Albemarle County Planning Commission
October 5, 2010

The Albemarle County Planning Commission held a public hearing and meeting on Tuesday, October 5, 2010, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Summer Frederick, Senior Planner; Megan Yaniglos, Senior Planner; Elizabeth Marotta, Senior Planner; Bill Fritz, Director of Current Development; Phil Custer, Engineer; Wayne Cilimberg, Director of Planning; and Andy Herrick, Senior Assistant 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 asked for committee reports from the Commissioners.

- Ms. Porterfield reminded the Commission of Ms. Maliszewski request if anyone knows of a church for a filming company that would like to film in Albemarle County.
- Mr. Franco reported the Fiscal Impact Committee met and it was agreed that the Fiscal Impact Policy ought to be relooked at as part of the upcoming Comp Plan amendment process. Since the CIP's have shifted a little bit into time the whole thing ought to be reevaluated. A statement has been prepared to go to the Board.

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

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 and also on any consent agenda item.

- Neil Williamson, with The Free Enterprise Forum, spoke regarding his research into the time it took to have a new theater approved in Waynesboro as compared to the same for the proposed Hollymead theater in Albemarle. He found the approval took about four or five weeks in Waynesboro even with some complications with reduced parking and other things. Then he checked Albemarle's file and it took about four or five weeks in order to get the project to where it is now, which is very close to approval. One or two weeks either way is a change. He did not believe the staff or Planning Commission looked as hard on that application as in previous applications. However, it seemed as though there was the sense of urgency. He concluded with a compliment to the County for the time it took in Albemarle.

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

Regular Items:

SUB-2008-00287 Fontana, Phase C – Preliminary
The request is for preliminary plat approval to create seven (7) lots on 2.85 acres. The property is zoned R4, Residential. A request for approval of modification of Section 4.2.3.2 to allow activity on critical slopes accompanies this application. The property, described as Tax Map 78E, Parcel A is located in the Rivanna Magisterial District on Brunello Court at its intersection with Fontana Drive Extended. The

Comprehensive Plan designates these lands as Neighborhood Density, in Urban Area 3. (Summer Frederick)

Ms. Frederick presented a PowerPoint and summarized the staff report for SDP-2008-287 Fontana – Phase C – Section 1 Critical Slopes Waiver Request.

The request involves the undeveloped portion of the Fontana Neighborhood. There are proffers associated with the rezoning of this area ZMA-2004-18 Fontana 4C. It is in the Development Area. The zoning is R-4, Residential. The request is for preliminary plat approval to create thirty-four (34) lots on 17.146 acres. This application includes a request to modify Section 4.2.3.2 to allow disturbance of approximately 1.7 acres of critical slopes in conjunction with grading and construction of infrastructure for residential lots.

The subdivision plat that generated this critical slopes waiver is for Section 1, which is not the 34 lots in total, but the critical slope area encompasses the entire section. That is the difference in the proposal on the staff report.

Staff review has resulted in favorable findings:

1. Application meets technical criteria for disturbance of critical slopes; and,
2. Disturbance of critical slopes allows for the development in line with current zoning, comprehensive plan designation, and an approved re-zoning application plan.

Unfavorable factors:

1. None indentified

Staff recommends approval of this waiver, with the following condition.

1. Water Protection Ordinance plan be submitted for all of Phase 4C, and the site grading is constructed as one phase.

One reason for this condition is staff feels it will assist the applicant in fulfilling one of the proffers that is associated with the rezoning, as follows. The final grading plan shall be approved by the County Engineer prior to the approval of the first preliminary subdivision plat, which is this subdivision plat.

Mr. Loach invited questions for staff.

Mr. Morris questioned if this includes sidewalks, curb and gutter. He asked if the width of the road is going to be expanded at least 4' so that people can walk on it without getting smashed by cars.

Ms. Frederick referred the question to Phil Custer who is the engineer reviewing the plan.

Phil Custer, engineer assigned to this project, said that the road sections match the approved rezoning plan. There are three roads involved. There is one that has an urban section with curb and gutter and street trees, which matched the rezoning. When a cross section shows up on an approved rezoning plan they don't have much power to modify it. The two roads in sections one and two are a rural section with shoulder and ditch. During the rezoning plan the sidewalks were not shown because this is an area that will be served by the trail. He believed that there is a sidewalk all along section three, which is called Brunello Court, but would pull the plan and check it.

