Albemarle County Planning Commission
June 22, 2010

The Albemarle County Planning Commission held a public hearing, and meeting on Tuesday, June 22, 2010, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Claudette Grant, Senior Planner; Megan Yaniglos, Senior Planner; Gerald Gatobu, Principal Planner; Bill Fritz, Chief of Current Development; Wayne Cilimberg, Director of Planning; Amelia McCulley, Director of Zoning/Zoning Administrator; Mark Graham, Director of Community 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.

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:

Approval of Minutes: January 19, 2010

Mr. Loach asked if any Commissioner would like to pull an item from the consent agenda for further review. There being none, the matter was before the Planning Commission for action.

Motion: Mr. Morris moved and Mr. Smith seconded for approval of the consent agenda.

The motion carried by a vote of (6:0).

Mr. Loach noted the consent agenda was approved.

Public Hearing Items

SP-2009-00030 Greenbrier Emergency Animal Hospital (Sign # 25)
PROPOSED: Request to amend SP 91-52 to extend veterinary services clinic hours and expand the space in the existing building on the site. No residential units proposed.
ZONING CATEGORY/GENERAL USAGE: C-1 Commercial - retail sales and service uses; and residential use by special use permit (15 units/ acre) and primarily HC Highway Commercial - commercial and service uses; and residential use by special use permit (15 units/ acre)
SECTION: Sections 22.2.2.5 and 24.2.2.4 of the Zoning Ordinance which allows for veterinary office and hospital uses.
COMPREHENSIVE PLAN LAND USE/DENSITY: Community Service - community-scale retail wholesale, business and medical offices, mixed use core communities and/or employment services, and residential (6.01-34 units/acre) in Neighborhood 1.
ENTRANCE CORRIDOR: Yes
LOCATION: 370 Greenbrier Dr. Approximately 675 feet west of the intersection of Greenbrier Drive and Route 29 (Seminole Trail)
TAX MAP/PARCEL: 61W, Section 1, Block A, Parcel 5
MAGISTERIAL DISTRICT: Rio
(Claudette Grant)

Ms. Grant presented a PowerPoint presentation and summarized the staff report.

- The applicant requests to amend SP-91-52 to extend veterinary services clinic hours and expand space within the existing building on the site.
- The property is zoned Highway Commercial. There is currently an existing animal hospital located on this site, which operates from 5:30 p.m. to 9:00 a.m. The applicant wishes to extend business hours to the day time hours of 9:00 a.m. to 5:30 p.m. in order to provide specialty veterinary care. The applicant is proposing to use an additional 2,625 square feet of vacant adjacent warehouse space.

Favorable factors:

- The special use permit is consistent with the Land Use Plan.
- The special use permit will provide an opportunity for the expansion of veterinary services in the Development Area.

Staff finds no factors unfavorable.

Recommendation:

- Staff recommends approval of SP-2009-030, Greenbrier Emergency Animal Hospital subject to the revised conditions in the staff report. The primary changes to the conditions relate to the hours of operation for each of the businesses.

Mr. Loach invited questions from the Commission. There being none, the public hearing was opened and the applicant invited to address the Planning Commission.

Tripp Stewart and Chris Kabbash, of Trip VMD, LLC, represented the request.

Mr. Stewart pointed out the idea is to possibly expand their veterinary services to specialty services, which are not currently offered in Albemarle County or Charlottesville. They currently operate only on nights and weekends. The idea is to potentially operate during the day.

Mr. Loach asked if it would be for a 24-hour period at times.

Mr. Stewart replied that it will be open for 24 hours, but not necessarily in the same hospital. The animals will strictly be seen on an appointment basis during the day for a specialty service, but at night they will continue to operate as an emergency service. The idea is not to have the two connected.

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

Motion: Mr. Lafferty moved and Mr. Morris seconded the motion for approval of SP-2009-00030, Greenbrier Emergency Animal Hospital subject to the conditions recommended by staff.

1. There shall be no outside exercise area.
2. No animals are to be confined outside.
3. Use is limited to 370 Greenbrier Drive.
4. The hours of operation for the Emergency Clinic shall be between 5:30 P.M. each Monday through Thursday and 9:00 A.M. the following day; between 5:30 P.M. Friday and 9:00 A.M. Monday; and all day each federal holiday. The days and hours of operation for the Specialty Veterinarian Clinic shall be between 9:00 A.M. and 5:30 P.M., Monday through Friday.
5. Animals shall be permitted on site only during hours of operation as specified above in Condition number 4.

The motion was passed by a vote of 6:0.

Mr. Loach noted that SP-2009-00030, Greenbrier Emergency Animal Hospital, would go before the Board of Supervisors on a date to be determined with a recommendation for approval.

ZMA-2008-00003 Albemarle Place (Signs # 58, 65, 67)

PROPOSAL: Rezone 64.694 acres from Neighborhood Model (NMD) zoning district which allows residential (3 - 34 units/acre) mixed with commercial, service and industrial uses to Neighborhood Model (NMD) to amend the original proffers; and rezone 0.3404 acres from Commercial (C-1) retail sales and service uses to Neighborhood Model (NMD) with the proffers.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Regional Service - regional-scale retail, wholesale, business and/or employment centers, and residential (6.01-34 units/acre) in Neighborhood 1.
ENTRANCE CORRIDOR: Yes
LOCATION: In the northwest corner of Hydraulic Road (Rt. 743) and Seminole Trail (US 29) in Neighborhood 1.
TAX MAP/PARCEL: 061W0-03-00-019A0, 061W0-03-00-019B0, 061W0-03-00-02300, 061W0-03-00-02400, 061W0-03-00-02500
MAGISTERIAL DISTRICT: Jack Jouett
(Claudette Grant)

Ms. Grant presented a PowerPoint presentation and summarized the staff report.

The applicant requests to rezone 64.694 acres from Neighborhood Model (NMD) zoning district to Neighborhood Model (NMD) and rezone 0.3404 acres from Commercial (C-1) to Neighborhood Model (NMD) to amend the original proffers and Code of Development. The applicant recently purchased the adjacent site where the 7/11 Convenience Store is currently located. This site will primarily be used for road improvements. It is zoned commercial. In order to have consistent zoning the applicant is requesting this site be rezoned to Neighborhood Model.

Several modifications to the original approved proffers are being requested in order to make the project more feasible to build. The following focus on the highlights of these modifications:

- Proffer 1 is a revision to the phasing plan that provides the visual detail as shown in the presentation that not only describes the two phases, but also shows the detail phasing as it relates to the development of Albemarle Place Boulevard.
- Proffer 11 relates to the two traffic signals at either end of Albemarle Place Boulevard and will need to be warranted prior to installation. Basically it will be a traffic signal at one end of Albemarle Place Boulevard and then another traffic signal on Route 29.
- Proffer 12 relates to the Commonwealth Drive connection installation and is more detailed and provides the County more time to make this request. The connection is in the upper northwest corner of the site.
- Proffer 14 is a new proffer added to be a substitute to proffer 8B. The intent of proffer 8B was to provide off-site improvements in the city at the northeast quadrant of the Hydraulic Road/Route 29 intersection near the Kmart Store. Ultimately the city and the applicant decided that certain transportation improvements in the city known as the Route 29/250 By-Pass Interchange Improvement Project would better serve the community and help resolve some traffic concerns related to the Route 29/250 By-Pass Interchange. Proffer 14 was created to provide an alternative for transportation improvements. As stated in the staff report the revised proffers are more detailed regarding timelines and execution. The proffers appropriately address impacts.
- Some outstanding technical issues need to be resolved before this request goes to the Board of Supervisors.
- The applicant is also making some revisions to Appendix A, the permitted/prohibited use table that will update both uses allowed and not allowed within this development. For example, originally cellular communication was permitted by special use permit in all blocks. With the revisions to the Zoning Ordinance now Tier 1, Tier 2 and Tier 3 relate to wireless service facilities. Tier 1 and Tier 2 are now allowed in all blocks and Tier 3 is allowed in all blocks by special use permit.
- As detailed in the staff report, the applicant is also requesting three modifications of the requirement of Section 4.15 of the Zoning Ordinance that relate to sign regulations. This request will assist the applicant as they move forward with the plans and leases. These modifications include a request to use Section 4.15.1.3 of the Zoning Ordinance for Highway Commercial (HC), Planned Development-Shopping Center (PD-SC), and Planned Development-Mixed Commercial (PD-MC) sign regulations instead of the Neighborhood Model District's sign regulations for Albemarle Place. This modification would allow freestanding signs at 32 square feet rather than 24 square feet and larger wall signs

would be allowed. The applicant requests that instead of requiring a special use permit for any off-site signs that off-site signs with the Neighborhood Model District will be allowed by right. The last item being requested related to signs is an increase in the maximum height of wall signage from 30 feet to 58 feet, which would also be subject to conditions.

