Albemarle County Planning Commission
June 2, 2015

The Albemarle County Planning Commission held a public hearing on Tuesday, June 2, 2015, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Staff present was Bill Fritz, Manager of Special Projects, Sarah Baldwin, Senior Planner, Amelia McCulley, Director of Zoning/Zoning Administrator; 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.

The following was noted by Commission members:

Mr. Randolph reported the following:
- The Rivanna Community Advisory Council met and elected their leadership.
- The Solid Waste Committee will hold its second Open House on Thursday June 4th.

Mr. Firehock reported the following:
- The Water Resources Advisory Committee met and will hold an Open House on Wednesday, June 24 at 6:30 p.m. at the COB regarding funding options to meet regulatory requirements. She noted there is also a survey on line for those who cannot attend the meeting.

Mr. Loach reported the following:
- The Crozet Advisory Committee held a town hall meeting in conjunction with the Crozet Community Association regarding development of the former Barnes Lumber property. Another meeting will be held in June.

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

Consent Agenda:

a. **Amend the Zoning Ordinance to address Farm Distilleries, Farm Breweries and Farm Wineries – ROI** (Mandy Burbage)

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 said the consent agenda was approved.

ADOPTED RESOLUTION OF INTENT

WHEREAS, the Albemarle County Zoning Ordinance authorizes farm wineries and farm breweries to hold various events and activities related to the farm winery and farm brewery; and

WHEREAS, effective July 1, 2015, Virginia Code §§ 15.2-2288.3:2 will require localities to permit and regulate limited distilleries (to be referred to as "farm distilleries" in the Zoning Ordinance) in material respects the same way that farm wineries and farm breweries are permitted and regulated, and the Planning Commission previously adopted a resolution of intent to amend the Zoning Ordinance to implement Virginia Code § 15.2-2288.3:2; and

WHEREAS, the cumulative impacts generated by farm wineries, farm breweries, and farm distilleries, including traffic on rural roads, parking, and water consumption, particularly when the events or activities are held on small parcels in the agricultural zoning districts, should be further studied; and

WHEREAS, it is desired to amend the Albemarle County Zoning Ordinance if such study identifies any substantial impacts on the health, safety, or general welfare of the public arising from traffic, parking, water consumption, or any other identified adverse impacts.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Planning Commission hereby adopts a resolution of intent to amend Albemarle County Code §§ 18-3.1, 18-5.1.25, 18-5.1.57, and any other appropriate sections of the Albemarle County Zoning Ordinance to achieve the purposes described herein; and

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

Work Session:

ZTA-2015-00003 BZA/Variances
To address State Code Requirements for BZA Process and for Minor Technical Changes (Amelia McCulley)

Amelia McCulley presented a PowerPoint presentation and summarized the executive summary regarding ZTA-2015-00003 BZA/Variances.

ZTA Background:
The primary purpose of this ordinance amendment relates to House Bill 1849 that becomes State law on July 1, 2015 and relates to Board of Zoning Appeals proceedings, variances and appeals. Of course, they are seizing this opportunity to provide other housekeeping and technical updates.

- HB 1849 will become State law July 1, 2015.
  - Revises criteria for variances and appeals;
  - Revises proceedings before Board of Zoning Appeals (BZA)
  - Opportunity for other technical updates and clarifications

The Board of Zoning Appeals is a board that does not have a whole lot of interaction with other boards and are independent in many regards.

Board of Zoning Appeals (BZA)

- Powers and duties include:
  - Hear (and decide) appeals of decisions by administrative officers (including the Zoning Administrator) in the administration and enforcement of the zoning ordinance;

- Hear variances;
- Hear special use permits; and
- Interpret the zoning district map

In Albemarle, the special use permits that are heard by the Board of Zoning Appeals (BZA) are limited to signs (off-site, electronic message signs). In some localities all special use permits are heard by the Board of Zoning Appeals as opposed to the governing body of the Board of Supervisors. In Albemarle they issue a fairly high number of official determinations of zoning violations which are the majority of all the zoning determinations that are made in a given year. Therefore, they end up being a majority of the zoning appeals that the Board of Zoning Appeals hears. In the past 25 years, we have had no applications for the BZA to be involved in interpreting the zoning district map.

Regarding background information when she first started as zoning administrator a long time ago they had a lot of variances. One of the things the State Code tells you is if you have reoccurring variances you have a problem with your ordinance and they should examine that. Therefore, they have done that over time and made a lot of ordinance amendments.

BZA Annual Report Information:

These factors from our annual report may shock you.

- In 2014 there were no variances and no appeals. There was one (1) special use permit for an off-site sign.

- In 2013 there were no variances, no sign special use permits and three (3) appeals. Six (6) appeals were submitted, but only three (3) were heard.

Staff strongly urge applicants to avoid variances because it is a last resort and there are many other options. Often it is self-imposed and staff will tell people up front this is something they have created and they have other options, such as boundary line adjustments to change setbacks, to exhaust all possible remedies to avoid variances. The Board of Zoning Appeals review of variances involves discretionary administrative review. The special use permits for the signs the BZA hears are legislative actions. Appeals of determinations are a quasi-judicial process. She would now turn this over to Mr. Kamptner to teach us about the House Bill and what it does.

Mr. Greg Kamptner said he would briefly explain House Bill 1849. In the procedures that deal with the various Board of Zoning Appeals (BZA) proceedings the General Assembly has really created a procedural minefield. The BZA consider generally three application types: the special exceptions, variances and appeals. And there are subtle procedural differences in each of the three types of hearings. In fashioning our regulations, that is why each type of application now is laid out separately so that staff, the public and the BZA know exactly what is required for each of the different types of proceedings. It makes the ordinance a little bit longer, but it also makes it a lot easier to follow.

In House Bill 1849 they have three (3) new procedural requirements, which are kind of head scratchers when you think about it. When they were getting the draft bills to comment on, they were constantly asking why we need a statute to deal with this. However, there are three new requirements. One is no ex-parte communications between the locality's staff and the BZA members about the facts or the law pertaining to a particular appeal or variance. The same holds true for the applicant because they are the appellant and cannot have these one-on-one communications. They should not be taking place anyway because BZA decisions need to be made based on the record that shows up that is created at the hearing. So this type of back door lobbying never should have been taking place anyway. However, they now have that in the ordinance. That provision does not apply to special exceptions or special use permits because they are legislative in nature and the decision makers can rely on anything to support their decision.

Mr. Dotson asked if it was only for the quasi-judicial functions.

Mr. Kamptner replied it was easier to think about it as non-legislative because it is the legislative decisions for all types of bodies that the decision makers can rely on anything to support their decisions. The next new requirement is that the BZA has to offer an equal amount of time for the applicant, the appellant and the county or locality staff. The third new requirement is that the staff report has to be provided to the interested parties at least three (3) days after it has been given to the BZA members free of charge. He asked somebody while this bill was going through why we have this. Apparently there were some localities where they were either not providing the staff reports to the applicant or the appellants prior to the BZA hearing and they were charging. Therefore, they have legislation to deal with that.

Ms. McCulley asked Mr. Kamptner if he wanted to talk about the variances.

Mr. Kamptner explained that the variance definition is being amended. What they see from over the last 11 years is a reaction by the General Assembly from a 2004 Virginia Supreme Court case. It really did not break new grounds because the Court was just restating the laws. They had a standard up until 2009 where the applicant had to show an undue hardship approaching confiscation in order to be entitled to a variance. That really goes to the heart of the purpose for variances - that they are the last resort safety valve remedy for an applicant who because of the unique circumstances of their parcel can't do what everybody else in the zoning district can do. If the applicants are bounded by street frontage on two sides, a river in the back, and a steep slope on the side so the building site is miniscule and they can't do anything on their parcel, then that is where the variance is appropriate.

