Albemarle County Planning Commission
August 24, 2010

The Albemarle County Planning Commission held a public hearing, and meeting on Tuesday, August 24, 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, Don Franco, Calvin Morris, Linda Porterfield, and Thomas Loach, Chairman. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Other officials present were Scott Clark, Senior Planner; Claudette Grant, Senior Planner; Wayne Cilimberg, Director of Planning; 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:

Mr. Loach brought up a matter even though it was not on the agenda that the Commission usually does as committee reports. He actually had a committee report from the CCAC regarding a potential plan for the Barnes Lumber Yard in the middle of Crozet on about 15 acres, which was reviewed. It will be in the neighborhood of 600,000 square feet of development with over 100,000 square feet that will be relegated to flex/R&D/light industrial. On the left side of the plan conceptually is a pedestrian mall. On one end will be a five-story hotel and at the other end would be a five-story senior living facility to anchor the mall. Over by the tracks will be where the R&D and light industrial will be. A residential component will abut up against the two ends of the residential component. It is really great news for Crozet and comes at a good time for them. It will add to the economic vitality of the Downtown and is something that they have obviously been trying to do for years. This is really in the ballgame and is conceptual. He would keep everybody informed as it comes down the road.

Mr. Morris asked how this is going to affect the overall area that is available for light and heavy industrial.

Mr. Loach replied that obviously it will increase the light industrial by 100,000 square feet. They have actually called it light industrial/flex because it may be research and development space. They still have light industrial that will be coming on line sometime in the future with Acme. It is going to be a good mixture of uses. There is one dotted line where there is some land they are trying to negotiate with CSX on that would add another two acres to the space for more Light Industrial. It will be interesting to see if they can actually market this type of thing to accompany it.

Ms. Porterfield asked if the site would have to be accessed from just the one road.

Mr. Loach noted that there was access from Crozet Avenue. There will be access into some of the new developments between Route 240 and Route 250 on the Con Agra side. Another entrance will come through New Main Street, which will be by the library. There will be two short roads that come over that will also get you in. They have road access. He was sure there will be some additional traffic studies, but it was looking good.

Ms. Porterfield asked if there would be access for semi-trailers.

Mr. Loach noted that they are moving semi-trailers in and out of there every day now.

Ms. Porterfield asked if they are coming in off of Route 250.

Mr. Loach replied that they were coming in off of Route 250 and will have the same access as Barnes Lumber.

Ms. Porterfield noted that there was no way to access it from the north side of the railroad tracks.

Mr. Loach replied no, but actually they would also be able to come in the New Main Street and then come around by the library. They had talked about giving them two places for access.

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.

Mary Rice, resident of Crozet area, expressed her frustration with a recent determination by the Chief of Zoning with regard to the proposed Restore N Station gas station/convenience station on Route 250 West just outside of the Crozet growth area boundaries.

- As you probably know by now last week Mr. Ron Higgins reversed your June 6th decision that the proposed project would need a special use permit and he unilaterally issued a decision that the project did not require a special use permit. Unbeknownst to Summer Frederick, the project planner, presumably other staff in the Planning Department, neighbors, the CCAC, the lawyer representing the neighbors, and everyone else Mr. Higgins has been in communication with the applicant since July 23rd regarding the project's water consumption and well flow rates. All of these are matters that have been hotly debated in front of the community for almost two years. As you will recall this room had over 50 citizens on June 6 who came to speak at the public hearing on the project's need for a special use permit and then they listened carefully to their deliberations regarding that permit. The citizen presentations were well thought out and many hours of work, thought and discussion both on your behalf and on behalf of the public and staff went into the Commission's decision to require the project to have a special use permit. Ordinances and laws were analyzed and data was gathered and presented by the applicant as well as experts and lawyers in the community who felt a special use permit was needed to protect the health and welfare of the community. Particularly for the neighbors on nearby well water the most precious of our natural resources in the rural area, which is water, needs to be protected. So it seems outrageous that a poorly worded 2 ½ page letter from the applicant plus attachments would convince the Chief of Zoning to single handedly reverse the decision of the Planning Commission.
- Both the letter and the decision have misrepresentations and omit some critical aspects of water usage and analysis such as the capturing of storm water. But she was not going to get into that tonight because that is a technical area and would be another whole speech. The citizens, of course, have been expecting that this project would continue in the public democratic process that they expect for projects such as these. They were assured by staff that they would be informed of all developments or new submissions. She personally was in a meeting with Mr. Higgins and was assured as other members of the CCAC were that they would be kept in the loop on information. Mr. Higgins has since said that he thought that the community knew of this submission. But how could he have possibly thought that they knew and not one person said one word. They as involved citizens have kept their end of the bargain. They have kept and stayed educated about commercial water usage, the local water table, traffic analysis, runoff, definitions and ordinances, etc. They have paid their taxes that have funded all of the staff and Commission time that has gone into this. As a Crozet area citizen she was outraged that this unilateral decision was made by a staff member and as Planning Commissioners who put time and thought into this decision she would expect that they would be outraged as well.

Mr. Loach invited other public comment.

- Frank L. Calhoun, resident of Crozet, spoke in agreement with Ms. Rice regarding the Restore N' Station determination. The residents had so little notice of this and they do have schedules in their lives. He believed this room would be filled tonight had they had sufficient notice. He served on the Board of Scenic Virginia along with Sally Thomas of Ivy. Their goals in Virginia are to keep it the most scenic state in the union, which he really thinks it is. He wanted the Commission to know that the community is outraged.