Factors Favorable:
- The proposal makes administration of regulations, such as uses, easier to follow.
- The rezoning is consistent with the Land Use Plan.

Factors Unfavorable
- The proffers need to be technically accurate.
- There are a few outstanding issues that need to be resolved regarding Appendix A in the Code of Development.

Staff Recommendation:
- Staff recommends approval of this rezoning provided that the proffers are revised to be technically and legally acceptable prior to the Board of Supervisors public hearing and that the outstanding issues in the Code of Development are revised.
- Staff also recommends approval of three modifications of the requirements of Section 4.15, Sign Regulations in the Albemarle County Zoning Ordinance.

Mr. Loach invited questions from the Commission. Under unfavorable factors it says that there are a few outstanding issues that need to be resolved in Appendix A and the Code of Development. He asked what the scope is of these changes and if the changes are just minor and technical.

Ms. Grant replied yes, the changes for the Code of Development primarily deal with the use table, which was approved in 2003. Some of the uses that were allowed or not allowed then are no longer in the zoning ordinance or various changes have occurred. The changes are primarily to bring the Code of Development up to date with our zoning ordinance in terms of the use table.

Mr. Loach asked if all of the changes would be done prior to the final vote, and Ms. Grant replied yes.

Mr. Cilimberg pointed out that the changes would be finished before it is advertised for the Board of Supervisors meeting.

Mr. Loach noted that the staff report indicates that staff is in the process of gathering information for a sign ordinance amendment. If there is another process going on he asked where we are in that process

Mr. Cilimberg replied that staff is in the very early stages of that work. A meeting has been scheduled with the ARB to discuss signage in a work session. Later in the summer there will be a work session with the Commission to discuss some of these changes. A group has been identified to work with this. Round Tables with the community will be held. It will be some months out before there are actual amendments that will be going to public hearing.

Mr. Loach asked to clarify that this plan is still consistent with the updates to Places29, and Ms. Grant replied yes that the plan was still consistent with the updates.

Mr. Morris asked if one of the things the applicant is going to be requested to put in is another stop light on 29, and Ms. Echols replied yes.

Mr. Morris asked if that stop light was awfully close to two other existing stop lights.

Mr. Cilimberg replied that the close proximity of signals was actually a matter discussed during the first rezoning. Through the proffers if and when there is connection provided to Albemarle Place available through the existing signal at Sperry, then this cross over and signal will be removed establishing for their initial entrance.

Mr. Lafferty acknowledged that this was a complex subject and a lot of material, but he could not find some of the attachments that were referenced. He had a hard time following it, but that was because he had not been on the Commission the whole time.

Mr. Cilimberg said that staff had made an effort to provide sufficient background due to the fact that the current Commissioners were not present at the original hearing many years ago. It was difficult and confusing because there were attachments within attachments.

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

Valerie Long, representative for the applicant, Edens and Avant, noted that also present was Tom Gallagher, Vice President for Development for Edens and Avant, who has been involved with the project for many years. She recognized in preparing that none of the Commissioners were on the Planning Commission at the time this was approved. Mr. Zobrist was probably the most familiar with it from his prior tenure. She presented a PowerPoint presentation and made the following comments.

- Albemarle Place was rezoned in 2003. There was an approved application plan with a set of proffers and Code of Development. Any projects that are zoned Neighborhood Model District are required to have a Code of Development prepared as part of the project. The applicant usually writes or drafts it with the staff's review and input. It serves as a mini zoning ordinance applicable to that project. It provides a great deal of flexibility for Neighborhood Model projects. Someone can design their own building heights, setbacks, standards of development, architectural styles, and so forth. This was the very first Code of Development approved. Therefore, everyone was learning their way at the time. There are a few kinds of updates to it that are necessary, which have been identified.
- The project is a mixed use project, which includes retail, office, residential, a hotel and cinema. She reviewed a copy of the approved application plan. The off-site road improvements were approved as part of the original proffers. They are only making kind of a technical change to those off-site improvements, but she wanted to give them an overview. They wanted to put it in context of the 250 Bypass and provide an overview of the off-site improvements that were going to be made at the very beginning of the project as part of the first phase. The one exception is the one light at Albemarle Place Boulevard and Route 29. That light will not be installed until the second phase of the project and until VDOT determines that the signal warrants are met. Everything else is being done as part of the first phase.
- There will be an additional lane added to Route 29 starting just south of Westfield Road. For the last two years Mr. Gallagher and others from Albemarle Place have been working with 11 or 12 land owners from whom they needed to obtain easements for these off-site road improvements. That is part of what has taken a while to get the project going forward again. They will add that new lane on 29 all the way to Hydraulic. There will be a new bus stop essentially being relocated from the front of the former Comdial building to the front of Albemarle Place. Also, they will be adding some frontage improvements on Hydraulic Road and a signal at Albemarle Place Boulevard and Hydraulic Road. They will be adding an extra turn lane so that there will be a dual right turn lane at Hydraulic and 29. Traffic tends to back up a little at that location.
- There are frontage improvements, as shown in blue in the presentation, that are along Hydraulic Road and 29 on the east side of the road that they are proposing to have the option to not have to do and instead use the money for something else. These are improvements on the city side of the line that at the time they were requested of the applicant were agreed to. Since then things have changed and they have been working very closely with the city over the last few years. The city has indicated that they would rather the applicant spend the funds towards what she calls the Best Buy ramp rather than using them for the improvements near the Kmart. Essentially it is an additional lane on 29 south starting at Hydraulic Road to improve the ramps and adding additional space on the Bypass to improve the situation with the traffic backing up. There are some real safety issues there. All of these improvements are being made as part of the first phase of the project with the exception of the light at Albemarle Place Boulevard and 29.
- Tonight they are asking for approval of the following three action items.
  1. Amendments to the proffers;
  2. Minor amendments to the Code of Development, and
  3. Three sign waivers.

- Amendments to the proffers are broken down into three categories.
  1. Phasing Plan – They are asking for changes to the proffers to allow them to phase the project differently than was originally intended.
  2. They are asking for the opportunity to use the funds that they would have used on the improvements shown in front of the Kmart, and instead having the option to take that money, which they have estimated at about one-half a million dollars to make those improvements, plus an additional one-half million dollars for a total of one million dollars, and give that to the city for its portion to contribute to the Best Buy ramp improvements. The city is working on that project in cooperation with VDOT. At this time that is the city's strong preference for the use of those funds.
  3. As Ms. Grant indicated they have a hand full of technical changes to the proffers, which are essentially updating language since the proffers were originally approved in 2003, adding some clarification and just reflecting the phasing changes being proposed to the plan.

