Albemarle County Planning Commission
June 24, 2014

The Albemarle County Planning Commission held a public hearing on Tuesday, June 24, 2014, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Cal Morris, Chair; Richard Randolph, Thomas Loach, Tim Keller and Mac Lafferty, Vice Chair. Absent was Karen Firehock, Bruce Dotson and Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia.

Staff present was Bill Fritz, Manager of Special Projects; Amanda Burbage, Senior Planner; David Benish, Chief of Zoning; Francis MacCall, Principal Planner; Wayne Cilimberg, Director of Planning; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum

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

Public Hearing Item

ZTA-2014-00004 Personal Wireless Service Phase II
The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance that would amend Secs. 3.1, Definitions, 5.1.40, Personal wireless service facilities, 30.6.4, Certificates of appropriateness, and 30.6.5 Development exempt from requirement to obtain certificate of appropriateness, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-3.1, by adding a definition of "mobile personal wireless service facility"; amend Sec. 18-5.1.40, by amending the required supporting information accompanying an application for a personal wireless service facility (PWSF) pertaining to trees and photographic simulations, by amending the exemptions from regulations pertaining to building sites and setbacks that otherwise would apply to a PWSF, by amending the screening and siting requirements for Tier II PWSF's to require them to be sited to minimize their visibility from any entrance corridor overlay district, and to exempt mobile personal wireless service facilities from the requirements of section 18-5.1.40 subject to obtaining a zoning clearance, durational limits, siting requirements, and other requirements; and amend Secs. 18-30.6.4 and 18-30.6.5 by adding PWSF's to the classes of development exempt from review by the County's architectural review board under Sec. 18-30.6. 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)

Mr. Fritz presented a PowerPoint presentation on the proposed amendment to the Zoning Ordinance to address the Wireless Policy.

This zoning text amendment is the result of a Resolution of Intent that was adopted by the Board of Supervisors to amend the ordinance for these changes. A work session was held with the Board in April to go over the Phase 2 portion of the Wireless Policy, which was going to be a much broader and all encompassing amendment. It was going to address a wide variety of things about the siting and design of facilities as well as a number of other things. However, the Board of Supervisors scaled that back and instructed staff to just look at these minor issues. The specific language actually comes from the Board with some guidance given to staff.

There are six main changes in the proposed ordinance, as follows:
- ☐ Modification of submittal requirements and how tree information is submitted.
- ☐ Provision to allow the requirement of photo simulations.
- ☐ Modification of the applicability of critical slope regulations. (two parts)
- ☐ Modification of method of determining setback. (two parts)
- ☐ Inclusion of provisions for temporary facilities.
- ☐ Removal of requirement for a Certificate of Appropriateness by the Architectural Review Board.

Modification of submittal requirements and how tree information is submitted
Currently the applicant is required to submit information that shows all trees within 50 feet of the proposed tower to be surveyed, including height, caliper and species. The proposed ordinance would amend that to allow the submittal of photographs. The ordinance would require the applicant to identify those trees which are going to remain, those trees which are going to be removed, and where the lease area is. Staff finds that having this information in a visual form

is much easier to review. The ordinance still retains the ability for the county to require all of the information if staff determines that it is necessary when the photographs don't provide the information needed. It gives staff flexibility to require what is needed in a particular case.

Provision to allow the requirement of photo simulations
Currently the ordinance does not have a provision that allows staff to require photo simulations. There has never been a case where anyone has objected to providing photo simulations. However, staff felt it would be appropriate to include it in the ordinance in the unlikely event that someone actually would not give us a photo simulation.

Mr. Randolph asked if this was in lieu of using the balloon.

Mr. Fritz replied no, this is in addition to the balloon test.

Mr. Fritz continued the Power Point presentation.

Modification of the applicability of critical slope regulations:
This particular change has two parts. The first part is to discuss the tower and base station.

- ☐ Currently the ordinance requires a special exception if critical slopes are going to be disturbed. If they are disturbing slopes of 25% or greater, a special exception is required by the Board of Supervisors to build the tower and base station equipment.
- ☐ The proposed ordinance would allow by right the disturbance of critical slopes for the tower and base station provided certain design standards are met.

In the recent Steep Slopes Overlay District, adopted in March, they created "Preserved" and "Managed" slopes in the development areas. Preserved slopes had a very short list of permitted uses, which included communications facilities. This is something the previous boards have directed staff to work on, and they are just now getting to it.

The County has routinely approved and never denied requests to disturb critical slopes for the construction of Personal Wireless Service Facilities. The areas disturbed are limited due to the limited footprint of the facilities. If a facility is being located on critical slopes and it has adverse visual impacts, it could still be denied. What staff has found over the years of processing is that by being on critical slopes sometimes trees can be avoided or the tower site can be sited in such a way that it minimizes visibility. What the ordinance also does is use the design standards that are in the Steep Slopes Overlay District in an effort to minimize adverse impacts that may be caused by any disturbance of critical slopes. The proposed ordinance allows critical slopes to be disturbed by-right and requires that performance standards be met.

Access Road:

- ☐ Currently the access road would be exempt from critical slope regulations if no reasonable alternative location exists for the access road.
- ☐ The proposed ordinance would remove the exemption. Any disturbance that was generated by the construction of the access road would require a special exception. This was a directive of the Board of Supervisors when they adopted the resolution of intent.

Those are the two changes as they deal with critical slopes.

Modification of method of determining setback has two parts to it.
Changes in measuring setback:

- ☐ Setback is 100% of the tower height or a 1 to 1 setback to the facility. Right now the tower and base station are considered part of the facility. So the tower and base station both need to be setback a distance equal to the height of the tower.
- ☐ Proposed ordinance maintains 100% setback for tower only. The base station equipment could be located closer. Again, if the location of the base station results in adverse visual impacts the facility could be denied.

Changes in reducing setback

- ☐ Current ordinance allows the 100% setback to be reduced by Board through the approval of a special exception or if the abutting owner grants an easement.
- ☐ Proposed ordinance allows reduction by Board or if abutting owner grants an easement *or a letter of authorization.*

The existing ordinance allows the 1:1 setback to be reduced if the Board grants a special exception or if the adjoining owner grants an easement in a recordable form. Multiple instances have occurred where the adjoining owner was willing to grant an easement but because the property had a mortgage they were unable to grant the easement without the lending institutions approval. The proposed ordinance would allow the setback to be reduced if the

adjoining owner approved of the reduction. The approval would not have to be recorded. If this provision is adopted, the County will develop a standard format for the authorization of the reduction.

Inclusion of provisions for temporary facilities.
The County currently has a Board endorsed policy on the location of temporary facilities. Staff believes that incorporating this policy into the ordinance is appropriate. Temporary facilities have been authorized several times, most recently for Fox Field, without any complaints or concerns. They are:

- ☐ Short term – 7 day maximum twice a calendar year.
- ☐ Allowed for duration of a state of emergency.

Removal of Requirement for a Certificate of Appropriateness.
The Board has previously authorized the Architectural Review Board (ARB) to establish criteria for a County Wide Certificate of Appropriateness for Personal Wireless Service Facilities. This will allow the issuance of a Certificate of Appropriateness administratively by staff instead of requiring review by the full Architectural Review Board (ARB). The existing regulations for Personal Wireless Service Facilities have very detailed design standards for the construction of a facility. This leaves the Architectural Review Board (ARB) with limited discretion when reviewing an application.

Architectural Review Board (ARB) review is limited to two issues: 1) The ARB provides advice to the Agent regarding whether or not the facility is being sited to minimize its visibility along the Entrance Corridor street, and 2) the ARB issues a Certificate of Appropriateness for the base equipment portion of the facility, which in many cases is not visible from the EC. Staff review considers the impact on the general area, including but not limited to the Entrance Corridor. Staff opinion is that ARB staff should continue to be involved in the review of applications to ensure that the visual impacts of a facility are mitigated. However review by the full ARB should not be required.

Staff recommends that the Planning Commission do one of the following:

- ☐ Recommend approval of the amendments.
- ☐ Identify those provisions they support and those they oppose.
- ☐ Recommend denial of the amendments.

This set of amendments is unusual in that they can act on it a la carte. Usually they are all linked together; if they change one provision they change another. That is not the case in this one. There are eight (8) distinct actions the Planning Commission can take. There are six items and two of them have part a) and b). There are eight (8) different provisions and they can be acted on individually because one is not dependent upon the other.

Possible Motions

- ☐ I recommend approval of the modification of submittal requirements and how tree information is submitted.
- ☐ I recommend approval of provision to allow the requirement of photo simulations.
- ☐ I recommend additional evaluation of modification of the critical slope regulations to allow the tower and base station without a special exception.
- ☐ I recommend approval of modification of the critical slope regulations to require the access road to require a special exception.
- ☐ I recommend additional evaluation of modification of method of reducing setback to include a letter of authorization from the abutting owner.
- ☐ I recommend approval of modification of allowing base station equipment to be closer to the property line.
- ☐ I recommend approval of provisions for temporary facilities with modifications to the time limit.
- ☐ I recommend denial of removal of requirement for a Certificate of Appropriateness.

Mr. Morris invited questions for staff.

Mr. Lafferty asked how far the platform can be from the antenna.

Mr. Fritz replied typically it is very close because they want to keep the runs that go from the base station to the tower as short as possible to reduce signal loss. They are talking usually not more than 10' and sometimes as little as 6'. However, there may be some that are as much as 12'.

Mr. Lafferty asked if they do anything to simulate the base like they do with the balloon test for the tower.

Mr. Fritz replied no, that information is shown on the plan so staff can visualize it and understand where those things are going to make it easy to verify in a field visit.

Mr. Loach questioned how the tree information is submitted. The first sentence says the current ordinance requires all trees within 50' of the proposed tower should be surveyed including height, caliper, and species. He asked if that is usually done by the applicant.

Mr. Fritz replied yes, that was correct.

Mr. Loach said the proposed ordinance is to change only the reference tree and photographic information. He asked which staff would do the evaluation in the change in the ordinance. He asked would it be the planner or would this be someone like Dan Mahone who is a landscape architect. He was wondering why they are doing it now for the height, caliper and species. He assumed that was to make sure there was no damage to the environment.

Mr. Fritz replied they have the height, caliper and species of the reference tree, which will remain. The height was important because it sets how they are measuring a tree top tower and determining what the visual impacts are going to be. The species and caliper was important so they know which tree they are talking about. That will still have to be provided. That was a catch all when they developed the ordinance. What they have found is that by going to visit the site and photographing it they get a better idea of which trees are going to remain and be removed. They can give those to the zoning inspector and they can stand there with the photograph and can actually see. It is an easier way to review and enforce than having the plan because they can actually see. They will need to identify in the photographs and by tying ribbons around trees and things like that which trees will be removed or stay. It will be easier for staff to then replicate that actually on the ground. It can be confusing when staff is out in the woods trying to figure out about what they are really talking about.

Mr. Loach said basically the reason for this was to identify precisely the reference tree because that was going to be used as a marker for the visibility of the tower over and above the reference tree.

Mr. Fritz replied yes, and the reference tree will always be identified. The other trees will be identified if they need them to be identified. However, they will be identified in the photographs. If they need to be identified in the plan, they can require them to be identified on the plan. Sometimes it may just be appropriate to identify them as to their location or caliper and maybe sometimes the species or the height. It gives flexibility to get the information needed in a particular case because all of the sites are not the same.

Mr. Loach questioned what the purpose was of the survey doing the additional trees out 50'.

Mr. Fritz replied that it was giving staff a feel for the area and helping identify what trees were to stay or be removed. They are suggesting that there is an alternative way of getting that information.

Mr. Loach pointed out photo simulations are very helpful and had no problem with them being required. He asked with the state of the technology can the photo simulation replace the balloon test since they are using those in the photo simulation.