Mr. Morris noted the reason he was harping on this was that this particular subdivision has been used as an example of poor planning on virtually everything that they see with the incline of the driveway, the lack of sidewalks, the narrowness of the streets, and so on. He was quite reluctant to contribute to an ongoing problem and thought that the Commission would want to look at it.

Mr. Custer pointed out that he checked the plan and that Brunello Court is a normal section, which is the street that serves the most units. It has a 6' planting strip and a 5' sidewalk with the right-of-way extending to the end of it. That matches what was approved on the rezoning plan. They are working out

the mass grading plan for this, which has all of the standard conditions that includes 10 percent driveways. They have to show where all the porches are, doorways and where people will be accessing their homes. That grading plan is going to remain throughout the life of the project. Any alternation to that for building will be sent to County engineering with an amendment.

Mr. Morris asked if he was hearing correctly that yes, sidewalks are a part of this.

Mr. Custer replied that sidewalks will be part of Section 3, which is not what they see before them, but that will have a sidewalk on both sides and a 6' planting strip within the right-of-way. Section one and two are a rural section, which was approved by the Board. But, there will be a continuation of the trail network on one side of the roads.

Mr. Morris asked if that is the trail he sees running in the back of the homes.

Mr. Custer replied that on this section one and two, which is a rural section, there are no sidewalks. But, there is a trail that runs on the top side of the longer road and connects back. Then it runs to the left and connects into a trail that needs to be constructed behind those three existing lots. They have not shown a trail, but on the mass grading plan it will run and connect to the sidewalk that will be on Brunello Court. This section will be somewhat connected to the trail way system that is out there. It has not been shown and is one of the outstanding comments on the grading plan that is required per one of the proffers from the rezoning.

Ms. Porterfield asked following that when are those trails going to be built.

Mr. Custer replied there is a proffer that the trails that need to be built and were itemized on the last zoning plan for this must be built prior to a grading permit. That is an existing proffer. There is nothing that can be done, except approval of the preliminary plat. This plan cannot get a grading permit to construct anything until the existing trails are built. The trails proposed with this plan will be built with this plan.

Mr. Lafferty asked what would be the composition of the trails.

Ms. Frederick pointed out that it would be Class A, Type One pedestrian trails.

Mr. Custer replied that he thought it would be stone dust or gravel.

Mr. Lafferty asked if the trails have been built in the rest of the subdivision.

Mr. Custer replied that he understood that the trails were still outstanding.

Mr. Lafferty noted that the second cul-de-sac being asked for was not in the phasing plan. He asked if it was new.

Mr. Custer replied that phase 4C was broken up into four sections.

Mr. Lafferty noted that the two cul-de-sacs shown on the screen were not included in Attachment D.

Ms. Frederick replied that was correct. That was from the rezoning plan.

Mr. Lafferty noted that the other part of the preliminary or phasing plan shows a road going off the property.

Ms. Frederick said that road extends to the subdivision behind.

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

Ms. Frederick noted that the applicant was not here. Her understanding was that the applicant's

representative was supposed to be here.

Since no one was present to represent the applicant, Mr. Loach invited public comment. There being none, he closed the public hearing to bring the matter back before the Planning Commission for discussion and action.

Mr. Morris reiterated that last time the applicant brought up extending Fontana they very clearly said that it would have to have to have a sidewalk and curb and gutter. There were examples given by persons in attendance that the streets were so narrow that a person pushing a stroller was really taking their life in their own hands. It is a very narrow area. He just cannot say he would go along with this if it does not have sidewalks, curb and gutter. Things were done differently and they paid for it many times. The people for Fontana have no recourse. They cannot extend the current streets because they go right into drainage ditches. That is where mothers and fathers pushing children as well as children waiting for buses are going right now into the drainage ditches. It is unacceptable.

Mr. Fritz pointed out that if the Commission's action is not to approve the critical slopes waiver there needs to be some connection between the requirement for curb and gutter and an action as a condition of approval for the critical slopes waiver. They need to state the connection between the two and what remedy the curb and gutter is providing to the requirement that they not grade on critical slopes and how curb and gutter is moderating the impacts caused by the disturbance of critical slopes.

Mr. Lafferty noted that he had seen 5 percent of critical slopes on lots and areas from 15 percent to 100 percent. He questioned why they have a critical slope ordinance if it was never enforced.

