Albemarle County Planning Commission
April 19, 2011

The Albemarle County Planning Commission held a public hearing on Tuesday, April 19, 2011, at 6:00 p.m., at the County Office Building, 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 absent.

Other officials present were Megan Yaniglos, Senior Planner; Judith Wiegand, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; J.T. Newberry, Code Enforcement Officer; Sarah Baldwin, Senior Planner; Elaine Echols, Principal Planner; Bill Fritz, Director of Current Development; Wayne Cilimberg, Director of Planning; Mark Graham, Director of Community Development; 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.

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.

Mr. Lynwood Bell, resident of 493 Fontana Drive, thanked the Commission for not running the CTS buses through Fontana Drive. To run those buses through their neighborhood would have been a severe mistake since the area is not suited for buses and a lot of traffic.

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

Review of the Board of Supervisors Meeting – April 6, 2011

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on April 6, 2011.

Consent Agenda:

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

a) **Approval of minutes**: 1-25-11, 2-22-11, 3-1-11, and 3-22-11
b) **STA-2011-00001 Resolution of Intent to Amend the Subdivision Ordinance for Special Lots** (Amelia McCulley)
c) **ZTA-2011-00003 Resolution of Intent to Amend the Zoning Ordinance for Special Lots** (Amelia McCulley)

Mr. Zobrist asked if any Commissioner wanted to pull any item from the consent agenda.

Mr. Lafferty asked for clarification on the resolution of intent to amend the Subdivision Ordinance for Special Lots. In the second paragraph, second sentence, it says the development rights thereto provided that they are created for specific uses such as. On the next page, it says used exclusively for public and private streets. "Such as" is just a hint of the use. He wondered if staff wanted to say limited to or make that wording a little stronger. He realized it was a resolution of intent and did not want to pull it, but he questioned the wording.

Ms. McCulley replied that in the resolution of intent staff was trying not to think they could list all of the specific purposes that would satisfy the special lot criteria. She asked Mr. Kamptner if he saw any

concern with the fact that it is so broad in the resolution, but then in the draft ordinance it was not a "such as" but "limited to."

Mr. Kamptner replied the language used in the resolution of intent was because the list of possible special lots is not final yet and they want staff to go through the process and identify any other types of situations that they would want to add to the list.

Mr. Lafferty noted under the definition it says used exclusively.

Mr. Kamptner replied when the lots are created they have to be used for those specific uses.

Mr. Lafferty agreed that made sense.

Ms. McCulley said that was a good point and a good way to explain that.

Motion: Ms. Porterfield moved and Mr. Lafferty seconded for acceptance of the consent agenda.

The motion carried by a vote of 7:0.

Mr. Zobrist noted the consent agenda items were approved, which included the following.

- STA-2011-00001 Approved Resolution of Intent as noted below**.** Staff will proceed to a public hearing with a Subdivision Text Amendment by scheduling the Public Hearing for the Commission on May 10th and with the Board on June 8th.
- ZTA-2011-00003 Approved Resolution of Intent as noted below**.** Staff will proceed to a public hearing with a Zoning Ordinance Amendment and schedule the public hearing for the Commission on May 10th and with the Board on June 8th.

STA-2011-00001 Resolution of Intent to Amend the Subdivision Ordinance for Special Lots

RESOLUTION OF INTENT

WHEREAS, there is an identified need for the creation of lots that do not comply with all of the standards for lots under Chapter 14, Subdivisions, of the County Code; and

WHEREAS, the Subdivision Ordinance authorizes non-building lots to be created without assigning development rights thereto provided that they are created for specific uses such as public and private streets, railroad rights-of-way, central water supplies and central sewerage systems, stormwater management facilities, greenways, public utilities and pre-existing cemeteries, all of which serve a general public purpose; and

WHEREAS, there is a pending zoning text amendment that would create a class of lots identified as special lots which serve the same purposes as non-building lots under the Subdivision Ordinance; and

WHEREAS, it is desired to have the Subdivision Ordinance and the Zoning Ordinance regulate special lots or non-building lots in a consistent manner using the same terminology.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good land development practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to amend County Code §§ 14-106, 14-302 and any other regulations of Chapter 14, Subdivision of Land, of the County Code deemed appropriate to achieve the purposes described herein; and

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

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ZTA-2011-00003 Resolution of Intent to Amend the Zoning Ordinance for Special Lots

RESOLUTION OF INTENT

WHEREAS, there is an identified need for the creation of lots that do not comply with all of the standards for lots under Chapter 18, Zoning, of the County Code; and

WHEREAS, through a longstanding and consistent administrative interpretation of the Zoning Ordinance, these special lots have been allowed to be created for specific uses such as public and private streets, railroad rights-of-way, central water supplies and central sewerage systems, stormwater management facilities, greenways, public utilities and pre-existing cemeteries, all of which serve a general public purpose; and

WHEREAS, it is desired to expressly define those lots that may be considered to be special lots and to delineate those regulations of the Zoning Ordinance from which special lots are exempt.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to amend County Code §§ 18-3.1, 18-4 and any other regulations of Chapter 18, Zoning, of the County Code deemed appropriate 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 by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

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Regular Items:

SDP-2011-00016 Panorama Farms (Verizon Wireless) – Final Site Plan
PROPOSED: Treetop personal wireless service facility with two steel/metal monopoles that would be approximately 110 feet tall (10 feet above the height of two reference trees), and ground equipment, within a 3,998 square foot lease area.
ZONING CATEGORY/GENERAL USAGE: Rural Area (RA)
SECTION: Chapter 18 Section 10.2.1 of the Zoning Ordinance
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Area in Rural Area 1
ENTRANCE CORRIDOR: No
LOCATION: At the end of Panorama Road [Route 844] approximately 0.75 miles from its intersection with Earlysville Road [Route 743]
TAX MAP/PARCEL: Tax Map 45 Parcel 1
MAGISTERIAL DISTRICT: Rio
(Megan Yaniglos)

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

This is a request to install two monopoles at a height of 10' above the reference trees and associated ground equipment within approximately 4,000 square foot lease area on Panorama Road. A balloon test was conducted. Because of the terrain, distance and existing tree cover the balloons were not visible from any intermediately adjacent properties or from Earlysville Road.

Factors favorable: The proposal meets the requirements of Section 5.1.40.

Staff did not identify any unfavorable factors.

Staff recommends approval of both personal wireless facilities at the proposed height of 10 feet above the reference trees.

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

The applicant did not want to speak.

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

Mr. Loach asked if there was no room for co-location on the tower.

Ms. Yaniglos replied staff reviews what is before them. However, staff did discuss the cost with the applicant that it would be more cost effective if they put in one tower. However, it would need to be higher and they would need to apply for a special use permit. The applicant discussed with her that they might bring this up at the meeting. However, the applicant did not show up about what the reaction might be for a special use permit.

Mr. Loach asked if there was room for expansion of others since the site was visually so remote.

Ms. Yaniglos replied that the ordinance requires that only three facilities are within a 200' radius. Therefore, only one additional tower could be put in this area within 200'. However, they would be able to put others up higher.

Mr. Franco asked if in staff's discussions did they say how much taller the pole would have to be to accommodate and provide the coverage with one monopole instead of two.

Ms. Yaniglos replied that they did not get the engineering, but they thought it would be about an additional10'. Therefore, the tower would be around 120' tall. They did not do a balloon test or anything to see if that would be visible. It was just a discussion during the balloon test at the proposed height

Mr. Franco pointed out this is his neighbor and he has had discussions with them. Personally, he felt this situation where it is not visible from anywhere would support a special use permit that would raise it up so there was only one pole versus two.

Ms. Yaniglos said she would pass that information on to the applicant because they could decide to pursue a special use permit instead.

Mr. Zobrist asked if they have the discretion to change the request. He thought they were limited to 10' above the reference tree.

Mr. Kamptner replied no, that by regulation the Tier II can only go from 7' up to 10'.

Mr. Zobrist noted that this would have to be a special use permit if they go higher than 10'.

