Albemarle County Planning Commission
December 2, 2014

The Albemarle County Planning Commission held a public hearing on Tuesday, December 2, 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; Karen Firehock, Richard Randolph, Thomas Loach, Bruce Dotson, Tim Keller, and Mac Lafferty, Vice Chair. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Other officials present were Bill Fritz, Chief of Special Projects; Amanda Burbage, Senior Planner; Claudette Grant, Senior Planner; Elaine Echols, Principal Planner; Sarah Baldwin, Senior 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.

Committee Reports

Mr. Morris invited committee reports.

Mr. Keller reported the Fiscal Impact Committee met.

Mr. Randolph reported the following:

- CIP Oversight Committee met on Monday and included in their discussion ways to potentially fund key planning studies for such things as the Rivanna River Corridor, Crozet Master Plan and recreational projects.
- The Solid Waste Task Force urges everyone to fill out the questionnaire about solid waste on the county website that will be operational within two weeks. The results will be used in determining how to move forward with solid waste.
- The Historic Preservation Committee continues to move forward on preparation of on-line information to be available for people who are interested in ensuring that their historic home will be preserved.

Ms. Firehock reported the National Heritage Committee and Water Resources met.

Mr. Lafferty reported the MPO Policy Board will meet on December 17th.

Mr. Morris reported the Free Bridge Congestion Relief Project Committee met and finalized four possible solutions to address congestion in that area.

Mr. Randolph also reported he attended the first town hall meeting of both Supervisors Dittmar and Palmer last night.

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

Consent Agenda:

Approval of Minutes: November 18, 2014

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

Motion: Mr. Randolph moved and Mr. Lafferty seconded for approval of the consent agenda.

The motion carried by a vote of (7:0).

Mr. Morris noted the consent agenda was approved.

Review of Board of Supervisors Meeting – November 11, 2014 and November 12, 2014.

Mr. Cilimberg reviewed the actions taken on November 11, 2014 and November 12, 2014.

Ms. Firehock asked when the schedule for 2015 will be available.

Mr. Cilimberg replied that a draft schedule has been completed that he would email to the Commission and provide at the next meeting.

Work Sessions:

ZTA-2014-00005 Artists Communities/Residencies
Add a section on Artists Communities/Residencies to the Comprehensive Plan to allow for a Zoning Text Amendment providing Artists Communities/Residencies by special use permit.
(Mandy Burbage/Elaine Echols)

Purpose of Work Session: The purpose of this work session is to establish whether or not the Planning Commission considers an artists residency as a use aligned with the County's Comprehensive Plan goals and, if not, whether there are circumstances under which the use could be supportive of the goals for the Rural Area.

Staff Presentation:
Elaine Echols and Amanda Burbage presented information on the Comprehensive Plan aspects of the proposed zoning text amendment request from the Virginia Center for Creative Arts for an artist community in the Rural Area.

Ms. Echols noted the Board of Supervisors had asked for a recommendation for the Comprehensive Plan update in relation to this use. Therefore, she was working at a little higher level on the Comprehensive Plan aspects of this. Staff will get more into the ZTA aspects of the proposal if the Planning Commission decides they need to be pursuing that. Ms. Burbage is here to answer questions since they worked on this together.

Content and Background

- Early 2012: Staff worked with the applicant who made the application for the zoning text amendment on whether or not what he was proposing was allowed by the zoning ordinance. Basically, it was an artist community or artist residency. She would explain later why they wanted to use that term as was noted in the staff report. Staff determined the use was not allowed. However, because of the nuances of the different activities that this particular use would involve the application made the ZTA application.
- June 2014: ZTA application
- Sept. 9, 2014: BOS Review since the use is not addressed in the current or proposed Comprehensive Plan, but is unique. Staff wanted to see how the Board wanted to deal with that in relation to the Comprehensive Plan. The BOS sent it to the Planning Commission (PC) to study.
- Sept. 16, 2014: Planning Commission (PC) asked to study the proposal since they could not guarantee a recommendation for approval. The PC was not convinced this is the right use for the rural area, but they want to study it and see if there is something to it that warrants allowing for this in the rural area.

Staff started looking way back at a higher level of some the issues that relate to who and what is an artist so they could get down to the details of the essence of what is being proposed. Looking at different sites and dictionary descriptions, they came up with descriptors of who is an artist. Part of this is to distinguish it from anybody who wanted to go out and do anything collectively in the rural area.

Who is an Artist?

- A person who, by virtue of imagination and talent or skill, creates objects or works of aesthetic value, especially in the fine arts and whose work requires a studio.

- Examples include but are not limited to painting, sculpting, writing, and composing.
- Professional or hobby
- Peer review or juried works, which is the level at which this particular use is being reviewed.

Artist Community/Residency

- Use that allows artists to create art in a place that offers room, board, and a workspace for individual endeavors
- Professionally run organizations, often non-profits. They have a Board of Directors and a lot of standards that are placed upon them. Mr. Kamptner provided information to staff just before the meeting showing that just because something is a non-profit does not mean it is tax exempt. Therefore, staff would want to look into that a little bit more.
- Usually involves financial support for the artist. Staff finds that most of these organizations have sponsors and receive gifts in order to support the artists who are creating works.

The website for the Alliance of Artist Communities describes a lot of what these places are and what they do. It talks about the creativity that takes place. It may be called a community, colony, retreat or a studio collective or residency. The use can take place in urban or rural areas since there is not one size that fits all. Staff wanted to look at this at a high level to see how this fit into the County's vision for the Rural Area.

In keeping with the Vision these are the uses or activities expected for the Rural Area:

- Farms, forests and an agricultural and forestall economy
- Interconnected areas of viable habitat for native wildlife
- Healthy streams
- Protected historic structures
- Traditional crossroads communities
- Lively rural industries
- Tourist economy

Those are pretty much the same in the existing and proposed Comprehensive Plan. In looking at all of those the main thing that jumped out was this kind of use could have an aspect of historic preservation that helped keep the vision of the Rural Area active.

Staff went through the goals of economic development and looked to see whether or not this use was in keeping with these particular goals. As stated in the staff report, they don't at every level because they really are not about tourism or sales of art.

In Keeping with Goals for Economic Development:

- Promote agriculture, forestry, and agribusiness enterprises in the Rural Area
- Promote tourism that helps preserve scenic, historic, and natural resources.
- Promote vibrancy of heritage tourism, entertainment, Agritourism, local food, and art.
- Provide support for jobs in the arts, design, sports and media (Arts and entertainment are complimentary target industries that they want to support in this community.)

As stated in the report, staff thinks there could be some value in helping to preserve historical resources. There are a lot of historic resources in the County's Rural Areas and the goals are to protect and reuse them. There is also the cultural plan that was prepared last year. Albemarle County contributed money towards the development of this plan and then endorsed the plan when it was presented to the Board of Supervisors. It talks about the importance of supporting artists in a community. One of the strategies in there for business development was to help create a place for artists to thrive. Staff thinks that in terms of the goals that are in the Comprehensive Plan the historic resources is the primary one. There is support in the cultural plan, which is not a plan that has been adopted by the County and not one the Commission has seen. However, it is a community based plan.

In Keeping with Goals for Historic, Cultural, and Scenic Resources

- Pursue additional protection of historic resources
- Promote re-use of historic buildings and sites
- Charlottesville-Albemarle Cultural Plan - strategy for business development: create a place for artists to thrive (artist residency)

In terms of where they are with this, staff found the use might be viewed as being in Conformity with the Comprehensive Plan (current and draft plan), if it could result in the following:

- Adaptive reuse of a historic building
- Reflect a complementary size and scale that is appropriate to its setting
- Be compatible with nearby agricultural/forestry uses
- No adverse impact on roads/traffic
- Generate little demand for emergency services
- Operate without need for public water/sewer
- Allow conversion back to its former use OR to a by-right use in the district

These were the aspects, other than the adaptive reuse of a historic building, that were important to the Commission when they were talking about alternative uses in the Rural Area. These were the standards the Commission had set and that exist in the existing and proposed Comprehensive Plan, and to date the Board of Supervisors has been in support of.

Staff was trying to parse this down into something that helped to retain the integrity of the plan. So staff has added for the criteria that talks about reversion that the use could be converted and that a new use could revert back to the buildings for which an original use was proposed. Staff's concern with reversibility on this is that if someone built something that is new in the Rural Area that is not in an historic structure and it has characteristics of a use that they would not want to have as either a by-right use or even as a special use, then that could be problematic in the future. Something the Commission raised in their last discussion was how do they retain the integrity of the Rural Area and not allow new uses and buildings that could result in something they don't want such as a resort, retreat center, or lodging.

Recommendations on how this use could be in conformity with the Comprehensive Plan:

- Use may be appropriate for a historic structure
- Building additions should allow the building to revert to its former use
- Construction of new buildings should be allowed if the future use of the building could be a by-right use

Next Steps:

- Planning Commission Discussion and Conclusions
- If Planning Commission agrees with staff – staff will develop parameters for development of a Comprehensive Plan Amendment (CPA) recommendation to provide a few statements in the Comprehensive Plan that would then provide the guidance for a ZTA
- Planning Commission can forward those parameters to the Board of Supervisors for recommendation for the Comprehensive Plan
- Planning Commission can continue with development of ZTA

Ms. Echols pointed out the applicant is present. She encouraged the Planning Commission to ask questions of the applicant.

Mr. Morris invited questions for staff.

Mr. Keller complimented staff on the report. He said bringing in the historic issue in the rural area was an interesting way to open discussion in a positive perspective.

Ms. Firehock noted last time the Commission talked about the notion that the artist community use does not have to be in rural area. She did not totally agree with the conclusion because part of the reason they want to be in the rural area was they were inspired by nature. She wants to follow what the comprehensive plan says, but had some sympathy of having a retreat in the rural area. They could address the traffic and noise later.

Mr. Loach asked if there was any economic data available since the staff report says several jobs would be created. Ms. Echols replied that she was not sure this is really an economic development endeavor. It is not a library or school, but the cultural aspects are similar to what a school or library would provide in the sense that it is creating

something that is good for society. Small numbers of people would have jobs. There would certainly be the sourcing of the food or any other supplies that the artists might use.

Mr. Loach asked about the availability of historic structures. Ms. Echols replied that she did not know that they have any information on historic structures that are for sale or available for these kinds of things. She knows the applicant has a particular historic structure in mind that is not in a crossroads community.
There are a number of historic structures that have the potential to not be maintained because they don't have viable use.

Mr. Lafferty said he was glad that staff defined what an artist was because it could be a dance studio. That was not an object that they are producing. In the report it is mentioned the applicant wanted around 20 acres and he questioned how likely they are to find that in a crossroads community. Since they are probably a non-profit what is the tax implication they would be losing for the county. He realized it depends on location, but some rough idea. Ms. Echols replied that it depends on a lot of things. Property taxes are what somebody would be paying if they were not tax exempt. However, they might have a large piece of land that then gives them some land use taxation benefits. So she does not really know the answer and it is kind of hard to say.

Mr. Randolph said as a follow up in terms of procedure he was assuming that staff would contact Ms. Maliszewski and this will go through the Historic Preservation Committee as well so they can provide input on it. Ms. Echols replied staff was just waiting for the Planning Commission comments and part of what staff would plan to do.

Ms. Monteith pointed out that they need to consider that historic resources are going to be very randomly location.

Mr. Morris opened for applicant and public comment. He invited the applicant to address the Planning Commission.

Mr. Greg Smith, County resident and homeowner, said he was present in the capacity of Executive Director of the Virginia Center for Creative Arts (VCCA) which is currently located in Amherst County on property owned by Sweet Briar. He thinks they do not pay property taxes on that. They have been operating at that location since the late 1970's after being established in Albemarle County in two locations just for 2 to 3 years at a time. He thanked staff and the Commission for their previous work. Obviously, this is a very complicated question not just in terms of this particular use in the comprehensive plan, but in the essence of what is an artist community and how does it fit in. They have already made some comments about what it is not. It is a little bit like a school, restaurant, hotel, B&B and a lot of things. Like the blind man and the elephant he does not think that it sums it up. He is here to represent the elephant and hope that it fits into the picture in the landscape here.

Mr. Smith commented on the question about the use being in the rural area as opposed to the crossroads or development areas. He pointed out the organization has in all of its history been located in the rural area. They are on property that is zoned agriculture. It was a dairy farm and looks like a dairy farm. Until the cows and the horses recently moved so that Sweet Briar could do a deal for growing bio mass switch grass it felt like a dairy farm, except for the core area where their buildings are located. They lease 12 acres of a 422 acre historic farm. What is compelling is what our artists tell us. The opportunity to get away, which Ms. Firehock was saying, is really at the essence of it. When they did a survey in the last calendar year of their artists they said it was overwhelming the sense of isolation, remoteness, contemplation and to get away from noise. They have a sign leaving the property that says returning to the real world that was done by one of the artists many years ago. The artists want to get away to be able to concentrate very strongly on the work. Why that is important is that the artists tell us they get 5 or 6 times the amount of work done when they are in residence at our place than when they are at home when they have jobs, families and the necessity to buy food, cook food and clean up afterwards. All they have to do with us over the issue of food is to eat it and have a conversation with like-minded people at the same time. So that is of critical importance to way they function.

