Albemarle County Planning Commission
January 11, 2011

The Albemarle County Planning Commission held a meeting and public hearing on Tuesday, January 11, 2010, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Bill Fritz, Chief of Current Development; Judy Wiegand, Senior Planner; Claudette Grant, Senior Planner; Mark Graham, Director of Community Development; Glenn Brooks, County Engineer; Ron Higgins, Chief of Zoning; Sarah Baldwin, Senior Planner; Wayne Cilimberg, Director of Planning and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Cilimberg, serving as temporary chair, called the regular meeting to order at 6:01 p.m. and established a quorum.

Election of Officers: Chairman and Vice-Chairman:

Mr. Cilimberg opened nominations for the election of Chair of the Planning Commission for the upcoming year.

Mr. Morris nominated Duane Zobrist to be Chair for 2011.

Mr. Franco seconded the nomination.

Mr. Cilimberg asked if there were any other nominations. There being none, he closed the nominations and called for the vote.

The nomination of Duane Zobrist as Chair of the Planning Commission for 2011 carried by a vote of (6:0).

Mr. Cilimberg turned the meeting over to Mr. Zobrist.

Mr. Morris publicly thanked our outgoing Chair, Tom Loach, for a fabulous job last year.

Mr. Zobrist agreed Mr. Loach was fantastic and he was anxious to follow him. He asked for nominations for Vice Chair of the Planning Commission for the upcoming year.

Mr. Smith nominated Calvin Morris to be Vice Chair.

Mr. Loach seconded the nomination.

Mr. Zobrist asked if there were any other nominations. There being none, he closed the nominations and called for the vote.

The nomination of Calvin Morris as Vice Chair of the Planning Commission for 2011 carried by a vote of (5:0:1). (Mr. Morris abstained.)

Set Meeting Time, Day, and Location for 2011 (Attached schedule memo)

Mr. Zobrist next asked for a motion to set the Commission's Meeting Time, Day, and Location for the upcoming year. He asked if everyone received the revised schedule submitted by Mr. Cilimberg

Mr. Cilimberg noted that there was also a paper copy before the Commission tonight. He thanked Ms. Porterfield for her comments.

Mr. Zobrist asked if there were any objections to the schedule as posted by staff.

Motion: Ms. Porterfield moved and Mr. Morris seconded for approval of the 2011 Planning Commission meeting schedule that will be held in the auditorium beginning, unless otherwise noted, at 6:00 p.m.

The motion passed by a vote of 6:0.

Adoption of Rules and Procedures: (Attached Rules)

Mr. Zobrist noted the Commission had been given copies of the red line of the amended rules of procedure, which Mr. Kamptner has revised in accordance with the Virginia statutes. He asked for any discussion, questions, or comments on that.

Ms. Porterfield said in regards to the information on the tie vote she was curious about what happens if the Commission can't break a tie.

Mr. Kamptner replied ultimately the tie would need to be broken because there is a State statute that requires and authorizes the Planning Commission to take action only by a majority vote. Therefore, this amendment was intended to clarify that requirement in the rules and procedure to assure that it happens.

Ms. Porterfield asked if the item would have to be moved to the next agenda as opposed to done on that agenda.

Mr. Kamptner replied that it is possible. When they encounter that problem, it may be that the motion could be that the Planning Commission has no recommendation on the particular application, which could achieve a majority vote.

Ms. Porterfield noted that would only work if it was going to the Board of Supervisors, and Mr. Kamptner agreed.

Mr. Zobrist noted that was provision E at the top of page 5. A tie vote shall only defeat the motion voted upon. Any matter receiving a tie vote shall not be deemed to have been acted upon and a tie vote shall not be deemed to be either a denial or a recommendation of denial. The motion just fails.

Mr. Kamptner pointed out that they would need another motion.

Mr. Zobrist asked if it couldn't go on to the Board of Supervisors with a failed vote.

Mr. Kamptner replied no, based upon the State statute.

Mr. Zobrist suggested that they work on another way of saying that. They don't outline a procedure for a tie vote here.

Mr. Kamptner suggested adding a provision that would require additional voting until there is a majority.

Mr. Zobrist replied that seems to be a logical solution on it. It just says it defeats the motion voted on and it is not a denial or recommendation. In their Rules of Procedure, the Commission can set the procedure on how to break the tie.

Mr. Kamptner said that paragraph e with be read in tandem with paragraph b, which makes it clear that there would have to be an approval or disapproval by a majority of the members.

Ms. Porterfield pointed out the problem was in that situation they tried the vote twice and it failed both ways. It was a 3:3 vote with six members present.

Mr. Franco said they would bring it back to the group to discuss it.

Ms. Porterfield noted that was why she asked that the issue be moved to the next meeting where seven members would be present to vote.

Mr. Kamptner agreed that it would be one way to solve it. They do run against the clock in some cases. The applicant would have to take additional steps in order to assert their rights in most cases. In the interim, the Planning Commission could take the action.

Mr. Morris pointed out he could clearly see what Ms. Porterfield is saying that the three might be adamant both ways in their opinions and if they cannot get a consensus on this thing they could go forever. Therefore, it might have to be deferred until the next week until all seven members are present.

Mr. Zobrist noted that if he was an applicant and had a tie vote he may want to let the time run because then it is deemed approved if it was not denied. That is the law.

Mr. Kamptner noted those items by which the Planning Commission may be directed to make a recommendation if they don't act within the 90 days would deemed to be recommended for approval under the statute.

Mr. Zobrist noted that is why they get deferrals. If they wait, then it is deemed approved if they don't deny. Therefore, that is sort of a pocket approval if there is six people here and it was tied. He suggested that the Commission think about it because they don't have to resolve it right now. At least the issue is on the table. He had never been on a tie vote in his time on the Commission.

Mr. Morris estimated that there had been at least 4 tie votes in the 7 years he had been on the Commission. In a tie vote, the decision fails and the request is not approved. This is just the opposite.

Mr. Kamptner noted it requires an action by the majority.

Mr. Zobrist felt it was premature, but asked what the other Commissioners would like to do. He suggested giving it back to Mr. Kamptner to work on so the Commission could talk about it some more. At least he has the benefit of what the Commission had said.

Mr. Franco said the answer is that the Commissioners need to be walking in less entrenched in their positions and really be prepared to discuss it openly and to find solutions. The things that have come before the Commission have been items that they have had the ability to massage components of it. Therefore, they really need to be able to express why they don't or do like something and be able to figure out a common ground in there as opposed to just figuring out how to push it down the road.

Mr. Loach said they were talking about the exception and not the rule. If they come up to a tie vote, they now what the time element is to either prevent that. If there is not a time element, as Ms. Porterfield said, then they go to the next meeting where they have seven members to vote on it. On the other hand, if they don't have the time, as said, the Commission would have to come to some modification of people's positions and go forward. That is just the bottom line.

Mr. Zobrist asked if they could put a provision in that in the event of the tie vote the Commission will deliberate until they are able to break the tie.

Mr. Kamptner pointed out as the Chair he controlled the meeting and he did not think that needs to be in the Rules of Procedure. Ultimately, the decision has to be made by a majority. Therefore, the Chair can hold the other Commissioners here until that tie is broken.

Mr. Zobrist said they might want to add language that just says a decision has to be made. Reading it together with b), he gets that. As Chair, he would want language in the Rule of Procedure that says they have to come up with a vote.

Ms. Porterfield said if they have the opportunity to move it to the next meeting where they could have a full complement, she thought they should have that opportunity.

Mr. Zobrist agreed, but that is a new vote and motion. The motion is move it to when they have a majority, and then they vote on that motion. That is the way he understands the language. The motion to approve or deny is before them and they tied on it. Then a motion is made to defer. Mr. Kamptner will tell the Commission yes they can defer, but here are the consequences of deferral. Then they vote on deferring it to the next meeting when they have a majority.

Mr. Franco said he did not think they could make those deferrals in many cases. It has to be the applicant that makes that deferral.

Mr. Zobrist said they could defer it, but have to take the consequences if the time is short.

Mr. Kamptner said staff would advise the Commission as the situation arises.

Mr. Zobrist pointed out if they miss the 90 day deadline, then the request would go on to the Board of Supervisors with a recommendation of approval.

Mr. Franco said what he heard Mr. Kamptner say earlier that if it was going to the Board they can always make a recommendation of no recommendation and probably agree on that.

Mr. Zobrist agreed. It is just a motion the Commission has to approve.

Mr. Kamptner said it is the action that provides an escape. The action in that case is no recommendation.

Mr. Zobrist said that he was okay with it. He asked if there was any further discussion. If not, then he asked for a motion to adopt the Commission's Rules of Procedure for the upcoming year. He noted that the Rules of Procedure had been distributed to the Commission.

Motion: Mr. Morris moved and Mr. Loach seconded to accept the Rules of Procedure for 2011 as amended and outlined in the Planning Commission's packet.

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

Committee Reports:

Mr. Zobrist asked for committee reports from the Commissioners.

Mr. Cilimberg suggested that tonight that staff just get confirmation from the members and the Commission's concurrence that they want to continue to have the same representations. That is all staff needs from the Commission. They may need to have some further action if the Board is going to officially Appoint any of these members, which staff can follow up with as necessary. This would just be basically to let staff know who wants to continue. Mr. Lafferty has already mentioned that he would like to stay on CHART and PACTECH. If others wish to continue on their committees and it through the agreement of the Planning Commission that is okay, then staff will take it from there.

Mr. Zobrist asked if the Commissioners want to stay as they are this year or want to talk about different assignments.

Mr. Franco sad he was comfortable the way it was right now, and the other Commissioners agreed..

Mr. Kamptner suggested that they make a motion to recommend to the Board for those committee appointments that require Board appointment as stated on the list. He was doing some research because there are a couple of these committees that he does not have a lot of background information as

to whether they are Board appointment. The MPO Tech Committee and the University of Virginia Master Planning Council are just straight appointment by the Planning Commission. It appears that all the others need to be forwarded to the Board to ratify.

Motion: Mr. Franco moved and Mr. Morris seconded for recommendation to the Board of Supervisors for the Committee members as shown on the attachment.

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

PLANNING COMMISSION COMMITTEE MEMBERSHIP AS OF 1/11/11:

ACE Committee Liason:
Duane Zobrist

CIP Technical Committee:
Don Franco

Charlottesville Albemarle Regional Transportation Advisory Committee (CHART):
Mac Lafferty

City/County/University Planning & Coordination Council Tech Committee (PACC Tech):
Mac Lafferty

Crozet Community Advisory Council:
Tom Loach

Fiscal Impact Committee:
Don Franco

Historic Preservation Committee:
Linda Porterfield

Metropolitan Planning Organization Tech Committee (MPO Tech):
Duane Zobrist

Pantops Community Advisory Council:
Cal Morris

University of Virginia Master Planning Council:
Ed Smith

Other Matters Not Listed on the Agenda from the Public:

Zobrist invited comment from the public on other matters not listed on the agenda including consent agenda items.

Neil Williamson, with Free Enterprise Forum, said unfortunately due to some travel plans he would not be present at next week's Commission meeting when they will have a work session on Wineries and the Noise. The Free Enterprise Forum simply wants to speak up with regard to the idea of wineries in the Rural Areas and economic viability of those wineries. Quite frankly, the wine business in Albemarle County is one of the richest in the state. Virginia now has 171 farm wineries. The richest Appalachian is the Monticello Appalachian, which includes at the heart of it Albemarle County. He was aware of at least three new wineries that will be coming on line within the next six month within the county. All of these wineries are working diligently in keeping its product that works on smaller acreage than large form farming. Part of their business model includes events. Most of the wineries he has talked to that do events are eager to work with their neighbors to be good neighbors. The Commission needs to recognize the good citizenship of the majority of wineries in their work with the neighbors. In any industry, there are

always bad citizens. There are bad citizens in the Virginia wine industry or there were who would land helicopters and have rock concerts and things of that nature. He did not believe anyone in Albemarle was looking to do that. However, they are considering weddings at a winery. He was out at the King Family Vineyard yesterday, which was a beautiful property under land conservation and an easement. They are planting another seven acres of grapes this year. That is a big success. As they consider the noise ordinance, the works that they do with events at King Family Vineyard in a structure certainly is a big part of their business and is directly related to the agricultural pursuits on that land. The Free Enterprise Forum just wanted to bring that to the Commission's attention. He regrets missing next week's meeting, but would be here on February 8th. He wants to alert the Commission to that rural economic viability.

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

Review of Board of Supervisors meeting – January 5, 2011.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on January 5, 2011.

Mr. Zobrist suggested that staff make Mr. McCann's presentation DVD available to the Planning Commission. It would be useful for the Commission to review Mr. McCann's framework. He recommended that they incorporate this in some kind of educational format to show community members to help them understand better the processes we use in the community and why they are doing them. One of the most interesting portions was his economic data on how good planning really makes a community healthier, property more valuable and a better place to live. The presentation will be available on a Charlottesville Tomorrow podcast.

Mr. Cilimberg noted that staff would do that.

Ms. Porterfield noted that there was a lot of confusion regarding what areas of the Scottsville District are called. There is the Village of Rivanna, Rivanna Village and then staff is referring to it as "Rivanna," which actually is another magisterial district. It would be helpful if staff starts calling the areas what they are. The whole development area is the Village of Rivanna. Rivanna Village is the section on the north of the development area, which will be the commercial section. Possibly, they could refer to them in that way.

Mr. Cilimberg agreed that staff would do that.

Consent Agenda:

SUB-2010-00149 Powell/Pitt – Final
PROPOSED: Request for final plat approval for the creation of one single family lot of 9.478 acres. This application includes a request for approval of a private street in accord with Section 232 of the Subdivision Ordinance.
ZONING CATEGORY/GENERAL USAGE: RA - Rural Area
SECTION: Chapter 14 Section 20, and Section 232 of the Subdivision Ordinance.
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Area in Rural Area 1
ENTRANCE CORRIDOR: No
LOCATION: East side of Plunkett Road, approximately one half mile from its intersection with Simmons Gap Road (SR 663).
TAX MAP/PARCEL: 00900-00-00-01900
MAGISTERIAL DISTRICT: White Hall
(Summer Frederick)

Mr. Zobrist asked if any Commissioner would like to pull an item from the consent agenda for further review.