Mr. Kamptner replied that was correct. The Commission's approval of the Tier II facility does not bind them to construct a Tier II. The applicant can come in and apply for a special use permit at any time.

Mr. Zobrist noted the Commission does not need to talk about this. If the applicant wants, they can come back with another request. The Commission needs to take action tonight on the request before them.

Motion: Mr. Franco moved and Mr. Morris seconded for approval of SDP-2011-00016, Panorama Farms (Verizon Wireless) Tier II PWSF - Final Site Plan, for approval of the two monopoles at the proposed height of ten (10) feet above the reference trees.

The motion passed by a vote of 7:0.

Mr. Zobrist said that SDP-2011-00016, Panorama Farms (Verizon Wireless) Tier II PWSF - Final Site Plan was approved to allow two SP-2011-00016 approved for two monopoles at the proposed height of ten (10) feet above the reference trees. The request does not require Board approval.

Public Hearing Items:

ZMA-2009-00005 Kroger Fuel Canopy
PROPOSAL: Rezone 30.985 acres from Planned Development-Shopping Center (PD-SC) zoning district which allows shopping centers, retail sales and service uses; and residential by special use permit (15 units/acre) to Planned Development-Shopping Center (PD-SC) to allow construction of a fuel center with a canopy.
PROFFERS: NO
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Places29 Master Plan: Urban Mixed Use in a Community Center, which allows a balanced mix of retail, housing, commercial, employment, and office uses, along with some institutional and open space uses in Neighborhood 1.
ENTRANCE CORRIDOR: Yes
LOCATION: 1980 Rio Hill Center in the southeast corner of the intersection of Woodbrook Drive and Berkmar Drive in Neighborhood 1.
TAX MAP/PARCEL: TMP 045000000094A0
MAGISTERIAL DISTRICT: Rio
(Judith Wiegand)

Ms. Wiegand presented the PowerPoint presentation and summarized the staff report.

Purpose: To add a fuel center with a canopy in front of the existing Kroger store in the Rio Hill Shopping Center

The Rio Hill Shopping Center was built in 1989. The area now occupied by the Kroger was first an Ames. The proposal for the fuel center and canopy is in the Rio Hill Shopping Center in the parking lot leased by Kroger

Places29 Master Plan designates the Rio Hill Center as a Community Center and Urban Mixed Use. The proposed addition of the fuel center is compatible with this designation. There will be no change in the zoning district itself, it is currently zoned and will remain PD-SC. However, in order for the applicant to add the fuel center, it must be shown on the application plan. Therefore, that requires the rezoning. The fuel center is compatible with the existing zoning.

The application plan is included in the packets. The applicant has worked closely with the County Engineer to make sure the center does not impede safe and convenient travel in the parking lot. The County Engineer has indicated that he is comfortable with this layout. Staff notes that, even with the loss of parking spaces for construction of the fuel center, the shopping center will still have plenty of parking to meet the requirements of the County's Zoning Ordinance.

Factors Favorable:
1. The proposed fuel center would allow "trip chaining," which would mean that fewer/shorter vehicle trips would be necessary.

Staff has found no factors unfavorable to this rezoning.

RECOMMENDATION
Staff recommends approval of ZMA 2009-00005, Kroger Fuel Center with Canopy, as noted on the amended application plan

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

Chris Shutz, with Balser and Associates, said he was the engineer for the project and the developer's representative. Others present tonight were Mr. Finn Childress, with Kroger Mid-Atlantic and Chuck Lebo, On-Site Property Manager. They met earlier with the owner's representatives as well. Given the favorable recommendation at this point, he thanked the Commission for their time and requested a favorable vote.

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

Chuck Lebo, On-Site Property Manager for the Rio Hills Shopping Center for 24 years, said that they were excited about the fuel center with the canopy. Right now, there was a slight economic downturn in retail and they had some vacant stores. They are thinking this might give them and the County an economic boost. They request approval tonight.

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

Motion: Mr. Franco moved and Mr. Loach seconded to recommend approval of ZMA-2009-00005, Kroger Fuel Center with Canopy as noted on the amended application plan as recommended by staff.

The motion passed by a vote of 7:0.

Mr. Zobrist noted that a recommendation for approval on ZMA-2009-00005, Kroger Fuel Center with canopy would be forwarded to the Board of Supervisors to a date to be determined.

ZMA-2011-00001 Fontana Trail Proffer Change
PROPOSAL: Amend proffers to remove obligation to build trail on 6.09 acres zoned R-4 Residential which allows 4 units per acre. No proposed change in density.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential which allows residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses in the Pantops Neighborhood ENTRANCE CORRIDOR: No
LOCATION: In open space behind Olympia Drive and Appian Way and also at the rear of lots on the north side of Fontana Court in the Fontana Subdivision
TAX MAP/PARCEL[S]: 78E000000000E,078E000000000D, 078E00000128, 078E00000127, 78E0000012600, 078E0000012500,078E0000012400, 78E0000012300, 078E0000012200, 078E0000012100, 078E0000012000
MAGISTERIAL DISTRICT: Rivanna
(Elaine Echols)

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

The Planning Commission reviewed the Fontana path system in 2006/2007. This is a challenging request because there is a lot of history on the project. Staff reviewed the history of the project as outlined in the staff report. The applicant proffered to complete the path system. Staff has been working with the developer to complete the system. Staff has a whole series of photographs that display both parts of the trails. Erosion and sediment control staff have been working on this project in Fontana.

Staff has been working with the developer on this. There has been a lot of dissatisfaction with the quality of the paths and some concerns with the proposed locations of the paths. There are people who are both for and against this particular proposal. For that reason staff finds the request challenging. It is supposed to be a neighborhood path system and yet there are members of the neighborhood that don't want it. She presented the PowerPoint presentation to explain the proposal and the steepness of the slopes. There have been different things that have been done over time to address the steepness issues. In some cases stairs have been put in and there are switch backs. There are paths that have been put in at a number of different places where there are existing homes.

Staff finds that the comprehensive plan supports the path system. They look for pedestrian access, interconnectivity and the ability to access parks and over space. This path originally came in as a substitute for sidewalks. Staff believes that it is important that there be paths in neighborhoods. The applicant wants to eliminate those paths and some residents believe it will be a positive impact on the neighborhood. To date the owners on the north side of Fontana Court have been unwilling to provide easements for the path. That would make it impossible to get paths in there unless the County wanted to go in and do something, which generally they don't do.

Factors Favorable

- Some residents desire elimination of the proposed paths and believe that this will have a positive impact on the neighborhood.
- To date, property owners on north side of Fontana Court have been unwilling to provide easements for paths.

Factors Unfavorable

- Elimination of paths as interconnections is contrary to Comprehensive Plan, Neighborhood Model, and Pantops Master Plan.
- Paths throughout neighborhoods enable pedestrians to move safely and conveniently through a neighborhood without having to walk in the street
- To date, there does not appear to be unanimity in the neighborhood that the paths should be eliminated.

Recommendation

- Staff does not recommend approval of the elimination of paths A and B because of lack of conformity with the Comprehensive Plan.
- Staff recommends approval of the elimination of path C because, as of now, there is no willingness of property owners to provide easements for the path.
- To accomplish this, the applicant needs to provide an updated plan and proffers.

Mr. Zobrist invited questions for staff.

The Planning Commission held a discussion with staff about the history of the paths in Fontana and asked staff questions concerning the proposal.

In response to Mr. Morris' question, Ms. Echols pointed out the following:

- One previous condition of approval was the owner shall not request that the county issue the ninth building permit until the paths have been completed. They could start construction, but needed to get that path in before they asked for the ninth building permit. There were the pedestrian paths that were to be constructed according to the design requirements and then the other part was the owner shall construct pedestrian paths in accordance with this plan and complete it to the satisfaction to the county engineer prior to grading in phase 4C.

In response to Ms. Porterfield's question about which paths have been completed, Ms. Echols replied that she did not know because Mr. Brooks who was going to explain that was not present due to illness. However, Ms. Echols pointed out that most of the paths had almost been completed. What had happened was that there may have been a section in one area that was moved to another place.