Mr. Fritz replied yes, in some cases. However, in some cases they need the balloon test to have a point of reference with which to do the photo simulation.

Mr. Morris said he had one question related to the critical slopes. They worked and staff provided an excellent process for the development areas where they have come up with a preserved and managed type of slope. He seems to recall that the same type of process might be looked at for the rural areas in the future. He asked if staff sees any additional work in identifying how they handle critical slopes in the rural area.

Mr. Fritz noted he would answer it in two ways. First, he would answer it as how it relates to telecommunication facilities. Telecommunication facilities on both managed and preserved slopes are permitted. Managed and preserved slopes are slopes of 25% or greater. The proposed amendment to allow the facility to be located on critical slopes is consistent with the recently adopted Steep Slopes Overlay District. In the Steep Slopes Overlay District a communication facility can be located on either managed or preserved slopes. They don't need a special exception, but just have to meet the performance standards. That is in essence what this ordinance does. It says on critical slopes a facility can be located without getting a special exception, but it has to meet the performance standards. This makes wireless facilities in the rural areas and development areas on equal footing as slope is concerned. The bigger question is whether or not they are going to look at the rural areas for managed and preserved slopes. He would hope not because it took a long time to do 10% of the county, and it would take a very long time to do 90% of the county. The Board was very specific in their guidance that they only wanted to look at the Steep Slopes Overlay District in the development area. In part it was because it was seen as a tool to facilitate development that was desired in the development area and to discourage development that they did not want in the development areas. The rural areas are not intended as a development area. Agricultural activities are exempt from the critical slopes provisions and that is the primary intent of the rural areas. Therefore, he thinks it is highly unlikely that the Board would direct staff to work on a steep slopes overlay district in the rural areas.

Mr. Keller asked if they have cell towers mounted on county public facilities such as our buildings or schools.

Mr. Fritz replied yes, there are wireless telecommunication facilities on county property. There are stand alone towers on county schools. He believed there are some attachments to some of the jointly owned E911 towers. He did not know that there are any communication facilities on any purely county owned towers. They don't have that many that purely is county owned. Most of them are with the E911 center. As an example, Scottsville School has a tower on it.

Mr. Keller asked if he understands correctly that in Virginia they can't consider health issues.

Mr. Fritz replied in the country they cannot consider health issues. The 1996 Telecommunications Act is very clear that environmental factors can't be considered to the extent that they are regulated by the FCC.

Mr. Keller asked if they can consider visual impact on resources that they have earmarked.

Mr. Fritz replied with traditional zoning they can still consider it.

Mr. Keller asked if #3 on page 7, open space plan resources, mean that views from greenways, parks, trails, blue ways, such as the Rivanna River, will be taken into account by staff

Mr. Fritz replied that they are currently.

Mr. Keller asked how that decision is made as to what that impact is. He asked if that is a subjective decision on the part of staff.

Mr. Fritz replied that it was two-fold. The ordinance has performance standards that are to minimize. For example, the tree top design minimizes the visual impact. They don't regulate based on aesthetics because they can't do that in Virginia. So they are trying to minimize the visual impacts. They use the guidance contained both in the ordinance and Personal Wireless Service Policy to determine what an acceptable level of visual impact might be. The best site obviously is when it can't be seen at all. They have a few of those. However, if it can be seen, then it is to the extent that it is mitigated and what it is having a visual impact on. When staff is reviewing a particular application for a Tier II, which they act on administratively, they have a fairly long ten year history of the Board of Supervisors acting on special use permits and Tier II facilities that they have built up a very good reservoir of guidance from the Board of Supervisors as to what an acceptable level of impact is. So staff used that experience they had with the Board of Supervisors, the comprehensive plan, and the Personal Wireless Service Facilities Policy. They also used Section 5.1.40 of the zoning ordinance.

Mr. Keller asked in the part to be handled administratively if there is a significant community issue and concern expressed, such as they are hearing from Key West residents, is there an opportunity for the staff to elect to bring that specific case to the Board of Supervisors for a decision or will it all be handled administratively.

Mr. Fritz replied nothing in this zoning text amendment is changing the process. The process was changed by the Board of Supervisors last year so that Tier II facilities are done administratively by staff. The only way an item would get to the Board of Supervisors would be if it was denied by staff the applicant could appeal that decision to the Board. They would not fail to take action and instead refer it to the Board because there is no mechanism to do that. If staff thought it had an adverse visual impact they could deny it and the applicant would have the opportunity to appeal that to the Board of Supervisors. The applicant could also appeal it to court.

Mr. Keller asked would it come forward on the consent agenda for the Board of Supervisors.

Mr. Fritz replied no, if there were a denial it would be on the full agenda. It would be an appeal of a denial and it would go to the Board of Supervisors.

Mr. Keller asked if there a mechanism for public input on individual cases that might have a degree of controversial.

Mr. Fritz replied there would be for everything except for Tier I. They have the three tier system and this ordinance does not affect any of that. The resolution of intent does not cover any changes in the process. The Tier 1 requests are attachments to existing structures, which are treated like building permits and routinely just acted on. The requests would either meet the requirements or not. A Tier II facility, which would be a tree top facility, they would notify the abutting property owners who would have an opportunity to review and comment. Staff would take those comments into consideration, and then would take an action. They very recently had an application for a Tier II facility and several abutting property owners objected to it. Staff reviewed it and actually denied the application. The applicant then appealed that to the Board of Supervisors who upheld the denial. That is already done. In a Tier III, which is a special use permit, there would be a notice to the public and there would be a meeting with the Planning Commission and a meeting with the Board of Supervisors.

Mr. Keller noted a recurring question in the emails received from the community was if they approve something administratively there is not a mechanism for that to come back in a public manner for discussion through the Supervisors.

Mr. Fritz replied that was correct.

Mr. Randolph noted he had several questions. The first question was about the seventh item about removal of requirements for a Certificate of Appropriateness. He asked if staff had consulted with the Architectural Review Board about the proposed change listed in the last sentence in the summary, "however review by the full ARB should not be required." He asked if there had been prior consultation.

Mr. Fritz replied there had been prior consultation with the Architectural Review Board in prior years. This has been an ongoing process. This particular text, as listed in the staff report, was actually looked at by the ARB Design Planner to ensure that it was consistent with what the ARB has been talking about in the past and currently. So yes to that extent it was run by the ARB Design Planner.

Mr. Randolph said next he would like to go up to the modification of method of determining setback. He thinks it is a common sense proposal to unlock the tower from the base station. There does not seem to be any logic that the base station is tied into the distance from the property line. It is the tower that poses the threat. He questioned the language in the last three sentences of that section, "the proposed ordinance would allow the setback to be reduced if the adjoining owner approved of the reduction." Second, the approval would not have to be recorded. He asked how the mortgage lending community would feel if an adjoining property owner agreed that a cell tower that would be 100' goes up and their house is within 80' and would not be recorded. The mortgage company would never know that an agreement has been made, which puts all of the depositors and officers at the bank at risk because if the cell tower falls over it hits the bank property. He asked if it was an appropriate idea that perhaps the mortgage lender be informed. He asked if staff has talked to anybody in the mortgage community in Albemarle County about how they would feel about the setback agreement not being recorded.

Mr. Fritz replied no, staff has not spoken to any of the lending community. The practical matter has been they have had a number of cases where an abutting property owner was willing to grant the easement, but was unable to because of the mortgage. They signed a letter that said they had no problem with this, and then the special exception went to the Board of Supervisors who authorized the reduction. So the effect is exactly the same. What they are simply doing is removing the need for the Board of Supervisors to take that action. The Board of Supervisors has approved every special exception request where the abutting property owner said he did not have a problem with reducing the setback.

Mr. Randolph said as Mr. Keller pointed out if it was an administrative decision there is no public notice; whereas, the Board of Supervisors makes a decision that is available through webcast and minutes for the public to review. There would be some awareness. However, for an administrative decision the people in this audience would not know that an administrative decision had been made.

Mr. Fritz pointed out the abutting owner would know because they are the ones where the reduction is occurring and they would have to take a positive action. So they would be involved in that.

Mr. Randolph noted the other neighbors would not.

Mr. Fritz agreed that was true. However, they would still be aware of what was going on because of a notification of the application and could show up at the Board of Supervisors meeting with the special exception.

Mr. Loach said he has a big concern about the language regarding the mortgage company would not be notified nor would it be recorded. It seems to indicate they are trying to circumvent a circumstance they ran into in the past that made it more difficult to achieve the tower.

Mr. Fritz pointed out what happened in those cases was the abutting owner had no problem with the reduction, but staff could not grant it. The ordinance has a second clause that says even if the abutting owner opposes a reduction in setback the applicant can still go to the Board of Supervisors and request a reduction in setback. The Board of Supervisors can reduce the setback to zero if they were so inclined even if the abutting owner was entirely opposed to it. The original intent was the 1 to 1 setback to protect the interest of the abutting property owner. The logic behind the reduction was being faithful to the original idea of protecting the abutting owner to let them say they are okay with the reduction and giving two ways of doing that.

Mr. Randolph questioned who would be notified and if it means the property touches the subject property. He asked if it would not be interpreted to be where the tower may fall or the distance from the tower. He asked if they are going

to creep into a situation where the height of the tower and the distance to the adjoining property owner determines who is notified.

Mr. Fritz replied no, that is a separate clause in the ordinance that is not being proposed for any amendment. All abutting property owners would be notified for a Tier II or Tier III.

Mr. Randolph said that critical slopes are a natural resource feature. He was concerned a bit about the slippery slope. They talked actively when they looked at preserved versus managed slopes that this was only going to be applicable in the planned residential area or 10% of the county. However, here they find all of a sudden they are leading into a by right disturbance of a critical slope. He was concerned this was the nose of the camel that sets up a precedent. It could be cited in the future that for a Tier II for the construction of a tower critical slopes can be disturbed. He asked why other publicly beneficial industries also could not be allowed to have disturbance of critical slopes because the precedent is set. He just wanted to raise that on the record that he is concerned about the precedent that might be established.

Mr. Fritz replied during the review of the Steep Slopes Overlay District they specifically stated they were taking the previous guidance of the Board of Supervisors to allow wireless facilities on critical slopes. They were taking the opportunity to use the steep slopes process to do part of what the Board had already done. So he does not see this as a slippery slope. The Board had already previously directed staff to do that. Staff simply used the steep slopes as the first effort. They were there and did that and knew they were going to come back later with the other critical slopes. So it is not the introduction of a new concept. They just simply did it with the steep slopes because they were doing it at the time. So they just took the opportunity to do that. They did state that was something that had been a previous direction of the Board. He understands his concern, but he thinks it is actually the other way around. This is not a slippery slope, but was just something that had been previously cited by the Board. They are not using the steep slopes as a means to get there, but were just pointing out the commonality between the two.

Mr. Randolph said that may well be something that was discussed at the Board level, but at the Planning Commission level it has not been discussed previously in his recollection. Therefore, it is a new subject for the Commission this evening. As he reads through this, he suggested there may be a need to really reexamine the setback proposals in light of community concerns and the due process for the community based on setbacks. He did not know how the community of Key West is going to feel about it. However, if email communications are any precedent he thinks they will be in support of some additional language in here to guarantee that there is further due process for the community on the setbacks.

Mr. Morris opened the public hearing and invited public comment. He noted the Commission has received over 55 emails. He had read all the emails and there was a distinct similarity in at least 50 of the 55.

