Albemarle County Planning Commission
January 25, 2011

The Albemarle County Planning Commission held a public hearing on Tuesday, January 25, 2011, 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, Russell (Mac) Lafferty and Calvin Morris, Vice Chair. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Other officials present were Summer Frederick, Senior Planner; Bill Fritz, Director of Current Development; Glenn Brooks, County Engineer; Wayne Cilimberg, Director of Planning; and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Zobrist, Chair, called the regular meeting to order at 6:00 p.m. and established a quorum. He noted there would be no presentation on Four Seasons tonight due to a deferral request.

Other Matters Not Listed on the Agenda from the Public:

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

Bill Wanner, Thomas Jefferson Planning District Commission, provided information on the Commission Public Service Training Program. The Planning District is undertaking a new initiative called the Water Street Center, which is a conference center located adjacent to their offices at Fourth and Water Street. The Commission Public Service Training Program is designed specifically to meet the needs of their member localities, which includes Albemarle County. A Fundamental of Planning Workshops will be held on February 17th specifically for Planning Commissioners. Another workshop will held later in April. A discussion will be held on Legal and Procedural Issues by Greg Kamptner and on Technical Documents by Darren Coffey, Fluvanna County Planning Director. Information cards were provided to the Commissioners and additional cards were left with staff.

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

Review of Board of Supervisors Meeting – January 12, 2011.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on January 12, 2011.

Deferral Request

SP-2010-00033 Four Seasons Learning Center
PROPOSED: PROPOSED: Amend special use permit to increase maximum number of children in daycare from 40 to 64. No residential units proposed.
ZONING CATEGORY/GENERAL USAGE: PUD Planned Unit Development which allows residential (3 - 34 units per acre), mixed with commercial and industrial uses
SECTION: 20.3.2.1, which allows for child care facilities
COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential (6-34 units/acre) in Neighborhood 1.
ENTRANCE CORRIDOR: Yes____No X
LOCATION: 254 Lakeview Drive, at the corner of Four Seasons Dr. and Lakeview Dr.
TAX MAP/PARCEL: 061X1-00-00-00500
MAGISTERIAL DISTRICT: Rio
(Elaine Echols) (Deferral requested due to an error in the notification to abutting owners to February 8th.)

Mr. Zobrist noted that a deferral has been requested on SP-2010-00033, Four Seasons Learning Center. He apologized if there was anyone present that did not get the information sent via email. There will be no action on this item tonight except to approve the deferral.

Mr. Cilimberg asked that the public hearing be opened so staff does not have to advertise the request again. The error was not in the advertisement, but in the notification to abutting owners.

Mr. Kamptner agreed.

Mr. Zobrist opened the public hearing and invited public comment on SP-2010-00033, Four Seasons Learning Center. He noted the deferral date was February 8. There being no public comment, the public hearing was closed and the matter before the Commission.

Motion: Mr. Franco moved and Mr. Morris seconded to defer SP-2010-00033, Four Seasons Learning Center, to February 8, 2011.

The motion passed by a vote of 7:0.

Regular Items:

SUB-2010-0156 Willow Lake
PROPOSED: Request for preliminary plat approval for the creation of six single family, six duplex lots, and one common space lot on 7.42 acres. This application includes a request to modify Section 4.2.3.2 of the Zoning Ordinance to allow activity on critical slopes.
OWNER: BD Land Properties
APPLICANT'S REPRESENTATIVE: Brian Smith
ZONING CATEGORY/GENERAL USAGE: R-4 Residential
SECTION: Chapter 14 Section 206 of the Subdivision Ordinance; and, Chapter 18 Section 4.2 of the Zoning Ordinance
COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density in Urban Area 4
ENTRANCE CORRIDOR: Yes
LOCATION: Southeast side of Willow Lake Drive, approximately one quarter mile from its intersection with Route 20S.
TAX MAP/PARCEL: 77E1-01-00-01700, 77E1-01-00-000B0, 77E1-01-00-000C0, 77E1-02-00-000A0,
MAGISTERIAL DISTRICT: Scottsville
(Summer Frederick)

Ms. Frederick presented a PowerPoint presentation and summarized the staff report for SUB-2010-0156, Willow Lake Preliminary Plat Critical Slopes Waiver Request.

The proposal is to create ten (10) residential lots, and one (1) Common Area lot, including a request to waive requirements found in Section 18-4.2 to allow for disturbance, and the location of building sites within the area of critical slopes.

REASON FOR PLANNING COMMISSION REVIEW:
Sec. 18-4.2.1 requires building sites be located out of critical slopes. Nine (9) of the ten (10) lots purposed by the applicant contain critical slopes, with three (3) of those having critical slopes over the majority of the lot. 18-4.2.3.2 restricts disturbance on critical slopes.

Sec. 18-4.2.5(a) allows the Commission to modify or waive the requirements found in Sec. 18-4.2.1.

Staff reviewed the County map showing the division locations and critical slopes. The applicant's plat proposal is shown with darkened areas reflecting critical slopes.

Section 4.2.5(a)(3):

The Commission may grant a modification or waiver if it finds that the modification or waiver would not be detrimental to the public health, safety, or welfare, to the orderly development of the area, or to adjacent properties; would not be contrary to sound engineering practices; and at least one of the following:

a) Strict application of the requirements of section 4.2 would not forward the purposes of this chapter or otherwise serve the public health, safety or welfare;

Staff did not find overwhelming reasons not to require strict application to the ordinance.

b) Alternatives proposed by the developer or subdivider would satisfy the intent and purposes of section 4.2 to at least an equivalent degree;

The subdivider has provided only the proposed plat that is in the staff report with no alternatives.

c) Due to the property's unusual size, topography, shape, location or other unusual conditions, excluding the proprietary interest of the developer or subdivider, prohibiting the disturbance of critical slopes would effectively prohibit or unreasonably restrict the use of the property or would result in significant degradation of the property or adjacent properties; or

Staff has found that there are other subdivision options and other use of the property. The owner would not be able to maximize according to the current zoning, R-4, with the amount of acreage they have. However, there are alternatives that would not require building sites in critical slopes nor the disturbance of critical slopes.

d) Granting the modification or waiver would serve a public purpose of greater import than would be served by strict application of the regulations sought to be modified or waived.

While this property is in the development area and granting the critical slopes waiver would allow for more lots to be developed in the development area staff believes that in taking in the larger picture and possible impacts to neighboring properties and water resources that development area potential does not outweigh the possible impacts.

SUMMARY AND RECOMMENDATION:
Staff review has resulted in both favorable and unfavorable findings:

Favorable factors:
1. The property is in the County's Development Areas, and has appropriate zoning to allow for the creation of the proposed single-family residential lots.

Unfavorable factors:
1. Further subdivision of the parcels remains feasible without the granting of the waiver.
2. The applicant has not provided any information addressing possible erosion and sediment control issues that may arise as a result of the disturbance of critical slopes.

