Albemarle County Planning Commission
April 9, 2013

The Albemarle County Planning Commission held a public hearing on Tuesday, April 9, 2013, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Ed Smith, Bruce Dotson, Don Franco, Richard Randolph, Thomas Loach, and Russell (Mac) Lafferty, Vice Chairman. Absent were Calvin Morris, Chairman and Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia.

Other officials present were Sarah Baldwin, Senior Planner; Ellie Ray, Engineer; Claudette Grant, Senior Planner; Wayne Cilimberg, Director of Planning; Bill Fritz, Chief of Special Projects; David Benish, Chief of Planning; Sharon Taylor, Clerk to Planning Commission; Mark Graham, Director of Community Development; and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Lafferty, Vice-Chair, called the regular meeting to order at 6:00 p.m. and established a quorum.

From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Lafferty invited comment from the public on other matters not listed on the agenda.

There being none, the meeting moved to the next agenda item.

Review of Board of Supervisors Meeting – April 3, 2013

Mr. Cilimberg reviewed the actions taken by the Board of Supervisors at the April 3, 2013 meeting.

Consent Agenda:

a. SDP-2013-00002 Northtown Phase IIA – Final Site Plan (Ellie Ray)
Request for final approval of 45,600 SF of commercial/retail space

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

Mr. Dotson said he would like to leave it on the consent agenda and would vote in favor of it. However, for the record he would like to briefly read a couple of sentences from the minutes when that was before the Commission previously.

Mr. Lafferty agreed that was fine.

Mr. Lafferty said this goes back to October 18, 2005. The reason he was reading it is the staff report notes that they are still working on the landscape plan. So the minutes read, "Mr. Fritz noted that it was very clear that the Planning Commission is looking at staff working with the applicant to develop landscaping screening plan for the property which exceeds the requirements of the ordinance and provides for a substantial screening buffer to adjacent residential properties. Mr. Riley stated that sounded perfect and the other Commissioners agreed." So that is just a reminder that was said in that meeting about the plans being worked on.

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

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

Mr. Lafferty noted the consent agenda was approved with the conditions as recommended by staff.

SDP-2013-00002 Northtown Phase IIA- Final Site Plan

1. Final Site Plan will not be signed until all reviewers have granted their approval and all applicable conditions of preliminary approval have been satisfied.
2. Eliminate Condition #7, allowing future phases of the plan to be approved administratively.

Public Hearing Item:

a) ZMA-2012-00002 Riverside Village
PROPOSAL: Rezone 18.67 acres from R-1 zoning district which allows residential uses at a density of one unit per acre to NMD zoning district which allows residential, mixed with commercial, service and industrial uses at a density of 3 – 34 units/acre and special use permit under Sections 30.3.05.2.1(2), 30.3.05.2.2(1), and 30.3.05.2.2(3) of the zoning ordinance for fill of land in floodways. 112 maximum residential units proposed for a maximum gross density of 6 units/acre for the entire parcel and a maximum density of 11 units/acre for the area designated for development in the Comprehensive Plan. Five (5) commercial buildings (up to 50,000 square feet) also proposed. Some floodplain disturbance for parking and recreational areas.
ENTRANCE CORRIDOR: Yes
PROFFERS: Yes
COMPREHENSIVE PLAN: Greenspace – undeveloped areas; Neighborhood Density Residential – residential (3-6 units/acre); supporting uses such as religious institutions, schools and other small-scale non-residential uses; and River Corridor – parks, golf courses, greenways, natural features and supporting commercial and recreational uses in Neighborhood 3 – Pantops Comp Plan Area.
LOCATION: Located on the west side of Stony Pointe Road/Route 20 and the east side of Free Bridge Lane/Route 1421, approximately 350 feet south of the intersection of Route 20/Elks Drive.
TAX MAP/PARCEL: 07800000005800
MAGISTERIAL DISTRICT: Rivanna

AND

b) SP-2013-00001 Riverside Village
PROPOSAL: Rezone 18.67 acres from R-1 zoning district which allows residential uses at a density of one unit per acre to NMD zoning district which allows residential, mixed with commercial, service and industrial uses at a density of 3 – 34 units/acre and special use permit under Sections 30.3.05.2.1(2), 30.3.05.2.2(1), and 30.3.05.2.2(3) of the zoning ordinance for fill of land in floodways. 112 maximum residential units proposed for a maximum gross density of 6 units/acre for the entire parcel and a maximum density of 11 units/acre for the area designated for development in the Comprehensive Plan. Five (5) commercial buildings (up to 50,000 square feet) also proposed. Some floodplain disturbance for parking and recreational areas.
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LOCATION: Located on the west side of Stony Pointe Road/Route 20 and the east side of Free Bridge Lane/Route 1421, approximately 350 feet south of the intersection of Route 20/Elks Drive.
TAX MAP/PARCEL: 07800000005800
MAGISTERIAL DISTRICT: Rivanna
(Claudette Grant)

Claudette Grant presented a PowerPoint presentation and summarized the staff report for ZMA-2012-00002 and SP-2013-00001 Riverside Village.

She pointed out the track changes caused some grammatical errors, which she hoped did not cause any confusion while reading the report. The property is located on the west side of Stony Point Road, also known as Route 20, and the east side of Free Bridge Lane.

Purpose of Request:

- The applicant is requesting to rezone 18.67 acres from R-1, residential zoning district to Neighborhood Model District (NMD).
- A special use permit is also requested for fill of land in floodways.
- Proposed: Maximum 112 residential units. Five (5) mixed use buildings- residential and up to 50,000 square feet of commercial uses.

Staff reviewed the proposed application plan and the block plan. She explained the plan had four of the commercial mixed use with residential buildings will front on Route 20 with the parking. The block areas are proposed for residential uses. She noted the parking for the fifth commercial mixed use building and the proposed park area is in the floodplain area.

In its general form, this proposal has been before the Commission previously for two work sessions. The Pantops Master Plan recommends the density of 3 to 6 units per acre for the area outside the floodplain, which would allow 30 to 59 units. This rezoning request is proposing up to 112 units, which is up to two times the density that was requested in the master plan. While the proposed development provides an appropriate mix of uses the Pantops Master Plan recommends small office buildings with less than 20,000 square feet. The request proposes a total square footage of commercial uses with a maximum of up to 50,000 square feet. There are impacts shown to the floodplain, such as storm water management facilities, parking area, and a picnic pavilion not shown on the plan but referenced in the Code of Development that would be in the park area.

Rezoning Factors Favorable

- The general form of development of the property as a mixed use development is consistent with the land use recommendations in the Comprehensive Plan and the goals for development in the County.
- Will provide employment opportunities and tax revenues to the County.
- A future interconnection is shown to the adjacent property.
- Park land and funds towards master planning and construction have been offered.