Public comment was received from the following persons:

Ellen Dudley, resident of Key West, said AT&T has been trying to place a cell tower right between two houses in the Key West neighborhood for the past five years. Last year AT&T's application was turned down because their big structural base for the 102-foot tower would have been too close to the house on the adjacent lot. Now there is a rule change proposal in the industry's favor so they can put the support structures even closer to any Albemarle County's neighbor's house irrevocably damaging that home's livability. Also, there is another rule change proposal, again in the industry's favor, so they can send in heavy construction equipment atop even the County's most valuable biodiversity areas, irrevocably damaging critical slopes. They are here tonight to ask the Planning Commission to act in the citizens' favor to protect residential neighborhoods. The other speakers will address four important points:

- FIRST: Why the restriction on building on critical slopes should not be relaxed, particularly considering the County's responsibility to protect vulnerable biodiversity areas.
- SECOND: Why there should not be any change in the setback rules to allow construction of a cell tower's structural base any closer to any existing home.
- THIRD: Why, although some may think there are already cell towers close to homes in similar residential neighborhoods, this is not the case.
- FOURTH: Why the Albemarle County government should stand with many other Virginia counties that protect residential neighborhoods and don't allow cell towers in their midst.

Ms. Dudley said they are here to ask the Commission to act for the benefit of the citizens of Key West as well as many other Albemarle County citizens who live in similar developments. They surveyed 152 Key West households and 142 signed a petition objecting to this cell tower placement. Other Albemarle residential neighborhoods are bound to have the same objections and would not want the cell tower site rules relaxed any further. She asked that

the Commission please deny the industry's push to further relax the county's standards for cell tower sites. She asked anyone that agreed that Key West and all similar residential neighborhoods should be off limits to cell towers to please stand up. (Attachment A – Ellen Dudley's Statement Submitted- Attachments on file with the printed minutes in the office of the clerk)

Daphne Spain, Professor of Urban and Environmental Planning at the University of Virginia and resident of Key West for 25 years, said each semester when she begins with her students she asks them to read the American Institute of Certified Planners Code of Aesthetics. She insists that they understand that planners are responsible for the public interest involving people whose decisions may affect them. They are concerned about protecting the environment. She also requires students to attend these Planning Commission meetings for three reasons. One is to observe the planning staff and whether they might like to become planning staff in the public sector; whether they might serve the public as a Commissioner, or whether they might simply be part of the public participating in a democratic process. She also asks them to pay attention to this group because it is this group that helps put policy into place to uphold the comprehensive plan goals.

Ms. Spain noted the goals that refer to the current situation in the comprehensive plan recognizes the importance of protecting biological diversity and rural and development areas. To make sure that happens, the county has appointed a committee on biodiversity to document and promote the stewardship of natural resources. Another goal is to protect the water resources that are written to the Code of Albemarle, Chapter 17 in maintaining the integrity of existing streams and networks for their biological functions. The Biodiversity Committee has identified Key West as an important site for biodiversity preservation, especially the rock outcroppings that are near the proposed cell tower site. It also identified disturbance of critical slopes as detrimental to biodiversity and to water quality of the Rivanna, which is one of our most valuable stream resources. Given these goals as stated by the comprehensive plan, she and her neighbors urge the Planning Commission to require a site review for every application of land use like the proposed cell tower. She invited everyone who agrees to stand.

Kent Sinclair, resident of Key West for 31 years, said he believes that really they are focusing on two paragraphs that are on page 4 of Attachment B. One is exempting the cell tower location itself from the critical slopes review. He thinks that is wrong because they have experienced in the Key West applications that the staff actually does its work and they do review. He thinks it is just a little glib to say we have approved these things in the past. It does not give credit to the fact that issues arise when the applicant has to explain to the county and staff on the case reviewing a critical slopes issue. For example, construction using blasting came up in Key West and it turned out to be excluded from the plan. He was not sure it would have if they had not had to make the application. He thought the logical flaw in exempting the footprint of the tower and the support structure is they want staff, which is looking at the road that will be reviewed under the critical slopes, to assess the cumulative effect of what is going to be built. That effect includes the road access, parking, and the area that is destroyed right where the platform is built. If they make the platform exempt from critical slopes review, he did not see how the staff can decide whether the road plus the destruction of the slope where it is actually built is an appropriate intervention in the critical slopes area.

Mr. Sinclair said secondly, they oppose the second paragraph on page 4 with respect to the setbacks in addition to Commissioner Randolph's point, which they discussed at length this evening in this is an end run on the mortgage holder's interest. He thinks that it is also of concern to buyers who cannot research this when they are looking at a piece of property to know that the prior owner has given a letter which places them subject to a restriction as to what they can do with the property they are about to buy. Our objection to the reduction of the setback is in one sense that this approach to what the facility is would be inconsistent with all of the other regulations in Albemarle that consider the tower and platform to be a facility. If they step back the basic message of allowing the ground equipment to creep closer to the property line, they make it easier for the cellular industry to put these installations in narrow residential lots. They believe they should act to discourage the placement of these towers in built up residential subdivisions. He asked if the people present agree with that position.

Eric Seaborg, resident of Key West, said he wanted to make a brief point about the significance of the proposed changes. He was talking about the critical slopes and the setbacks using the tower that was proposed by AT&T on Key West Drive as an example. When they discussed this tower site with the Planning Department last year, they said this must be a unique situation because the tower facility would only be a few feet from a home, less than 90' from a property line, and only 200' from an adjoining home. However, the Planning Department told us that oh no, there are many similar towers built in similar neighborhoods in Albemarle County. They eventually gave them a list of these towers. They had a committee of concerned citizens who visited and documented every single one of these towers on the list. What they concluded was that none of these tower locations came close to the situation in Key West. Therefore, the tower proposed at Key West would have been unique in the county. Because these changes would now allow towers in such a location they think that the changes are a significant change in the requirements. If they approved the proposal, they could be opening all neighborhoods in Albemarle to cell towers in close proximity to many houses. (Attachment B – Statement of Eric Seaborg) (Submitted Attachments on file with the printed minutes in the office of the clerk)

Bob Toplin, resident of Key West for ten years, said right now they were being asked to rule on a decision that will make it easier to place cell towers in established neighborhoods. If they agree to these changes they will have a specific impact on Key West in particular. They saw up on the screen a little diagram on the idea of separating the platform from the monopole. That was what saved Key West. The tower might be under construction or already be there today if it were not for that combination. The setback includes the platform. The point is simply that they have a neighborhood of residents living in close proximity and yet on a lot right by that home would have been a huge tower. It would have been an eyesore and a problem in many respects for the neighbors. They assessed and surveyed the various people and almost every home, of 150 plus homes, the people said they did not want it. In talking about this, they may be wondering across the state of Virginia: what do other localities do. Are they more strict or free about the placement of towers than Albemarle? They have before them a list of several of these places. If you read the quotations and even inquire with, the individuals they spoke with are planners, development people and people in law and administration. They said one after another they could not believe what we are doing here. When they talked about the Key West situation, they discovered many of them have much larger setbacks. So they could see that they were very surprised and found that we are rather loose in our arrangement. The idea here is that the proposed changes at first glance look like they are minor, and yet when you look at them carefully, you discover they are very serious in their applications. Key West is just one example. It is sort of a canary in the coal mine. However, this really applies to so many neighborhoods. They should be moving in the right direction and that is towards greater concern in monitoring and care for critical slopes and caution about placing these towers in the middle of a neighborhood where it would be seen while sitting on your porch. In fact, he would just close on what one such platform looks like at Monticello in our city with a picture in the presentation. They are not talking about a small affair. They have something to think about here. He asked if they would like this across the street or next door. (Attachment C - PowerPoint Presentation including photos and "What Other Virginia Counties and Cities Do about Cell Towers in Established Neighborhoods presented by Bob Toplin) (Attachments on file with the printed minutes in the office of the clerk)

Marcia Joseph, current member of the Architectural Review Board, pointed out the ARB looked at a cell tower yesterday at Royal Acres, which is adjacent to I-64. They looked at all of the information in the lovely packet. One of the things that it does show is the 50' of trees around the site with the height. She thinks it is an important thing that they keep because it helps visualize what is happening out there. If you only have one tree, then you don't know what the relative heights of all the other trees are around it. It is the reason they ask for that initially when they created this ordinance. The other thing is the road location. The road location on the Royal Acres site changed a little bit and they showed it. The reason it changed is because apparently the road was very steep going down so they moved it a little bit. However, when you see all these things you are able to figure out what the visual impact is going to be including the cut of the road, and the surrounding trees. Staff talked about the current staff's abilities and she agrees with him that everybody knows what they are doing. However, not all of the same staff people will be reviewing this in the future. So if they are just relying on photographs it gets a little bit difficult if something does go wrong to be able to pin point exactly what it was that happened because they are dealing with photographs instead of base maps.

Jeff Werner, with Piedmont Environmental Council, presented items to the Commission for reference that included two photographs and site elevations. (Attachment D – Photographs and three Site Elevations) (Attachments on file with the printed minutes in the office of the clerk) He said the entire point of a tree top tower is there are trees around the tower and those trees remain after the tower is constructed. He handed out examples of site elevations. A detailed site plan is currently required to be able to see where the trees are. If necessary, at a later site visit staff can determine if the trees are in fact still there. He referenced the two photographs in which they can see how difficult it is to really get a spatial idea from just a photograph. He thinks a site visit by the staff does not provide that information unless, of course, staff is prepared to go out there and generate a detailed sketch plan of the site. Also, as Ms. Joseph pointed out it also assumes the county has in the budget the money for staff to do such a thing. Second, on eliminating the Architectural Review Board and deferring to ARB staff he understands in some locations it would make sense. He thinks on development sections of Route 29 one could see where people would not be clearing necessarily for a public hearing. However, he thinks in some of the historic districts and scenic byways folks really rely on the ARB to take care of their interests. Whether it is on Route 29, Route 22 or anywhere, he thinks the county needs to be extremely cautious when it begins removing opportunities for public input. Again, the whole deferral to staff assumes there is staff to do this.

Mr. Werner said Albemarle adopted this policy years ago that was based and anchored in one thing, the aesthetics of this community. That mattered very much to this community. Ever since they adopted that they have heard repeatedly from the service providers that these regulations are just too costly and they can't afford to do these things. He did some research and in the last couple of years of the top five companies who spend the most on advertising in the United States two of them are AT&T and Verizon. In fact, in 2011 each spent in excess of 2.3 billion dollars in advertising, yet it is too costly for the service providers to produce a detailed and thorough site plan that shows where the trees are for a tree top tower. He would really ask that they please place the interest of county residents above the interest of billion dollar corporations.

Morgan Butler, with the Southern Environmental Law Center, said he wanted to take a few moments tonight to voice some reservations that they have about the proposed change that would exempt cell towers and base station equipment from the critical slopes regulations. One of the justifications the staff report offers for this change is that the county routinely approves and has never denied a request to disturb critical slopes for wireless facilities. However, that justification overlooks that many applicants have likely intentionally designed their proposals to avoid slopes precisely because the critical slopes protections are in place. In other words, the ordinance may be encouraging cell tower applicants to steer clear of critical slopes in the first place, and that is generally a positive thing. It also does not follow the waiver review process and provides little benefit or value to the county in those cases in which waivers are ultimately approved. In any case in which a waiver has been approved the applicant has had to convince the decision maker that the disturbance to critical slopes was justified under the particular circumstances on that site and the location of the disturbance may even have been changed or adjusted as a result. Also, the process of review allowed site specific protections to be attached to the approval to address particular concerns where that was necessary. Those both provide value to the county as well. Allowing a critical slope to be disturbed and accepting the risks and damage that come along with that disturbance may well be warranted in some and perhaps even many cases involving cell towers. But, that does not mean there aren't good reasons to keep the special exemption requirement in place. Finally, one last point is the justification was offered tonight that the county recently made cell towers a by right use on preserved slopes in the development areas. What they would be doing here is just making it consistent in the rural area. From his reading of the recent changes involving critical slopes they exempt communications distribution facilities. The definition of that term specifically excludes personal wireless service facilities. So he does not think that is a compelling or even a legitimate reason to justify this proposed change regarding critical slopes either.