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

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

Mr. Zobrist noted the consent agenda was approved with staff's recommended conditions, as follows

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

Deferred Item:

ZMA-2010-0014 Hollymead Town Center (Area A-1)
PROPOSAL: Rezone 59.162 (portions) acres from Planned Development-Mixed Commercial (PD-MC) zoning district which allows large-scale commercial uses; and residential by special use permit (15 units/ acre) to Planned Development-Mixed Commercial (PD-MC) zoning district which allows large-scale commercial uses; and residential by special use permit (15 units/ acre), in order to amend the existing proffers.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Town Center-compact, higher density area containing a mixture of businesses, services, public facilities, residential areas, and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre) in Hollymead Development Area.
ENTRANCE CORRIDOR: Yes
LOCATION: Hollymead Town Center Area A-1, the southwest quadrant of Seminole Trail (US 29) and Towncenter Drive in the Hollymead Development Area
TAX MAP/PARCEL: 032000000042A0, 04600000000500, 03200000004400 (portion), 03200000004500 (portion)
MAGISTERIAL DISTRICT: Rio
DEFERRED FROM THE DECEMBER 21, 2010 PLANNING COMMISSION MEETING
(Judith Wiegand)

Ms. Wiegand presented a Power-Point presentation and summarized the staff report.

Purpose of This Rezoning:
To amend the existing proffers relating to road improvements and public transit operating expenses.

The full Hollymead Town Center—all five areas—had already been rezoned prior to this application. Area A-1, the subject of this application, was rezoned in 2007. The original proffers were approved as part of this rezoning.

Hollymead Town Center–Areas
As a refresher, the diagram shows the different areas that are part of the Hollymead Town Center. Area A-1 is shown in red.

Location
In the Northern Development Areas—four parcels are involved in the rezoning. Only portions of 34 and 35 are involved in this.

Zoning
HTC Area A-1 was rezoned to PD-MC, Planned District-Mixed Commercial under ZMA 2005-00015, and approved on September 12, 2007. Area A2 was rezoned to NMD, Neighborhood Model District and was not part of the discussion this evening. This zoning is in conformity with the Comprehensive Plan, which shows this area as Town Center.

Road Improvement Proffer
The discussion tonight will involve two proffers. The first is the road improvement proffer. Staff explained the changes in the road proffer and the road segments that would be affected. The original language and the amended language for this proffer for Proffer 1, Road Improvements are in the staff report. There are three road segments discussed within that proffer.

ORIENTATION: US 29 North is to the RIGHT
Meeting Street--southern end where it will connect with Berkmar Drive Extended north, to Airport Road (which does not show on this plan)
Towncenter Drive
Harris Teeter – Target -- Kohl's
Greenway with trail—Powell Creek tributary

The original road improvement proffers refer to three segments:
1. Towncenter Drive—NO CHANGE
2. Meeting Street north of the intersection with Towncenter Drive—NO CHANGE
3. Meeting Street south of the intersection with Towncenter Drive—shown in red in presentation—that is the one affected by the proffer change.

The County asked the property owner to change the proffer language to dedicate the portion of Meeting Street south of the intersection with Towncenter Drive. This is the new language that's in the "B" part of the proffer. The County would like dedication of this segment in the Area A-1 proffers. The reasons are related to acceptance of the road into the state system and maintenance.

The applicant is looking for a temporary Certificate of Occupancy for the Kohl's as soon as possible. The store wants to begin stocking and preparing for its opening. They want to get a permanent Certificate of Occupancy within the next few months. In order to qualify for that Certificate of Occupancy under the currently approved proffers, they would have to construct this segment of Meeting Street. That is not necessary for Kohl's. In fact, the County is concerned if the whole segment was constructed, particularly the part towards the southern end, they basically would be construction a road for the time being would be a road to nowhere. Eventually this would connect to Berkmar Drive Extended at the time that road is built. Most likely, that is several years in the future.

Once the County Engineer approves a road upon completion it normally would be accepted into VDOT's system and qualifies for state maintenance. VDOT does not normally accept roads to nowhere for maintenance. Therefore, the County would be left with the tab for maintaining a portion of this road that would not serve anything, which would have a couple stream crossings and things that might require extra maintenance expense. The County is currently looking this and requesting dedication of the whole stretch so they know where the road will be and have the appropriate right-of-way. For A-1 proffers that would be sufficient. Staff is expecting at the time the indoor theater site plan comes in that this segment of road would have to be constructed before its Certificate of Occupancy could be issued. It would be part of that site plan and not the Kohl's site plan. That is not a part of the proffer, but what the County is expecting as the way that this stretch of Meeting Street would be constructed. That would give a second entrance to the indoor theater where the road would connect in that direction. Kohl's would also connect at that point. It is not necessary for Kohl's to have that entrance because they are going to have one coming from Route 29 and another from Town Center Drive.

Proffer Language (New)

The owner has said he was comfortable with that language.

B. Reserve and dedicate. The Owner shall reserve for dedication and dedicate to public use, upon the written request of the County, the right-of-way for Meeting Street from the intersection of Town Center Drive to the southern boundary of the Property. The land reserved and dedicated shall be at least the minimum width necessary to comply with applicable VDOT standards for the construction and maintenance of the road, and include all necessary easements. The right-of-way shall be dedicated within the period specified by the County, which period shall not be less

than 90 days. If the right-of-way is not dedicated in conjunction with a subdivision plat, the Owner shall be responsible for the cost of a survey and preparing the deed to convey the right-of-way to the County.

Public Transit Operating Expenses Proffer

- **Public Transit Operating Expenses -** Within thirty days after demand by the County after public transportation service is provided to the Project, the Owner shall contribute $50,000 cash to the County to be used for operating expenses relating to such service, and shall contribute $50,000 cash to the County each year thereafter for a period of nine (9) additional years, such that the cash contributed to the County pursuant to this Proffer 4, shall total Five Hundred Thousand Dollars ($500,000). The cash contribution in years two through ten shall be paid by the anniversary date of the first contribution**. If public transit service is not provided to the Project by July 1, 2012, this proffer shall be null and void.**

During a meeting with staff on January 3 called to finalize the language for the road improvement proffer, the property owner requested a change in Proffer 4. Public Transit Operating Expenses. The original language and amended language are included in the packet. The change is the addition of a "sunset clause" after which the proffer would become null and void if no transit service is available to the Hollymead Town Center Area A-1. The applicant explained that no other part of HTC had such a proffer. He proposed a sunset date of July 1, 2012, which is approximately seven years after the opening of the first commercial business in HTC—Target. While staff has no problem with a sunset clause, the date proposed is so close—approximately 18 months from now—that it effectively removes the obligation that was part of the original rezoning to provide some funding for transit. Transit service is expected in the area in five to ten years, so staff thinks a date of January 1, 2021—about ten years from now—is more appropriate.

Other Projects With Transit $ Proffers

In the other five areas of Hollymead Areas A1 and A2 are owned by the same owner. Area A1 has the proffer. Areas B, C and D do not have transit proffers.

1. **North Pointe**: $250,000 total over 10 years; sunset clause = 10 years from BOS approval or 7 years after first commercial CO—whichever is ***later***.
2. **Martha Jefferson Hospital:** $50,000 total; sunset clause = 1 year of CO for hospital
3. **Albemarle Place:** Jitney service; sunset clause = 1/1/2007 or first commercial CO-***last.***
4. **Biscuit Run:** $1,000,000 (lump sum); unexpended funds to be retained by *County*. In addition, a proffer for private transit service to bridge the gap until public service was available.
5. **5th Street-Avon Center:** cash contribution based on 20 center/SF after provision of transit service to property and for as long as service provided; *no sunset date*.

Mr. Cilimberg noted last year the Albemarle Place Jitney service discussion in their proffer ended up having the option for them to contribute cash to the CTS Service. That was a recent amendment to that service. He did not remember the cash amount, which was in lieu of the Jitney service. The Planning Commission had that before them when making their recommendations.

Staff Recommendation

- Staff does not recommend acceptance of the July 1, 2012 sunset date for the Public Transit Operating Expenses proffer. Staff believes a sunset date of January 1, 2021 gives a more realistic opportunity for transit service to be provided in the area to which this project would contribute.
- Staff does recommend approval of the rest of the revisions to the proffer language as included in the signed Amended Proffers, dated January 3, 2011.

Mr. Zobrist invited questions for staff.

Mr. Loach asked what would be the date if staff applies the seven and ten year date to the Certificate of Occupancy.

Ms. Wiegand replied that the first commercial Certificate of Occupancy in the entire Hollymead Town Center would have been the Target, which would have been approximately July 31, 2012. The first commercial use in A-1 would be Kohl's, which would be coming up in another few months. It would be seven years from that time.

Ms. Porterfield asked staff to go back to the map where it showed the roads. The change in the proffer is that from the circle going south where the applicant is going to build the road to the first intersection.

Ms. Wiegand replied no, according to the proposed proffer, he would dedicate the right-of-way for this entire stretch upon request by the County.

Mr. Kamptner asked staff to clarify that segment of Meeting Street that actually goes through both A-1 and A-2. He asked staff to show where the A-1/A-2 boundary would be for Meeting Street.

Ms. Wiegand replied that Meeting Street is bounded on one side by area A-2 and on the other side by area A-1. Further south Meeting Street is all within area A-2.

Ms. Porterfield asked staff to explain when that stretch of road that comes up to access Kohl's will be built.

Ms. Wiegand replied that would be built as a part of the site plan submitted for the indoor theater. Before the indoor theater could get their Certificate of Occupancy, they would need to have this road built to the dimensions as set forth in the site plan. The road has to be done to just south of this intersection.

Ms. Porterfield noted that the applicant was planning to complete the theater this year. She asked if staff sees this being built.

Ms. Wiegand replied yes.

Ms. Porterfield noted in the meantime the road that is going out to 29 North from the Kohl's is going to be out there. She asked if there is a stop light.

Mr. Cilimberg noted that there would not be a signal there. The signal exists at Town Center Drive and Route 29. It is a right in and right out basically for the lower entrance because it was at a median.

Ms. Porterfield said if it is a right in and right out, anyone else that is going to be accessing will have to come in at the light.

Mr. Cilimberg replied yes, that was the intention from the beginning with the original rezoning.

Ms. Porterfield asked if that entrance is built to the standard that was planned with the correct number of lanes. It is a very interesting access because one has to be in certain lanes to be able to access. Otherwise, there would be people crossing over on top of someone else. She was just wondering if there was going to be a single road that was going to go to the west and then the other lane was going to bear off to go to the Target or go on up to the Harris Teeter. That would be the main access for Kohl's.

Mr. Cilimberg noted it was Town Center Drive. What they have out there built and open is what was planned.

Ms. Porterfield noted what she saw is what they would get. She just wondered if there was anything else that was supposed to be done to that. When this is built and since VDOT does not want a road that goes nowhere, who is going to maintain the section from the roundabout to as far as that road is going to extend.

Ms. Wiegand replied that she understood that because it would provide a connection that VDOT would be able to accept that part. It is primarily the part south of there that would be a problem.

Ms. Porterfield said eventually when Berkmar Drive connects the whole thing would be acceptable to VDOT.

Ms. Wiegand replied that would be built as part of the movie theater, which was on the site plan.

Mr. Zobrist asked if Mr. Kamptner suggested the July 12, 2012 date for the proffer of cash for the transportation component.

Mr. Cilimberg replied that was the request of the applicant.

Mr. Zobrist asked who drafted it into the document.

Ms. Wiegand replied that the applicant came in to speak with staff last Monday concerning questions on other revisions that Mr. Kamptner had requested. The applicant asked at that meeting to have that sunset date. Staff put the sunset date in at the applicant's request.

Mr. Zobrist noted it seemed that a developer would want to make proffers for public transportation because it was going help his shopping center. He asked if that was why it was made in the first place.

Ms. Wiegand replied yes. Staff has no problem with a sunset date, but just wants to push it out.

Mr. Cilimberg noted it was staff's desire to try to make the sunset date usable because they don't expect the transit service to be there before July, 2012. It is going to be five to ten years, which is staff's best guess. If not in effect by July 2021, then it would no longer be in effect.

Mr. Kamptner asked what percentage of the segment of Meeting Street within A-1 would be constructed for the A-1 portion and site plan that came in for A-2.

Ms. Wiegand replied she had not looked at the site plan for A-1, but the entire road segment is shown on the site plan for the indoor theater for A-2.

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

Wendell Wood, owner of the properties, said they are in agreement with the road plan as proposed by the proffer and staff's approval. He would be happy to answer questions, but thought it was clear where the road would be built to.

Ms. Porterfield asked Mr. Wood to summarize the request.

Mr. Wood said that the road would be built 20' beyond the intersection going south at the time a Certificate of Occupancy was issued. That road would be complete at that time. The rest of the road would be completed at the request of the County as written, which they had agreed to. In other words, if Berkmar Drive was extended they have agreed to build that part. Right now if one goes beyond the Kohl's and theater entrance it dead ends or goes nowhere. It is a steep terrain with a creek.

Ms. Porterfield asked if at this time they have any plans to develop that area.

Mr. Wood replied that they do have plans, but nothing going on.

Ms. Porterfield noted that there was nothing going on in the near future. She makes the assumption that if his plans become brick and mortar, he will build the road.

Mr. Wood replied that was correct.

Ms. Porterfield asked if he anticipates if he has to build the road that VDOT will accept it if it does not intersect with Berkmar Extended or who is going to maintain it.

Mr. Wood said he did not understand the question.

Mr. Franco noted the quick answer to the question is if there is a user down there VDOT will accept the road. However, if it is just a couple hundred feet of road that goes to no users they won't accept the road.

Ms. Porterfield noted they don't have a problem with the road being maintained, and Mr. Franco agreed.

Mr. Wood said he thought that was correct.

Mr. Zobrist asked if he wanted to address the requested sunset clause.