Mr. Fritz replied that there have been some cases where the critical slope waivers have not been approved or where they have not been approved to the full extent that the applicant requested. His point was well taken so much so that the Board of Supervisors has actually instructed staff to investigate modifying the critical slopes provisions within the development areas. Staff has not come to a final conclusion yet on what they would recommend to the Planning Commission and on to the Board of Supervisors. But it is obvious to staff from the research done, the roundtables held, and looking back at past actions that critical slopes of this type have been approved frequently if not routinely. The reason they have the critical slope provision is to mitigate or prevent negative impacts from recurring.

Continuing Mr. Fritz noted what they have found in many cases in the development areas, and in this particular case where they are doing a master plan looking at a much broader erosion and sediment control plan, are that those techniques allow them to protect the slopes adequately. This case is also unusual in that when the rezoning was done these areas were not set aside as being critical areas. They will frequently do that in a rezoning saying that area is really out of bounds and it would have critical slopes. If that had been the case and these areas had been shown as an out of bounds area, then staff would have cited that. They would have said during the rezoning there was a conscious decision not to develop these areas. Therefore, they would have some value and staff would have recommended denial. These slopes are actually in an area that was shown for development. Staff typically would encourage those critical slopes waivers to be done at the time of the rezoning. He believed that was suggested at the time this rezoning came through, but it did not occur. The applicant did request the waivers for the curb and gutter to be allowed to use rural cross section. That was a topic of discussion during the rezoning review. Regarding Mr. Lafferty's question on a Class A, Type One trail, it is an asphalt trail over a 4" aggregate base 5' wide.

Ms. Porterfield asked if any of the critical slopes affect the use of the trails regarding water runoff. If there was water running over an asphalt trail, it would be slippery.

Ms. Frederick replied that the trail that runs along the back portion is in an area determined to have critical slopes.

Mr. Fritz pointed out that the design alignment for a Class A, Type One pedestrian trail is a 10' maximum longitude grade with a 2 percent maximum cross grade.

Mr. Custer said that specification says that the trails are to be built sort of to VDOT standards, which basically means they are to look for drainage problems. That is something he would be reviewing with the grading plan. There would be ditches on the cut side of the trail so rather than water running across it would be funneled to a relief culvert ever so often.

Mr. Fritz pointed out that the standard in the design manual is very clear that concentrated run off must not run across the trail; culverts and foot bridges are to be provided especially where the trail crosses ditches. In other words, as part of the review the applicant will have to provide a detailed location, a cross section, and a design of the trail to ensure it will not be washed out and stay in place.

Mr. Cilimberg provided the history of Fontana.

- Most of the review was done under a subdivision plat and not a rezoning. The Subdivision Ordinance did not have the requirement for sidewalk, curb, gutter, street trees, or planting area at that time. That was not amended into the ordinance until around 2004, which now makes all projects subject to a requirement as a subdivision for curb, gutter, planting strip, and sidewalk. It can be waived, but is the requirement under the ordinance. Fontana 4C was a rezoning. It was an extra area that was not zoned. During the discussion of that rezoning, a couple of the big issues were the lack of sidewalks throughout Fontana and the fact that the trail system had not been completed. So there was a lot of discussion with both the Planning Commission and ultimately at the Board level regarding what requirements should be made of this project. Of course, the Board has the final say. The final proffers are shown in Attachment D of the staff report. The Board decided not to impose any sidewalk, curb and gutter requirements on the existing Fontana at that time because it was really too much to retrofit. That would have been extremely expensive. But for the new section because there was a road being provided to the adjacent parcel, that road does require under the Board's zoning action curb, gutter, planting strip and sidewalk. That is the connecting road, which is the only road in Fontana connecting to the existing road system that would require the curb, gutter, planting strip, and the sidewalk. The road shown in black, which is a new road as well, was also required to have curb, gutter, planting strip, and sidewalk. That was part of the zoning action, which Mr. Custer was mentioning earlier. In reviewing these plats they have to follow the zoning approvals.

- The next street in the display will have new lots, but will not have curb, gutter, planting strip, and sidewalk because they are being built on an existing street. Those lots are on a street that exists and not a street to be built. The next street connects to an existing street, and the Board again in this case did not require curb, gutter, planting strip, and sidewalk. So those were the Board's actions and why it is in this form as a subdivision plat. The Board had the opportunity at the time in making its decision potentially to have said that they could not approve it unless they provided more sidewalks along with curb and gutter. However, the Board did not do that. They actually approved it in this way and got the stipulations proffered for the provision of the trails, which as mentioned are tied to the grading permit and being tracked by the county engineer. That is why it is before the Commission as it is and why there was not a lot of latitude in what staff could require for these sections because of that zoning action. How that relates to the waiver of critical slopes he could not speak to and would have to leave it to the current development staff to speak to. Mr. Fritz has noted that if the Commission was to deny the critical slopes waiver they need to cite the reason for doing that. The request was before the Commission in its form because of the zoning approvals of the Board of Supervisors. If Fontana had come in 2004 or later, it would never have turned out like it did. It is an example of why they have the new provisions in their subdivision ordinance.