Mark Graham, County Engineer, noted that the answer was that the areas to the left and the bottom of the major utility easements, which was sections 1 and 2, had all been approved. Fontana Court obviously has not been done because they are trying to eliminate it. The remaining sections, sections 3, 4, 4a and 4b are about 90 to 95 percent done. There are some outstanding issues that the developer has not addressed. Therefore, the county is still holding bonds on those sections.

In response to Ms. Porterfield's question about some paths running through home owner's association property, Ms. Echols replied that the homeowner's association is a party to the application. Ms. Echols noted that there was a sewer easement, but no pedestrian path easement.

Mr. Zobrist noted that staff is recommending the deletion of C, but not A and B because it could not be built anyway because they don't have the easement.

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

Steve Driver, engineer representing the property owner and Fontana Homeowner's Association presented a PowerPoint presentation and explained the background of the proposal. He asked the Planning Commission to consider these items and look favorably on eliminating the path. He pointed out that the steep slopes created a problem creating the paths.

There being no further questions for staff, Mr. Zobrist invited public comment.

Lynwood Bell, home owner in Fontana for 10 years, noted that this matter could be cleared up very easily. He was part of the original trails committee and has walked all of these trails. Regarding the trails on Fontana Court there is no easement there. It would do great harm to those folks. They can have access to the trails because Fontana Court is a cul-de-sac. They have easy access to the trails along Fontana Drive and down to Wilton Ponds and Darden Towe Park by simply going out of their back or front doors and through the Clubhouse parking lot. There is access for them. Those trails would cause a lot of problems. He recommends that they support the developer and not build those. With regard to the both trails on Appian ways there is an easement with regards to fiber optic lines. It is a generally flat surface as described. What they would propose is a mode trail or path so when the owner of the fiber optic line comes along and wants to dig those up they would not have to replace it with the gravel. For that reason as a home owner he recommends to support this new change in the proposal. To do otherwise would cause undue hardship to the owners on Fontana Court and provides no benefit to the folks along Appian Way.

Mr. Zobrist said basically he supports the proposal to eliminate the need as number c.

Mr. Bell pointed out it was a, b and c.

Mr. Zobrist noted that a and b are eliminated, but he wants them to be conditioned as a mode path as opposed to a permeable surface. He asked if that was his recommendation.

Mr. Bell replied yes.

Mr. Loach asked if he could define what the undue problems would be for the home owners if the paths were there.

Mr. Bell replied that on Fontana Court there was no easement there to build those trails. Therefore, somebody is going to have to prevail upon them to give up their property to build those trails. There is no easement along Fontana Court to the north to build any of those trails.

Mr. Loach asked if the easement was the only problem it would cause if the trails were there, and Mr. Bell agreed.

Ms. Porterfield asked Mr. Bell since he was on the original committee if all of the other trails have been built and connected where they are supposed to be.

Mr. Bell replied that he was not on the current committee, but as far as a home owner he was reasonably happy.

Tom Williams, resident of Appian Way, said Appian Way and Olympia Drive get a lot of traffic through there since it is tied back to Route 250. A lot of people cut through that area. The narrow roads make it hard for both the children and older folks to walk on the paved areas. To walk a dog one has no choice but fight the vehicles to walk on the paved areas. He suggested that on Apian Way both a and b ought to be paved. They could go to the side of the fiber optics. Anytime they look at morning dew or any time it rains it is going to be a very slick area down there. They have already talked about the grades in that

area. He did not think grass would suffice. He felt that it needs to have a chip and seal through that area so that it would be maintained. Right now he has no guarantees that area would be kept mowed. They have contracts that go year to year and things change in that. If it was chip and sealed, then he felt it would have a better opportunity to be maintained. He asked that be considered as a safety measure to the children and people who walk through that area. He has lived there from 10 to 12 years and he was promised that there was going to be trails there. It has been a long battle to get trails. There has been talk about whether they were satisfied. He did not think the trails are completely done all the way back in that upper section not to the satisfaction of most people. The trails are completed to a point. However, a lot of the trails have been washed out and the tar has not been done up to a standard. It has been very substandard and grass is already coming through. There was a question about the imperviousness. There is already grass coming up through areas. He would like the Commission to consider those things.

Stan Rose, President of the Fontana Homeowners Association, said the trails have been a contentious situation at least when he moved there in 2006. He could not speak much about what transpired prior to that. But, they started out as grass trails. He tends to side with the developer's representative for aesthetic view of the lovely swatch of grass to walk on. However, the Board of Directors, the elected representatives of the Association, in November voted to support the proffer amendment to eliminate those three sections of trails. Yes, it is not 100 percent. However, as any society it was the elected representatives who voted to support that. He would like the Commission to take that into consideration plus the fact that it is the owners who pay for the maintenance of those trails as opposed to their neighbors who have VDOT paying for their sidewalks. Any trail that is not built is money saved for the homeowners.

Michael Powers, resident of Fontana Court, noted in August, 2009 ten homeowners on Fontana Court wrote a letter to both the developer and the County Attorney advising that the proffer as designed included a section of trail that was within their private property and that there was no easement for that construction. The homeowners also advised that they intend not to grant any such easement in the future. They are concerned that if this amendment is not approved that there will be a limbo situation in which the developer will have an obligation to construct a trail and yet not any ability to obtain easements to construct that and the situation will languish for a long time because of that conflict. There also has been a little bit of talk as part of the staff notes that the county if they are concerned about the timing could eventually pull the bond and then proceed to construction themselves with those funds. If this waiver is not approved, then the county itself would be in this limbo situation of having an obligation to construct the path for which no easements were possible. He asked that the Commission consider that point in their deliberations.

Mary Malaski, homeowner of lot 19, asked that they maintain the nice grassy areas. As they look to remove the applicant's obligation to build a trail she asked that they be better maintained. She questioned if they need county approval to deed the paths over to the home owner's association. That is not entirely clear. The paths north of Fontana Drive are really in disrepair with weeds on the slopes and slick walking in those areas.

Sally Picall, a homeowner, supported removing the obligation of trails. Lot 24 backs up to Apian Way and they are one of the families that keep the slopes nice.

Ginny Anderson, owner of lot 151, asked the Planning Commission to approve eliminating the trails. She noted that they just got a note from the fiber optic company that they are going to be digging it up soon. The neighborhood wants Mr. Nichols to be done with the paths**.**

Mr. Zobrist pointed out that the Commission was asking that the area where the fiber optic easement was to be left grassy.

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

The Planning Commission discussed the proposal with staff.

Mr. Lafferty understood what the homeowner's were saying and their frustrations. His problem was that he almost felt like they are rewarding the developer for negligence in doing this. That bothers him. However, he thought that the present homeowners take precedence as far as he was concerned.

Mr. Franco echoed those comments. What helped convince him when looking at lot C was he heard some of the residents talk about the cul-de-sac that they have the ability of walking out their front door and along this cul-de-sac with the limited traffic to the club to get to the system behind the club. He would imagine they could walk to the end of the street to Fontana where the sidewalks starts. He becomes more comfortable with it due to that.

Mr. Loach agreed. His first feeling was that it would be a vote against the developer who he did not believe has met his obligations. That said, he hoped that they put enough conditions in this to make it more palatable. Secondly, he hoped that they had learned some good lessons that will be reflected in future decisions.

Motion: Mr. Morris moved for approval of ZMA-2011-00001 Fontana Trail Proffer Changes with a modification to staff's recommendation that recommends the deletion of the other two paths. He did not recommend the deletion of the two paths, but maintain them as grass.

Mr. Zobrist asked if they would eliminate the condition for the sealed impermeable base, and Mr. Morris replied that was correct for those areas A and B.

Second: Mr. Smith seconded the motion.

Mr. Zobrist invited further discussion.

Ms. Porterfield asked if they were going to do something about the proffer that was in existence right now. She agreed with what Mr. Lafferty said. She did not want to reward the developer and let him get off with not building this stuff. She wanted the developer to fix this and get it done so that these people can live in a place that is fixed.

