity don't have to make reports to the County. She had assumed that the farm winery would have one event that could be over 200 persons going on at the same time they were having their usual and customary business.

Mr. Cilimberg pointed out that Mr. Kamptner had made the point that they were trying to emphasize farm wineries as an agricultural activity in the rural areas, which really are not about residences but agricultural

activities. That is their purpose for the rural area. The measure they are using is the 200 person limit and to get too far beyond that is going to be tough. He questioned what the loophole is and what it is that they want to do to close it.

Mr. Franco asked Ms. Porterfield if she was comfortable to move this forward to the public hearing and resolve this issue later.

Ms. Porterfield replied yes, but she would like them to think about it a little bit.

Motion: Mr. Zobrist moved and Mr. Franco seconded to authorize staff to proceed to public hearing on March 16 for ZTA-2009-00003 Farm Wineries with an amendment to loosen the language to allow for easements.

The motion passed by a vote of 7:0.

Mr. Loach noted that ZTA-2009-0003 Farm Wineries would move on to public hearing on March 16.

ZTA-2008-00019 Definition of Family - Amend Sec. 3.1, Definitions, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 by amending the definition of "family" as it pertains to unrelated persons to add the Rural Areas (RA) zoning district to the class of low density residential zoning districts (the R-1, R-2 and R-4 zoning districts) in which not more than two (2) persons rather than six (6) persons as presently allowed in the RA zoning district, not related by blood, marriage, adoption or guardianship living together as a single housekeeping unit in a dwelling or dwelling unit, qualify as a "family." 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. Anyone desiring further information about the above may contact the Department of Community Development, County Office Building, North Wing, 401 McIntire Road, Charlottesville, between the hours of 8:00 a.m. and 5:00 p.m., or telephone 296-5832 ext. 3255. Copies of the proposed plans, ordinances, amendments, and/or applications may be examined at such location. Reasonable accommodations will be provided to persons with disabilities, if requested. (Rob Heide)

Mr. Heide presented a PowerPoint presentation on ZTA-2009-019, Amendment to Definition of Family. He noted a correction on the staff report in the recommendation section that Attachment C should actually be Attachment B.

Origin and Background:

- The Board of Supervisors initiated a Resolution of Intent on December 2, 2009.
- The RA district currently allows for six unrelated persons in a dwelling unit.
- This is a more intense occupancy than in higher density districts such as the R-1, R-2, and R-4.

Discussion and Public Purpose:

- The proposed ordinance would:
  - The first part of the ordinance to limit the definition to two or more related by blood, marriage, adoption, or guardianship would not be changed;
  - The part that proposed to be changed would be that there would not be more than two unrelated persons living together as a house keeping unit.
  - The second change is to limit the number of families able to occupy a dwelling unit to one.
  - The main reason is to prevent overcrowding in less dense zoning districts.
    - The current ordinance could permit a "boarding house" type use to exist in the Rural Areas (RA) by-right.

Administration and Potential Impacts:

- Challenges and impacts that may exist:
  - Enforcement by staff could prove to be problematic.
  - Adherence by owners. The current ordinance has been in effect since 1978. There would be a bit of a curve there to make people aware of the change in the ordinance.

- ❑ Another impact would be potential rental affordability.

Conclusion:

- ■ Staff recommends approval of ZTA-2009-019 as written.

Mr. Loach invited questions from the Commission.

Mr. Franco said that he had some practical questions. The first would be how they would deal with unmarried couples with children. A couple of summers ago he and his wife helped out some wineries and had an intern live with them. Therefore, they had three unmarried persons living in the Rural Area in a house that has five bedrooms. He was not sure they created a big nightmare for the community there. He asked if that would have been two families; would have been prohibited and he would have been breaking the law. The question would be how he would view that and what does occupy mean. The intern was with them for six weeks and was a guest. Therefore, would that have been a guest or occupant. The same thing applies to the unmarried couple with children.