Mr. Wood said that he would like some type of relief. This was put on by the previous owner in times that were different than today's world. He suggested that they compare it with what they saw on the map tonight. Martha Jefferson had a total liability of $50,000. Albemarle Place has a liability of $35,000. North Point has a sunset of seven years. This project, if they apply the same criteria of seven years, only has the July 12th deadline. That was with the opening of Target. Therefore, they think that is a reasonable request. Their number is a much larger number of $50,000 per year. That is a little onerous. He would really like to have some consideration. It is tough to be put in a position that your neighbor has no responsibility. They are in competition when renting something by the square foot. If the person next door does not have to pay $50,000 per year, it creates a big disadvantage. He knew of no conditions placed on Willow Glen when the County rezoned the property. He made this request because it was hard to cover the ½ million dollars. Albemarle Place was done in a more recent timeframe. Getting the job done today is not quite the same world. It puts a cloud on the title for trying to get financing. The financing is already almost impossible with the $500,000 liability. He would like to have a shorter timeframe and something similar to Albemarle Place, which is twice as large with a total liability of $35,000.

Ms. Porterfield asked if the previous owner of the property owned everything.

Mr. Wood replied no, he owned this same property.

Ms. Porterfield asked if the entity did not own anything else if possibly this was being looked at as a proffer for the entire area as opposed to just these two particular pieces.

Mr. Wood suggested that the times might have been different. When he sold the piece of property to them, which included Target, it was considered as one development.

Ms. Porterfield said Target was a part of this and the half a million dollars may have been looked at as taking care of all that area.

Mr. Wood replied yes, they have spent 13 million dollars meeting those proffers already. The public has the misconception that Route 29 was paid for by the State of Virginia or Albemarle County. Not one penny of that has been paid for by the State. Town Center Drive, which is over 3 million dollars, was not paid for by Albemarle County or the State of Virginia. He paid for it himself, which included Meeting Street dedication. It was part of these provisions. He did sell it. The new owner when he came in did agree to quite a few things that are not in the cards today. That owner agreed to parking decks and a 5,000 car parking garage on this property. That is not going to happen. It just can't happen. He agreed to $17,000 per unit. He believed since that has been adopted there has not been one project approved in Albemarle County. It virtually makes the land value zero. The land cost used to be represented at about $17,000 a unit, which was contributed to the land cost. That was pretty standard. Now they have that as a proffer, which was virtually why nothing is being done. It is not economically feasible.

Mr. Wood continued along with this project as one of the conditions they agreed to build 100 units of a mobile home park. They have done that. They were approved for 244. They went in about two months

ago to expand it for affordable housing. When they got it, approved 16 homes were allowed on one water meter. The water meter at that time cost $450 for 16 homes. The water meter today for one mobile home is $8,000 per home. There is no way they can provide a mobile home park. That is a form of affordable housing. It can't be done. They sell the homes at $40,000. Now they would have an additional $8,000 to add a water meter plus the monthly bill of about $45 per month.

Ms. Porterfield said the half a million dollars that were agreed to in the proffer was agreed to prior to his getting the land back.

Mr. Wood replied that was correct.

Ms. Porterfield said that at that time the individual who agreed to this also was developing the Target, and Mr. Wood replied no.

Ms. Porterfield said this was just for these two sections.

Mr. Wood replied that was correct. It was discussed with Target at that time there were no plans for bus service. The proffers included the whole area of Hollymead Town Center, which consisted of 140 acres. This project is 72 acres of that area, which included the Target. There are no proffers for bus service on any of the rest of the property there.

Ms. Porterfield said this originally included the Target area, which was one half of the original size. That is potentially part of the reason why the proffer is at such a large number. She was trying to see why they were looking at the half a million dollars.

Mr. Wood noted that the proffer was only being applied to this section. In other words, the owner of Target does not need to pay anything.

Mr. Cilimberg explained that originally there were four sections being A, B, C and D in Hollymead. The last of the sections to be rezoned at least three years after the first three was A-1 with A-2 later. Areas B, C and D were the first to be rezoned, which did not have the transit proffer requirement at that time. The rezoning was done in a different timeframe. It was with the A-1 and A-2 rezoning that the transit was being used in other projects and was also offered for this project. It was in part to recognize that the transit had been identified as a real need up in that area ultimately. It also had to do with the fact that A-1 and A-2 together were proposing a much larger amount of square footage of development. If they look at the Meeting Street, it was actually like a main street with a very high square footage possibility along that street as well as residential development up to about 1,900 units. There were other reasons. There was a timing aspect of it associated to the degree of development that would occur under the zoning approval at least.

Mr. Wood said they were not opposed to doing something.

Mr. Zobrist invited public comment.

Neil Williamson, of Free Enterprise Forum, noted they do not comment on projects and have no position on the proffers for this project. However, they do comment on how the policy works in the project. The Free Enterprise Forum is very concerned that staff continues to use Biscuit Run as a proffer comparison when evaluating projects. Biscuit Run is dead. The proffers that were offered with Biscuit run will never materialize. Some in the community have suggested that the level of proffers that were accepted by the owner willingly volunteered by the owner by the Code were a contributing factor to the project's eventual conversion to a State park. The Free Enterprise Forum asks the Planning Commission what their opinion is with regard to directing staff to continue or discontinue using proffers for comparison that will never be recognized.

Morgan Butler, of Southern Environmental Center, noted that he spoke with Ms. Wiegand today about this and thought he understood. He had questions particularly with respect to the first proffer change. The second proffer change is more a question of philosophy. It will be interesting to see whether they

deem its worth in forcing commitments that were made to get this project approved. As to the first request, his understanding from reading the proffers is that the proffers that are currently in existence, which are currently valid and enforceable. This applicant has an obligation to construct Meeting Street from that roundabout down to the southern end of the property. With the proffer changes proposed that obligation to construct will be softened so it is simply an obligation to reserve and dedicate the right-of-way to the County. There is a significant difference between constructing that road and simply reserving and dedicating the right-of-way, especially when they all know how important that Berkmar Drive Extended is going to be and how essential it is to the County's transportation network to get that connection made all the way up to Hollymead Town Center. He fully understands that it may not be wish to require construction of that road to its southern terminus at this point in time, but he did not think it particularly wish to basically remove that obligation from the proffers and leave it as an obligation to reserve the right-of-way. The proffers could be changed in a way that postpones when that segment of road has to be constructed as opposed to removing the obligation to construct it altogether. He understands from speaking to staff that there is likely to be proffers for Area A-2 coming forward in the near future in the next month or so. Perhaps these commitments to construct those additional portions of road all the way down to the southern boundary may materialize in those proffers. However, he did not understand why they would not do that simultaneously so they don't have this period of time where that commitment simply banishes. He did not understand the rush or why this has to be done tonight. He asked why this couldn't be done in conjunction with the proffer change to Area A-2 to make sure that commitment does not simply disappear. It does not seem to be wise policy especially considering the importance of the road in play here.

Kirk Bowers, resident of Key West, noted that he was a licensed professional engineer with a lot of land experience over the last 30 years. He stated that proffers are pretty much a standard item for any locality. Compared to northern Virginia he did not believe that the standards or proffers here are really high enough. Listening to Mr. Wood, he is probably right about Albemarle Place. They may need to go back and revisit the proffers on that site. He believed those proffers were too low. It is not fair for the public to pay for developments. Taxpayers should not have to pay for anything that contributes to development.

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

Ms. Porterfield asked that the Planning Commission invite Joel DeNunzio of VDOT to speak about this road. She questioned whether it makes sense to go ahead and build the road since it has been proffered.

Joel DeNunzio, of VDOT, pointed out that it was correct that VDOT would not accept a road that does not go anywhere. It would have to serve a public purpose. It could be residential or to some sort of commercial office or retail. He thought that down to the intersection shown that would be constructed at the Kohl's entrance they could accept that when it was constructed as long as Kohl's or the movie theater is open.

Mr. Zobrist asked for comments on the road.

Ms. Porterfield said the question was raised by one of the speakers as to if there are proffers coming in with A-2. Those proffers are going to require the building of this road much farther south. She asked why they are not dovetailing the requests and totally taking it out of this one.

Ms. Wiegand replied that staff is working with the applicant on both sets of proffers at the same time. Staff needed to get this one before the Commission for Area A-1 because of the need to have this issue about the dedication versus the construction of the road resolved in order that the applicant would qualify for a Certificate of Occupancy for the Kohl's. They could not build the road in time for that, of course, to get the Temporary Certificate of Occupancy sometime this month and the Final CO in another few months. Staff wanted to get that done first. Staff is in discussion on the second one.

Ms. Porterfield said that Kohl's is only going to be accessed by either the piece that is coming off the east/west road or by coming off Route 29 itself. Therefore, why does it need to have this other road in order to get a CO.

Ms. Wiegand replied that it does not. The current proffers require the construction of this road. It is not needed for the Kohl's. However, unless it was built it would keep them from getting a CO because they had not fulfilled the requirements of the proffers. The applicants would not be able to get the CO for the Kohl's. Staff wanted to require they dedicate it. If that is in the proffer, the County gets the dedication for the road and Kohl's gets the CO. Then at the time, that the A-2 proffers come in there will be a discussion of what to do with how they handle the construction of the section of road below that entrance at the southern most section. They don't have the language finished yet.

Ms. Porterfield noted that there are more than one half of the proffers that have not been satisfied. She asked if staff was saying all of the proffers would be satisfied in order for them to get the CO or only this one. She asked if they were talking about every single item on the proffer list has to be satisfied in order to get the CO.

Ms. Wiegand replied it was her understanding that they will.

Mr. Cilimberg suggested that Zoning staff speak to that question because they are the enforcement entity. It is staff's understanding that the void they would have in the A-1 proffers towards the ability of Kohl's to get their CO is with the proffers regarding the road construction that would prevent CO to be issued. Zoning staff can speak to that issue. This was actually requested by the County as a change for the proffers regarding the relationship of the improvements to what was being built to enable this project to be achieved.

Ms. Porterfield asked Mr. Higgins to address the concern whether they are actually going to be moving potentially to not constructing the road, but getting a right-of-way.

Mr. Higgins replied that staff does not think that is what is happening at all. What they are merely doing tonight is enabling a timing mechanism to be put in place that was simply not thought about when the original proffers were done. This road is supposed to have been built by December 31, 2010. Everyone understands that road makes no sense to be built. They don't want to eliminate the obligation. They want to phase it and time it and it would still be their obligation. They wanted to make sense out of the timing of the road construction. Without getting into detail, it is linked to many other road pieces that are going to have to be dedicated and really for acceptance prior to Kohl's getting their CO. Therefore, they have a lot more on the plate in that list of proffers than just this piece.

Ms. Porterfield asked since Kohl's has those other two access points, why is this needed for their CO.

Mr. Higgins replied that it was not needed for Kohl's. The original proffer anticipated the build out of A, which later became A-1 and A-2. They are simply looking at one building being built right now whose site plan has approved that only the two access points that will be provided for Kohl's are needed to provide the traffic control for Kohl's.

Ms. Porterfield asked why is it so important at this point.

Mr. Higgins replied that Kohl's couldn't open unless this proffer is met.

Mr. Franco noted the clarity he thought she was looking for was as a proffer anything that develops in that area is subject to that proffer. To get a CO that proffer has to be met regardless of what is going on. Engineering does not require the traffic for the road to be built, but the proffer requires that the road be built.

Mr. Cilimberg noted under the current proffer they have build the road all the way to the southern boundary from the traffic circle.

Ms. Porterfield noted that everyone expected this shopping center to be up and going.

Mr. Cilimberg said that they expected a more comprehensive development at the time. That is why they are not dealing with it in pieces rather than as a whole. They are really trying to associate the proffers with what is actually being built.

Mr. Porterfield asked Mr. Kamptner if they make the change do they have the problem that was cited by a previous speaker that they may be giving up getting it constructed in case they don't get a proffer that comes in that is going to finish it.

Mr. Kamptner replied that part of it was the timing under the State Subdivision law and under both the Subdivision and Zoning regulations. Pertaining to site plans, they can require public roads to be extended to the edge of the property line. Mr. Wood, Ms. Wiegand, and he had a brief conversation discussing the staff report. He made the point during his presentation. There may be a failsafe provision that allows the Kohl's CO to be issued. That would include some language that would allow the County to ask that portion be constructed upon the request by the County. There is no deadline imposed. If he heard Mr. Wood correctly, he was agreeable to put that language in the proffer as well. It would allow the CO to be issued so that it is not set against a hard deadline, but when appropriate for it to be extended even though there may not be a subdivision plat or site plan. That could provide the additional comfort that he was hearing some people seeking.

Ms. Porterfield asked if Mr. Wood is agreeable. If so, could they get some language drafted.

Mr. Kamptner said he could do that between now and before tomorrow morning.

Ms. Porterfield said if they adopt this, then the Commission could put something in like that.

Mr. Kamptner replied yes.

Mr. Franco said that the Commission's would be a recommendation to the Board as a rezoning.

Mr. Kamptner said that they would circulate the language to staff and the applicant and make it available to the public.

Mr. Zobrist asked if this request was going to the Board tomorrow, and Mr. Kamptner replied yes.

Mr. Morris noted based upon the question this phasing of the road makes a lot of sense and he was fully in favor of it.

Mr. Zobrist asked if he was making a motion that they bifurcate this into two issues in making a resolution with respect to the road and then coming back to the cash proffer for rapid transit.

Mr. Cilimberg pointed out that the Commission needs to make one recommendation on the rezoning. The Commission could do a straw pull regarding the two elements, but he would not suggest separate actions.

Mr. Morris noted that he was in support of this portion.

Mr. Zobrist said it sounds like there is a consensus on the road portion. He would like to have a ten minute break and come back and talk about the change of the cash proffer since that is a longer discussion.

Mr. Kamptner said he heard that the Commission was going to reach a consensus on the road.

Mr. Zobrist noted the Commission would not come back to discuss the road since they were done with it. He asked for a consensus to accept the road portion with no further discussion when it was time to vote on the rezoning. He asked for a straw pull of those in favor.

Mr. Franco asked if that was with the proffers as written, but amended to include the provision.

Mr. Zobrist agreed that it would include the provision that upon demand of the County the applicant would build the road. He noted that the Commission would come back and talk about the cash proffer after the break.

The Planning Commission took a ten minute break at 7:22 p.m. The meeting reconvened at 7:34 p.m.