Mr. Loach noted that Mr. Kamptner said that would be available as a recommendation on the Commission's part.

Mr. Kamptner agreed that would be included as part of the motion.

Ms. Porterfield agreed that it needs to be part of the motion.

Mr. Franco disagreed since he did not agree that it needs to be.

Ms. Porterfield suggested that the Commission put something in so that the Board will know that the Commission has said that they ought to do this. She would love for the applicant to come up and say they accept that as a change in the proffer and that they will complete these paths within a certain limit of time and not with the condition with the nine houses.

Mr. Loach agreed it should be included as a recommendation since that is a feeling that the Commission that it does not carry the weight of law that it has to be.

Mr. Morris said he had no objection to adding that. However, it has already been done when they looked at 4C.

Mr. Zobrist suggested that the Commission recommend that the bond not be renewed. The county can call the bond, get money, and get it fixed if the developer does not do it. If they want to put some teeth in it, that is the recommendation. It is a two year bond and the developer has to renew it every two years. If they don't renew the bond, the County calls it and they go get the money. He asked Mr. Graham how

they can accelerate this. The Commission is finding some discomfort with the disrepair they see on the mountain.

Mr. Graham noted that Mr. Kamptner asked a good question in where are they in that two year cycle. Frankly, he did not know standing up here today. One of the problems is that there is not a bond, but several bonds because there are several sections.

Motion: Mr. Morris moved for approval of ZMA-2011-00001 Fontana Trail Proffer Change to include the non-deletion of A and B and keeping them as grass as a marked grassed path and that the trail system for sections 1, 2, and 3 be completed by May 1, 2012.

Mr. Cilimberg noted that they were also recommending eliminating C.

Mr. Morris agreed that was included in the motion.

Mr. Kamptner clarified that it also needs to include the trails in 1, 2, 3, 4A, and 4B.

Mr. Morris agreed

Ms. Echols asked if he intends that the applicant would be providing this up to date map to go with the proffer.

Mr. Morris replied yes, absolutely.

Mr. Kamptner noted that also Trail C can be deleted.

Mr. Morris agreed.

Mr. Zobrist noted that the applicant will provide an updated map to staff within a reasonable time.

Mr. Cilimberg pointed out that has to happen before it goes to the Board because the map has to be part of the zoning action the Board ultimately takes. The Board cannot take an action on the rezoning without an amended plan.

Ms. Porterfield asked how far in advance from that date do they need the plan submitted.

Ms. Echols replied that the request does not get scheduled for the Board until the applicant has completed everything.

Mr. Morris said that this has been very confusing. He asked if it is fairly clear what he is proposing.

Mr. Driver replied that he believed that it is clear. The only new thing that has come up is the completion date of May 1, 2012. He did not know how that coincides with the bond dates, but that is something Mr. Graham can address.

Mr. Smith seconded the amendments to the motion.

Mr. Kamptner asked that the motion be restated.

Restated Motion: Mr. Morris moved and Mr. Smith seconded to recommend approval of ZMA-2011-00001, Fontana Trail Proffer Change subject to the conditions as set forth in the staff report amended as follows:

1. Trail segments A & B (identified in the staff) report be retained; however they should be kept as grass and marked;
2. Trail segment C (identified in the staff report) be deleted;
3. The trail system for Fontana Phases 1, 2, 3, 4, 4a, and 4b be completed by May 1, 2012

4. An up to date map showing the constructed and proposed trails be provided to accompany the proffers.

The motion passed by a vote of 7:0.

Mr. Zobrist noted that a recommendation for approval on ZMA-2011-00001, Fontana Trail Proffer Change would be forwarded to the Board of Supervisors to a date to be determined.

The Planning Commission took a break at 7:52 p.m.

The meeting reconvened at 7:58 p.m.

SP-2011-00006 Elks Lodge Farmers Market
PROPOSED: Farmers Market on 6.34 acres; no residential units proposed
ZONING CATEGORY/GENERAL USAGE: R1 Residential (1 unit/acre)
SECTION: 13.2.2.14 Farmers Market
COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential which allows 6.01-34 units/acre and supporting uses such as religious institutions, schools, commercial, office and service uses in Pantops Neighborhood.
ENTRANCE CORRIDOR: Yes
LOCATION: 389 Elk Drive approximately 265 feet from intersection of Elk Drive and Route 20N
TAX MAP/PARCEL: 078000000058A0
MAGISTERIAL DISTRICT: Rivanna
(Elaine Echols)

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

This request is for a farmers market at the Elks Lodge on Pantops Mountain just across Route 20 from Fontana. The farmers market would be held in the parking lot. Staff analyzed the request and had no problems with it.

Factors favorable
- Promote and preserve agricultural businesses in the County;
- No new parking is required -- parking lot typically is underutilized during proposed time period; and
- Easy access to fresh local produce and products for neighbors and residents in Pantops area.

No factors unfavorable

Staff recommends approval with the following conditions:
1. Development and use shall be in general accord with the conceptual plan on Page 3 of the Plan entitled "Special Use Permit Elks Lodge" prepared by the applicant and dated 2-18-11 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator.
2. The use shall operate during the months of April through December of each year.
3. The hours of operation for sales at the Farmers Market shall not begin earlier than 3:00 P.M. and shall end not later than 7:00 P.M. on Tuesdays, and not begin earlier than 8:00 a.m. and shall not end later than 1:00 p.m. on Saturdays.
4. In order to provide safe and convenient access to the adjoining property when the adjoining property is developed, a Class A – Type 1 low maintenance asphalt pedestrian path shall be constructed to the adjoining parcel in accordance with the County's Design Standards Manual. The path shall be located to connect to a similar path to be constructed on the adjoining parcel described as Tax Map Parcel 07800-00-00-05800. Construction of the path shall begin after the final site plan or subdivision plat is approved for the area adjoining the Elks property and be completed before April of the following year.

In addition to the hours of operation, it is understood that there will be vendors who will have to set up and take down before and after those hours.

Staff recommends a path to the adjoining parcel, which would be located to connect with a path on the other side of the property. There is a development proposal in the office right now called Riverside Village, which is for the adjoining property. Staff believes that as that plan comes together the two of them will decide where that path connection should be made. The Elks would not have to put in their connection until after the final site plan or plat is approved for the adjoining property. That proposal will probably be seen by the Commission later this year. The Elks are okay with that condition.

Mr. Lafferty suggested that they add "only" during these months to condition #2, and Ms. Echols agreed.

Mr. Lafferty asked if the path was a multi-modal path.

Ms. Echols replied that staff was talking about a Class A – Type 1 low maintenance asphalt pedestrian path similar to Fontana. That is the same standard Fontana had, which is the minimum standard from the Design Standard Manual. As heard in Fontana, those paths did not have a standard to begin with so they had to build upon that.

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

Ellis Frazier, one of five trustees of the Elk's Lodge property, said he was appointed by the trustees to act on this legal matter only. The members also appointed him. They have talked with the adjoining neighbors. They are very excited about this. So far, this plan has exceeded their expectations. They have 18 vendors out of 21 spaces that have called and wanted a space. They may have underestimated what they should have asked for, but are going to leave the request as is. He thanked Elaine Echols and staff for their assistance in the process. He asked that the Commission and Board approve this request since it will be a big asset for the whole community

Mr. Zobrist invited questions for the applicant.

Mr. Smith asked if the Elks Lodge had any objections to building this path as discussed.

Mr. Frazier replied no. They had a little concern about it. However, after they explained it, they think it will be okay. The Board of Trustees said the maintenance path would be okay. Since the path is low maintenance, they don't see any problem. The portion of the path through the southwest of their building is about the only feasible path, which connects with an access paved delivery driveway. They would only have to put in about an 8' path.

Mr. Morris pointed out that it was almost done.

Mr. Frazier agreed since about 8' is all they would have to put in to the next property line. They are okay with that.

Mr. Zobrist invited public comment.

Lynwood Bell, resident of 493 Fontana Drive, said as things sometimes seem simple they are not necessarily that simple. One of the things staff has forgotten about is the small matter of traffic.