Mr. Kamptner explained after 2009 the standard was reduced to an undue hardship. In this bill, hardship is being removed from the definition entirely and it is one of two alternative criteria that the BZA has to consider when they are making their decision. What that means in reality is that the BZAs that are respectful of their zoning ordinance and the standards that they are supposed to be applying is they probably will continue to make the same decisions that they have. It is hard to quantify the difference between an undue hardship and a hardship. The BZAs that hand out variances like special privileges will probably continue to ignore it. The change in the law probably makes it easier for those decisions to be upheld, although he thinks there is still a very high standard for variances even though hardship plays a less important role than it has historically.

Mr. Lafferty said the way that sentence reads it replaces the requirement that the ordinance must not unreasonably restrict. It appears that you have to have an ordinance that must unreasonably restrict.

Ms. McCulley asked to qualify as a variance she thinks that is the language.

Mr. Lafferty said the first part of it makes sense to me.

Mr. Kamptner agreed and noted in the second clause in the middle bullet definition of variance it says the variance is available when the ordinance unreasonably restricts the use of the property. So the applicant has to make that showing and the BZA actually has to make that finding. The BZA has to find an unreasonable restriction. That is where he thinks the General Assembly kind of faltered, since he thinks the intention all along was to lower the standard. However, to find an unreasonable restriction is still a pretty high bar for an applicant to establish.

Mr. Keller noted the old hardship clause that they all learned in our basic planning is still there, but not in the same words.

Mr. Kamptner agreed. A lot of the opposition mainly by local governments was they have a well-developed body of law going back 70 years or so in Virginia applying the standard - and they are just throwing it out. The one thing that he would say though is that there might be one single variance case at both the appellant and the trial court level in Virginia that resulted in a published opinion where there actually was even a hardship. The typical variance application is the family in the house and they want to put a deck that is going to encroach into the setbacks; they want to convert the garage into a family room; or they want to build a new room onto the side yard setback. That is the typical request. If the BZA is doing its job it still is not going to qualify for a variance.

Mr. Randolph noted he thought they had one here in the last 3½ years that involved an effort out in Crozet where the applicant wanted to put the grandparents in the back. He asked if that rang a bell for anybody.

Mr. Morris replied yes, but it was in Ivy.

Mr. Keller pointed out there is legislation in Virginia that allows you to put a temporary unit in any yard for health reasons.

Mr. Kamptner said there are also circumstances where the ADA and the Fair Housing Act will trump the State variance standards because under the ADA and the Fair Housing Act they have to make reasonable accommodations under our zoning regulations. However, it has been waived in prior iterations and certainly not the current iteration of the ADA. Very early on in his time here, they had an application that he believed the variance was granted. However, it was not even being looked at under the ADA grounds for an elderly person to be able to live in the home since they needed a covered walkway that encroached into the front setback. It has been years, though, since they have had one.

Ms. McCulley pointed out next they would move on from the codification of the new State law that relates to BZA and their proceedings into housekeeping items.

Variation or Exception for Site Plan Improvement Requirements

- *Sinclair* case holding that general waivers/modifications of zoning regulations are legislative in nature. Holding does not relate to development requirements whose origin is in Subdivision or Site Plan enabling authority. Draft Section 32.3.5 clarifies the variation and exception process for site plan improvements.
- Administrative review of the waiver/modification with appeal to the Commission and then to the Board.

This one in particular is probably more along the lines of what the Planning Commission deals with. As a result of the Sinclair case, many waivers and modifications that were previously reviewed by staff and/or the Commission, are instead special exceptions that are heard and decided by the Board of Supervisors. An exception to that are site plans and subdivisions (and associated improvement requirements). They originate from a different statutory framework and do not involve policy or law, but instead are the application of technical requirements to a particular case/application. Examples of improvement requirements are parking, travelway and landscaping requirements. A more specific example is the requirement for curb and gutter or the minimum width requirement for a travelway, which are technical requirements with specific criteria to vary from the default. Those are reviewed by the agent for the site plan or the county engineer in the case of a lot of the parking, travelway and drainage things. The revisions that are in the draft ordinance attached to the report just better reflect the process. Other revisions within the site plan regulations, Section 32.0, include updates to better interact and be consistent with the revisions to the Water Protection Ordinance (WPO) to update to be consistent with the State storm water management requirements.

The Architectural Review Board (ARB) regulations are revised for reformatting for clarity and consistency. One of the most substantive changes is to codify the process that relates to Design Guidelines. It may have been a bit mysterious before and this just makes it clearer. The State law also makes it clear that there is a requirement for advertising notice for the adoption of ARB Design Guidelines. Then there is also a requirement after the ARB approval that the Board of Supervisors ratify the Design Guidelines before they become final and can be used for review of development. That is clarified in the revisions under that section.

Violations (Section 36)

Under Section 36, which are violations, updates include clarification as well as consistency with the State Code. Practical updates include things such as the notice of a violation must state the applicable appeal fee and where information may be obtained regarding filing an appeal.

One thing she forgot to mention, which was not in the attached draft ordinance, is a very common violation - a site plan violation. Therefore, they want the site plan ordinance to more clearly state that you need to maintain your site consistent with your site plan or else that is a violation. If you add new parking areas, new buildings and things like that, that is a violation of your site plan. Therefore, in the draft that goes through public hearing, staff will be adding that. She asked for input from the Planning Commission.

Mr. Randolph noted he had several questions. On page 10 under Section 32.7.4.1 he noted with interest that erosion and sediment control and other water regulations were struck out. He asked Ms. McCulley to remind him the reason why they were excluded. He asked has that been superseded by another Code aspect in here that he did not catch. However, he understands the focus on storm water management.

Mr. Kamptner asked what section he was referring to.

Mr. Randolph replied on page 10 under Section 32.7.4.1 at the top where erosion and sediment control and other water regulations were deleted. The whole section focuses on storm water management, water pollution and soil characteristics and he was just curious why that language was struck.

Mr. Kamptner replied it was really to keep up with the Water Protection Ordinance because under the new Water Protection Ordinance in State Law, storm water management is the overarching item.

Mr. Randolph said that is what he thought, but just wanted to double check. He asked on page 12 under d) at the bottom it states that except one member may be a member of the commission. He asked which commission they are referring to here.

Mr. Kamptner replied it is defined in the zoning ordinance to mean the planning commission, which is right out of the state enabling authority.

Mr. Randolph said the next question is on page 30 comment 2, notice of the hearing, which may be better directed to Mr. Kamptner. Why is there no time period attached to the notice. He reads that section and it does not say that there has to be a certain period of time when adjoining, adjacent and abutting property owners are notified prior to a hearing. Is that covered in another aspect of the statute?

Mr. Kamptner replied it is covered in the State Code section that is referenced there and five (5) days is the minimum notice required for abutting owners.

Ms. McCulley asked if he was talking about the State Code provision 2204, and Mr. Kamptner replied yes.

Ms. McCulley referred the question to Mr. Kamptner since he knows that section better.

Mr. Kamptner noted that Bill Fritz and he have been working on the resolution of intent that was adopted to expand the notice given for certain wireless applications. However, Mr. Fritz may be going back to the Board to get some further direction about being consistent across the board with respect to the advance in the type of written notice that is given to abutting owners or even extending beyond. However, right now all of our regulations that require notice under this State statute refer to that state statute. Five days is the minimum written notice. However, he thinks what staff would tell us is that even though that is the minimum that the written notice typically goes out 10 to 15 days ahead of time. He asked Ms. McCulley if that is correct.

Ms. McCulley agreed that she thinks that is right.

Mr. Randolph said that is great; however, five days just seems entirely too short given the way people live their lives and oftentimes they don't open their mail for a couple of days.

Mr. Morris invited other questions.

Mr. Dotson noted he had one question on page 21 of the staff report where it is talking about the criteria for variances that may come straight out of the new State Code. It strikes him that the language here sort of turns things on their head from what he is accustomed to because it talks about criteria to establish the "right" to a variance as opposed to the "basis" for a variance.