Rezoning Factors Unfavorable

- The density proposed is considerably higher than what is recommended in the Pantops Master Plan (PMP).
- The proposed square footage for non-residential uses is higher than what is recommended in the Pantops Master Plan (PMP).
- Impacts are shown in the floodplain, such as storm water facilities, parking area, and the construction of a picnic pavilion as described in the Code of Development.
- Proposed road access and design to some blocks does not provide adequate vehicular access, parking, or fire-rescue access.
- Cash proffer amount is not consistent with the County's cash proffer policy.
- The application plan and code of development need technical revisions.
- The proffers are in need of substantive and technical revisions.

Staff cannot recommend approval of ZMA-2012-00002, Riverside Village because of the unfavorable factors.

Staff put an alternative recommendation in for ZMA-2012-00002 Riverside Village, if the applicant were to agree to basically reverse all of the unfavorable factors to fix all of the area's issues, as follows.

Staff can recommend approval of this proposal provided certain changes are made in the application plan and proffers;

- The proposed residential density is revised to be consistent with the recommendation in the Pantops Master Plan (PMP).
- The proposed square footage of the non-residential use is reduced to be more consistent with the recommendations of the Pantops Master Plan (PMP).
- Impacts to the floodplain are removed, including the storm water facilities, parking area, and the construction of a picnic pavilion as described in the Code of Development.

- Roads B and C are constructed to public or private road standards as recommended by VDOT and/or the County Engineer.
- Provide cash proffer amounts consistent with the County's cash proffer policy.
- Numerous substantive and technical corrections are made to the application plan, code of development and proffers to the satisfaction of Director of Planning.

In reference to the special use permit the applicant has shown that there will be some impacts to the floodplain area, which our engineer has agreed is not something that is normally what the County would agree to. So at this point they don't have any factors favorable for the special use permit request.

Special use Permit Factors Unfavorable

- This would allow development in the flood hazard overlay district which would not normally be allowed.
- The proximity of residences to floodwaters may be a concern to future residents.
- The danger of settling and erosion in areas of fill will be increased.
- This would add to the cumulative effects degrading the floodplain of the river.

Therefore, staff recommends disapproval of the special use permit request for the factors that were listed as unfavorable.

Staff provided a variety of options for the Commission.

Mr. Lafferty invited questions for staff. He asked how closely staff worked with the client on this. He was somewhat appalled that somebody would build a structure in the floodplain when they clearly say you can't do that. He wondered what kind of advise staff gave the applicant.

Ms. Grant replied unfortunately this project has a long history with this department. It has been here for several years. If they go back historically and look at comments they are pretty much the same comments staff has given every time. Since she picked up the project they have been saying to the applicant that these are things that they would not like to see.

There being no further questions for staff, Mr. Lafferty opened the public hearing to the applicant and for public comment. He invited the applicant to come forward and address the Planning Commission.

Justin Shimp, engineer and representative for the project, presented a PowerPoint presentation to answer questions and explain the proposal.

- To start with the question just asked, Mr. Shimp said they are not proposing to build any buildings in the floodplain. They would fill a small portion of the floodplain, which takes it out of the floodplain. The building gets built on top of that elevated ground. Certainly it is against the ordinance of the County to build in the floodplain. That is not the intent and has never been. He would go into that more in detail.
- Our plan is for a Neighborhood Model District. They are trying to be a little innovative and create an interesting neighborhood. That is the goal here. This is a long process, but he thinks it is worth it to get a better development than what can be done by right. He presented a rendering of what they would expect to see at the end. He explained the proposal. He noted Road C is the one in question particularly for the design standards. He would talk about that as well.
- They did not come to demand an up or down vote. They are really here to look at some of the big picture issues. They heard staff's comments and have seen the report. Some of the issues they worked on and some of them different applicants worked on. There are some items that they just think differently on. They welcome the opinion of the Commission on that and to think about whether this needs to move forward now or whether it should be revised to address some of these things. The commercial density is the same. The flood corridor is an item that they will discuss. If they have time they want to discuss the cash proffer issue.
- The residential density, of course is derived from the Pantops Master Plan. The color on the map is yellow, which is the Neighborhood Density. It is adjacent to a lot of Urban Density Residential. They don't quite know why it was picked at this lower density. From a standpoint of principle of the Neighborhood Model they feel this should be a higher density site. It is right along the river.

It is a greenway corridor. It is convenient to employment centers and retail. They think that is a reason for people to be there not to reduce the density.

- In the Pantops growth area of the 1,600 acres 45 percent is in green space. Their portion of the Neighborhood Density is about 19 percent. There is also a mixture of the urban density/urban mixed use, which will have some residential as well. Overall one-half the area in Pantops is sort of designated for residential type development in various forms. What is not a lot of on Pantops is actual density. If they look at urban density residential it just barely clips the minimum. If they look over to us, Neighborhood Density Residential they will see blue being the existing density, which is below the recommended minimum. There really are not that many parcels left that could be developed that are ideal for designs that can promote some alternative form of transportation and it can be convenient to neighborhood centers.
- To sum all of that together based on the acreages of each number of people in the Pantops growth area you find again that right now they are below the minimum recommended density within Pantops. Again, they understand the map is drawn and it has an intent there as a guide. However, there are also 100 pages of other information in the master plan that talks about the principles of how development should occur. There are a couple things they want clarity on which they sort of differ on with some of the staff comments that is taking this hard line on it. The right thing to do is to look at the big picture overall in how this integrates with the development area rather than here is the plan, here is the floodplain, thou shall do this. That is really what they need clarification on.
- For commercial it is somewhat the same. They do propose a larger number than 20,000 square feet. They have always taken the interpretation of 20,000 is about scale and not about overall. If they had 100 acre site they certainly would think you would have more than 20,000 square feet of commercial to support that. It should also be noted that they almost have two frontages as if two neighborhoods. They have a river neighborhood that is 10,000 square feet of commercial along the Rivanna River. He was thinking of that as the fitness center, the running shop, and a nice restaurant on that corridor. Then they have the Route 20 corridor. They have four 5,000 square foot buildings. That is probably retail on the first floor, office on the second floor, and the residential above. So in reality they are not talking about a 50,000 square foot medical type center use plopped down in the center of this thing. That would be out of scale. That is not what they are proposing. It is a mixture of things spread out throughout the development.
- The floodplain issue is one again thinking of the design, the purpose and why they would disturb a floodplain has to have some merit in the discussion. They recall there was a Rivanna River Vortex Study by the University students a few months ago. The purpose of it was to talk about how they interact with the river in a different way than just to put the backs of all our commercial buildings, houses and loading docks to it. That is kind of what is there now. So how do we change that? Our idea for that is to create sort of a mixed use building with the style perhaps of the Woolen Mill Warehouse or that type of feel down along the river as a draw for people who are in that river corridor. They could say okay they have a destination now that makes it logical to travel up and down this path. To do that when they are going to build along the river certainly they are up above the floodplain, but there are always going to be little areas where they are going to be near the floodplain. That is a necessary part of river front development.
- They have been working on a detailed flood study. It is quite a process to do. However, as part of this they have worked on that. They got the model from FEMA and then ran a bunch of technical bits. Then they add detailed information for this site particularly. What they will find is that in block 5, being the building in the commercial that went back. The area of floodplain is the dark blue area shaded. That really is an ineffective flow area. It is not part of the capacity of the river. It just happens to flood because it is there.
- The other part of the floodplain fill that is necessary that did not get mentioned in the staff report as favorable is a large portion of the fill is necessary to widen Route 20. Route 20 is in the floodplain. As it is they want to widen it out in a lane on our side and they have to fill to do that. What they found is that in measuring the intent, which is the way the floodplain is done, there is no increase in either of those fills. There may be a slight increase due to the Stony Point Road improvements maybe one-half an inch or three-hundreds of a foot in that range, but nothing else. The relationship of that or the volume of fill of the river across our site, 60,000 cubic yard, which are our portions of that with the fill proposed. So that block D being 1,800 is a very minimal number. Our feeling is if they want to create a good development and utilize this water corridor