There being no further public comment, Mr. Loach closed the discussion.

Before going on Mr. Loach said that he wanted to say a little bit about this. He thought that Ms. Rice brings up a good point about processing. He did not want to go into the specifics of this case because it was still in the state of flux and things are changing and the County Attorney's Office is looking into the matter. He thought that there was a problem with process. The Commission spent a great deal of time last week just talking about the mailing process and how to keep people informed. It seems that they still have a problem with communication. That said he was going to bring this back to the Crozet Advisory Committee for further discussion. It is a hard thing because at the same time this is going on they have lost their community planner that they had assigned to them on a regular basis. What is going to be happening to the Advisory Committee in the future is also in flux now as he understands. Be that as it may on this case he would bring it back to the CCAC for further discussion.

Ms. Porterfield asked if the decision has been appealed.

Mr. Kamptner asked to update the public and the Commissioners that did not see the email that was sent out around 5:00 p.m. this afternoon. The August 19, 2010 determination is being reconsidered and it is being further evaluated. They expect to have a new determination released within the next week.

Ms. Porterfield asked if they would keep the Commissioners in the loop.

Mr. Kamptner replied that Zoning would do that.

Mr. Cilimberg pointed out that staff has a sheet available for anyone to sign that wants to be contacted with the information that will be coming through so they can be notified.

Mr. Lafferty asked what the process was that established the reevaluation since the other process was sort of mysterious.

Mr. Kamptner replied that they are looking at some of the issues that were considered over the past year and a half and how they interpreted the regulation in the Highway Commercial zoning district that requires the special use permit. They are taking more time in working through the analysis and carrying that over to this new determination.

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

Review of Board of Supervisors Meeting – August 4, 2010 and August 11, 2010

Mr. Cilimberg reviewed the actions taken by the Board of Supervisors on August 4, 2010 and August 11, 2010

- There was an approval of the Economic Vitality Action Plan. Staff has scheduled that for a presentation to the Commission in September. There is a chance that it can be put on the 21st to balance agendas from the 14th as previously noted. It will be good for the Commission to see the presentation on the full plan. Staff sent a copy of it to the Commission as well for their reference.
- The Board approved the new zoning fees, which will be effective on January 1, 2011.
- There was a rezoning request submitted for the Hollymead Town Center. There was an appeal of the Deputy Zoning Administrator's determination regarding a proffer violation at the Hollymead Town Center in its provision of a connection to Willow Glen. The Board upheld the Deputy Zoning Administrator's determination. There may be more to follow with that including the possibility that the Commission will see a proposed change as part of the Hollymead Town Center zoning map amendment in the future.

Public Hearing Items

ZMA-2007-013 Fontaine Research Park Expansion (Sign # 34 & 35) PROPOSAL: Rezone approximately 54 acres from CO Commercial Office - offices, supporting commercial and service uses;

and residential use by special use permit (15 units/ acre) to PDMC Planned Development Mixed Commercial - large-scale commercial uses; and residential by special use permit (15 units/ acre) to allow for an increase from 565,000 square feet to 875,000 square feet of office, laboratories, medical or pharmaceutical, research & development activities, hospitals, and supporting commercial space permitted in the research park. Three parking garages are proposed. No residential units are proposed. The following Special Use Permits are in conjunction with this rezoning: SP200700055, SP200900010, SP200900011, SP200900013, and SP200900014. PROFFERS: Yes. EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Office Service - 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: Adjacent to the intersection of Ray C. Hunt Drive and Fontaine Avenue in Neighborhood Six. TAX MAP/PARCEL: TM 76, Parcels 17B, 17BW, 17BX, 17B1, 17B2, 17B3, 17B4, 17B5, 17B6, 17B7, 17BB, 17BA and 17B8. MAGISTERIAL DISTRICT: Samuel Miller

AND

SP-2007-0055 Fontaine Research Park - Parking Structures (Sign # 34 & 35). PROPOSED: Parking Structures in Planned Development - Mixed Commercial Zoning District. This SP is in conjunction with ZMA2007-00013.

AND

SP-2009-00010 Fontaine Research Park - Research & Development Activities (Sign # 34 & 35)
PROPOSED: Research and development activities in Planned Development - Mixed Commercial Zoning District. This SP is in conjunction with ZMA2007-00013.

AND

SP-2009-00011 Fontaine Research Park - Laboratories, Medical or Pharmaceutical
PROPOSED: Laboratories, medical or pharmaceutical in Planned Development - Mixed Commercial Zoning District. This SP is in conjunction with ZMA2007-00013.

AND

SP-2009-00013 Fontaine Research Park - Hospitals
PROPOSED: Hospitals in Planned Development - Mixed Commercial Zoning District. This SP is in conjunction with ZMA200700013. 17B3, 17B4, 17B5, 17B6, 17B7, 17BB, 17BA & 17B8. MAGISTERIAL DISTRICT: Samuel Miller

AND

SP-2009-00014 Fontaine Research Park - Supporting Commercial Uses (Sign # 34 & 35).
PROPOSED: Supporting commercial uses in Planned Development - Mixed Commercial Zoning District. This SP is in conjunction with ZMA200700013. (Claudette Grant)

Mr. Loach said that the Commission heard these requests previously.

Mr. Kamptner pointed out if the Commission can reach a consensus they can come up with one motion for all of the applications.