Mr. Kamptner replied the language in the State's new law is that the BZA shall grant a variance if these criteria are met. The current law said that variances are authorized if the BZA finds so the General Assembly has flipped it.

Mr. Dotson asked do we have to use the word "rights" to a variance. He would be more comfortable with "basis" for a variance.

Mr. Randolph suggested if they hear a right that might not be constitutionally sustainable.

Mr. Dotson said the turning on its head and the word "rights" are the things he wanted to mention.

Mr. Keller said he had a question about the Board of Architectural Review. If he understands it, staff is working on updating areas or suggesting other areas for that. There is something the Commission has heard from Mr. Cilimberg that staff is working on.

Mr. Kamptner replied that he thinks Ms. Maliszewski is working on that project, but he is not working directly with that project yet. However, the objective is to have corridor specific guidelines.

Mr. Keller asked if this is basically the enabling piece or umbrella piece that all of those will fall under?

Mr. Kamptner replied this lays out the process for that. There is a process in the current regulations; however, it is just kind of confusingly written. That language has not been revised since 1991 or so and they are taking this opportunity to do that.

Mr. Keller said after updating this if there are five new corridors added would it come back to the Commission just like if there was a new land use district and it get added into the list.

Ms. McCulley pointed out if they actually add new corridors it would be a zoning text amendment and a zoning map amendment because it is an overlay district. If they adopt the corridor specific design guidelines for those, let's say those five corridors that already exist, then this outlines the process that would be followed.

Mr. Kamptner noted that is a process between the Architectural Review Board (ARB) and the Board of Supervisors. However, there is no reason why it could not come through the Planning Commission for input like when the Water Protection Ordinance was first adopted. He thinks a couple of the other significant amendments have come through the Commission as well. However, he did not think last year's amendments did just because they were under such a time crunch.

There being no other suggestions, Mr. Morris asked if the Commission was ready to ask staff to schedule the zoning text amendment for public hearing.

Motion: Mr. Randolph moved and Mr. Lafferty seconded to request staff to schedule ZTA-2015-00003 BZA/Variances for public hearing.

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

Mr. Morris noted that staff would schedule ZTA-2015-00003 BZA/Variances for public hearing.

Public Hearing Items

ZTA 2015-00007 Wireless – Public Notice. The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance that would amend Sec. 18-5.1.40, Personal wireless service facilities; collocation, replacement, and removal of transmission equipment, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-5.1.40 by requiring written notice to landowners of all parcels within 1/8 mile of a proposed Tier I or Tier II facility, or an Exempt Collocation. Currently, written notice is provided to abutting landowners for Tier I facilities requiring a special exception and Tier II facilities. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Bill Fritz)

Mr. Fritz presented a PowerPoint presentation to summarize the executive summary regarding ZTA-2015-07 Wireless – Public Notice. He noted Ms. Baldwin passed out copies of the emails received today.

The Board of Supervisors expressed interest in amending the ordinance to expand notification. This is a County initiated text amendment. To remind you what these types of projects are: Exempt Collocations are attachments or modifications to structures currently used as wireless facilities and Tier I applications are attachments to existing structures.

Currently notice is provided for Tier I applications if a special exception is proposed. Notice is also provided for Tier II (treetop) and Tier III applications. It should be noted that Exempt Collocations and Tier I applications must be approved if they meet the minimum standards. The standards for the two types of applications are different. Both applications are treated like building permits. Currently no notice is provided for any type of building permit. If this amendment is approved a building permit to demolish an existing building, regrade the site and build a new structure would receive no notice but attachment of an antenna to an existing structure would get a notice.

Staff does not support this proposed amendment. Staff does support offering the public increased opportunities to be aware of proposals they may have interest in. Staff recommends that the County investigate methods of making the public aware of all types of applications made in a comprehensive way. Some localities utilize a robust GIS system integrated with an application tracking system to allow the public to investigate development proposals by type or location. This would allow users to self-define "the neighborhood" and see what is going on around them. They would also be able to pull up information on that particular application that provided information on the proposal and both staff and applicant contact information.

Staff does not support this amendment proposal. It creates an odd situation where one type of building permit you are providing a notice for and another type you are not. Instead, staff recommends that it just be investigated or looked at in a comprehensive way much broader than this particular application. Therefore, staff is recommending denial of this proposal.

Mr. Morris invited questions for staff.

Mr. Dotson said under the new federal and state requirements they have to approve certain kinds of applications. He asked can conditions be attached to those approvals or are they prohibited from putting conditions on them.

Mr. Fritz replied for exempt collocations they can't attach any conditions. Under our ordinance for Tier I and Tier II applications the only conditions that are attached to those are those which are contained within the ordinance. It is the same with the exempt collocation that it is fairly limited, but it does have to meet some standards. However, the applications cannot be approved with conditions.

Mr. Dotson commented there would be no useful tweaking as a consequence of hearing public input. He asked if there was nothing that could be done with that, no condition or voluntary modifications.

Mr. Fritz replied under the current ordinance no. If the ordinance were to be amended at some point in the future to have some discretionary provision for a Tier I, then perhaps. They don't currently have that. They don't have it for Tier II's. That would be a completely different question. Right now they would be notifying, but if the application meets the minimum standards they have to approve it.

Mr. Dotson noted the consequence of the Board's request would be to have the public be informed to know what is going on, understand it and not be surprised. But, whatever the public comments were there would be no way that those could be used modify the process.

Mr. Fritz pointed out there was no appeal provision and no conditional approval language contained within the ordinance. It is a binary answer and either approved or denied. It meets the minimum standards and gets approved, or it does not and it gets denied.

Mr. Kamptner pointed out an applicant can always voluntarily modify their project. The county would approve it provided that it still complies with the performance standards in the Wireless regulations in response to it. If the application meets the performance standards the county has to approve it.

Mr. Dotson noted the staff report points out an alternative method of providing notice to utilize GIS, County View or some other type of development tracking software. Does staff have any idea at this point if the county were to go that way how someone would know that there was information on the web or how they would know to go to County View?

Mr. Fritz replied staff does not know and that is one of the things they would like to investigate. How do they get that information out to the public so that people could be aware? There are a couple different ways. Do they send notices periodically that people can investigate this site? It is not an opposition to providing notice on an application; but, it is providing notice for one subset of a building permit application where the potential impacts of other types of building permits may be greater and you have this weird situation where you are notifying for some things and not for others. Staff is recommending that public notice, both what items are notified and the second part is who, and do they notify just abutting owners or go just beyond that. That should be a very comprehensive conversation beyond the antenna. Staff's recommendation is that conversation continue, but that it be a much broader conversation.

Mr. Dotson said he had one comment. He thinks there is something unique about cell towers, which is they are taller than anything else. So in that sense an average building permit maybe is a two-story building going in. This is a lot taller and a lot more visible to a lot more people. He shares Mr. Fritz's concern of even handedness amongst all kinds of building permits.

Mr. Fritz noted the distinction staff was making is that these are attachments only to existing structures. So the structure are there. The other types of building permits can involve grading. Mr. Randolph was talking about a building permit where they were grading wetlands, and that receives no notice. That is why staff is saying let's have a comprehensive conversation about it.