Mr. Heide replied that the unmarried couple with children would met the definition. There is no more than two unrelated and would still be within that parameter. He suggested that Mr. Kamptner could comment. The other question gets to the heart of the challenge in how many is too many. Staff tried to stay within the parameters of the spirit of the resolution of intent and to make the definition more across the board to more zoning districts. It was not for all zoning districts. Staff's effort was to stay within the parameters and spirit of the resolution of intent and to make the definition more across the board to more zoning districts, not all zoning districts. It would be to balance the density problem between a less dense area allowing more intense use versus a higher dense area allowing less intense use hence the R-1, R-2, and R-4. The biggest challenge has been identified.

Mr. Franco asked what would the definition of occupied be for a house guest.

Mr. Kamptner replied that in the administration of the ordinance it would depend on how long the person was there. He used the word occupy because that is the term that is used in the other places in the Zoning Ordinance. He struggles with that and thought of making a last minute change to use the word reside or something like that, which might have a more commonly understood meaning and a word that certainly implies more longevity and permanence to living there. He felt that in practical implementation of that ordinance staff will end up in the same place. How long does somebody have to be there until they are deemed to be occupied he was not sure if staff has ever had occasion to have to determine that.

Mr. Heide said the cases they have had related to home occupation permits where they have asked the owner to proof that is where they are residing. They do so through a Virginia operator's license or through a voter's registration. In this case, he thought it would be exactly as Mr. Kamptner outlined on a case by case. If they get a complaint, someone has been there for six weeks, they go there, and they are just visiting, then that may be where they leave it. However, three months later they get the same complaint and it is the same people it may be a different indication that now they are residing.

Mr. Franco acknowledged that there is a magic line out there. He could also see taking in visiting faculty for a year or something like that as not being out of character for this Rural Area. The definition seems very small.

Mr. Loach said that size and scale are not measureable in here as far as the number of people.

Ms. Porterfield asked if they are limiting this to the Rural Areas, R-1, R-2, and R-4.

Mr. Heide noted that it currently exists for R-1, R-2, and R-4 and they are just adding RA to that exemption.

Ms. Porterfield asked if every other zoning district in the county therefore could have the six unrelated people, etc.

Mr. Heide replied that was correct that it was the definition for R-1, R-2, and R-4..

Mr. Zobrist said he would like to look at the problem that precipitated it.

Mr. Loach asked what was the basis of it.

Mr. Heide replied that the basis was a complaint made to one of the board members and they brought a resolution of intent on December 2. The complaint was that a residence in the RA was either occupied or attempting to be occupied by six unrelated people. The community that residence was located in had a problem with that.

Mr. Lafferty suggested that it could be that they were renting it out and had more unrelated people. The people might have thought it was rental property, which lowered the surrounding property values.

Mr. Heide said that it was an owner in absentee and the owner attempted to rent it out in its entirety and not just a room here or there.

Ms. Porterfield noted she would make the assumption that in the Rural Areas they have some dwelling units that are being used by students at the University of Virginia. She was aware that her son-in-law who graduated in the '90s lived with a number of other students in the Rural Areas. If they do this, it is going to eliminate housing possibilities. She questioned whether they should rewrite the ordinance just because of one complaint.

Ms. McCulley pointed out that staff is responding to a Board of Supervisors' resolution of intent. In terms of number, the number two is what they have had in the ordinance as Mr. Heide said for quite some time. That may not be the right number for this community. Staff has not researched that. It is on the low end from what they understand that many other communities do. Some allow three or four unrelated persons in area where they are trying to restrict occupancy. However, it was seen as kind of a gap that they needed to close for the Rural Areas where they are trying to move people into the development areas for their residential use. Staff is responding to the Board's resolution of intent.

Mr. Zobrist asked if staff should do some more study and get a handle on it. If all of a sudden, they blast out 95 families that have two or three families living in houses, which a lot of them do judging by the number of cars that are out there, it could be a problem. He wondered if they might not want to look at what is actually going on to see what kind of problem they are going to create if they forge ahead. How long has this ordinance been on the books.