that there is no detriment to anybody from this fill. All they are is a positive to us. It is creating this environment that they think is appropriate on the river to encourage the use of that county amenity. It can be done without any environmental or flooding impacts to anybody.

- Lastly, is the issue of Road C. This is all about old subdivision ordinance and lots of requirements for frontage curb and gutter and other things like this. They don't think that is necessary. It is an outdated concept. People can have a house that they don't have to pull right in the front of. Our concept is to have alleys in the back, garages rear loaded, and then the sort of pedestrian muse type of situation where they can walk to and from Route 20 through the commercial area through the muse down to the river center on an alternative sort of street design. There are a lot of ways to do this to allow fire access and to keep vehicles off it in a manner that promotes the design concepts and the principles they are trying to adhere to.
- What they are looking for here is some discussion. They hope the Commission agrees with us about these things, being the densities and the floodplain. If not, they are certainly willing to listen to constructive criticism. Our philosophy, again, is don't draw a hard line in the sand but come up with a good development that adheres to the principles that they are trying to adhere to and then go build it. That really is what they are here about as a start of that process. He invited questions.

Mr. Lafferty asked if he was saying he wanted a work session instead of a decision on this.

Mr. Shimp replied certainly they feel that everything they have done in our plan is not ignoring staff comments. It is things that they feel are right for the site. If the Commission agrees, they certainly welcome that vote of confidence. Perhaps things could be done to do better and that those could work within our principles they would be happy to step back and revise the plan to accommodate that.

Mr. Lafferty requested questions from the Commission.

Mr. Randolph asked if they have met with neighbors.

Mr. Shimp replied that they have not met with any neighbors of recent. They don't have many neighbors. However, they have talked with the Elk's Lodge folks about the project.

Mr. Lafferty invited public comment. There being none, the public hearing was closed to bring the matter back before the Planning Commission.

Mr. Benish pointed out staff was not aware of the meeting with the Pantops Citizen Advisory Council at the time that they made a presentation. Staff was not present. So staff is not necessarily disputing what Mr. Shimp said. He was at the meeting the next month. He did know that two members expressed concerns to him about the density of development on this side given the traffic impacts and concerns with traffic on Route 20.

Mr. Loach pointed out on the question of traffic it says that the intersection at Route 20 and Route 250 are already failing. He asked are there any funded planned improvements for the intersection to improve that.

Mr. Benish replied there are no funded improvements. There are project improvements that have been generally identified, but nothing funded or programmed for construction at this time.

Mr. Lafferty noted he talked with Calvin Morris. This is his district and he could not be here tonight. It was his feeling, and he is on the Pantops Advisory Committee, that they should stick to the master plan.

Mr. Dotson pointed out as an observation from last week that they saw in our discussion of the Comprehensive Plan Amendment an area that could be used for an eastern connector. Does the eastern connector that the Thomas Jefferson Planning District Commission (TJPDC) is proposing for study use this portion of Route 20 as part of its right-of-way?

Mr. Benish replied what the MPO is looking at this point in time is really just a link from one road section to another without looking at any definite alignment. He thinks it would be premature to say that it could

or could not be in this area. Prior studies have looked at general locations in this area. But, again there had never been a defined or recommended corridor. There still is none right now.

Mr. Loach said he had not seen in some time a project come before us with so many negatives from the staff. It would have been good to have someone from the advisory committee to be here. He questioned how they could add more to a failing intersection when they know there are no improvements. He agreed with Mr. Morris, who was on the Pantops Advisory Council and not present, to support the master plan.

Mr. Randolph echoed the point that with this kind of aggressive proposal in a riparian zone he would have been looking at a minimum for a much more forthcoming set of proffers about the exit onto Route 20 that are absent here. His essential concern is this proposes extensive development in a riparian zone and riparian woodlands. He was at the site today. There are vernal pools there. This is an area that does not lend itself to development in the argument of the applicant that essentially that it is up above the floodplain. It is up above the floodplain in the proposal because there is an extensive amount of fill here. The folly of fill has been proven when a river floods. It could not hold dikes back in the Mississippi River in New Orleans. Extensive 100-year flooding here would place these structures at risk. He did not see this as sound planning in this location. The master plan and comp plan do not support it. Staff does not support it. He did not see how the Planning Commission can support it. He strongly suspects when it goes up to the next level, given the precedent on the Howardsville decision where the campground was turned down by the Board of Supervisors because of concern over the floodplain, the Supervisors will not support it. This is even more of a concern because they are proposing to place permanent structures here within the floodplain.

Mr. Franco said it was not proposing to put structures in the floodplain. It is proposing to put fill in the floodplain. The structures would then be out of the floodplain. Therefore, it is a completely different issue. It is not a dike that they are building, but it is fill and they are extending a pad down into the floodplain. He reviewed his concerns.

- He looks at the plan and tries to balance the Neighborhood Model with the Master Plan. He had a couple of questions. The first question is for staff. As he reads page 4 of the staff report it talks about the neighborhood density. It talks about small areas on non-residential land use on the scale of Neighborhood Service. Then it goes on to say small office buildings with less than 20,000 square feet. He asked is that per building because that is how it reads as opposed to by site.
- In the past when they have looked at the definition of scale in Neighborhood Service it has really been tied back to what is appropriate scale and size. It takes him back to the plan. When he looks at the plan he likes the concept of the small buildings. It is sort of a set up of cottages or two-story structures along Route 20. The parking is relegated in the back. It is somewhat live/work with the residential proposed on top. So he did not get hung up on the 20,000 square feet, which was tied to just the office buildings.
- The live/work units do not have a size represented to them. When he goes back to scale, there are a lot of elements of this plan he likes. He likes the layout and the muse. He would like to find a way to allow that kind of design to take place because it is a design aspect that is happening throughout the rest of the United States. Just because our Code has not caught up does not mean they should discourage it from occurring. They obviously have to find a way to enable it in our requirements, but they should not discourage it simply because it is not something they allow right now. Again, he sees that as a Comprehensive Plan issue of having to figure out how to allow this form to take place.
- The other aspect of the plan he really likes is the effort to put some non-residential in the back corner of the site towards the river. They have had a lot of discussions over the past months about how to engage the river and how to develop the greenway or the Rivanna River walk through there to preferably get those appropriate uses close to that area. The river is part of what gives the life down there. Therefore, the little corners that are being massaged for the floodplain don't bother him in this particular instance. Again, he would probably encourage even a little bit more action to open up that bigger building that they are trying to put a use into to engage the river and people on the river walk. He would thin trees and try to open it up so that it really did have more of a presence versus the picture that was shown in the plan. It kind of looked buffered by a forest there. They have to decide because they have done a lot of talking about wanting this