Ms. Porterfield noted the problem was the requests were not advertised correctly. She asked if they can go straight to that since the Commission has already discussed the requests.

Mr. Cilimberg noted that staff will show the Commission the parcel that they did not realize existed and then the Commission has already seen the rest of the information that has not changed. One update is that there are proffers in response to the Commission's recommendation that will go to the Board that are addressing their recommendation. Copies of the final and signed proffers will be provided to the Commission.

Ms. Grant said she would not go into great detail since they have already heard this. Basically, the subject parcel, Tax Map 76, Parcel 17B9, is part of this rezoning and special use permit request, but it was not advertised. Staff is bringing it back to the Commission just to have it advertised for public hearing. (Staff Report Summary Noted Below)

BACKGROUND:

On July 27, 2010, the Planning Commission held a public hearing for the Fontaine Research Park. While staff did not recommend approval of the re-zoning for several reasons noted in the staff report provided for that public hearing, the Commission, by a vote of 6:0, recommended approval of ZMA-2007-13 with the amendments to the proffers as discussed. Also, the Commission, by a vote of 6:0, recommended approval of five (5) Special use permits, SP2007-55, SP2009-10, SP2009-11, SP2009-13, and SP2009-14, as reflected in the staff report, with the conditions as recommended by staff. The Commission also recommended approval of the modification of Section 21.4 of the Zoning Ordinance regarding height regulations with changes to the referenced street names in the staff recommended condition.

DISCUSSION:
This request is before the Commission because Tax Map 76, Parcel 17B9 was not included in the legal ad for the July 27 public hearing. This parcel was subdivided from Tax Map 76, Parcel 17B1 (which was included in the original legal ad) and recorded on September 9, 2009, but staff was unaware of the recordation of the new parcel until the applicant called it to staff's attention after the July 27th public hearing. Due to the absence of Tax Map 76, Parcel 17B9 in the legal ad for the July 27th public hearing, the rezoning and SP's need to be re-advertised and a new public hearing held. There are no proposed changes to the rezoning and special use permit requests that were originally heard by the Commission other than the inclusion of this new parcel. The applicant is in the process of amending the proffers to reflect the actions of the Commission.

RECOMMENDATIONS:
As nothing of substance has changed since the Commission's July 27th public hearing, it is recommended the Planning Commission once again recommend approval of: 1) the rezoning request subject to the amended proffers; 2) the five special use permits subject to the conditions recommended by staff; and 3) modification to the building height regulations with changes to the referenced street names in the staff recommended condition.

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

Valerie Long, representative for the application, offered to answer questions.

There being no questions for the applicant, Mr. Loach invited public comment. There being none, the public hearing was closed and the matter before the Planning Commission.

It was the consensus of the Planning Commission to take action on the requests in one action.

Motion: Mr. Morris moved to approve the entire package with the conditions as stated before subject to the revised proffers with copies to be received by the Planning Commission.

Ms. Porterfield noted that there were a couple of items that needed to be clarified by staff, such as the way the buildings were facing and their side and front yards. She asked that all of that information be taken out of the previous discussion and included.

Mr. Kamptner noted that also includes the zoning map amendment, the modification and the five special use permits.

Mr. Zobrist seconded the motion.

The motion was approved by a vote of 7:0.

Mr. Loach noted that the entire packet would go to the Board of Supervisors on September 8, 2010 as previously approved, as follows:

Action on ZMA-2007-013:

The Planning Commission recommended approval of the entire package, as follows:

ZMA-2007-013 Fontaine Research Park Expansion subject to the following:

1. Revisions of proffers to provide that either: 1) the owner will construct the Sunset-Fontaine Connector in the alignment reserved on the Application Plan at such time that the remainder of the road is constructed off of the Fontaine Research Park property or 2) the owner shall contribute cash to the County that is equal to the value of constructing the alignment onsite if the Sunset-Fontaine Connector is not established in a location that utilizes the alignment reserved on the Application Plan, and the cash would be applied to the cost of the acquisition, design, engineering and construction of the Connector in the new alignment.
2. There is no requirement for a cash contribution proffer for further study of the Fontaine-Sunset Connector.
3. Revisions of proffers to incorporate legal and acceptable technical wording recommended by staff shall be completed before the ZMA goes to the Board of Supervisors.
4. The Applicant commits to a five (5) percent ceiling for supporting commercial uses as a condition of SP-2009-014 Supporting Commercial Uses. There is no minimum amount required.

Action on Five (5) Special Use Permits:

- The Planning Commission recommended approval of the five (5) special use permits -**SP-2007-055; SP-2009-010; SP-2009-011; SP-2009-013; and SP-2009-014**, as reflected in the staff report, with the conditions as recommended by staff.

SP-2009-013 Hospital with the following conditions:

1. The hospital use shall be limited to 60 beds;
2. The use shall not commence until such time as appropriate state and federal approvals have been obtained;
3. Site plan shall not be signed until fire official approval has been obtained;
4. The use shall be for inpatient medical rehabilitation and shall not provide emergency services.

SP-2009-014-Supporting Commercial Uses with the following condition:

1. The supporting commercial uses shall be limited to a maximum of five (5) percent of the square footage allowed in the park. There is no minimum amount required.

Action on Modification:

The Planning Commission recommended approval of modification of Section 21.4 of the Zoning Ordinance regarding height regulations with the expectation that the relationships of building heights to the roads will be properly referenced.

- Staff to send the copies of the final signed proffers to the Commissioners.