Mr. Smith said he understands and agrees with the county staff that not all artist communities are in rural areas. However, our artist community follows the traditional model that goes back to MacDowell and Yaddo in the early part of the 20th century, which were very much in rural areas to provide that kind of retreat. In the last 25 years artist communities around the country have been established that are much more urban or tied in to a neighborhood community, a city community, or a college or university community. They don't follow that model so the ZTA that they have prepared, which is in our own best interests, reflects our history and desires.

Mr. Smith noted secondarily related to the comprehensive plan because he understands that is the broader context they are working within. Actually one of the things that make the protection of the rural area important to us is over the issue of historic preservation. Right now they are in a kind of a half and half situation. They have adapted a 1930 barn to be the studio barn. All of the studios except for two are located there and the other is in a former garage that also dates back to that time. However, the mansion that was on the property that was historic unfortunately burned down when renovations were being done. It was replaced by a contemporary structure that is basically a very utilitarian structure for bedrooms, bathrooms, dining facilities, and other communal spaces. To limit it to buildings or properties that have the potential for the adaptive use of historic properties would essentially eliminate a great number of possibilities for our relocation to Albemarle County. Although the location they are primarily entertaining right now does have an historic house, it would need to be complimented with new construction for studios. They don't find studio type spaces in 19th or early 20th century structures. People did not build houses like that. However, barns are very good for adaptive reuse and that is reflected in our history. They are very much interested in the aspect of the VCCA relocation to the county that would fall into place along with historic structure conservation and protection. They are looking to protect the larger tract parcel rather than seeing it developed into by right residential. Therefore, that factor could have been a stronger argument in their documentation to the Planning Commission. He is mostly here to answer any questions and provide information.

Mr. Morris invited questions for Mr. Smith.

Mr. Dotson asked what he meant when he said he was interested in protecting and preserving farmland.

Mr. Smith replied that a good example is for the past 35 years they have only leased 12 acres. However, those 12 acres have essentially been preserved as a one tract large parcel of 422 acres with cattle and horses around it. He alluded to the fact that Sweet Briar has changed its deal with the farmer and the cows and horses are gone. Our artists are dismayed by that. Some of the artists are New Yorkers who have never seen a horse or cow up close. They are in a rural environment they find incredibly valuable to their creative juices and effort in time. They are not interested in moving to a location that is going to be chopped up. They have been talking about the opportunity to give up developmental rights because our goal is to protect the whole of the property as a buffer from the outside world for these artists.

Mr. Dotson said what he is not quite clear because on the one hand they could protect rural land indirectly by providing an income to a farmer who then is able to keep his farm, but there is no conservation easement or any other type of formal protection on it. But, it sounded like they were envisioning that there would be a formal protection mechanism for a conservation easement.

Mr. Smith replied that in discussions with staff they have not talked about conservation easements specifically. However, they have talked about the question of a large tract which owners have by right opportunity to build on it. They are interested in doing other than building for the purposes that he has explained and the kind of numbers that he has included in the ZTA. What they have talked about more has been an agreement to give up developmental rights. However, a conservation easement might be another way to do it, too. He pointed out no one has raised that before tonight.

Mr. Randolph noted in the document submitted on June 12, 2014 on the ZTA he had put down a required density limitation that this use shall require a parcel of a minimum of 20 acres. He asked if Mr. Smith would have difficulty if they recommended a minimum of 21 acres. They have discussed economic development in the rural area and agric business and tried to set a standard of 21 acres. He asked if one acre would make a difference.

Mr. Smith replied that one acre would not make a difference. In fact, it was just a starting point in the discussion since he knew that one of the issues would be what the minimum size is for this kind of use. He thinks actually he had seen a reference to 21 acres and when he wrote it up he miswrote it.

Mr. Lafferty asked if he any problem with the reversion that the county has mentioned several times that if they vacate the land it going back to the previous use or a use that does not disturb the rural nature.

Mr. Smith replied obviously if the VCCA gave up its property it would be because it has gone out of business. He

would think probably they would not be caring too much about the future that way. However, he understands the issue of reversibility. It has come up both in the terms of what happens to the property as a whole and also what happens to any buildings that are constructed or adapted. He thinks that is a valid question. Frankly, he thinks that the kinds of values that the staff has indicated to us in this discussion are very much parallel to the values that they have. He has tried to describe that a little bit. They are preservationists. This is all very much in sync. The question is what the particulars are beyond the bigger picture discussions they are having right now. He did not see any problem with the reversibility issue. He has often thought if they were constructing a building now unlike what was done in the late 70's with our residences hall it would fit into the landscape better if it were designed to look like a barn. There is now wonderful timber structure architecture that really goes well with that.

Mr. Lafferty noted he brought up the concept of a central place where people feed and then 20 or 30 little studios around it, which would not lend itself to future use.

Mr. Smith pointed out there were different models that way. MacDowell Colony in New Hampshire has studios that are spread around throughout it acreage. In our situation because there was a barn and mansion they went to the kind of 2 structure approach. One of the things in surveying artists is the walk between their bedroom and the food service to their studio is an important mental transition. It is like making the commute to work. They kind of clear their head and figure out what they are going to do with the next 8 to 12 hours he is going to put in at the studio. They spend more time in the studio than in the residence. They have gone to this model of 2 buildings and yet different properties that might be potentially for us in the future might have different characteristics that drive things towards different solutions.

Ms. Monteith said she was trying to piece together the12 acres that he has now; the fact that he was in a 1930 studio barn in a garage, and then what was submitted in June which was essentially a range of 20,000 to 40,000 square feet. She said it seems that there are some gaps there because most barns are not that large. She was trying to understand the difference between that. She knows the Commission reacted to that 20,000 to 40,000 square foot number at the June meeting because 40,000 square feet is not far off from an acre under roof. She was trying to understand what he has now and the fact that it is in a barn(s) and what has been proposed for an assemblance of square footage that seems quite large.

Mr. Smith explained they currently have 4 structures. The barn and resident's hall are each close to about 15,000 square feet. The residents' hall is on 2 stories and the barn is a 1 story structure. The other 2 buildings are the former garage now called the cottage and it has 2 live/work spaces for the artist. The other is a maintenance shed. Currently they have about 33,000 or 34,000 square feet in 4 buildings. In the request he put something towards the upper side not knowing about where this discussion was going to go. If a building came up that had 20,000 of barn space, then that might change it and not make possible if he just put 33,000 square feet. Some of that just as the acreage question he thinks at least with his discussion with staff is still one of the sets of particulars that are open to continued discussion and negotiation. He hopes that clarified the question.

Mr. Morris invited public comment. There being none, the public hearing was closed and the matter before the Planning Commission for discussion and recommendation. He asked if there was any discussion.

Mr. Keller agreed they should follow the steps outlined by the staff. He believed strongly that the issue of new construction is really at the core of this. He thinks staff's recommendation to think about adaptive reuse and the issues of reversibility fit very well with the rural areas. He thinks that the amount of square footage is extreme. He also thinks there is an issue here in terms of this reversibility about the fiscal health of an institution such as this. He would like a little background piece on the history of artist communities like this and whether they are continuing to be ongoing or whether there are a number that fail. From his experience as a consultant in working with a number of artist communities around the country, not one like this particular one, but this is just allowing us to have the possibility of having more. He knows they can't really explore that, just like they can't explore who is going to purchase a property. However, it would be good for us to understand what that track record is up there. Again, that goes back to the issue of if it is going to stop being the use then how is this parcel going to be used and what kinds of changes are going to be called for after that.

Mr. Dotson said he is very torn by this. He thinks it would be a very positive addition to the community. He thinks there would be indirect economic benefits even if not direct ones. It would help boaster the local arts community.

He thinks it would be a very positive thing and he would like to see it in our greater community. However, on the other hand he did not see it in the rural area. He felt it was not sufficient to say that some piece of the structure would be historic. Perhaps it would be a barn. The new construction he worried about. It brought to mind that as you drive into Fredericksburg through Spotsylvania County on Route 3 that runs east/west and you look off to the left there is a national chain hotel that took and did a very nice adaptive reuse on a barn. It gets your attention sitting right in the middle of the suburban strip malls and so forth. If they had these structures and this artist community was to leave he thinks they would be under great pressure to convert them and render them useable for other uses, possibly a chain motel. His question really is if not here meaning the rural area, then where? He understands the applicant is principally interested in the rural area. However, the staff pointed out tonight that 60% of these are in rural areas or small towns. Forty percent are in urban areas. He is guessing that greater Charlottesville would fall into urban area. But, to somebody from New York it might seem like a small town.

Mr. Dotson said he was puzzled by this and so he went to the same site that Ms. Echols had shown some slides from. He found a couple of things. From the Alliance of Artists Communities in advising artists about choosing the right residency for you, isolated bucolic retreats in the middle of a city or vibrant activity in a rural area. The community within the residency is as important as the external community. So if they want it here he is not convinced that it has to be in the rural area. Going on a little further it says geography alone does not dictate how much connection there is to the community. Instead consider how many other artists will be in residence in this community and what other programs and organizations the community has for workshops, exhibits, performances, etc. This got his attention in how much access there is to transportation and other means for interacting with others outside the residency. Yes, this is a place of retreat, but it sounds like it is also a place of action, and in fact the benefits to the community would come from that interaction. A rural area location does not have the transportation to get people about. The proposal the applicant made as a conversation starter, he thinks, he was talking about one-half a car for each artist. That strikes him as low, particularly when he read that some of these allow families to join the artists. What it makes him say is that he wants to be supportive of this use in our community; couldn't our economic development staff work with the applicant and seek other perhaps more appropriate locations? Unlike Mr. Keller he is not convinced that involving an historic building is sufficient to go forward. He thinks it is kind of intriguing to think about cross roads communities because that might be a small town kind of setting. But, he sees that as a longer term thing. If the applicant is looking for something shorter term if he has to get out of his existing facility perhaps, he would say look for a different location that is not in the rural area. That is where he stands on this.

Ms. Firehock noted she was trying to think about places that might look kind of like an artist community. She was thinking about some of the camps that are down along the James River Road that are setback off the road that have dormitories. She was also thinking about other sort of retreats like religious retreats she has seen where the buildings are very ugly that she can see from the road. She asked if there was any guidance they could provide in terms of setback or screening so if an artist community would come into a rural area it would not disturb the rural character too much. She was thinking whether it was possible to specify not just the rural area, which is 95 percent of the county, but to say something like within close proximity to some of our smaller more developed areas like outside of Crozet or Scottsville. Then the artist could add to the local economy. She suggested breaking the rural area up into distinct districts and really think about the character and the unique conditions of each. She was sure there were places in Albemarle County where this use would be really inappropriate and in other places where it might not be a problem at all. She was wondering if there was additional guidance they can provide and if they were to put this in the comprehensive plan as an appropriate use some additional guidance such as close to infrastructure development. She would like to see it close to some existing infrastructure, and hoped staff could reflect on that.

Mr. Randolph said there were many areas in the county, such as Earlysville, that would really lend themselves to this kind of community being contiguous to services that artists would enjoy and will be become part of their experience in being in Albemarle County. He thinks proximity to the corner community is something worth thinking about and also minimizing the 21 acres and above the size of the lot they are going to have.

Mr. Loach said he would give more latitude. In some respects he sees the precedent already been set in what they did with Monticello at Mt. Alto for the scholars to live there. He thinks the latitude he would get is the reuse of the historic building, but with additional structures as needed to complete the compound. Hopefully, they would be in some sort of conformity architecturally, etc. with the historic structure. He thinks it is important for the community

to have a strong art space. They have an excellent track record and this is not a fly by night operation. Therefore, he was not concerned about the operation.

Mr. Lafferty agreed with Mr. Loach. The Charlottesville/Albemarle region is very supportive of the arts. The community would certainly be very supportive as he would, too.

Ms. Monteith added if it was going to be a reuse of an historic structure with some kind of addition that there is an appropriate proportion. In other words, there not be one quarter historic structure and three-quarters new construction.

Ms. Firehock asked to follow up on what Mr. Loach was just saying. She really likes the idea of reuse of historic structures as a way to help preserve some of these buildings. There is a large estate for sale near her property that has not sold because no one wants to live in a mansion like that. But, it would be appropriate for something like this. However, she wants to be careful that they not over design the studio space for the artists in terms of saying that the additional buildings would need to somehow reflect the architectural of whatever this historic structure was. She was thinking more like Frank Lloyd Wright and if they want to use native materials and build something in keeping with the landscape and blend it in better so that they are less noticeable. She was more concerned with the screening and blending rather than if they make an attempt to mimic something historic that is already there. However, she really loves that adaptive reuse focus.

Mr. Morris said the first time he saw this he was not happy with it at all because the comprehensive plan discourages the building of residential structures in the rural area. He thinks with the historic structures they have really hit on an excellent way of combining the two. In listening to Mr. Smith he has heard him comment on new buildings are in the form of barns. With the materials available now it can really tie in with what Ms. Firehock was saying. He was in favor of this at this particular time, but to be tied in with the historic structure whenever possible.

Ms. Echols said she was with him until he got to the whenever possible. From listening to the Commission they are not in agreement. There are some pieces of this that she felt were very important to either get a consensus or vote on so they know how to proceed. She heard from Mr. Keller, Mr. Randolph and Ms. Firehock that there needs to be historic preservation involved and that is necessary.

Mr. Morris noted she could add him and Mr. Lafferty.