- The traffic light at Fontana Drive and 20 North is the nexus for traffic that comes from Avemore, Wilton Farms, Fontana, and Highland Ridge. Some traffic will come from the Pavilions. In addition, they should not forget about Cascadia that is down the road. He recollects on weekends there are about 300 cars that turn per hour at that light coming and going to softball games, soccer games, tennis games, and Lacrosse games. There is another 162 units being planned to go right behind the Elks Lodge. In addition, they should not forget about their friends in Key West and Franklin.
- On Tuesday across the street is traffic from the Montessori School. Those ladies now back their cars out of the parking lot around on the driveway out Fontana Drive and one-half way to the light from the Avemore/Fontana Drive intersection. They do that every day. There is an awful lot of

traffic. The residents in that sector are being overburdened with traffic coming out of their ears. It has just begun. On Saturday, it is impossible to get out of his neighborhood to make a left turn to go towards Route 250 because there are many softball players who are in a rush. There should not be any parking along Elks Drive. They currently have a real mess and he would urge the Commission not to approve the request at that location because of traffic and safety considerations.

Mike Power, resident of 138 Fontana Court across from the Elks property, said he would like to experience the benefits of the farmer's market. The farmer's market sounds like a great amenity that he would have convenient access to. He thought the Commission should consider some of Mr. Bell's comments about traffic congestion at that traffic light, particularly in regards to what he understands is an upcoming Cascadia rezoning. He thought that they need an exit from Cascadia further north on Route 20 to make sure that does not add traffic to the same intersection coming out at the Montessori School.

Richard Martin, member of the Elk's Lodge for over 25 years, noted that the Elk's Lodge was there before Darden Towe Park and before Fontana was ever thought about. The Elks have always been a very community oriented organization and hold many activities there. They have been approved for about 175 parking spaces in the parking lot. On occasions, they have an event that park people on Elks Drive. In addition, the County owned park next door parks people on Elks Drive. The traffic light with a little work from VDOT can be made to handle traffic far more efficiently than what it is doing. He understands what Mr. Bell is saying about the traffic. However, if he is having a problem with that one, then he did not know what he does at the traffic light at Route 20 North and Route 250. The amount of traffic for this particular event will be over a period of time. It starts fairly early in the morning on Saturdays and is done by 1:00 p.m. On Tuesday afternoon, there will be a little additional traffic during travel time. However, he thought people needed places to go such as the proposed farmer's market. This is a partial fund raiser for the Elks Lodge as well as a thing for the community. If it gets to the point where the Elks Lodge can't afford to be there because they don't raise funds to support the operation, they could sell this lot to a developer and then let's see what happens to the traffic.

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

Mr. Morris said he was completely for this request. He understands the problem with traffic, but he thought the benefit to the people on the east side of town was tremendous. He compliments the Elks for going this way. Besides, if he did not vote for it the people in Key West would lynch him.

Mr. Lafferty pointed out the letter from VDOT on the back page recommends a pedestrian vehicular connection and yet staff is saying just a pedestrian connection. He questioned if that is the same connection.

Ms. Echols replied that it is the same connection. The adjoining property could connect into Elks Drive if everything were in place for them to do that. There is a matter of having to acquire a strip of land in order to get to Elk's Drive. She thought that was what they were talking about with the adjoining property being able to connect there. The pedestrian path is an absolute.

Mr. Lafferty noted that they don't want to hold the request up because of that.

Motion: Mr. Morris moved and Mr. Smith seconded to recommend approval of SP-2011-00006, Elks Lodge Farmers Market, subject to the four conditions recommended by staff.

Mr. Kamptner noted Mr. Lafferty recommended a change to condition 2. There is a possible ambiguity related to the days it can be used. He would recommend that condition 2 be revised to say the use shall operate only during the months of April through December of each year and only on Tuesdays and Saturdays.

Motion Amendment: Mr. Morris accepted the motion amendment.

Amendment Second: Mr. Smith seconded the amendment.

Mr. Franco pointed out that in the past they have had some concerns about traffic, which the Commission has heard expressed. He asked if they would want to put a time limit on this. He supports the use since it is a great use. However, if they want to caveat it, he could also entertain a limited period of time of two years to see if works out and then make it unlimited after that.

Mr. Morris said he saw no need for it.

Mr. Cilimberg pointed out that would require reapplication.

Mr. Morris noted that he would like to leave the motion the way it is.

Ms. Porterfield pointed out the Commission did not do that on the most recent farmer's markets, including the one at Forest Lakes. She did not think the Commission should do it because they have not set that precedent.

Mr. Zobrist asked that the question be called.

The motion passed by vote of 7:0 subject to the conditions, as amended.

1. Development and use shall be in general accord with the conceptual plan on Page 3 of the Plan entitled "Special Use Permit Elks Lodge" prepared by the applicant and dated 2-18-11 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator.
2. The use shall operate only during the months of April through December of each year and only on Tuesdays and Saturdays.
3. The hours of operation for sales at the Farmers Market shall not begin earlier than 3:00 P.M. and shall end not later than 7:00 P.M. on Tuesdays, and not begin earlier than 8:00 a.m. and shall not end later than 1:00 p.m. on Saturdays.
4. In order to provide safe and convenient access to the adjoining property when the adjoining property is developed, a Class A – Type 1 low maintenance asphalt pedestrian path shall be constructed to the adjoining parcel in accordance with the County's Design Standards Manual. The path shall be located to connect to a similar path to be constructed on the adjoining parcel described as Tax Map Parcel 07800-00-00-05800. Construction of the path shall begin after the final site plan or subdivision plat is approved for the area adjoining the Elks property and be completed before April of the following year.

Mr. Zobrist noted that a recommendation for approval on SP-2011-00006, Elk's Lodge Farmers Market would be forwarded to the Board of Supervisors to a date to be determined.

ZTA-2011-00001 Unlicensed Wireless Broadband Internet Access

Amend Sec. 3.1, Definitions, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 by adding facilities for unlicensed wireless broadband internet access to the definition of "personal wireless service facility." The full text of the ordinance is available for examination by the public in the offices of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia (Bill Fritz)

Mr. Fritz noted there was no presentation since this was being categorized as a housekeeping matter. The technology has changed since the County originally adopted the Wireless Policy. What is before the Commission is a proposal to include in the definition of a personal wireless service facility unlicensed wireless broadband services. That is a way of providing wireless internet service. If one has a smart phone right now they can do that. The interesting thing staff found is the FCC says that a licensed carrier, AT&T, Verizon, Sprint, whatever, if a licensed carrier provides wireless broadband service they are covered under the Telecommunications Act. If it is an unlicensed provider providing the exact same service using the exact same type of equipment as a licensed carrier, they are not covered by the Telecommunications Act. Staff recommends the amendment proposed to treat like services in a like manner. That is all this does

Mr. Zobrist invited questions of staff.

Ms. Porterfield asked does being licensed or unlicensed have any impact on a consumer. Is there any down side to an unlicensed one?

Mr. Fritz replied that staff has not looked at that in terms of the service provider. What they are trying to do is treat the impacts on the community, the appearance of the antenna and base station equipment, and the impacts on the community, and then the consumer will have to decide who to get service from. There are other alternatives, which some people think are better and some worse. Staff was not trying to enter the market of what is a better service. They are actually trying to take the Telecommunications' Act role of stepping back and saying we are not going to make those judgments on technology.

Mr. Kamptner said what this text amendment does is brings this type of service under the County's Wireless regulations, which allows for Tier I, Tier II and Tier III review rather than having them classified as radio transmission towers, which would require a special use permit in every instance.

Ms. Porterfield asked if it puts the County in any liability if they end up with an unlicensed provider who is getting to do this, but ends up not providing it the consumer.

Mr. Fritz said the FCC permits this type of service. It is provided throughout the country. So it does not put the County in any awkward position.

Mr. Loach said there are no differences in the technologies between the two, the licensed or the unlicensed.

Mr. Fritz replied that was correct. It was just whether one had a license or not.