SP-2009-00033 Coleman Morris Development Right (Sign # 51)
PROPOSED: Special Use Permit for one additional development right to create a minimum 2-acre parcel.
ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).
SECTION: 10.2.2 (28) Divisions of land as provided in section 10.5.2.1;
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development lots)
ENTRANCE CORRIDOR: No.
LOCATION: 5391 Morris Knoll Lane; appx. 1600 feet west of the intersection of Rt. 720 Harris Creek Rd. and Rt. 20 Scottsville Rd.; approximately 1.5 mile north of Rt. 712, Plank Rd.
TAX MAP/PARCEL: TMP 112 00000003200.
MAGISTERIAL DISTRICT: Scottsville

Scott Clark presented a PowerPoint presentation and summarized the staff report for SP-2009-00033 Coleman Morris Development Right.

This is a special use permit request for an additional development right on a parcel in the Rural Areas zoning district. The parcel is located off Route 20 just west of its intersection with Rt. 720, Harris Creek Road. In this case this parcel and four of the adjacent parcels were all created with the original five development rights that existed on this property. All of these properties were transferred to family members that occupy the property. The current request is for an additional development right for another parcel to be given to a family member. The additional development right, if approved, would be at the end of the driveway in the area of the subject parcel.

Since 1981, 21 applications for additional development rights have been considered

- 10 applications approved
- 11 applications denied

The Board of Supervisors typically based its approvals on finding that the applications adequately met the criteria of Section 10.5.2.1, such as a location next to a development area or existing development, for a family member, or some unique circumstance.

The Board approved all five of the applications prior to SP-2008-00048, Matheny that were intended to provide lots for family members, which the Commission will see again later. SP-2008-00048 was the first denial of such a request. Previous to that all family division requests had been approved.

Staff has identified the following factor favorable to this application:

1. The proposal can be accommodated without significant health or safety impacts on the area.

Staff has identified the following factors unfavorable to this application:

1. Additional development rights are generally inconsistent with the purposes of the Rural Areas zoning district. Staff proposes to minimize this concern with a condition of approval that would require the subdivision to be processed only as a family subdivision, which would keep the land in the family for at least four years.

Staff recommends approval of SP 2009-00033 Coleman Morris with the following condition:

1. The proposed subdivision of Tax Map 112 Parcel 32 shall only be permitted as a “family subdivision” as provided by Chapter 14 of the Albemarle County Code.

The condition means that the lot would have to stay in the intermediate family four years after it was recorded.

Mr. Loach invited questions for staff.

Mr. Loach said that there were two of these requests and each one seems to have the same address. He assumed that they are different.

Mr. Clark replied that they were different because of a typo in the address.

Mr. Smith asked what size lot was proposed.

Mr. Clark replied that it would have to be a minimum of two acres. The entire property is about eight acres. He deferred the question to the applicant, Mr. Coleman Morris.

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

Mr. Coleman Morris, property owner, said this property has always been in the family. The property has not changed hands since the '50's. The request is for an additional lot for his granddaughter. There is no intention in making any profit off the lot or selling it. Basically it is a two acre lot that he received from his dad and mom who had owned the property. The property is in the Keene area on Route 20 south. The property is in the rural area and is wooded with farms around it.

Mr. Loach asked if the proposed condition is acceptable that he keep this as a family subdivision for at least four years.

Mr. Coleman Morris replied yes that was very acceptable.

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

Ms. Porterfield noted that there was a problem with two things. Some of the Commissioners were not here when the request was previously heard. The problem is that there is nothing exceptional about adding a development right here. In her mind it really opens the box. If they approve a request like this she did not know how they could not approve the same type of request for anybody that comes in and asks for another development right. She understands that it would be nice to have another family member living there, but just keeping the property for four years does not necessarily mean that they won't end up selling the lot. If they are going to have the regulation that someone gets X number of development rights based on the number of acres in the county, then that should be the rule that they follow in the county. If the Board wants to change that for family members, then they should go back and change the family division regulations. Otherwise she personally cannot support this because they were opening Pandora's Box.

Mr. Cal Morris said he fully understands what Ms. Porterfield is saying. However, again when they have a large parcel and are trying to keep the family together he thought that trumps it.

Mr. Franco said that he was torn in this whole thing. He agreed with what everybody said today, but he did not know if he considered an eight-acre parcel a large parcel to start with. So he was struggling a little bit with that. He thought it was good to be able to keep the family together, but it is inconsistent with the Comprehensive Plan. He did not know how this would apply to somebody else coming in. He had a problem with the permanency of it.

Mr. Loach asked if the four years is a minimum requirement and if there is anything that can keep the applicant from extending that period to make it more acceptable.

Mr. Kamptner replied that the four years is established by the family subdivision regulations in the Subdivision Ordinance, which is the minimum period that the land owner is required to hold the property.

Mr. Loach asked if they can essentially proffer a longer period of time so that the concerns that Ms. Porterfield has stated will be made more palpable.

Mr. Kamptner advised the Commission that they can revise the special use permit condition, but that staff will look at it between now and the Board of Supervisors meeting. The Commission can recommend that the holding period by the member of the intermediate family be longer than four years.

Mr. Loach asked Ms. Porterfield if there was an acceptable time period as far as maintaining the lot that she could live with.

Ms. Porterfield said her follow up question is whether it is enforceable by the county and if they would know if the lot is sold.