Ms. Echols said that there were at least five Commissioners that believe that this needs to be an aspect of historic preservation, kind of like the restaurants were in historic structures. The aspect of new construction and how that relates to any future use of the property should something change she thinks is where it starts to become a little unclear. They may be able to start with for most Commissioners they are okay with this use if it is in an historic structure. The next step needs to be okay. If there is new construction what are the perimeters that they would want to set around new construction. Does it need to be, as they said here, the new construction should allow either reversion back to the former use if it is like a building addition or if it is a new building it ought to be for a by-right use. Whether or not the Commission is on board with those last two bullets she thinks will give staff some better direction on what to bring next.

Ms. Firehock said she was trying to think quickly of what type of use it could revert to. The two things that come to mind are youth camps, religious retreats or those types of places which are already allowed by special use permit in the rural area. That is a cabin that a camper or an artist might stay in or someone on a retreat would be very different from somebody who wants to stay in a motel in the rural area.

Mr. Loach agreed with Ms. Firehock.

Ms. Monteith said she thought they all thought it was important to have the reversibility. However, staff may be speaking to things that are not clear to her.

Ms. Echols replied yes, but the reversibility may be part of a building addition. For example, if they have an historic structure and they want to put on a major addition that has a dorm aspect to it. If it is more like a dorm space that really restricts future use to it. If it is more like additional bedrooms that then allows the future use to be used

potentially residentially. So it is a nuance, but it is an aspect of reversibility.

Ms. Firehock noted as a follow up she was thinking more along the lines of a dorm use that then lends itself more to uses that are allowed like camps and religious retreats versus something that would turn into studio apartments. She thinks staff could write that.

Ms. Echols suggested staff could take what they have given or at least the very definitive things and then bring back possibly some options about the things where it is a little bit gray and get the Commission to put some lines down there and then they will know where to go next on it. She thinks what she has gotten from the Commission is historic structure, reversibility or another use that is allowed in the district and the question is by right or by special use permit. That is another aspect of it. She asked if she missed anything.

Mr. Morris suggested staff not forget the reversal into agric-forest since that is a barn.

Ms. Monteith added the other thing is whether or not it needs to be rural area, which was something that there was quite a bit of discussion about. In other words, it was as Mr. Dotson pointed out that what may feel urban here may feel rural in New York City. Therefore, does it need to be specifically rural area or could it be in kind of an in between zone. Also, Ms. Firehock talked about the fact that if you looked at different areas that are considered to be rural area some might be appropriate and some may not. So she did not know how to get at that. But, she heard most of the Commissioners comment on that to a certain degree.

Mr. Loach noted it seemed that to a large extent that would be up to the applicant where he chooses to place his residence. He thinks in some respects it might be even easier since they have given the applicant as much information as they think they have available now to see his reflection on what kind of concepts he comes back with that they can react to with more specificity. In other words, does it meet that threshold of reversibility and does it meet a threshold of reuse in looking at it.

Ms. Echols noted that almost gets to the site specific pieces of his particular proposal. She thinks they are not quite there yet and have a couple more steps. However, the point of access location in relation to the places people might want to go trying to reduce the amount of traffic that would be on the rural roads. She thinks that is sort of what the Commission was getting at potentially. However, staff has enough to bring it to the Commission next and let them parse those lines. Then staff will have enough to help the Commission put together what they need to send to the Board of Supervisors before they go onto the next step with the zoning text amendment. She asked if that sounds good to the Commission.

Mr. Dotson asked the Commissioners if the minimum property size of 21 acres, which was thrown out for discussion, is the right size. The applicant indicated a desire, though the mechanism was not clear, to use this as a vehicle to protect a larger acreage. Is that something they would like the staff to be thinking about or discuss it with the applicant as well.

Mr. Loach asked if that would be in proportion with the number of artists he has in residence. That is to say he might find a historic residence that fit all of his artist needs within the concept of the mansion that he purchased versus what he wants as far as their ability to roam around to look for creativity or whatever the reason would be. They can't answer that unless they know how many people they are talking about. That size would be proportional to the number of artists and residents in his mind. Maybe to say if it exceeds a certain number for a certain size and scale of residents, then it would have to have "N" number of acres associated with it. He did not know that.

Ms. Echols noted that was getting a little bit more towards the zoning text amendment. However, she thinks the idea is that they are looking towards things that can accomplish other goals of the rural area, which is preservation of natural resources and larger tracts of land. Staff will develop parameters for development of a CPA recommendation and draft ordinance language to bring back to Planning Commission to review prior to forwarding recommendation to BOS.

Mr. Morris thanked staff for the presentation.

In summary, the Planning Commission held a discussion to provide guidance and recommendations on how the proposed use is in conformance with the Comprehensive Plan and how to move to the next steps to process the zoning text amendment regarding the following issues.

- Historic issue in the rural areas
- Generally thought it could be considered in context of cross road communities – use is similar
- Location in cross road communities could provide economic benefit
- Want to follow what Comprehensive Plan says, but have some sympathy of having retreat in rural areas. Address traffic and noise later.
- Economic impact of residences on communities where it presides. See giving more latitude if economic impact so there is a pay back to the county as far as what they bring in. Latitude versus establishing new residences versus using historic structure
- Any economic data available?
- Concern about number of structures available that could use.
- Non profit – tax implications
- Request to Design Planner that this will go through Historic Committee for consideration of future impact
- Consider historic resources are randomly located.
- Brining in historic issue in rural area interesting way to open discussion in positive perspective
- Value of allowing use
- Is applicant interested in protecting and preserving farm land? Is there a formal protection easement?
- Is there a minimum size/acreage for the use? Would applicant consider 21 acres?
- Is there any problem with reversion back to previous use or a use that does not disturb rural nature?
- New construction at core of this. Think about adaptive reuse and reversibility and if fits well in rural area. Amount of square footage proposed in barn is extreme (20,000 to 40,000 square feet). Also issue in terms of reversibly.

The Planning Commission recessed at 7:19 p.m. and the meeting reconvened at 7:26 p.m.

CPA-2014-00004 Lofts at Moore's Creek
MAGISTERIAL DISTRICT: Scottsville
TAX MAP/PARCEL: 076M2-00-00-06800
LOCATION: Approximately 750 feet southeast of the intersection of Harris Road and 5th Street SW. City/County boundary east of 5th Street and portion of Willoughby Apartments in City.
PROPOSAL: To amend the Comprehensive Plan designation for approximately 5.67 acres, from Neighborhood Density and Parks and Greenways designation to a higher density (24 units per acre) designation.
ZONING DISTRICT: PUD Planned Unit Development – residential (3 – 34 units per acre), mixed with commercial, service and industrial uses.
AIRPORT IMPACT AREA: Yes
FLOOD HAZARD OVERLAY: Yes
STEEP SLOPES MANAGED: Yes
STEEP SLOPES PRESERVED: Yes
COMPREHENSIVE PLAN: Neighborhood Density Residential – residential (3-6 units/acre); supporting uses such as religious institutions, schools, and other small-scale non-residential uses and Parks and Greenways which allows parks, greenways, playgrounds, pedestrian and bicycle paths in Neighborhood 5. (Claudette Grant)

Ms. Grant presented a PowerPoint presentation to summarize the request. A revised resolution of intent and a letter emailed from Joan Albiston were distributed. (**Attachment A** - Revised Resolution of Intent for the Lofts At Moore's Creek) (**Attachment B** – Letter from Joan Albiston dated November 26, 2014 to Department of Community Development Attn: Wayne Cilimberg in reference to Planning Commission review of Comprehensive Plan Amendment for parcel 076M2-00-00-06800 - Available in the office of the clerk with written minutes.)

Purpose of Work Session: To amend the Comprehensive Plan designation for approximately 5.67 acres, from Neighborhood Density and Parks and Greenways designation to a higher density designation for 24 units per acre (Urban Density Residential).

Location: The property is a vacant parcel of land, which is 5.67 acres, located on the city/county border and adjacent to the Willoughby Subdivision in the southern part of the county in the vicinity of Fifth Street Extended. It is also adjacent to the Fifth Street Station Shopping Center, which is currently under construction.

Background:
At its October 7, 2014 work session on the Comprehensive Plan, the Board of Supervisors heard a request from Keith Woodard to redesignate undeveloped property near the Willoughby Subdivision from Neighborhood Density, which allows 3 to 6 units per acre, to a higher density designation such as Urban Density, which allows 6 to 34 units per acre. Although this request was late in the process for considering land use changes, the Board referred the Woodard request to the Planning Commission because the request seemed reasonable. The Board recommended the Planning Commission do due diligence in its review, including a public engagement, and provide a recommendation back to the Board. The Board did not expect action by January 15, but asked for a status update at that time.

The purpose of the December 2, 2014 work session is to look at the significant policy issues and impacts of the proposal and to determine the next step with the requested Comprehensive Plan Amendment (CPA). The Comprehensive Plan designates this property as Neighborhood Density, which allows residential uses of 3 to 6 units per acres and supporting uses such as religious institutions, schools and other small scale non-residential uses. A portion of this property is designated Parks and Greenways, which allows parks, greenways, playgrounds, pedestrian and bicycle paths. The property is zoned Planned Unit Development, which allows residential uses 3 to 34 units per acre mixed with Commercial Service and Industrial Uses.

It is important to note that when Willoughby was initially developed the application plan shows the property for future development with no designated uses. Therefore, it has no by right uses at this time. In order for the land to be developed a rezoning will need to take place. The concept plan shows areas of development including a road and bridge that would interconnect Harris Road in the city with the Fifth Street Station Development in Bent Creek Road. This subject property is adjacent to an undeveloped vacant parcel located in the City of Charlottesville. There are green spaces that are shown on the plan that are adjacent to Moore's Creek. However, it is not clear if this area will be preserved. Both the city and county portions of this property have a history of issues, the primary one being the lack of adequate access. Access to Harris Road has been proposed in the past by the applicant, but not approved by the city. In part it is due to steep slopes, difficult sight distance and the need to gain permission from the Willoughby Homeowner's Association. On the county's side there are challenges such as floodplain concerns and issues related to the Bent Creek Road portion of this road connection.

Staff sees four possible options for the Planning Commission:

Option 1: Adopt the Resolution of Intent and direct modification of the Land Use Plan for Urban Density Residential.

Option 2: Deny the request to adopt a resolution of intent to change the land use designation.

Option 3: Adopt the resolution of intent and study the request to determine if a higher density designation is appropriate on the property given its proximity to Fifth Street Station.

Option 4: Deny the request to adopt a resolution of intent to amend the land use designation until such time as additional information can be provided on access and the feasibility of providing interconnections.

Recommendation:
In conclusion, staff believes that adoption of a resolution of intent to amend the Comprehensive Plan to change the land use designation on this parcel is premature. Staff does not recommend proceeding with this Comprehensive Plan Amendment until issues of access and feasibility of interconnections are resolved, which is equivalent to Option 4.

Mr. Morris invited questions for staff.

Ms. Firehock asked if in preparation of the staff report staff did much research on the current TMDL for Moore's Creek, the impairment report and the requirements for land cover to keep the water quality and improve it.

Ms. Grant replied no.

Mr. Randolph referenced page 7, second paragraph and asked if staff is now aware that the applicant for the Lofts at Moore's Creek has permission from the owner of Fifth Street Station to build a bridge.

Ms. Grant replied no, they are not aware of that at this time.

Mr. Randolph asked if staff can cite an example in the past five years when a density has been permitted which is four times greater than the previous density.

Ms. Echols asked if he was asking that from a land use or zoning standpoint.

Mr. Randolph replied he was referring to the middle paragraph on page 7. It says density is perhaps the most important issue under the existing and proposed land use plans the maximum density is expected at 6 units per acre. The applicant has requested four times that amount of density. He asked has there been in the last five years a case where the county has permitted a land use density that was four times greater.

Ms. Echols replied that the land use plan change in density she thinks about the Southwood Mobile Home Park in particular. They don't have the specifics to know what the highest density is that is being proposed there, but they were asking for a change from Neighborhood Density to an Urban Density Residential designation. They looked at that in detail, but there was nothing specific as to exactly how many units per acres were being requested.

Mr. Randolph noted in that case there were existing structures, which were trailer homes on that property. From the standpoint of the county one of the benefits would be that even if the density went up the quality of the construction and the safety and health of the residents would be enhanced as a result of the change of those structures. Whereas, in this case they are dealing with woodland and riverine environment where there are no structures.

Ms. Elaine noted that some of the Hollymead Town Center pieces may have had this level of increase in density. She thinks maybe it was zoned R1 and RA at one point. She asked Mr. Cilimberg if that sounds familiar.

Mr. Cilimberg pointed out there have been changes in land use plan designation. They have not had say the specifics of a potential of development because in this case the applicant actually has had before us a zoning map amendment. The knowledge of all the particulars are a little different here than some of the other cases. In the case of Hollymead Town Center, which was more than five years ago, there were a variety of land uses that changed before Hollymead Town Center was developed. The one that strikes him as a major increase not to the density here but certainly to the scale of development was when North Pointe was approved in an area that had been changed in the comp plan from rural area to allow for the kind of development North Pointe ultimately was.

Mr. Randolph asked in that case was there an existing development contiguous to where North Pointe was permitted to go to a higher density.