Mr. Randolph said he was struck intermediately when he read this page that there was a focus on potentially the county using the GIS and County View. He thinks both of those are good ideas. However, he did not think it was sufficient or adequate simply because even though they like to believe that our population is extremely internet responsive and aware the percentage of the Albemarle County population that with regularity visits the County View website he would guess it was probably a low percentage of people that visit it. Because they are looking at a very limited subset of situations that are going to arise here potentially he would like to recommend strengthening and that instead of just relying on both of these that they would establish that the notice option would include a public meeting, which would involve the Planning Commissioner and the Supervisor from the appropriate magisterial district. They would call the meeting and along with staff it would be an informational meeting. A lot of people out there don't understand that what is operating here is essentially federal preemption. They have very little latitude to operate at a local level within the confines of federal law. So they are under an assumption that we can in fact have more of an impact than the law permits us to have. He thinks a large part of public reaction is they feel the government is not transparent. If they rely on only the GIS and County View there are going to be people that say I did not know about that why didn't they let us know. The presumption is that

somehow government is out there manipulating the flow of information and that they are trying to control it and minimize information to some people. He thinks the way to address that is to have a public meeting called by the Supervisor with a Planning Commissioner present. They are not looking at creating a whole series of additional meetings. They are probably talking about three or five meetings maximum under the circumstances where they have got this wood pole.

Mr. Fritz replied no, what they are talking about now is public notices. The wood pole discussion is going to come up later. This is public notices for exempt collocations and Tier I applications, which are where they have an existing structure. It may be a building, which would be a Tier I, or it could be an existing tower, which could either be a Tier I or an exempt collocation and they want to take that existing structure and add an antenna to it. Since the rule went into effect they have gotten 15 or 16 applications, and so far they have approved one. This review would be for public notice for exempt collocations and for Tier I applications. For the wood to metal, which they would talk about later, the draft amendment staff is providing the Commission would provide for notice. So that would get a notice.

Mr. Randolph noted he would not change his recommendation based on that. He still thinks that there needs to be a way the government is responsive in a group setting so that people have an opportunity to share their concerns and have those issues addressed. That is why they have a democratic system of government and people are elected to do that. He hates to put a burden on Supervisors and Planning Commissioners who are already busy. However, he thinks they are the right people that need to be out there doing this to address this issue. People want to be heard, and he did not think with just relying on the GIS and County View that people are going to feel that they are being heard. It is just a recommendation.

Mr. Lafferty said that Mr. Fritz was not saying GIS is the only way; he was saying study it. He thinks staff can take your recommendation into account, too. He would think it would be worth studying further to see what options they have given Mr. Randolph's concern about the burden on the office and disparity. Therefore, he would recommend denial with the caveat that it be further studied.

Mr. Morris pointed out right now they were just focusing on questions for staff. He asked if there were any further questions for staff.

Ms. Firehock said she had not made a decision yet. She has been to a lot of meetings where the response from government is that we hear your concerns, but they have not power to do anything. That can actually result in making people even angrier than not knowing at all. So she was not a fan of having a meeting where they say here is this and they are explaining why they can't do anything. She thinks at the very least if they do go the road of notice of some form, they would have to come with some kind of fact sheet like we are letting you know, but we can't do much because this is just administrative. They would have to be really clear. They get lots of emails already about things in which they have not control, and she tries very carefully to explain that. She thinks it will just get worse. She did not think this issue is going away. She is just not a fan of holding a meeting.

Mr. Loach said he thinks they have all been there when a development issue comes up and what they are really deciding is a very limited special use permit with the community. It puts more of a burden on us to deny, but they are only deciding on one small issue and not the overall issue.

Ms. Firehock pointed out in this case they would not be deciding anything. So there would be no decision.

Mr. Loach agreed that they need a broader discussion. As far as the GIS notification one of the things that is changing now is technology and the ability to push notification. So they can get to the point where they can push out information and maybe even get to a point where you as the citizen, unless you opt out, will be getting these notices that you sign up for one way or another. So he thinks the technology will take us a long way. He agreed that he did not want to get into a position where they get here and there is an expectation on the public for us to do something that they have no ability to do.

Mr. Morris opened the public hearing for public comment. He invited public comment to address this particular item.

Jennifer Greeson, resident of the Samuel Miller District, said she lived in the Bellair neighborhood where they have two cell phone towers. So she wanted to speak a minute about the importance of notice even for work that is just adding something to an existing structure. Notice is really a matter of courtesy to the people who live in the neighborhood where the work is being done. This work even just for adding something to an existing structure is very disruptive. It often takes 120 crane boom trucks that are huge. She did not know how big the trucks were until she saw them. It often takes extensive trenching if they are running a new fiber optic cable. Through many people's yards in Bellair they had about 35 yards dug up last fall and there was no notice. They just looked out the window one day and saw a man digging up their yard, but did not know why. Another interesting thing is this work is done largely by subcontractors. The truck does not say AT&T, but it says nothing. It is a rental truck with an out of state license plate with no phone number to call. They had their road blocked off for over a week at one point by one of these crane trucks and there literally was no phone number to call. They could call the police. But, there is no sort of corporate responsibility. If they just got notice in the mail to let us know that work was going to be done in a general timeframe, this company was responsible for it and that there was a phone number to call that would make a huge difference in how this business is done in the county. So she feels like that is important for them to understand from our perspective living with this. She also wants to say with all the changes to the code, which are kind of mind boggling, it is important to have even in these exempt applications. It is important to have an opportunity for the public to give input because a lot of these definitions are influx and these rule changes are trickling down and precedents are being set. It is important for there to be a public voice even when it is an exempt amount of work that is being done. As Mr. Kamptner said, she wanted to point this out too, it is possible for the wireless companies to voluntarily amend their work plans as well so when there is notice there is an opportunity for there to be a conversation between local residents and the wireless company. Again, this is a better more civil more courteous way of doing this business in our county. It is just letters and not a big deal. Notice is easy. Therefore, she strongly supports this amendment and would urge the Commission to as well.

Valerie Long, representing Verizon Wireless, pointed out Jess Wilmer with Ntelos is here. They don't have any real opposition to the concept of this proposal. They are certainly sympatric and tend to very much agree with staff's analysis that it creates an unusual situation. But, they thought it might be helpful to share a little bit of perspective from the industry's experiences and some of the issues that are allowed. Jesse Wilmer is here tonight and she may want to add some of her own comments. She was just reminding me that under the existing ordinance the wireless providers are permitted to conduct maintenance at their facilities at any time. So if an antenna is damaged or needs to be replaced for some reason they have full right and authority to replace an existing antenna with one that is identical to it. They come out frequently at an average of about once a month to do an inspection. Sometimes they climb all the way to the top or they bring in an equipment truck out to evaluate their equipment and make sure it is working properly. She also reminded me that under federal regulation if one of their sites goes down because they serve an emergency 911 feature they are obligated under federal law to repair the site within a few days or they could be in violation of the terms of their license. So trying to work that in with realities of a public notice requirement and having to send out public notices before any work is allowed to be done they just wanted to put that in perspective. That is all they had. They would be happy to answer questions and Jesse Wilmer may have additional comments.

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. Loach requested to ask Ms. Long a question. On the notification he hears what Ms. Long is saying, but he also hears the neighbors' interest. If there was a large change that has to be made, whether it be maintenance or new construction, he was talking before about the ability now to push notification from the county would it be too much to ask the industry then where there was a substantial impact by the type of work that is going to be done that they would notify the county and the county could then through its own technology push out notification.

Ms. Long noted they have to do that in the form of applying for a building permit.

Mr. Loach noted she was just saying maintenance. But, that maintenance may be substantial as in the example she gave. He was just saying would it be too onerous on the industry that if there was a threshold of maintenance that they would notify the county and the county would then notify the neighbors that this work was coming up. So as the neighbor pointed out now all of a sudden she had a truck that has not markings on it that identify with the company that they have some notice about what is going to happen.

Ms. Long replied that it would be something that would have to be considered. It would be hard to identify or establish a rule that could be appropriate and applicable for all circumstances. But, just using the examples she mentioned after a storm that the site is down their focus is going to be in getting back out to that site as quickly as possible to repair any damage that may have occurred or to at least check on the equipment and make sure that it is functioning properly so that folks can rely on their service. She did not know what the mechanism would be unless there was a point of contact or someone in particular at the county. She was just trying to think today if they did that Mr. Cilimberg she did not know who you would even contact for a particular site.