Mr. Kamptner replied yes because as a special use permit condition it is essentially a zoning regulation that runs with the land. He did not know the extent to which Community Development tracks compliance with the family subdivision holding periods, but knew that it had been lengthened over the last few years

as they have looked at the issue. The owner is required to record a document that upon sale will be found in the title that lets the person know that it is subject to a four year holding period.

Mr. Clark said that because it is a special use permit it would be caught much more easily. If a subdivision plat were to come in the planners would see that there was a special use permit on the property that would have to be reviewed.

Mr. Zobrist said he assumed that the title company would pick it up since that would be their job. The applicant would have to file a subdivision plat.

Mr. Kamptner noted there is different enabling authority for localities that have family subdivisions and the outer limits for those localities are subject to stricter regulations than Albemarle County. Fifteen years is the outer limit now for a holding period just as a rule of thumb.

Mr. Lafferty asked if the family subdivision ordinance was created for this purpose.

Mr. Cilimberg replied the family divisions were created to allow division of land for family members that would not be subject to the normal subdivision requirements. It was not created for creating additional lots beyond what is allowed by right. That is why there is a special use permit.

Mr. Lafferty said by changing the time period they would not necessarily be changing the way it is written now.

Mr. Cilimberg said that it does not change the other provisions of the family division in the ordinance.

Ms. Monteith noted when they discussed this previously it was not just the time frame but also the precedent. If they are going to allow one additional family member now, and they do have two of these requests in front of the Commission, then next year it could be six and then the next year it could be seven. Changing the time frame does not necessarily address the precedent that they would be establishing.

Mr. Loach agreed, but could see Cal Morris' point too because he sees family as somewhat of a different circumstance. He heard Mr. Franco was also struggling with it. Knowing the situation today, knowing it is going to be family, and then seeing from the staff report that they don't think it would essentially change the character of the area around it kind of leads him to be more favorably inclined towards the request.

Ms. Porterfield said that the Commission got sections from the minutes from the last time they heard this. At the time Sally Thomas was the Supervisor and her quote is that, "Although this application is in her district she is not going to vote for approval because she has never been in favor of increasing rural development rights. She visited the site and it is a nice vista for the second one. It is a nice place to have all of the family houses together, but there are many families in this situation and the Board has to think about hundreds of families and not just one." That is what Ms. Monteith is talking about because they did discuss precedent, which is the whole problem with this. She felt that there was nothing unusual about it. It would be an unusual circumstance if a family came in and said that they really needed to divide because they have a child in serious medical condition that they want to be able to move back. This situation is not unusual. It is just a family that wants one more development right. They can't give one more development right to everybody in the county. In other words, what they would have done is negated the planning that was done quite a while ago.

Mr. Smith said that first of all not everyone has enough property to give a family member a lot. He asked staff roughly how many of these do they have on the books at this time.

Mr. Cilimberg replied that Mr. Clark had given a number of those lots approved for family division.

Mr. Clark noted that there have been five special use permits that have been approved to give people additional rights to do family divisions. Overall there are relatively few family divisions compared to standard subdivisions. Several years ago when doing research for the Comprehensive Plan for the rural

areas he went back through the records for the family subdivisions that had been done and over several years nearly all of them were still in family hands. It was a real perspective that almost all of them were still in family hands.

Mr. Loach said that as far as 11 of them being approved it would not really be setting precedence of any nature. He asked staff to address that.

Mr. Kamptner noted they want the decisions to be consistent, but each application also must stand on its own facts. Each application is different and each one needs to be decided on its own merits. But they do want to strive for consistency. It may be that even though they have a 10 to 11 split that there is a common thread that supports the 10 that were approved or denied and a common thread that supports the opposite result in the other. Another thought, which has no direct relationship to either of these applications, is the family division restriction applies only to the new parcels that are created. If someone already has the new parcels created out of that original five, those could be transferred at any time. If somebody with a 12 acre parcel uses up all five (5) development rights and with one of those five is a four acre parcel, they may ask for a development right because they want to divide a family division. Any of those other four parcels could be sold off. So the family division provides some protection and assurance that the additional development right is being used for a purpose that the county supports, family divisions. But those pre-existing parcels would not necessarily stay in the family.

Mr. Zobrist asked the applicant how big the original piece of land was and if it has been split into five lots already.

Mr. Coleman Morris replied that it was ten acres. He understood that a lot of people have abused the family division rights so that they could sell it to other individuals. That is not the case for this applicant. Since the '50's his family has owned this property. He inherited the two acres they are talking about from his mom, which adjoined his other property or eight acres he lives on now.

Mr. Zobrist noted that he had said there were five families living there. He was missing how fractionated the land is.

Mr. Coleman Morris said when he bought the land from the original owner it was two acres that adjoined his ten acres.

Mr. Zobrist noted that he was missing something. He asked how many families live on the 10 acres.

Mr. Coleman Morris replied that it was four families.

Mr. Zobrist asked if he inherited the two acres as a separate parcel.

Mr. Coleman Morris replied that was correct that he inherited the two acres, which was from his mom that joined the same property.

Mr. Zobrist asked if the two acres was divided off these ten acres.

Mr. Coleman Morris replied that it was divided off his mom's property, which adjoins this property.

Mr. Zobrist asked staff if this was a separate parcel.

Mr. Coleman Morris said that this was a parcel that was added to his parcel after his mom passed away.

Ms. Porterfield asked if it has officially been added to his parcel.

Mr. Coleman Morris replied yes.