Mr. Loach noted the only potential downside may be that it may in the end mean more requests for the monopoles that they are seeing in wireless towers now at 7' to 10'.

Mr. Fritz said the alternative would be more special use permits. Staff thinks the Personal Wireless Service Facility Policy because it has standards on how to review these is a better tool to review than the special use permit.

Mr. Zobrist opened the public hearing. He noted there was no applicant. He invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Motion: Ms. Porterfield moved and Mr. Lafferty seconded to recommend approval of ZTA-2011-00001, Unlicensed Wireless Broadband Internet Access with staff's recommendation.

The motion passed by a vote of 7:0.

Mr. Zobrist noted ZTA-2011-00001, Unlicensed Wireless Broadband Internet Access would be forwarded to the Board of Supervisors to a date to be determined with a recommendation for approval, as follows.

ZTA-2011-00001 Wireless Broadband – Recommended Ordinance Language

RESOLUTION OF INTENT

WHEREAS, County Code § 18-3.1 defines "personal wireless service facilities" and the definition does not include facilities that provide wireless internet broadband access; and

WHEREAS, by declaratory ruling of the Federal Communications Commission, wireless broadband internet access facilities that are commingled with a provider's personal wireless service facilities would be "personal wireless service facilities" under relevant provisions of federal law and County Code § 18-3.1; and

WHEREAS, under current zoning regulations, facilities that provide wireless internet broadband access that are not commingled with a provider's personal wireless service facilities require a special use permit as "radio-wave transmission towers"; and

WHEREAS, County Code § 18-5.1.40 establishes the regulations for reviewing applications for personal wireless facilities, and these regulations impose standards designed to protect the public health, safety and general welfare but also provide for an efficient and economical review of such applications; and

WHEREAS, the regulations and standards in County Code § 18-5.1.40 were developed from research and practical experience, and it would be reasonable for those regulations and standards to be applied to all facilities that provide wireless internet broadband access; and

WHEREAS, it is desired to amend the definition of "personal wireless service facilities" to include facilities that provide wireless internet broadband access in order to allow applications for those facilities to be reviewed and acted upon under County Code § 18-5.1.40.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to amend County Code § 18-3.1 and any other regulations of Chapter 18, Zoning, of the County Code deemed appropriate 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 by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

* * * * *

ORDINANCE NO. 11-18( )

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, is hereby amended and reordained as follows:

By Amending:

Sec. 3.1 Definitions

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

. . .

Personal wireless service facility: A facility for the provision of personal wireless services, as defined by 47 U.S.C. § 332 (Section 704 of the Telecommunications Act of 1996), including those Federal Communications Commission licensed commercial wireless telecommunications services such as cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), common carrier wireless exchange access services, ~~and~~ unlicensed wireless

services ~~and common carrier wireless exchange access services~~ and, for the purposes of this chapter, unlicensed wireless broadband internet access. (Added 10-17-01; Amended 10-13-04)

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

_____
Clerk, Board of County Supervisors

	Aye	Nay
Mr. Boyd	____	____
Mr. Dorrier	____	____
Ms. Mallek	____	____
Mr. Rooker	____	____
Mr. Snow	____	____
Mr. Thomas	____	____

ZTA-2010-00002 Industrial Performance Standards Update

Amend Secs. 4.14, Performance standards, 4.14.1, Noise, 4.14.2, Vibration, 4.14.2.1, Method of measurement, 4.14.2.2, Meaning of terms, 4.14.3,Glare, 4.14.7, Electrical interference, 4.14.8, Certified engineer's report, 26.7, Performance standards, 30.4.3, Permit required, 30.4.14, Performance standards, 31.5, Zoning clearance; repeal 4.14.4, Air pollution, 4.14.5, Water pollution, 4.14.6, Radioactivity, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend the industrial performance standards in Sec. 4.14 and its subsections (Secs. 4.14.1 through 4.14.8) pertaining to noise, vibration, glare, and the certified engineer's report, add a standard for heat to Sec. 4.14.3, repeal the performance standards for air pollution, water pollution and radioactivity, and reorganize Sec. 4.14 and its subsections. This ordinance also would amend Sec. 26.7 to cross-reference Sec. 4.14 and its subsections, amend Sec. 30.4.3 to require a zoning clearance prior starting a natural resource extraction activity, identify the information to be submitted, and provide for periodic review, amend Sec. 30.4.14 to revise the performance standards for natural resource extraction activities, and amend Sec. 31.5 to require a zoning clearance prior to starting a natural resource extraction activity and clarify certain agricultural activities that are not commercial or industrial for the purpose of determining whether a zoning clearance is required. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Amelia McCulley)

Ms. McCulley noted that J.T. Newberry was passing out three slides from the PowerPoint. There are two corrections and one revision. She presented a PowerPoint presentation and summarized the proposal.

Introduction

Purpose:

1. More practically address impacts of industrial uses, especially since we are broadening permitted uses;
2. Update references. (This is the first comprehensive amendment since 1980); and
3. Improve clarity of regulations and procedures.

Background

- This is part of a larger effort with our industrial districts, as recommended by the Economic Vitality Action Plan.
  - Initial effort added HI uses by-right within the LI district by Special Use Permit.
  - Performance standard update is the 2nd phase. (PC Work Session held on August 17, 2010.)
  - Amendments to broaden uses, revise the intent, expand supplementary regulations, and to address setback, height and the like, are a 3rd phase that is also underway.

Performance Standards

- Apply to uses of an industrial character and home occupations;
- Are utilized to control and limit the impacts generated by the use of land; and
- Address operations such as noise, water and air pollution, vibration, dust, electrical impulses.

Environmental Regulations
- Local environmental regulation through zoning is limited by enabling authority from Virginia Code.
- The Virginia Statewide Fire Prevention Code addresses standards to safeguard against fire and explosion.
- The majority of environmental regulation relating to industrial operations is through state and federal agencies such as Virginia Department of Environmental Quality.

Proposed Revisions to Performance Standards
- Add "Spill Containment and Waste Management Plan" section referencing applicable local, state and federal regulations;
- Update references and standards applicable to state and local permits and add the requirement that these permits be provided as part of the engineer's report;
- Update the vibration standards to be more practical and enforceable;
- Add new standards for glare from processes and heat;
- Codify the administrative practice allowing documents in lieu of a full-blown certified engineer's report, such as is done with home occupations.

Follow-Up to PC Work Session
1. <u>What types of follow-up inspections are done for these uses?</u>
- Fire/Rescue inspects on 20 month basis;
- DEQ inspections depend on the volume and type of the facility's waste (hazardous, medical) or emissions (air, water); and
- Zoning conducts an initial inspection and later inspections are complaint-driven.

2. <u>What potential home occupations require a certified engineer's report?</u>
   Home occupations do not require a <u>certified engineer's report.</u> However, certain home occupations require submittal of information sufficient to satisfy the County Engineer that the proposed use will comply with performance standards. (*Sect. 4.14.5 c Document in lieu of certified engineer's report*.)

Recommended Change from Draft Performance Standards Ordinance

> *Proposed Section 4.15.c: <u>Document in lieu of certified engineer's report.</u> In lieu of a certified engineer's report, the zoning administrator, upon the recommendation of the county engineer, may require that a prospective occupant of a use of an industrial character submit a document to the zoning administrator prior to the issuance of a zoning clearance or approval of a final site plan. A document in lieu of a certified engineer's report is appropriate for those uses of an industrial character that are determined to be low impact. The document may be in the form of a letter signed by the prospective occupant or its representative. The document shall describe the processes and activities of the proposed use and address the performance standards in section 4.14.*

- Staff recommends revision to remove reference to the Zoning Administrator and leave the review and approval up to the County Engineer as it has historically been done.

Recommendation
- Approval of the ordinance amendments relating to performance standards (Attachment C) with the revision recommended by staff (regarding document in lieu of certified engineer's report).