Staff opinion is that the unfavorable factors outweigh the favorable factors, and therefore staff recommends denial of this waiver.

However, if the Planning Commission chooses to approve the waiver request, staff recommends the following conditions:

RECOMMENDED CONDITIONS:
1. The applicant provide an overlot grading plan, to be approved by the County Engineer prior to the approval of the preliminary plat.
2. A letter of intent be submitted for any off-site easements necessary to complete any future development on the proposed lots prior to the approval of the preliminary plat.

Mr. Zobrist invited questions for staff. He questioned why the Commission was considering man-made critical slopes.

Ms. Frederick replied there is a portion of the critical slopes that may possibly be man-made. The ordinance states in order to be deemed man-made the critical slopes need to be on a County approved site plan and staff has not found a site plan that was approved and built to that shows grading creating these critical slopes. In the past staff has required other property owners to get critical slope waivers for somewhat questionable critical slopes that might have been done.

Mr. Zobrist said basically staff was not showing whether the critical slopes were man-made or not, and Ms. Frederick replied that was correct.

Mr. Fritz pointed out if the critical slopes were man-made, as part of the road construction, they are talking about the provision that allows staff to waive some critical slopes administratively. It is still a waiver, but an administrative waiver that is only eligible if the critical slopes are shown on an approved site plan. There is no approved site plan. There are subdivision plats and road plans in the area that do not fall under the same categories. That is why the request is before the Planning Commission. The critical slopes would still be before the Commission because they are not on a site plan even if man-made. If the critical slopes were on an approved site plan, staff would be dealing with an administrative waiver.

Mr. Smith asked if there was any reason the critical slopes would have to be shown on a site plan for the construction to have occurred, and Mr. Fritz replied no .

Mr. Lafferty noted that under unfavorable factors staff lists further subdivision of the parcel remains feasible. He asked staff to explain.

Ms. Frederick noted that one parcel had no critical slopes and would be a by right subdivision. Another parcel is large enough that it could be shrunk for a single-family home for another parcel. There would be some potential for accessing the back area for another parcel for a lot in the rear. Staff has not spent a lot of time doing alternatives. One area has enough road frontage to allow for multiple subdivisions. The road frontage was enough that staff thought there was an alternative that does not require disturbance of critical slopes. It does not maximize the amount of acreage that they have, but it does allow for a feasible option.

Mr. Lafferty asked if the applicant would possibly be able to get three or four lots and still be able to build down close to the pond.

Ms. Frederick replied that was correct. She noted that the property was zoned R-4, which allowed four dwellings per acre.

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

Jim Bonner noted that he owned the property with his partner, Janet Mathews, who resides along Willow Lake Drive. They are both members of the Homeowner's Association at Willow Lake.

- The subject property consists of three lots of record along Willow Lake Drive. They made application for a critical slope waiver to create ten lots of record along Willow Lake Drive. This application does not contemplate any disturbance of the land, only the subdivision of the lots. Future homeowners and their builders will be mandated by the County to provide proper erosion controls and protections during the construction of their homes. It is zoned R-4 with public water and sewer easily available. A site plan for this property was given final approval by Albemarle County in 1990 for 28 lots, known as Phase 3 of the Willow Lake Subdivision, which included an internal road. A critical slopes waiver was granted with the Planning Commission approval at that time.

- They wish to be good stewards of the land. The zoning would allow for 28 dwelling units by right. Upon taking title, they engaged County Planning staff and an engineer, Brian Smith, who was

involved with the original design of the Willow Lake Subdivision, to design a responsible, orderly, and less dense plan for this property that would be a continuation of the existing development along Willow Lake Drive. They want not only to preserve the majority of the natural critical slopes and respective wildlife habitat, but also respect the owners of the existing homes along Willow Lake Drive. They would protect their property values by restricting any development in their backyards and view sheds. This design fills the intent of the County's Comprehensive Plan by allowing for residential infill of this property in a designated growth area. The design is sensitive to the environment, homeowners, and existing infrastructure. It is less dense than what was previously approved by the County.

- There has been some discussion about whether the majority of the critical slopes involved in the design are natural slopes and subject to this process. He submits it is the opinion of the engineer that the slopes in the area contemplated for this particular development are largely man-made slopes. He provided photographs of the site taken last week that clearly shows the area of the slope created for the construction of Willow Lake Drive. (Attachment A) In fact, the staff report states that some slopes are due to the construction of Willow Lake Drive. They have carefully examined the areas that might reasonably be considered natural critical slopes. Consequently, they have designated one-half of their property for the preservation of those slopes with no development whatsoever to avoid disturbing those areas and dedicate those as open space for the preservation of the wildlife habitat. Brian Smith would also like to voice his opinion about the slopes and the engineering of the project.

Brian Smith, Professional Engineer, with Civil Engineering, Inc. and representative for the applicants for the critical slopes waiver request, summarized the letter he sent to the Planning Commission today. He believed the critical slopes were man-made where they want to put the homes, which was up along the road. He asked Mr. Fritz that even if there are no maps if the critical slopes were man-made would this approval be required. **(Attachment B – Letter dated 1-25-2011 from Brian P. Smith, PE Civil Engineering, Inc.)**

Mr. Fritz replied that the applicants would still need a waiver from the Planning Commission because the critical slopes were not shown on a site plan.

Mr. Zobrist asked that the Commission proceed with the assumption that they have to grant a waiver.

Mr. Smith summarized the letter. He noted as stated in the letter he had been in the community since the late 70's. He started working as Assistant County Engineer with Jay Harvey Bailey, a respected engineer in this community for many decades. Then he moved on and worked with the Albemarle County Service Authority for 7 ½ years and headed up their engineering department. He worked ten years for Kurt Gloeckner as a consulting engineer before starting up his own practice in 1995. He was one of the engineers that worked with Mr. Gloeckner's staff that designed the Willow Lake Subdivision. Therefore, he was very familiar with the property. He was present tonight representing the applicants for the critical slopes waiver request.

- As shown on the handout the three lots they were talking about were A, B, and C. Two lots are at the end of the cul-de-sac where there is one lot now. Lot B is basically the open space that will remain open space, which is where the majority of the steep slopes are. Lot C is the area that they would like to divide up into eight lots, which is one lot now. Essentially that is what they are looking at.

- After walking the site today with Ms. Porterfield they came up with ideas that would hopefully ease the confusion or tension of some of the existing folks that live in Willow Lake. At the bottom of his presentation he had a few suggested recommendations of approval, as follow:

    1. All ten (10) of the proposed lots shall be part of an HOA that will be responsible for the remaining open space, which will remain undeveloped.
    2. To ensure the homes are built along Willow Lake Drive frontage, the rear setback line of 20-feet is to be increased to 60-feet. This is a condition of approval that his client can live with. That will

keep any buildings away from the lake and up towards the road. This is for the eight (8) proposed lots along Willow Lake Drive and does not include the two lots in the cul-de-sac. In addition, sheds or outbuildings will not be allowed within this 60-foot setback.