Ms. Porterfield asked if now he just has one parcel number, and it was previously a separate parcel.

Mr. Coleman Morris replied that was correct. It was a larger parcel that belonged to his mom and they divided it among the children. His brother and sisters had already gotten their parcel and this parcel was added to his parcel.

Mr. Zobrist asked if basically he has 8.75 acres plus two acres.

Mr. Coleman Morris replied he had six acres before he got the two acres.

Mr. Zobrist assumed that when it was divided up by his mother it used the five division rights that were on the original parcel. That is why he did not have a division right left.

Mr. Clark noted as he understands it there were five lots created that used the development rights that existed on the property. The five lots created were tax map 112, parcels 33F, 33D3, 33C, 33D4 and 33D.

Mr. Smith asked if the lot is coming off the front or back of the property.

Mr. Coleman Morris replied that it was going to come off the back of the property. That road has always served the property. Before his father gave all of the children the land he farmed the property, which is why that road always existed and served that property.

Mr. Zobrist said when he got the two acres since there were no division rights left he took his two acres as part of his lot because he did not have a division right left.

Mr. Coleman Morris replied that is basically what happened. All intentions were that they were all supposed to get a division right there. There is no more land there to divide.

Mr. Zobrist said the problem was that the property only had five division rights.

Mr. Coleman Morris said that he understood the rules, but did not think his mom understood the rules.

Mr. Zobrist said that he accommodated his siblings who got the rest of the land. Now he was saying give him a break so he could cut this off to give the lot to his granddaughter.

Mr. Coleman Morris replied that is exactly what has happened. When his mom and dad were alive they wanted him to get this particular lot. He was always promised this lot. He did get the lot, but they wanted him to build a house on it. He did not do that because he bought the land right beside it, which is where he acquired the other property. The two acres adjoined the other land. They did not know the stipulations that there were only five development rights.

Mr. Zobrist asked where the two acres was divided off of.

Mr. Clark pointed out the area at the edge of Mr. Morris' property, which as he said was transferred to his ownership. When it was transferred it was noted on the plat that it was a parcel of two acres that had no division rights and was not a buildable lot. It is identified on the plat that it has no rights.

Ms. Porterfield said that Coleman Morris' lot is 111-32. His original property ended and his mother owned that piece plus those lots.

Mr. Coleman Morris said that was correct.

Ms. Porterfield said that piece when he did the other things was adjoined to his property, which is why it does not have a separate parcel number.

Mr. Coleman Morris agreed that is what the surveyor did. All of the other lots are his brothers and sisters and there is nobody outside of the family. They have had this property since the 50's and he has no intentions to sell the two acre lot to anyone outside of the family. His house sits next to the two acre lot on six acres.

Ms. Porterfield suggested the Commission indicate in the motion that the reason for granting the special use permit is unique because the reason this land has no development rights is that it was part of the original division and did not become a lot by itself but simply was then hooked up to the other siblings in the family.

Mr. Coleman Morris said that is exactly what happened.

Mr. Franco asked staff if parcel 112-32 has division rights.

Mr. Clark replied no that is why this became an issue.

Mr. Franco noted that it has used all five of its division rights.

Mr. Clark replied that he was not sure and would have to go back and go through the old tax maps.

Ms. Porterfield said she thought that Coleman Morris bought this land from somebody other than his parents.

Mr. Coleman Morris replied that the property outlined in red, other than the two acres they were talking about, he did buy from his neighbor.

Ms. Porterfield noted that was the question. Coleman Morris bought the two acres from his neighbor and it did not come down from his parents. So does it have any division rights?

Mr. Zobrist said that the answer was no and was why the request was before the Commission.

Mr. Cilimberg said that the reason it was before the Commission is that the resulting parcel, which was probably created through a combination of what he bought with what he already had, has no development rights and has no rights to divide. That is why it is before them.

Ms. Porterfield said that the original property at 112-32 before he added this to it did not have any development rights either.

Mr. Zobrist pointed out that it had the one development right that he is occupying and no additional ones.

Mr. Coleman Morris said that his brothers and sisters received all of the development rights. His mother and he were not aware of all of the stipulations. If he had known all of the stipulations he would have built his house first since he had the opportunity.

Mr. Franco said that on the tract he bought it looks like the adjacent neighbors are 32A2, 32A, and 32B. He asked are those relatives.

Mr. Coleman Morris replied yes, that was his son and daughter. The man he bought parcel 112-32A from had given that lot to his son before he bought the property. Originally it was 12 acres, which with his purchase left him with ten acres. Those two acres is what he gave his son before he ever bought the property, which was one of the development rights. The two acres he received from his mom has always been fed by a road his dad used for farming before any houses were built. He said that family division had probably been abused by some, but he was glad that there are stipulations on it. He certainly does not want anybody else other than a family member to be on the property. The two acres they are talking about has been in the family since the 1950's since it belonged to his mom and dad.

Mr. Franco asked if he was comfortable with the extended period of time, and Mr. Morris replied yes.

Ms. Porterfield asked if they could put something into the motion that indicates that this is an unusual granting of one more development right due to the fact that maybe it should have been done before that piece was added. They should have come in and said this is what they wanted to do.

Mr. Kamptner replied certainly that it was appropriate to identify the unique circumstances to justify the recommendation.

Ms. Porterfield said that would help a lot. She asked if he said that the outside amount of time was four years to 15 years.