Ms. McCulley pointed out one recommended change from the draft, which is the whole section about document in lieu of Certified Engineer's Report. Staff realized that sometimes they are caught in the habit of creating too many hand-offs in what they do. They are really trying to streamline things. The way it is currently written it requires the insertion of the Zoning Administrator. The County Engineer said that is another step and is not what they do, therefore he did not think they need that. Staff fully agrees. Staff

has asked the County Attorney with the Commission's consent to make an amendment before it goes to the Board that would remove the reference to the zoning administrator and leave the entire review and approval up to the County Engineer as it is done.

There are two corrections that need to occur, which are really just simple missing words.

1. In the section about vibration it starts with the word 10 p.m. in the rural area or any residential districts. Staff missed the words before that, which are the standard. It should say "0.02 inches per second between 7 a.m. and 10 p.m." and should be included and accepted as part of their recommendation.
2. Impact vibrations are vibrations and discrete impulses less frequent than 60 per minute rather than more. The wrong word was used. It should say less and not more.

Mr. Zobrist invited questions for staff.

Mr. Lafferty noted that both corrections were on page 3 in Attachment C. He read in the discussion on the second page of the handout that this authorizes the Zoning Administrator not to require a certified engineer's report. The implication there would be that it would not go through the County Engineer first. The Zoning Administrator would make the decision as to whether there was any engineering approval.

Ms. McCulley said that is the way it is worded, but was not the way it happens currently. Staff is suggesting that it be reworded to reflect the current practice, which is the County's Engineer's decision and discretion of what is needed when. The County Engineer is given the information on the home occupation and then he decides what information he needs from the applicant and reviews and approves it.

Mr. Lafferty said on page 6, attachment C she referred to a document, which can be just a letter from the applicant saying what he does. He asked if that is sufficient to give an approval to an industrial site. He asked if that is the implication that he was getting.

Ms. McCulley pointed out there is a packet of information the applicant has to fill out and provide to the County Engineer.

Mr. Zobrist asked where he was in the document.

Mr. Lafferty said he was on page 6, of attachment C in subsection C. It says a document in lieu of a certified engineer's report is appropriate. He wondered what that document was. It says it can be in the form of a letter signed by the applicant. They are talking about an industrial site coming in and the applicant is going to say yes, he meets all of the standards.

Ms. McCulley referred to a packet the County Engineer has created, which is a component of the Design Standards Manual. He has a sample letter that people can use for what he calls a Type 1 engineer's report. She read the example given in the packet, which explained the extent that someone has to go to address the performance standards. The letter goes item by item through each performance standard, such as noise.

Mr. Lafferty said it concerned him that the statement said the document may be in the form of a letter. That implies as simple as a letter.

Ms. McCulley replied that is correct.

Mr. Zobrist noted that it is modified by itself. It says if the County Engineer determines it to be low impact, then they don't have to do the full report. Anything other than low impact he was not sure what the County Engineer would require.

Mr. Lafferty said the way he read it is that the Zoning Administrator made the call.

Mr. Zobrist said they were changing it to make it the County Engineer to make the call.

Mr. Lafferty noted that he did not read it that way.

Ms. Porterfield suggested that the wording be changed if an engineer read it that way.

Mr. Lafferty pointed out he could only question it on the engineering part. He might have misread it on the legal part. If he wanted to be picky, on page 7, attachment c why have the vibrations of the number of decibels gone from 129 to 133. What drove that decision.

J.T. Newberry replied that in doing the research on the vibration standards staff found that they were substantially more restrictive and out-of-date with other localities that have updated their standards. They also took into account the fact that they changed where that measurement was to be taken and specified that it was going to be at the property line as opposed to any structure not on the subject property. Staff wanted to account for that.

Mr. Lafferty pointed out at the property line it can sound like a jet engine.

Mr. Newberry replied just for the surface blasting it would be regulated by the Bureau of Mines, Minerals, and Energy. He thought that would be covered by their safety measures adequately.

Mr. Lafferty said he thought about Stone Robinson School, which backs up to the Stone Quarry at the property line. He was just curious if zoning can stop the extraction activity if they find they are not in compliance.

Ms. McCulley asked if he meant not in compliance with the performance standards. They could go through steps to inform them they are in violation. Staff's goal is to seek voluntary compliance, which is what they would be moving towards. If they refused to comply, they would have to get an injunction and make them stop. However, typically they get cooperation.

Mr. Lafferty asked why they removed the State Water Control Board and the specifications from the State Air Pollution. He guessed they consolidated those in Section 4.14.

Ms. McCulley replied yes, that was correct. Air pollution, water pollution, and radioactivity because there is no local regulation and it is just referenced to state and federal regulations, staff consolidated that and updated the references.

Mr. Kamptner noted that they did not want to put zoning staff in the position to have to enforce a radiation standard of which they really have no direct authority over and obviously no expertise.

Mr. Lafferty pointed out for vibration they are allowing approximately ½ inch a second from Table 2. He apologized if that is being too picky.

Ms. McCulley said she appreciates his input. Vibration is something staff does not have the expertise to measure.

Mr. Lafferty agreed that would take very sophisticated information.

Mr. Franco asked if that is regulated by the state or federal regulations.

Ms. McCulley replied yes for natural resource extraction. For general industrial use, she was not certain.
Mr. Newberry said by including some standard staff does give those industrial uses that do require a full blown Certified Engineer's Report some standard for the engineer to test to and to make sure the equipment meets those standards.

Ms. McCulley agreed. Before the industrial use locates they have to show that they can meet all of these standards.

Mr. Lafferty pointed out that jest of this is to try to ease the burden to somebody that wants to start some industry in the County. Getting a Certified Engineer's Report is an expense and fairly time consuming. To protect the engineering occupation, he should say everybody should have to get one. His concern is the procedure that says you don't have to get one. The way he originally read it, which he had been corrected, is that the Zoning Administrator would make that decision. As he understands it, staff is saying that the County Engineer would make that determination.

Ms. McCulley replied that is what staff is recommending that they remove the Zoning Administrator from that decision. It is her understanding, which can be clarified before the Board's hearing, that this only occurs with a non-industrial use with the home business. In other words, for true industrial uses a Certified Engineer's Report is required.

Mr. Lafferty noted that he did not read that at all.

Mr. Zobrist pointed out that Mr. Lafferty was struggling with the language. The language says a document in lieu of a Certified Engineer's Report is appropriate for those uses of an industrial character that are determined to be low impact. That determination will now be made, if this is passed, will be made by the County Engineer and not by the Zoning Administrator.

Ms. McCulley noted that is how it is currently done.

Mark Graham said that he has done these in the past. Glenn Brooks has done most of them since he became the Director. Mr. Brooks does it very similar to how he used to do it. They start with the presumption that there is a need for a complete Certified Engineer's Report. That is a rebuttable assumption. Then they would go through it and look at the information to see if there was actually an ability to reduce that requirement. For the taxidermist, they asked what kind of chemicals they were using there and how much they were using it in an average year. He was using a gallon of the chemicals in a year. They look at how he was doing it, which was out in the back. Then they realize there is no need for him to go through a whole vapor extraction analysis. It would cost more than he would ever make for his whole business. It is a judgment call. They start with the idea that a Certified Engineer's Report is the appropriate standard to try to back down from that based on the information staff is supplied by the applicant.

Mr. Lafferty said that makes perfect sense. When he was reading this, he had a visual image of a semi-conductor plant coming in dealing with arsenic or something like that and the Zoning Administrator not realizing that may be hazardous. He did not realize they were addressing home occupations.

Mr. Graham said they have had several issues in the past with some home occupations. They were not doing anything that would affect their neighbors. They were actually hurting their own property by putting chemicals in their septic tanks and things like that. It was a matter of getting the Health Department involved and making sure everybody understood what was appropriate. Interestingly enough, he thought that more often than not with these home occupations that are small uses they end up doing it more to protect that applicant than to protect the surrounding neighborhood.

Mr. Lafferty noted that did not realize they were talking about small usage or small industries. It was not clear that they were actually talking about that. He was thinking more of a large industry using Light Industrial space or Industrial space.

Mr. Zobrist noted the way he read it; the document could be used in lieu of a Certified Engineer's Report if there is a use of an industrial character that is determined to be low impact. They have to find the low impact in their office when they make this decision as a home occupation.