Amy Eichenberger, Senior Project Manager at the University of Virginia said she works on large scale building projects at the University. She did not have all of the detailed language that a lot of these folk have or the knowledge of the history of the detailed information given. However, in the construction world they all know that everybody does not always get what they want. There are all kinds of constraints including budget constraints and they have to balance those out. She asked if the Commission has been informed of all the other options that AT&T has in their back pocket, which she is sure they have many aside from the Key West facility. Typically this is their first preferred option. She is just talking about process here. Everybody wants this one option, but that option is not feasible. So what are the other options that might cost a little bit more for AT&T? They can look across where they want to install this tower and see the new development on Rio Road. They know about Belvedere and Dunlora. She asked how many feet of additional height do they have in this location versus across the river. What she is hearing is those are the communities really being served. She has a question about the locations because she is guessing there are several options. However, she does not know if they have been given other options for locations. The other question is about the equipment options. What she has been told is that these cell towers will be obsolete in a matter of time. She asked: are there smaller installations and could they do several other smaller installations to provide the kind of service that they are intending to provide, which they all do benefit from?

Valerie Long said she represents several wireless telecommunications providers and tower company owners. She wants to acknowledge the robust participation by the representatives and residents of the Key West neighborhood and pointed out the industry certainly take their comments into consideration. She wanted to remind the Commission, however, that this zoning text amendment is not about the AT&T proposal in the Key West neighborhood. This is about proposed revisions to update the zoning ordinance to address all wireless facilities. Certainly input on how individual applications from the past have been handled and reviewed are relevant, but she does not want them to lose focus on the big picture. These proposals have all been brought forth at the direction of the County Board of Supervisors after literally three years of work sessions, public input and discussion by the Planning Commission, the Board, representatives of the public industry and the planning staff. These proposals have been recommended by the planning staff, and supported by the Board in concept subject to the Commission's review. Representatives of the industry do support them. Several of them were not even brought forth at our suggestion. They were suggestions and proposals that staff identified that were logical and reasonable and reduced unnecessary provisions that did not necessarily benefit the public interest.

Ms. Long asked to clarify a couple of issues on the setback proposal. There is no change to allow ground equipment to be closer than it is already allowed to be. The setback requirements have always been focused on a one to one setback requirement for the pole. That is how it has always been intended and interpreted. It was brought to the county attorney's attention that technically it said facility, which technically does include the ground equipment. When it was first brought to our attention, the staff intermediately said this was not how they have intended it to be applied, it is not how they have applied it in the past, and they intend to fix it and request the Board to fix it. So it is really a technical change that would just restore the original intent of the setback and will continue to require the poles to be setback on a one to one basis from property lines. Industry is not asking for anything other than that. It is just restoring it to what it has always been the intent.

Ms. Long said with regard to the critical slopes waiver provision the Board has consistently said in many cases some of the very best towers are due to the visibility perspective. The overall goal of the entire county ordinance and policy

regarding towers is to minimize visibility. In many cases the towers that you see the least are those that have a wooded backdrop behind them with either a side of a hill or mountain. In order for those sites to work they were fortunate enough to find those locations. Often times it results in a very small disturbance of critical slopes. So they would ask the Commission to consider that. She would be happy to answer any specific question they might have about those issues.

Lori Schweller, with LeClair Ryan representing Verizon Wireless, said she also would like to place this conversation in the context that most of the Commissioners are familiar with, which is the county has been working on ordinance changes for several years. The ones they are considering tonight are not the industry's wish list. They are just a few modest changes that put into the ordinance some of the processes that they are already following or policies the county has always abided by. She wanted to mention specifically concerns about staff and their interpretation of our applications. She did not think anyone here would ever claim the staff is in the pocket of the industry. They are very fortunate in Albemarle County to have a staff that are knowledgeable about wireless and keep up to date. They attend various meetings and really understand the industry. She thinks they are protecting the citizens. She was one of them and was happy to say they are doing a good job interpreting the ordinance. These changes are very minor. When they are talking about the setback change, they are not talking about the monopole or pole. They are only talking about the ground equipment, which is typically a small brown equipment shed or cabinet that looks similar to a garden tool shed or an electric cabinet. Those are things that are permitted all over the county without any type of permit, whereas, in our installations they need to put fencing and landscaping all around the compound. So there is a significant buffer that would buffer anything within that compound whether it is brown, large or small. She also wanted to mention, which Ms. Long brought up, the critical slopes issue is a concern only in that often times citing a monopole to serve an area is best done on the side of a mountain or hill so that they don't have sky lighting. They want to have the treed background so they don't see the brown pole amidst the trees. So if they can't build a road to it, they certainly can't build a site there. That is going to prevent them from doing some of the common type of installations that they have seen in the past. Again, thank you very much for considering these. She thinks they are very modest changes. They do hope the Commission considers them, although they are not in favor of the extra restriction on the critical slopes in terms of access.

Christopher Welte, a member of Key West, said his point is simple and his concern is more of a holistic view put before the planning committee. Despite design and whether it is a cell tower, his concern is more why do we feel it is okay to allow a corporation to put a commercial structure inside of a residentially zoned area regardless of the residents' request. If a corporation is allowed to put something in a residential area the people of that residential area should be allowed to act and speak for it.

Preston Lloyd, attorney with Williams Mullen, said he like Ms. Long represents a number of wireless facility providers. He offered some context to Albemarle County's experience. They do work with carriers in other jurisdictions. One of the gentlemen that spoke earlier this evening tried to make some comparisons with other jurisdictions. One of the things that are unique about Albemarle County's approach to wireless facilities was the way they codified the policy that was adopted in 2000. As it has been mentioned, it really focuses on visibility, but specifically it created a carrot and stick kind of program recognizing that carriers and the county can work together to find a collaborative solution to provide this technology.

Mr. Lloyd pointed out it is really important and Congress recognized that in the 1996 Telecommunication Act when it said localities have all responsibility for siting the facilities for land use because they do that best and it is much better than the federal government attempting to do that. The federal government will handle the health and safety stuff, but the locality would deal with the zoning. So Albemarle County, taking that and running with it, said they will work with the carriers with a carrot and a stick to say if they can give the kind of design that will mitigate visibility, then they will try to make it as easy as possible to get those approved because that is in the best interest of the community. Then they came up with the Tier I, Tier II and Tier III division. Currently, Tier II towers can be approved by staff. A lot of scrutiny goes into that. However, the way they get into the Tier II classification is they have to meet certain design specifications. Those have been discussed at length this evening. The policy that underlies that is visibility. The reason he goes into this deep background is to talk about the aspect of the critical slopes ordinance that can somehow run counter to that visibility aspect. As has been mentioned, there are aspects of sky lighting that will enhance visibility. If they put it on an area that has topographical change, it will enhance what the comprehensive plan wireless policy describes as camouflage. It gives greater concealment opportunities for the facility. Staff has really worked to try to bring the critical slopes ordinance more consistently under what the policy describes in the 2000 Wireless Policy that is part of the comprehensive plan.

Mr. Lloyd said just to reference other communities that take a different approach, why does this happen in residential communities? That is because Albemarle County is unique in that it said they only want treetop towers. They will only let them build approximately 10' above the reference tree as it is defined in the ordinance. A lot of the other jurisdictions that they saw in the slider earlier this evening will allow a 200' tower. In fact, he just had one approved in Chesterfield last month that was in a residential zone in their comprehensive plan. That allows a wide coverage of an extensive amount of residential areas and prevents other smaller towers from being put in greater proximity.

Albemarle County in its wisdom took a different approach, saying they will allow more towers to proliferate but they really don't want to see them anywhere. That has been part of what has taken place in some of the towers the Commission has seen before them. He thanked the Commission for their consideration. He just wanted to offer that

Mr. Randolph asked in Chesterfield was that an existing community or a community in the process of being developed.

Mr. Lloyd replied it was a community that had been there for over 20 years. They walked door to door with the cell phone carrier's representatives alerting them about the tower and at their community meetings. The planning commission and board never had a single person show up to speak. It is a different circumstance and community. He just wanted to offer that context since it was brought up earlier this evening.

Mr. Randolph asked topographically is that fairly level land. He asked what the height of the tower proposed was.

Mr. Lloyd replied the land was flat as a pancake. The tower was 198'.

Jessie Wilmer, with Ntelos Wireless in Waynesboro, Virginia, asked to speak on something that has not been brought up this evening. She appreciates the comments from fellow colleagues in the industry and agreed with them. She appreciates the zoning text amendment that is before the Commission tonight. She wanted to touch on the topic of temporary facilities. In cases where they need to install a temporary facility, it is not always the case of an event or emergency and sometimes it exceeds the limit of the 7 day time limit that was discussed. They are located on several Rivanna Water Authority tanks. Occasionally the tank has to have maintenance on it where they have to pull the antennas off and sand blast the tank. Several of those have happened over the years and had to be off the tank for several months at a time. On occasions that time period exceeds that 7 day limit to have a temporary site. She just wanted the opportunity to speak to staff further about that situation which may come up.

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

Mr. Randolph referred to page 4, #2 in setbacks. He proposed the Planning Commission eliminate the term "or a letter of consent" because it is not a legal or recordable document. One of the things they talked about this evening is the certainty that a document go with the land that would apply to future owners and to the financial institutions that may support the current owner's ownership of the property so that they are aware there has been an agreement regarding this setback. He thinks that needs to be something that is recordable that is in there. Second, the Commission needs to look at using the tree standard versus photographs. Third, he is very uncomfortable with the by right aspect of critical slopes. Knowing how this body has operated in good faith with the cellular tower industry in reviewing sensitively and carefully the applications before them he sees no reason for it. He noted that 99% of the cell tower applications they see that have a critical slope dimension he thinks would be pretty pro forma for us in approval. However, he would hate to see our ability to provide oversight and protection of critical slopes to be completely waived by right for the user. Those are things he remains concerned about and he cannot support this going forward unless those changes are incorporated.

Mr. Fritz suggested the Commission go through staff's recommendation one by one and state any modifications.

Mr. Morris agreed they would do that, but right now he wanted general discussion.

Mr. Lafferty suggested the Commission go through the discussion points on the front page and if they had a problem they could discuss them in more detail. If they did not have any problem with it, then they could go ahead and pass it.

Mr. Fritz replied that each of the eight topics was broken out individually on the slide in the presentation.

Mr. Loach asked Ms. Joseph to come forward for a question regarding the tree information. He had asked the question at the beginning of the meeting that they used the reference tree for the height of the tower. In the past they used 50' around the reference tree and did a survey. But, he was never quite sure what the survey was for and what they would be looking at and who would review this on the staff. Would it be someone like Dan Mahone who is a landscape architect? What is the criterion for the other 50' that they need to be concerned about.

Ms. Joseph replied that on the Architectural Review Board she looks at the height of the trees and where they are located so she can visualize how this will sit with the other trees around it. If they have a bunch of 12' trees and an 80' reference tree that means there are one pole and one tree standing up there. If they get an idea that these are various heights and maturities, then they can get an idea of how this is going to sit in that area. They asked for that initially so they could see that it was in a wooded area, there were more mature trees there, and they could get an idea of how this tower would relate to its surrounding.

Mr. Loach asked if that has to be as specific a survey as they have done by having additional steps to have all of those trees codified; or, could someone on the county staff do that job with the level of detail that they have been doing in the past.

Ms. Joseph replied that it takes trigonometry to figure out how tall those trees are. The surveyor actually goes out to find out the height of those trees. Yesterday at the ARB meeting this item came to the ARB and it took three to four minutes to look at it. The package is so complete with the information they require at this point in time that it just goes through. Staff has worked with the applicant to conform to ordinance requirements and they are good to go.

Mr. Loach asked about the issue of biodiversity of the overall site. He asked if what they have been doing is enough and if that is part and parcel of the survey they have been talking about. The issue has been raised by the public about the damage to the biodiversity in the site itself.