3. To ensure the protection of mature trees within this 60 feet, these eight (8) lots shall carry with it a provision that healthy trees 8" in diameter or greater may not be removed unless approved by the HOA.
4. To ensure the control of soil erosion within this 60 feet, grading shall not be allowed on those eight (8) lots unless approved by the HOA. This does not include the installation of underground utilities or fencing. He added that there was a sanitary sewer line on the back side where a 4' ditch would be dug to put in the 4' lateral.)

- Those are the four items they discussed together and came up with after the applicant talked to some of the residents and after talking with Ms. Porterfield today.

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

Richard G. Piccolo, resident of Albemarle County, presented a PowerPoint presentation and handouts showing photographs in reference to the Willow Lake View, which included photos of Willow Lake that included critical slopes with % grade, habitat, riparian area, cleared areas, and native areas. **(Attachment C – Albemarle County Planning Commission – January 25, 2011 – Re: Willow Lake View)**

- This lake is an impoundment, which was about 60 years old. It has some storm water runoff and fresh water runoff. The lake has a spring feeding it and is land bound. He reviewed the various grades and critical slopes on the property. It is a state road where the driveways will come up onto. The proposal threatens the wetlands and wildlife habit. There has been some clear cutting done on the property. He noted the area that has not been disturbed. He noted the areas of critical slopes being discussed. He took the grades about every eight guard rail posts. The slopes as noted on the photos, 44%, 42%, 49%, and 38%, etc. will come up onto a public road. This is not within Willow Lake since this is a state road that these driveways will come up onto. He explained the various proposed building sites, the clear cutting done recently, and the fallen trees. The proposal threatens the habitat intermediately and in front of the proposed building sites. Eagles have been sighted north of town. On the same day the photographs were taken, he saw a bald eagle just south of town. Eagles like fresh water.

Charlotte Hisey, resident of 445 Maple View Court in Willow Lake, opposed the waiver since it would work in direct opposition in solving the current watershed problems of both the County and the City, The lake is impounded, but the runoff from Willow Lake goes directly into Cow Branch Creek, which then goes directly into Moore's Creek. The waiver would open up a situation where in spite of attempted erosion controls more pollutants are destined for Moore's Creek, which is already in trouble. There is no sure proof way to fight gravity with lawns heading down right towards the lake over which neither Willow Lake Homeowner's Association nor the County would have any real control. They are currently spending 40.5 million dollars to upgrade the Moore's Creek Treatment Plant to try to meet current EPA standards for total maximum daily load. Let's not set up the conditions, which if they are at all honest, will only add to the pollution that they are trying to clean up in order to comply with current standards. Just because this critical slope resides in a development area does not mean that it is suitable to be given a waiver so that it can be built on presenting untold problems for the perspective buyers, the Willow Lake Community, the County, the City, and the EPA.

Katherine Schafer, resident of Willow Lake, presented a PowerPoint presentation on "Why You Should Deny the Waiver." In building on what Ms. Hisey said in terms of the impact on the already endangered water shed of Moore's Creek she offered the following.

- Erosion control measures are central to the Total Maximum Daily Load Implementation Plan (TMDL-IP). The implementation plan was set forth by the Thomas Jefferson District Planning Commission to address the fact that there is a high level of fecal coliform bacteria as well as pollutants, sediments and other contaminants of the water system in the water shed. Granting this water will impede the erosion control measures and would likely contribute to greater erosion.

- The County Code demands maintenance of an 100 foot stream buffer setback from stream or non-tidal wetlands buffer. As Mr. Piccolo showed, they do have non-tidal wetlands there.
- Consequently, building on the slope will impact water quality including increasing potentially the amount of fecal coliform bacteria in the Moore's Creek watershed.

- The maintenance of riparian zone is inherent in this duty
  - Filters and absorbs pollutants
  - Traps sediment
  - Stabilizes banks around bodies of water and current stream buffer.

Consequences of Granting Waiver
- Will diminish riparian zone in existing impaired watershed
- Increased runoff without adequate buffer to absorb pollutants
- Consequential increase in fecal coliform discharge/bacteria in Moore's Creek in an area that has a high density of canine fecal material as well as waterfowl.

Barton Parrott pointed out that his home enters at Willow Lake and his property abuts the property under consideration. He was concerned about erosion and water quality. He walked around the lake every day with his dog and pays pretty careful attention to what is going on there. This could be a very difficult situation to work with to prevent erosion given the site and the amount of fill and disturbance that would have to happen to build close to the lake. With the best of intentions, they could have a situation where they have a half dozen builders. His property had fill at one time. It is going to take a lot of fill to be able to put a house there. There is going to be a lot of loose material very close to the lake subject to run off and storm water. Another part of the slope has riprap on it. The riprap is currently not controlling the erosion from the hill. There is a lot of sediment currently coming down the hill into the lake. This site would be much more open and have much more exposed loose material. Even with a plan in place, he did not see how something so close to the water source could adequately be prevented from the sediment going into the lake. The Willow Lake Homeowner's are responsible for the water quality of the lake. They would have a situation where builders would be building on a site that is not part of the Homeowner's Association, They would be undergoing activity that would affect the quality of the lake and the homeowners would essentially be responsible for that with no way to impact it.

Janet Mullaney, Willow Lake homeowner since 1996, asked to address the legal mandate of the Willow Lake Property Owner's Association to maintain the integrity of the lake's water, its perimeter, and the dam.
- The environmental controls are addressed by the Association Articles of Incorporation. To protect the natural beauty of the vegetation, topography and other natural features of all properties within Willow Lake and the beauty and purity of the lake area, the following environmental controls are hereby established: Topographic and vegetation characteristics of properties within Willow Lake shall not be altered by removal, reduction, cutting, excavation, or any other means without the prior written approval of the Association. Written approval will be granted, hereunder, only after a plan designed to protect the lake from pollution resulting from erosion, pesticides, or the seepage of fertilizer or other materials has been submitted to and accepted by the Association.
- The lots now owned by B D Land Properties, LLC that are adjacent to and uphill from the lake are not part of the Association as has been discussed. Consequently, they are handicapped from carrying out their duty to supervise activities that would adversely affect the lake and its buffer. Neither will the County monitor the environmental effects of development on the lake, especially if the lots are sold piece mill.
- Another important issue is their responsibility for maintaining the dam. Last year a special assessment was necessary to replenish the Master Association's reserves, which had been depleted because of an unexpected $20,000 spent to remove trees on the berm to comply with the Virginia Dam Safety Act. Since 2000, a total of $42,000 has been spent on lake maintenance. For many years, the Association maintained a broad pathway to the lake for the use of residents and for maintenance vehicles to access the perimeter. At present, the site plan shows a much narrower path for lake access located between the first two lots on the left. Besides the runoff, the pollution, and the silt the Association faces liability issues in relation to the lake. Regardless of posted signs, they cannot prevent all unlawful use of the lake by individuals from the proposed subdivision. Hence they

face increased amounts of pollutants entering the lake as well as liability for accidents that may befall trespassers especially children from the new houses. In summary, the sale of these lots to one or more developers renders the Association unable to control who or what goes into the lake for which they are legally responsible.