to occur. However, the reality is there is a large floodplain in that direction and how important is our vision in creating a lively walk through there. Or, are they going to just say it can't occur because they can't embrace a river or a walk from a couple hundred feet away. It is going to be very difficult to develop the project being discussed without some compromise on the floodplain in different aspects.

- He goes back and looks at the non-residential use. He does not interpret it the same way as staff. The residential uses he looks at and does not see any big buildings being proposed. He sees townhouses, single-family units and a mixture of uses. The scale seems appropriate for a Neighborhood Model. Therefore, he was willing to allow some flexibility in there to get this use. He would like to have a better discussion to understand exactly what some of those aspects were from the Pantops Master Plan or Citizen's Advisory Committee on why they chose what they did.

Mr. Loach assumed part of it is the fact that intersection itself is failing. It is one thing to say this is a fairly good design and the principles are there, which he would agree. However, the infrastructure is not there with regard to the road infrastructure and there is no money for improvements in sight. He noted the letter from the neighbor, that referenced staff engineering the last time, had some misgivings. He asked if staff has anything from engineering on the latest plan.

Ms. Grant replied there are two areas in the report. First, the special use permit was reviewed specifically by Glen Brooks, the engineer. Secondly, the street section included many of Mr. Brooks' comments about his concerns regarding the street. The person who wrote the letter she spoke with this morning said he had worked with Mr. Brooks previously on some of the previous iterations of this project.

Mr. Franco said he had a question on the Master Plan with the 20,000.

Mr. Benish replied that they look at it by the land designation within the master plan not necessarily parcel specific but what that bubble is and its designation. In this particular case it is kind of an isolated bubble of neighborhood density surrounded by other designations. In this case they looked at 20,000 square feet as being the appropriate amount for this area based on that bubble designated as neighborhood density. When they step back and look at the larger context of the intermediately surrounding area they have Cascadia that was approved for 20,000, Avemore that was approved for buildings across the street, and just south of the site a development that has in excess of 50,000 square feet of buildings approved with vacant sites for office use. Therefore, looking at the mix generated along that intermediate corridor there did not seem to be a need to exceed that 20,000 square foot guidance for this particular part of the neighborhood density. He thinks they have been very supportive all along with the building oriented to the street. As Ms. Grant's staff report indicated they liked the form. It is the cumulative effect of the proposal being twice the density of the comp plan and a fairly significant amount of additional office use. Therefore, it did not seem to be warranted given what had been approved in other intermediate areas.

Mr. Franco said that was the part that was hard to balance. He liked the form as he indicated. However, he was not sure if it were residential that he would like residential next to Route 20. He would want to have that back set back off Route 20. If they are going to frame Route 20 it seems that the non-residential would be best. When he went through the map if the buildings stay the size shown they are really talking about 33,000 square feet. With both stories of the four buildings the max would be just under 34,000 square feet and then 10,000 square feet in the back. The 10,000 square feet in the back is something he would ask the Commission if that is important for the river walk. He thought it was important to allow some uses back there. He was not sure if the master plan envisioned that and how that wants to be handled. However, scale wise it seemed appropriate for the reasons of not wanting residential up against Route 20, but still wanting to frame Route 20 and wanting some non-residential in the back.

Mr. Benish clarified that those buildings are residential, too. There is one story the way the code is written.

Mr. Dotson agreed with a lot of the things Mr. Franco said. However, he cannot support the scale of the development as requested. He thinks there are a lot of creative things here in terms of design. Again, the cottage buildings and the civic plaza could end up being quite nice. There is access to it across the

parking lot in a protected way leading over to the muse and so forth. There is a variety of residential densities possible. Again, he was echoing Mr. Franco with the small maybe micro activity center back towards the river as being good things. He was not particularly troubled by the amount of retail if it is as shown on plan. The four buildings across the front are 4,200 square feet each in terms of office and commercial type of use. So it is really the residential scale that drives his conclusion that he cannot vote positively for this. If it was reworked and simply tweaked down, then there probably would not be a need to fill in the floodplain as staff pointed out. It seemed that would be a winner.

Mr. Lafferty noted there was still the issue about the traffic and the proffers. Apparently they have not come to any agreement on those. He asked if the Commission was ready to take a vote.

Mr. Smith agreed with Mr. Franco that he liked the frontage on Route 20. The floodplain area does not bother him. The one thing they have not mentioned, which Mr. Loach referred to, was about Routes 20 and 250. They have another intersection 100 yards up the road that is going to feel the impact of this traffic also. It is already not a good intersection as the Commission discussed about three weeks ago.

Mr. Loach agreed with Mr. Dotson. He could look at the analogy to Old Trail and in some instances say Old Trail was approved for more than was in the Master Plan. On the other side of the coin, the type of development that has gone in there has been a net positive. Therefore, he thinks as Mr. Dotson said that it was the size and the scale of the residential. If they could build it the way it is and not put in any parking lots except for the commercial so that everybody has to take public transportation, then they could put all the residential in that they plan for. However, that cannot occur.

Mr. Franco said it looks like most of the residential is serviced by garages and things like that. The parking is really for the bulk of the nonresidential.

Mr. Loach pointed out he was just talking about volume and saying that the infrastructure is not there yet. He thinks the design is fairly good. As he mentioned, there are some elements they should probably allow that they should see if they can incorporate to be allowed in the future in areas where the infrastructure can handle that kind of density.

Mr. Franco noted the applicant was asking for feedback. He asked if it was worth asking the applicant if he got the feedback he was looking for or if he had any other questions.

Mr. Loach asked if this was a vote or a deferral. He asked if it was a work session.

Mr. Benish replied it was not a work session.

Mr. Kamptner responded that the applicant can request the Commission to defer taking action and just provide feedback at this point and defer it to a specific date. In that case another public hearing would not be needed. Or, it can be an indefinite deferral on the action and then it would come back for another public hearing.

Mr. Shimp said they have heard some feedback of substance, which is what they were very interested in. It sounds like there are some issues of density they have to look at. He pointed out regarding traffic that VDOT did not provide any comments. He was not sure why that did not happen. Perhaps that is as good a reason as any that they request a deferral at this time in order to sort out a couple of those items and bring a revised plan back to the Commission.