Mr. Kamptner replied that under a different enabling authority and 15 years is the maximum.

Mr. Zobrist noted that in our county it is four years.

Ms. Porterfield said that if they want a different time they are being told that as a special use permit it could be 15 years because that is done other places. There is at least a track record as to why they picked 15 years. If the applicant doesn't intend to sell it, she did not think they would care whether it is 100 years from now. She was more concerned about making this request unique than about the amount of time.

Mr. Franco said that he was concerned about making it unique.

Motion: Mr. Franco moved and Mr. Cal Morris seconded for approval of SP-2009-00033, Coleman Morris Development Right subject to the staff's recommended condition and a second condition added by the Commission:

1. The proposed subdivision of Tax Map 112 Parcel 32 shall only be permitted as a "family subdivision" as provided by Chapter 14 of the Albemarle County Code.
2. The family division period to retain the property shall be extended to seven (7) years.

Ms. Porterfield suggested an amendment to add a condition that the lot cannot be created until a more detailed subdivision plat is submitted with a minimum of two acres.

Mr. Cilimberg pointed out that is a requirement under the county ordinance that they can't do a lot of less than two acres.

Ms. Porterfield suggested adding a condition or indicating that the Board understands that this is a very unusual situation due to the fact that when the family divided the original property there was this portion that they could have come in and asked to create one more lot at that time, but it was hooked onto a piece of property owned by the person who wants it totally separate at this point, and this was not a piece of the family property.

Mr. Franco preferred that not to be part of the motion, but just as part of the discussion.

Mr. Loach noted that it would go in the minutes as far as a record of the discussion.

Ms. Porterfield agreed as long as it showed when it goes to the Board of Supervisors in the action memo and not just the minutes.

Mr. Zobrist said that it was not quite correct. It could never have obtained a division right because the division rights were all extinguished. That is why the two acres merged into his property. They don't want to go down that road.

Mr. Franco pointed out what makes it unique and why he is willing to make this motion is the fact the property has family all the way around it and it has been in the family for years. They've agreed to an extended period above and beyond what the family division would require today and he was comfortable with that.

The motion was passed by a vote of 6:1. (Porterfield nay) (Smith voted aye with reservation.)

Mr. Cilimberg clarified that the minutes will reflect the discussion, which will go to the Board. The Board does not get the action memo, but the minutes. As they recall the action memo is simply to reflect their actions and not individual comments from the action. That will be in the minutes.

Ms. Porterfield asked if the minutes will be completed and proofed by the Commission before this goes to the Board.

Mr. Cilimberg noted that the draft minutes would be complete prior to the Board meeting. The Commission will not have seen them. There is no way the Commission will be able to act on the minutes prior to the Board meeting or they would delay this applicant from going to the Board for probably three months.

Mr. Franco noted that his experience has been in the past if they had something they wanted to share with the Board they can send an email directly if the minutes are not prepared for it.

Mr. Cilimberg said that the minutes will be prepared, but will just have not gotten to the Commission for action. Staff will send the minutes to the Commission as they are prepared for the Board. But the Commission's official action on the minutes will not have been taken.

Mr. Loach noted that SP-2009-00033, Coleman Morris Development Right, would go before the Board of Supervisors on a date to be determined with a recommendation for approval.

SP-2010-00018 Matheny Development Right Request (Signs 44 & 46).
PROPOSED: Request for one additional development right for a family subdivision.
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots);
SECTION: 10.2.2.28, Divisions of land as provided in section 10.5.2.1.
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/ acre in development lots).
ENTRANCE CORRIDOR: No.
LOCATION: 2839 Craigs Store Road (Route 635), approximately 2000 feet south of the intersection with White Mountain Road (Route 736).
TAX MAP/PARCEL: Tax Map 84 Parcel 14E.
MAGISTERIAL DISTRICT: Samuel Miller

Scott Clark presented a PowerPoint presentation and summarized the staff report for SP-2010-00018 Matheny Development Right Request.

This is a request for one additional development right for a family subdivision. The properties in this area all belong to members of the same family. Mr. and Mrs. Matheny live on parcel 14B. The additional development right would be for a family division for their grandson.

Since 1981, 21 applications for additional development rights have been considered

- 10 applications approved
- 11 applications denied

The Board of Supervisors typically based its approvals on finding that the applications adequately met the criteria of Section 10.5.2.1, such as a location next to a development area or existing development, for a family member, or some unique circumstance.

The Board approved all five of the applications prior to SP-2008-00048 Matheny that were intended to provide lots for family members. SP-2008-00048 was the first denial of such a request, which was this same request.

Staff has identified the following factor favorable to this application:

1. The proposal can be accommodated without significant health or safety impacts on the area.

2. Staff has identified the following factor unfavorable to this application:
3. Additional development rights are generally inconsistent with the purposes of the Rural Areas zoning district. Staff proposes to minimize this concern with a condition of approval that would require the subdivision to be processed only as a family subdivision, which would keep the land in the family for at least four years.

Staff recommends approval of SP-2010-18 Matheny Development Right Request with the following condition:

1. The proposed subdivision of Tax Map 84 Parcel 14E shall only be permitted as a "family subdivision" as provided by Chapter 14 of the Albemarle County Code.

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

Ronald Matheny, applicant, pointed out the picture shows that he gave all of his sons a lot and now he has a 22 year old grandson that he wants to give a lot.

Mr. Loach asked if he would have any objections to lengthening the time that the lot would have to stay in the family.