Mr. Heide replied that the current ordinance has been in existence since 1978.

Mr. Zobrist suggested that it would not be unreasonable to take another four months to let staff work on it to get some more numbers.

Ms. Monteith asked about the instance if a property owner rents out a house and people rent the house and don't know anything about this regulation. She could imagine four students renting a house not knowing anything about this regulation and not knowing that they are doing anything wrong. She suggested that the property owner might not check who is renting the house. It just seems that without intent in a University town that they might be creating a problem. There is lots of housing around the University. However, once people get to be third year and/or graduate students they tend not to want to live on Jefferson Park Avenue. She did not know the reality. They could help staff out with some of their geo-coding if they would like because they have done that. It does seem like maybe trying to understand the implications of this if there is a way to do it without being a tremendous amount of work might be a good way to assess whether the numbers are the right numbers.

Mr. Loach pointed out that they might do better by trying to limit the number of cars in the driveway. That is what people are going to be complaining about.

Mr. Lafferty asked if that is in the zoning regulations right now.

Mr. Loach noted if it was in the Rural Area and they have a two-bedroom home with six cars parked there it is a problem.

Mr. Zobrist said this discussion brings up the question of how many people actually live out in the Rural Areas. He did not have any idea.

Mr. Porterfield suggested that staff do more work on it before they bring it to public hearing.

Ms. McCulley agreed that staff could do some more work on it.

Mr. Loach said that staff needs to scope out the size of the problem to see if it was really something they should undertake. Staff could review it more on a factual basis for the location and number of complaints.

Mr. Franco noted on the agricultural side he understands that there are migrant workers that come into this community, but he did not know how that was housed or dealt with on the farm level. He was not sure if that was targeted towards that practice. He would like to hear from people in that industry. He wanted to understand what impacts, if any, it might have on this. He knows that the working farms he has seen have a number of residential units on the farm. He could see a number of unrelated people living in a house that are the farm workers.

Mr. Heide pointed out that there is a ordinance definition for farm worker housing and it revolves around being on the farm. It is seasonal and addressed separately from this.

Mr. Franco asked if this proposal would not affect that.

Mr. Kamptner said that it could. For someone to take advantage of farm worker housing it has to fall within the definition. It is set up by right for up to ten people and they need a permit to go above. It is a separate housing structure that qualifies it.

Mr. Zobrist noted from his experience there could be four or five unrelated families that work off the site that are sharing a house together and splitting the rent. That is very common. He was not sure if they care depending on where it is. He did not have a sense. When he drives down the road and he sees 15 cars in front of a modular home he wonders what is going on there. However, he just keeps driving since he thinks that is the way things are in Albemarle County sometimes.

Mr. Loach said in conclusion it was the Planning Commission's consensus to send this back for further discussion with staff. He invited public comment.

John Clem, resident of 413 Key West Drive and Social Worker with the Ark of the Piedmont, said they serve people with developmental disabilities in the community. This ordinance might affect the people who live in the group homes that they serve. They have one group home in Crozet that they consider rural that is a six bedroom home. These people really need to have affordable housing. He thought that this would hurt their ability to be able to get that. Right now in Virginia, they are trying to get people out of the institutions and get affordable housing. The only way they will be able to do it is to get rental units. The wording says something about a boarding facility. He did not know if that would fit exactly in what they do. There are rental houses that are rented by the people on a lease and then they come with in-home supports. It would not exactly be a boarding house. He suggested that staff look at the wording of that. He would want to make sure that they have the numbers up to be able not to affect group homes. He also wondered about Innisfree, which has quite a few large group homes on their farm properties of unrelated people living together in large numbers perhaps in eight to ten people. He hoped they would consider that and look at that when they go back.

Mr. Kamptner noted that group homes that qualify as such under the Zoning Ordinance are allowed by right for up to eight unrelated people. Therefore, they are treated separately by regulation. They have to have the right State license that qualifies them as such.