Mr. Zobrist asked to direct the discussion to a certain degree since they have three options here with respect to the proffer regarding public transportation. They can leave it the way it is. They can follow the staff recommendation and put it out to ten years. They can cut that back to a lesser number if they choose to do it. On the other hand, they can modify the proffers if they choose to. Right now, it is before the Commission to make a recommendation to the Board. It is up to the Planning Commission to decide what the policy is going to be on this in trying to take into consideration what is reasonable, correct, makes good policy, and what the Board of Supervisors would want to do. At the end of the day, the Commission's job is to vet these things out and collect all of the information so the Board can make a reasonable decision.

Mr. Loach asked for guidance from staff on what would be a reasonable expectation for what the transportation needs are so they can make a reasonable decision.

Ms. Wiegand replied that when the original proffer was adopted there was no sunset date. The amount was agreed to. She did not know specifically why they chose $50,000. At that time it was to cover all of area A, which is now area A-1 and A-2. When those were split, the proffer was left in area A-1 proffers. Staff was surprised by a request for a sunset date. Staff has no problem with the idea, but the date itself was little more awkward. David Benish noted staff expected transit to be extended into this area in five to ten years. Staff was looking for a date to give a date certain to the applicant so that he would know what the date was and if he did not make it in ten years, he would be off the hook for it. That is why staff chose that date. Staff did not discuss the possibility of changing the amount.

Mr. Loach said if he heard from applicant correctly the person with the first section was not liable for any of that proffer money.

Ms. Wiegand replied that was correct and the property was not Mr. Wood's.

Mr. Loach suggested that they apply it to both and make it five years.

Mr. Morris agreed with staff completely that 2012 is too soon. That date is too short. He thought that 2021 is way out there and puts the developer in a real bad light. He agree with Mr. Loach to put a date of 2016 or 2017 on the proffer.

Mr. Zobrist noted that the suggestion was for a five year date.

Mr. Smith concurred with Mr. Morris.

Ms. Porterfield questioned whether the half million dollars was reasonable.

Mr. Loach said that there was not a sure answer out there for that.

Mr. Zobrist agreed that it was not based on what was in front of the Commission.

Ms. Porterfield agreed with the speaker that they couldn't use Biscuit Run as a comparison. She would be more inclined under the current circumstances to try to end up with a proffer that actually is paid. Instead of putting a sunset date on it, she suggested bringing the amount down to something that seems

to be reasonable and get it paid at some point. They need to make sure the County has some money to help extend transit.

Mr. Zobrist suggested that they go back and ask why the County asks for transit. He thought the reason is that they need more buses to bring people out to the shopping center area, which the developer would want. He did know where the number came from. Obviously, the amount is why out of line of the other numbers in front of the Commission right now. North Point has a ten year sunset clause, which their attorney negotiated for. He was not sure they should ask the applicant to pay for it if he is not going to get any buses to bring people out to his development. Nevertheless, he was in agreement with shortening the sunset provision. He did not think it should be hanging out there forever. If the buses are going to be provided, he thought the applicant should pay for them.

Mr. Franco asked how the North Point proffer is written.

Ms. Wiegand replied that it is a $25,000 a year for ten years. The sunset clause on that one is if no transit service comes in either ten years from the Board of Supervisors approval or seven years after the first commercial Certificate of Occupancy, which would be whichever of those two things is later. The bus service would have to start before they starting paying the $25,000 a year for ten years.

Mr. Loach asked for a comparison in the square footage.

Ms. Wiegand replied that she did not have those figures for North Point. Hollymead Town Center is larger, but they are only talking about one area, A-1.

Mr. Wood pointed out that North Point was almost as large of an area, which had residential and commercial. There is no residential in this portion of Hollymead Town Center.

Mr. Zobrist asked Mr. Wood if he had any idea of what he would like to propose.

Mr. Wood replied that they have spent 11 million in building. He questioned the developer who spoke that said that the developer does not pay. He has paid every penny of roads, water, sewer, and donated land. On this site, he donated 14 acres of the site for open space in addition to this. The man is clearly wrong that says the developer does not pay. He noted that Albemarle Place is larger in square footage. This site is 250,000 square feet with no dwelling units. Albemarle Place is 375,000 square feet and 500 dwelling units. Albemarle Place's proffer is $7,000 per year for five years.

Mr. Zobrist asked where that number is coming from.

Ms. Wiegand said she used an older version for Albemarle Place without realizing it. Therefore, that may not be accurate. They do have a proffer for expenses.

Mr. Cilimberg pointed out they have existing service. It was to supplement the service that exists in that area. In this case, they are talking about the new service in the 29 north area. There are different circumstances. It is a closer comparison to North Point.

Mr. Wood suggested that the cost be spread out to other people. Their next door neighbors have nothing.

Mr. Zobrist asked Mr. Graham to weigh in.

Mark Graham noted that he was involved in coming up with proffer amounts on all of the rezoning. He cautioned the Commission not to look at the dollar amounts. Those were one part of the proffers. They would do all the proffer together including road improvements, affordable housing, parks and everything else to come up with a total number. The parks may be high in one project and low in another. It is similar with things like transit. It was a juggling act to try to balance the amount. It was recognized that each project came up with a unique approach. He noted that some of these were done prior to the County implementing a cash proffer. That is an important point to remember. The County now has a

cash proffer policy that species how proffers with residential units are calculated. That came into place with Biscuit Run. This project was actually approved after that, although it has no residential. That is one of the reasons why Biscuit Run keeps being used. It was the first project after the County had the policy, which is still in place for cash proffers. He could not speak to the date or time line, except to say that each of the projects was individually discussed with the applicant and they offered what they put in the proffers. He would really caution the Commission from trying to compare one project to another.

Mr. Zobrist noted that they were trying to get some idea on what should the policy be. This is not a decision about money right now. It really is what should the policy be. If someone came in today with this project what would they ask him to pay for public transportation.

Mr. Graham replied that there is no answer. There is no existing policy on what the County expects for a transit contribution. That policy does not exist for the County.

Mr. Zobrist said if someone was willing to pay $17,000 per unit for housing they probably would not ask for the transit.

Mr. Graham replied yes as far as the residential recognizing that the cash proffer policy speaks to residential units. It does not speak to commercial units. If it was a residential project, they do have a cash proffer policy.

Mr. Zobrist noted the commercial has to pay for all the infrastructure.

Mr. Graham agreed that the commercial pays for the infrastructure necessary to support that development, as it is determined on a case by case basis.

Mr. Zobrist noted that Mr. Wood said he paid 13 million dollars out there putting in roads and fixing 29, etc.

Mr. Graham replied those were the improvements that when they did the transportation model for that development said these are the road improvements that must be put into place to assure that they are maintaining their capacity on that highway. It was not to improve the road and make it better than it was. It is to assure that they are maintaining the same capacity that they had than before that development was put into place.

Mr. Franco asked if residential would pay that as well. It would be for any development.

Mr. Graham replied that was correct. He just wanted to be clear on how the proffer policy works there.

Mr. Loach asked why one section of this entire development has no obligation.

Mr. Cilimberg replied that was an earlier set of approvals for b, c, and d at a time when they did not have the transit identified. It was not included in those particular proffers at that time for those projects. They did not have a cash proffer policy at the time. There is residential over there that has not been charged because it was not in place at the time either. Therefore, they were dealing with a transit proffer a little later than that point in time when b, c, and d were approved.

Mr. Graham added that Area B is where Target is located. There was a lot going on with that project. It actually had a recommendation for denial by staff and the Planning Commission that went to the Board. Many things were worked out at the Board after that. When this went through the Planning Commission, there were a lot of open questions and concerns that had not been addressed. Then the Board came up with the package they thought satisfied their concerns.

Mr. Loach said he heard staff saying not to consider money. He questioned whether they should vote either up or down on the policy for proffers in place now.

Mr. Graham said he was suggesting the Commission not to try to compare the amount that has been proffered for one packet with the dollar amount being considered here. Those are just one part of a total proffer packet that was being evaluated. They were not done with equal parts in each rezoning. It is not a apples to apples comparison.

Mr. Cilimberg noted if this project came in new today staff would use when they thought transit would be available there in the comparison. He could not speak to the amount. What they would want to make sure was any sunset would at least be established in line with when they thought transit could be established. They would not want to have a sunset that would expire before it was really practically possible for transit to be put in place. That is whey staff suggested five to ten years to be the date for when transit would be put in place.

Mr. Zobrist suggested reducing the amount for every year they don't have transit there so that at least he was not getting the benefit that he thought he was getting. Again, if he had transit there it would bring customers out to his site. For every year they don't have transit they will reduce it by $25,000.

Mr. Cilimberg said it would not take long to hit zero that way.

Mr. Zobrist noted if in ten years he would still owe one-half of it.

Mr. Cilimberg noted it was a yearly contribution. It is not a lump sum.

Ms. Wiegand pointed out the sunset date is to govern when the contributions begin.

Mr. Zobrist understood that the policy is to get money to put buses out there. It seems to be a balancing act.

Ms. Porterfield noted that the transit proffer was originally for areas A-1 and A-2. A-2 does include residential.

Ms. Porterfield recommended the Commission use the sunset date staff suggested, but cut the proffer in half. Bringing the number down to $25,000 per year is basically a trade-off for keeping the proffer out at the ten plus years so they have the opportunity to get transit out there.

Mr. Franco said that is a long time out there. He liked what had been discussed about some kind of incentive from the County's perspective that the funds may diminish over time.

Mr. Zobrist said that he would get to the exact same place if it were ten years out. If they reduced it to $25,000 a year for the next ten years that would be $250,000 they would have to pay for the following ten. He liked cutting it in half since it makes better sense. They can rationalize that acknowledging it is a whole package. It looks more like the number North Pointe is paying.

Mr. Franco said if they are looking at ten years from the Board approval, which was 2007, for the first Certificate of Occupancy that was now. Seven years from now would be 2018. That would make it more consistent with North Point instead of 2021.

Mr. Zobrist suggested that they craft the language so a motion could be made.

Mr. Franco said they don't need to craft the language since they know the first CO is coming this year. Therefore, they can recognize that seven years from the first CO is going to be the limiting factor versus the ten years.

Mr. Zobrist noted that they would just cut it in half.

Mr. Cilimberg noted it would be $25,000 per year.

Motion: Mr. Morris moved to recommend approval of ZMA-2010-00014, Hollymead Town Center (A-1) proffer amendments to include the amended proffers as included in Attachment C with the modification of the proffer dealing with transit to state that the sum be cut to $25,000 per year and the sunset clause timeframe go to July 1, 2018.

Mr. Franco pointed out the amendment for proffer 1 needed to be added.

Mr. Kamptner reiterated that the provision would allow the County to require construction upon request by the County. Staff will fill in the details using standard language.

Ms. Porterfield seconded the motion.

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

Mr. Zobrist noted the ZMA-2010-00014, Hollymead Town Center (Area A-1) proffer amendments would be forwarded to the Board with a recommendation for approval as included in Attachment C, amended as follows:

1. With the modification of proffer dealing with transit to state the sum be cut to $25,000 per year and the timeframe go to July 1, 2018; and
2. Proffer 1 (Road Improvements) amendment to include a provision that would allow the County to require construction upon request by the County. Staff will fill in the details using standard language.

ZMA-2010-00001 Pantops Ridge
PROPOSAL: Rezone approximately 38 acres from PD-SC Planned Development Shopping Center, which allows shopping centers, retail sales and service uses and residential by special use permit (15 units/ acre) to R-15 Residential zoning district which allows single family attached/detached uses and multifamily residential uses up to 15 units/acre. Proposed number of units is 566 for a density of 15 units/acre.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential - residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses; Urban Density Residential - residential (6.01-34 units/acre) and supporting uses such as religious institutions, schools, commercial, office and service uses; Greenspace.
ENTRANCE CORRIDOR: Yes
LOCATION: 1998 Hansens Mountain Road, Intersection of US Route 250 East and Hansens Mountain Road. Access is proposed from a relocated Hansens Mountain Road and through 106 Viewmont Court.
TAX MAP/PARCEL: Tax Map 78, Parcel 53; Tax Map 78B-A-4
MAGISTERIAL DISTRICT: Rivanna
(Claudette Grant)

Ms. Grant presented a Power-Point presentation and summarized the staff report for ZMA-2010-00001 Pantops Ridge.

The applicant is requesting to rezone approximately 37.5 acres from Planned Development Shopping Center (PD-SC) to Residential zoning district (R-15) to allow 562 dwelling units for a density of 15 units per acre. No plan of development has been provided.

An extension of Viewmont Court and a relocated Hansens Mountain Road will be a safety improvement for Ashcroft residents and can address many of the traffic impacts of the development. The existing entrance to Hansens Mountain Road will be closed. The proposed Hansens Mountain Road would allow vehicles from the development and the Ashcroft neighborhood access to US Route 250 through Glenorchy at an existing signalized intersection at Peter Jefferson Place. The current vehicular access for this site and Ashcroft is an un-signalized intersection at Hansens Mountain Road and Route 250. As mentioned in the staff report these proposed improvements will depend on acquisition of right-of-way from

property owners in Glenorchy because currently there is not sufficient right-of-way for the improvements. A traffic study as requested by the County Engineer and VDOT has not been provided.

The applicant's approved final site plan for Gazebo Plaza has been approved for a 183,000 square foot shopping center. A lot of parking would need to be provided. Large retaining walls would also be needed.

A 2006 traffic study described approximately 9,500 vehicles per day would be generated from a shopping center. The Pantops Master Plan does not recommend a shopping center at this location. The property is designated Urban Density Residential around a Central Green Neighborhood Density Residential adjacent to the existing Glenorchy Subdivision and green space along the eastern property line. Most of the property is shown as Neighborhood Density, which is intended to have between 3 to 6 dwelling units per acre. Urban Density Residential areas are intended to have a density between 6 to 20 dwelling units per acre with possibilities of up to 34 dwellings per acre under a planned development approach. As mentioned in the staff report, the Pantops Master Plan suggests approximately 300 units be built on areas designated as Urban Density and Neighborhood Density. There are 562 dwelling units proposed. This property is located in a residential area and the Master Plan recommends maintaining the residential character. As described in the staff report, the proposed residential use is more in keeping with the Land Use Plan than the approved commercial use. The proposed road improvements related to Hansens Mountain Road relocation will be a safety improvement and the residential uses less intensive than the approved commercial use.