Mr. Lafferty asked if he was requesting a deferral.

Mr. Shimp requested a deferral.

Mr. Kamptner said if the Commission and the applicant want to defer to a specific date, then another public hearing would not be required.

Mr. Franco suggested that it be an indefinite deferral with comment so there was an additional public hearing. It sounds like the plan may change.

Motion: Mr. Loach moved and Mr. Randolph seconded for approval of the indefinite deferral of ZMA-2012-00002 Riverside Village as requested by the applicant.

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

Mr. Franco said one of the questions he asked before they took the vote was if the applicant got all his questions answered.

Mr. Shimp replied yes.

Mr. Benish noted there would be good minutes and they could listen to the recording. However, he thought he heard some consensus about some components of the form. Most specifically, it appeared that the nonresidential amount of square footage in excess of 20,000 square feet was less of a concern. It is the cumulative effect of the residential development and the 50,000 square feet. In terms of working with the applicant and what flexibility they have it sounded like there was more of a preference to exceed that scale than the residential scale. He asked if that was correct.

Mr. Lafferty replied that was correct.

Mr. Benish noted that was an important distinction he wanted to make sure they were clear on. The Commission seemed to support the form on the location of the nonresidential.

Motion: Mr. Loach moved and Mr. Smith seconded for approval of the indefinite deferral of SP-2013-00001 Riverside Village as requested by the applicant.

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

Mr. Lafferty noted that SP-2013-00001 and ZMA-2012 for Riverside Village was indefinitely deferred.

ZTA-2013-00001 Wireless Phase I

Amend Secs. 3.1, Definitions, and 5.1.40, Personal wireless service facilities, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend the regulations pertaining to personal wireless service facilities by amending Sec. 3.1, by adding and amending definitions pertaining to personal wireless service facilities, and Sec. 5.1.40, by allowing equipment to be collocated and replaced by right if it does not result in a substantial change to the facility; allowing Tier II facilities to be up to 10 feet taller than the reference tree and to be approved administratively; requiring balloon tests at the request of the agent, rather than in all cases; eliminating the requirement that service providers submit annual reports; codifying the times by which applications shall be acted upon; eliminating certain design requirements for equipment located entirely within a structure; codifying the procedures and standards for changes to facilities approved prior to the adoption of Sec. 5.1.40 on October 13, 2004; and making other minor clarifications. 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. (Bill Fritz)

Sarah Baldwin in a PowerPoint presentation briefly reviewed some of the items highlighted in the staff report.

What this ZTA Does

- Adds and Amends Definitions
- Revises Balloon Test Requirements
- Eliminates Automatic Reporting
- Establishes Procedures to Amend Existing Sites
- Establishes Reviews Times
- Creates Administrative Review for Tier II Sites

- By-Right Procedure for Collocation

Definitions are necessary to incorporate the collocation requirements and implement the proposed process changes for previously approved/constructed sites. The ordinance currently requires all sites to submit an annual report stating the site is still in use. This is a time consuming venture for the Zoning Administrator to keep up with and serves no purpose as no site has ever been abandoned. The proposed ordinance will still allow a report to be required upon request. Amending existing sites has been time consuming and difficult to administer. This proposal also brings all old sites into the Tier structure and simplifies processing. This has been one of the most requested revisions from the industry. Review times are brought into the ordinance. Currently review times are by policy. These review times are consistent with the FCC recommended review times. "Shot Clock" currently is in the United States Supreme Court and is being considered if the shot clock can be imposed on localities by the FCC.

What this ZTA does NOT do

- Does not reduce design requirements
- Does not change Tier concept
- Does not eliminate public involvement except for certain collocation proposals.

This ZTA does not deal with the provision of either wire line or wireless broadband.

Revises Balloon Test Requirements

Balloons cannot be flown in cases like shown in the presentation due to power lines, guide wires etc. The proposed ordinance simplifies processing by making balloon tests required upon request of the agent. The agent will require balloon tests where the site permits testing. Making this change eliminates the need to process any special exceptions for balloon tests.

Creates Administrative Review for Tier II Sites

- Staff has 9 years of experience processing these requests.
- The height would be 10 feet above reference tree.
- Public notice is maintained.
- All design requirements are maintained.

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012

"Local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."

Section 6409 does not alter localities' processes for approving an application for a change that is not substantial; the statute only requires that the application be approved.

The law contains no definitions except for - Eligible facility is an existing wireless base station or tower

By-Right Procedure for Collocation

Site may not be in an avoidance area, an Entrance Corridor District or within 500 feet of Dwelling.

- Adding one or more antennas.
- Replacing a tower at an equal or lesser height.
- Replacing a treetop tower with one that is not more than 10 feet taller than the reference tree.
- Strengthening a tower without the use of guy wires.
- Expanding the lease area up to two times the original lease area.
- Adding ground equipment.

Section 6409 requires approval if the change to a site does not represent a substantial change. It should be noted that some are questioning if the Federal Law can mandate a state or locality to approve changes to a site. Staff is not taking a position on the ability of the Federal Law to mandate a local action. Staff does believe that by-right changes to a site should be permitted if those changes are not substantial. Therefore, we have developed these standards which are not substantial changes. All of these changes

require that design requirements are met. Changes that exceed these limits, such as adding lighting or changing color or not meeting any other design requirement, would be considered a substantial change.

Nationwide Programmatic Agreement

- Existed prior to the adoption of the Middle Class Tax Relief and Job Creation Act of 2012.
- Was an agreement between Federal Agencies designed to address review of impacts on Historic Resources?

Agreement exists that a definition of what "does not substantially change the physical dimensions" is needed. Some belief that the "Nationwide Programmatic Agreement for the Collocation of Wireless Antennas" should be used.

Comparison of the Act and Programmatic Agreement

Middle Class Tax Relief Act
"Does not substantially change the physical dimensions"
- No definition is contained in the law except for eligible facility as an existing wireless base station or tower.

Programmatic Agreement - "substantial increase in the size of the tower"
1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
4) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

The proposed by right procedure for location of the site may still not be located in an avoidance area or an Entrance Corridor District or within 500 feet of a dwelling unit. Such other things as adding one or more antennas, replacing a tower at a equal or lesser height, replacing a treetop tower with one that is not more than 10 feet taller than the reference tree, strengthening the tower without the use of guide wires, expanding the lease area up to two times the original lease area or adding ground equipment would now be by-right.

The premise exists that a definition of what does not substantially change the physical dimensions is needed. Staff held a roundtable and there was no consensus about what that definition should be. Some believe that the Nationwide Programmatic Agreement for the co-location of wireless antennas should be used. However, the programmatic agreement is not clear. The agreement allows existing facilities to be increased in height. However, the term "existing facilities" is not defined. Would it be a facility as it existed when the agreement was adopted in 2001; or is it when the act was adopted in 2012; or the time that the application was made? Also, how many extensions are permitted? What is the standard number of new equipment cabinets?