- Regarding the phasing, the block plan essentially includes blocks A, B, C, D, E, F and G. Blocks A, B, C, and D are all part of phase one. As Ms. Grant indicated they would also build a portion of Albemarle Place Boulevard as part of phase one. Phase two would include several blocks plus the remainder of Albemarle Place Boulevard. The light would go in as part of phase two. The signal at Hydraulic and Albemarle Place Boulevard will go in as part of the first phase. Again they will complete all of the other off-site transportation improvements. Phase two is the rest of the project and the rest of the road and the signal.
- The fund swap would be to take the money they would have originally spent on improvements on the city side of the line near the Kmart and instead put them towards the Best Buy ramp improvements to 29 and 250. Then they would actually put additional funds towards that. That project not only is strongly supported by the city, county and VDOT, but the applicants for Albemarle Place as well. It will have a much more significant impact on the project in terms of improving the traffic flow along Route 29 than the improvements near the Kmart would have.
- There are some technical changes to the proffers and minor amendments to the Code of Development. All of the changes to the table of uses are really technical. Some of the other changes relate to the definition changes for such things as farm stands and farmer's market. Therefore, they had to update some of the definitions to make sure they had the appropriate terms in there. There were also a few uses that should have been permitted by right in some districts back in 2003 that just for whatever reason got left off accidentally. As staff has worked on other codes of development they have kind of refined their list of things that really need to be allowed in every Neighborhood Model District. So they went back and compared it and added them back in when they were not in the original one.
- The three sign waiver requests are pretty straight forward. The Neighborhood Model zoning district sign regulations are slightly different than those for similar mixed use projects. Planned Development-Mixed Commercial, Planned Development-Shopping Center, and Highway Commercial all have a certain set of sign regulations that are slightly different than the Neighborhood Model District regulations. They are asking to be able to use the same sign regulations for this project given that it is on Route 29 the major commercial thoroughfare. Staff has been supportive of that request. It is a relatively minor change in the big scheme of things, but very important for Albemarle Place in terms of remaining competitive from a leasing perspective and so forth. It will allow them to have the same sign regulations that other projects along 29 are permitted to have.
- The off-site sign is a bit of a technical issue. If there was a hotel in the back corner of the project that is sold as a separate parcel, they would not by right be able to have a sign up along 29 that advertises the hotel because it would be technically on a separate tax map parcel, which makes that an off-site sign. The proposal is to allow for the ability to have a technical off-site sign by right so long as it is within the project. As staff indicated that is a change that the zoning administrator has been working on and thinking towards for some time because it is a reoccurring request with these large Planned Development Districts where they often have to sell off a parcel as part of the development process. That would intermediately create a problem for their signage because they can't put a sign near the road where it needs to be.
- Finally, they are requesting the maximum height for wall signs be slightly higher. Because there are some taller buildings that will be part of this project eventually they want to make sure they have the ability to put the wall signs at the appropriate heights so that they look aesthetically appropriate and also so the signs are not blocked by any other tall buildings that are in the foreground. It would still

be subject to ARB review in some circumstances to ensure that appropriate design standards are followed and so forth.

Mr. Loach invited questions for the applicant.

Mr. Lafferty asked if phase one of Places 29 was taking into account what is shown in the lower left hand corner and wouldn't that be part of the round-about or grade separated interchange.

Ms. Long replied that there are proffers that have been there since 2003, which they are not proposing to change, that obligate the owner to dedicate and reserve certain land for those types of improvements. So they are doing all of that. The county has made the official request that they go ahead and dedicate that land. The applicant is having the subdivision plats prepared so that they can go ahead and take care of that. Some of this may be reserved for off-site improvements long term.

Mr. Cilimberg noted that at the end of last year the Planning Commission recommended and the Board ultimately approved the official map for the actual interchange, which gave the county limits of the right-of-way needed. That is what staff has used with the applicant, which they have designed around and would be dedicating.

Mr. Lafferty noted that they are showing a lot of buildings in there. He asked if they are moving the bus stop to phase two.

Mr. Gallagher replied that the bus stop will be constructed with phase one. There were concerns about putting the bus stop down closer to 29 because of stopping and stacking distances. That is why the bus stop was kept a little bit further to the north.

Mr. Loach questioned the request for a rezoning from Commercial to Neighborhood Model.

Ms. Long replied that the balance of the property has already been zoned Neighborhood Model since 2003, but the 7/11 property was not part of the original application.

Mr. Loach suggested that they wait on the signage until the sign ordinance was amended in order to include it in the broader scope. He was leery to sort of spot rezone within the Neighborhood Model Districts from what they have set up as the rules and regulations for signage. He suggested that the changes be made during the overall amendment process.

Ms. Long pointed out that they have been working on this request with staff for a couple of years. Staff has been supportive of the request all along. The signage is also an issue in terms of leasing with future tenants. They are looking at signs for other projects with similar zoning and saying that they just want to be treated the same way. Staff is supportive of the sign waiver request. Given that this Neighborhood Model zoning district is situated right on the busiest commercial thoroughfare and intersection in the community they just want to be treated the same way and have the appropriate district. It is not like they have single-family detached residential units in here and are asking for commercial signage. There is residential here, but it is apartments, condominiums and things like that. It is more heavily focused on the commercial and office side. That is why they felt it was an appropriate request.

Mr. Zobrist asked what would be the mix and actually be built.

Ms. Long replied that the residential portions are in the back. They are not sure what will be built at this time.

Mr. Gallagher asked to add two things. They are at are a critical junction right now in terms of the leasing. From the signage standpoint in terms of leasing it is important for them to knock this out now. They find the request appropriate given where it is located notwithstanding there is a separate process as pertains to looking at the signage. Additionally, they still have to go through the ARB process in terms of the review regarding the signage. There is that second tier. In terms of the mix their primary focus has been on the retail, which is also one of the reasons they are at this junction and why they are seeking to phase

it in this manner. As a testament to Charlottesville and the market, notwithstanding the current economic trend, they have gotten some positive momentum. There will be retail, a hotel, and some residential. But they are not sure exactly what the mix is going to be.

Mr. Zobrist pointed out that 700 or 800 is a lot of residential, but he did not think that much residential is going to fit there. It won't be single-family residences, but will be apartments and townhouses.

Mr. Gallagher replied that there would be no single-family residences, but there is a possibility that there will be some dense townhouse product. It will be multi-family with for sale condos and multi-family rental, but the market has a bit to come back on.

Mr. Lafferty asked if the sign can be seen from Route 29 doesn't the ARB have to make a judgment on it.

Mr. Loach invited Ms. McCulley to address the Commission.

Amelia McCulley, Director of Zoning, noted that all the signs visible from Route 29 would be subject to ARB review. She asked Mr. Kamptner if one option could be that the waiver be granted for only non-residential uses since that is where the applicant needs it the most. The Neighborhood Model District sign regulations are the same as the PUD sign regulations. It is based on the assumption that they have largely a residential development that is very internal. They did not anticipate something like this with two major road frontages, a town center and things like that.

Mr. Loach noted that they have been hearing that staff is supportive of this. He asked if that is correct.

Ms. McCulley replied that was correct.

Mr. Loach asked if she saw this as setting any precedent outside the process that would come back to bite them later because they approved this. He asked if she thought it was going to be fairly consistent with the changes that the committee was going to bring forth and if it would fit.

Ms. McCulley replied that since they were very early in the process it remains to be seen where it will go once staff meets with the ARB again, the Commission for the first time and the Board. The off-site sign requirement staff absolutely supports and sees no reason why not to since it is a provision where someone would not get extra signage. They are controlling the message so to speak because they can only advertise on-site uses. In allowing it by right they do not lose anything in terms of giving away additional signs or sign area. It would definitely serve the purposes of the sign ordinance and be much more efficient for the applicant and staff. The wall sign height thing is something that has come up a couple of times and actually another Neighborhood Model development had a variance. Staff is looking at that with the sign text amendments. At the time they were not able to get the variance because it was based on hardship on the constraints of the property and not the constraints of the ordinance. For the non-residential uses and those that are situated along the major roads, 29 and Hydraulic, staff does support sign areas and sign sizes that are more consistent with other commercial properties. It would be identical, but not zoned Neighborhood Model.

Mr. Franco said that in Planned Developments there are Planned Residential Developments as well as Planned Development Shopping Centers and they are leaning towards the PD-SC regulations. He thought that it has already been envisioned in Planned Developments that there be different sign ordinances and criteria for whether it is more residential or commercial in nature. For the commercial it just seems appropriate where as in the Neighborhood Model District there is no distinction. Therefore, he felt that the request is appropriate.