Corky Shackelford said that he lived in the Rural Area. The big question in his mind is why. He asked what is it they are trying to accomplish. The problem that he hears them talk about isn't because of too many people, but maybe because they make too much noise. There is a Noise Ordinance. If they have other problems, they probably have ordinances for that. He did not think the number of people per say is going to be the problem. On the farm, they have an old tenant house they have upgraded that they rent. It is affordable housing and there is not a lot of it in the County. If he cannot rent that to an unmarried couple with a child or if he can't rent it to three students or farm workers working on neighboring farms, then they have hurt his income. When his mother was in her last years, they rented an apartment in the house to a graduate student and his family in order to look after her. They were not there. That would not be allowed in this. There are many things that would not be allowed. Besides it seems that the size of the house would be more important to the number of people than just the fact of whether they are related or not. Therefore, he would question the logic of dealing with this whole question.

Neil Williamson, with the Free Enterprise Forum, said he was surprised to get a couple of emails about this today. He had taken notice and raised a few questions with regard to migrant workers and student housing. The question he received in these emails was with regard to folks who own homes in the Rural Area and were renting them out. The implied sense that they might be set up in a position where they have to evaluate whether people are related or not and whether they are subleasing or not is a new burden on that person who is renting or who owns the house. In the Rural Areas, the residential is secondary to the agricultural production. He can appreciate that and the goal of promoting density in the urban ring. They have all heard him say repeatedly about the challenges of housing affordability within the urban ring. They also have seen the small modular units with lots of cars in front of them. They have seen those cars go out and do the services and harvest the apples, pick the grapes and work in the vineyards. These are important parts of our tapestry of a society. He appreciates the concern the Commission has raised, but definitely would want to have that number changed somehow from two. Mr. Franco raised a number of very good valid questions with regard to exchange students and interns. These are all real things out there in the Rural Areas. The reason they are there generally speaking was the economic need for affordable housing and the challenges it presents to our working class. Reading between the lines it seems very arrogant and he senses an undertone that they don't want anyone here less than two people unrelated living in Albemarle County. He feared that there was some social economics working behind the scenes. He did not think that was good for the County.

There being no further public comment, Mr. Loach closed the public comment to bring the matter back before the Planning Commission for action.

Mr. Kamptner asked if staff wants it deferred to a particular date.

Ms. McCulley replied that it would be best due to staffing not to have a specific date because this is going to take some research.

Mr. Franco asked with the depth of the questions if it is worth going back to the Board to understand the goal better. He questioned if it would be worth forwarding the minutes of the meeting to the Board before it comes back to the Commission or staff spends more time on it.

Ms. McCulley replied staff would discuss it and decide whether it is a good next step before they come back.

Motion: Mr. Zobrist moved and Mr. Morris seconded to defer ZTA-2009-019 Zoning Amendment related to Definition of Family for further study by staff.

The motion passed by a vote of 7:0.

Mr. Loach noted that staff should conduct further study regarding the number of unrelated people residing in a house before bringing ZTA-2008-00019 back to the Planning Commission.

Old Business:

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

New Business:

Mr. Loach asked if there was any new business.

Mr. Zobrist moved, and Mr. Franco seconded to cancelled the March 2 and 9, 2010 meetings and adjourn to March 16, 2010 at 4 p.m.

The motion passed by a vote of 7:0.

- The planned March 9 work session was rescheduled to March 16, 2010 to begin at 4 or 4:30 p.m.
- THERE WILL BE NO MEETING ON TUESDAY, FEBRUARY 23, 2010, MARCH 2, 2010, AND MARCH 9, 2010.
- THE NEXT PLANNING COMMISSION MEETING WILL BE ON TUESDAY, MARCH 16, 2010 AT 4:00 P.M.

Adjournment:

With no further items, the meeting adjourned at 9:13 p.m. to the Tuesday, March 16, 2010 meeting at 4:00 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 C. Taylor, Clerk to Planning Commission & Planning Boards)