Factors Favorable:

- The residential use is more in keeping with the Land Use Plan than the approved commercial use.
- An extension of Viewmont Court and a relocated Hansens Mountain Road will be a safety improvement for Ashcroft residents and can address many of the traffic impacts of the development.
- The residential use is less intensive than the approved commercial use and is expected to have less of an impact on surrounding residential developments.

Factors Unfavorable:

- Proposed density is not in keeping with the Pantops Master Plan.
- There is no commitment to retain Greenspace as shown in the Pantops Master Plan.
- No plan of development that could allow determination that goals from the Comprehensive Plan, including the Pantops Master Plan, related to environmental preservation, design around a Central Green, provision of amenities, provision of a mixture of housing types, and a pedestrian orientation are met.
- No traffic study has been provided. Without a traffic study, requirements of the state's Chapter 527 traffic study regulations have not been met and needed transportation improvements resulting from the development cannot be confirmed, including the proposed relocation of Hansens Mountain Road.
- The proffers obligate the County or VDOT to acquire any needed land for the relocation of Hansens Mountain Road utilizing funds proffered by the applicant without a commitment by the applicant to attempt to acquire this land themselves. This puts the County or VDOT in the position of potentially needing to condemn land owned by multiple property owners in order for the proffer to be executed.
- There is no commitment to accommodate transit in the development, nor is there a commitment of any funding for any public transit services.
- There is no contribution to providing affordable housing.
- There is no commitment to off-set the development's impacts on public facilities as stipulated in Appendix B of the County Land Use Plan entitled "County of Albemarle, Virginia Cash Proffer Policy for Public Facilities."
- Proffers are in need of substantive and technical changes.

Recommendation:

Staff believes that a residential development proposal could be made in a location that would be in keeping with the County's Comprehensive Plan and also address impacts and meet expectations for design. However, based on the factors noted as unfavorable in this report, staff recommends denial of this rezoning.

Staff noted that Glenn Brooks and Joel DeNunzio are present to answer questions.

Mr. Zobrist invited questions for staff.

Mr. Morris asked if work has begun on the shopping center site such as bulldozing, clearing and so forth for the Gazebo Plaza site.

Ms. Grant replied that a WPO has been approved.

Mr. Loach said when staff reviewed this application for principles under the Neighborhood Model out of the 12 according to his calculations nine are not met, two can't be evaluated, and one leaves substantial revisions to the proffers are needed. Essentially, there is no way, shape, or form that this proposal meets any of the objectives of the Model Neighborhood.

Ms. Grant replied that is correct, not at this time.
Mr. Zobrist opened the public hearing and invited the applicant to come forward and address the Planning Commission.

Valerie Long, representative for the applicant Richard Spurzem and Neighborhood Properties, presented a PowerPoint presentation to explain the proposal.

- As a brief summary of the history of the project she noted the property is currently zoned Planned Development, Shopping Center. It has been zoned that way for over 30 years since the County's comprehensive rezoning in December 1980. Prior to that it was zoned B-1, Business. There was a site plan that was approved for the property in October 1980 that was for the approved shopping center for 183,000 square feet. It was designed essentially to be a twin of the Albemarle Square Shopping Center, which is on 29 North. It is the same size footprint as that. It was not developed for many years. Mr. Spurzem acquired the property about 12 years ago and wanted to develop the property for residential uses that was consistent with the Comprehensive Plan at the time.
- In response to Mr. Morris' question, site work has begun for the shopping center. It is not going on at the moment, but in early 2008, there was a fair amount of site work that took place at the property. It was actually reflected in the aerial photograph that was taken at the time. It is shown in a copy of the aerial photo. This was the site plan necessary to build the shopping center and the significant amount of grading required for that. That work has ceased for now and the property has been stabilized and reseeded. She believed the owner has received portions of the site bond back. It is dormant for now, but site work did take place at one time.
- Mr. Spurzum wanted to develop the property for residential dwelling uses. He is a residential apartment builder primarily. In 2003 at a time that was prior to the Pantops Master Plan being in existence the property was designated on the Comprehensive Plan for a mixture of residential uses as well. It was mostly for high density residential. They proposed a rezoning in 2003 if it had been approved, but it was ultimately deferred, it would have permitted up to 900 residential dwelling units for primarily townhouses and apartments. It also contemplated an independent living facility and also 50,000 square feet of commercial space. It also included at the time some proposed road extensions to relocate Hansens Mountain Road along the southern boundary of the property. That was not something that could be achieved at the time. Mr. Spurzem did not own the necessary land to make that work. There was not feasible way to do it. It was shown as a possible future connection. There was certainly no guarantee.
- Another page of the plan, which was a concept plan, that was submitted at the time showed structured parking, an independent living facility, and so forth. This proposal came to the Planning Commission in 2002/2003. The problem with the project was that the application would not have permitted or VDOT would not have permitted a signal at this intersection, which is

necessary to make that function well. It was too close to the existing signal and the off-ramps from the interstate. They would have had a situation where the current situation would have continued. They would have had more traffic using it. VDOT determined that it was not safe. The County did not feel it was appropriate to approve and essentially said to the owner they need to go out and fix this problem. At the time VDOT has prepared a 2003 Route 250 East Corridor Study that included a recommendation for this road relocation project to have Hansens Mountain Road to be relocated through the bottom of the Spurzum property and come out on through the Glenorchy neighborhood and come out at a signalized light at the existing signal. That was on one of their plans for 2003. There was no way to implement that concept at the time.

- As a result, at that point Mr. Spurzum had one and only one option for development of the property. That was looking back to the 1980 approved shopping center. He did entertain a number of other development proposals from other interested buyers, but none of those was permitted by the zoning. The zoning is PD-SC with an approved shopping center site plan as the application plan. Without amending the application plan there was literally not a single other use that could be permitted legally on that property. There were many efforts. A local church very much wanted to build their church facility on the property. That was not consistent with the current zoning. Since that was not allowed and other options were not allowed, the large rezoning would not be approved without a solution to the traffic problem. The only legal use was to construct the 1980 shopping center. So Mr. Spurzem moved forward and ultimately after many years obtained final site plan approval for the shopping center. This is in place and the bonds have been paid, and site work has begun. There is no desire to build this project. This was the only option.
- Mr. Spurzem has come back and says what he really wants to do is a residential community. That is what the Pantops Master Plan contemplates and what they understand the neighbors would prefer over a shopping center. Many of the other property owners in that area very much do not want a shopping center and would much prefer to see residential. They have been working for the past year on the residential rezoning proposal. She reviewed a rendering by the project engineers of the approved shopping center project trying to provide a little bit of a three dimensional perspective. Among other things, she pointed out the retaining walls. That is why so much site work was being done in the one area for the grading to get the retaining walls necessary to hold up the parking and so forth.
- The proposed rezoning is for entirely residential units. There would be no commercial of any kind. There would be a maximum of 562 dwelling units, which is consistent with a dwelling unit average of 15 per acre. It would be a mixture of unit types of single-family detached, single-family attached or townhouses, and apartments. It would also include the relocation of Hansens Mountain Road at the applicant's expense. They also have a number of proffers including the stream buffer; a trail that would be constructed in the northern portion of the property at the owner's expense; and a proffer that the site plan for the shopping center would be abandoned. They have also proffered architectural standards to address the Monticello view shed issues.
- She pointed out on a copy of VDOT's Route 250 East Corridor Study the current Hansens Mountain Road alignment. It proposes to obscure the existing road bed and essentially take it up and then shows the proposed relocation of Hansens Mountain Road through Glenorchy. On a copy of the Land Use Map in the Pantops Master Plan, which was approved a few years ago, she noted the transportation improvements. She noted the proposed relocation of Hansens Mountain Road. It was the subject of much discussion when the Board of Supervisors was considering the Master Plan several years ago. Ultimately, the Board of Supervisors voted to include this as a recommended road improvement project. It is on the list of implementation plans and is recommended for construction.
- If this project were approved, full blown road plans would need to be designed, prepared, reviewed, and ultimately approved by VDOT. The current plan is tempting to demonstrate that it is possible to build it and keep the same alignment. No houses would be taken. No individual lot owner would lose a single square foot of land. They have worked hard to keep the same general alignment of Viewmont Court. The curves in the road actually help slow down the vehicles. They have worked hard with VDOT to get them to agree to the speed limit being 25 miles per hour instead of 45 as VDOT originally wanted. They have included some traffic calming devices.
- One of the issues in the staff report is that there is not a plan of development for this project. This is a R-15 project and the Zoning Ordinance does not require a plan of development for a R-15

project. It requires them for Planned Districts. However, technically or legally it does not require them for a R-15 project. There are a large number of apartment complexes in the County that have been zoned R-15 and were built as essentially by-right projects without any plan of development. There are many beautifully built projects, which includes Jefferson Ridge that was designed and built by the applicant. It has things like attached garages, beautiful landscaping, etc. It is a very high quality development and extremely successful project. Another R-15 development is the Woodlands of Charlottesville, which has very high quality amenities provided. Carriage Hill is another example of a R-15 development with no plan of development.

- They think what is important to keep in mind with this project is the big picture issues, which staff lists as favorable factors. She did not think anyone in the County wants a shopping center use. She asked for a favorable recommendation for the residential development with no commercial. They are proposing to fix a challenging road and traffic situation. They acknowledge that many residents along Viewmont Court have significant concerns about the road relocation proposal, but that issue has been decided by the Board when they approved the Pantops Master Plan. They are merely trying to implement that plan.

Mr. Zobrist invited public comment.

Stan Livecott, Resident of Ashcroft, said he was not opposed to development. However, this property has a history, which they are all aware of. He refers to the property as the white elephant. The reason they don't have a shopping center, which he was opposed to, was that it was not doable. The owner was not able to unload the property after he got all of the approvals, which is why that went away. The density is lower than what he is asking for. He asked why they would even consider going to that extreme since they had all that public input. There has been no presentation about traffic as relates to the density. He asked why there is no site plan.

Mr. Zobrist asked that he add things that are new items not already set forth in the staff report so the Commission can have all of the facts when they make a decision.

Jean Wibble, resident and homeowner since 1972, opposed the request. She was concerned with the project because of the traffic. It was not only the 562 houses proposed, but that houses have wives, husbands, and children. They are talking about 1,000 or more people added to the existing traffic. The lights will reflect on all the other houses and the noise generation. It would be a worse problem getting out on to Route 250. Currently they have to wait for many red lights before they can get on to Route 250 before adding all this additional traffic. They have made no provision for the upper road, which is East Haven Court where she lives. Her property is in the corner on the big map and backs up all of these houses. There is no place for people to walk on the road. The road goes straight up the mountain. After reading everything, she did not see any clear plans in anything that he had. She opposed the request since the proposal would only hurt the Glenorchy residents.

Mr. Zobrist noted that Mr. Dunberg had sent in a letter. He asked if he had additional information.

Ron Dunberg replied that he had additional information.

- His family moved into 105 Viewmont Court on the Fourth of July in 1976. This is the third time he has appeared before this body and subsequently the Board of Supervisors to defend the integrity of Glenorchy and Viewmont Court. This is the oldest residential neighborhood in Pantops. On the issue of traffic, he would very briefly discuss it. It is in the plan to reroute Hansens Mountain road through Viewmont Court, which for all practical purposes will destroy the community. There is no way to make that safe regardless of the speed limit.
- He asked to address another issue that rarely comes up when this body or the Board of Supervisors is considering commercial or residential development, which is the issue of public security. They know from the press that crime in the County is increasing. He regrets to say he can personally attest to the fact that the property crime on Viewmont Court is on the rise. He can also attest to the fact personally that the Albemarle County Police Force is inadequately staffed to respond to telephone and/or electronic reports of crimes. When he called ten days after submitting the electronic report and asked why he had not heard back as promised within 72 hours or ten days he was told because they don't have the staff. It is a proven fact that the

increase in population results inevitably in the increase in violent and property crime. He was not talking about the rate, but the number of crimes. They are talking here about a substantial increase in the population of Pantops without any effort to increase police protection. There is no doubt in his mind that the substantial increase in the population will result in an increase in violent and property crime. Where is the effort to increase police protection. It is not there. Development commercial and residential continues in pace in Albemarle County and rarely do we hear a discussion of the issue of public security. He thought it is time to do that.

- He had a couple of brief points to make about the plan. It is a fiction that they are being accommodated for property lost to the entrance from the rerouting of Hansens Mountain to Viewmont Court. He will lose shrubbery and a custom built mailbox/newspaper drop. What he gets in return is dirt roughly the consistency of hardtop if not cement. That is not a fair compensation. He has not heard yet why the entrance to Viewmont Court from 106 has to be located where it is depriving him of some of his property when it could easily be moved just a little bit in the other direction. If the developer does not destroy Glenorchy, he will fundamentally change the characteristics and the character of Glenorchy. He felt he should be asked to compensate the homeowners along Viewmont Court for landscaping that would help muffle the sound of the dramatic increase in traffic that will result, if indeed it is done through Viewmont Court. There is some debate about where the Board of Supervisors stood on this issue three or four years ago.

Kirk Bowers, resident of 106 George Rogers Road in Key West Subdivision, said he was a long term resident of Albemarle County. He had prepared comments this evening. He opposed the Pantops Ridge rezoning application for three 3 reasons:

1. Roads, insufficient capacity on their road systems.
2. Utility and infrastructure – Do they have the capacity for water and sewer to add this area to the development.
3. Environmental impacts – This includes the destruction of the forest, trails, and the additional impervious areas, which creates the additional runoff and storm water management issues.

He would like to say that they just don't need or want any large residential development in the Pantops community area. He was fairly confident in saying there is no one in Pantops who really supports any large developments. He suspects that most people live in the County where they don't have to face the traffic conditions like they do in Pantops. Everyday traffic is backed up from McIntire Road to the interstate. It has been getting worse and worse. He does support the County staff recommendation to deny approval of Pantops Ridge rezoning application. Further, he would like to encourage the Commission not to support this development. It is crucial to their community. They have already been over developed and need to stop.