Mr. Cilimberg replied there were existing houses adjacent on an adjacent street. North Pointe property itself was not developed and generally speaking it was a rural area property. There was also a change even more years ago that ultimately lead to what is now the University of Virginia Research Park that had been rural area. So there have been changes in the comprehensive plan that has taken areas that are essentially undeveloped and created the possibility of development. There have been changes that have taken industrial designations and made them commercial or residential. In terms of a more infill situation where there is adjacent development and there is a request to up the density within the infill in our comprehensive plan he is not recalling that type of thing. There certainly has been small rezoning within areas of lower density, such as Treesdale and The Lofts at Meadow Creek that increased the density of those developments over what was allowed by right and as compared to what was adjacent.

Mr. Morris opened the public hearing for applicant and public comment. He invited the applicant to come forward.

Mr. Justin Shimp, engineer for the project, said that Mr. Woodward the property owner was present. He wanted to answer a couple of things before he makes his presentation. It is about the questions that Mr. Randolph just had.

One is about the connection or the easement across adjoining properties. The proffers for the 5th Street Station specify the land will be given fee simple to the county. It may optionally be an easement. So that is something that has to be thought of. If the land is given to the county, then it is the county's discretion if they want to let us across or not. It was obvious by coming in with a rezoning request that would be applicable. Otherwise, it would be on us to secure those easements. They have been talking about that some, but it is not done yet. Maybe he has confused folks a little by the way he wrote the sketch for 24 units per acre. It really is the urban density scale of 6 to 31 or 34 units because what happens in between that 6 to 34 is a lot about the things that were said in the staff report for some of these details whether it ends up higher or lower on that scale. Regardless of which side and scale it is on they are very certain that it needs to be some of these infill concepts in the comprehensive plan. It needs to be in that 6 to 34 range rather than the 3 to 6 range.

Mr. Shimp pointed out that earlier he sent the Commission an email. He was sure the Commission had received many emails on this topic. What he means to say by that is our focus is the big picture question of density here. This is a challenging property. He thinks every infill property is going to be a challenging property. He can't think of the last time, in fact, anybody brought him an easy development. There aren't any left. He thinks these are going to come up with everything they look at in infill developments especially. There are potential environmental issues that need to be dealt with, natural resources. But, it is transportation, connectivity issues and things to be discussed. However, what they want to know is does the Commission and Board as a county agree that if those issues are satisfied, should this be in the 6 to 34 range or should it be in the 3 to 6 range. They feel very strong that it is the 6 to 34 range. He has some information to present about that. That is really what they are trying to gather. They can't confess to have all of the flood studies done to get the bridge across Moore's Creek. Absolutely it can be done. Is it a lot of work? Yes, they will spend thousands of dollars of engineering and studying that they would like to feel that there is some agreement about what the end result would be before they go down that road.

When they look at this property in the context of the comprehensive plan what they sort of think about is development in this situation. One of the things they always look to is the draft master plan, which is probably the same as the current. There is the definition of centers, which is about employment centers and a location where someone can walk to for employment or services. Sure enough, of course, Fifth Street Station is a center, which is right across the creek from us. One of the reasons they see this as an appropriate place for higher density is they look at what is nearby residentially. This is a quarter mile and one-half mile radius. The lighter browns or tan colors are all the lower density residential that is around the county. The city has similar density in this particular area. On the south side next to the lake is Lakeside Apartments, which is the only multi-family within that one-half mile range. Then they will walk across 64 there on Avon Street to make that connection. So that is not a real desirable walkability circumstance. The zoning that is available as far as multi-family or higher density opportunities is basically nothing. Monticello High School is zoned R-15. There is another piece of R-15 just across the interstate on the Fifth Street side he thinks someone is looking at for multi-family. That is again over one-half mile and probably three-quarters of a mile away across the interstate. It is not really connected to Fifth Street Station employment center. The Land Use Plan actually talks quite a bit about infill. There is a whole section of several pages on strategies and recommendations for infill development. Of those the strategies talk about things like to have some more flexibility for these difficult parcels given that they are developed in a way that everyone can agree on to allow for infrastructure to access this and consider planning for getting this bridge over to this parcel and make that connection to the Fifth Street Station.

Some of the recommendations that come out of the comprehensive plan, many of them you read through talk specifically about higher density. When you read that the overall goal is the idea of promoting workforce served neighborhoods that are walkable to where there is employment. Fifth Street Station creates this center that really is disconnected from everything else but us. That is why they think that is an important consideration in this land use question.

The comprehensive plan, of course, talks about mixture of housing. That is another good thing to think about in its context. So they go back to their picture to see what the housing varieties around us are. There is some attached products, some single-family, but really there is not any multi-family within that circle radius at all. That is another stated goal to achieve that in this situation. With the 450,000 square foot shopping center he thinks they are really in the best situation to achieve it. The staff report was very thorough and talked about a number of issues. He thinks it said that the key question is density and that is what they are here to talk about. There are several places that it is so worthy it may have merit if they can work out these things. They understand that those things need to be worked

out, which includes the activity, natural resource impacts, the linking between Harris Street and Fifth Street Station, and how does that road ultimately end up being. Those are the things that get worked out during a rezoning. The question is where they start for what sort of density. That dictates what they can do on the property. So really the first step is what is the end result and then how do they get there with all of these other components that they will go through including the public hearings for the rezoning, the site plan and Water Protection Ordinance. All of these things are built in to protect those items in the comprehensive plan. To end with a similar note it is about considering the higher density based on the factors.

One thing that might be of concern to folks if you don't go and walk on the property there is not, for example, a lot of wetlands or things down along the base of the slopes. He thinks that is a flat area and really most recently been worked over by the RWSA for repair of the stream bank where the sewer line is. It is not an area where there are wetlands or a lot of naturals or fish habitats type of thing. Could there be some consideration of that in a rezoning to develop some of those areas? Sure. It is definitely an opportunity to leave Moore's Creek better off than it was before in this type of circumstance. That is what they expect to work out during a rezoning. He reviewed site photos along the creek in the slides. There is a very flat path and it drops off maybe 10' down to Moore's Creek and it is quite an eroded stream bank in that area. So that is the items that they feel are really relevant to consider here. They look forward to the Commission's deliberation on this. He was happy to answer any questions.

Mr. Morris invited questions for the applicant.

Mr. Lafferty said in the City of Charlottesville's comments they say the access to Harris Road is not possible under the conditions. He asked how they plan to address that.

Mr. Shimp replied first they disagree with that statement. Today they have an ongoing site plan there and they have an appeal in on that issue. So they have several ideas to work that out. So to say it is not possible they don't agree with. They would hope that over time this property sort of integrates in with that one. There is some comprehensive look at how that access is, which way traffic should be moving, which way only pedestrians and bikes moves and which way cars move. This presents an opportunity for that thing. But, as far as here and now they don't agree with the city's statement about the access.

Mr. Lafferty asked does the applicant own the property up to Harris Road, and Mr. Shimp replied yes, in the city portion the applicant does own that.

Mr. Lafferty asked how you plan to be compatible with the existing neighborhood in Willoughby with the density that he is proposing.

Mr. Shimp replied that there are a number of ways to do that. He thinks staff outlined one when they were talking about a mixture of building types perhaps as you went away from the existing neighborhood that were smaller in scale on the border of the existing neighborhood that would transition to larger scale buildings that interface more with the Fifth Street Station side of things. There could be a matter of landscaping. If there was additional density perhaps the construction is more vertical and there was a little more buffer left around the existing neighborhood's rather building the exact same neighborhood up to where you already are. There are lots of ways that could be dealt with. They don't have an answer for that at the moment because really the foundation of what kind of development it is. Is it a high density or a low density that forms that? But, they certainly would expect that to receive lots of review and public input over the course of a rezoning if they go down that road for the high density.

Mr. Lafferty asked if he feels like a multi-story residence is in keeping with the same architecture as around Willoughby.

Mr. Shimp replied it can be if it is done correctly. There needs to be thought about that. It can't just be slapped up on the property line. The site slopes a lot from Willoughby down. So perhaps it can be stepped into the hillside where you are minimizing the impact on the uphill side. However, it has a much more presence on the downhill side.

Mr. Lafferty said so right now they don't have connectivity with 5th Street Station nor Harris Road.

Mr. Shimp replied they have connection to Harris Road, but to 5th Street Station they don't. They certainly would expect that to be a condition of any higher density approval.

Mr. Lafferty said but the city is saying they can't do it under the conditions now.

Mr. Shimp replied that is their position at the moment. However, again, they are contesting that.

Ms. Firehock pointed out in his request he talked about workforce housing, which is often used to refer to things like firemen, nurses, school teachers, etc. She thinks he is really talking about people that work potentially at the mall. She asked if that correct for a retail job. She was not questioning the type of person, but where she was going with this was she wanted to know a little bit more about the affordability of his units. If they are going to work in retail, or obviously they can also work in Downtown Charlottesville, but if they are working in retail there might be issues of affordability. She knows this is not the site design stage but she was just curious about what he had envisioned.

Mr. Shimp replied that they envisioned that. Obviously in the rezoning affordability is going to come up. They envision that being a big part of it. He thinks it has been identified by everybody that part of having a vibrant community is having these opportunities for people who can't afford the $500,000 homes that seem to be designed everywhere else around Albemarle County to go there and live. That is where density comes into play when you have an opportunity to increase the density they have an opportunity to increase the affordability. They don't have the numbers and he can't say what that percentage would be. However, they would be thinking about that during the rezoning in how they can match an appropriate percentage of the affordability to what is around us and how that relates with what the ultimate density should be.

Mr. Randolph asked how lofty will the lofts be. Mr. Shimp indicates that he will have 24 units per acre.

Mr. Shimp replied that 24 units per acre generally is a 3-story building with probably a parking structure underneath.

Mr. Randolph pointed out that sounds like a 4-story building.

Mr. Shimp replied not always to the base in the parking structure or the base in this situation. So it could be 40' to 45' tall.

Mr. Randolph asked if he was planning to put automobiles in the basement of an area where there could be a high water table.

Mr. Shimp replied that he was sure in the developable portion of this property, which is well above Moore's Creek, there is no high water. They might have rock or something like that. They are not going to have high ground water in those locations.

Mr. Randolph said Mr. Shimp submitted a letter today and distributed it to all members of the Planning Commission where he identified his project as being a small infill. Do you consider a total of 10.5 acres a small infill?

Mr. Shimp replied yes, relative to the Willoughby Neighborhood is a couple hundred acres adjacent to us and next to a 40 some acre shopping center. So in the grand scheme of things they are not big. Of course, they have to remember also that they have 10 acres, but not all of that land is really developable. There is floodplain and some slopes. This is not 10 acres of buildings wall to wall. There is going to be a large portion of open space and preserved area, and then some smaller acreage of developed area.

Mr. Randolph said he would like for him to drive down Cleveland Street, which is just going north on 5th Street and make a left. There is a new Habitat home that was just put in. It is infill development. He considered that small infill that is a single duplex residence. He would refer to that as small infill. Habitat refers to it as small infill. He would not consider 10.5 acres to be small infill. He would like to follow up on Ms. Firehock's question about affordability. He felt there was an affordability issue for minimum wage workers to be able to pay the rent.

Ms. Monteith said she had one question. He referred to the fact that the Commission probably has received many letters today. She had two questions around that, which is if they have engaged the surrounding community in

conversation at all. She did not know where he was in that process. Secondly, she asked what he thinks their concerns might be.

Mr. Shimp replied they are familiar with the surrounding community because of the work on the city side. They have not engaged on this specific portion of land. The concerns he hears are about the traffic on Harris Road. He was sure there were concerns about construction next to the creek. Those are reasonable and there are ways to mitigate those things. That is what the next part of the process is all about. If they go down that road they need to develop ways to mitigate those concerns. There are always going to be folks who don't want to see different sort of housing or higher density right next to them. They understand that, too, but at the same time back to Mr. Randolph's comment part of the reason housing is very expensive is because Charlottesville has a very high demand for it. They can't fix the many problems in this world about wage not rising adequately and things like that. But, they can all try to be part of the local economy here to improve that the best that we can. But, it is the increase in supply Increase in supply that is thought of in the sort of infill situation. They will give people opportunities better than they otherwise have. He had a couple of employees who choose not to have cars. They have a better quality of life living downtown.

Ms. Monteith asked if he was answering her question.

Mr. Shimp replied the first question was has he engaged the neighbors. The second question what might their concerns be. He thinks he had covered all of the ones he was aware of in going into the discussion about they are concerned about a different type of product or housing adjacent to theirs. He understands that concern, too. But, there is maybe a bigger picture in consideration of why they are proposing a higher density that they are.

There being no further questions, Mr. Morris invited public comment.