Mr. Loach said he was just saying in the circumstances that she just gave he was sure that somebody goes out to make the assessment of what the damages are. At that time depending on the assessment of the damage they would notify the county that in their estimation there is going to be a lot of construction needed just to let the people know.

Ms. Long said she thinks in many cases there won't be much construction needed. In the example she used they were checking on maintenance they often times it is just a small pickup truck or kind of a Jeep Cherokee sized vehicle that goes out. Those are ones that do the regular maintenance. It is usually when they are swapping out antennas or doing some sort of upgrade like that that heavier equipment is required.

Mr. Lafferty said if they have somebody going out there could they notify the landowner that potentially there is going to be heavy construction going on.

Ms. Long replied that is what they do. They notify the owner of the land where the tower is located, especially under their lease, generally she can't speak for all carriers, but generally in the leases she has seen they don't technically have to notify their landowners. But, they usually do out of courtesy to let those landowners know. So she would hope in circumstances like have been described that the landowner where the tower is located would be able to communicate with their neighbors or at least respond to inquiries from their neighbors when they came up.

Mr. Lafferty said he would be pretty irritated if his driveway was blocked for three days.

Ms. Long pointed out there were some claims. Ntelos has a site out at the Bellair property as well. Mr. Fritz was aware of this. Ntelos was doing some upgrades to its equipment within the right-of-way and so their equipment was in the right-of-way for some time. However, it was off to the side. Staff went out and inspected the work, and concluded that in fact it was being done exactly the way they would have wanted it to be done. They were tunneling under driveways and things like that to make sure that it did not disrupt driveways. So there have been some real efforts to do things in the way that were as sensitive as possible. However, those were equipment upgrades that were required to be done to improve the workings. She thinks that might have involved some landline work and not even wireless work. She was not sure.

Mr. Lafferty said as a matter of courtesy if they could notify the neighbors when they go out and do the inspection he thinks that would make things a lot more understandable for them.

Ms. Long noted they do the inspections on average about one time per month. It is usually more in reality about four times a year. However, they come out on a schedule for inspections, but they also go out after storm events, after reports of a site being down or things like that. So they don't do it on a regular schedule always. It is often responsive to weather events or emergency situations.

Mr. Lafferty suggested if their inspection indicates that there will be major construction then he thinks it would behoove them to notify the neighbors.

Mr. Keller commented through the years as he has done survey work and whatever the entity that he was doing survey work for provided a to whom it may concern letter that could be given to individuals who questioned. While he hates to bring up the issue of violence and people blowing up places it seems that it would be helpful to have something that was official to give to the citizenry when someone comes to a place. If they are developing a work order it seems that could be turned into a paragraph with a contact person back at the home office. He also thinks during holiday times when a number of the shipping companies are using contractors, but they put the magnetic signs on the door that says they are a contractor to a major thing. It seems that if they just had those two courtesies it would take a certain degree of mystery out and that seems to be what our citizen input is about. He encouraged Ms. Long to think about those.

Ms. Long agreed. However, she does mean in any way to minimize the disruptions that some of the neighbors did feel out in Bellair. She was familiar with it and was out there as well. It was poorly handed by AT&T subcontractors to be sure. Once it was brought to AT&T's attention by the county staff they came out and fired the subcontractor and brought their own AT&T in house construction folks in and not only completed the job that had been started, but repaired damage that had been done. Also, she did not know but was not aware of any other situation like that that has occurred in the county. Certainly not within any Ntelos or AT&T facilities that she was aware of. So while she does not in any way minimize the disruption that did take place she would just caution about using one bad example to change the ordinance county wide when it may have been an isolated incident that everyone has learned from including AT&T and hopefully the subcontractors. However, they use different subcontractors now. But, she certainly appreciates your comments. She was not sure why it was so hard to figure out who was involved because she kept thinking well they could have traced it back to the building permit application. Somebody has to submit the application and there has to be a name and phone number, which should have indicated at least provided the contact information for the subcontractor who could have then relayed yes they were doing this job on behalf of AT&T. They have a job number as well.

Mr. Morris invited further questions.

Ms. Firehock noted she had a question for staff. They basically said it is kind of an undue burden on the staff or an additional burden to send notice on that. They don't send notices for all building permits. Mr. Dotson made the point that maybe a cell tower is a little bit of a different kettle of fish. She asked staff to say a little more about what is entailed. Staff mentioned the 15 pending applications. She asked staff to talk a little more about the staff time involved in sending notice on one of those even if the notice was this is happening, here is a fact sheet on the fact that they can't do anything, thank you and for more information please call zoning.

Mr. Fritz clarified that they did not say it would be an undue burden. In fact, what they said is that the impact on a particular application may be minimal, it is the cumulative impact that is of concern. He did not know what that would be. Obviously, if the Board were to amend the ordinance they would try to figure out a way to implement it as efficiently as possible. When they send more notice out to generate public interest you will get public interest, and staff will need to address that. It may be 10 minutes per application, it may be an hour per application, but it is going to be something. While the impact on a particular application may not be substantial that time is time that is not being spent on some discretionary item or on some other item. So ultimately they need to account for all these incremental increases. That is fine and they will do it. The reason they put that budget impact is so Board don't be surprised if staff comes back and say they have had to add five minutes here, five minutes here and five minutes here. That is a new FTE because this is an expanded service. That is fine and staff can do expanded services, but they have to understand that is what it is. Every time you do an expanded service while that one may not be a big impact cumulatively it all starts to add up. That is all they are saying here. He did not know what the time would be. They would have to analyze that. However, it would be something more than zero.

Ms. Baldwin said as a follow up to that they do not really have a clear direction how far that notice would be. Is it abutting owners or more than that? That could lead to a bigger discussion that we've all had in the past.

Mr. Morris asked if there were any other questions. If not, he asked does anyone have a motion.

Mr. Dotson said he has a question for Mr. Kamptner related to a motion. He was familiar with recommending approval or denial. He asked can the Commission recommend to the Board that this study mentioned here be conducted and that in the meantime this matter be tabled. He asked if that is a legitimate recommendation.

Mr. Kamptner replied that could be a recommendation. Or the Commission can also make a recommendation that is either up or down with the ordinance as it is drafted with a separate direction to staff to come back with a resolution of intent to initiate the study of notice to other types of ministerial building permit type applications.

Mr. Fritz pointed out staff has two possible scenarios for them. One would be to expand who they give notice to, which could include building permits, administrative subdivisions and administrative site plans. There is a whole category of family divisions, rural divisions and subdivision categories. Minor site plan amendments get no notice. All building permits get no notice. So there could be a discussion about that. Then separate or included with it there has been some interest expressed at the Board level of expanding notice beyond the abutting property owners to go some distance beyond the abutting property owner. They actually have started to look at that a little bit and what the impacts would be of doing that in terms of different scenarios rural versus urban and what happens. You get into the thousands of people pretty quick. But, it can happen. There are two things there. One would be for what types of projects do you send notice and then secondly if you send notice who gets that notice. So there are two parts of it.

Mr. Loach asked is there any technology out there available that they don't have that would aid the staff in doing something like that.

Mr. Fritz replied that staff has looked at some technology that other counties and cities are using that allows them to have their development tracking system much better integrated with their GIS System. By doing that it gives you some efficiencies in being able to develop those notices in the first place or being able to push the notices out or just make it available through different means. So yes there is some technology out there that staff has seen.

Motion: Mr. Randolph moved and Ms. Firehock seconded to recommend denial of ZTA-2015-00007 Wireless – Public Notice.

Mr. Morris invited further discussion.

Mr. Loach asked if Mr. Dotson was going to add an amendment or conditions on to it.

Mr. Kamptner pointed out it would be a separate motion after the Commission acts on the approval.