Dennis Roethlisberger, resident of Key West, said when he moved to Charlottesville 15 years ago there were three stoplights between his house and I-64. He traveled the state frequently and so wanted a house close to the interstate. Now there are eight stoplights between his house and the interstate. His wife frequently resorts to cutting through the Food lion parking lot in order to circumvent the 250/20 interchange light in order to get home. This situation will only increase with the development of more residential property out beyond that point. He recommends that the board not approve this zoning permit and cancel any plans for development of that area.

Haley Blake-Scott, previous resident of Crozet, said he moved to Pantops to the Ashcroft neighborhood. It does appear that Mr. Spurzem bought a piece of land zoned for a shopping center and now decries his need for a shopping center and wants to build lots of houses, which is what he does. He was not opposed to building houses, but they are talking Old Trail type density in about a tenth of the space. He reiterated that the traffic situation on Pantops is unconscionable at times. In a normal traffic pattern, it would take ten minutes to get to work and often times it takes 40 minutes for no apparent reason. They are talking in a density of this level of adding anywhere to 600 to 800 cars in a small area. They are going to be taking a bad situation and making it substantially worse. There is no plan for this. He was not opposed to residential housing in this area, but he thought at this density it is just insane.

Paul Beyer represented for R L Beyer Construction who builds houses in Ashcroft and Liberty Land, the developer of Ashcroft. There were two points expressed tonight.

- The main point is just to reiterate how badly they need the connection through Glenorchy. There is a reason why the connection was shown on the Pantops Master Plan. There is a dangerous intersection that comes out where Hansens Mountain Road comes out onto 250. It would fail on any safety inspection. It is a dangerous intersection where a traffic accident will occur at some point. Frankly, there is no real solution to it besides rerouting the road through Glenorchy. He fears that at some point if Mr. Spurzem was not opposing this road VDOT would have to step forth at some point and do it. It would be a major accident that would happen and then the fire would be lit and this road would be needed. At that point Mr. Spruzem has bought a house through his road is going to be rerouted. He is proposing it as part of the proffer. Ten years from now or if Mr. Spurzum goes away and someone lives in that house they are facing imminent domain in order to reroute a needed road through that subdivision. It is a sensitive issue.
- He would point out there are 150 families already in Ashcroft who could fill up this auditorium. He also represents 130 homes that are going to be built in Ashcroft, which will be double what is there. It is a very pressing solution that affects a great number of families. He would asked regardless of the rest of the property that they give Mr. Spurzem an unequivocal answer that they support the location and concept of the road and then whatever else happens to the property. The road is paramount for Ashcroft and for the future residents and safety of the families.
- The second point was that he felt like Mr. Zobrist. He attended the meeting last night at the Charlottesville Tomorrow. He felt that they need walkable communities and mixed use. There is a reason they have urban density and promote that. He felt like some neighborhood shops here would be great. He was sure that Mr. Spurzum was going for something easy here because it was a contentious project.

Andrew Dracopoli, representative for Worrell Land and Development Company, said they sold the land to Mr. Spurzum and made the following comments.

- They bought the land from Dr. Hurt for what became Peter Jefferson Place. It was a part of what Dr. Hurt owned. They knew when they bought it that the property had the Planned Development Shopping Center zoning. However, nobody ever considered that was a viable option for the property. In fact, one of the first things that he did when he came to work for Mr. Worrell was in the 1989 work on the Comprehensive Plan for the density of the property to be as a residential property. It clearly needs to be a residential property. The County encourages Urban Density in the urban growth area. It is within the water and sewer district. When they widened 250 in 1990, they extended the sewer line to the property so it could hook into the pump station that they have at the Peter Jefferson Place. It clearly needs to be residential.
- The other part is that the road issue was a huge issue. Eventually there is going to be a major accident there that is going to force the issue. He thought that this addresses that and the only way that it is seen feasible both by VDOT and the County was through the master plan process. The other thing he would like the Commission to think about in the back of their mind is that everybody has said that nobody is going to build a shopping center. However, if that really becomes the only option somebody is going to build that shopping center. It may not be Mr. Spruzum, but somebody will. That shopping center has 60' high retaining walls. It is a monstrosity.
- He asked to think about if at the end of the process they deny Mr. Spurzum and effectively prevent him from doing any residential on this property that shopping center would be built. Then they are going to look back on it and say did they make the right decision. They will question whether they were nitpicking on their rules about having pre-approved application plans and everything like that. This is a down zoning from a Planning Development Shopping Center zoning to a residential zoning. They know that rezoning for R-15 do not require an application plan. He asked why they were requiring one for this site. He thinks they really run the risk of creating something a monstrosity that they really don't want and which nobody in the County will thank them for. That will be the only use for this property.

Richard Beyer, owner of the Ashcroft development, noted that a minor point that has not been brought up is that as far as the access in Ashcroft is this is the only place between the interstate and the top of the

hill where the Liberty Gas Station is that does not have the benefit of the safety of a light. Everything else does have it one way or the other so they can get out at a light.

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

Ms. Long asked for rebuttal time. She made the following comments.

- This project has a long history and she wanted to make sure the Commission had the benefit of the bigger picture of it there just to reiterate some of the things and to respond to some of the comments that were made. They understand the traffic issues in the Glenorchy neighborhood would be different than they are now obviously. She would like the Commission to keep in mind that it is not a matter of the traffic now versus it can't stay that way. If the road is relocated, which VDOT and the County have said that they want, it is a matter of the shopping center being in place with all of what Mr. Dracopoli described as the monstrosity of the retaining walls and a use that absolutely no one wants. The shopping center does not permit the relocation of Hansens Mountain Road. If the shopping center is built and continued the situation that Hansens Mountain Road at the cross over at Hansens Mountain Road and Route 250 is required by the site plan approval to be closed. They will end up with a situation where Hansens Mountain Road becomes a right in right out only intersection. Which means that anybody trying to exit Hansens Mountain Road and go east towards the interstate will have to go west or towards town and go way past where they want to go and make a U-turn. The site plan requires that no U-turn signs be posted. It will be a disaster for everyone. There will be many U-turns going back and forth in front of Pantops.
- She did not dispute the comments that were made by several of the speakers about the traffic situation at Pantops on 250 now. This will exacerbate the problem beyond everybody's worse nightmare. They think that the proposed solution they have brought forth tonight is a reasonable one based on the circumstances. It is not ideal by any means. It is the only solution that anyone has brought forth that is viable. It is what VDOT says they want. It is what the County says they want. The owner is proposing to build that relocation at its expense entirely, which is estimated between 3 and 4 million dollars, depending on a number of variances. As stated by the Ashcroft developers, there are over 135 residents there now and over 100+ lots that are coming. There are a number of lots at the Shadwell Mountain Estates neighborhood that use Hansens Mountain Road. There will be people using Hansens Mountain Road regardless of whether this project is approved. It will be all of those residents plus the customers of the shopping center exacerbating an already difficult traffic situation. The alternative is if they will work with the applicant and approve the R-15 rezoning, there will be instead of a disastrous shopping center and all of the attendant negative impacts that come with that, there will be a residential community and there will be a relocated road at the owner's expense. The owner is the only person who has stepped forward to solve this traffic problem. There is no one else who is willing or able to. Certainly, the County does not have the funds at the moment. VDOT does not have the money now and does not appear to have it anytime in the future. She did not believe the Ashcroft residents are interested in being assessed for the 3 to 4 million dollars it would cost to build the project. The owner is proffering to build it himself. She is asking that the Commission keep that in mind.
- Again, she thought that Mr. Dracopoli's points were very well put. Whether it is worth spending more time discussing some of the smaller issues she was not sure. She was not saying they were irrelevant, but that these issues were smaller. The proffer plan is not required. They have a list of proffers and addressed a number of those issues. They don't think a proffer plan is necessary for the Commission to make a determination that a down zoning from a shopping center is preferable to having a plan. They think everyone can agree that a residential community, even without any proffer plan, is better for the overall community than a shopping center, especially a shopping center without the relocation of Hansens Mountain Road. That is the most simple situation.
- There are a number of other benefits. The grading involved to create that shopping center is substantial. The trucks required to bring that dirt in and out all day long will be a disastrous for the neighborhood. By comparison, a residential community can work with the existing grade much better. Obviously, some amount of grading will be required, but substantially less. No retaining walls. They have proffered architectural standards. They have proffered a lighting

standard. They have proffered a trail. All of those that would not come with the shopping center. The shopping center will have the retaining walls. It will have lights in the shopping center parking lot that could create an adverse impact on the neighbors. There will be truck deliveries coming every single day creating noise. It will be a terrible view shed issue for both the Ashcroft residents and certainly from Monticello as well. There are many other issues she would be happy to elaborate further on.

- They understand that it is not a perfect proposal. They have worked very hard over the last year to address as many of the comments from the staff as possible. That is why they revised their proffers on a number of occasions to address the issues. They went absolutely as far as they could short of proffering the plan. They think again in the big picture in the larger community the community is much better with 562 dwelling units and a relocation of Hansens Mountain Road in a way that can be done in a sensitive fashion at no cost to the County. That down zoning is far superior and it outweighs all those negative factors that are listed in the staff report.
- One final point with regard to the cash proffer policy. The cash proffer policy includes a provision entitled exceptional circumstances. It is a provision that says in essence that certain projects are unique. It left a door open for the Board to accept a rezoning projects for residential use that were unique and different. She did not think this was contemplated at the time. However, it talks about unique circumstances of a proposed development that either mitigates the development's projected impact on public facilities and creates a demonstrable reduction in capital facilities needs. In this case, the road relocation meets that test. As somebody stated, the option really becomes the road has to be fixed at some point. She would think everybody would agree. One major accident there and another major accident there and VDOT will require it. Her final point is that the mitigate the impact because they were willing to build the road now at no cost to taxpayers. If it is not built now by the owner, her understanding is that it will be built someday at significant cost to taxpayers and they believe they fit into that circumstance.

Mr. Zobrist noted that the matter was now before the Commission.

Mr. Morris noted this request was in his district and he agreed with a number of people, specifically Mr. Dracopoli, in that he definitely opposes a shopping center here from looking at the shopping center and the projection as to the amount of traffic that it would bring about. This is going into a right in right out operation that would be extremely dangerous with nearly 9,500 vehicle trips per day. There are a number of people in this room that helped with the Pantops Master Plan. The Pantops Master Plan clearly says that this area should be residential and a combination of both urban and neighborhood density. He believed that Ms. Grant explained exactly what that was. There is no clear measurement in this document that says how many acres of the overall plot should be urban, green space, green site, and so forth. He thought that could be worked out. He was against the R-15 overall. He thought they need a plan that gives an idea of exactly what they are looking at. There will be a neighborhood or a shopping center in this area. He thought it would behoove them to look at really how they are going to make this work. Again, if they were here and working on the plan as a lot of the people present were they saw that this was going to be problematic, but it is part of the plan.

Mr. Loach said that obviously Ms. Long is incorrect in her assumption that the community is in support of this project. He finds it odd, too, that the developer would show up and define his current project as a disaster. He wondered if the first time it came before the Planning Commission and Board if it was described in similar terms, which he doubts. Ms. Long made several references in her presentation to the master plan, yet did not bother to bring in a plan that is consistent with the master plan. In regards to Mr. Beyer who came up and discussed the presentation that was given the other night at the Charlottesville Tomorrow he would point out that the essence in his ending remarks the one point that he made very specifically was that density could not occur without good design and without good design it would fail. What they are seeing here is not a design consistent with the master plan that the neighborhood had spent a considerable amount of time. He was not going to support this proposal.

Mr. Smith questioned who would use the shopping center if they only had right in and right out. The road in and the road out would be very detrimental to the neighborhood. He did not know any other way to do it. He would not want it if he lived there. He would be opposed to the County having anything to do with any condemnation of property to help build the road.

Ms. Porterfield pointed out that Mr. Morris and she had the abutting magisterial districts. The Scottsville Magisterial District goes out as far east as the edge of the County. Route 250 is a major problem. It is not going to get any better. It was a big consideration in developing the Village of Rivanna Master Plan. This particular area of Route 250 that starts basically east about where the curve comes around and where one can buy ice cream just off of Route 250 and heads to the west going through Pantops is becoming a real bottleneck. She believed that the plan is that the median portion of Route 250 that opens at Hansen's Mountain Road will be closed. When it is closed, Hansens Mountain Road basically becomes a right out and right in. When leaving their homes in the morning, Ashcroft residents can make a right turn. However if they want to access the interstate, they will need to make a U-turn at Peter Jefferson Parkway. If the people in Ashcroft want to get back to their houses from work downtown or on Route 29, they will have to drive past Hansen's Mountain Road, underneath the overpass and go down to about the Comfort Inn to make the U- turn. She would appreciate if they ask Joel DeNunzio come up and talk about it. Her reason for saying this is that it is very, very important that they work with this applicant. Not everything is wonderful with regard to Route 250. The ability to build Hansen's Mountain Road where it can be brought out to a signalized light is very important to the people in Ashcroft, the people on the cul-de-sac that it is going to come through, the people in this new development, and the people who are coming and going through the area by the I-64 interchange and Pantops. She suggested they figure out how to work with this individual to achieve the needed connection for Hansen's Mountain Road.

Mr. Loach noted that was exactly what everybody just said. He asked what is the problem.

Ms. Porterfield pointed out they did not support the proposal. She suggested they should work with the applicant to figure out how to keep the proposal alive and work with it.

Mr. Franco noted he heard everyone saying they could not support this proposal as is, but they are not saying they can't support any proposal. He echoed some of the comments he had heard.

- With respect to the master plan this has been one of the issues he has raised all along with the master plans that he had been involved with. They need to look at what kind of threats or problems are associated with it. He thought the decision to route the road through in the direction the applicant has proposed is something that has been decided. It is going to happen at some point in time. However, the density and use is something that is a liability of the master plan because it is a shopping center. He thought that the residential is better. He could support residential there recognizing that R-15 is higher than the master plan. He was still comfortable with that from the aspect that they are getting rid of the shopping center use that he did not want to have in that location.
- There is a statement they need to adhere to what the Code calls for in regards to the submittal of a plan. He resented over the years having new rules created along the way. Since R15 does not require a plan he thinks the important aspects they are looking for is some of the buffers and trails that are being proffered. He would like to see a plan, but was comfortable not having one simply because it was not a requirement of the Code.
- His biggest concerns with this development will be with respect to the proffers and trying to find the right balance that works to encourage the use and the change over of use, but to get some of the cash proffers and the proffers for affordable housing that are required. From what he has heard, the road improvements are 3 to 4 million dollars, which is the best guess. He thought the upper end of the density they are probably looking at over 7 million dollars in cash proffers in accordance with the current policy. They are not assured of that high density, but are probably somewhere between 5 to 7 million. Therefore, there is an excess in cash proffers above and beyond the road. He thought they should get credit for rerouting the road and the public improvements he is making, but it should not wipe out full expectation of the cash proffer.