Mike Meintzschel, resident of Willoughby at 621 Harris Road for over 20 years, clarified briefly that the development on the city side of 6 acres originally what the developer proposed two years ago was four stories on top of a garage, a total of five stories. If you have not had a chance to see the clear cutting at the Fifth Street Station Mall they should go and look at it. It is a mixed blessing since the neighborhood does want closer shopping, but they have nearly alienated 55 acres. They have cut everything down. They also have to consider that directly upstream from the Fifth Street Station Mall next to the Holiday Inn the developer, Mr. Katurah Roell, is proposing a fast food drive in small retail type location. In doing so in filling in his land he has had to deal with or go through FEMA. Although he does not understand the process quite clearly he did get some of the documentation. In his FEMA report in a section called community reminders FEMA warns that future development of projects upstream could cause increased flood discharges which would cause increased flood hazards. A comprehensive restudy of your community's flood hazards would consider the cumulative effects of development on flood discharges. Willoughby subdivision of 238 homes is downstream of all this development. StreamWatch tests all the local streams, totaling 45, and Moore's Creek is the only one that has a designation of very poor quality. No other stream has that designation. So where they talked about that there is not life down there is because we have killed it off. Stream watch writes in their Executive Report, "...as expected, land-use and land cover correlates directly with stream health, and it appears that as little as 2% imperviousness can result in severe degradation of Rivanna streams." So in the past two years the Rivanna Water and Sewer Authority has spent over $450,000 to mitigate stream erosion because the sewer pipe that runs along Moore's Creek over 3 miles of it is slowly eroding into the creek. The banks are literally washing away. Where he thinks density is a viable thing, it makes sense and has been around for millennia he did not think this is the right location for it. (**Attachment C** – Letter to Planning Commission dated December 2, 2014 from Mike Meintzschel with attachments. Available in the office of the clerk with written minutes.)

Jeff Maurer, 100 Loma Lane, thanked the Commission for the opportunity to express his concerns about how increasing the population density of urban level could affect the safety of residents in the Willoughby neighborhoods, specifically those who bicycle either as commuters or for recreation. The entrance to the Willoughby Subdivision is very windy, which is more winding than the developers original plans admitted to. In addition to being windy it is also quite steep. If you take cars and bicycles on winding and steep roads they don't always mix very well. However, as it is right now there is essentially no traffic. Generally there is just one or two cars coming or going at a time. So they can easily see him when he is on his bicycle. If they don't see him there is plenty of room on the road for him to avoid being run over. Should this population density be approved and the

project go forward that is potentially hundreds more cars trying to access the developer's new project through the entrance to Willoughby. He feels that is hazardous for two reasons. One would be just increased traffic flow that would make it harder for drivers of the vehicles to see him on his bicycle. Second, as he understands it the developer is proposing fewer parking spaces than bedrooms. Most likely that would mean overflow parking right at the entrance to the subdivision on the windy steep part, which would make it harder or impossible for him to avoid the cars that don't see him. He thanked the Commission for their consideration.

Patrick Crusse, resident of Willoughby and Vice President of the Willoughby Properties Association, said he wanted to present the Commission with three items. He pointed out during the last week there has been a lot of talk. They have knocked on a lot of doors and gathered over 130 signatures opposing this item. He submitted a letter in opposition to proposing this adjustment dated November 26, 2014 from the Board of Directors of Willoughby Property Owners Association, Inc. signed by all Board members; a Petition to Reconfirm Designation of Parcel 076M2-00-00-06800 in Comprehensive Plan as "Neighborhood Density" and/or "Parks and Greenways" with over 130 signatures; and four letters in opposition from homeowners including Patrick Crusse, Patrick Healy, Marie-Christine Wright and Colleen Baber. (**Attachment D** – Includes four letters and petition that are available in the office of the clerk with written minutes.) There are probably more letters from homeowners, but he just wanted to pass this along.

Mr. Crusse noted there were about 20 people here tonight from our neighborhood speaking. That just scratches the surface. It affects a lot of people in our neighborhood. There are 240 houses that almost all would be affected by this proposal. So it is very important and he hopes the Commission will consider it carefully. He has been on the board for three years and a question was asked earlier if Mr. Woodard had approached our neighborhood about this topic. He could say on the three years he has been on the board the answer is no, not at all. It has been very difficult to be honest. They have had some great homeowners who have been very proactive in this, which is one of the only reasons they even catch things that are happening he feels behind our back. So it is very frustrating in that regard. Also, it is important to know that there are not only houses are affected but the homeowner's association owns about 56 or 57 acres of green space around the entire neighborhood, which borders especially this area in Albemarle County as well as the City parcel. Again, they have not been approached about any easements that would be necessary if that could happen.

Aurora Hutter, resident at 836 Harris Road, and member of the Willoughby Homeowners Association Board, said she would elaborate a bit on Mr. Crusse's comments. They did display the poor timing in between getting the notification of this session and the holiday being right there. Before this meeting they did engage in the petition with the homeowners. They did not hit everybody. So the 130 signatures is a gross underestimate she believes of the concerns of the community about this project. What she can say for her small part of it is she walked around for about 2 ½ hours on Sunday and spoke to about 30 households in that time and not a single household that she spoke to knew why she was knocking on their door, but more importantly not a single one declined to sign the petition. She cannot say every homeowner or renter in Willoughby is against this proposal, but she can say the trend certainly seems to be in favor of the neighborhood as a whole having serious concerns. She heard a lot of stories from a lot of homeowners who have been through this process previously. She has only lived in the neighborhood for 2 ½ years and she missed the last round of deliberations surrounding this. However, she heard a lot of concern over amount of public comment and concern that was brought about back then and the fact that now this seems to be coming up in a less transparent way. She just wanted to share that this was a much wider concern than what is represented here tonight.

Logan McKinley, resident of 106 Leigh Place, said his property directly borders the property they are talking about. He was going to talk a little bit about our neighborhood and what drew him to want to move here close to 8 years ago. It really is that the neighborhood is a true neighborhood in the sense that they have mature trees, a mix of people and building styles. They have single family homes and duplexes. While he believes in infill and he does support development he thinks that the property next to Willoughby that they are talking about tonight should be developed in what it was proposed, which was 3 to 6 homes per acre. It would be similar to what Willoughby is. Another thing that is important is to think about this property not just about what is in the county but the entire property that is in the city and county. There are 3 different properties that equal a little over 10 acres. The entrance on Harris is a big concern. That is really what got us interested in this development to begin with. The way that entrance hits Harris Road is at an S curve going uphill. The idea of hundreds of cars going through that simply would not work. That is why the city denied it. As far as he knows the city has denied it twice. People can appeal

an appeal and that does not mean that something has changed for it to be approved. He would ask that the county continue to work with the city and really understand what this development is going to be before they approve or change the recommendation that was developed over 3 years making the Comprehensive Plan. He did not understand what has changed that would cause it to change at this tenth hour. He understands the chicken before the egg, but he thinks exactly opposite. He thinks they need to see why they are changing the zoning before they do that change. In his view it is only prudent to understand what is happening with this land before they make the change. Once they make the change then the developer can say well this is the change that you recommended so they are just trying to fulfill what they recommended. He was worried about getting that cart before the horse. He would ask the Commission to deny the change and leave it at the 3 to 6 acres per acre.

Hunter Sisser said he was probably one of the newest residents in Willoughby. He said a lot of good points had been made by the other residents and some excellent questions asked. His biggest concern is the lack of answers he hears from the person who is going to design the project. When he stepped outside his home he could see the beautiful mountains. He would oppose seeing a high rise. He did not know why they would grant unlimited ability to build without definite plans or options and just tell him that they could get it done. It is not acceptable. There are a lot of people in Willoughby in opposition to the proposal that could not be here tonight. He wanted to speak up for them on that part. The safety and traffic issue is his main concern. He did not think the parking will not take care of itself. He has never once known someone that never had guests over. He thought there was not enough parking available in the neighborhood. There would be cars parked everywhere, creating a congestion problem.

Anne Undberg had left the meeting and did not speak.

Patrick Healy, resident of 641 Harris Road, said he was going to speak to process but in the interest of undoing redundancy. Staff pointed out this request is not well timed and is out of sequence. Staff also recommended rejection, and he supports both of those. He pointed out this was a very late request and that he believes it should be rejected. He noted this connection to Harris is a very narrow one that the developer has. His understanding had been that it is certainly suitable for the one dwelling that is back in there now as entrance to Harris. It is probably suitable for the residential zoning. However, it is absolutely unsuitable for the request building. He suggested the developer can clear that up. He noticed on staff's earlier report that at one point there was about 6 or 7 bullet points about the arts community about how it could work in a rural area. He was reading those and there were things like compatibility with what is there and demands on service. In thinking of that development and going down the list of bullet points he would say no, no, and no. In terms of compatibility he thinks most of the people who are in the room tonight will tell you it is not.

Joan Albiston, resident of 921 Royer Drive in Willoughby, said she has lived directly adjacent to Moore's Creek either in Fryers Spring or Willoughby for 20 years. She is a landscape architect and has worked with developers on multi-family sites. She has completed site grading plans. She has worked with the City of Charlottesville on stabilization of Moore's Creek in Azalea Park. She is not in favor of changing the designation of the parcel in question. She thinks that the site is too steep. It is currently stabilized by vegetation that would be severely compromised and it drains into an already threatened stream. She did not think that density of development in excess of the current designation of 3 to 6 units per acre or Parks and Greenway is appropriate for this particular site. Too much of the site is defined as critical slope that will need to be disturbed in order to support development greater than 3 to 6 units per acre. As an example, she has copies of a partial plan showing critical slopes for both the city and county parcels owned by Mr. Woodard. She is also providing to the Commission as an example of density at nearly 9 units per acre the development that was proposed for the site by Mr. Woodard in 2011. That will give them an idea of what it would look like at 9 units per unit much less at 24 units. The county staff comments related to the 2011 plan, which she has included in the packet; state that the proposed grading and limits of construction are less than may be expected to occur for similar projects so more disturbance than proposed would likely occur. Even with the perhaps unrealistic amount of proposed grading and disturbance County Engineer, Glen Brooks, sent a memorandum regarding a related critical slopes waiver request. He estimated that of the roughly 34 percent of the site that is defined as critical slope 50 percent would be disturbed. That percentage does not account for the adjacent slopes that may be just slightly less than the 25 percent slope that defines the slope as critical. Please do not allow further degradation of the land overlooking Moore's Creek that would be already permitted by the designation of Neighborhood Density of 3 to 6 units per acre or Parks and Greenway. The Comprehensive Plan needs to balance the development of walkable communities with protection of our county's environment. (**Attachment B** – Letter

from Joan Albiston dated November 26, 2014 to Department of Community Development Attn: Wayne Cilimberg in reference to Planning Commission review of Comprehensive Plan Amendment for parcel 076M2-00-00-06800)

Beth Owen, a 20 year resident of Willoughby, asked to make a quick comment about aesthetics. She has lived on a beautiful street and had a gorgeous back yard for 20 years that is now gone. She had taken her boys in the back and hunted tadpoles and all such things. However, it is gone. She liked the idea of the Chianti bottle since she was a visual person. She would like for the ladies to think of this spot as a size 8. Our individual here is asking to put a size 16 figure in a size 8 dress. That is uncomfortable and unattractive. For gentleman they are asking us to put a size 18 into a 15 ½ skirt size. It is uncomfortable and unsightly, please do not approve.

Clair McKinley, resident of Willoughby, said her backyard would directly see all of this. The only think she wanted to point out is they are saying that there are not a lot of dense apartments or dense living in the vicinity of the 5th Street Station. But, they also have to look at the city. None of that was included. There is the Brookwood and the Willoughby Towns, which is right across the street. Those are denser. So it is not that it does not exist. It may not exist right now in the county right there. But, it does exist. She urged the Commission to keep it at the 3 to 6 units per acre as was already decided.

Mr. Owen, resident of 919 Royer Drive, said his wife just spoke. He just wanted to mention that the proposal reminds him a little of when he was 7 years old and his mother use to put a big lemon meringue pie on the table. Then she would put liver in front of us and said if you want that you have to eat this. No matter what kind of argument we would give, they could not short change the process. He kind of sees the same parallel here a little bit. It is the desire to have something here before going through the hard work in making it and to answering all the questions that have been so beautifully raised. He commented that as a former school principle he always keeps an eye out on school children and the school buses. He would be absolutely horrified to think if this were passed the impact that would have not only on our own children but also on children from the rest of the county and the city as they are transported back and forth on their school buses. He would strongly recommend not approving the request.

Bill Baron, resident of 103 Leigh Place, said that his property had a direct line of sight to what is being proposed much like Claire who is his neighbor. He wanted to reiterate what a lot of people have already said about the traffic and the danger of the access to Harris Road. It is extremely twisty and steep. Any time there is winter weather like what they have been seeing now it is just a mess. They already have roughly 500 cars coming in and out of our neighborhood. They are looking to add another possibly 250 units on that road, which would be roughly 750 cars if there were 3 people living in each these units. As a man who has 2 extremely young children, the last thing he needs is up to 700 new cars driving through his neighborhood with the potential of running over his children. He was very concerned with the extremely narrow road and the entrance point at Harris that they have all been talking about.

There being no further public comment, Mr. Morris closed the public hearing and bring it back to the Planning Commission for discussion. Mr. Morris invited Mr. Shimp for a five minute rebuttal.

Mr. Shimp noted there was one thing that he had heard a lot about. He thought the Commission was aware of this, but maybe some of the neighbors are not, that if this comprehensive plan change is made they are not guaranteed given free run to anybody. The analogy about putting the liver in front of the pie, if that was the hurdle to get the comprehensive plan designation changed they would eat it all day. They have to practically build the kitchen to make the pie to go through all of the rezoning steps that are required. There are many, many parts to this. Everyone listening should be aware that this is only the first step. This is a work session and if they can afford this there would be a public hearing and then another public hearing with the Board of Supervisors minimally and perhaps more. So this is not something that is going to be fly by night that they are approved and are going to build a 5 story building the next day. No, that is not even close. They would have years and years of work before they got that to make sure that they have looked at all these issues and mitigated them before moving forward. He just wanted to make sure the neighbors were aware of that. One individual asked him what has changed about this. He thinks the big thing that has changed is the Wegman's at 5th Street Station. That and the alignment of the Bent Creek Road had opened up these possibilities for a different form of development on this parcel that never existed before. That is the change and it is catching up at this time with the process. The Board of Supervisors thought it was reasonable to consider it at this time. That is why they are here. So they don't think it has slipped in or anything like that. It has been discussed and people think it is a reasonable idea. Now they need to weigh out all the issues.