Mr. Morris noted they had a motion and second for denial. He asked for a roll call.

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

Mr. Morris asked Mr. Dotson for the follow up motion.

Motion: Mr. Dotson moved and Mr. Lafferty seconded that the Planning Commission recommends that an alternative method of providing notice for all types of projects be studied. This could utilize GIS, County View or some other type of development tracking software.

Mr. Morris invited further discussion.

Ms. Firehock asked if they should put a time table on that. She was just concerned that it will be one of those things that they ask for.

Mr. Fritz replied what staff would do is take this recommendation and give it to the Board of Supervisors and see if they endorse it. If the Board endorses it, staff would then ask them to look at the Community Development Work Program to see where they want to prioritize that within the Work Program. Community Development has an adopted work program from the Board of Supervisors.

Mr. Morris asked if that would be taken up by the Board of Supervisors on the date July 8th.

Mr. Fritz replied this is a motion so it would all come to the Board together. Staff will bring up that issue and he assumes the Board will talk about it. Then they will talk and figure out how to deal with prioritization.

Mr. Morris asked for a roll call.

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

Mr. Morris noted that ZTA-2015-00007 Wireless – Public Notice would be forwarded to the Board of Supervisors on July 8th with a recommendation for denial and a second recommendation for further analysis.

Mr. Fritz clarified that all three zoning text amendments being heard tonight will go to the Board of Supervisors on July 8th.

Mr. Keller suggested there was still another component. He did not know if they had any ability to deal with this. He asked is there any way that they can require contractors to identify themselves and have some sort of handout that would explain what they are doing.

Mr. Kamptner replied that he was not aware of any authority that would authorize the county to require contractors to do that.

Mr. Keller said it seemed that in this particular industry it would behoove them to do it just in terms of good public relations. So he did not know what the mechanism would be for that, but as they continue to have these discussions he wants to think about asking staff to formulate something along those lines. They are living in a society where neighbors don't know neighbors to the extent as they have historically and that there is this sort of fear factor in our society. He thinks it would behoove us to think of some way to make that more apparent. He thinks that would be good business.

Mr. Morris said his point was very well taken. He pointed out Lee Catlin has been trying for ages to get a solid list of homeowner associations or if it was not a HOA just an organization that represents a subdivision. That is so fluid that it has never really gotten really off the ground no matter how hard she tries. So your point is well taken. A homeowner's association is the place to go if they have it.

Ms. Firehock noted in the rural area that would not be possible.

Mr. Morris said he understands that. But, Bellair is a very established area.

Mr. Keller noted he was still thinking just something that could be handed out when somebody is coming as a contractor in their own vehicle with no identification are they up to good or no good. It could be something as simple as a leaflet explaining what they are doing seems to be not too much to ask.

Mr. Dotson suggested another possible vehicle in for a project requiring a building permit he believes those are required to be posted for public view.

Mr. Kamptner replied yes, building permits are posted on site.

Mr. Dotson said he would suspect the building permit was posted well on the interior of the property so somebody might be trespassing if they went up to read that permit. He was not sure who determines the size of the permit, what color paper it is on, and where it is posted. That might be something for the county to look at which perhaps would cover one category of project.

Mr. Randolph said he would add many applicators now when putting down any kind of pesticide they put a sign up in notifying people that they should not walk on that grass for a period of time usually two days at a minimum. That is kind of standard operating procedure in that industry. So enhancing notification will probably go a long way to addressing some of these issues. He knows certainly in Glenmore if there is any work being done like that they notify the GCA and the GCA notifies all the residents in the community that this work is taking place. But, as Ms. Firehock has quite correctly identified not everyone lives in a planned residential development. So the information flow is not as consistent. Where they are having problems is somewhere between where they have planned residential development, but they may not have the community communications network set up there to make residents aware.

Mr. Morris noted that was a good point; however, he thinks this is something that each individual industry has to look at.

Public Hearing Items

ZTA 2015-00006 Wireless – Antenna size and mounting standards. The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance that would amend Sec. 18-5.1.40, Personal wireless service facilities; collocation, replacement, and removal of transmission equipment, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-5.1.40 by increasing the maximum antenna size allowed from 1152 to 1400 square inches, and by increasing the maximum distance an antenna may project from the structure to which it is attached from 12 inches, measured from the face of the antenna, to 12 inches for the closest point and 18 inches for the farthest point, measured from the back of the antenna. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Bill Fritz)

Mr. Fritz presented a PowerPoint presentation to summarize the executive summary regarding ZTA-2015-06 Wireless – Antenna size and mounting standards. (See PowerPoint presentation)

Proposal
This is an applicant initiated zoning text amendment to:
- Increase the by-right size of an antenna from 1,152 square inches to 1,400 square inches. It is an increase of 248 square inches.
- Change the measurement for standoff from the front of the antenna to the back of the antenna.

The applicant provided photographs that show what an antenna size would look like at different distances. He pointed out a photograph taken at 50 feet, 100 feet and 150 feet. They also provided some photo simulations where they took an existing tower and array and provided information to show what the new antenna sizes would look like.

The applicant recommended that the ordinance be amended to change the measurement from the front to the back of the antenna. There was no maximum distance. Staff is proposing this maximum distance. He just wanted to be clear that is not something the applicant proposed. He pointed out the antenna is not always pointed in a straight direction, but are tilted in both the X and the Y axis. What staff is proposing is that there be both a 12 inch and an 18 inch so they could be set off 12 inches, but the back could not be more than 18 inches that would allow these kind of angles. It would also allow a down tilt.

This is something the Planning Commission has discussed in the past. Staff is recommending approval of it. In the staff report staff notes that the sizes have not changed since the original adoption of the ordinance. There have been some substantial changes in technology since the adoption of the Wireless Policy, which goes back to 2000, and staff believes this to be an appropriate text amendment. Staff recommends approval of ZTA 2015-06.

Mr. Morris invited questions for staff.

Mr. Loach asked on the 18" maximum staff says it covers both the rotation and tilting. He asked does it cover all of the potential that they have now with the equipment or what percentage of that would it cover. In other words, is the 18 inches is that 80% of what they could do.

Mr. Fritz replied that he would let the applicant say what sort of limitations it might place on them. What staff was trying to do was still maintain that concept of keeping it close and minimizing the visibility.

Mr. Lafferty asked if the antenna on the right bottom showing the 12" and 18" be compliance

Mr. Fritz replied that it was intended to be drawn that way and he hoped it does. The idea is that no portion of the back of that antenna is supposed to be more than 18" away. He sees what Mr. Lafferty is saying there the lower left is a little bit more than 12". The idea there was that it would have to be 12".

Mr. Lafferty asked how restrictive is this be to the present antenna design.

Mr. Fritz replied it was more permissive than the existing because right now it is measured to the front of the antenna. So whatever the depth of that antenna is included in that 12". So if they had an 8" deep antenna you would only have 4" to do all the mounting brackets and equipment between the back of the antenna and the tower itself. What staff is proposing is to push that out and give them the 12" so they can get a proper mounting bracket in there and some angles.

Mr. Lafferty asked if the 18" was to the back of the antenna.

Mr. Fritz replied that everything is measured to the back of the antenna in the proposed ordinance.

Mr. Lafferty asked if the antenna could be as thick as it needs to be.

Mr. Fritz replied yes, the antenna could be as thick it needs to be. Generally he thinks what they are seeing really is a maximum of 10" to 11". That is the thickest one he thinks he has seen. Most of the time it is in the 6" to 8" range. However, the applicant can correct me.