Ms. Joseph asked if was in the site itself as far as disturbing it.

Mr. Loach replied yes.

Ms. Joseph said one of the things that she thinks they have to remember is in our rural areas they can remove all kinds of trees and do all kinds of plowing. So she does not know. She was sure it does upset the balance when these things go out there. But, she thinks they do a pretty good job of requiring protection, which is another critical slopes issue.

Mr. Keller said that he would like to discuss more of the global piece before they go through all of the specifics. It seems that there is a bigger issue. He realized the county has a committee that is looking at the digital connectivity. But, it seems we need to undertake a comprehensive digital connectivity plan for the county. There are areas that we could connect with hard wire, copper or fiber optic that would mean that could preclude some of the towers that they are in such a hurry to approve. He does not know if the Commission needs to make a recommendation to staff and to the Supervisors. He knows that the School Board is undertaking a look right now. He knows a number of the Supervisors are interested in this topic right now.

Mr. Fritz pointed out that is actually going to be the subject of a work session that is being set up. Staff is working to set up a joint work session between the Planning Commission and the Board of Supervisors. That was part of the conversation that they had back in April. There is a much larger conversation. Some of the comments that were made about not allowing facilities in residential districts are one of the things to talk about with the Board of Supervisors. They have set that aside. The broad band issue is a wider ranging conversation and wireless is a component of that conversation. He is absolutely right and staff is working to bring that to the Commission. He thinks the County Executive Office is trying to set that up potentially in August.

Mr. Keller suggested that they hold all of this and not forfeit any of the controls that are potentially lost through some decisions here. They should hold until that more comprehensive discussion has occurred.

Mr. Morris said what he heard was to defer or deny the whole thing at this particular time.

Mr. Keller suggested deferring until there is this comprehensive discussion and it be put in that larger framework.

Mr. Morris asked if there was support for that notion.

Mr. Loach replied he did not agree. He supported a recommendation for approval of the first one and would go along with the change. The only thing he would add to the first one is he thinks staff needs to look to see if they might need to add an additional person to review the site for the trees. It may be the landscape architect on staff.

Mr. Fritz noted that they have a couple architects on staff.

Mr. Loach said he thinks that would suffice as opposed to what they are doing now, which is an extra step of documenting all the trees.

Mr. Morris asked Mr. Kamptner if they need to take a vote on each one of the eight items.

Mr. Kamptner suggested they could take a consensus vote and then ultimately there would be a vote on the Commission's recommendation as a whole identifying what the Commission wants to pass on with its recommendation of approval or not or to defer.

Mr. Lafferty said looking at the temporary facilities and the need to define it for emergencies that if they do it for 7 days it would be in violation of current practice.

Mr. Morris said he thinks that really needs to be looked at. He would go down each item and ask for a vote from each Commissioner starting at the modification of substantial requirements of how tree information is submitted.

Mr. Loach replied yes with the change he recommended for review.

Mr. Randolph replied yes with the recommended change consistent with what Ms. Joseph has brought up.

Mr. Keller replied yes.

Mr. Morris said they have consensus on #1. Next, he asked about #2, approve or deny the provision to allow the requirements of photo simulations.

Mr. Keller said he was still thinking about it.

Mr. Lafferty and Mr. Randolph replied yes

Mr. Morris noted they have 4 yes votes and one maybe. Therefore, #2 would be recommended.

Mr. Morris asked about #3 recommended denial or approval of modification of critical slope regulations to allow the tower and base station without a special exception.

Mr. Lafferty replied yes.

Mr. Loach said this is a hard one because as was pointed out a lot of the times in order to decrease the visibility they are dealing with areas where they need a critical slope modification. They have also spent a lot of time over the last year or so going over the critical modifications and how things are looked at. He thinks the work they have done is sufficient enough for staff to use that with the performance perimeters to make a decision. Therefore, he would say yes.

Mr. Morris said he was going to move for denial.

Mr. Randolph voted yes, and Mr. Morris noted it was the same as for denial.

Mr. Keller pointed out he agreed with the industry representative as a landscape architect who has done a lot of visual evaluations that there are definitely times when the tower will show up less if it is placed in the critical slopes. However, he does not have a problem with there being a need for a special exemption. So he was sort of split both ways with this.

Mr. Morris pointed out it was for a recommendation of denial since there were 2 for and 2 against and 1 kind of in between. The next one is approval or denial of critical slope regulation to require access road to require a special exception.

Mr. Keller replied he would stay with the special exception.

Mr. Randolph and Mr. Morris voted yes.

Mr. Loach replied yes.

Mr. Morris noted that the majority says it stays. The next one he recommends denial of the modifications of the method of reducing setbacks to include a letter of authorization from the abutting owner.

Mr. Lafferty voted yes.

Mr. Loach said he had a bad feeling about this. He had a problem with the language in the staff report. He thought it almost seemed to circumvent for the reason they stated: the person who might have a mortgage. He wondered if they are causing a problem legally for that owner by just taking a letter.

Mr. Kamptner said what they found, not necessarily in this context, but even with minor drainage easements when the county needs a drainage easement and the land is subject to a deed of trust that the deeds of trust often have a provision that accelerates the obligation of the borrower to pay without getting the lender to subordinate their lien. It is time consuming and sometimes very difficult to obtain. That is the genesis for this. Letters of consent is an idea they

have used for farm stands and also for family day homes. It was used more for farm stands where the abutting property owner is notified of the application and if they submit a letter of consent, then the application is processed differently if there is a letter of objection. It is not completely unique to the zoning ordinance. It is a step in a different direction.

Mr. Loach said he needs more time to think about it.

Mr. Randolph asked that they go through the others and come back to this one.

Mr. Morris said he was for approval on this one.

Mr. Randolph said he would vote nay.

Mr. Keller said since this is visibility and visual quality he would like them to think more broadly about what are the visually abutting neighbors and include more. He realized that is opening a can of worms that would have to be defined in a smaller way, such as 5 or 10. From issues he has heard discussed both in this county and around the country often the issues are for visibility where someone is on an adjacent bluff that might be several parcels removed.

Mr. Randolph asked to add some remarks. The reason he voted nay is really important. His colleague brought out there is a need for some process of community consultation if located contiguous to an existing residential community. There is no provision for that in here and there should be some kind of provision for that kind of community input. It was not a veto necessarily, but to get some input. As residents are here tonight that should be formalized in the process. It is not subject to review, and it should be. That is why he is voting nay in this situation.

Mr. Morris said they have lots of may be, one nay and one yea.

Mr. Cilimberg pointed out as a reminder that in the Tier II and Tier III there are notification of all abutting owners. Tier III's go through special use permits in addition. So there is notification. This particular provision is for the fall of a tower onto an adjacent property that is closer than the property line to that tower. So he thinks they are talking about two different things here. But, they do have the abutting owner requirements for Tier II and Tier III.

Mr. Loach asked if they are the same as developments where the neighbors can call it up to the Planning Commission.

Mr. Cilimberg replied they cannot call up any site plans to the Planning Commission. Tier II applications are essentially like site plans.

Mr. Loach said he just wanted to make it clear to everybody that they have not had that.

Mr. Lafferty clarified that in no case would a monopole be put up where it could fall on a dwelling.

Mr. Fritz replied it could fall on a dwelling and it can be located on the property within less than the distance of the height of the structure to the dwelling on the property it is located.

Mr. Loach said they could make a submittal to allow it.

Mr. Fritz agreed, but he would have to get a waiver in order to allow that to occur.

Mr. Morris pointed out the Commission had not reached a decision on that one. He noted the next one was the approval or denial of specification of allowing base station equipment to be closer to the property line.

Mr. Kamptner noted to put it in context the base station would still be subject to the normal setbacks that apply within the zoning district. So in the RA district it would be 6' for an accessory structure.

Mr. Fritz referred to the photograph that was shown to the Commission by a member of the public. If they say that tower is 150' and the base station equipment is located on the opposite side of that tower, then they are talking about being able to take that base station equipment and flip it around on the other side so it is less than the 150'. That is what they are talking about with this provision.

Mr. Lafferty said given the information that the base station needs to be as close to the antenna as possible because of the loss of signal he would say yes.

Mr. Loach said he would say yes.

Mr. Morris asked who would move for denial.

Mr. Randolph and Mr. Keller agreed with the denial.

Mr. Morris noted the vast majority say yes. The next question is whether to recommend approval of denial of the provisions of the temporary facilities.

Mr. Lafferty said they have the problem of the seven days.

Mr. Morris said that really needs to be looked at.

Mr. Fritz replied that staff can look at it.

Mr. Randolph noted he appreciates the representative from Ntelos that let us know what is currently going on because that enables the Commission make a sounder decision.

Mr. Keller, Mr. Lafferty, Mr. Loach and Mr. Randolph all agreed with the recommendation for denial of the provisions of the temporary facilities.

Mr. Morris pointed out it was 100% to recommend denial of the provisions of the temporary facilities.

Mr. Morris asked if they recommend approval or denial for the removal of the requirement for a Certificate of Appropriateness.

Mr. Keller, Mr. Randolph, Mr. Loach, and Mr. Lafferty agreed with the recommendation for denial for the removal of the Certificate of Appropriateness.

Mr. Morris noted the consensus was to recommend denial of the removal of the Certificate of Appropriateness. He said they would get that written up and see what they have.

Mr. Fritz noted he was working on the Commission's recommended motion.

Mr. Keller asked if they can come up with some terminology for something that could be a consensus on suggesting that the county staff and Planning Commission be involved in the discussions of some sort of comprehensive review.

Mr. Morris noted it was for the whole digital area. He suggested they add a recommendation under new business and forward that with the staff report.

Mr. Keller agreed.

Mr. Fritz summarized the Commission's request. The Commission wanted to have more conversations about the exemption of the base station equipment from the critical slopes regulations and the method of reduction of approving a reduction in setback. He asked the Commission to review the recommendations for accuracy.

Mr. Morris invited questions from the Commission.

Mr. Keller asked staff to read through the list.

Mr. Fritz read the list of recommendations, noting staff would link it back to the actual text.

Mr. Morris asked if any Commissioner had any changes.

Mr. Lafferty said he did not have any changes, but would like to say that although most of the members of the audience did not get everything they wanted the Commission appreciates them coming here and providing their interpretations of it. It is really important for it to have community involvement, and he thanks them for it.

Mr. Morris noted it was extremely valuable input across the board. He asked for a motion to accept.

Mr. Fritz noted the Commission can forward with split recommendations on the two they don't yet have comments on. Staff will do our best to faithfully present that or they can have further conversations on those two, whichever they want to do.

Mr. Kamptner said if they send everything on with a motion they will lose the ability to consider the two issues that they still have not resolved. So they may want to think about it some more or defer taking an action until they have had an opportunity to make a recommendation one way or the other on those two items.

Mr. Keller made a motion to defer action for further consideration.

Mr. Randolph seconded the motion.

Mr. Morris invited further discussion.

Mr. Loach said he would rather send what they have with the two or three changes where there was discussion. He asked can they send them on to the Board of Supervisors.

Mr. Lafferty asked Mr. Kamptner if he understood correctly if they did that they would not have a chance to discuss the two.

Mr. Kamptner replied the Planning Commission needs to make a single recommendation. It may be that these two items that they have not resolved yet may have no recommendation or they can't make a recommendation for approval. The Board may end up referring it back to the Commission for further discussion. However, if the Commission is not ready those are two significant parts of the ordinance and they may want to work through those before they decide to recommend the whole thing going together.

Mr. Fritz asked Mr. Kamptner if he simply changed it to say on those two to recommend deferral of action on modifications.

Mr. Kamptner replied that is fine if they want to take those off the table and if they ever come back it would be as a separate zoning text amendment. That would be another way.