Mr. Zobrist suggested that they should ask the applicant to defer and come back for a work session, which he was surprised that they did not have already. It would have taken a lot less time to come in on a work session to work with the Commission to find out what they think they can come up with.

Mr. Franco said he was not sure if there was a benefit to the work session if they are looking for design aspects.

Mr. Zobrist pointed out that this is fairly controversial. It has been around for a long time. He thought that there is consensus that they are all very happy with the idea it is not going to be a shopping center so let's have residential up there. The question is what are the components of that going to be and how do they get to that point in time. The Commission can turn this down and tell the applicant to go make another application and delay the process, or they could have a work session and work it out to see if they can come up with a consensus. He agreed with Mr. Franco that this is a good idea, but just not the way it has been proposed.

Mr. Loach noted in the community master plan the County decided to use the Neighborhood Model in judging applications that come before the Planning Commission. In this request out of the 12 there are 9 not met. It has to be consistent with the Neighborhood Model, which is the way they are judging these. The growth area residents have the right to expect that. That is how these things are going to be looked at.

Mr. Franco said with a zoning classification that is an option for R15. The Neighborhood Model standards were set to be tools to evaluate projects with. He did not know if it was fair. There are a number of the principles that can't be addressed because the plan has not been proposed. That does not mean that they won't be addressed in the future. For instance, the pedestrian connections or the walkability it says it has not been accurately addressed. Yet they are going to find that at least sidewalks in those pedestrian mode areas will be provided because the Subdivision Ordinance is going to require curb, gutter, and sidewalk in there. Granted they don't know where it is going to be, but the orientation is going to be a little bit of a question because they are going to be using the existing setbacks. He was not sure that they are ever going to find the underlying cause of that unless they start to require a plan or a different zoning classification.

Mr. Zobrist noted that they have ARB to consider here, too. This is on the Entrance Corridor. He was not prepared to take any action other than to say come back for a work session or if they want a vote, they will. It is entirely up to the applicant.

Mr. Franco said he was not prepared to make a motion yet. It looks like the consensus here is not to move it forward with a recommendation of approval at this point in time. Before they take that action, it would be very helpful to be more specific to the applicant on what they like or don't like about what is being proposed so that they can clearly understand where they stand. He heard some of the speakers mention the road and the rerouting of the road. If they feel that is off the table because of the master plan or other components that they have heard tonight, then he thought that they need to state that. He clarified that it was off the table in the sense that it is going to happen and they support that. It is a given. Then they can move on to what concerns they do have. Otherwise, the work session is not going to be productive.

Mr. Morris asked if it would be of benefit to ask the applicant to come forward and get their input if they are willing to discuss this. If they are adamant on R15, then that is a deal breaker for him.

Mr. Zobrist invited Ms. Long to address the Planning Commission.

Ms. Long noted that the applicant at this point feels very strongly about the issue of the application plan. The current ordinance does not require an application plan for a R15 District. They are asking to be treated fairly here by the legal rules in regards to the ordinance. That is all they are asking for. They certainly appreciate the comments and feedback. It is helpful. However, at this point the applicant is not interested in discussing a plan essentially affirming Mr. Franco's assumptions.

Ms. Porterfield said she was having a real problem in why they absolutely can't deal with it as an R15. He is proffering certain things. They could ask that he proffer a few other things that would handle some of their expectations if it were in a different classification. She opposed throwing the whole baby out with the bath water.

Mr. Zobrist replied that they were not throwing it away. This is a recommendation to the Board. He was not willing to deal with it as a R15.

Mr. Franco asked what is the concern and whether the 562 is too high.

Mr. Zobrist replied that they have a master plan and Neighborhood Model and they ought to deal with it in terms of what is on it. He heard that the community did not want the 562 houses on the R15. The master plan does not call for it. Staff has recommended on that basis alone that it be denied. They have offered to have a discussion with the applicant and help them to get to what is best for both sides of the community. They all have to live together. If the applicant does not want to do that, then they have no choice to move it up or down.

Mr. Franco said they also have all agreed that the shopping center is not what they want to see. He asked if there is a compromise or a common ground somewhere between the master plan density and what is being proposed.

Mr. Loach noted that they have heard from the applicant that there is no compromise. The Commission is responding to what the applicant has presented and told them. What he saw presented was nothing that was consistent with the master plan or Neighborhood Model. The master plan has been vetted by the community, Planning Commission, and Board and they need to be consistent with them. He was judging the proposal on what merits were brought before the Commission tonight.

Mr. Kamptner said what he was hearing from four Commissioners was that if there was a vote to recommend denial it could be because the proposed density is too intense for that particular site.

Mr. Morris said it does not meet with the Pantops Master Plan.

Mr. Zobrist noted there were other technical issues with the proffers that make it impractical without some work.

Mr. Morris asked to let it be known that he would love to see residential with the road and everything else, but he feels that it needs to be in conformance with the Master Plan. Too many people worked too many years to create that and just to throw it out. That is what is happening.

Ms. Porterfield asked if he was looking for the density that is in the master plan.

Mr. Morris replied that was correct. He was willing to give a little, which was why he was saying that very possibly they could expand the urban density to take into consideration the green space that is there. That would give more density to the individual and it can be worked out. At least it is a combination of urban and neighborhood density meeting the qualifications of the Neighborhood Model.

Mr. Franco said if the applicant chose to come back with some kind of definition of how many single families and townhouses to see how much was in the higher density with a total number that was lower than the 562, it would be helpful.

Mr. Morris replied that he would think that it would be.

Mr. Kamptner noted if the applicant still insists on the Planning Commission taking action tonight, that can be included as part of their recommendation. The Board can evaluate whether or not the Commission would get to see the same project that they are looking at. What the Board has done with other rezonings is send it back to the Planning Commission and ask them to provide a new recommendation based on any revisions.

Mr. Franco asked the Chair to invite the applicant up again. What he heard the applicant say a minute ago was they were adamant about the R15 and the application plan. He did not hear that on the density side. He was trying to craft whatever the Commission was going to do.

Mr. Zobrist invited the applicant to come forward and explain what they meant.

Mr. Franco asked if it was the application plan, the density or both.

Ms. Long replied that it was really both to be quite honest. Someone said that the applicant is not compromising. She understands their position there. The applicant feels they are compromising significantly. The by-right use permitted now is a very intensive commercial shopping center. They have compromised down from that to a R15 zoning. She fully hears what he is saying that it is more than what they would like per the Comprehensive Plan. The R15 zoning, as compared to the approved shopping center, is so much closer. It is not perfect and not there. However, it is so much closer to the Pantops Master Plan and they think it is far closer on the Neighborhood Model principles. They respectfully disagree with the staff's analysis on the Neighborhood Model principles, but she chose not to get into those principles at this time. They are very important principles. They think the plan now complies with many of them. As Mr. Franco said, they will ultimately achieve all of them.

Mr. Franco asked if their preference is they take an action tonight as opposed to not asking for a deferral.

Ms. Long replied that is correct. They appreciate their willingness to offer. It is the applicant's preference to have a vote. There has been a lot of time put into this project.

Mr. Franco said he was comfortable moving forward with a vote. If it were going forward as a recommendation to the Board, it would be helpful to include a statement as part of the motion. He was not prepared to craft the language, but should they choose to approve it here are the things that need to be considered or to take care of. He thought that it would be most helpful to the Board.

Mr. Cilimberg noted that the report identified factors unfavorable. The Commission might not agree with all the factors. However, it would be good to know in the motion what if any of the factors unfavorable needs to be addressed or is relevant to their recommendation to the Board.

Ms. Porterfield asked if the unfavorable factors were based more on the fact that it is not following the Neighborhood Model principles and not having an application plan or were they based on the R15 zoning.

Mr. Cilimberg replied that it was based on staff's evaluation of what was presented. Some actually notes the master plan and some the lack of a plan. However, it also speaks to the lack of proffers regarding the transit possibilities, and affordable housing. It has nothing to do with whether it is a Planned Development or a R15.

Ms. Porterfield asked which ones could apply to R15 zoning as opposed to the ones that that would apply only if it were the other way around. They should not be unfavorable factors if they don't apply to R15 zoning because the applicant is not asking for anything else.

Mr. Cilimberg replied that #3 is the only one that the site is unfavorable due to the lack of a plan.

Ms. Porterfield said that #1 really is not an unfavorable factor for R15.

Mr. Cilimberg replied that was her judgment. He pointed out noted that conditions 1, 2, 4, 5, 6, 7, 8, and 9 all apply to the rezoning.

Mr. Zobrist said the only reason they did not proffer a plan is that they have requested R15. Therefore, they don't have to submit a plan. If they were coming in as a Planned Development, they would need a plan.

Mr. Franco pointed out what would help him move forward with a motion was to look at the summary on page 10 and the three factors that are listed as favorable. He asked if the Commissioners agreed with those points.

<u>Factors Favorable:</u>

1. The residential use is more in keeping with the Land Use Plan than the approved commercial use.
2. An extension of Viewmont Court and a relocated Hansens Mountain Road will be a safety improvement for Ashcroft residents and can address many of the traffic impacts of the development.
3. The residential use is less intensive than the approved commercial use and is expected to have less of an impact on surrounding residential developments.

It was a consensus of the Commission to agree with the favorable factors.

Mr. Franco noted on the unfavorable side it lists the following factors:

Factors Unfavorable:

1. Proposed density is not in keeping with the Pantops Master Plan.
2. There is no commitment to retain Green space shown on the Pantops Master Plan.
3. No plan of development that could allow determination that goals from the Comprehensive Plan, including the Pantops Master Plan, related to environmental preservation, design around a Central Green, provision of amenities, provision of a mixture of housing types, and a pedestrian orientation are met.
4. No traffic study has been provided. Without a traffic study, requirements of the state's Chapter 527 traffic study regulations have not been met and needed transportation improvements resulting from the development cannot be confirmed, including the proposed relocation of Hansens Mountain Road.
5. The proffers obligate the County or VDOT to acquire any needed land for the relocation of Hansens Mountain Road utilizing funds proffered by the applicant without a commitment by the applicant to attempt to acquire this land themselves. This puts the County or VDOT in the position of potentially needing to condemn land owned by multiple property owners in order for the proffer to be executed.
6. There is no commitment to accommodate transit in the development, nor is there a commitment of any funding for public transit services.
7. There is no commitment to providing affordable housing.
8. There is no commitment to off-set the development's impacts on public facilities as stipulated in Appendix B of the County Land Use Plan entitled "County of Albemarle, Virginia Cash Proffer Policy for Public Facilities".
9. Proffers are in need of substantive and technical changes.

Mr. Franco asked if the Commission agrees with #1 about the density not being in keeping with the Pantops Master Plan. He asked if it was fair to say that there is room for some massaging of that.

It was the consensus of the Planning Commission that across the board it needs to be more in keeping with the Pantops Master Plan.

Mr. Franco said the commitment to the green space as shown on the master plan was an unfavorable factor.

Ms. Porterfield said that they were giving green space. He is going to have the trail within a section, and is doing a large buffer along the stream. It may not be exactly in the square that was shown.

Mr. Cilimberg noted that there is a pretty significant area on the eastern side of the property that the master plan showed as green space as well. They are not getting that proffer. They are saying that it is just not at the level that the master plan shows.

Mr. Franco noted that he was trying to craft this into a motion. It sounds like that without a lot of massaging that remains an issue for the majority of the Commission.

Mr. Cilimberg pointed out that staff will be the first to admit that in the ultimate outcome it might not be the exact area as noted in the master plan.

Mr. Franco noted that #2 remains an issue for the Commission. Number 3 was the fact that there was not plan. He asked if they were comfortable that there is no plan because it is R15. He asked what are the components of the plan that they are looking for. What if he came back with something that offered a certain amount of green space, but did not define where it was. He could proffer a minimum 10 or 15 percent open space, but just not tell us where it is to be. Would they require everyone to submit under the neighborhood model to rezone.

Mr. Kamptner said he read factor #3 a little bit differently. In what staff is saying if a plan had been submitted it would have allowed staff to evaluate better the proposed rezoning against the Pantops Master Plan. That is all that is saying. Without a plan staff was unable to determine whether or not the goals of the Pantops Master Plan would be satisfied.

Ms. Porterfield suggested that is what it should say.

Mr. Zobrist noted that is what it says.

Ms. Porterfield said it is a factor unfavorable, but it is a wish list that would help staff in evaluating it. It is not really unfavorable for what they are asking for because it is not required.

Mr. Zobrist said it is required for staff to look at the Comprehensive Plan and see how it relates to the application plan.

Mr. Kamptner noted that he was saying that it was required for a Comp Plan analysis. That kind of information would have allowed staff to determine the extent to which it complies or does not comply with the Pantops Master Plan.

Mr. Franco asked if he would gain consensus by wording it closer to what they heard from the attorney to say that it would have been helpful versus what is said in the staff report. They want to be clear to the Board.

Mr. Kamptner suggested there was insufficient information provided to evaluate fully.

Mr. Morris said it would be fine with him especially in that he is requesting a R15. It would be helpful for staff to have something to bounce it off.

Mr. Franco agreed with that. The problem in the past has been if they submit a plan that all of a sudden even though it is supposed to define some general concept, it is set in stone.

Mr. Morris said that they don't want that.

Mr. Cilimberg said actually they are not asking for plans any longer that get proffered or are a part of a Planned Development that are showing a specific location for the building or buildings. They have tailored back to knowing where the critical environmental areas are that should be avoided, the roads should be located, and where the areas of building and parking would be. Then they have let the issues of density, number of dwelling units by type and location really be part of proffers or in a code of development when they do the Planned Development. Illustrative plans show a lot more details. However, that is not the plan that is proffered or a part of the zoning.