Impact of Using Programmatic Agreement

The PowerPoint slide showed what could happen if the Programmatic Agreement was used. Staff opinion is that the County can and should develop a definition for what "does not substantially change the physical dimensions" means.

Recommendation
Staff recommends that the Planning Commission recommend approval of ZTA 2013-01.

Mr. Lafferty noted on page 2 where staff discusses the dimensions of the facility, which would have to be approved by the agent when adding one or more antennas, does this mean a different nature? In other words, if they were talking about adding a similar flush mounted antenna does that change the review?

Mr. Fritz replied staff was saying the addition of an antenna, provided that they meet the design standards, would not substantially change the nature of the tower and would be a permitted use provided that those antenna additions meet the design standards. An example is if they have one array and want a second one.

Mr. Loach asked does it have to be similar to the existing array or a similar design.

Mr. Fritz replied that it just has to meet the design standards. It has to be flush mounted and meet the size and color. It may actually not meet the standards. The existing ones may not meet the design standards currently. There may be an array that stands off and may be an older site.

Mr. Loach said he assumes when they talk about the facilities and setback requirements for property lines that also includes any easements that also may be attached. He asked if they have had these with fall zones where they have gotten easements on the neighbors' properties to allow it.

Ms. Baldwin replied that is correct.

Mr. Loach noted when they say setbacks that these include those easement areas.

Mr. Fritz pointed out that was a design standard.

Mr. Randolph commended staff on a well done visual presentation and also a concise one. He had a question on page 3 under eliminating the automatic annual reporting requirement. The last sentence says the proposed ordinance does require that a service provider notify the county if a facility is discontinued. What are the consequences if a service provider does not notify the county that a facility is discontinued? He asked are there any.

Ms. Baldwin replied that it would be considered as a zoning violation.

Mr. Loach asked is there rules and regulations now when they discontinue as far as the equipment and handling the removal.

Ms. Baldwin replied yes.

Mr. Fritz commented that staff did not provide a full history. In a work session with the Board of Supervisors that was a specific request to be added into the ordinance. It had been mentioned in a staff report.

Mr. Dodson understood that this is phase one of a two phase set of amendments. Phase one is more sort of process and definitions. However, at some point standards come in, too, when they try to decide what is minimal impact or not. He was confused about one thing. If he looks at attachment B on typed page 8 and hand numbered page 12 up at the top it talks about the height of the monopole. The new wording at the bottom of the previous page is the Board of Supervisors may approve a special exception allowing the height of the monopole to be up to 10' taller than the tallest tree. So he reads and understands that. However, in the staff report it seems to say about Tier II applications that the 10' taller

would be handled administratively and be by right. That is something he did not understand because it seems to be contradictory.

Mr. Fritz replied that needs to be corrected. It should not say Board of Supervisors. It should say agent and remove reference to the 7' and 10' difference. They would just be reviewing it. It is either an appropriate site or it is not. They would have to work with the applicant to say what the right height is in a particular case.

Mr. Dotson reiterated that it would be a correction to say the agent rather than the Board. Now they are saying apparently that 10' is henceforth if this is approved, it would be by right.

Mr. Fritz replied that was correct.

Mr. Dotson asked if the special exception would no longer apply, and Mr. Fritz replied that was correct.

Mr. Dotson said they are changing that standard in this process document. They are not letting that carry over to when they are looking at all of the standards.

Mr. Fritz agreed that was correct. He noted that was done because obviously 10' has been permitted. When working with the Board of Supervisors they looked at all the applications that had been approved and they were at 10'. He would summarize what he thinks the Board was saying. The Board believed that they could review those and that 10' was appropriate. Then if in a particular case 10' was not appropriate they would not approve that and maybe it would be 9', 8', 3' or whatever the right number is. However, by not having that 7'/10' split they would say it is 10' and work from there.

Mr. Dotson questioned whether in this document it is the time to consider that standard or whether they should consider it when they are considering all of the other standards. Then they can see the combined effect of making those changes. It is significant in terms of defining a substantial change because in the third bullet down on page 2 it proposes to say "replacing a treetop with one that is not more than 10' taller." So again, they are using that to say if it is up to the 10' it is not substantial. So it is a significant change to define that.

Mr. Fritz noted they are proposing to go to 10'.

Mr. Dotson pointed out the second comment is on the balloon tests. He was confused because it seems to say that the agent can require a balloon test when they feel it is necessary. But, then the last line under that paragraph on page 3 of the staff report says balloon tests will still be required for new facilities where it is possible to fly a balloon.

Mr. Fritz replied staff was saying whenever it is possible to fly a balloon that as policy they will require the balloon test to be done.

Mr. Dotson suggested the ordinance should say that.

Mr. Fritz noted staff tried to craft it in such a way to say where possible and so forth and because of the St. Clair case they could not write it in such a way that they still would not need a special exception. This is for the ease of processing it. They are using the other side of the coin. Right now what happens is they have to process a special exception, which means they have to go through a finding that it is not necessary or can't be done. They have to go through all of that work to do that. It is much easier by flipping the coin on its head and saying it is not required unless they ask for it. All they have to do is say they have to do a balloon test. The processing is much easier on staff with less special exceptions.

Mr. Dotson said he was raising a concern for two reasons. One, he finds a balloon test very helpful on any matter that comes before the Commission. He would think the Board would, too. One thought is to say if an item comes before the Commission there will be a balloon test. That is very clear.

Mr. Fritz replied that staff can certainly look into that. If an item is normally scheduled for a Tier III or anything with a significant change, staff can do that. He understands what he is saying and can advise the Board of it.

Mr. Dotson asked if it is currently stated that the agent can waive a balloon test, and he assumes they do that, and if there were 10 proposals maybe they waive it 2 out of the 10 or 8 times the balloon test is done. He is afraid if they change the language to the staff or the agent can request or require it that it sort of changes the burden of the decision. He fears that instead of having 8 balloon tests the staff will say this is sort of a gray area and the applicant does not want to do it, so alright let's not do it or require it. So it puts the burden on the staff to require instead of which seems like it is pretty easy to say let's waive that.

Mr. Fritz said the burden is still on the staff under the current ordinance language when the applicant says they don't want to do a balloon test in a particular case. Staff has to then analyze that. They are always in agreement. It is both because it is an existing tower and they don't need to do a balloon test because they can see it. Or, there are power lines. Even in cases where they have had thick tree cover they have still done balloon tests maybe not at the exact site, but moving it some distance so they can get a rough idea of what it is going to look like. They would continue to do those things. They are simply proposing to flip the coin here for processing. It makes it easier to process. Balloon tests are important for staff to be able to analyze. They cannot analyze it most of the time without a balloon test.

Mr. Dotson said his bottom line would be he thinks balloon tests are useful.

Mr. Smith said balloon tests are important for the public.