Mr. Lafferty asked if this document only deals with home occupations.

Ms. McCulley said she would ask the County Engineer to provide some further information to report to the Board to able to more fully respond to his question.

Mr. Lafferty said his comments were mainly about measurements and stuff like that. She had caught the inconsistency and infrequency. That was mainly his concern.

Ms. Porterfield asked if staff was saying this document was mainly for home occupations and not for major industries.

Ms. McCulley replied that was her understanding. However, she wished that Mr. Brooks could be present since he is the one who reviews this. She knows he has set this process up for home occupations. She did not know if he ever allows it for any other use of an industrial character. Remember it does not have to be zoned industrial to be a use of an industrial character.

Ms. Porterfield asked when they are considering vibrations what does this new ordinance do to a use such as the Luck Stone Quarry in the Scottsville District. She asked does it ease the regulations or does it make them tighter.

Mr. Lafferty said it eases them.

Ms. Porterfield asked what does that do to the residential areas around Luck Stone Quarry. The point was brought up if it was moving it out to the lot line and they have the school sitting right there, what is going to happen.

Mr. Lafferty said if this document has to do with home businesses that Luck Stone is not a home business and this would not apply.

Ms. Porterfield replied that she would not think so. She was talking about vibration standards specifically at this point. It is an industrial use, but are they lessening the vibration standard and thereby putting areas that are residential at risk around it.

Mr. Kamptner pointed out for Natural Resource Extraction the standard is not changing per vibration. It is still referring to the State standards. That is not changing by this.

Mr. Lafferty said it is the blast basically that went up slightly in db.

Ms. Porterfield asked what is that going to do.

Mr. Lafferty replied that it sounds louder.

Ms. Porterfield pointed out the reason she asked the question is that there is a school right there. They need to be cognitive of what they are doing when they are going to start affecting residential areas. In Glenmore when they blast the residents can feel it. They have to be careful that they are not lessening things in order to bring business in by putting business in a place where it is going to affect the residential areas and the ancillary parts of residential areas like the schools.

Mr. Lafferty agreed. He thought if they are going to rely on the State standards, which are also written into this and they have researched it and said the normal single blast standard is 133 db, then he would accept that as reasonable.

Ms. Porterfield asked if they know these are the State standards. They are basically rewriting our ordinance to meet the State standards.

Mr. Kamptner pointed out for Luck Stone, which is in a Natural Resource Extraction Overlay District; ground vibration is regulated by a State regulation. That regulation is not changing. The air over pressure from the blasting the decibel level is going up from 129 to 133 db. However, the point of measurement is closer to the blasting action because the current regulations say that it is measured at 129 decibels measured at any occupied structure not on the subject property. The new standard is 133 decibels, but it is measured at the property line, which is closer. The distance doubles in an inverse way. Although the decibel level is going up the point of measurement is closer to the blasting activity.

Ms. Porterfield asked does this affect such things as construction compactors, pile driving, and that type of thing.

Ms. McCulley replied that construction is exempt if it occurs after 7 a.m. They are talking about noise and not vibration. The general industrial use vibration standards, other than the Luck Stone scenario that the information staff received from people in the industry and based on their research with many other locality ordinances is that our ordinances were not realistic and difficult to follow. As an example, the current vibration standard for continuous vibration at residential district boundaries is .00. That is no measurement. From what they saw and what they heard that is unrealistic. They changed that and created a daytime and nighttime for vibration just as they do for sound. It has to be a lower standard at night. It goes to .01 and .02. That is an example of some of the changes. They also have currently three different standards and they went to two different standards to be consistent with the localities that do have quantitative standards. Many localities don't have a quantitative standard, but a subjective standard that they are struggling with that. Staff decided they wanted a quantitative measureable standard.

Ms. Porterfield asked if these localities studied were as mixed of commercial and residential as Albemarle County in the sense that there are soft lines and not hard lines.

Ms. McCulley replied yes. Those localities include James City County, Roanoke, Henrico, Chesterfield, Prince William, New Kent, Virginia Beach, and several others.

Ms. Porterfield agreed that they have a good cross section.

Mr. Lafferty said she mentioned the vibration standard. On page 3, attachment C the maximum vibration level in any zoning district shall not exceed .4 inches per second. That is about ½ inch per second.

Ms. McCulley agreed that was #2 after Table 2.

Mr. Lafferty said that would be 6 inches a minute, which seems pretty high to him.

Ms. McCulley noted this was something she did not have any expertise on. They just surveyed those other localities. They can look further into it.

Mr. Zobrist opened the public hearing and invited public comment. There being no public comment, the public hearing was closed and the matter before the Planning Commission.

Ms. Porterfield suggested this item be deferred so the Commission could talk to the engineer who is more familiar with this information. The Commission could have somebody standing here who works with this stuff.

Mr. Lafferty said he would sort of disagree with that. If he had not have been picky and raised the point the Commission would have passed it.

Ms. Porterfield noted that they might not have. She made a phone call to a friend who was an engineer. This is the first thing that she had gotten and read which she did not have a background in. She expected to see the County Engineer here. She was sorry he was sick, but based on that she thought it would be a bad idea for the Commission just to pass something that only a couple people really are cognitive of. It is not going to hurt to let this one sit and bring in the person who can tell them what is going on here.

Mr. Lafferty noted that there are several things that need to be cleaned up.

Ms. McCulley noted staff has no objection to a deferral.

Mr. Kamptner asked that it be deferred to a specific date.

Mr. Cilimberg suggested the item be deferred to May 24th.

Motion: Ms. Porterfield moved and Mr. Lafferty seconded to defer ZTA-2010-00002, Industrial Performance Standards Update to May 24, 2011.

The motion passed by a vote of 7:0.

Mr. Zobrist noted that the item had been deferred to the May 24, 2011 Planning Commission meeting.

Ms. McCulley asked to summarize to make sure she was capturing everything the Commission expects to see when the request comes back. It includes the three corrections the Commission already talked about in the PowerPoint.

1. Document in lieu of certified engineer's report to be County Engineer review and approval (omit Zoning Administrator); and
2. Insert missing measurement for vibration in Table 2.
3. Change "more" to "less" for definition of impact vibrations (Section 4.14.b.4).

In addition, the Commission wants further information on the following:

1. They want further information about document in lieu of the certified engineer's report when it is allowed.
2. Does that extend to uses other than home occupations.
3. They want a further explanation of the vibration standard changes, why they are changing, and what the legalisticy of those new numbers is.

Ms. Porterfield added that staff speaks as to whether there is any more impact to our residential areas by these changes such as the schools.

Ms. Morris asked if it is confined to home occupancy.

Ms. Porterfield noted Mr. Franco has corrected her in she should have said residential areas and anything ancillary to a residential area, which would include the schools.

In summary, ZTA-2010-00002 Industrial Performance Standards Update was deferred to May 24, 2011 so staff can provide additional information. In summary, the Planning Commission asked that the following information be provided when the request comes back:

It includes the three corrections the Commission already talked about in the PowerPoint, as follows.

1. Document in lieu of certified engineer's report to be County Engineer review and approval (omit Zoning Administrator); and
2. Insert missing measurement for vibration in Table 2.
3. Change "more" to "less" for definition of impact vibrations (Section 4.14.b.4).

In addition, the Commission wants the following:

1. Further information about document in lieu of the certified engineer's report when it is allowed.
2. Does that extend to uses other than home occupations?
3. Further explanation of the vibration standard changes, why they are changing, and what is the legalisticy of those new numbers.
4. Whether there is any more impact to residential areas or anything ancillary to a residential area, which would include the schools.

Old Business

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

New Business

Mr. Zobrist invited new business.

- The Planning Commission cancelled next week's meeting on April 26th to move the agenda items to May 17th.
- No meeting scheduled on May 3, 2011
- Next Meeting: May 10, 2011

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

Adjournment

With no further items, the meeting adjourned at 8:57 p.m. to the Tuesday, May 10, 2011 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)