Mr. Loach asked if the $42,000 had been paid by the Homeowner's Association.

Ms. Mullaney replied that was correct.

Mr. Zobrist noted that the Commission had already received an email from Carolyn Patterson.

Carolyn Patterson, owner of the Inn at Monticello with husband Robert Goss, said that their bed and breakfast inn was located on 4.6 acres of land at 1188 Scottsville Road. The back of their property is significantly adjacent or abutted by the proposed development. It is the subject of their concerns and objections.

- Number 1, if the critical slope waiver is granted and the land in question is developed, as proposed, construction activity and the proximity of the resulting single-family houses and duplexes will significantly harm their business and will diminish the value of their property, resulting in a decrease in their tax payments to the County and Commonwealth. The Inn at Monticello operates at about a 60 percent capacity year round. It is one of the most successful inns in Virginia. In four years, their business has averaged $20,000 a year in sales and use taxes to the County and Commonwealth. They also pay $8,700 a year in property taxes. They believe that the granting of this critical slope waiver and the resulting development will significantly decrease the value of their land and the business that goes into their front door every day. They believe that the value of the Willow Lake Neighborhood will decline substantially if critical slope waiver is granted and these houses are place in their view shed.
- Number 2, if the critical slope waiver is granted and the land in question is developed, as proposed, construction activity and the proximity of the resulting single-family houses and duplexes to the lake and creek will most likely cause significant harm to the environment. That has been discussed previously and the concerns are not unique. They are literally downstream in the most important ways of all of the after effects of this development. They have current problems with downstream water, storm drainage, and significant silt coming down into their yard. The County Ordinance mentioned earlier, Section 4.2.5, requires addressing the need for erosion control. They do not see anything in the application that acknowledges that fact.
- Number 3, disturbance of the critical slope so as to permit this development of the land may require blasting and other means of moving earth and rock, which could result in compromise of the berm (dam) enclosing the lake. To conclude, previous owner for 20 years were unable to get a waiver or develop this land despite several attempts and denial of critical slope waivers. They believe that is the ordinance protecting them from bad ideas. They hope that is continued today by denial of the waiver.

Ms. Monteith noted in a letter received from Brian Smith yesterday the last point he made was that they have taken into consideration the needs of their neighbors and have proposed granting them, etc. She asked if they had been considered as part of this process.

Ms. Patterson replied not at all.

John Sinclair, resident of Willow Lake, noted a few points clarification. One is in terms of the lake the stream buffer from Cow Branch extends significantly into the lake, which effectively from a water shed standpoint bring the whole lake into the stream buffer. A line cannot be put in the water. That would make the water's edge where this proposed subdivision is being made the edge of the stream buffer. The engineer mentioned the 60' setback, which seems should be overwritten by the 100 foot consideration. The other point was with respect to the guardrail, which goes up the entire street. There is a sight line that has to be met, which is a part of the new parcel the applicant bought. That is a safety issue, which has to be addressed by the state. The guardrail that extends the entire length of the proposed subdivision. The guardrail would have to be removed in order to accommodate the driveways going down that slope. In effect when there is a subdivider that usually one of the first things they do in terms of

infrastructure the basis structure is to address curb and gutter. In this particular case, they do have the concrete curb all the way down that goes into a gutter that goes just below all of this proposed subdivision. At the curb would have to be removed along with the guard rail. So the curb and gutter issue becomes a situation where all of these driveways are the gutter going into the ultimate gutter that is the lake. He wanted to make those points in regards to in effect these applicants are asking this Commission to override all these concerns in order that they as real estate agents or principals of the land can say developers have at it. That would be 9 people that they would have to be dealing with to protect the lake along with what is charged by the County.

Tom Moore did not speak.

Roy Grant, resident of 453 Maple View Court for 17 years, said that he went to Richmond yesterday morning to meet with Mr. Shaffer who is the Training and Development Manager at VDOT. He explained his concerns to him about the guard rail. He went for the education. Last Friday he spent an hour with Ms. Frederick to get an education. Like many here, they are not professionals or engineers and have never done this before. The bottom line is the guard rail is 1,000' long steel eye-beams pile driven into the ground 6' deep. The posts are every 4'. The applicant is not asking for anything other than for the Commission to give him permission to subdivide the land. They have not asked permission to set up a homeowner's association. His perception is that if they allow them to subdivide the land and sell it off piece mill it will create problems. Mr. Shaffer took him took him to another State office building so he could call with the Land Development Program Administrator. He got an education. If this land is subdivided, then the lots can be sold off. The Commission is the only domino. He honestly thought there was a string of dominoes that had to fall. If the Commission approves the request, the applicant can go to a final plat to subdivide the land and put the lots up for sale. He talked to the assessor and found that a lot of profit will be made from this sale. If they don't put restrictions on this, then the common ground shown on the plat will become fiction.

Roger McDonald, resident of 1253 Maple View Drive, echoed the comments Ms. Hisey made. He just got out of the Army and would be going back shortly. He hoped he had something to come back to with the lake. They are asking for a waiver for a reason. They asking because there are Codes in place that require them to get a waiver. He asks the Commission to govern so that he has a lake to come to when he comes back.

Brook Ravan, of 449 Maple View Court, said his main concern was they have an island of uncontrolled land right now surrounded by a Homeowner's Association that is required to take care of all of this land around it. Personally, he was concerned that there was going to be a lot of things in that island that they can't control. The permission to use that critical slope will exacerbate that situation and add more to what they can't control, especially for protection of the pond that most enjoy.

Dr. Karen Mulder, Willow Lake home owner, said she had three primary points. Without an environmental study, she did not see how they could dare to approve this. Second, without a traffic study of the addition of 4 to 28 cars, (if there were 2 people per proposed unit), she did not how the issues would be worked out with the curb and guardrail. Third, it is in the southern part there that has always had movements or petitions to prevent the kind of chaos that reigns in the northern part of Charlottesville. This has been a very near and dear concern to some who live in that area. This was one compromise and if made, it is just another kind of flag to developer's greed. She was not speaking to the ones who own the property, but the ones who come after them for which there seems to be no limitation.

Ms. Monteith requested to ask a question of Mr. Piccolo. She understand that there has been clear cutting in this area, but does not understand why. She wondered if anybody could help her understand why.