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

Valerie Long, with the firm of Williams Mullen representing Ntelos Wireless, said Ntelos is the applicant on this zoning text amendment. They discussed this issue generally with the Commission on a couple of different occasions over the past few months. It came up particularly during prior review of other wireless ordinance amendments about the fact that Ntelos was working on a large number of equipment upgrades for all of their sites in Albemarle County, which is at least 50. They are working to comply with new technological upgrades. They need to provide better service and more service for long term evolution 4G service in essence for their customers. They are also required under federal law to provide service to their legacy customers, as the industry calls it. So some people don't yet have a smart phone or don't want or need a smart phone. They have an old fashion flip phone perhaps. That is a 2G phone or does not use the same exact technology that maybe Mr. Morris with his I-phone 6 uses or whatever he has.

Ms. Long explained there is different technology and different requirements. So all of those different types of service require a separate internal component of their antenna. In order to find an antenna that worked for all those needs Ntelos had to find one that could handle more ports in its antennas for the different cables that have to go up inside them. As a result they are thicker and wider than they have been in the past. She referred to some photo simulations, some which Mr. Fritz just showed them, where in some of their sites they are replacing antennas that are 17 years old with newer technology. The county approved one application that they had just a few months ago in Piney Mountain. They may recall it was a Crown Castle tower. Ntelos' equipment has been on the tower for 17 years, and they were just upgrading it. The photo simulations did not show a real material difference in terms of visibility.

Ms. Long pointed out generally they are talking about flush mounted antennas that are at tree top tower height. They do have some old towers that were approved prior to the county's ordinance being adopted in 2004. Even earlier than that Ntelos was actually the first carrier in the county to migrate to a tree top tower design facility on a voluntary basis. So Ntelos started doing that long before any other carrier did and worked very closely with Mr. Fritz and other members of the staff back then to migrate to that design. The zoning text amendment that Ntelos submitted has two parts. The first is to increase the maximum panel area to 1,400 square inches. Right now the ordinance has somewhat of a strange number. It is 1,152 square inches. She was around when that number was established. It was somewhat random. It was back in about 2000. However, in 2004 was when the ordinance was first adopted. That was the largest antenna size that any carrier was using at the time, which was Alltel. Someone literally looked at the plans and said the biggest one they have seen is this big and that will be the number we plug in. So that is why it is not a round number. That worked for all the carriers for a long time. They had to work hard to find antennas that would fit that limit. It worked for a while, but now with the new technology requirements it just no longer works.

Ms. Long pointed out the photos were taken by Ntelos staff outside their offices. (See Power Point presentation) On the right hand side is a panel that meets the 1152 square inches in the current ordinance. On the left side, which was literally a piece of cardboard and not an actual antenna just so they know. That one was 1400 square inches taken at 50 feet. You can tell in the one on the right there is an adult standing behind one of them. It was not actually intentional that person was visible, but it does provide a bit of scale. Likewise, the same photograph was taken at 100' and then again at 150', which is usually about the tallest they will see of any of these treetop towers in our community. Ones at that height are pretty rare. The one at Piney Mountain that they did was a 150' tower. So they wanted to show that just for context. She knew Mr. Fritz showed the photographs Commission already, but she just wanted to kind of walk through them.

Ms. Long said what are they talking about is 1152 square inches and an increase to 1400 square inches. They did the math and it is 248 square inches. She was a very visual person and asked what does that mean. That is why she liked the pictures that Ntelos prepared. She pointed out the difference between 1152 square inches and 1400 square inches. They tried to be very modest with our proposal and only ask for what they really needed. It may seem silly that they need to go through a whole zoning text amendment just for increases of this size. If they don't meet this requirement and the ordinance is not changed, then every one of Ntelos' applications to upgrade its antennas that application will go from being a Tier I building permit to a Tier III special use permit application. That is why they had to bring the Piney Mountain application to you. They are hopeful because the Commission has made comments in the past that they did not think it was necessary for all of those applications to be a full blown special use permit especially when they have at a minimum 50 of them. She knows this is a challenge for other carriers in the community as well.

Ms. Long explained the second component of the Ntelos zoning text amendment is to update the way that flush mounting standards are considered and applied. Right now, as Mr. Fritz indicated, the flush mounting requirement it has to be no more than 12" to the outside of the panel antenna. It is a very simple diagram obviously. It does not show the mounting brackets that are required. That is why they included the photograph to try to show it is not like the antennas can be glued to the pole. They wish they could because it would be a lot easier to comply. But, they are extremely heavy due to all of the cables that are required. On one of the newer ones, there are two rows of ports which is why it is thicker. Early generation antennas only had to have one row of ports, and did not need to be as thick. She pointed out a pipe mount that goes up the side of the pole and the antennas get attached to it. There is a mounting bracket. She has another diagram she will show in a minute. It has always been measured to the outside of the panel antenna. They have been able to work with a lot of effort to comply with that over the last 11 years since the ordinance was created in 2004. But, as the panel antennas have become thicker in order to comply with the technology needs it is just no longer possible to meet that requirement. This is an exhibit. She would show the Commission a blow up of each of these in a minute that Ntelos prepared to better explain how these panel antennas get mounted to the pole. She noted the pole, the mounting brackets the pipe mount that is part of the mounting bracket that permits the tilting of the antennas and the antenna itself. There could be three different antennas that go on each of their poles right now.

However, it depends on the site because sometimes they can do it all in one antenna and sometimes they need different antennas on each pole. This is one where measured to the outside face of the antenna is 20 1/2 ". But, if you measure to the inside of the antenna they can just barely make it work at 12". Likewise, this is a different antenna that they use that is 18½" to the outside face, which is not quite as thick. Then there is an earlier 16" version that they use which is easier to work with.

Ms. Long explained some simulations of sites they have submitted to staff, which are some of the handfuls they have mentioned that are now called exempt collocations. Next is one where Ntelos is upgrading its equipment. Because of the new FCC regulations this is one that accounts as being an exempt collocation. It is challenging to now explain the way the ordinance is now interpreted and handled. But, it does not violate the concealment elements of this tower; therefore, it is exempt. It is our opinion that there is no visual difference in the antennas. In another example that has been submitted and the Commission has not seen, it shows the difference. The antenna on the left is the one that is larger than the ordinance permits. The one on the right is in compliance. So it is a very small difference. Next, she noted a photo simulation of equipment upgrades Ntelos is planning to a building in Crozet. (See PowerPoint presentation presented by Valerie Long) She would be happy to answer questions. They very much appreciate your consideration of this proposal.

Mr. Morris invited questions for Ms. Long. There being none, Mr. Morris invited public comment.

Lori Schweller, an attorney with LeClair Ryan representing Verizon Wireless, said she had a few slides that she wanted to bring up. (See PowerPoint presentation) First, they certainly do support an increase in the size of antennas and the standoff from the monopole. They probably will recall in 2012 through 2014 she visited the Commission and the Board of Supervisors pretty much monthly as Verizon Wireless was adding LTE antennas to provide 4G service from all of its existing facilities. As Ms. Baldwin and Mr. Fritz know well it takes a lot of work to do a very simple thing that she thinks this ordinance will help Ntelos do much quicker. However, they have a simple request and she did not know whether it can be accommodated in this process or if readvertising is necessary. She did not think so. However, as they brought up in a meeting of April 8th Verizon Wireless' LTE antenna is the larger one as shown in the picture on the slide. This is its LTE antenna. They have seen us many times asking for special exceptions at the Board, and they have always been approved every time. The antennas are just a little bit larger, 18" X 18" larger than the size that is being proposed in the zoning text amendment. So our request, of course, is that the maximum be 1800 square inches to make this meaningful for Verizon Wireless.