Mr. Cilimberg noted the question would be: do you want to in the deferral recommend the whole packet be deferred or only those items for which they did not reach a conclusion, which are the two just mentioned? He suggested that should be specified as part of the deferral.

Mr. Morris pointed out personally he would like to see as much of this go forward to the Board as possible so these folks are not hanging around all summer waiting for the Board of Supervisors meeting so they can attend that. However, he would like to pull or defer these two items for future action by the Commission.

Mr. Randolph commented it was not a question necessarily of action, but just further work that needs to be done on what has surfaced from the input from the speakers this evening and our discussion as Planning Commissioners. Therefore, he suggests having additional time for staff to rethink some of these, flush them out, and provide more details and a means by which public participation can be formalized. He thinks it is in the interest of the industry that be done as well as for the people of the community. However, he has no difficulty voting to move the rest of this forward with the consideration the Planning Commission has an opportunity to look at those items that they did not approve for further discussion. He hopes in the process that the representatives from AT&T can meet with the people in Key West and help fashion a policy that is going to be effective for the community and also in terms of communication.

Mr. Fritz said additional evaluation is what he has written here. He asked if that is a fair way of saying that.

Mr. Morris replied yes.

Mr. Kamptner pointed out they should just understand that when they take an action and send it on to the Board, the Board may decide in their discretion to take up those two issues.

Mr. Morris replied that was fine.

Mr. Cilimberg noted right now they have a motion for deferral of something.

Mr. Morris replied that was correct.

Mr. Cilimberg noted the Commission needs to specify what they want to defer.

Mr. Keller said he did not want to make that motion. Therefore, he asked to withdraw that motion. The reason for withdrawal is because they are in late June and are going to have a meeting in August, which is less than two

months. It does not seem that it is a significant deferral to not be able to talk more globally and put the other providers in this greater discussion.

Motion: Mr. Loach made a motion to recommend approval of the motions on ZTA-2014-00004 Personal Wireless Service Phase II made by the Planning Commission as stated by staff with the two deferral items noted.

Mr. Cilimberg pointed out those will not be treated as deferral items, but as additional evaluation items that the Board may decide to act on.

Mr. Loach agreed.

Mr. Kamptner clarified for the record that each of the motion subparts are as reflected on the screen.

Mr. Loach revised the motion to be as reflected by staff.

Mr. Lafferty asked if they are just saying that they can't make up their minds so the Board should do it.

Mr. Morris agreed that was absolutely correct.

Mr. Fritz pointed out the way staff would explain it is the Commission thinks that these are deeper conversations and should be part of a broader context of conversation to come back at a later time. That is the way staff will present it to the Board.

Mr. Keller agreed that was the way he would like to see it. They have the Comp Plan discussions going on at the Board of Supervisors' meetings and there are a lot of things that relate to these issues.

Mr. Morris seconded the motion.

The motions passed by a vote of 3:2. (Morris, Lafferty, Loach aye) (Randolph and Keller nay)

Mr. Morris noted that ZTA-2014-00004 Personal Wireless Service Phase II will be forwarded to the Board of Supervisors with the following recommendation.

- ☐ Recommend approval of the modification of submittal requirements and how tree information is submitted.
- ☐ Recommend approval of provision to allow the requirement of photo simulations.
- ☐ Recommend additional evaluation of modification of the critical slope regulations to allow the tower and base station without a special exception.
- ☐ Recommend approval of modification of the critical slope regulations to require the access road to require a special exception.
- ☐ Recommend additional evaluation of modification of method of reducing setback to include a letter of authorization from the abutting owner.
- ☐ Recommend approval of modification of allowing base station equipment to be closer to the property line.
- ☐ Recommend approval of provisions for temporary facilities with modifications to the time limit.
- ☐ Recommend denial of removal of requirement for a Certificate of Appropriateness.

Mr. Fritz noted tentatively ZTA-2014-00004 Personal Wireless Service Phase II was scheduled for the afternoon of August 6. He has an email distribution list that he has used to let people know, which he would use as soon as the meeting date is confirmed. If anyone wants to send their email to him at bfritz@albemarle.org he would add them to the list.

The meeting recessed at 7:55 p.m. and reconvened at 8:04 p.m.

Work Session

ZTA-2014-00001 Farms & Farm Breweries – State Code Changes
Review proposed Zoning Ordinance amendments to Address State Code Requirements for Farms & Farm Breweries (Mandy Burbage)

Ms. Burbage presented a PowerPoint presentation to summarize the request.

BACKGROUND: On July 1, 2014, new State legislation will become effective limiting a locality's ability to regulate certain activities associated with bona fide agricultural operations and farm breweries. Staff is working as expeditiously as they can to amend our ordinance as close to that date as possible. Our focus to this point has been on activities that have "a substantial impact on public health, safety, or general welfare of the public". That is the preview of our

ability to regulate activities at agricultural operations. The protected activities at agricultural operations are basically production and harvesting. Farm breweries have a longer list of activities that are protected that mirror those that are protected for farm wineries for things like sales, tastings, storage and the like.

On March 25, 2014, the Planning Commission adopted a Resolution of Intent authorizing staff to undertake a zoning text amendment to amend our ordinance to ensure continued compliance with State law. Since that time they have held two work sessions and a public roundtable to discuss proposed changes in response to the State Code. At our last work session they discussed how several substantial impact thresholds would apply to farms, farm breweries, and farm wineries and heard the following feedback.

First, they would like to have a very clear definition of what constitutes agriculture. Staff has introduced in the draft ordinance before the Commission this evening a definition of agricultural operation that is the State Code's definition and a specific reference to bona fide agriculture being the primary use of a property in order for these additional events and activities to occur. The Commission also asked that they treat farm breweries the same as farm wineries since those regulations are working well and since the State Code is very similar in treating those two establishments. Also, staff was asked to explore more stringent substantial impact thresholds for events associated with agricultural operations. Part of the rationale there was there is so much more of a potential since they have so many properties in the rural area that could have agriculture, and therefore could have these activities and events that they may need to have more restrictive thresholds.

To summarize the regulations as they are outlined in the staff report and the draft ordinance:

Farm Breweries and Farm Wineries - Essentially the only thing that is changing is the introduction of the zoning clearance requirement for outdoor amplified music. For wineries that would only apply to wineries that have been established after these ordinance amendments are adopted. Existing wineries would be grandfathered so those that have already gone through a process to ensure that they can comply with the noise ordinance and would not have to go through that process again. Essentially, that zoning clearance review would consist of staff verifying that the brewery or winery has amplification equipment that can comply with the noise ordinance for a calibrated sound meter that allows them to self monitor. It adds a special use permit threshold for farm breweries for events over 200 attendees. That is what the farm winery regulations currently have.

For the substantial impacts thresholds that apply to activities and events at agricultural operations she emphasized that these thresholds do not apply to bona fide agriculture. Production and harvesting would not be subject to these. It would just be the activities and events associated with a primary agricultural use of the land. There are five thresholds they would like the Commission to consider applying.

At the last work session a few Commissioners said they would like staff to consider a minimum parcel size in addition to setbacks. They have also introduced a threshold that relates to vehicle trips per day to an agric operation. That is a metric the Virginia Department of Transportation uses to determine whether or not a commercial entrance is needed. Farm sales area and event attendance are addressed in our current ordinance. Outdoor amplified music (also applies to breweries and wineries). How do these thresholds apply to agricultural operations?

There are three (3) triggers for a zoning clearance.

- Agritourism events or retail sales that generate over 50 vehicle trips per day. This is the trigger that VDOT uses for a moderate volume commercial entrance, which requires compliance with sight distance and access management requirements. Fifty (50) vehicles by VDOT standards is a car going and coming which would count as 2 trips. Therefore, it is actually 25 round trips for the 50 vehicle trips per day.
- Agritourism events or retail sales that occur on parcels less than 5 acres. The Commission had some concerns about the impact of activities occurring on smaller parcels. Since 5 acres is Albemarle's minimum acreage for agricultural land use taxation they thought that was a logical minimum acreage for requiring a zoning clearance. That is actually consistent with several other localities they have looked at which have a minimum acreage for Agritourism. So that would not be unique in Albemarle County.
- Outdoor amplified music (already been addressed by staff)

The zoning clearance process would be very similar to what our current review process is for farm sales, farm stands and farmer's markets. They look at things like compliance with VDOT entrance standards, health department requirements, quantity and location of parking, setbacks (including new to this zoning clearance would be increased setbacks for outdoor activity areas and parking) and outdoor amplified music.

As far as triggers for a special use permits there are three.

1. Structures for farm sales that exceed 4,000 square feet. Below 4,000 square feet would be by right.
2. Events of over 200 attendees at any given time, which is consistent with how wineries are treated and how they are proposing that breweries be treated.

3. Frequency trigger of 24 events per year. To exceed 24 events per year would require a special use permit. That threshold exists in our current ordinance in the supplementary regulations as the maximum allowed for special events by special use permit per year.

Staff gave a few examples of some common activities in the rural area of how the regulations would apply.

1. Farm sales structure under 4,000 square feet located on a parcel less than 5 acres that generates fewer than 50 vehicle trips per day. That would be by right with a zoning clearance because of the fact it is on a parcel under 5 acres in size.

2. Pick Your Own Berry Farm (Note: Abutting parcels under the same ownership that are part of the agricultural operation will be included in the total site size.) A farm that is over 5 acres and generates over 50 vehicle trips per day would be by right with a zoning clearance because of the 50 vehicle trips per day.

3. Harvest Festival on a parcel over 5 acres with over 200 attendees and live music would require a special use permit. As part of that special use permit process there would be the testing of equipment as mentioned associated with the outdoor amplified music zoning clearance.

Staff hopes these changes have adequately addressed the Planning Commission's concerns. Also, staff is working on a preamble for the agriculture sections drawing on language in the comp plan as the Commission had mentioned being interested in at the last work session. If the Commission is comfortable with the amendments before them this evening staff recommends the Planning Commission direct staff to schedule the zoning text amendment for public hearing. July 15 has been reserved for that purpose if the Commission feels comfortable moving forward.

Mr. Morris invited questions for staff.

Mr. Randolph said he had a question about the balance and fairness. If he operates a business out of his house in a planned residential development he has to apply for a home occupancy license. If he lived in the rural area and had a 5-acre site he had to obtain a zoning clearance. Why shouldn't he be subject to some kind of license so that the county is aware that he is operating a business on that site? Thereby, as long as his business is operational he should apply annually for that license that allows the county to keep track of how many licenses there are at any one particular time in the rural area.

Mr. Kamptner noted that it was because of the state legislation to start with. The General Assembly has said that they cannot require any kind of permitting until they have identified a substantial impact. The ordinance lays out the number of activities and the state has established a threshold for our review.

Mr. Randolph asked does the state say they can't do a license or cannot have a fee associated with a license.

Mr. Kamptner replied it says they cannot require any permitting. Under the planning and zoning laws they can only impose fees for services rendered. So if there is no permit required there is no review required it at that stage, then the fee would not be justified.

Mr. Cilimberg pointed out the business license requirement mentioned was not a zoning provision. That is outside of the zoning ordinance. So the applicability of that would not fall within these ordinance amendments if in fact it applies at all. It is a separate area of government.

Mr. Randolph said he was not interested in the tax or the revenue that would be generated. He was interested in trying to find a way for the county to know on an annual basis how many 5-acre site agricultural operations are out there. Is there another way they can gain that information?

Mr. Cilimberg replied that he would have to think about whether there is.

Mr. Randolph pointed out if there isn't that is a really unfortunate ramification or consequence of this state decision to prevent them from being able to do that. It seems reasonable for the county to be able to keep track of how many of these agricultural operations exist at any one particular time.

Mr. Loach said it was a good question. He asked if the county could get the information for data purposes.