Mr. Lafferty asked what would be a competitive sign and if the applicant could give an example of the demands of a person who was going to lease in what they would want that they normally don't get. They have heard the term competitive signs.

Ms. Long replied that some of the similar type of projects they were looking at that were similarly large mixed use with a similar scale and right on 29 were Hollymead Town Center (zoned PD-MC), Kohl's and

North Point. The North Point project is PD-MC and there is some residential there as well, which was approved by a special use permit. That is what she was referring to. She would let Mr. Gallagher speak to some of the more specifics in terms of tenant demands for signs and so forth.

Mr. Gallagher said that he could not be any more specific other than tenants always want more signage than they are going to be able to get. It is just on a case by case basis.

Mr. Lafferty pointed out that since they were looking at the signage overall having some guidelines would be helpful.

Mr. Gallagher noted as Ms. Long said that he thought what they are asking for is reasonable and consistent with the other commercial projects on 29. Some of the national tenants have an expectation for signage in terms of even the PD-SC that they are trying to meet.

Mr. Loach asked what realistic time frame that they are looking at.

Mr. Gallagher replied that this project is very lease driven. They have gotten over the last year a lot more attraction in terms of leasing. While he could not confirm any existing leases that are in place he could say that they are looking forward to making some announcements shortly with respect to people that are signed up. They are on a daily basis working on the leasing front. They would like to get started later this year. They obviously have a fair amount of site work they have to do. There is probably about eight months of site work and depending on the complexity of the building another 6 to 12 months of vertical construction.

Mr. Loach invited public comment.

Jeannette Janiczek, City of Charlottesville ECI Program Manager, said that they have been working with the county staff as well as the developer. She wanted to bring two concerns to their attention that city staff has towards implementation. One of those would be that they were requesting additional time to institute proffer 14. Currently they have three years and they were looking for additional time. She thought that they were close to reaching an agreement on that. Since they can't start planning until they receive official notification that is the proffer they are picking rather than 8b, which is the reason for the request for additional time. The second is a minor clarification regarding proffer 5 for the Jitney Service since there is some staff concern that this might be taken as a new service rather than helping CTS establish a new stop within the development along with amenities, etc. It would not fund a completely new route, but it would certainly help serve the development with an existing route.

There being no further public comment, Mr. Loach invited Ms. Long to come back and address the last two items.

Ms. Long said that they have been working very closely with the city. In fact, during the past few days they had meetings with city staff, including Angela Tucker, and have spoken to Mark Graham about it. She would ask Mr. Graham speak to it as well since he has spoken recently with Ms. Tucker from the city. Part of the arrangements to make all of this work is an agreement that the developer has from working with the city on basically all of the details of how this "swap" of transportation improvement dollars would work and what the process would be. They have tried to include time frames that work for everybody. They are working hard to incorporate the preferences and concerns of the city, the county and VDOT and to make sure that the applicant's million dollars is put to that use. It is a challenge to get everybody on the same page, but she was very confident that they are very close on those issues. It is just a matter of working out some of the details and probably including a bit of flexibility in the agreement to ensure that if the city decides that they need more time to get the project completed that the county has an opportunity to weigh in and allow more time to take place without triggering any of the money going back to the county. She asked if that makes sense. As for the other issue with the Jitney Service, they will work with folks on that issue to address those concerns. Her understanding, having not been involved with the project in 2003, was that proffer was made to be put towards the Jitney Service if that was put in place. As they know it has not been put in place. So there is now a desire to instead have that proffer dollar just essentially go to other CTS projects in the area. So they are willing to consider that and work with the

staff on those issues.

Mr. Loach invited Mark Graham to address the issues.

Mark Graham, Director of Community Development, said with respect to proffer 14 and the timing of the transportation improvements obviously from a county perspective the interest of the county would be concurrency that the improvements are complete at the time that the stores are open. What they have recognized is that there are some issues with that and they have proposed a three year time frame there as seen in proffer 14. What Angela Tucker has brought up, which is a valid concern, is there is federal permitting and state permitting that they have to go through and they can't have total assurance that everything is going to be in place. What he has discussed with Ms. Tucker, which he certainly is willing to recommend, is an idea of allowing for the three year deadline to be extended by joint agreement of the city and the county perhaps by the County Executive and the City Manager if they see that there are extenuating circumstances that made it impossible for them to get it done. But other than that the intent is to get those improvements done as quickly as possible and to stick to that three year time line.

Mr. Loach asked if the Planning Commission needs to make any changes to this proffer.

Mr. Graham replied that he did not think there was any need to make changes at this point. It is something that staff will work with the applicant on. It certainly seems amenable to those kinds of modifications and is something that they could work out between now and the Board hearing.

Mr. Loach noted that when he hears words from an attorney, Ms. Long, like challenge and flexibility he gets worried sometimes hearing it. He asked if there were any other questions. Since there were no further questions he noted that he had one more question for staff. Regarding utilities and the Meadow Creek Interceptor and the upgrade he asked if that was phased now to concur with this development. He asked if they were not going to have a flush factor problem.

Mr. Cilimberg replied that actually they were going to need the interceptor in order to get their permits. The interceptor is under construction. Part of the timing of the whole project has actually ended up being associated with that as well as the other factors Mr. Gallagher explained.

Mr. Loach closed the public hearing to bring the matter before the Planning Commission for action.

Mr. Franco asked if they need to act on the request to Section 4.15 separately.

Mr. Kamptner replied that both requests would be going to the Board, but the regulations now require that there be an affirmative action on the waivers or modification so that they never have a situation where there is an approval by implication. For clarity they would ask for a separate motion so that it is clear on the modification.

Motion for ZMA-2008-00003:

Motion: Mr. Franco moved and Mr. Morris seconded the motion to recommend approval of ZMA-2008-00003, Albemarle Place provided that the outstanding issues on the proffers (see Staff Report Attachment C) and the Code of Development are clarified between staff, the applicant and the City before it goes to the Board of Supervisors.

The motion was passed by a vote of 6:0.

Motion for Modifications:

Motion: Mr. Franco moved and Mr. Morris seconded for approval of the modifications to Section 4.15 of the Zoning Ordinance regarding signage based on the findings in the staff report.

The motion passed by a vote of 6:0.

Mr. Loach noted that would ZMA-2008-00003, Albemarle Place and the modifications to Section 4.15 of the Zoning Ordinance regarding signage would go before the Board of Supervisors on a date to be determined with a recommendation for approval.

Mr. Cilimberg thanked Mr. Lafferty for bringing up the issue regarding the complexity of the staff report because staff is going to pay more attention to that for the future and also before the request goes to the Board to make sure that it is understood what are the attachments to this report and to the prior report to give a little more flow. Also, he wanted to correct the record because he misspoke a bit in terms of the obligations under the matter of the signal at 29. That is not something that is proffered. That actually has been handled in their permitting with VDOT in terms of removing that at the time that access would be provided through the Sperry light. So it is not in the proffers, but through another mechanism that has been addressed.

Regular Items:

SUB-2010-00049 Nydrie Farm

The request is for preliminary subdivision plat approval to create 26 lots on a total of 408.37 acres. Associated with this request is a request to allow private streets. The properties, described as Tax Map 120- Parcel 16, Tax Map 120- Parcel 16G, and Tax Map 120- Parcel 16H6 are located in the Scottsville Magisterial District at the intersection of Esmont Road [Route 715] and Green Mountain Road/ Porters Road [Route 627]. The Comprehensive Plan designates the properties as Rural Areas in Rural Area 4. (Megan Yaniglos)

Ms. Yaniglos presented a PowerPoint presentation and summarized the staff report.

- The request is for preliminary subdivision plat approval to create 26 lots on a total of 408.37 acres. Staff will act on the subdivision plat administratively after the action from the Planning Commission concerning the private street request. There are three separate parcels comprising the entire subdivision.
- The applicant provided justification for the approval of the private street under Sections 14.2.32.a1 to alleviate significant degradation to the environment and 14.2.32.a3 general welfare. Staff found that that the environmental impacts would not be significantly different between a public street and a private street for the proposed alignment. However, a public street would require additional road construction to provide connections to abutting properties and intersections with existing pubic roads per the new Virginia Department of Transportation connectivity index. VDOT approved new regulations that would require this property to make additional connections to adjacent parcels. What they are proposing would eliminate those connections.
- Although it has been the policy of the County to discourage private streets in the rural areas, given the current economic climate, the maintenance and cost rendered by the developer in the residence of the development, and the fact that no additional lots could be created with a private street, staff believes the general welfare is being better served by allowing it.