Mr. Piccolo replied that the clear cutting started about two months ago and it continued. He was under the impression that Mr. Hauser was cutting because he was the prior land owner. Honestly, he did not know he had gone through foreclosure. As a owner, but they thought was part of Willow Lake, they thought he had consulted the Board of Directors as well as the condominium management and they had told him to take care of his property that was within Willow Lake. The clear cutting surprised everybody.

It happened. It was chipped and done. When he received the notice of the first hearing that was postponed, which was the week before Christmas, that was the first he had heard about a hearing that was being held. That is when everybody's flags went up that this was not Mr. Hauser taking care of his property, but something different.

Neil Plum, a home owner in Willow Lake, said he was not speaking to night as a Board member except to make one point that as a Board they are here or represented. They were not speaking as a Board because of notification. There was an issue in his managing partner never received a mailed notification. Evidentially it was sent to the wrong address of record. Speaking with condominium management, our management said that they had tried on several occasions to correct that error. As a Board, they are not speaking right now since they simply have not had time to meet and form a position. He means it is the Willow Lake Homeowner's Association Board.

Mr. Loach said with regard to the statement that made for the requirements for the homeowner's association to maintain a quality of water. Who were the original owners from the homeowner's association or was that set up by the developer.

Mr. Plum replied that his history with the Homeowner's Association has been for ten years. He has no documentation of this history. He has served on the Board for one year after serving two years before. He did not know the exact history. He believed the original developer, but not the primary developer, was Hauser Homes or some affiliate. A very comprehensive covenant was put in force here. On page 22 of the HOA covenants and restrictions, the lake in Willow Lake, currently known as Willow Lake, is an important resource to this community. The association, their successors and assigns have a responsibility to avoid causing material adverse effect to the beauty, quality, and purity of the waters thereof. In order to ensure that this responsibility is fully met the Association shall promulgate and amend from time to time rules and regulations which shall govern the sensitive environmental activities as the application of fertilizers, pesticides, and other chemicals, erosion control measures, use of lake surface, and any other activities that may materially affect the waters of this lake. Failure of any owner or tenant of property in Willow Lake to comply with these requirements of such rules and regulations shall constitute a breach of these covenants. He believed this is what the applicant who are both land owners and property owners need to abide by.

Mr. Lafferty asked if the land in question was not included in this covenant.

Mr. Plum replied yes, this was proposed phase 3 of Willow Lake. He believed the applicant stated at the very beginning of this discussion that this has already had a preliminary approval. He believed this is what the Commission needs to check and evaluate. There is confusion on this matter. Phase 3 was just a proposed carve out there out on the lake. It never had a plat submission until this moment that has been approved. This would effectively be phase 3. Now it has been determined apparently that it is not part of Willow Lake. This is also a point of confusion. These things all transpired all within the last two months during the holidays. That is why their housekeeping is not in order as it should be.

Mr. Zobrist noted that it really was a legal question if that property was bound by the covenants and conditions. He did not think they were prepared to deal with that right now.

Ben McCauley, the principal of Condominium Management, noted that Willow Lake was built in 1939. The property was developed first by Dr. Hurt. There has been two other people involved in it since that date. All the document showed that this was going to be part of Willow Lake. When Hauser owned it, he voted his right or his lots that he claimed he owned there with the Association since 1987. Until just recently, when this information came that this land had never actually on a title search showed that it had never actually been a supplemental declaration put into the record for this to become part of that. Up until this time, everyone involved thought this was part of Willow Lake.

Mr. Zobrist said there was a title search done and the title search shows that this land was never in it.

Mr. McCauley noted that Hauser never put it in.

Mr. Zobrist said the title search showed that this portion of land before the Commission tonight was never burdened by the CC&R's.

Mr. McCauley replied that it showed that the land was never entered into the property. In 1979, before any of this was built his mother-in-law owned a piece of property two lots up. It would take a billy goat to climp all of this property from the lake up. The developer cut out enough to build roads and place houses. The access to the road is still in question. There may be some legal ramifications that are soon to arise on that because it has been in use continuously for over 20 years, which they are not dealing with tonight.

Marian Altman, a Willow Lake home owner, agreed with the concerns that the others expressed. She was concerned about the lake because of her personal use of it for the last 6 years in the walking of her dog around the lake and seeing the wild life habitat. A lot of the wild life habitat is going away with the clearing of the property and more development. She was very sad about that.

David Halsey, of 445 Maple View Court in Willow Lake, said he would like to make one thing clear. He asked everyone to stand up who was against this request. (The majority of the public stood.)

There being no further public comment, Mr. Zobrist closed the public hearing and asked the applicant if they had anything further to say.

Brian Smith noted that he wrote down a few notes as the people were talking for clarification and to help everybody here to be good stewards of the land and good neighbors. He was very happy having the clients he had who want to do this sort of development and not put any homes down near the lake. The applicants want to protect the lake just as much as the neighbors do. One gentleman talked about the driveways climbing up the steep slopes behind the guardrail. They don't envision that. They envision the homes to be cut into that side slope and the area in the foundation for the homes to be a retaining wall that would hold up the driveway that would be between the house and the road.

Mr. Zobrist noted that he did not understand that. They had a report from VDOT and they were saying they would cut through and run the driveways down the slope between the houses.

Mr. Smith replied no. A gentleman this evening talked about having driveways come down that steep slope for each one of those 8 lots. There were some slides shown at 42%, 44%, and that sort of thing. That is not what they envision at all. They envision homes being cut into that slope in the front of those homes being set on the 25' setback so that the foundation for that home would act as a retaining wall to hold up the driveway that would be between the house and the road.

Ms. Frederick pointed out that the applicant is proposing to fill between the house and the road.

Mr. Ed Smith asked if he envisions the front driveway being on grade as they intersect the street sloping down to the street.

Mr. Brian Smith replied actually it would be sloping just a touch up so the water won't drain back towards the house. It would come back towards the curb and gutter.

Mr. Ed Smith said when he cuts the curb and gutter they will have to put in CG9 or CG11 entrances. Therefore, he would control the water.

Mr. Brian Smith replied yes. It will all be controlled.

Mr. Ed Smith asked if knows yet if the guard rail would go away.

Ms. Frederick replied yes, VDOT has said the guard rail will go away.

Mr. Brian Smith noted at the end Ms. Frederick was kind enough to send an email to him late this afternoon. He read the email and then called and spoke with Joel DeNunzio who is the VDOT Engineer.