Mr. Loach said on the balloon tests very often the applicant has brought a facsimile of what the tower would look like. It is probably a technology question. But he wonders if in lieu of the balloon test, even if they waive it, if they could still require a facsimile. He finds the balloon test very useful because the full height of what the tower would look like is displayed if the technology provides true representations.

Mr. Fritz said staff agreed. The ordinance is written in such a way that staff can require those things if they ever need them. Staff does the same thing. There are times when staff simply says having a photo simulation would be really helpful. The default is going to be then to deny it. If they don't know what the impact is going to be, they would deny it. Staff would tell the applicant they don't have the information to be able to approve the request and therefore they go the other way. If staff cannot make the affirmative findings, it would be denied. The applicants are here in the audience and they have been very good to work with to get that information.

There being no further questions, Mr. Lafferty opened the public hearing and invited public comment.

Laurie Schweller, with LeClair Ryan, represented Verizon Wireless. She would like to provide comments about the proposed ordinance amendments.

- Verizon Wireless does support these amendments. They think it is very important to bring the County's ordinance into compliance with the FCC's ruling, the "Shot Clock", and with Section 6409 The Middle Class Tax Relief and Job Creation Act of 2012. They believe that this amendment does that to a large extent. They are very happy to see that facilities approved prior to this current ordinance in 2004 will now be treated the same as facilities approved under the current ordinance, the tiered facilities. That will help a lot with predictability and treating like applications alike. That will help to effect these other changes.
- She thinks for Verizon Wireless and maybe for some of the other carriers they are particularly pleased to see this new administrative process for co-locations or placements of existing towers, extensions of towers and even new towers. By towers, she means monopoles up to 10' above the reference tree. She thinks they all know that the Albemarle County staff is well equipped and has plenty of experience to evaluate these applications. They have been doing it a long time and are very familiar with the ins and outs of them.
- She thinks it will save everyone unnecessary time in hearings for the sites that they have approved readily. In the past year and a half Verizon Wireless has had seven Tier II requests that

were approved without any controversy. They have had a number of Tier III special use permits that were merely co-locations of new antennas below the existing antennas and other things that under this new ordinance could be approved as a Tier I administrative approval, which they do believe is appropriate.

- She just wanted to point out, however, that was with the carve outs, of anything that is within 200 feet of a Scenic Byway, along the Entrance Corridor, or in the Historic Districts, which cover about one-third of the County on the eastern side, or within 200' of three (3) other monopoles or within 500 feet of a dwelling off site. There are so many carve outs that they can expect to see a large number of our applications still coming up for public hearing. That is something they hope to consider when they get to phase 2.
- She introduced the next speaker Tim Dykstra, who is the Director in Network Engineering with Verizon Wireless for the Virginia region. He can provide some comments on technology matters.

Tim Dykstra, Director in Network Engineering with Verizon Wireless for the Virginia region, commended staff and the Commission for working with them because it really is a partnership between the wireless industry and the people who help govern and ensure that what they are trying to do is work together to supply their customers with a quality product. He was here two-fold. First was with what Verizon Wireless is seeing from a built perspective and where they are going as technology continues to evolve. Secondly, he was open to any questions that anyone might have with respect to anything he can answer on wireless with respect to Verizon Wireless or any trends he sees at this point. He provided the additional information, as follows.

- That usage is growing faster now than it ever has before. It is partially voice, but most of it is data. What they are seeing in the industry is the usage of data, which is growing rapidly. To be able to handle that they have to continue to do things like buy additional spectrums from the FCC. To be able to utilize that spectrum they have to add different lines of antennas onto their sites. The physics of the way that the radio frequencies work is they can combine some frequencies but they cannot combine all frequencies. Otherwise, they start to actually degrade themselves and they don't get the performance out of the network.
- Albemarle County is going to see more applications coming from Verizon Wireless. He would assume other carriers would be coming down the pike to add antennas to existing structures. They are going to need to add more lines and more antennas to service those new products coming down the road. That is being driven or fueled solely by the amount of usage that is being used on their network now as it continues to grow. They are talking about areas of 7 to 13 times growth over the next 4 or 5 years. That is a tremendous amount of growth.
- The customers are driving the need for this. They are trying to service them and give them everything they need. From a built perspective it is not just adding existing equipment to the existing cell sites. It is building more new cell sites in areas where they don't provide good coverage. They are trying to enhance the footprint that they have. People are using devices not just in their vehicles, but in their homes. They are replacing their home phones with wireless devices. They are using these devices to fuel their laptops and their I Pads at home so that they don't have to have hard connections inside their houses so they can continue to be mobile and use their devices anywhere. That is where they are seeing the huge amount of growth.
- People want to be able to utilize their I Pad from their bedroom into their living room into their vehicle on their way to work and anywhere else they want to go. They see that and it continues to grow. Therefore, they are going to be building more new sites and adding equipment to the existing sites at rates that they might have never seen before just because of the amount of growth they are seeing in the data world. Adding capacity to the existing network is the part about adding lines and antennas to the network in order to add coverage so that people can use these devices in other areas that they can't presently use them now.

Mr. Lafferty thanked him for his comments. He invited questions.

Valerie Long, an attorney with the firm of Williams Mullen, said she has been here on many occasions representing Ntelos Wireless and AT&T. First, she would ask that the Commission feel free to ask them questions and let them serve as a resource to the Commission and staff. They have always served as a good resource or certainly have always tried to for everyone. There is an exceptional amount of industry expertise here in the room. In industry it includes both those working for particular carriers and those who

have been involved in the ordinance for many years. They are very familiar with it and use it every day. They know certain parts of it by heart for better or worse. She offered the following comments.