- Favorable factors:
  1. A private street does not permit more development than a public street in the Rural Area.
  2. The approval of the private street puts the cost and maintenance on the developer and the residents of the subdivision rather than the general public.
  3. The private street will be built to public road standards with the exception of the new requirement by VDOF for additional connections to adjacent parcels.

- Unfavorable factors:
  1. The policy of the County has been to require public streets in the rural areas.

- Staff recommends approval of the private street per Section 14-232 (A) (1), Alleviating Significant Degradation to the Environment, and Section 14-232 (A) (3) General Welfare subject to the conditions outlined in the staff report.

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

Bill Ledbetter, with Roudabush and Gale, said that he prepared the plan and would answer any questions. He felt that it was very clear cut from the staff report.

Mr. Loach invited questions for the applicant.

Mr. Lafferty noted that it seemed that the general idea is to avoid having a public street.

Mr. Ledbetter replied that the general idea is to have private streets. They are trying not to create the additional road connections that VDOT now requires with their secondary road acceptance requirements. It requires building an additional 500' to 1,000' road to adjoining property. It would be building roads to nowhere. They don't see where it serves any purpose whatsoever and that VDOT's regulation does not make sense in the rural area. They have a 500 acre farm here that basically is surrounded by a state road on three sides. They have one side that does not have road frontage. They want them to build a road that terminates at a property line that would never serve anything. He understands the VDOT regulation for the urban area, but feels that it makes no sense for the rural areas whatsoever. It is not a desirable connection to them and would not serve as a connection to a state road.

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

Motion: Mr. Zobrist moved and Mr. Franco seconded for approval of a private street waiver request for SUB-2010-00049, Nydrie Farm subject to staff's recommended conditions recommended in the staff report.

1. The plat shall be subject to the requirements of Section 14-303 (Contents of final plat), as identified on the "Final Subdivision Checklist" which is available from the Department of Planning and Community Development;
2. The final plat shall address all minimum requirements from Sections 14-410 (Standards for all street and alleys) and 14-412 (Standards for private streets only).
3. Health director approval of individual private wells and/or septic systems.

The motion was passed by a vote of 6:0.

Mr. Loach noted SUB-2010-00049, Nydrie Farm was approved to allow access to the proposed lots via a private street per Section 14-232 and 14-234 subject to the conditions recommended in the staff report. This is not a matter that requires Board of Supervisor approval.

The Planning Commission took a break at 7:04 p.m.

The meeting reconvened at 7:10 p.m.

SDP-2010-00003 Singleton Tower

The request is for approval of a treetop personal wireless service facility with a steel/metal monopole that would be approximately 69 feet tall (10 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 12.2.1. (16) of the Zoning Ordinance which allows for Tier II personal wireless service facilities by right in the (VR) Village Residential zoning district. The site is located on 2856 Morgantown Road [State Route 738] approximately 600 feet from the intersection of Morgantown Road [State Route 738] and Ivy Road [State Route 250]. The property, described as Tax Map 58A1 Parcel 40F1, is 2.089 acres in size, and is located in the Samuel Miller Magisterial District. The Comprehensive Plan designates the property as Rural Area in Rural Area 3. (Gerald Gatobu)

Mr. Gatobu presented a PowerPoint presentation on SDP-2010-00003, Singleton Tower and summarized the staff report.

The request is for approval of a personal wireless service facility. The proposed location is in Ivy next to Duner's and Ivy Store. Tonight there are two actions for the Planning Commission to take.

Planning Commission Action:

I. Deny the application on merit: The Planning Commission can deny the application based on information presented today, but must identify the requirements that were not satisfied by the applicant [apart from the ARB not granting a certificate of appropriateness], and inform the applicant what needs to be done to satisfy each requirement."

II. Technical Denial: The Planning Commission would have approved the tower, but because the ARB has not granted a certificate of appropriateness, the PC has to deny the tier II tower application.

- B) Defer the application (with input from the applicant).

Staff wants to present and make sure what they see in terms of visibility on what the tower looks like. There are three balloon tests that were conducted for this site. The staff report details the three balloon tests in terms of how many and why. It was all in trying to make sure that they can minimize the visibility. The aim here is not to make the tower disappear, but the aim is to minimize visibility.

He explained the photographs taken of the balloon tests in the PowerPoint presentation. In the photograph coming down the hill going towards Crozet the balloon is visible directly in front. He explained the applicant's photo simulation of the tower that showed what the tower would actually look like compared with the other photographs. He noted the reference tree where the monopole is supposed to be. There has been an issue to make sure that the balloon was raised at the actual monopole location. In most cases it is not possible because of the tree branches would actually bust the balloon and they would have to keep doing it. Therefore, they tried to move it to a location that would actually simulate the balloon for the monopole location to the best of their ability. Staff took pictures in February along Morgantown Road. The neighbors have their own photographs. They can look at all of the photographs and judge in terms of visibility what the tower would look like.

The applicant is required to meet several subsections. There is a criterion that is going to be used. The applicant has met subsection 5.1.40.a, which is the application itself that includes submittal of a plat, the owner's name and the power-of-attorney that they have been granted permission to put the tower in that location. The applicant has met that criterion. The applicant has to meet subsections 1 through 8, which ties into it being flush mounted. The monopole itself will have the wires run inside and has to be brown in color. The applicant has agreed to put up a fence around the lease area as well as with some additional landscaping. It has to be painted a java brown color to match the location and make sure that it is not visible from anywhere within the Morgantown area or Ivy area. The applicant has done that. It is flush mounted. The base diameter will be 30" and the top will be 18". A tree conservation plan has been provided in terms of being able to maintain the trees as they are.

Staff reviewed the renderings in terms of the visibility. There are some evergreen trees that are on the neighbor's property. From what the ordinance says there is a 200' radius at least for which they have to maintain the trees as they are. Both the evergreen trees are located on a neighbor's property and not within the 200' range. They provide the coverage at least to make sure one cannot see it in terms of the pictures presented. Those are the pine trees that are providing at least the limited visibility in terms of the balloon test itself. There will be discussions about that. Staff will open it up at this point.

The applicant met requirements of subsection 5.1.40.a. The applicant has demonstrated that the facility will be installed and operated in compliance with the provisions of criteria (1) through (8). What they don't have is that they have not met the requirements of the Architectural Review Board. These are the three things the Planning Commission usually needs to be able to say definitely yes they can approve this. The applicant does not have a certificate of appropriateness. The Planning Commission can deny the request based on the issues that are before them in terms of the pictures. Several neighbors are present to speak.

Per section 5.1.40.d above, the Planning Commission can approve each tower application when:

1. Requirements of subsection 5.1.40(a) are satisfied

2. The applicant demonstrates that the facility will be installed and operated in compliance with all applicable provisions of this chapter, criteria (1) through (8)
3. **All conditions of the architectural review board are satisfied**

Recommendations:

- This proposal meets the requirements of Section 5.1.40.a, and will be installed and operated in compliance with section 5.1.40.d Criteria (1) through (8), however, Architectural Review Board conditions have not been satisfied because a certificate of appropriateness for this project has not yet been approved. A hearing on the appeal of the ARB's denial of the certificate of appropriateness for this project is scheduled for July 14th, 2010. Staff cannot recommend approval of this personal wireless facility.

However, had it not been that the ARB had disapproved it staff would have proposed approval at 7' and it is upon the applicant to demonstrate that there is no material difference between the 10' and the 7'. In this case the Planning Commission would be making that decision in saying they don't see any difference between 10' and 7' and then they would approve it at 10'.

Mr. Loach invited questions from the Commission.