Ms. Porterfield noted that they have an unbuilt trail in critical slopes and they were uncertain if it could be built.

Mr. Fritz replied that staff is saying that it has not been designed yet, but it can and has to be.

Ms. Porterfield asked if they have to finish the trail system.

Ms. Frederick replied that this particular trail will be done with this proposal. The trails that need to be completed prior to the grading permit for section 4C are in the other currently constructed phases of Fontana. Those trails are not finished and have not been signed off by the county engineer. Those are the trails that will need to be constructed to completion prior to a grading permit being issued for this particular phase.

Ms. Porterfield asked since they did not finish the other trails that they would be able to guarantee to finish the trails here if they get the critical slopes waiver.

Mr. Fritz replied that the trails would have to be bonded just like the roads.

Ms. Porterfield noted that if they bond the trails and don't finish them, then the county will finish them.

Motion: Mr. Franco moved and Mr. Smith seconded for approval of SUB-2008-00287, Fontana, Phase C – Preliminary with the condition recommended by staff

1. Water Protection Ordinance plan be submitted for all of Phase 4C, and the site grading is constructed as one phase.

Mr. Fritz verified that it was for the subdivision file SUB-2008-000287. He asked if the reason for the motion was based on the staff report.

Mr. Franco replied yes, that the motion was based on the reasons stated in the staff report.

The motion failed due to a tie vote of 3:3. (Smith, Franco and Loach voted aye. Porterfield, Morris and Lafferty voted nay.)

Ms. Porterfield voted no, noting that part of her vote is based on the fact that she did not really think staff should have to present an application for the applicant. She thought that a representative of the applicant should have been here to talk about the concerns they have. Although she understood what staff was saying, she would have liked to have had the applicant here to guarantee that certain things were going to happen.

Mr. Lafferty voted no because of the critical slopes. He thought that if they look at this in ten years it would be hard to justify why they allowed houses to be built on these kinds of slopes.

Mr. Morris voted no for the same reason as far as critical slopes.

Mr. Morris asked if this request goes on to the Board.

Mr. Fritz asked Mr. Herrick if there was any reason to vote to deny the request since the vote would go the same way.

Mr. Herrick suggested that there be a motion to deny the request and then a vote taken on the motion to deny.

Mr. Cilimberg noted that it should include the reasons for denial.

Mr. Fritz said that would be necessary should the applicant chose to appeal it.

Motion: Mr. Morris moved and Mr. Lafferty seconded to deny SUB-2008-00287, Fontana, Phase C – Preliminary.

Mr. Loach noted that his understanding was that the reason for denial needed to be stated in the motion.

Mr. Herrick said that he believed that those supporting a denial can state at the time of their votes the reasons for denial.

Mr. Franco voted no because he thought that the plan that has been presented is consistent with the rezoning expectations that were established by the Board and the applicant. Therefore, he voted no for this motion.

Ms. Porterfield voted yes because of the fact that the critical slopes are reasonably extreme and they do affect trails that were promised. There are no sidewalks so they have to assume that they need to be able to put these trails in and be able to drain the street. She was concerned about that and would have liked to have seen the applicant here to answer some questions.

Mr. Smith voted no.

Mr. Loach voted no for the same reasons as Mr. Franco although he understands Ms. Porterfield's concerns.

Mr. Lafferty voted yes because he thought that they have a responsibility for the future of this community and they instituted the critical slopes ordinance for a reason.

Mr. Morris voted yes simply because he did not feel that the trails should be on a critical slope and that is the only way that people in this particular area are going to be able to move safely from one place to the other.

The motion failed due to a tie vote of 3:3. (Smith, Franco and Loach voted nay. Porterfield, Morris and Lafferty voted aye.)

Mr. Herrick noted that both motions have failed and perhaps most importantly the vote for the critical slopes waiver has failed. Therefore, a critical slopes waiver is not granted in this case.

Mr. Franco asked since both motions have failed if it is possible to move for deferral of this item until the applicant can be here to present.