Mr. Kamptner replied that the county's GIS group could look at 5-acre parcels that are zoned rural areas and also layer that with the 5-acre parcels in the rural areas that receive land use taxation, those that are in agricultural/forestal districts and things like that. However, it would be more difficult to know specifically whether they are holding an occasional event on site if they meet the thresholds that do not trigger our permitting process. He was not sure how they would do that. He would have to think about that.

Mr. Morris invited input from Francis MacCall on that.

Francis MacCall commented that zoning does not track that right now for any business. They don't go through all of the zoning clearances for new businesses whether they are home occupations or businesses in a commercial zoning district and go back and see if they are still in operation. Like Mr. Kamptner suggested, that might be able to be done with the rural area and trying to figure that out. However, there would be a lot of work going into that to try to pinpoint the ones they have approved and whether they are still operating today. Mr. Cilimberg had said they were talking about the business license. The home occupation he was referring to is a zoning clearance for somebody's operation of a home business. It just has a different name that they associate it with, which is the zoning clearance for that home occupation.

Mr. Kamptner said the other thing to add is assuming that these regulations are adopted in August or September they won't be set in stone forever. As they gain more experience it may be that the critical mass of these types of activities and events are happening and they identify a new substantial impact that just does not exist now. Regulations can be adjusted to deal with that circumstance if it arises.

Mr. Randolph said it sort of surprises him they are not going to be able to have any metrics on how many of these are out there. He complemented the excellent grid Ms. Burbage put together and that his remarks were not directed at that. His appreciates Jeff Werner sending the Commission the resolution from the Board of Supervisors of Rockingham County. It is nice to look at something from another county. However, they clearly were concerned in Rockingham County about the possibility of a non bona fide producer using this state authorization to do things from a retail standpoint that otherwise they shouldn't do or would not normally be permitted to do, but can do under the wide enabling authorization here. In the language that is included on page 2, number 7 he recommends highly consideration of the definition that is provided for agricultural operation. But, it says in point 8 the term bona fide production is understood by the Board of Supervisors to mean a. the agricultural operation if the primary use on the land. Factors such as the proportion of capital investment, operating expenses, labor, acreage and similar considerations allocated agricultural activities shall be taken into account when determining whether the agricultural operation is the primary land use or to the contrary is the secondary or incidental use. No specific proportion shall be considered conclusively positive of whether the agricultural operation is the primary land use. Rather the analysis shall be a total facts and circumstances analysis. Here is the key phrase. However, an agricultural operation may never be deemed the primary use on the land if a reasonable person could conclude that the agricultural operation exists for the purpose of establishing eligibility for exemption from local regulation under the statute.

Mr. Kamptner commented that all of that pretty much tracks our definition. They have addressed that and the zoning administrator will make this kind of determination in every circumstance when there is any kind of question. These are all factors that she and her staff will evaluate.

Mr. Randolph commented that b. the agricultural operation is managed in good faith as a business activity.

Mr. Kamptner replied they cannot be devoted to bona fide production of crops, animal or fowl if they are engaged in the activity only to be allowed to do the events and activities that are allowed under the regulations.

Mr. Randolph said thirdly they propose the agricultural operation qualifies for land use taxation treatment whether or not land use taxation treatment is applied for in any given calendar year. He just liked the fact that they had a, b, c which was three very specific criteria and it seemed they were very aware of trying to close the door on anyone using the enabling legislation to not operate truly a valid bona fide agricultural operation.

Mr. Kamptner noted as they have discussed in prior work sessions they believe someone can have a bona fide agricultural operation on a smaller parcel. For example, on a 2-acre berry farm it could be very legitimate, but it was not going to have the acreage in order to qualify for land use taxation. So they built in a little bit of flexibility to deal with those kinds of situations.

Mr. Cilimberg said it was when that less than 5-acre parcel devoted to bona fide agriculture would want to have events that you would have a zoning clearance.

Mr. Kamptner said to tie this back to the comp plan our rural areas plan does recognize farming taking place on these small parcels and how to deal with them. So they have tried to factor in all of these different considerations in developing these regulations.

Mr. Randolph said this is the last time they are going to look at it in all probability and he just wanted to be sure that they had covered all of those contingencies and every one of those angles.

Mr. Kamptner noted they will get another shot at it at the public hearing.

Mr. Morris asked if there was any other question for staff.

Mr. Keller said he just wanted to compliment staff. As it continues to move forward he still has concerns. He must say the Rockingham County piece in sort of its legalistic manner has helped him think about this. However, he was still concerned about whether they have the triggers to catch all of this. He thinks there are a couple of points in that one they should just note. The Board of Supervisors recognizes that the owners of bona fide agricultural operations need to explore creative alternative income generators that are incidental to arise out of and enhance their traditional farming operations. That is kind of the underlying piece that is the justifier in the state legislation that they would have Agritourism coming out of agriculture. His concern all along has been the Agritourism façade that is going to be applied, which is why he still has an issue with the minimum acreage. So based on the last series of questions they still don't really have a figure for parcels that are 5 acres or less that are in the rural areas, much less in agriculture, and they don't have a figure for the parcels that are 21 acres or less that are in the rural areas.

Ms. Burbage asked what he meant by figure. Is it the number?

Mr. Keller pointed out he had asked that in two different meetings now and it has come up again. He thinks it is really important. He asked what year the rural area plan was done and whether it was in 2002 or 2004.

Mr. Cilimberg replied there were different years for different chapters.

Mr. Kamptner noted it was in 2005.

Mr. Keller pointed out a lot of these figures are really quite old. However, at that point there were 16,000 plus residences in the rural areas. His concern is not that everybody in those be able to have a bona fide agricultural operation; but that there be a trigger that lets them know they are bona fide agricultural and if they are a small lot how they are going to deal with that. He thinks they have really begun to address that. However, he still wonders about how the storm water management that is going to come into play ultimately might affect that 50 automobiles coming to a 6-acre parcel. Six acres would be in effect by right.

Ms. Burbage said if it was over 50 vehicles that would trigger the zoning clearance. However, if it was under 50 vehicles on a parcel larger than 5 acres, then that would be by right.

Mr. Keller suggested they need to think about that because that is a lot of vehicles. When Mr. Cilimberg gave him the history of the rural area when he came on the Planning Commission, there was a part in it where it explains how the 21-acres came about. That 21-acre came about in 1980 specifically to work towards the continuation and protection of agriculture and silviculture. The 2-acre minimum lots that there can be several of was considered by right. But, the 21-acres were defined to be what would maintain the rural character of the rural areas. He thinks that 21-acres should be the bench mark for all the way down to the smallest acreage to have a bona fide agricultural operation. However, to trip below that a trigger so that there will have to be a special use permit so there will really be a thoughtful analysis of the impacts on the smaller acreage was his basic point. He did not think they can handle 16,000 or 20,000 of these operations going on or a smaller number. If they are bona fide agriculture, they have to occur. They just need to know for sure that they are bona fide agriculture. So what is going to be the mechanism? They have done a good job at trying to answer that. However, he was just trying to look into a future window of the operations that are not growing out of the traditional agriculture that we have now. Is there the potential for a huge number?

Ms. Burbage asked Mr. Kamptner if she was correct that the definition of an agricultural operation event, which includes Agritourism, has to occur at a bona fide agricultural operation by definition.

Mr. Kamptner replied yes.

Ms. Burbage pointed out even though there is no zoning clearance review process agriculture still has to be the primary use. It would be on an enforcement basis. She understands his concern about how do we know they are happening. However, the ordinance still stands even if the zoning clearance review process is not happening.

Mr. Keller said it made sense, but he was just looking at a worse case scenario in 20 years. It is really interesting a number of people from Fauquier County pushed it and yet Fauquier County is one of the places where they are starting to see that economy of scales where a number of these small operations are next to each other and it is creating a grid lock. He thinks the whole concept of it is good. There is no challenge about that at all. However, it is a challenge for the small operations that might be fly by night. Let's think about what this 24 visitations a year would be. If they are basically occurring from the middle of June until the middle of November, then that is almost every weekend. That is implying there is a potential for five adjoining properties to have these occur that often by right. Again, it is not that he thinks we have any right to say they can't do it, but just thinks they need a trigger sooner so they can see they are truly in line with the control mechanisms that they are left with can be in place.

Mr. Kamptner said to pick up on Mr. Keller's point he thinks when they have been working on this zoning it has indicated the farm wineries often come in on their own just to get information from the county to make sure they know what the county is going to expect. They discussed the idea, even though the county cannot require a permit. To have a provision that requires these places to at least come in for a meeting to get information from the county would allow us to track it. It also lets them to get off on the right foot so they know what setbacks and regulations are in place so they understand and don't run afoul of the provisions off the bat.

Mr. Loach asked if they could post a registration data base that they would register into with no fee. He agreed Mr. Keller is making a good point, but unless there is data it is hard to evaluate that.

Mr. Kamptner noted that is what this pre-activity meeting would be. It would just be a onetime thing. But, that would be a way they could start to develop a data base.

Mr. Loach said he would go back to his usual plug that they should master plan the rural areas. To treat the rural areas to be so homogenous he thinks is a fatal flaw. He thinks there are areas that probably they should not be looking at for intensive development or economic development, which should be protected.

Mr. Keller said there was one set of figures that sort of go along with this. In the 2005 rural areas plan using 1997 data there were 41 entities that were calling themselves farms in the 1 to 9 acre size; 186 in the 10 to 49; 266 in the 50 to 179; 176 in the 180 to the 499; and 50 from the 50 in the 500 to the 999 acres and 28 in the 1,000 acres or more. They have a total acreage, but no total number. Obviously, those numbers have increased on the small and large size. It is not an unmanageable amount for the amount of roadway they have in the county. He thinks much of this hinges on the definition of bona fide and the quick turn into a farmer operation to be able to host Agritourism. It is not an issue about the existing. If they took all of those existing numbers and whatever they have increased to now he did not have any concern there.

Mr. Cilimberg suggested they could provide a more current number from the farm census. In fact, he believed there was a fairly recent number. He was not sure there has been an increase in the numbers. However, they can provide that number. It will give them an understanding as to what the census used as farm operations there are in the county. Beyond that it is back to what both Ms. Burbage and Mr. Kamptner have said and that is they can't have the first event on any rural area property that is not bona fide agricultural. That is the bottom line.

Mr. Keller asked who is going to give that test.

Mr. Cilimberg replied there is not an allowance for us to have people come in and tell us that they are bona fide unless they meet one of those zoning clearance requirements or unless there is an event there that they receive a complaint about. Then they would be investigating to determine if it was bona fide. That is the same as any other rural area use that may fall under the special use permit requirement and would be under certain supplementary regulations. Unless there is a complaint they don't know because they don't get clearances for those.

Mr. Keller noted that in Rockingham County it defines what bona fide agriculture is in terms of income and if it is the primary income source on that particular property. It supports the legitimate agricultural enterprises that they have now. It is going to set a threshold measure and depending on how it is written in code somebody would actually be breaking the law if they were saying they are bona fide and they are not. It is really interesting to see where the second largest agricultural production county in the state has taken this and not going into the land use and the acreage side.

Mr. Cilimberg asked that they be mindful this is a resolution from the board that carries no land use law implications. Unless they write it into the zoning ordinance, which they did not do, it does not carry the weight of law, but provides for guidance. Mr. Kamptner could probably look at how they could incorporate some of that language into the zoning ordinance as mentioned by Mandy Burbage. They want to have a preamble section that may need to capture some of this in addition to what they might write in the definition itself. But, they have to be within the legal requirements of state law for that definition.

Mr. Kamptner said they can certainly enhance the definition beyond the current proposed definition to address some of the concerns.

Mr. Cilimberg noted they found it interesting it was a resolution and they were not going through a zoning ordinance amendment. That is the other side of the coin so to speak.

Mr. Morris opened the work session for public comment and invited anyone who desires to speak to come forward.