Mr. Lafferty asked if the balloon test was at 10'.

Mr. Gatobu replied that the first balloon test was at 10'. The second balloon test was lowered and there was no big difference. Therefore, on the third balloon test the balloon was taken back to 10'. So they are dealing with 10'.

Mr. Loach asked if there was a fall zone requirement.

Mr. Gatobu replied yes, the applicant met that. If the height of the tower is 69' they have to be 69' away from any of the properties so that if it falls it falls within the same property.

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

Katie Carmichael, representative for the applicant, noted that Valerie Long, her colleague, was also present. She presented a PowerPoint presentation and reviewed the plan that AT&T is proposing to improve wireless telecommunication service in the Route 250 area. Currently there are locations along Route 250 where there are holes in coverage and AT&T is proposing to improve the coverage in order to fill those holes. The goal is to provide reliable service to businesses and residences in the area. Route 250 is a major thoroughfare that has a lot of traffic. Therefore, it is an important route for AT&T to have reliable coverage in.

She reviewed the orientation map pointing out that AT&T carefully chose this location. Prior to choosing the Singleton site they did look for co-location opportunities. Co-locations are the preferred method. It is a lot easier to install the antennas when they co-locate on existing buildings and it is a lot less expensive for AT&T. In this particular area they did approach St. Paul's Church, which is just up Owensville Road, who has an existing facility in their steeple for Intelos. Unfortunately, there was not enough physical area to install both antennas in that church. So that opportunity AT&T did not pursue. They did contact other landowners in the area and were not able to find any willing landowners who also would be able to provide the coverage in the area for AT&T's coverage objective. The Singleton site is able to have both a willing landowner and able to cover the holes along Route 250.

In the coverage maps for AT&T the three areas were circled around Route 250 where people drop their calls or have no service at all. Those are the areas they are focusing on. When the site would be built on the Singleton property the map shows the improvement in coverage. The map shows the vast improvement in coverage along Route 250 as well as the surrounding areas including the shopping center and other residences in the area.

In an aerial map of the Singleton property it shows a heavily wooded property. AT&T is proposing to use the existing access road so there will be no disturbance of the trees or in any land disturbance. From the plans it is clear that there is proposed landscaping. Within the tree survey and a 50' radius there are over 30 trees surrounding the site. As Mr. Gatobu mentioned the proposal is for a 69' antenna. The antennas are flush mounted and proposed to be painted java brown. The cables run in the interior. That is an overview of the tower itself.

In the presentation she reviewed the general area of the proposed tower location and the existing access road. Currently there is quite a bit of vegetation along there. She explained the tower location in photographs from various views looking towards the Gibson's house, the leaf area, and the other surrounding properties. She noted the drop in the topography of the land towards Route 250. She noted the additional tree coverage in the back of the area along with the telephone and power lines. She pointed out a view of the access road. In looking at the proposed tower location she noted the tree coverage in the area.

She reviewed the view of the proposed tower from several vantage points, including adjacent properties, in photo simulations and other pictures.

- From the tower location to the site of the garage is about 120'. From the tower location to the Viglantee house is about 750'. In the photograph it shows Morgantown Road, Route 250, the railroad crossing and power lines crossing other people's property in the back.
- Mr. Gibson was nice enough to let her on his driveway so she could see the view from there. In the photo simulation it shows the tower location mitigated through the trees.
- With a blue balloon in the balloon test it would be more visible than the tower would be.

They have spoken with the Gibson's and actually discussed ways to mitigate any visibility at all from their property if there was any. In addition to installing the fencing, which Mr. Gatobu mentioned, they have proposed to install 17 Holly bushes that are native to the area. That is the Holly shown on the right side of the compound.

Views were shown from the streets surrounding the site, which included:

- From the Duner's parking lot area the photo simulation shows the tower in the center, which is mitigated by the trees.
- The view shown heading west on Route 250, which was taken recently, and
- View from 250 west (summer).

She pointed out the heavily wooded Singleton property. One of the nice things about the Singleton property is the tree coverage that is on site. There are over 30 trees within 50' of where the actual tower is proposed to be located that provides mitigation.

There is a balloon test taken during the spring, which is in the photo simulation. The red balloon is shown floating, which is difficult to see. From the Exxon gas station she displayed a photo simulation, which showed only the very top of the tower with the rest being mitigated. A view from the bottom of the hill in the summer time was displayed.

There has been some question as to whether the mitigation is solely on those two pine trees, which was mentioned by staff, that is off-site. She just wanted to rest assured that there are a significant amount of trees on site and they were not relying at all on those two pine trees to provide the mitigation for the tower. As shown it is a heavily wooded area and it is only the very top of the tower that is actually visible. Therefore, they feel that from all vantage points they have provided heavy mitigation for this tower.

She showed a video taken while driving along Route 250 to show what a short period of time span that one can actually see the very top of the tower. The video started while driving along 250 heading west towards Crozet at the speed limit of 35 miles per hour. In the 30 second video the balloon is visible for about ten seconds. The balloon is verily visible for a short period of time at the Exxon gas station. Reaching the railroad track the balloon cannot be seen any longer.

As seen from the photo simulations taken at various times of the year it is merely the very tip of the tower that is visible and it is only from one vantage point. Compared to all of the telephone poles and the other distractions in the area, the very small time that it is seen, as well as the small amount of the tower seen it is very minimal. It is a very well mitigated site.

The County actually adopted a Wireless Policy in order to set up a compromise basically not to have the more effective 200' towers and decided to allow the less effective far less visible tree top towers. So that is what they are proposing here a tree top tower that complies with the zoning ordinance.

To summarize, the ground equipment is mitigated from all view, the majority of the length of the tower is mitigated from the view using off-site tree cover, and the only view point is heading west on Route 250. If there are any questions, she would be happy to answer them. She would appreciate the opportunity to respond to any public comment at the end of the period.

Mr. Loach invited questions for the applicant. There being no questions, he opened the public hearing and invited public comment.

Philip Beaurline presented a PowerPoint presentation. He said he had been a full time professional photographer for 22 years and had a tremendous amount of experience taking pictures of inanimate objects in their environment. The following discussion relates to the County Code concerning two Tier II cell towers. "The facility shall be sited to minimize its visibility from adjacent parcels and streets regardless of their distance from the facility."

- The first photo is one of the photos the applicant is using to show how the proposed tower would look in its environment. In terms of its intended purpose this is not a very good photograph. The relatively wide angle that was submitted by the applicant does not represent our visual experience. He thought that everyone who experienced the balloon test, including the County staff members that were present, would agree that this photo does not illustrate what they were all seeing. The balloon and the simulated tower are virtually invisible in the image when in fact the balloon was starkly sky lined above Ivy. Additionally, it was taken from a viewpoint well off of 250, which he would say at least 30'. This does not represent what is actually seen form 250. It is framed in such a way that emphases the other distracting objects and diminishes the impact of the proposed tower.
- He pointed out that his photograph illustrates much better what is being proposed. He took this shot from the eastbound side of 250 and a little further up the hill in order to simulate the view from the highway itself coming around the corner entering Ivy. Using this photograph and some of the images supplied by the applicant he would show that the proposed cell tower would indeed be a very visible and obtrusive object on the sky line in Ivy.
- First, he submits that the so call winter time view of the Ivy sky line is in fact the one they should be concerned with. The deciduous trees lose their leaves around the end of October and it is not until mid-April that they see significant leaves again. This means that for more than five months of the year they will have bare trees mixed with evergreens on the sky line. The other seven months do not mitigate the first five. The next photo is of the second balloon test made on February 23 of this year with the balloon at 4' above the reference tree using a 3' diameter balloon. The test was a repeat of the first test made at 10' above the reference tree. Subsequent tests were made at the 10' level. Notice that the balloon is nearly centered between the two tallest evergreen trees. On March 31 the applicant conducted another balloon test which was repeated for County staff on April 16. None of the area affected residents were notified of the last two balloon tests. Their stated purpose was that they were to be done from a location which more accurately represented the proposed location of the tower as viewed from the westbound lane of 250. The applicant based their May 3 appeal to the ARB on this new test which purports to show a more mitigated view of the tower. They continue to rely on this photo to show how the cell tower would look. His analysis shows that the most recent balloon test was flawed and the proposed cell tower would be a very obstructive object on the sky line.
- The applicant's Attachment H, which locates the tower, shows the various balloon tests and photo locations along with an inset drawing showing the proposed site in detail. In order to accurately relate this image to his photograph he made four modifications to the aerial map and inset. He has added his approximate photo location in the lower right corner, which is on the same horizontal site line as the applicant's photos. He has rotated the inset drawing so that the north arrow corresponds to the

north arrow of the aerial photo. With the north arrows matching he was able to accurately transpose the green site line tract onto the inset detail.