Mr. Shimp said he wanted to make clear that the density and land disturbance are not necessarily related. There is a buildable portion of this property. It is going to get built upon at 3 to 6 units an acre or 6 to 34 units an acre. The question is about the form of development, the affordability, and the type of product. If it is a concern about will a higher density cause more intense clearing of land and cutting of more trees, they don't see that as the case. It will be the same either way. The question is what will be the end result as far as type of housing product. Ms. Albiston made a comment about mirroring the walkable communities and the environmental aspects of it. They agree with that. That is what the next process is for is figuring out how to balance on a complicated site like this a place for more than 20 homes to have that opportunity. That is the whole point of this infill project in figuring out how to balance those things. What they know is if it is left as 3 to 6 units per acre that is never going to come about. If it is brought up to the 6 to 34 units per acre, then if they can clear all of these hurdles, work out designs and layouts that address the interface between the lower density development and the higher density development, then it could happen. But, if they can't then maybe nothing happens or maybe it ends up being that lower density if those things cannot be addressed. But, what they are trying to accomplish here is not permission to go bang and start building tomorrow high rise buildings. It is permission to spend some money in solving these questions and moving forward if they can find the right solution. So he thinks that is his summary and he would be happy to answer questions.

Mr. Morris invited questions.

Mr. Loach asked why he didn't start out with a dialogue with the community and at least define what the issues were and how he would address them. The reason the community is so upset is because they feel that they have been bypassing the process and he shows up here and asks the Commission a question of can he go from 6 to 34 units per acre. He did not think that was the ideal way to start off a project.

Mr. Shimp said that is probably a fair critique.

Mr. Loach said he could not have thought that he was going to come in proposing a project with these densities and not have a reaction that he is having.

Mr. Shimp replied he thinks that anytime you are in a development situation with a big project, like North Pointe or even a small project, you are going to have a reaction to that change certainly. Frankly, most often it is not positive. That is part of the business and part of the challenge of developing parcels like this that are in existing neighborhoods that have been there so long. So yes, do they need to engage them better, he would say yes. He said if they continue along he was sure they would step up that effort. There will be plenty of opportunity moving forward, of course, for the public to have interactions with them and the Commission.

Mr. Lafferty said he was curious why they took it before the Board of Supervisors first.

Mr. Shimp replied that he thought it was a timing issue. There was a discussion going on about this and the owner happened to be going by the meeting and sort of understood that the issue perhaps and said he told them he had a different idea of this property and asked the Board what they think. That is how it transpired to the submitting this CPA. If the Board had said don't consider it, and then they could not have. That is how it came to be.

Mr. Lafferty noted it appears to be rushing it.

Mr. Shimp replied this is the start of a process that could take 3 or 4 years. They would not want to delay another 3 to 4 years to start the CPA. The CPA was being discussed now and he thinks that was a thought to include this to the conversation.

Mr. Lafferty said it certainly was his right to go to the Board first, but the Commission would want to have a say in it first.

Mr. Shimp pointed out the thought was not to say ignore these guys down here, but should they or not have this discussion. They have 2 or 3 more meetings with the Planning Commission before they go further on if they do.

There being no further questions, Mr. Morris invited discussion.

Mr. Lafferty said he did not think he had enough information to make a decision. He knows there are some critical slopes there, but he does not know where the roads or buildings are going to be.

Mr. Loach said the problem is should they allow higher density for infill. The answer to that is most assuredly yes they should where it is appropriate. But, even if he said to the applicant yes, he thinks that infill density is good and he thinks at higher density it is good because it is consistent with the comprehensive plan, he would be giving him no answer because it would be meaningless in the light of what they know about the project. It is a nebulous question that they can give no answer to.

Mr. Morris said that he had visited the site and their beautiful community. However, he is glad they have to drive that road and not me because the site differential is poor at best. The transportation issues bother him and he thinks are going to be a real challenge for them. Also, the critical slopes and so on are going to be a real problem. Like Mr. Lafferty, he is not quite sure what the concept is. He knows they are not in the site plan business at this particular time. However, he was not sure from what he saw from both sides of the creek how they are going to get that many units on those properties. That is just a concern he is sharing.

Mr. Randolph noted unless they go vertical he thinks there is lots of homework to be done. At the end of the day even after all of the homework is done and Mr. Shimp comes back to the Commission, he thinks they are still going to have some issues. What is being proposed on the site is perhaps incompatible based on the slopes of the site. The only way to get into the site is off of Harris Road, which is less than acceptable from a public safety standpoint. He thinks the applicant has a challenging proposition. However, he did not think he made it any easier for himself. The fact is that he is their local Planning Commissioner and Mr. Shimp never came to him with this. Mr. Randolph has gotten other recommendations and other developers have come to him and he has a chance to walk the site with him, talk about it and urge them to meet with the neighbors first and foremost. He could have really helped him here. When he saw what was proposed he was flabbergasted. The fact is they have stream protection issues. He did not see any proposal here to enhance Moore's Creek. If they are going to be that close to Moore's Creek he would need to hear how he was going to sweeten Moore's Creek from an environmental standpoint so that there is a benefit that he is providing. Across Moore's Creek they have a property owner who has tried to improve and enhance Moore's Creek. However, he has not heard anything from him today that indicates a commitment on that. That was number one. Number two, he is proposing much higher density than seems reasonable, feasible, appropriate and necessary. Whether he can get 3 to 6 units per acre in there he thinks is anybody's guess. He would have to see the actual plan, given the slopes. He thinks it is challenging at 3 to 6 units per acres. If Mr. Shimp was asking for even higher density he thinks they are reaching for the moon.

Mr. Randolph pointed out Mr. Shimp has not worked with the neighbors. He would need to see alternative road junctions with Harris. If this is the only way, he really has a problem based on the way he has the road currently configured. Looking at the slopes here he is going uphill on part of that, which comes back to the point made by Mr. Owen when he talked about school buses on a steep slope. That slope is steep and the road will rise very quickly, making a concern for public safety on that bus particularly with winter weather. Mr. Randolph has not seen any attempt here to differentiate between "managed and protected slopes." That is something that is important to the Planning Commission and Mr. Shimp has not identified it. On the map provided by one of the residents it shows us where the critical slopes are. But, they don't know which of these are managed. He assumed that most of these are protected. So they would be asked to waive our protection of slopes in this case. He thinks there is a lot more homework that needs to be done. But, even when Mr. Shimp comes back and all the homework is completed Mr. Randolph was not convinced. Mr. Shimp has a project that is going to be feasible on the site. He just has to tell him honestly what he sees here.

Mr. Dotson noted he had a process question. He sees option 4 on the screen and was wondering if there was a 4a or a 5, which would substitute defer for deny. He says that because as he understands it an application has been filed and the fee has been paid for a comprehensive plan amendment. In a sense they owe the applicant an official public hearing and an official action based on filing that application.

Ms. Echols replied that she did not believe they do. She thinks it is the Commission's option to decide whether or not they are going to move it forward. So they do have an option there.

Mr. Dotson said in any case an option would be to defer. Now perhaps that is futile as Commissioner Randolph indicates there are so many issues that can't be resolved. However, that at least leaves it to the developer to do the best he can.

Mr. Morris agreed that was a good point.

Mr. Keller agreed that Mr. Loach had summed it up correctly and was inclined towards high density infill. However, he thinks there are so many issues with this particular project that he can't see that it warrants a rezoning.

Mr. Firehock said she has listened to all of the perspectives here tonight. She has also done other research such as reading the report for Moore's Creek, which is an impaired watershed and has cleanup plans. As she looks at the requirement for the clean-up plan this does not advance us towards those goals. It takes us backward. The developer said in his rebuttal points that the multiple family units would have the same impact as 3 to 6 units per acre. She can't subscribe to that. Perhaps he could build one single super story building with 50 stories and then it would only have a small footprint. It just does not pass the credibility test in terms of impacts to the stream, the steep slopes, the access and the safety. There are so many issues that she did not think this is an appropriate place for high density infill development. While she is a huge fan of infill, workforce housing and affordable housing she cannot support this request for this particular location. She thinks the zoning that is currently in place is appropriate and she did not see any reason to amend the comp plan. She also thinks it is pretty late in the game for this to be coming forward. She thinks things are happening in the wrong order since this Planning Commission has made that clear that they want the neighborhood consulted before people come before us. That is in the public record.

Ms. Monteith noted she has already made her comments.

Mr. Morris asked if they were ready to look at the options and if there were any recommendations. He asked if the applicant wanted to request deferral as Mr. Dotson suggested.

Mr. Shimp said he would take some offense by some of the comments that were made. However, he would not get to that now. He pointed out they are thinking about this in terms of a CPA and the checklist required to submit for the CPA is not the same. There is no box on the checklist for how you address the problems at Moore's Creek. However, does that need to be dealt with on this property? He agreed it does, but they were not aware that now was the time. They would partly prefer an opportunity for deferral if they can at least look at all of the things that were said and see how many of those things reflect what they can tackle If they can't tackle them, then they can just drop it. If they can tackle them in some fashion, then they can proceed on. He thinks a lot of this information about the scope of the request here, such as grading plans and things like that, is well beyond what they would ever have expected for a CPA discussion. They certainly appreciate the opportunity to have a little bit more time to get to those things. However, he would just kick it out now.

Mr. Morris asked if he was asking for a deferral.

Mr. Shimp replied yes, they would be happy to defer if that is something the Commission will grant.

Mr. Dotson asked staff to put option 4 back on the screen. He asked if that was the option taken would this be the end of the request or would this be a recommendation to the Board. He asked what that recommendation would mean if they chose that.

Ms. Echols replied it would put the ball back in the court of the applicant. They would be reporting to the Board of Supervisors on the status of this request at this time.

Mr. Loach asked if that was equivalent to deferral.

Mr. Cilimberg pointed out the reason this is coming as it is and fairly quickly is the Board was asked to consider this as part of their review of the comprehensive plan land use. The Board is on a timeline that staff hopes will have them acting on that comprehensive plan in the spring. Our actual timeline he believes is to complete our work with the Board finishing their draft plan to take to public hearing in February. The request of the Board for this review by the Planning Commission was in order to have some recommendation as to what they might do with the land use for

this particular proposal as part of their review. He thinks the effect of deferring from our perspective would be to tell the Board that the Commission felt like it was not in a position to make a recommendation. That means it would then be dealt with outside of this comprehensive plan process. So he was just noting that because defer or deny the applicant still has the opportunity to continue working with the Commission in asking for a comp plan change, but it won't be something they would be recommending to the Board to be a part of the comprehensive plan that they have under review. It would be post comprehensive plan in which that would be considered.

Mr. Randolph noted that was very helpful.

Ms. Firehock commented that she was a planner and designer and does subscribe to the Miracle of Good Design, but the things that she has heard here tonight do not convince her that just through some better engineering and maybe some stream restoration that all of these hurdles can be overcome with access, safety, slopes impact, etc. So she was at option 2 deny the request to adopt a resolution of intent to change the land use designation. At this point for this site she would certainly agree if everyone wants to defer this, but it seems like it is out of synch with the update of the comprehensive plan

Mr. Cilimberg said he thinks if the Planning Commission simply feels that it is a no go because of the factors that they have heard then simply denying the resolution of intent is certainly appropriate. If they feel like they are just not in a place where they can decide that, then option 4 was our way of suggesting to them that the resolution not be adopted now and the applicant then has the chance to come back. However, the Commission may feel like it is a no go. He was talking about process.

Ms. Firehock noted she just wanted to make clear that she did not need more information.

Mr. Morris noted that there had been a request for deferral by Mr. Shimp for the applicant. He asked for a motion.

Motion: Mr. Dotson moved and Mr. Morris seconded to grant the applicant's request for a deferral.

The motion was denied by a (2:5) vote. (Dotson, Morris - aye) (Keller, Randolph, Firehock, Loach, and Lafferty – nay)

Mr. Morris noted the motion for deferral was denied. He asked if there is any other proposal.

Motion: Mr. Randolph moved and Ms. Firehock seconded to propose option 2 to deny the request to adopt the resolution of intent to change the land use designation.

The motion was approved by 7:0.

Mr. Morris noted by unanimous vote the Commission was selecting option #2 to deny the request to adopt the resolution of intent to change the land use designation.

Mr. Cilimberg noted for clarification because they have to go back to the Board and report to them on the Commission's review that staff are assuming the basis for the Commission's denial of the resolution is they are feeling that the request for the density change was not appropriate in this location.

Mr. Morris replied that was correct and also for all the other reasons that were stated.

Mr. Cilimberg noted they would have the minutes.

The Planning Commission recessed at 8:53 p.m. and the meeting reconvened at 9:01 pm.