Mr. Fritz noted that there are two things. He did not know where they are in the time frame and they may be coming up against the 60 day clock, which means only the applicant could make the request to defer. The applicant is not here. Since the application failed the waiver has not been granted. The applicant can always appeal the decision of the Planning Commission within ten or fifteen days to the Circuit Court or the Board of Supervisors. Staff will notify the applicant of that time limit.

Mr. Loach asked if the appeal would not come back to the Planning Commission.

Mr. Fritz replied that the appeal specifically states that it is to the Board of Supervisors or to the Circuit Court. If the applicant wants to come back to the Planning Commission staff will see what they can do. It may have to be considered as a new request.

Ms. Porterfield said her only question is did anything really fail here. She was not sure.

Mr. Fritz replied that the waiver was not granted. Therefore, it fails. It has to be an affirmative action to grant the waiver and the 3:3 vote fails.

Public Hearing Items

SP-2010-00022 Heard's Mountain

PROJECT: SP 2010-00022 Heard's Mountain - Verizon Tier III PWSF

PROPOSED: Replace three (3) existing microwave dishes with (2) new dishes at heights of 74 and 90 feet and replace four whip antennas and six panel antennas with a single full sectored array of up to twelve panel antennas on an existing 150 foot tower on Heard's Mountain (which requires a waiver/modification of section 5.1.40.C.3).

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 (48) Special Use Permit, which allows for Tier III personal wireless service facilities in the RA Zoning District
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas uses in Rural Area 3
ENTRANCE CORRIDOR: No
LOCATION: On Heard's Mountain Trail (State Route 633) approximately 2 miles west of the Intersection of Heard's Mountain Trail and Hungrytown Road (State Route 698).
TAX MAP/PARCEL: 097000000004F0
MAGISTERIAL DISTRICT: Samuel Miller
(Megan Yaniglos)

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

This is a request for SP-2010-00022 Heard's Mountain Trail Tier III Personal Wireless Service Facility.

Background and Location:
- This tower was permitted by SP 1990-066, with conditions
- It is an existing 150 foot monopole and compound located on Heard's Mountain Trail (State Route 633) approximately two miles west of the intersection of Heard's Mountain Trail and Hungrytown Road (State Route 698)
- The property is wooded and mountainous and contains multiple Personal Wireless Service Facilities that create a small tower farm at the top of the mountain.

Proposal:
- To replace and relocate three (3) existing microwave dishes with two (2) microwave dishes
- To replace four (4) whip antennas and six panel antennas with a single full sectored array of up to twelve panel antennas
- Zoning Ordinance Modifications:
  - Sec. 5.1.40 (c)(4)- Requirement for a tree conservation plan to be submitted prior to the issuance of a building permit
  - Sec. 5.1.40 (c)(5)- The installation, operation and maintenance of the facility to be conducted in accordance with the tree conservation plan
  - Sec. 5.1.40(c)(3)- Flush mounting requirements modification

Summary and Recommendation:

Factors Favorable:
1. The existing monopole currently represents an opportunity site.
2. The changes to the site will have minimal impact on the adjoining areas.

Factors Unfavorable: none

Staff recommends approval of the proposed wireless service facility with the conditions outlined in the staff report. Two separate actions are needed for the following:

1. Zoning Ordinance Modifications:
1. Sec. 5.1.40 (c)(4)- Requirement for a tree conservation plan to be submitted prior to the issuance of a building permit
2. Sec. 5.1.40 (c)(5)- The installation, operation and maintenance of the facility to be conducted in accordance with the tree conservation plan
3. Sec. 5.1.40(c)(3)- Flush mounting requirements modification

2. Approval of SP-2010-022 Heard's Mountain

Mr. Loach invited questions for staff.

Mr. Smith asked if there was no change in the height, but just in the configuration on the pole.

Ms. Yaniglos replied that was correct.