It may go away. It may change. It all depends upon how many driveways, how close they are, and how that is designed. They talked about the house sites. They talked about driveways on that steep slope behind the guard rail. They talked about erosion control. Some of the folks here were concerned about erosion control. The owners are also concerned. They all are concerned. He proposed a site plan that showed house locations and the locations he had talked about. It had a grading plan on it. He could add an erosion control plan on it as well. He had no problem doing that. He did not believe his clients have any problems spending the money for him to develop that. They were encouraged by staff not to show that because of one reason or another. Therefore, they did not show the house locations. He suggested that maybe they should. They are happy to offer and draw those plans up and get staff approval and address all of those items of house locations, grades, etc. So keep that in mind on the conditions. They would be happy to do that. There was discussion about access for maintenance of the legal technical access for the people who live in Willow Lake. There is a 5' area that goes from Willow Lake Drive that goes down to the lake through a very wooded area. That is eroded out from the drainage that comes from Willow Lake Subdivision. Everybody goes down and enters where it is cleared out and they walk down through there. That is how they get their mowers down there. What they are proposing to do is just make it legal and move it down there and give them a nice path just like the Service Authority does for access. Regarding the bed and breakfast, his client indicated she had a meeting with her two weeks ago. The lot that is adjacent to the bed and breakfast is not their lot. It is a separate lot or Lot 17 that they have already divided.

Mr. Ed Smith asked who owned lot 17, which was a little triangle.

Mr. Brian Smith replied that his clients bought that lot, too. That lot is in the HOA, but lots A, B, and C are not. He asked staff to discuss the stream buffer.

Ms. Frederick noted that the 100' stream buffer was along Cow Branch and goes through the lake. The 100' stream buffer does not encompass the lake, but it does go through the lake.

Mr. Brian Smith said it was very unusual. Usually they see the 100' stream buffer along the lake's edge. In this case, it is not.

Mr. Fritz elaborated that they meet with staff early on and he is describing accurately the conversations they have had regarding the plans. One of the questions staff had was where is the stream buffer and why is the pond not in the stream buffer. It has to do with the design of the pond sort of off line from the stream itself. The stream itself is where the stream buffer is the way the ordinance reads. It is along the perennial stream.

Mr. Zobrist noted that the pond actually extends the buffer because it goes all the way to the other side of the pond.

Mr. Fritz replied that the pond does not extend the buffer by our ordinance. Effectively it takes it to the other side, but one cannot build in water.

Mr. Brian Smith said the last item is traffic study. Is the road capable of handling these 8 additional lots. The answer to that question is yes because when it was originally designed it had 28 lots proposed in that area and when that was added in no problem.

Mr. Zobrist asked if this land is in the HOA.

Mr. Brian Smith replied that was a legal question and he had no idea.

Mr. Zobrist asked if the owners know. When they bought the land, they bought a title policy.

Ms. Monteith asked to make a comment. As far as their regard to the street and the guardrail in building up and filling, she would note she is a land use planner, architect, and landscape architect. To her that does not sound like a solution for erosion control when it concerns the water body.

Janet Mathews, one of the property owners and resident of Willow Lake, noted that the answer to the question was that these lots are not in the HOA. In fact, because they are going to create open space they will have to create their own HOA or as has been discussed with the present HOA they would encourage people who bought those lots to join their HOA. The fact that they say they have not had time to prepare, she would say they went with their original plans to a Board meeting in November in order to establish an open dialogue with them. She lives in the neighborhood and these are her neighbors.

- She read her statement. "It is true that no good deed goes unpunished. While she is fully cognizant and sensitive to all of the concerns expressed by her neighbors this evening they have done as much as they can to maintain an open line of communication and offer all of the information that they have based on what the County told them. Emotions run high around issues like these. It becomes difficult to keep the facts clear. Public opposition has been heated, but much miss information has been put out there. She submits the facts are clear. They are applying for a critical slope waiver in order to create 7 additional lots to the 3 that are currently lots of record. The issue in question should be whether the Commission can grant the waiver. The waiver had already been granted in 1990 along with a site plan showing 27 homes. She has a letter stating that this was approved by the County at that time and a site plan that she pulled from their archives that they could not find.
- Their intention in presenting this plan was to reduce the impact and density. The location of the houses along Willow Lake Drive is the best and highest use of this property. As they have heard, they are willing to create an HOA to ensure that responsible development practices will be followed. The clear cutting that has been referred to were Paradise trees that were removed, which was removed by VDOT four years before, which improved the view of the people living in the townhomes. Now they are claiming they are trying to take their view.
- Cow Branch is not within the water shed. The lake is an impoundment. There are no wetlands. The setback of 100' applies to Cow Branch not the lake. She would welcome staff comments regarding that at this time as they were told that would not be an issue.
- The subject property is not presently in an HOA. The HOA has access along the road frontage on Route 20 to maintain their dam. Instead of requiring them to do that and build a bridge, they offered them vehicular and pedestrian access in the area that they've always historically used. They have an extremely steep easement and they offered them a much more reasonable access. There are currently many trespassers from Stone Creek Apartments and the amount of trash they have cleaned up is incredible. If fecal coli form is an issue, she suggests that people use plastic bags to clean up after their dogs.
- The Inn at Monticello is not a member of the HOA, but she did meet with them 2 weeks ago. They have inquired about purchasing the lot that is part of the HOA in order to protect their interests. At that time, they informed her that they had offered the bank less than $10,000 for the quarter acre lot that sits behind them. She told them that their market value was slightly higher than that.
- In closing, she would say their efforts to develop this land are not actually to develop this land, but to reduce density and to prevent 27 town homes from being built. It is a far more sensitive and sensible plan than the one the County has previously approved. She would ask the Commission to approve the critical slope waiver with the understanding that a 60' setback, which they are proffering from the lake, with appropriate erosion controls and a grading plan, be criteria for their approval.

Mr. Zobrist closed the public hearing to bring the matter before the Planning Commission.

The Planning Commission took a ten minute break at 7:16. The meeting reconvened at 7:27 p.m.

Mr. Zobrist noted that the matter was before the Planning Commission for discussion.

Mr. Franco noted that it is fairly common practice that raw land would not be put into the HOA yet. It would only be added as the subdivision is created. It does not surprise him that the residue or these parcels were not part of the HOA at this time. The intent may have been in the future when the 28 unit site plan or these lots were approved that when the plat was signed and recorded, then the covenants and restrictions would be recorded at the same time. That is a standard practice.

Mr. Loach asked if he would address the issue of the HOA being responsible for the water quality as they have been. Obviously, they have spent a considerable amount of money to maintain it. If this comes in essentially, they can't dictate the erosion and sediment control, but it seems in some respects they are still responsible for it under their present HOA.

Mr. Franco said their HOA is not law. First of all, they can't fine themselves. As an adjacent property owner, if there is damage coming from this site onto their property they have legal rights because of that. It is not like they are completely unprotected. They would have a means of doing something if there was a problem. It is a different venue, but there is a venue that exists to take care of that problem. He would be interested in knowing, and this is not the place to figure this out, is whether they are open to allowing this to be part of this subdivision. If the original developer had pursued this, he probably would have added it to Willow Lakes. He was not sure if that right was assigned or if this developer has that ability. That would simply make it simpler if this could come under that later on in following the regulations. That is at least common practices for developments. With respect to some of the questions raised, he had a few questions for staff. He thought the 100' buffer because the lake was adjacent to the main body of the stream and not part of the stream, but this would still be subject to the water quality from the State. He asked if that was a fair statement.