Mr. Franco noted that #4 was the parking study, which remains unfavorable.

Mr. Morris agreed it was definitely unfavorable and he would like to have it.

Ms. Porterfield said a traffic study was done in 2006. It indicated the number of vehicles per day for the shopping center at 9,500. Then they used the normal way of calculating residential units to say that this drops down to 5,100. It is a no brainer that it was dropping. This is going to get a lot better. The question is if the money should be spent on a traffic study when the number was going down. When it is going up, she could see exactly what they mean and why it was unfavorable. It was very favorable to cut the numbers in almost in half.

Mr. Franco asked if they could make that a favorable point and add that the reduction in traffic is favorable in order to address everybody's concern.

Mr. Zobrist said he was not sure if it was favorable if it was at 562 units.

Mr. Franco noted it was moving in the right direction.

Mr. Zobrist agreed it was moving in the right direction, but not far enough.

Mr. Morris said his concern as far as the traffic study is that what they were looking at is the current Hansens Mountain Road and he would like to see what the projection of traffic would be at the new location that has a stop light. He would like to have some kind of handle on what is going to come through Glenorchy.

Mr. Zobrist noted what they need to know is what is going to be the impact of the traffic.

Mr. Franco pointed out the numbers in the report was taking them from 5 houses on the road and the cul-de-sac that is there, which is estimated to be 50 vehicle trips per day. It was taking it to 5,100. It is two orders of magnitude. It was putting the traffic to the intersection where they want it to come out.

Mr. Morris said they also have to think about everything from Ashcroft, which has to be weighed in there and the other subdivision.

Mr. Franco noted that was part of the study or at least the numbers that are recorded. The proffers obligate the County and VDOT to acquire land. He asked if that was a concern for the Commission.

Mr. Zobrist said the County should never be required to do either one.

Mr. Franco noted he goes back and forth on this. The arguments he has heard in favor of this is that it helps to execute the master plan. In order to make the road system or the network meet the master plan someone is going to have to execute it. The County can either do it as a participant or it is not going to be done.

Mr. Kamptner pointed out by way of background there have been a couple of other rezonings where the County accepted proffers in a similar format to this where the applicant proffered cash where if necessary the County would use it for imminent domain. One was Albemarle Place Commercial Development and the landing issue was along Route 29. The other one was North Pointe.

Mr. Zobrist said he did not have any problem with that concept.

Ms. Porterfield noted that #8 was not an unfavorable factor. It was just that the County would prefer not to weigh in unless absolutely necessary.

Mr. Kamptner said the other proffers provide that the applicant would seek to acquire the property and right-of-way up front.

Mr. Cilimberg noted that they don't have that right now as a proffer in this case. That was their concern.

Mr. Franco said the applicant would try to get the property first, and if it can't then they would allow the County to execute this. Is what they are saying that they don't have that right now.

Mr. Cilimberg replied that was what he understood Mr. Kamptner to say.

Mr. Smith said that would be very unfavorable to him for the County to condemn the land.

Mr. Franco asked what was their consensus for a motion.

Ms. Porterfield said she would love to see the proffer written such that if it becomes necessary because of the situation of needing this road that the County would have to step in. It is a definite benefit to the County to get this ability to run this road through to a signalized intersection.

Mr. Zobrist agreed.

Mr. Kamptner pointed out that Ms. Long corrected him. In the other examples, the proffers themselves do not put the obligation on the land owner to negotiate first. He thought there might be an understanding. However, as far as the proffers are concerned that was not spelled out in the proffers.

Mr. Zobrist asked what does that mean. If this was approved with the County having to condemn and the County did not go condemn then what happens, they don't have to build the road.

Mr. Kamptner replied that the road is not constructed and the transportation impacts are not addressed.

Ms. Zobrist said he was not aware of any condemnations by the County for the last 20 years.

Mr. Cilimberg noted that he knew of one case where there was an off-site project that was interested in making improvements that might be necessary for rezoning, but they could not get the property owner to agree. They wanted the County or VDOT to use their money to condemn. They actually ended up putting the project in the Six Year Secondary Plan to be paid for by the developer at which time that land would be necessary. That was not part of a proffer. That was before there was a rezoning proposal made. The County Attorney's Office can probably better address the problem. Staff felt that should be the last result so to speak.

Mr. Zobrist said he thought they all agree with that.

Mr. Smith said that he did not agree. He suggested that they put themselves on that subdivision street.

Mr. Zobrist said that he understood. However, he also knew they have a nightmare with Hansens Mountain Road and that needs to be changed. At some point in time, the County or someone will have to step up and change it. This is the opportunity.

Mr. Franco asked if they all agree on the transit being unfavorable.

It was the consensus of the Commission that transit was unfavorable.

Mr. Morris said he was in favor of affordable housing, but with the economy, they might not develop it.

Mr. Zobrist pointed out what he was hearing from Ron White was they did not need units, they need money to get people into them.

Mr. Cilimberg noted that the standard proffer allows for money in lieu of the units at the determination of the housing director.

Mr. Cilimberg said he had not talked with Ron White very recently. That is something they determined that they should not decide at the proffer level, but let the proffer be flexible enough where that could be determined by the Housing Director.

Mr. Franco asked if the majority feels that it is important or not.

It was the consensus of the Planning Commission that #7 was important.

Mr. Franco said that in #8 there is a lack of commitment for the development's impact. It was basically the cash proffer policy.

Mr. Zobrist noted that Ms. Long asked to waiver that because of unusual circumstances. They are getting rid of a shopping center and getting houses. She wants to waive that because of extenuating circumstances.

Mr. Cilimberg said in determining the cash proffer amount received based on the units that projects such as an off-site road can be a credit against that amount. But they can't reduce the amount of the per unit cash proffer. That is a fairly standard consideration. However, it fall under the policy. They are really just pointing to the fact that they had no commitment in accord with the policy.

Mr. Zobrist said they were saying that the applicant should be given a credit for the road.

Mr. Franco agreed and that it sounds great.

Mr. Morris agreed.

Mr. Franco said that #9 stops so they don't need to talk about it. Given the fact the applicant does not want to defer and wants to move forward.

Mr. Zobrist asked Ms. Long if she wants to change her position to defer or do they vote.

Ms. Long replied that she was able to follow everything and their position remains the same.

Motion: Mr. Franco moved and Mr. Morris seconded to recommend denial of ZMA-2010-00001, Pantops Ridge based on the following:

The favorable factors identified in the staff report with the addition of a favorable factor being the reduction in the traffic generated by the proposed use; and

The nine factors listed in the staff report as unfavorable with the comments massaged and made during the discussion.

<u>Factors Favorable:</u>

4. The residential use is more in keeping with the Land Use Plan than the approved commercial use.
5. An extension of Viewmont Court and a relocated Hansens Mountain Road will be a safety improvement for Ashcroft residents and can address many of the traffic impacts of the development.
6. The residential use is less intensive than the approved commercial use and is expected to have less of an impact on surrounding residential developments.
7. The reduction in the traffic generated by the proposed use.

<u>Factors Unfavorable:</u>

1. Proposed density is not in keeping with the Pantops Master Plan.
2. There is no commitment to retain Green space shown on the Pantops Master Plan.
3. No plan of development that could allow determination that goals from the Comprehensive Plan, including the Pantops Master Plan, related to environmental preservation, design around a Central Green, provision of amenities, provision of a mixture of housing types, and a pedestrian orientation are met.

4. No traffic study has been provided. Without a traffic study, requirements of the state's Chapter 527 traffic study regulations have not been met and needed transportation improvements resulting from the development cannot be confirmed, including the proposed relocation of Hansens Mountain Road.
5. The proffers obligate the County or VDOT to acquire any needed land for the relocation of Hansens Mountain Road utilizing funds proffered by the applicant without a commitment by the applicant to attempt to acquire this land themselves. This puts the County or VDOT in the position of potentially needing to condemn land owned by multiple property owners in order for the proffer to be executed.
6. There is no commitment to accommodate transit in the development, nor is there a commitment of any funding for public transit services.
7. There is no commitment to providing affordable housing.
8. There is no commitment to off-set the development's impacts on public facilities as stipulated in Appendix B of the County Land Use Plan entitled "County of Albemarle, Virginia Cash Proffer Policy for Public Facilities".
9. Proffers are in need of substantive and technical changes.

Mr. Cilimberg noted that he understood the motion, but was going to have to report this to the Board. He was hearing the motion recognizing the factors favorable and noting a fourth factor favorable as reduction in traffic. However, also recognizing for the reason of denial the factors unfavorable. What he was hearing is that rather than the plan of development being critical under #3, there was basically insufficient information to allow a determination that the goals of the Comp Plan, including the Master Plan, were being met. In addition, there should be credit for the off-site road in determining the cash proffer obligation.

Mr. Morris noted that was correct.

Mr. Franco noted for clarification it was not just the off-site road, but the road that is upgraded to a site would also contribute towards that or the cost to the road.

Mr. Cilimberg added the road upgrade.

Mr. Franco added that the condemnation issue was discussed. His motion would add that the Commission is comfortable with the need to condemn as a last alternative or a last resort at the applicant's expense.

Mr. Zobrist asked if Mr. Smith could dissent from that portion, and Mr. Franco replied yes.

Mr. Zobrist asked if there was further discussion.

Mr. Franco asked if staff has enough to understand the Commission's action.

Mr. Cilimberg said on the last point regarding the obligations for possible condemnation the clarification is that the County or VDOT are a last resort. The applicant has actually already agreed to pay since that is already in the proffers.

Mr. Zobrist noted that it had been moved by Mr. Franco and seconded by Mr. Morris in accordance with the discussion. He asked if there was any further discussion.

The motion passed by a vote of 5:1. (Mr. Smith voted aye with reservation because it would be very unfavorable for the County or state to condemn the land.) (Ms. Porterfield voted nay for the following reasons: She believed this applicant would work with R-15 and do a good job, especially seeing some of the areas that he has already built. The applicant is willing to proffer away the approved shopping center. The applicant is willing at his expense and has already made the effort to purchase a lot so that Hansen's Mountain Road can be relocated and extended to come out at a traffic light on Route 250. This relocation will greatly benefit the current and future residents of Ashcroft as well as all who travel Route 250 both east and west at the Shadwell I-64 Interchange.)

Mr. Zobrist noted that ZMA-2009-00001 Pantops Ridge would go before the Board of Supervisors on a date to be determined with a recommendation for denial, based on the favorable and unfavorable factors as amended and identified in **Attachment 6.**

Attachment 6
ZMA-2010-00001 Pantops Ridge

In summary, the Planning Commission, by a vote of 5:1 (Porterfield voted nay.) (Mr. Smith voted aye with reservation.) recommended denial of ZMA 2010-00001, Pantops Ridge based on the following:

- The factors identified in the staff report as favorable with the addition of a fourth being the reduction in the traffic generated by the project; and

- The nine factors listed in the staff report as unfavorable with the comments revised and made during the discussion.

(Mr. Smith voted aye with reservation because it would be very unfavorable for the County or state to condemn the land.) (Ms. Porterfield voted nay for the following reasons: She believed this applicant would work with R-15 and do a good job, especially seeing some of the areas that he has already built. The applicant is willing to proffer away the approved shopping center. The applicant is willing at his expense and has already made the effort to purchase a lot so that Hansen's Mountain Road can be relocated and extended to come out at a traffic light on Route 250. This relocation will greatly benefit the current and future residents of Ashcroft as well as all who travel Route 250 both east and west at the Shadwell I-64 Interchange.)

Factors Favorable:
1. The residential use is more in keeping with the Land Use Plan than the approved commercial use.
2. An extension of Viewmont Court and a relocated Hansens Mountain Road will be a safety improvement for Ashcroft residents and can address many of the traffic impacts of the development.
3. The residential use is less intensive than the approved commercial use and is expected to have less of an impact on surrounding residential developments.
4. The reduction in the traffic generated by the proposed use.

Factors Unfavorable:
1. Proposed density is not in keeping with the Pantops Master Plan.
2. There is no commitment to retain Green space shown on the Pantops Master Plan.
3. No plan of development that could allow determination that goals from the Comprehensive Plan, including the Pantops Master Plan, related to environmental preservation, design around a Central Green, provision of amenities, provision of a mixture of housing types, and a pedestrian orientation are met.
4. No updated traffic study has been provided for this application, however a significant lessened traffic count was computed due to the change in use from shopping center to R-15. Without a traffic study, requirements of the state's Chapter 527 traffic study regulations have not been met and needed transportation improvements resulting from the development cannot be confirmed, including the proposed relocation of Hansens Mountain Road.
5. The proffers obligate the County or VDOT to acquire any needed land for the relocation of Hansens Mountain Road utilizing funds proffered by the applicant without a commitment by the applicant to attempt to acquire this land themselves. This puts the County or VDOT in the position of potentially needing to condemn land owned by multiple property owners in order for the proffer to be executed.
6. There is no commitment to accommodate transit in the development, nor is there a commitment of any funding for public transit services.
7. There is no commitment to providing affordable housing.
8. There is no commitment to off-set the development's impacts on public facilities as stipulated in Appendix B of the County Land Use Plan entitled "County of Albemarle, Virginia Cash Proffer Policy for Public Facilities".

9. Proffers are in need of substantive and technical changes.

Additional clarification included the following:

- There was discussion regarding R-15 submission not requiring a plan of development. However, the failure of the applicant to submit a plan of development was an unfavorable factor because, without a plan, there was insufficient information to determine whether the goals of the Comprehensive Plan, including the Pantops Master Plan, were met. In addition, there should be credit for the off-site road in determining the cash proffer obligation. The road upgrade to the site would also contribute towards that or the cost to the road.

- The need to condemn to be used as a last alternative or last resort at the applicant's expense.

Old Business

Mr. Zobrist asked if there was any old business. There being none, the meeting proceeded.

New Business

Mr. Zobrist asked if there was any new business.

- Slaughterhouse trip update.
- One Commissioner requested that maps with color keys be reproduced in color.

There being no further business, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 9:42 p.m. to the Tuesday, January 18, 2009 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)