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

Stephen Waller, Planner and Site Development Consultant to Verizon Wireless, said Maynard Sipe, counsel for Verizon Wireless, was also present. They are here today because Verizon Wireless purchased Alltel Communications and are in the process of integrating their licensed networks with Alltel's network. In this particular case, the tower was built in the early 90's originally for support of voice networks and paging networks. The whip antennas at the top are coming down because they are obsolete with current technology. Whereas, the flush mounted antenna will also be removed if they are allowed to use the existing mounted platform at the top of the tower, which has been on the tower since constructed. They would be using an existing part of the structure to flush mount their antennas on that and get the antennas that are flush mounted to a lower point directly to the tower removed and then flush mount all of their antennas to the platform at the top of the tower. For the micro waver process what Verizon Wireless is doing they are integrating their micro wave network from the old Alltel system into the Verizon Wireless network, which has switching stations in Richmond and Lynchburg. Basically, prior to the merging of these companies being that they were competing companies that had different markets where they were using some of the same frequencies, Verizon's network could not shoot into Alltel's home markets and Alltell could not shoot signals from their micro wave or wireless networks into the Verizon market. Basically, what is being done is that everything is being integrated. With this micro wave back hall system it will basically allow everything that is coming out of the switching stations from Lynchburg and Richmond to be fed through a dedicated network that shares the fiber lines. It will allow the increased voice and data and also higher speed of networks to all the shared and back hall for greater reliability of the system. That is where many of the heights have to change and new equipment is being put in. The current equipment was put in supporting the back hall network that was really based off of the copper line that was in place at the time. Again, these are newer and upgraded micro wave dishes. The reason they can use smaller dishes is the newer technology, but also it is geared more toward the fiber as opposed to what was used for the copper lines. He would be happy to answer any questions.

Mr. Loach invited questions for the applicant. There being none, Mr. Loach invited public comment. There being no public comment, he closed the public hearing to bring the matter before the Planning Commission for discussion and action.

Mr. Fritz recommended first that the Commission take action on the zoning ordinance modifications because only the Commission needs to take action on those and then make a recommendation to the Board of Supervisors on the special use permit as a separate action.

Action on Three Modifications:

Motion: Mr. Franco moved and Mr. Morris seconded for approved of the three (3) modifications, presented in the staff report for SP-2010-00022, Heard's Mountain, to waive certain requirements of the following sections:

1. Section 5.1.40 (c)(4)- Requirement for a tree conservation plan to be submitted prior to the issuance of a building permit.
2. Section 5.1.40 (c)(5)- The installation, operation and maintenance of the facility to be conducted in accordance with the tree conservation plan.
3. Section 5.1.40 (c)(3)-Mounting standard to allow array antennas.

The motion passed by a vote of 6:0. (Zobrist absent)

Motion For Recommendation on SP-2010-00022:

Motion: Mr. Franco moved and Mr. Morris seconded to recommend approval of SP-2010-00022, Heard's Mountain – Verizon Wireless Tier III subject to staff's recommended conditions and based on the staff report.

1. Tower height not to exceed 150 feet;

2. All work shall be done in general accord with what is described in the applicant's request [Attachment B of Staff Report].

3. The tower shall comply with Section 5.1.40 of the Zoning Ordinance, except for the modifications of Section 5.1.40 (c)(4), Section 5.1.40 (c)(5), and Section 5.1.40 (c)(3).

Ms. Porterfield noted that this is a tower farm and different from many things that they see.

The motion passed by a vote of 6:0. (Zobrist absent)

Mr. Loach noted that SP-2010-00022, Heard's Mountain – Verizon Tier III PWSF is scheduled to go to the Board on a date to be determined with a recommendation for approval. The modifications do not require action by the Board.

SP-2010-00021 Carter's Mountain
PROJECT: SP 2010-00021 Carters Mountain Trail - Verizon Tier III PWSF
PROPOSED: Replace two (2) existing microwave dishes with (2) new dishes at heights of 112 and 175 feet on an existing 185 foot lattice tower on Carters Mountain ((which requires a waiver/modification of section 5.1.40.C.3)
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 (48) Special Use Permit, which allows for Tier III personal wireless service facilities in the RA Zoning District
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas uses in Rural Area 4
ENTRANCE CORRIDOR: No
LOCATION: Tax Map Parcel 91-28: on Carters Mountain Trail approximately 1 mile south of the intersection with Thomas Jefferson Parkway (State Route 53).
TAX MAP/PARCEL: 09100-00-00-00028
MAGISTERIAL DISTRICT: Scottsville
(Elizabeth Marotta)

Ms. Marotta presented a PowerPoint presentation and summarized the staff report for SP-2010-00021, Carter's Mountain Trail Tier III Personal Wireless Service Facility.

Request: The proposal is to replace two (2) existing microwave dishes with (2) new dishes at heights of 112 and 175 feet on an existing 185 foot lattice tower on Carters Mountain (which requires a waiver/modification of section 5.1.40.C.3).

- This request is to modify an existing tower that is permitted by SP-1994-37, with conditions.
- There is an existing 185' lattice tower and compound.
- To replace and relocate 2 microwave dishes to heights of 112' and 175'. One of the dishes will remain a 6' diameter and the other will be reduced to a 2.5' diameter.