Ms. Frederick asked Mr. Brooks to come forward and answer the specific question.

Glenn Brooks, County Attorney, replied yes.

Mr. Franco said there has been a lot of attention on the clearing that took place. He asked if there was a permit or one required to do that clearing.

Ms. Frederick replied no.

Mr. Franco asked if a SDP was approved in 1999.

Ms. Frederick replied no. A SDP was approved in 1991.

Mr. Fritz noted that in March of 1991 there was a 28 unit multi-family development approved on this property. One of the difficulties with that plan is it does not actually show critical slopes. He could not tell exactly where the grading is in relation to the critical slopes. He would have to mark it up. It probably disturbs some areas of critical slopes. However, it did have 28 units on this property.

Mr. Franco assumed that it was not longer valid and expired in 1996.

Mr. Fritz replied yes, it expired at least in 1996.

Mr. Franco asked if the critical slopes were required to be on the site plan at that point.

Mr. Fritz replied that it was required to be on preliminaries.

Mr. Franco said none of it was executed anyway.

Mr. Fritz said that it was not built. He had not done the contours. It was a little different from what is shown here, but did hit critical slopes.

Mr. Fritz pointed out that the 28 lots was not the same area. It was extended a little farther. There was no open space or a lot less open space than what is currently proposed.

Mr. Zobrist asked if he was saying this is an expired plan. The applicant is starting from scratch.

Mr. Fritz replied that the site plan is expired. The property is zoned R-4 and there was a site plan approved in the past.

Mr. Ed Smith asked if the 60' setback was from the lake or the property line.

Mr. Franco noted that it would be more like 75' from the edge of the lake.

Mr. Loach questioned when the new conditions in Brian Smith's letter dated the 25th were developed. He asked were these promulgated today so the home owners has not had time to react to them.

Mr. Brian Smith replied that the letter was developed today after a meeting with Linda Porterfield in the field coming up with some ideas to protect the lake and minimize the grading as much as possible. Part of that is the grading plan and the erosion control plan. They have not have the time to share that with the residents of Willow Lake.

Mr. Zobrist noted that he was a trained and State Supreme Court Certified mediator. He asked if there was any chance in mediating this and coming up with a solution that everybody would like. He questioned if they would like to do that. He asked if the owners had an interest in pursuing this or would they like the Commission to make a decision. Right now they have a staff recommendation that it be denied. He was getting a sense that many Commissioners feel this might be premature and if they could work something out with the home owners along the lines Ms. Porterfield helped Mr. Smith with. He thought it would make it a lot easier for everyone. The Commission will take an action tonight if the applicant so chose.

Ms. Mathews, applicant, said that they would be happy to accept a deferral from the Planning Commission with the understanding that it is on record that we offered a grading plan and was told it was not necessary for a subdivision. It was their idea to keep the dwellings on their original site plan more than 100' off the edge of the lake. In doing that, it was an effort to be as considerate and as careful of the environment as possible considering that it is her house that is the abutting house for these lots that are going to be developed. She requested a deferral to next month because the taxes are high and the engineering costs are going up.

Mr. Cilimberg suggested that the Commission did not need to set a date. This is not a public hearing item. They need to make sure there is some resolution or some finality to this and then get it scheduled at that point.

Mr. Zobrist noted that the applicant has requested deferral to a date to be agreed upon with the staff.

Ms. Monteith stated that they heard very definitively from two different people tonight that this parcel was and was not included originally in the HOA. Whatever happens in the future in terms of this it should be clear and they should have legal evidence of what the situation is.

Mr. Franco asked to hear from the individual that was a member of the HOA to see when their next meeting is and get an idea of how they might work together.

Neil Plum, member of HOA, said that their next scheduled meeting is on March 16th. He would speak and say that they have been shown drawings, but no formal proposal or suggestions have been shown to the Board. They have been shown drawings and had conversations. They have had nothing to move on. When he spoke earlier about notification, that nothing has been formally proffered or shown to them as to what is going on next.

Mr. Franco asked if they were willing to speak with the applicant.

Mr. Plum replied that speaking for the Board they would certainly have a meeting. They are a Home Owner's Association and represent their interest, also.

Mr. Zobrist noted the applicants are acting in good faith. It would behoove them to meet in good faith and try to work it out.

Mr. Plum replied that it sounds great.

Mr. Zobrist invited Kim Olson to come forward and address the Commission.

Kim Olson, a Board member of the Home Owner's Association, said just stating from their documents in order for them to have a meeting prior to the 16th they have to call a special meeting. There are certain things that they have to do in order to get that meeting on the books that is outside of a quarterly regularly scheduled meeting. The soonest they could do something is March 16th unless the Board votes to call a special meeting.

Mr. Zobrist suggested that they work on discussing this in order to come to a decision on or before the 16th. The applicant has said they are willing to compromise and work with them. He suggested that they give them some time on a reasonable basis.

Mr. Plum noted that this Board would not move to delay this since they want to resolve it.

Ms. Porterfield said having met with the homeowners and applicants a lot lately that there are some definite issues to all of this. She hoped that they would discuss them. Obviously, the water quality issue is big. Another one that is really big is whether it is logical to have two homeowner associations or just one that has been functioning for a long time. Another is that they really have to think in terms of whether or not the suggested way of building these houses is a good way. Personally, she was concerned that there could be eight different builders in there since the applicants only want to subdivide the land. There needs to be a way to make sure they all do it in the same way. She asked staff if there are things they can provide that could lock this in much better so anybody coming in would know exactly what they would have to do if they bought one of these lots.

Mr. Franco suggested the guidance they would offer, if they are all in agreement, is that in order to process this waiver favorably that he would like to see an overlot grading plan and erosion control plan that shows how the overall concept is going to be implemented as part of the submittal document. Therefore, they would need to understand this.

Mr. Fritz noted that was what staff was recommending as a condition of approval should the Commission approve it.

Mr. Franco suggested that the applicant bring in that information as part of the next review. The applicant needs to show the erosion control and the overlot grading as part of the approval process. He encouraged the parties to look at the HOA documents to see if the lots should come in as phase 3.

Ms. Porterfield agreed that was very important. Another thing that came up was the road. She personally asked Joel DeNunzio's take on the road, and he sent in an email to the Commission. She would definitely suggest that everybody try to work VDOT into the discussion and see what they say about the potential of 11 curb cuts along there if everything they are talking about is built and access is brought in off the top. That would be many curb cuts. Mr. DeNunzio indicates that he would prefer to leave the guard rail the way it is. There have been many issues brought to her attention. The Commission needs for everyone to look at the issues to see if there is a way the homeowners and applicants can come together on some of the issues to make the best of certain things and to come up with something that the majority can support.