Mr. Matheny replied that he would not care if they make it 50 years because he thought his grandson would stay there that long.

Mr. Porterfield asked if he was going to use the existing driveway to his house to access this lot.

Mr. Matheny replied no, there was already a driveway into that lot from years ago.

Mr. Clark noted that the proposed lot had an existing driveway on to Craig's Store Road.

Ms. Porterfield asked if a condition could be added that the access be to both lots so no one can come back in the future for another cut.

Mr. Clark replied that would not be practical because the other part of the lot was accessed from a different point.

Ms. Porterfield noted that the staff report says that the new lot would be accessed by the existing driveway.

Mr. Clark replied that the existing driveway was accessed off Craig's Store Road. The other portion of the property is accessed off of Casey Lane.

Ms. Porterfield asked if there were two accesses to this particular lot at this point.

Mr. Clark replied that there was an access off of the private road that goes to the existing house. The new lot would use an existing driveway that has not been used in a long time, but is directly off Craig's Store Road. It has reviewed by VDOT for site distance and is acceptable.

Mr. Smith asked if the lot on the left is now accessed off his existing driveway.

Mr. Matheny replied that is not correct. There is an existing entrance or driveway going in off the state road, Route 635 to the proposed lot.

Mr. Lafferty noted that it was a 30' access easement. If they required them to share an entrance he would have to give an easement across his property.

Mr. Franco asked if lots 1 - 4 as shown are still owned by family members.

Mr. Matheny replied yes.

There being no further questions, Mr. Loach opened the public hearing for public comment.

Dave Wyant said that he did not know any of these families, but wanted to point out that people who have lived in the country all their lives want to keep their families together. He suggested that they look at the surrounding parcels in this case and consider that they want to keep their grandchildren and other family members together. He knew his mom and dad's family have lived in this county for nine generations and wanted their family here. This is a real concern in the county out in the country. He had people come by his store in the mornings and from their conversations he was sure that there would be other similar requests. He acknowledged that they have rules and regulations, but he believed the applicant could have built another house as an accessory. Staff could address that. His concern is when they are out there in these small areas it is a war situation. They have to make sure that they are supported there in the area where they want to put these. That is the only thing that he would be concerned about in the family. But he wanted to see the family parcels around it. He would not want to see all these other folks living there if someone was trying to be devious. They know about and have faced some of those cases. He came tonight to hear the Commission's discussion and just wanted to share his views on what he had been seeing.

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

Mr. Smith noted that this was in his district and he has looked at the lot. He personally knows Mr. Matheny and has seen what kind of subdivision he has. He thought that the family division was created for just this purpose to help the family. He discussed with Mr. Matheny that he would never build a house before he drilled a well, and he agreed.

Motion: Mr. Smith moved and Mr. Morris seconded for approval of SP-2010-00018 Matheny Development Right Request subject to staff's recommended condition.

1. The proposed subdivision of Tax Map 84 Parcel 14E shall only be permitted as a "family subdivision" as provided by Chapter 14 of the Albemarle County Code.

Ms. Porterfield noted that there was another piece of property here that is 4.142 acres. This one is 4.936 acres. So they have the real possibility of another division request coming in.

Mr. Clark pointed out that those parcels do not have any remaining rights.

Ms. Ronald Matheny said that parcel cannot be divided because the light line comes in front of it, which was why they gave that son more land than the others. That lot cannot be divided no more.

Mr. Cilimberg asked for clarification on the motion and the second. He asked whether it was just to include the condition recommended by staff or also to add a condition like the previous one with the seven year limitation.

Mr. Smith clarified that the motion for approval was for the four year limitation since he thought that the seven year limitation was ridiculous. That was why he voted for the prior request with reservation. That was his reservation.

Ms. Porterfield asked if it was for a minimum of two acres, and Mr. Cilimberg replied that in the rural area it has to be at least two acres.

Ms. Matheny pointed out that Mr. Morris had drawn this lot as 2.170 acres, which had been surveyed off.

Mr. Franco voted aye with reservations, which was he would prefer the longer period of time.

Ms. Porterfield voted no because she really did think they were setting a precedent.

Mr. Loach voted aye with reservation.

The motion was approved by a vote of 6:1 subject to the condition recommended by staff. (Porterfield voted nay) (Franco and Loach voted aye with reservation)

Old Business:

Mr. Loach asked if there was any old business.

The minute process was discussed with a request to provide draft PC minutes for particular items going to the Board of Supervisors to the PC members one week prior to their submittal to Clerk of the Board. The consensus of the PC was to keep the process as is with the proviso that upon request of any Commissioner draft minutes for a particular item could be provided to that Commissioner at the same time those draft minutes are submitted to the Clerk of the Board. Furthermore, it was noted that individual comments on a particular item from any Commissioner can be emailed to the Board prior to the Board's meeting.

Staff will provide copies of draft Planning Commission minutes for any particular item going to the Board of Supervisors upon request by a Commissioner.

New Business:

Mr. Loach asked if there was any new business.

- The PC discussed the alternative of staff not providing a recommendation as part of its staff reports, but providing just the pros and cons of the project. No changes to the current process were made.
- NO MEETING ON AUGUST 31, AND SEPTEMBER 7, 2010
- NEXT MEETING ON SEPTEMBER 14, 2010

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

Adjournment:

With no further items, the meeting adjourned at 7:22 p.m. to the Tuesday, September 14, 2010 Planning Commission 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)