- There are three waivers associated with this request:
- Sec. 5.1.40 (c)(4)- Requirement for a tree conservation plan to be submitted prior to the issuance of a building permit.
- Sec. 5.1.40 (c)(5)- The installation, operation and maintenance of the facility to be conducted in accordance with the tree conservation plan.
- Sec. 5.1.40 (c)(3)- Flush mounting requirements modification.

Factors Favorable:

1. Existing tower permitted by SP-94-27; and the existing tower represents an opportunity site.
2. The increased height of the proposed dishes will not have an increased negative visual impact

Factors Unfavorable: none

Staff recommends approval of the proposed wireless service facility and waivers with the conditions outlined in the staff report.

Staff recommends the Planning Commission take two separate actions, as follows:

1. Zoning Ordinance Modifications:

1. Sec. 5.1.40 (c)(4)- Requirement for a tree conservation plan to be submitted prior to the issuance of a building permit
2. Sec. 5.1.40 (c)(5)- The installation, operation and maintenance of the facility to be conducted in accordance with the tree conservation plan
3. Sec. 5.1.40(c)(3)- Flush mounting requirements modification

2. Approval of SP2010-021 Carter's Mountain Trail

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

Stephen Wall, representative for the application, noted that as Ms. Marotta pointed out this site is very similar to the last site that they just went over. Basically, it another Alltel conversion site where Verizon Wireless is integrating its networks with basically combining the two networks. If there are any questions regarding this particular facility, he would be happy to answer them.

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

Motion on Three Modifications:

Motion: Mr. Franco moved and Ms. Porterfield seconded for approval of the three Zoning Ordinance modifications for SP-2010-00021, Carter's Mountain – Verizon Wireless –Tier III based on the staff report, as follows.

1. Section 5.1.40 (c)(4)- Requirement for a tree conservation plan to be submitted prior to the issuance of a building permit.
2. Section 5.1.40 (c)(5)- The installation, operation and maintenance of the facility to be conducted in accordance with the tree conservation plan.
3. Section 5.1.40 (c)(3)-Mounting standard to allow array antennas.

The motion passed by a vote of 6:0. (Zobrist absent)

Motion For Recommendation on SP-2010-00021:

Motion: Mr. Franco moved and Mr. Morris seconded to recommend approval of SP-2010-00021, Carter's Mountain – Verizon Wireless Tier III subject to staff's recommended conditions and based on the staff report.

1. Tower height shall not exceed 200 feet;
2. Compliance with Section 5.1.40 of the Zoning Ordinance;
3. Board of Supervisors approval is required for the installation of additional antennae.
4. The tower must be designed and adequate separation provided to property lines such that in the event of structural failure, the tower and components will remain within the lease area; and
5. Tower shall be located within the lease area shown on Attachment C (on file in SP1994-37.)

Ms. Porterfield noted that this tower farm is in her district.

The motion passed by a vote of 6:0. (Zobrist absent)

Mr. Loach noted that SP-2010-00021, Carter's Mountain – Verizon Tier III PWSF is scheduled to go to the Board with a recommendation for approval on a date to be determined. The modifications do not require action by the Board.

Old Business:

Mr. Loach asked if there was any old business.

Ms. Porterfield said that she did not think the Commission achieved anything with the first item, Fontana, on the agenda.

Mr. Loach replied that he thought that they did. He agreed with Mr. Franco on the critical slope issue that the Board of Supervisors had really set the precedent for what was established. That said he thought that the Commission raised the spectra again of the importance of critical slopes and they heard from staff that they are in process of redoing those regulations. He hoped they would take under advisement the comments that they have made under the last couple of instances that they have run into.

Mr. Fritz pointed out that staff would be bringing the critical slopes as a work session to the Commission for more comments.

Mr. Loach said on the sidewalks, curb and gutter he thought as they have heard those transitions have already been made unless there was something else.

Ms. Porterfield noted her question is actually procedural. She wondered if the Commission revisited the issue, could they make a motion that would be such that if the applicant wished he could come back in a couple of weeks and give them the information that was being talked about. There may be a way to moderate the critical slope impact and to find out more information about the trails that are going to be impacted and why the other trails have not been built. She just wondered because as it is it is in limbo.

Mr. Loach said his understanding from what was said is that the applicant has the opportunity if he wants to come back here or he can go to the Board or the BZA.

Mr. Fritz noted the various steps.