Marcia Joseph, resident of Albemarle County, pointed out she had a couple of questions, as listed in the submitted attachment. She appreciates staff's good job in coming back with some of the comments the Commission had made

the last time. (Attachment C – List of questions and article from Daily Progress entitled "Le Chic Picnic targets Nelson County visitors" submitted by Marcia Joseph) Ms. Joseph posed the following questions.

Bona fide defined
She thinks there is a problem with the definition. The way the ordinance is written now it says, "Bona fide agriculture must be the primary use on the lot, as determined by "objective evidence". That is kind of scary because she did not know how one determines what "objective evidence" is.

Zoning Clearance Section 5.1.58.b
She appreciates the zoning clearance section being a supplemental regulation.

She asked will parking location be considered to make sure that environmentally sensitive areas are avoided and protected? At the last meeting Mr. Keller brought up where is the parking and if it was going to be on critical slopes or is it going to be within a stream buffer. She thinks that really has to be looked at and not just how much parking but where it is located on the site.

She wondered if it was possible to add the following.

- Artificial lighting and whether or not that is going to be on the site.
- Assurance that the interior roads are able to accommodate emergency vehicles. If there are a lot of people in there with more than 50 vehicles trips per day they need to be able to get emergency vehicles in and out of the site.
- An affidavit to be signed that references the ordinance which indicates the lot "on which producing one or more agricultural products is a primary use, the activity is engaged in good faith for that purpose, and not merely to enable the parcel to be eligible to host events and activities at an agricultural operation." If they can't figure out what bona fide is maybe they could get the property owner or applicant to sign that.

Is there a method to determine that the event does not become the primary use on the property?

The Daily Progress article is about the Le Chick Picnic in Nelson County. The use is on a 5-acre parcel. The uses on this parcel include:

- Stand alone Commercial Kitchen to serve "travelers on the go"
- Le Bleu Ridge Bed & Breakfast
- Winery
- Tasting room

She wondered if the Zoning Clearance will list the number of activities allowed on each site because that seems like an awful lot going on a 5-acre site.

Jeff Werner, with Piedmont Environmental Council, noted he had been talking with a lot of folks about this recently and thinks they are struggling with this as much as the Commission. He offered some thoughts and comments for the Commission's consideration, as follows.

- How do we address the cumulative impact on a particular road? For example, if there are 5 properties on Clark's Track all doing small events it is when that traffic then comes out onto Route 22/231. What happens there? If a zoning clearance was requested can a condition be made that maybe there is some cooperation such as having a policeman hired to direct traffic or things like that.
- They have a lot of structurally deficient bridges out in the county. He was asked a couple of weeks ago about the bridge on Route 810. He told the person there was only a couple hundred vehicle trips a day on that road. So that bridge is not really getting elevated to a point where the county is paying attention to it too much and putting it in a priority. What happens if an activity starts putting a lot more traffic on a bridge that is in that situation? He agrees at some point they need to look at the Rockingham language as some sort of preamble at least to establish the county's position.
- He understands the situation with the zoning versus a business issue. The State Code is very clear the regulation has to take into account the economic impact of the restriction on the agricultural operation. The folks at PEC feel that at some point in time somewhere in the Piedmont there is going to be a challenge for this. So what information has to be provided in that? If this is an economic issue, then presumably that is a business that has to show this regulation affected them economically. It is stated in the ordinance. So he thinks looking at this as a business is not inappropriate.
- They were talking about some numbers in the rural area. There are roughly 25,000 lots in the rural area. He was surprised there are 8,400 lots in rural subdivisions in the rural area. Of those in the rural subdivisions he came up with almost 6,500 that are smaller than 5 acres. Then in the rest of the rural area, maybe about 17,000 lots, almost half of those are smaller than 5 acres. The county has to anticipate if these things start happening in rural subdivisions that it is going to be a tremendous push back on the county. Therefore, he would suggest some outreach into at least those places in the rural subdivisions so they know what is happening if these activities come into their neighborhood.

Antoinette Brewster said she lived in the rural areas in the Scottsville area. She had a visual for the Commission to ponder that came upon her today which was sort of an illustration of how traffic is going to go in these circumstances. She was driving through Keswick on a back country road and there was a church having a function. She did not think it was a funeral because there was no police. There was a gridlock with about 50 cars and the woman in front of her stopped in the middle of the road. The people on the other side were all lined up and could not figure out where to go either. Now consider if they get a whole bunch of people all lined up and they are having events on a little country road that has one line. Imagine it because it is a visual and something that is going to happen. It is something they need to ponder and figure out how they deal with it because the traffic is going to be a big issue. She had to pass on a lined road because the woman would not move out of the way. It is an accident waiting to happen. She had no choice. It is something to think about because she thinks the traffic amongst other things is going to be a problem on these back country roads with everybody lined up doing a little event. She was not against events and thinks it is great, but traffic is an issue.

Morgan Butler, with the Southern Environmental Law Center, offered some specific recommendations. As he sees it there are two issues the state statute changes set up. First, what are the uses that localities now have to allow on agricultural properties unless there is a substantial impact on the health, safety or welfare? That is the initial question. Second, what is the threshold for substantial impact? Once they have figured out the universe of uses when they hit a point in terms of their size and scale that they then jump to having a substantial impact and therefore require a closer level of scrutiny. He thinks staff has done a really good job of that second part in what are those thresholds. It may not be exactly what they would say, but he thinks the vehicle trips per day at 50 and other thresholds are a reasonable cut at this process. What he is still concerned about is the universe of uses they are even talking about in the first place. He thinks they could have a perfect bona fide agricultural operation and everyone would agree it was bona fide. However, what he was worried about then is what they start calling an activity or an event in an agricultural operation and saying it now falls under these requirements and it gets this open door under the regulations. When they are talking about agricultural operations, events and activities and the ones that have to be allowed, are those considered usual and customary. His question for staff: are there events or activities at agricultural operations they would consider usual and customary that are not already allowed by right under the rural areas zoning ordinance? If there are not, then they really don't even need to be adding that fourth category. They could just do what Rockingham has suggested and say usual and customary activities of agricultural operations are those that would be allowed by right in a rural area. So what he is suggesting is they may not even need to open that whole window of subjectivity in trying to determine what is an activity and what is an event at an agricultural operation in opening the door for people to come in and argue different things if they feel pretty confident they already allow all usual and customary events and activities by right within our zoning district.

Mr. Butler said the second question somewhat unrelated that he wants to raise is they have come up with this 200 person threshold for a special use permit that applies now at farm wineries, that would apply at farm breweries under these changes and would apply at agricultural operations/events. He was wondering if there is a specific reason why they aren't also thinking the same 200 person threshold should apply to the Agritourism activities or for farm sales at the same time. It is not going to substantially impact anything that would require this additional level of scrutiny. Those are the two questions he wanted to raise more for purposes of a discussion than in advocating any particular point of view.

There being no further public comment, Mr. Morris closed the public comment to bring the matter back before the Planning Commission for discussion and consideration of action to ask staff to set the public hearing for the zoning text amendment.

Mr. Keller said even though he had a lot of questions about it and continues to have, he thinks they need to move forward with this. He supports the staff recommendation that they move forward. If there could continue to be modifications and some of the information added that is great. But, they can't tarry on this and have to move on it.

Motion: Mr. Keller moved and Mr. Lafferty seconded to direct staff to schedule the ZTA-2014-00001 Farms & Farm Breweries – State Code zoning text amendment for public hearing.

Mr. Morris invited further discussion.

Mr. Cilimberg reiterated the one thing staff is hearing tonight is the Commission would like staff to work further with the definition as well as the preamble of what the purpose and intent is. Staff can certainly do that. They have heard some of the other comments and he thinks they are all worth some further consideration on our part to make sure they have covered all of the bases as they finish this up for the Commission to have their public hearing.

Mr. Keller asked staff to look at page 3 for the rural area plan. One paragraph reads in December, 1980 the county was comprehensively rezoned. In the rural area a single zoning district was created and focused on agriculture and forestry as preferred uses. But, it also recommended development by assigning each rural parcel up to five

development right lots, lots with a minimum two acres. Outside those development right lots a minimum parcel size of 21 acres was established in hopes of preserving larger parcels for agriculture, open space and rural character. That says to me that size, the minimum lot size, should be used as the trigger. Of course, you could have bonafide agriculture at whatever the smallest parcel size is. However, they need a trigger for these smaller lots where there is going to be much more impact either to an association of them along the road because they are smaller and in the rural subdivisions. So he would encourage that to be a special use permit or at least that they have the discussion of this special use permit.

Mr. Cilimberg pointed out right now the suggestion is anything less than 5 acres that would have a zoning clearance. He asked if he was suggesting 21 acres instead because that would be a simple change to the number.

Mr. Keller replied that was what he was suggesting: a single change for everything below that.

Mr. Cilimberg noted that would be for a zoning clearance. Then there are other factors that can kick in a special use permit requirement.

Mr. Keller said there is precedent in the comprehensive plan for this just as the precedent staff has made as the argument for the 5 acres. If his point is not taken, he just wanted everyone to understand that there is precedent for that 21 acre size just like there is a precedent for the 5 acre size that staff is using to trip something with VDOT. He thinks that is a very good workable point. However, he would like to have a discussion back and forth about these two sizes. It seems that is what a public hearing can give us.

Mr. Lafferty asked if he was modifying the motion.

Mr. Keller replied no.

Mr. Morris said he was simply saying that when they have the public hearing this is something the Commission ought to discuss. He asked if he was hearing it correctly.

Mr. Keller replied yes, he thinks staff has really been working hard on this and done a great job. Just as others he is posing these questions back to them. In terms of the motion, he thinks they should set the public hearing date.

The motion passed by a vote of 5:0. (Dotson, Firehock absent)

Mr. Cilimberg noted the Planning Commission public hearing date is planned for July 15.

Old Business

Mr. Morris invited old business. There being none, the meeting moved to the next item.

New Business

Mr. Morris asked if there was any new business.

Mr. Keller said he would like to make a motion that the Commission encourages staff to think about a holistic planning operation for the digital connectivity or the digital divide. He knows it is already going on. Maybe what they need to be asking staff is can we be involved in that somehow.

Mr. Cilimberg replied yes. In fact, the Commission is going to be invited to a joint work session with the Board of Supervisors on that very topic.

Mr. Morris noted it was not on July 8th.

Mr. Cilimberg agreed it was not on July 8th because it was the cash proffer policy work session which the Commission needs to adjourn to tonight. For the digital broadband wireless considerations that work session has not been set up yet, but he understands it would be in August. That is actually when the Commission would be invited to participate with the Board in that discussion.

Mr. Morris asked if staff had any problem with adding that to our minutes.

Mr. Cilimberg replied it would reflect in the minutes that the Commission would be part of that. He did not think it requires any action on the Commission's part because they would be part of that process and have a chance in that work session to participate as well as kind of guide the next steps.

Mr. Keller said he thought he had covered it.

- Planning Commission will be participating in a joint work session with Board of Supervisors in August regarding broadband and wireless service.
- City of Charlottesville hired a director of traveling who is going to work with the bicycle and pedestrian coordinator.
- No Planning Commission meeting on Tuesday, July 1, 2014
- Joint work session with Board of Supervisors on Tuesday, July 8, 2014 regarding Cash Proffer Policy

Adjournment:

Motion: Mr. Lafferty moved and Mr. Loach seconded to adjourn to the Joint Planning Commission and Board of Supervisors meeting regarding the Cash Proffer Policy on Tuesday, July 8, 2014, at 5:00 p.m. in room 241.

The motion passed by a vote of 5:0. (Firehock, Dotson absent)

With no further items, the meeting adjourned at 9:02 p.m. to the Cash Proffer Policy Joint Planning Commission and Board of Supervisors meeting on July 8, 2014 at 5:00 p.m. in room 241, Second Floor of the County Office Building, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

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