- Finally using the existing distance scale he added a 3' diameter balloon to the actual location of the proposed tower. Looking at the modified inset drawing one can see relative to the green site line tract the proposed tower location is approximately one-half of a balloon width (over 18") to the viewer's left of the February balloon test location. The March balloon test is approximately one-half of a balloon width to the viewer's right of the February balloon location. He went back to the applicant's February balloon test photo, which shows the tower location roughly centered between the two larger evergreens. To the applicant's March balloon test photo they learned that the applicant is claiming that the new balloon test location more accurately locates the actual tower location on the sky line. Notice the balloon position relative to the tallest evergreen tree. By their reckoning the tower has moved what appears to be about 15' to the east using the balloon as a measure of scale. In fact, the new location should have moved the balloon 18" to the west according to the inset drawing. This can be explained by the fact that on 9 a.m. on March 31 the wind was averaging 2 to 5 miles per hour and was coming out of the west, which would have easily moved the balloon well to the east. On February 23 when he took his photograph the wind in Ivy was 0 to 1 mile per hour from 9 to 11 a.m. when the balloon test was staged.

Mary Newton continued Mr. Beaurline's presentation. The March balloon photograph as submitted by the applicant is an anomaly and is further supported by this photo taken by the ARB staff on April 16 of the fourth balloon test. This balloon was also flown from the new location staged at the request of the ARB staff as they were not present for the March test. The winds in Ivy were 1 to 4 miles per hour at variable direction at the time of the April test. Using this information Mr. Beaurline has modified his original photo to simulate the March balloon test and the actual proposed tower location. The March test was done at 10' above the reference tree, which is 6' or 2 balloon widths higher than in his original photo. The actual proposed tower location is the balloon in between the two test balloons. It is clear how little difference there is in between the two tests and the actual proposed location. It is clear that the applicant's photo simulation does not at all show how the proposed tower would actually intrude on the sky line. This rather is what the cell tower would look like when approaching Ivy for over five months of the year.

Amy Vigilante, resident of 2930 Morgantown Road, said that she was also an AT&T cell phone customer with reliable coverage, which she is happy with. She argued tonight that the applicant, AT&T, does not meet the Code requirements for a Tier 2 under #2, which states that the site shall provide adequate opportunities for screening and the facility shall be cited to minimize its visibility from adjacent parcels and streets regardless of their distance from the facility. The Singleton site where the pole is to go has few trees and mainly overgrown with vines and brush. She was floored when she heard of the application as the pole is so invasively close and visible to four houses nearby and from a distance. She questioned what proper screening or mitigation would be. To figure this out she drove around the area where other cell towers have been approved.

Ms. Vigilante presented and reviewed examples of other existing cell tower sites on a poster board. In one example at Dry Bridge the cell tower is in a wooded area behind the house where it is hardly visible. Another site off of Morgantown Road the tower is just above the ridge and slightly visible. In Bellair the tower is located so to be hardly visible. In West Leigh the tower is right above the ridge line. In the examples that have been approved the sites are screened and heavily wooded. In a photograph of the Singleton site taken a few days ago she contended that there is a difference. Ms. Carmichael says that the Singleton site is heavily, but she would disagree. There is the one reference tree with ivy growing up dead trees. The reference tree where the pole is going is not a mitigated area. In both the summer and winter view the proposed tower would go right in a sky lit view. The tower would be visible from other vantage points including Morgantown Road. She would argue that the balloon was more than 10' above the tree line and probably 20'. Therefore, she would argue that the tower site is not mitigated.

Jim Sofka, resident of 2850 Morgantown Road, presented a PowerPoint presentation noting that his house was on the eastern triangular lot with the stone wall. He had been in contact with Mr. Robert Caldwell, who is the owner of Duner's Restaurant. Being out of town, Mr. Caldwell asked him to register on the record his strong disapproval of the request.

- He noted that all four of the evergreen trees in the photo are located on his property. The large evergreen tree the County has identified is 6' from the front of his house. It is an Eastern standard Hemlock that he has treated because it is diseased with blight. It is 316' by GPS to the tower stake. He agreed that Ms. Carmichael is right that there are trees on the Singleton property, but unfortunately they don't command the ridge line. Under Section 3 and the Tier II rules in Sections 2 and 6 it refers to these trees, or the tallest ones, that are all located on his land. A few of the trees are located on the Gibson's property next door. He gave an open invitation to the Planning Commission to visit the site. Therefore, it is his argument that AT&T is piggy backing on the Gibson's and his land in order to satisfy their requirements.
- In a simulation he showed what the site will look like without the tree tops that they own in question were removed. Of course, he has no desire to rip trees down. However, the two tallest evergreens are Hemlocks that are diseased. He treats the Hemlocks annually. His arborist has certified this. However, given that the trees are within 10' of his roofline, should the trees become diseased they must be removed. This is a 25 year lease. These trees are off site. He identified the trees in the photo that are located on both the Gibson's and his property. A few of the trees in the back are on the Singleton property. It is clear that the topography of this is commanded by trees on a ridgeline that they do not possess. It is 100' plus outside of the orbit of what they have to satisfy with 200'.

Trevor Gibson, resident of 2852 Morgantown, noted that his property was directly adjacent to Ms. Singleton's property. In PowerPoint presentation he explained several photographs of what the tower would look like from his house from various locations. He read a statement based on a couple of the slides. This is a reiteration of the Tier II, Section 2 which provides that adequate opportunities for screening of the facility shall be sighted to minimize visibility. From the previous speakers it is evident that adequate opportunities for screening from the street level and neighboring properties would be impossible because AT&T does not control the trees. He noted the following.

- From his house it is also impossible to provide adequate screening. It is liken to trying to hide an elephant in a living room, which can be seen from looking at the photographs. From his six-year old daughter's bedroom the tower would be very visible. The tower location is sandwiched in between two properties in a neighborhood environment that has small parcels of one to two acres, school bus stops and a shared driveway. There are children around all the time. In a photo from his breezeway it shows the trees with ivy and shrubs to be relied on for coverage. The photos from the various locations from his house display that the tower would basically be part of their life for the rest of the time that they are in this house. They are planning on living in this house for the rest of their lives.
- The tower would be a few feet below where it would need to be for that 69' tower to crash into their yard. The proposed tower site would be completely intrusive into his house. They are very concerned about it. They also believe that the precedence such a tower would set would be detrimental to the quality of the life they have in Albemarle County. They moved to the country setting for that setting and the wonderful school district. This is a game changer for his family. The tower does not belong here and is not appropriate for this site. They would like to suggest that the request be denied on merit pursuant to both Sections 2 and 6 of the Tier II Code as demonstrated.

There being no further public comment, Mr. Loach invited the applicant to make their rebuttal.

Ms. Carmichael asked to clarify a couple of things.