ZTA-2014-00004 Wireless Phase 2 –
This work session is to further discuss proposed amendment of the Zoning Ordinance regarding the requirement that Personal Wireless Service Facilities obtain a Certificate of Appropriateness from the Architectural Review Board. The Board of Supervisors has asked for clarification of the Planning Commission's previous recommendation to retain the requirement for a Certificate of Appropriateness. (Bill Fritz)

Bill Fritz presented a PowerPoint Presentation on ZTA 2014-04, Personal Wireless Service Facilities Phase 2 to summarize and explain the changes in the proposed ordinance, as follows.

☐ **Modification of submittal requirements and how tree information is submitted.**

- The Planning Commission recommended approval of the tree information and the Board of Supervisors requested that staff provide alternative standards and bring them back to the Board. The Board was not comfortable with staff later developing the standard.

☐ **Provision to allow the requirement of photo simulations.**

- The Planning Commission recommended approval of photo simulations and the Board of Supervisors supported this change.

☐ **Modification of the applicability of critical slope regulations: Allow the tower to be on critical slopes without needing a waiver or modification, and applying critical slopes provisions to the access road.**

- The Planning Commission recommended evaluation of the critical slopes provisions for the tower. The Board of Supervisors discussed it and declined to pursue this amendment.

- The Planning Commission recommended approval of applying critical slopes provisions to the access road. Currently the road is exempt. The Board of Supervisors supported this change.

☐ **Modification of the methods of determining setback.**

- The Planning Commission recommended more evaluation of the methods to reduce the setback for the tower. There was some discussion about getting a letter of authorization. The Board of Supervisors will not pursue this amendment.

- The Planning Commission recommended approval of the modification for location of the base station equipment to allow it to be closer than the height of the tower. The Board of Supervisors will not pursue this amendment.

☐ **Inclusion of provisions for temporary facilities.**

- The Planning Commission recommended approval of temporary facilities and the Board of Supervisors supported this change.

☐ ***Removal of the requirement for a Certificate of Appropriateness.***

- The Planning Commission recommended denial. The Board of Supervisors has requested additional comment from the Planning Commission. There was not a lot of discussion and the Board wanted some more understanding of where the Planning Commission is coming from.

- The Board of Supervisors previously authorized the ARB to establish criteria for a County Wide Certificate of Appropriateness.

- On November 17 the ARB endorsed amending the proposed amendment to eliminate the need for a Certificate of Appropriateness.

With the direction of the Board of Supervisors staff went back to the Architectural Review Board (ARB) to basically start over again. Staff brought this issue before the ARB for their comments and is now bringing this to the Planning Commission. During the ARB's review they were concerned about how that tree information would be provided on the application. That was important to them in their determination of whether or not a certificate of appropriateness should be required. Staff developed language that satisfied the ARB's concern, which staff thinks

will also address the Board's concern. The ARB supported the proposed amendment to eliminate the need for a certificate of appropriateness. It is important to clarify that removal of the need for a certificate of appropriateness does not mean the ARB staff will be removed from the review process. The ARB will continue to be part of the review process and impacts on the entrance corridor will still be evaluated by staff.

In essence what this does is the applicant only has to provide height information for those trees that the height is relevant for the ones used for the reference tree and the ones to provide screening. Otherwise, they just have to provide the location and caliper.

Proposed submittal requirement:

- ☐ (f) Trees. The height, caliper and species of all trees where the dripline is located within fifty (50) feet of the facility. The height, caliper and species of any tree that the applicant is relying on to provide that are relied upon to establish the proposed height or screening, or both, of the monopole or tower. The height, caliper and species of the reference tree. The caliper and species of aAll trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted, regardless of their distances to the facility.

Discussion:

- ☐ With the additional ordinance language and recommendation by the ARB can the Commission support the proposed amendment to eliminate the need for a Certificate of Appropriateness.
- ☐ If the Commission cannot support the proposed amendment to eliminate the need for a Certificate of Appropriateness they should provide comments on why they do not.

Mr. Morris invited questions for staff.

Mr. Randolph commended staff for going back to the ARB and letting them do their due diligence on this issue. He thinks it is a stronger recommendation now as a result of that. Certainly what the ARB has recommended in terms of changes on the tree section seems to be appropriate. Therefore, he does not have any difficulty now going along with the certificate of appropriateness as indicated here.

There being no further questions for staff, Mr. Morris opened the work session for public comment.

Valerie Long, representative for several clients in the wireless industry, asked staff to put the new text back up on the screen. Having discussed this language with Mr. Fritz previously she had one comment. She thought generally the concept is helpful as discussed during the Board of Supervisors work session about what the county should require in terms of submittal from the applicants. She thinks staff originally proposed saying they don't need to show any tree other than the reference tree. Some Board members were nervous about that to mean that more was necessary. Afterwards she talked to Mr. Fritz who was very receptive to our input in terms of their comment that actually they don't mind showing additional tree locations and heights. They do not want to have to show the height of every single tree because the surveying process is time consuming and expensive. However, it does help them to identify the heights of certain trees which will be relied on for screening. Therefore, she thought this language was very helpful since it helps both staff and the applicants to have the zoning drawings showing where the trees are and the heights of the most important trees. However, her only hesitation and concern is with the last sentence which requires the caliper and species of all trees that are being removed to be shown regardless of how far away they are from the facility. She did not think that was the intent. However, what she thinks that would ultimately mean is, for example, that in some circumstances if there is not an existing access road they have to create an access road. They have to clear trees to create an access road and some of the best sites are those that are located within dense woods. Sometimes they get the benefit of an old logging road that makes an access road. Sometimes they have to make a new access road, which requires tree removal. What they don't want to have to do is pay a surveyor to go out and identify the caliper and species of every single tree along a one-half mile access road that they might have to build. What they would like to be able to do is just identify the boundaries of the access road, which is already a requirement, and just note trees within this area to be removed. Sometimes the tree removal goes a little bit beyond it. They might have a 12' access road, but a 20' easement. So they are saying they will show the area where the trees are coming out, but they would ask that it be clear that they don't have to specifically identify the location of each and every tree that are within that new access road. She did not think that was the intent. If it

was, they would have concerns about it. However, she thinks that just some clarifying language would be helpful. Otherwise, they support this and would be happy to talk about the ARB issues specifically if they are interested.

Mr. Morris invited questions for Ms. Long.

Ms. Firehock pointed out since she was not involved with the original conversations she could not reflect on what the Commission thought before or why this is the way that it is. She sympathized with Ms. Long's desire not to survey every single tree's height and caliper along the roadway and suggested just specifying the area of canopy to be removed. They could do percent canopy. Since they have one meter resolution imagery available for the county it is fairly easy to say the amount of canopy that will be removed within the disturbance area is 30 percent. So they would not be identifying trees, but just identifying the area of canopy to be removed.

Ms. Long agreed that might work. She pointed out right now on all our zoning plans they have a survey and what essentially is a site plan showing the lease area with the location of the tower, reference tree and access road. She proposed they could have a little note saying any trees within the proposed access road to be removed. That way it is clear in disclosing.

Ms. Firehock said it was 100 percent of the trees within this zone are removed.

Ms. Long pointed out for an access road they must have clearance to get through. She noted a lot of it is for the initial construction. The maintenance vehicles come on average about once a month. They usually use a small vehicle like a pickup truck. However, the initial construction of the site does require heavy equipment and that is why it has got to be almost a road to get in there in order to actually construct the site. If there are trees in the way it makes it hard. If those trees are far away from the facility they are not being relied upon for screening of the facility. The reason to identify the species, caliper and in some cases height of the trees is so that in the future people can look at the plan and say okay there were supposed to be four trees right here that were going to help screen this pole and now there are only two and somebody has done something wrong. That was essentially the context of the Board.

Ms. Firehock said she understands the intent. They want to know the species because some trees are short lived, some trees get diseases and die and some trees are not good for screening. She would be supportive of Ms. Long's request to not have to identify all of the trees that would be within the road. The language is somewhat broad in terms of saying adversely impacted. Therefore, she was not sure to what area was for that. She understands the road, but she does not know what else would be impacted.

Ms. Long pointed out she was going to say something like you only have to identify the trees that are to be removed if they are within 50 feet of the facility. She thought that would probably be okay.

Mr. Randolph asked to provide some language to try to address this problem. He suggested saying that the caliper and species of all trees immediately adjacent to the proposed tower, power shed and its intermediate surroundings which will be adversely impacted or removed during installation or maintenance of the facility should be noted regardless of their distances to the facility. He was concerned that once they put a distance on there they are going to have a situation where because of the slope or something that the distance is not going to be easy to implement. He was trying to keep it broad. However, in the spirit of understanding Ms. Long's point he does not think the ARB meant that this would be so broadly applied that it would also govern from the road going in. As was pointed out they recognize that in some cases it could be a very lengthy windy road. He thinks what Ms. Long is getting at is they should only identify those trees intermediately where the construction will be done for the operating facility, the tower, the power shed and any other ancillary structures that goes in. He asked if that was her intent.

Ms. Long replied that it is, although she should clarify one other thing that maybe would even take this broader. There is also a provision in the ordinance that in essence says neither landowners nor wireless carriers restrict the ability to remove any trees within 200' of the facility.

Mr. Fritz pointed out there were some important things that he thinks are being missed here, and to touch on this it is 200' from the tower. The facility is an important distinction because when they started developing the Wireless Policy they view these as facilities from the entrance off the public street to the top of the lightning rod. That is how

staff reviews them. The tower may be perfectly sited, but if the access road is going to be adverse that is part of the facility and staff reviews that. It is important to note that the last sentence currently reads, "All towers that will be adversely impacted or removed during installation or maintenance of the facility shall be noted regardless of their distance to the facility." The only new language there was intended to say how you show those and it is the caliper and species. Right now you have to show them all. That is not new language. The only part that is new is the method by which you show them, which is the caliper and species. He suggested what they could do is simply say remove the caliper and species and simply leave it the way it is where it says all. The Board did not express any interest in lowering the level of information that is received about the trees that are going to be removed. The Board was more concerned about how the information was going to be shown as to what trees were actually on the site. There was no conversation about that last sentence. That was something staff added to try to clarify. Staff would not have a problem and he did not think it affects the ARB either if that last addition the caliper and species of all is removed. They could simply keep the last sentence the way it currently reads.

Mr. Loach said he thought Mr. Fritz clarified it. However, when they identify a road and if that is a negative it is usually not because of the trees they are removing. It is usually because of the topography and other reasons that the road becomes problematic.

Mr. Fritz pointed out they have had someone in particular many years ago where one of the factors that they cited for denial was the visual impact created by the access road. It was going to have to be a winding road with switchbacks going up a mountain, and because of the clearing it was going to be highly visible along with the tower itself.

Mr. Loach noted that it was not because of the caliper or the species.

Mr. Fritz agreed because it was just the area that was being cleared.

Ms. Firehock pointed out that was a helpful question. She was wondering at what point the caliper and species would lead to the denial of something.

Mr. Fritz replied that staff could find that out just by visiting the site. Removing that last sentence was simply trying to clarify how the information is submitted. By removing it and leaving it to say all trees does not add or remove any problems with this.

Ms. Firehock said, for example, if there was a champion Beech tree they would still look at that or they would not know now.

Mr. Fritz pointed out staff goes out and field visits every single site. Staff still is of the opinion that this information is more than what staff needs to adequately review the site.

Mr. Dotson asked Ms. Long if her concerns have been satisfied if the existing language was used.

Ms. Long replied that first she would apologize because Mr. Fritz was exactly right. That last sentence is in the existing ordinance and she was not thinking about that. She was just thinking about the fact that they have had this in several cases where they have had to spend an inordinate amount of money on 5 to 10 extra hours of surveyor time to identify trees to be removed from a road. As Mr. Fritz said it was not really necessary for the review. So they were hoping they could avoid that. However, he is correct in that request is beyond the scope of what the Board really was getting into. Therefore, she would retract that request. However, she would ask that they keep that in mind in terms of maybe they could provide comment to the Board about whether they think a change like that would be appropriate for them to consider. That would be helpful. However, Mr. Fritz is absolutely correct that the context of the issue was about how much information really needs to be included on these plans. Staff's point was they don't rely only on what is on the picture to know whether this a good site or not since staff goes out and looks at it. Sometimes there is a tree that maybe on paper does not look that important, but when they go out to the site they realize that one tree is critical. Sometimes it is the opposite. They might have a big tree, but they realize because of vantage points, relative location of tree to roads and other things that it isn't as important. There is never any substitute for viewing it in person. However, what is important was the ability for identification purposes almost more as a record of knowing what did the applicant tell us was going to be there at the end of the day after

the site was built. They said there was going to be five trees at X height and X species and zoning inspectors and others want to know when they go out there later that those five trees are still there if they were promised. If they are not, then there is a problem. That was our same point, too, that they actually rely on that same information for the same reasons. They want to be able to hold contractors accountable. When they tell them not touch these protected trees they use these plans with contractors as well. So it was not a burden on us to show that information. However, it just made her realize that trees in the road were another issue. Again, she would pull back on that issue because she thinks that does get beyond the scope of tonight's meeting. She apologized for the confusion, but appreciates the opportunity to have the discussion.

Mr. Fritz asked what the consensus of the Planning Commission was for the proposal. The question is does the Commission support the proposed amendment to eliminate the need for a certificate of appropriateness.

Mr. Morris asked for a straw poll. He noted the Commission's consensus was to support the proposed amendment to eliminate the need for a Certificate of Appropriateness as recommended by staff.

Mr. Fritz noted that staff would so inform the Board of Supervisors.