Mr. Franco asked if the applicant has any questions and there is clear guidance on where they are going.

Brian Smith said he had a clarification on the grading and erosion control plan. He suggested that they deal with real topo and not the topo they have on the County maps because they are not as accurate. He suggested they should do the erosion control plan, the grading plan, the house sites, and address the guardrails and present those to staff, VDOT, and these folks to get their comments. Then they would present that to the Homeowner's Association.

Mr. Zobrist reiterated that the applicant wants to figure out how to deal with the Homeowner's Association without the Commission giving them guidance.

Brian Smith agreed.

Mr. Zobrist asked if everybody agreed with that.

Mr. Morris agreed it was a good point.

Mr. Ed Smith asked if he envisioned having a joint driveway on the smaller lots.

Mr. Brian Smith replied that he thought that they could go either way. There are advantages and disadvantages both ways.

Mr. Ed Smith noted that it would just be fewer curb cuts.

Mr. Franco asked if that would be part of what they figure out in the next couple of weeks, and Mr. Brian Smith agreed.

Ms. Mathews asked what was determined in terms of discussing this with the HOA. She asked if that was a requirement of the Planning Commission.

Mr. Zobrist replied that they have no requirement. They are deferring so that they can pursue discussions with them to see if they can come to an agreement so that they can come in as a united front and say they agree with this.

Ms. Mathews asked if the approval of the Planning Commission on a critical slope waiver going to require them to have an agreement of a HOA that they are not a part of.

Mr. Zobrist replied no.

Ms. Mathews said she just wanted to clarify that.

Mr. Zobrist noted that he would clarify that. They are on their own. The deferral was to see if the applicants could work out an agreement with the Willow Lake residents. If they can't work out an agreement with the residents, then they are welcome to come back to the Commission for a decision to be made after hearing further public comment.

Ms. Mathews said she was happy to work it out, but was skeptical. On all these other issues like views, aesthetics, and things like this – these are things they have tried to address. What they would like to do is put in front of the Commission a much more detailed plan. She asked if that would help the Commission make their decision.

Mr. Franco replied absolutely.

Mr. Zobrist said the Commission would take any information they were willing to provide, even though it is not required. It is really helpful if they help the Commission see what it is they are trying to do. Many people come in and try to do the minimum and the Commission has a hard time envisioning it.

Mr. Franco noted that it was clear that it is not a requirement of the ordinance to do that, but it would certainly help the Commission make their decision.

Mr. Zobrist suggested that Brian Smith talk with people and find out what their individual thoughts were. The Commission has individual thoughts, but they don't know what they are because they were going to bring back a new plan.

Ms. Mathews agreed that they were going to bring back a new plan.

Motion: Mr. Franco moved and Mr. Morris seconded for acceptance of the applicant's request for deferral of SUB-2010-0156, Willow Lake Critical Slopes Waiver Request.

Mr. Zobrist invited other discussion.

Ms. Porterfield noted that in order for the Homeowner's Association to weigh in on this, when rescheduling the meeting with the Commission that the new hearing would have to be after March 16th to accommodate the HOA's next regularly scheduled meeting.

Mr. Morris noted that the Homeowner's Association could call a special meeting.

Mr. Zobrist noted that it was up to them how they want to handle the matter. If they can't handle it, then the applicant can come back with their plan for another hearing. The Commission encourages them to find a way to meet each other half way. He thanked everyone for their comments and for coming tonight.

The motion passed by a vote of 7:0.

Mr. Zobrist said that SUB-2010-0156, Willow Lake Critical Slopes Waiver Request was deferred. He hoped that they could find a way to resolve this matter in everybody's best interest.

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.

Adoption of Resolution of Intent

Mr. Kamptner noted that staff sent an email with a copy of the resolution of intent regarding fees. They discovered a glitch in the zoning fee regulations. The email explained what happened in the fees for farmer's market. The resolution of intent is in front of the Commission and would initiate the rezoning that would correct the fees for farmer's market special use permits and also deal with the notice fees for a couple of type of uses that have recently been approved. It was not only the farmer's market but the farm stands and farm sales, and the new classes of home occupations so that their notice requirements are reduced to be more commissary with actual costs. Community Development has identified a couple of other minor fees that they would like to take care of in this zoning text amendment as well. Tonight is just a resolution that initiates the process. Tentatively staff will bring the zoning text amendment to the Commission on February 22nd.

There being no discussion, Mr. Zobrist asked for a motion.

Motion: Ms. Porterfield moved and Mr. Franco seconded to adopt a resolution of intent to amend Section 35.1 of the Zoning Ordinance, which establishes fees for various zoning applications, as follows:

RESOLUTION OF INTENT

WHEREAS, Section 35.1, Fees, of the Zoning Ordinance (Chapter 18 of the Albemarle County Code) establishes a schedule of fees for various zoning related applications and approvals under the Zoning Ordinance; and

WHEREAS, the Zoning Ordinance has been recently amended to change or add classes of uses for farmers' markets (County Code § 18-5.1.47) and major and minor home occupations (County Code § 18-5.2A); and

WHEREAS, farmers' markets require a special use permit in most zoning districts but no specific fee for such a special use permit is imposed under Section 35.1 and it is desired to establish a specific fee rather than to have the general fee for special use permits to which a specific fee does not apply; and

WHEREAS, there are other minor services provided for which fees are desired that are not currently included in Section 35.1 including, but not limited to, a fee for minor amendments to approved site plans for which only a letter of revision is required; and

WHEREAS, the Zoning Ordinance requires that notice be provided to the owners of abutting properties after an application for farm sales, farm stands, farmers' markets (County Code § 18-5.1.47) or major or minor home occupations (County Code § 18-5.2A) is submitted, and the required fees for such notice is currently $200.00 plus the actual cost of first class postage; and

WHEREAS, it is desired to amend Section 35.1 of the Zoning Ordinance in order to add farmers' markets and other minor services to the schedule of fees and to add a separate fee for the notice required for farm sales, farm stands, farmers' markets, major home occupations and minor home occupations that is adequate to cover the reasonable cost of the service provided.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to amend Section 35.1 of the Zoning Ordinance to achieve the purposes described herein; and

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on the zoning text amendment proposed pursuant to this resolution of intent, and make its recommendations to the Board of Supervisors at the earliest possible date.

* * * * *

The motion passed by a vote of 7:0.

- By a vote of 7:0, the Planning Commission adopted a resolution of intent to amend Section 35.1 of the Zoning Ordinance, which establishes fees for various zoning applications.

- NO MEETING ON FEBRUARY 1, 2011
- NEXT MEETING ON FEBRUARY 8, 2011

There being no further items, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 8:00 p.m. to the Tuesday, February 8, 2011 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

_____

V. Wayne Cilimberg, Secretary

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