- The reason did he did not recommend a deferral is the State Code and the ordinance requires that they take an action within 60 days of submittal. A deferral is not an action. They would either have to approve or deny the application. They are up against that 60 day time line. If the applicant had been here and requested a deferral there would be no problem because it is in the control of the applicant. That is why he did not recommend a deferral. Otherwise, they would have failed to take action and the applicant could have theoretically said they have approved it because they failed to take action within the time frame.

- What they have done by their own rules a tie vote by normal procedure is tantamount to a denial. Staff had the Commission take the other vote because it helps to clarify that. The applicant has the opportunity to appeal and go to either the Board of Supervisors or the Circuit Court. What he did not know is and he frankly needed to go and sit with the ordinance for a minute is whether or not the applicant can come back with the same application to the Planning Commission. The ordinance is specific on the appeal process it says to the Board of Supervisors or to the courts. Whether or not staff can create an administrative ruling that allows them to come back to the Planning Commission they will just have to determine if that is an efficient way of doing that. Or they could say this application has run its course and they can file a new application, which staff can bring forward to the Planning Commission. It would be a new application number, but have many of the same materials. They may do that because there would be new information and

would be a new analysis. There would be a new application fee. Application fees are supposed to compensate for the review. So they may go that route. The answer is that he did not know if it can come back to the Planning Commission as the same application. It may have to come back as a new application. For all practical purposes the Commission won't notice a difference. It is really procedural behind the scenes issue.

Mr. Fritz noted that he had one item of old business. He explained why staff had the Commission do two separate votes and actions when they have waivers. The reason is because in a ministerial action if they are approving a subdivision or a site plan that involves waivers the waivers and the ministerial action are both something of the Planning Commission. The decision making body is the Planning Commission. But in a special use permit, as those two items were, the decision making body on the special use permit is in fact the Board of Supervisors. So they separate those two actions because they are very distinct actions as to who is making the decision. One is the Planning Commission with the waivers and the other is the Board of Supervisors. They have had cases where the Planning Commission has actually denied a waiver and the applicant then can appeal that so that both can be heard simultaneously by the Board of Supervisors. That is why they do these as two separate actions. It seems awkward, but there is logic behind it.

Mr. Loach asked for feedback from staff because many times he has a problem in forming the motion. He asked if they could have two motions one for approval and one for denial. He asked if was possible to have it in the packet like this.

Mr. Fritz said that there are some jurisdictions that do that. He and Mr. Cilimberg can sit down and talk about how to incorporate that.

Mr. Loach noted that at least the motions would be consistent with what the law would require and they could not have to worry about it coming back and saying the wording was not correct. That would be the only reason.

Mr. Cilimberg pointed out that actually for the Board of Supervisors when he takes items to them in the presentation he provides for them essentially the action they need to take if they are going to approve based on recommendation of the Planning Commission. Therefore, the Board can just look at the screen and basically use that as their action. For denials it is hard for staff to tell them what to include in their motion because the denial is going to have to be based on reasons that staff cannot anticipate. Being able to tell the Commission how to motion for denial is a little more difficult in advance.

Mr. Loach asked for the motion to be set up with fill in the blanks.

Mr. Cilimberg noted if staff recommends denial they could recommend denial to the Commission and say for these reasons.

Mr. Franco said just having staff's write their recommendation out as a motion is what he was hearing him ask for and that sounds reasonable.

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

New Business

Mr. Loach invited new business.

Mr. Morris noted that Mr. Lafferty and he were scheduled to go out with a member of the zoning inspection staff today. It was a real eye opener on things that they have approved on a Presbyterian Church that they thought was all set that. It was very interesting to see what was going on and what the staff has to put up with. His point is that those good folks will welcome anyone who would like to contact them and ride along at anytime or if someone had a specific site they want to ask about they will take them out there. It was a good experience.

Mr. Lafferty noted that one of the reasons they scheduled this was that both Mr. Morris and he went to the Virginia Certification of Planning Commissioners, which was the program 69 that had been going on for many years in the state of Virginia. The program was well worth it and he recommended others to attend. He would almost say that it should be a prerequisite for somebody coming in to sit on the Commission.

Staff will notify the Commission of the upcoming dates for the spring session if anyone is interested.

- NO MEETING ON OCTOBER 12, 2010
- NEXT MEETING ON OCTOBER 19, 2010

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

Adjournment:

With no further items, the meeting adjourned at 7:03 p.m. to the Tuesday, October 19, 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)