- They were around before there was an ordinance and when there was not a comprehensive plan that dealt with wireless. They have a lot of experience and have been working with people like Bill Fritz and Sarah Baldwin for many years. Stephen Waller is here tonight representing the industry. He was a planner for many years. She probably worked on 15 or 20 special use permits for towers with Mr. Waller when he worked with the County. Please take advantage of our experience with this ordinance and with the technology and let us serve as a resource so they can address concerns or questions that may be out there.
- They are not looking to get any special treatment. They are just asking for flexibility to streamline the ordinance and not undermine the regulations that they provide. As the staff presentation indicated, this does not change the regulations. It does not change the design standards. It really just streamlines things and they support the ordinance. They have a couple of suggestions they think will make it a little bit better. However, on the whole they very much support it. They are very grateful for the time that Mr. Fritz and his team have put towards working and soliciting their input generally in a partnership to get to where they are now.
- There was a significant change that she would ask to be considered, which Ms. Schweller spoke to generally when she talked about the carve outs. One of the best things this ordinance does is it takes a thousand little issues that right now are not a by-right co-location and clarifies it is a by-right co-location that is administrative. The easy example is if they have an old wood pole approved in 1999 and it needs to be replaced because the wood is deteriorated over time. The carrier or owner of the tower wants to replace it with a steel pole. Right now that is not necessarily a by-right situation. It could have been approved under an old special use permit that says as a condition of approval this pole must be made of wood. There were a number of them approved in that way in the early days. She thinks staff now agrees and the Commission and the Board have all come to the consensus that steel poles for a variety of reasons are far better than wood poles.
- This ordinance exception, among other things, would allow that pole to be swapped out administratively. It is by-right, simple, quick, and fairly affordable. Similarly, attaching an additional set of antennas below the first set, as Verizon and other carriers are doing, to accommodate those additional users would be an administrative Tier I. That is all wonderful and they strongly support it. However, the benefits of that provision she thinks are largely gutted by the fact that a couple of giant exclusions exist. It says all those things are by right unless the site is along an Entrance Corridor or if it is in an avoidance area. An avoidance area is defined in the ordinance to include among other things anything within an historic district. For a long time that was not such a big deal because there was the Southwest Mountains Rural Historic District, but not a lot of other historic districts in town. Within the last ten years the County implemented the Southern Rural Albemarle Historic District, which covers roughly a quarter of the County particularly in the Scottsville District. The vast majority of all the sites they have been working on along the Route 20 Corridor would have been a Tier II tower, but they were a Tier III tower only because they were in the historic district.
- Any facility, whether it was approved in 1999 or last week, if the carrier that owned the tower wanted to come along and put a second set of antennas on it lower down if it was along an Entrance Corridor, that is not a by-right co-location. It could become a Tier III special use permit, which would require them to spend all of the time and resources to bring it to staff for review and then come before the Commission and Board. If they think about all of the Entrance Corridors, the vast majority of the cell towers are along an Entrance Corridor because that is where the vehicles are. It includes Route 20, Route 29, I-64, Route 250, and Route 53. Towers on those routes would not get the benefit of the very positive revisions that this ordinance provides. That is the significant change that she would ask to be considered.

Mr. Lafferty invited further public comment. There being none, the public hearing was closed to bring the matter before the Planning Commission for discussion and action.

Mr. Dotson asked to hear staff's response to Ms. Long's point about the "carve outs".

Mr. Fritz noted staff does not disagree and has not hidden the fact that the "carve outs", as it is being referred to, does cover a significant portion of the County. The reason they did not tackle that as part of this zoning text amendment is that was going to be something that was investigated as part of the phase 2. They certainly can talk about it now if they like, but staff has in the past expressed or at least his opinion is that probably the rural historic districts probably can be removed as an avoidance area. He made the recommendation by virtue of the history they have of approving applications in the rural historic districts. He was not sure about carving them out as a separate avoidance area. They are trying to follow the guidance that they received from the Board and not tackle that as part of phase one. Staff is interested in hearing what the Commission's thoughts are either now or in the future. He agreed with the suggestions made to use the knowledge of others in the industries to get technical advice when they move into phase 2. He felt that would be very valuable and plans to set up work sessions in the future with the Board and Commission.

Mr. Franco asked about the lower antenna comment. There was a comment made by Ms. Long that going back and adding an antenna lower on the pole than the existing antennas takes it and creates a Tier III condition.

Mr. Fritz commented as an example in an avoidance area it would count as a substantial change and would not be eligible for an administrative approval.

Mr. Franco asked if that was a requirement anywhere or is it just in an avoidance area.

Mr. Fritz replied that it may be a Tier II or a Tier III depending on the nature of the application as Section F wraps all of those different types together, but depends on how the previous one was done.

Mr. Franco supported trying to streamline, especially Route 20, where they had spent a lot of time on. The fact that it is a rural historic district has not stopped the Commission from supporting the tower location there. Again, this had to meet the criteria of meeting the visibility aspect of it. However, he would certainly see that as a benefit to streamlining. The other important comment made in the letter they received is to provide some language in there or at least some understanding that a Tier III does not mean that they should not have it. Tier III means that they need to give closer scrutiny to the proposal, but they should not simply say it is a Tier III and it does not fit in the Tier II so they should just not allow it on principle. They have done that in the past. At least some members of the Commission have simply voted against all Tier III's saying they were not Tier II's.

Mr. Lafferty invited further comments. Sitting here with his I Pad after reading and thinking about putting up these antennas he felt it was like the tragedies of the commons where they have a common area and the sheep are feeding in it. Suddenly somebody puts another sheep in there, one person benefits from that, and the rest of the group suffers. What they are doing is changing our landscape by putting up all of these antennas for basically the telephone company's profit. He would like to see them having to give something back to the County even if it means hooking up the schools or something like that instead of the County just giving it all away. Again, he is a big user of the internet. So he sits here and wants good connections in the room, on the downtown mall, and at his house. However, it is always the County giving up something such as the visual impact.

Mr. Loach hoped like other technologies it will be a self limiting type of thing as technology gets better that the size gets smaller and the things that they have been worried about as far as the visual disturbance will become less and less of an issue. He still did not like the big Christmas tree.

Mr. Randolph said there was a lot in here that is really good in terms of expediting the process for the applicant in terms of the technology evolution they are having. The process previously has a lot of controls. They have a good working relationship between the Wireless community and the Community Development Office as well as the Planning Commission. He was not yet persuaded that means they need to suspend everything in terms of the Entrance Corridors. He thought when they come back to this they should really have more of a focused discussion about whether that is appropriate or not. He thanked Ms. Long for bringing it up. It is a good question for us to look at. He understands, given the design group that is here, where it would be logical to make that next step; however, he was also

concerned that possibly in the future they will not have as eager, committed and well versed a series of companies providing wireless services here and the successors might not be quite as reputable and dependable. Therefore, things might not occur the way they would like them to occur in the Entrance Corridor. He thought it was a good question and he looked forward to a robust discussion about that when they get back together again. Certainly everything that is in here is really sensible and is consistent with the federal requirements now for us on the local level. Therefore, he was enthusiastic about it.

Mr. Lafferty asked what action the Commission needs to take on this or does our suggestion just go to the Board.

Mr. Kamptner replied that staff is looking for a recommendation for the Planning Commission to take to the Board of Supervisors.

Motion: Mr. Dotson moved and Mr. Randolph seconded to recommend approval of ZTA-2013-00001 Wireless Phase I.

Mr. Kamptner clarified the one typo pointed out on page 8 that Mr. Dotson raised about the height of the monopole by right correcting that it would be 10' by-right.

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

Mr. Lafferty noted that a recommendation for approval would be forwarded to the Board of Supervisors on ZTA-2013-00001 Wireless Phase I, which would be heard on a date to be determined.

Old Business:

Mr. Lafferty asked if there was any old business. There being none, the meeting moved to the next item.

New Business

Mr. Lafferty asked if there was any new business.

- The next Planning Commission meeting will be held on Tuesday, April 16, 2013.

Adjournment:

With no further items, the meeting adjourned at p.m. to the Tuesday, April 16, 2013 meeting at 6:00 p.m. at the County Office Building, Second Floor, Room #241, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

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