ZTA-2014-XXXX FCC Mandated Revisions to Wireless Regulations
Discussion of methods to implement mandated revisions and adoption of Resolution of Intent. (Bill Fritz)

Mr. Fritz Bill noted the purpose of all the information was really to start us to understand what the impacts of these regulations are. They are still in the learning stages about what these are. Sarah Baldwin and he have been doing a lot of work on this and believe they probably are as far ahead if not farther ahead than any jurisdiction in the country right now on understanding this. Just today they asked a question of the FCC, which he thinks stumped them. So the FCC does not know the answer so they are still trying to learn. The reason staff is bringing this to the Planning Commission now is the way that these rules will go into effect. The rules will go in effect 90 days after it is published. However, it still has not been published. Staff is expecting it to be published in the next two weeks, which was what the FCC told us today, which means they have to start working on this. The information provided is what staff thinks right now are the impacts. But, all staff is asking for today is the resolution of intent so they can start the advertising process and move it all forward. He was happy to talk to the Commission about what staff thinks the issue is.

Mr. Morris invited questions for staff.

Mr. Randolph said he understands the reason for the change in the design standards in essence here, but he does not understand going from 90 days on the shot clock down to 60 days. He asked the logic in shrinking the shot clock from 90 days to 60 days when the feds have specified 90.

Mr. Fritz replied no, that is the new regulation. The new regulation is if you are not a substantial change they only have 60 days. So there will be three shot clocks of 60 days, 90 days and 150 days. The 150 day shot clock is new construction.

Mr. Keller asked when Ms. Long came to the Commission awhile back with the tilted additions to the towers is this in effect saying that those tilted additions are going to be by-right.

Mr. Fritz replied based on his understanding right now if the application was approved with conditions that are specific as to antenna design, mounting standards and heights that those conditions are intended to be a method of minimizing the impact of the facility. In other words it is a concealment technique and they would not be able to do that if it violated the original conditions. That is where they think they are with this. So if they have an application that is prior to the mid to late 1990's where they did not have conditions like that, yes, they would be able to do additions to the towers that were 20' off. It is in the staff report. But, if they had something from the late 1990's to about 2004 most but not all of those are probably going to have some sort of condition that is getting towards minimizing the visual impact concealment. Therefore, they would not be able to do a down tilt because it does not meet our design standards. It would not meet that. Most everything after 2004, especially for the Tier II, is going to have very specific standards. That is staff's opinion right now based on what they think the FCC is doing.

Mr. Dotson said he mentioned that one provider would be coming forward with 40 to 50 sites to update them. He asked what does update mean.

Mr. Fritz replied it was to update to new technology taking down an antennae and putting a new antennae up or co-location. That is in the new definition of co-location. If you take something down and put something back up that is a co-location as is adding a second set of antennas. He pointed out they are going to get a bunch of these.

Mr. Dotson said what he is saying is that is not an insurmountable workload that would be handled by staff.

Mr. Fritz replied they are saying that we need to make some changes or it is going to be a major problem given the shot clock and so forth. But, it can be done. They believe that staff can develop some techniques and application forms so they know if it is or is not a substantial change so they can move the ones that are not a substantial change through the process very rapidly. For those that are a substantial change they still have that 90 day shot clock they have to meet. If it is a Tier III, it is a very difficult high bar to meet. They have to receive the application, do the review, schedule it for a Planning Commission meeting and then schedule it for a Board of Supervisors meeting all within 90 days. The Tier III is a substantial change. The problem there is because of our lead times for preparing the ads and everything the actual time staff has to review it is actually less than for a lower tier. So they need to move some things around. Otherwise, it is going to be a real problem.

Mr. Dotson noted joint hearings are a possibility, but they don't need to get into that now.

Mr. Fritz said it is just very difficult to schedule. Staff thinks it can be done and still preserve the reserve the spirit that both the Commission and the Board have had where the public can still know of the application, there is still adequate time to review it and there is still an opportunity for those who are interested to participate in the review process and have comment.

Mr. Keller suggested they ask Ms. Long to comment. He thinks they all need to be aware of since they have had this discussion about these tilted larger add on pieces and he would like to hear the industry's rebuttal. If the Commission has a concern about that, then what is the process? He asked if this has been published.

Mr. Fritz pointed out this has not been published in the federal regulations yet.

Mr. Kamptner noted once it is published they will have 90 days to implement the regulations. The regulations establish the minimum that localities are going to have to consider. So they can be more lenient than what the FCC has mandated if they choose to. But they can't be more stringent.

Mr. Keller said that is why he thinks it is worth five minutes right now to hear the other side.

Mr. Fritz said there are people who don't agree.

There being no further questions for staff, Mr. Morris opened the public hearing and invited Ms. Long to speak.

Valerie Long pointed out she thinks they may have confused her with Lori Schweller who represents Verizon Wireless. She and I are good friends and work closely together on many issues including issues affecting the wireless industry. The industry representatives, like me and our client Jesse Wilmer who is here from Ntelos tonight, are almost always in general agreement with Mr. Fritz and Ms. Baldwin and their team on what they are proposing when it comes to Wireless Ordinance revisions. They have been great to work with. They are very reasonable and their proposals are reasonable. They think they would do a lot to help facilitate deployment of wireless and wireless broadband in the community without having an adverse impact on our community. They are reasonable steps that are more streamlining and clarifying than anything else and would save not only the industry time and money but significant amounts of time for the industry and staff. Generally speaking they are always in agreement with them. However, she has some concerns with the way the FCC regulations have been interpreted with regard to how they would affect Albemarle's Ordinance. All through this meeting she was rereading the published regulations, which are really helpful.

Mr. Fritz offered to hand out copies for anyone that wants one.

Ms. Long pointed out that a lot of that is footnotes. However, it is very helpful because they go in great detail about what regulations and statutes they have imposed in the past; some of the ambiguities and questions that have come up; what they asked for everybody to give comments on; what the industry said, what the municipality said and the decision of the FCC on each of these issues and why. The main concern she has is in the basic concept that the goal is to facilitate a rapid deployment of wireless for the benefit of the community as a whole. It talks about all the reasons wireless and broadband are so vital to our community. The absolute fundamental is helping co-locations be approved quickly without unnecessary regulation and to make it cheaper and quicker so that they can be approved. Co-locations are the focus of this particular regulation. There was prior legislation that said as long as you don't substantially increase the size of a tower your co-location has to be approved very quickly. But, as Mr. Fritz has noted in the past it did not really provide a lot of guidance on what does that mean substantially increase. Albemarle County implemented its own ordinance a year and a half ago with its interpretation of what that meant. The FCC has come back and said they need greater certainty for the industry, local governments and the public on what that means. So they have tightened up what that means to be substantially increased for size. They have said as long as you don't trigger a substantial increase in size in one of these eight ways your co-location qualifies and the locality has to approve it in 60 days. They said, for instance, the reason it is so quick is because they think the scope of the review is going to be so limited that the local governments won't need much time to review it. They have some specifics on the 10 percent increase in height and that sort of thing, which will be controversial. However, one of the things that they did not provide a lot of guidance on when you first look at it is that one of the provisions talks about concealment elements. In her read of the staff report staff has said our towers are all about concealment so any change made to a tower will be a change to the concealment element. Therefore it is a substantial increase in size and therefore it is not technically a co-location that merits this fast track review. In her reading of the regulations there is one paragraph (200) that talks about it, which she thinks is a broader reading of what was intended. That talks specifically about, for example, concealment requirements such as requiring the antennas to be painted to match the structure they are mounted to. That is what they mean. It would also include fake tree branches. If you have a fake tree and someone wants to co-locate on it, you would have to make the new antennas being added also look like a fake tree. That is what they were talking about. They have no problem with that. However, what is happening and what Mr. Fritz alluded to in the staff report is Ntelos is the industry representative that was referenced in the staff report; they have 40 to 50 sites around Albemarle County that were built over the last 15 years. They need to upgrade the antennas. The antennas necessary for 4G deployment are bigger and thicker than the county ordinance permits just by a little bit. As a result there is a size limit on an antenna. It is 11.52 square inches. The Ntelos ones are just over 12. Because they are larger than allowed they are not technically a co-location under the strict reading of the ordinance. They are not a tier 1.

Mr. Fritz pointed out they are a co-location, but a substantial change.

Ms. Long agreed it was a substantial change in the size of the facility. Therefore, not only does it not get the benefit of this fast track, which clearly if you read the summary of the FCC regulations was the intent. It would allow the carriers to upgrade their equipment to comply with the demand that they all have. They all want our I Pads and I Phones to work. She would ask that staff really look at the intent of the regulations and not try to be so narrowly restricted of it, particularly that concealment element. She did not think it was intended to regulate every single aspect of every tower. It was a narrowly crafted reference that she thinks has been misinterpreted. The impact is not only with these Ntelos applications, which have already been interpreted to not be co-locations that get Tier 1 treatment, they are Tier 3 applications. Ntelos has one application pending. It is an old lattice tower that they would never approve one new today. But, it was approved years ago in 1994. Ntelos has its antennas on the structure and it merely wants to take the old antennas off the top and replace them with ones that are slightly larger. But, the antennas are larger than the allowable size. So that is the first strike against them. There is a flush mounting requirement in the ordinance. From the outside face of the pole to the outside face of the antenna it can't be greater than 12 inches. So it includes the thickness of the antenna. However, the newer antennas in order to work for all of our data devices have to be thicker to meet the new technology. So it is 12 inches plus a few more. So they violate the 12 inch flush mounting requirement not because they are trying to have it stand out farther, but merely because the antennas are thicker. As a result of those two reasons that has gone from being a Tier 1 co-location, which essentially just needs a building permit, to being a Tier 3 special use permit application. Even under the best of situations the150 day review process is challenging. So multiply that times 40 or 50 and you can see why they are so focused on this issue, and that is just one carrier. AT&T has its own system upgrades in the works. She knows from talking with Lori Schweller Verizon does as well. So they are not trying to skirt the rules or exploit the FCC

regulations in any way. They are merely asking them to take a look and see if there are some reasonable modifications they can make to that aspect of the ordinance that will enable those minor upgrades to be treated as co-locations and fast tracked as co-locations as is the intent of the FCC regulations. She wanted the Commission to understand the background so they could understand the context.

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

Mr. Fritz noted the answer to the question from Mr. Keller about how to deal with the down tilt or the size of the antenna would be to change the design standards. Staff took that to the Board in April of this year as a package of proposed changes and they chose not to pursue that. The item that was just before this is what the Board moved forward with. The Board would have to give staff direction to proceed with those other changes that they talked about. They had all sorts of other changes about heights of antennas, size of antennas, mounting standards and what the definition of a tree top facility is, and those would be all those kinds of things. It would be reopening the design standards.

Mr. Keller noted for fellow Commissioners he went to that Supervisors meeting and heard these presentations. That is why he wanted to bring this up because there are many more pieces to this that he thinks do relate to our discussion.

Mr. Fritz noted it very complex and there are a lot of moving parts for this.

Mr. Morris noted the Commission's task right now is to consider adopting a resolution of intent to amend the Zoning Ordinance.

Motion: Mr. Dotson moved and Mr. Randolph seconded to adopt the resolution of intent to amend the Zoning Ordinance to conform to the FCC mandated revisions to Wireless Regulations.

The motion passed by a vote of 7:0.

Mr. Morris noted the resolution of intent was adopted unanimously.

RESOLUTION OF INTENT

WHEREAS, County Code § 18-5.1.40, which is part of the Albemarle County Zoning Ordinance, establishes regulations pertaining to personal wireless service facilities; and

WHEREAS, the Federal Communications Commission adopted a Report and Order on October 17, 2014 and released it on October 21, 2014 (FCC 14-153) (the "FCC" and the "Report and Order"); and

WHEREAS, the Report and Order establishes new rules interpreting the FCC's previous "Shot Clock" Declaratory Ruling and Section 6409 of the Middle Class Tax Relief Act of 2012; and

WHEREAS, the FCC's new rules will become effective 90 days after they are published in the Federal Register; and

WHEREAS, in order to promote the efficient and effective administration of the County's regulations pertaining to personal wireless service and similarly regulated facilities, it may be desirable to amend County Code §§ 18-3.1 and 18-5.1.40 to incorporate the applicable rules from the Report and Order.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to consider amending Albemarle County Code §§ 18-3.1 and 18- 5.1.40 and any other sections of the Zoning Ordinance deemed to be appropriate, to achieve the purposes described herein; and

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

* * * * *

Old Business

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

New Business

Mr. Morris asked if there was any new business.

- Meeting to be held by the leadership of the Board of Supervisors, Planning Commission and staff. Any comments or ideas to be brought up should be directed to Mr. Cilimberg.
- Public comments regarding agenda items should be directed to Mr. Cilimberg for distribution to Commission.
- Commissioners need to receive public comments on agenda items by noon of the date of their meeting to assure the Commissioners have a chance to read them.
- THERE WILL BE NO PLANNING COMMISSION MEETING ON TUESDAY, DECEMBER 9, 2014.
- THE NEXT PLANNING COMMISSION MEETING WILL BE HELD ON TUESDAY, DECEMBER 16, 2014.

Adjournment

With no further items, the meeting adjourned at 9:46 p.m. to the Tuesday, December 16, 2014 Albemarle County Planning Commission meeting at 6:00 p.m., Auditorium, Second Floor, 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)