- They did four balloon tests for this site. Obviously, with each balloon test there are varying conditions, such as wind, temperature, tree foliage, etc. Thus, one cannot have the same exact picture each time. There are varying conditions for each of the photographs. The photographs in her presentation are per their engineers and planners of the most precise and exact photo simulations and location of the tower that they can obtain. As can be seen there is quite a bit of coverage of trees and things like that in the area. They can't actually fly the balloon at the exact location of the tower, but they have done their very best with their engineers and everyone analyzing this to simulate exactly where the tower would be. Those are the items that they showed. With the plans they have to do a tree survey of the tower location. Within 50' of the tower there are over 30 trees, which are in varying ranges between 40' and 50' high. So there are significant trees in the area as seen in the photographs.
- The Architectural Review Board, as noted in the minutes, had no issue with any of the views except the one view from Route 250 West. The ARB reviewed the view from Route 250 and Duner's

Restaurant and had no issues from any of those views. Removing the trees in the Photoshop from the Sofka property is a little bit crude. Just placing a white box over that is not an accurate view of what the actual tree lining would be along that area. Although those trees right now could provide screening for that area they are relying on the trees on the Singleton property to provide the mitigation of the majority of the view of the tower, the ground equipment, etc. They are relying on the trees on the Singleton property. There are over 30 trees within 50'. Towers are not intended to be invisible. They have mitigated the view of the tower using the on-site trees. Again, it is not intended that they are suppose to be invisible. They have had an arborist out on the site that did a tree conservation plan, looked at the health of the trees, etc. and provided that information to the county.

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

Mr. Gatobu pointed out that the planner with the ARB, Brent Nelson, is present to answer questions.

Mr. Lafferty asked if the applicant had checked on the location on the hill where they were taking pictures from about locating the tower there and it was not possible.

Ms. Carmichael reiterated the question was did they consider locating the tower on a property that was at the top of the hill coming west on 250 in order to provide the coverage. One of the interesting things about trying to provide coverage into this area is that there is such a great elevation change between the top of the area and the low lying area. The area they are trying to cover is at the very bottom of the hill. They looked at all possible locations within the area, co-locations, existing buildings, existing towers and other properties in the area. This was the best match to provide coverage in the area they are trying to cover.

Mr. Loach noted that one of the slides shown was of what would happen if these trees that are prone to disease that the gentleman has been treating died. He acknowledged that they already have a tree plan as the applicant described. He asked what happens if those trees off-site that provided partial shielding should died and not provide that function. He asked if the situation would be re-evaluated.

Mr. Gatobu replied that is a very good question. As they look at a lot of these towers their visibility is mitigated by trees that are on site and off site. They try really hard to make sure that they capture what is on site and make sure that those trees are preserved. The area specified in the zoning ordinance is so the agent is able to go for a radius of 200'. It means they would be controlling trees that are way beyond that which he can't tell if he owns three parcels ahead and they had trees they had to cut down. They can't fault the applicant because those trees are there at that point. But if those trees are taken out they can't just say because they are taking the trees out the tower can't be approved. It is more a judgment call in that sense in that the area that is surrounding the proposed tower site is what is used in terms of mitigation in terms of the trees. They are right that some of the trees at some point could be cut down. As an example, there is one Woodson tower that was approved on Rio and 29 at the Crossroads Store. In a photograph he showed that there were a lot of trees in between on other properties where they could cut some of the trees. The tower could be seen and it was not invisible even though there are some trees blocking it. In this case how far can they go beyond the 200' is a good question. They have a tree conservation plan showing at least 200' and they can't cut anything. They have to make sure that they meet all of the tree conservation. They had an arborist look at the trees and determine how they are going to preserve the trees.

Mr. Loach asked if those trees died would there have to be a modification of the cell tower.

Mr. Gatobu replied no, if the trees are out of the 200'. Within the 200' if trees died, then staff could require them to plant some trees or something. But beyond that they can't really do anything.

Mr. Kamptner pointed out that if the reference tree dies, falls or is removed, then the height of the facility has to be accordingly adjusted or re-located. It is the reference tree within 25' that dictates height.

Mr. Zobrist said that the sky lighting is an issue because it appears to be sited on the ridge and is getting back lighted wherever one looks at it in the various photographs. They would not have the by right if the tower location was above the ridge line if it was being back lighted.

Mr. Gatobu said that there was a question like that. If they go on Mr. Sofka's property they would be able to see it. It is just a road elevation. Ms. Carmichael did a good job in the video from within a car. When one comes down the hill it is visible for a few seconds, but when one dips down it sort of disappears. That is the problem with covering areas that are low lying.

Mr. Zobrist noted that it was just the angle one looks at it that makes it look back lit as opposed to actually being back lit. That ties into his next question. It seems like the community used a heavy magnification to make the balloon bigger, which he did not like. He was not sure how it really looks. He looked at the movie, which was not offensive at all. When he looked at the stuff the neighborhood showed, with them bringing in a professional photographer showing a view that they want us to have, he was not sure what the real view is.

Mr. Gatobu pointed out that if driving the view of the tower was questionable unless someone pointed it out. The question is could you see the tower or does it stand out so you know it is there while driving in a car at 35 miles per hour or the speed limit for ten seconds. He asked if one would look straight up and see the tower right in front of them.

Mr. Zobrist noted that he would be worried about saving his life while driving through that community. That is the biggest problem he has.

Mr. Gatobu asked if there was a passenger in the car would they be able to see it. Unless they knew the tower was there he asked would they see it. He pointed out that there are a lot of towers that are not visible unless someone pointed out the location. That is Albemarle County's policy. They made a trade off. There is a 200' tower going towards Augusta County, which is very visible. But, Albemarle County wanted to make sure that they have a nice visual drive within the county. So they chose these small antennas, which are allowed in every zoning district and listed as a by-right use. People want cell phone service.

Mr. Loach noted that his main problem was not from 250 because of all of the light poles and the bridge, but from what was shown from Mr. Gibson's house and its visual impact. Mr. Zobrist brought up a good question on how they start to really deal with which one of these photographs and determine the one that gives the best perspective.

Ms. Monteith agreed that it was not so much the road. She thought that was not the big concern that they were hearing tonight. They are only hearing from the people that are the directly affected neighbors. She has to believe that there are many more people who are going to be visually affected by this.

Mr. Loach invited the ARB representative to address the Planning Commission.

Brent Nelson, Landscape Planner, noted that he took the request before the ARB and their concern was only with the view while westbound on Route 250 starting at the top of the hill and proceeding down into Ivy. It was not visible eastbound on Route 250 and looking up at the site from Duner's and it was their belief that it was sufficiently mitigated at that point.

Mr. Loach asked if the ARB's concern was only with the view shed as from the 250 perspective.

Mr. Nelson replied that it was from Route 250 westbound into the Village of Ivy.

Motion: Mr. Zobrist moved and Mr. Morris seconded the motion for denial of SUB-2010-00003, Singleton Tower based on the technical grounds that the ARB has not approved the Certificate of Appropriateness.

Mr. Loach noted that there was a motion and a second for denial based on the denial of the ARB.

The motion for denial passed by a vote of 6:0.

Mr. Lafferty asked if this puts the applicant in a Catch-22 that they can't get the approval of the ARB until they have approval from the Planning Commission.

Mr. Kamptner noted that this decision is appealable to the Board of Supervisors and the Board of Supervisors will be hearing the ARB appeal on July 14.

Mr. Zobrist pointed out that they were moving the political decision from the Planning Commission to the Board of Supervisors.

Mr. Lafferty said that the Commission was passing the buck, and Mr. Zobrist agreed.

Ms. Carmichael asked for a clarification on the motion. She asked if it would have been approved had it not been a technical denial.

Mr. Kamptner replied that the stated reason in Mr. Zobrist's motion for denial was because the ARB had not approved the Certificate of Appropriateness yet.

Mr. Zobrist said that is the sole basis for the motion.

Mr. Loach said that the Planning Commission denied SDP--2010-00003, Singleton Tower. The applicant can appeal the decision to the Board of Supervisors within ten days of the decision.

Old Business:

Mr. Loach asked if there was any old business. There being no old business, the meeting moved to the next item.

New Business:

Mr. Loach asked if there was any new business.

- Staff will develop formal guidelines for site plans and subdivisions on providing information to the Planning Commission received after the submittal dates and the staff report has gone out.
- NO MEETING ON JUNE 29 AND JULY 6, 2010
- NEXT MEETING ON JULY 13, 2010

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

Adjournment:

With no further items, the meeting adjourned at 8:17 p.m. to the Tuesday, July 13, 2010 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)