Ms. Schweller pointed out Verizon Wireless is licensed to provide four technologies in the county. LTE, which is the 4G service AWS and then as Ms. Long explained the legacy 2G and 3G, which are PCS and Cellular. To provide all of those on one level on a monopole requires two antennas per sector. The reason this is important is because you can then if you provide all of your technologies at one place on the monopole you don't use up several different places. When they came to the Commission asking to install our LTE antennas they were extending the pole or placing the LTE antennas under the existing array. So they using at least two places and sometimes three on one monopole. For a new facility or a complete replacement of all the antennas on a facility it makes a lot of sense to consider these dimensions if they want one carrier to get everything at one point on the monopole. It is just a suggestion. To do that requires not only a greater size in the maximum antenna size but greater standoff. Joseph Nekambuza, the Verizon Wireless RF Engineer who spoke to the Commission in April is here again to explain this drawing in case you have any questions. But, she would be happy to take questions as well.

Mr. Morris invited questions.

Mr. Dotson asked what the standoff distance is that they are proposing as an alternative.

Ms. Schweller replied they were proposing 24". As they can see in the drawing if they have two (2) 18" wide antennas on a face and they have to be separated to avoid interference, that is 52" total on each side you need to have a larger pole than 18" in diameter. It has to be 24" because of the geometry here. If they are going to mount those there and tilt them at all it has got to be more than 18". As they can see

they are showing 18.75" as constructed. But, if it is tilted it is going to be more like 24" to the back of the antenna.

Mr. Lafferty asked how many poles they will have to replace so they will have the 24" diameter.

Ms. Schweller replied they don't have any proposal to replace any poles. This suggestion is made because for new structures it makes sense to be able to put everything at one level. They are fully complying with the ordinance now by simply adding another set extending the height of the existing poles. This proposal would allow us to put everything at one height for a new pole and possibly allow collocation for other carriers below that.

Mr. Lafferty asked what is coming down the road. He asked if 5G is coming down road.

Ms. Schweller pointed out the high priority for Verizon Wireless is small cells right now. They have been working in all the jurisdictions in Virginia to install very small antennas in urban areas. Where there is a lot of demand you need to off load from towers to satisfy all of the data transmission. That is a very high priority. However, they still need coverage in some of the rural areas that simply don't have enough.

Mr. Lafferty asked if in antenna design is there anything coming down the road that will change the antenna design.

Ms. Schweller replied as Joseph Nekambuza can describe more fully the antennas that they are using on towers to provide LTE are bigger and larger than the ones that they have used for PCS and Cellular in the past to better focus the signal. So the trend in the micro sites is bigger antennas at the same time that they are doing micro cells for urban areas. So there are two things happening at the same time.

Mr. Morris invited further public comment. There being none, he closed the public comment to bring the matter before the Planning Commission for discussion and action. He posed Ms. Schweller's question to staff.

Mr. Fritz replied what Ms. Schweller is proposing is different from what is advertised. He noted the Commission could entertain it and direct staff to come back to you and work with the County Attorney's Office and figure out what they need to do in order to have it properly advertised.

Ms. Firehock said that it sounds significant enough that it will have to be re-advertised.

Mr. Morris asked Mr. Kamptner what he thought.

Mr. Kamptner replied that it does have to be re-advertised. He was looking at the resolution of intent which likewise was focused on the point of measurement and the increase as proposed in the zoning text amendment.

Mr. Lafferty asked will Ntelos agree to this since it delays them.

Mr. Morris asked Ms. Long if Ntelos would agree to this.

Ms. Long replied that they certainly have no objection in substance to this. It certainly would provide even greater flexibility. Our only concern is one of timing. Ntelos has a number of applications pending and a large number that they have been holding while this amendment was under review.

Mr. Fritz suggested one thing they might do is move forward with this application and then do another resolution of intent.

Ms. Long said they certainly appreciate that and do not want to do anything that would make it harder for any other providers.

Mr. Morris said they fully understand. He thanked Ms. Long very much.

Ms. Firehock said she was just curious from staff's perspective. She was really surprised to get the email about the additional size. She did not understand how they have spent so long on this and yet here they have a proposal that they don't have the right size in our intent. She was not saying that staff has done anything wrong, but was just trying to understand.

Mr. Fritz pointed out this is one of those topics that they took to the Board of Supervisors and said we would like to work on this. Then what they would have done is they would have gone out and done more research to find out what options there were, what the different providers were doing and so on and so forth. They would have done all of that work. That was not what happened. Instead what happened was staff got a specific request for 1,400 square inches and 12 inches, and that was what they then were reviewing because it was an applicant proposal. So staff was not going beyond that just because that was what they had. Staff had specifically asked the Board to direct us to do this kind of work and they had not. So staff was limited to reviewing what was submitted before us.

Mr. Dotson asked what staff's reaction was and are the numbers compatible or pushing the point.

Mr. Fritz replied his initial reaction was that he would like to do some more work. He was not sure that the size of the antennas is necessarily going to be a big visual impact. This is another one of those things of cumulative impact. So increasing the size alone – okay; increasing the standoff alone – okay; and increasing the tower diameter from 18" to 24" – okay. But, when you take all of that together what is the visual impact going to be. He was not sure it is going to be that great, but that is the kind of thing they would want to analysis. He was not comfortable giving the Commission an answer right now that it is or is not appropriate.

Mr. Loach said if they increase the size as was proposed here, then do they limit it to the one array of towers. When they say visual impact now that she was talking about collocation so now they are not only making it larger they are making it larger by two.

Mr. Fritz pointed out that was one of the things that they talked about when they asked the Board to look at this. They could increase the total antenna size permitted on a tower or increase the individual antenna size or do they allow one array to be one size and another array to be another to minimize those visual impacts. Yes, those are the things that staff should look at. Staff would want to look at those things and give the Commission the option so that they could see what the different impacts are and make a decision.

Mr. Morris noted right now they need to focus on the application in front of us. He asked if anyone had a motion.

Motion: Mr. Randolph moved and Ms. Firehock seconded to recommend adoption of ZTA-2015-00006 Wireless – Antenna size and mounting standards.

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

Mr. Morris noted that ZTA-2015-00006 Wireless – Antenna size and mounting standards would be forwarded to the Board of Supervisors with a recommendation for approval to be heard on July 8th.

Mr. Morris asked if anyone would like to also encourage a recommendation that this be looked at for the additional information to be looked at.

Mr. Lafferty said with the new dimensions they have an opportunity to look at the visual impact, and then he would assume that would come back to the Planning Commission.

Ms. Firehock suggested the Commission needs to make a directive recommendation. She suggested the statements from Verizon Wireless be considered about the size of an additional amount. She suggested that not only that comment or proposal be considered but that the staff have adequate time to research

the other issues they brought up tonight so that they are not once again on some very narrow focus when they would also need to look at a couple of other things.

Mr. Lafferty agreed.

Ms. Firehock said she did not want to sit here and list what the staff should do. She thinks staff knows because Mr. Fritz just enumerated that.

Mr. Cilimberg suggested it was probably best if your inclination is to have staff look at that and for us to draft a resolution of intent and bring it back.

Mr. Kamptner suggested that staff could bring the resolution of intent back on June 16th.

Mr. Morris agreed that would be great if they would.

Mr. Randolph said he would totally agree. He was going to say earlier that there are three things. First, how they look at the antennas is as important because if they look at it percentage wise the growth of antennas that the Commission just went ahead and authorized is 22.5'. Some people would go oh my goodness 22.5', but, the common sense rule as the Commission saw visually it does not look that much larger. So it is very important that they be able to look at this in the same way as they just looked at this application. In other words, have the same visuals for the public as well as the Commission in order to make an informed decision. Secondly, at all costs they need to avoid Tier III special use permits because otherwise they are just going to constantly be sitting here and reviewing applications that they all agree are really pro forma in most cases.

Ms. Baldwin asked to make a small clarification. With our last ordinance changes for Wireless they did make that change that it would be a Tier I with a special exception. So they did slowly get to another process and it is not the special use permit Tier III.

Mr. Randolph noted he thinks currently there is an excellent partnership between Mr. Fritz, the staff, and the industry and they are pursuing policies that are both time and cost effective for the applicants. At the same time they are trying to safeguard the best interest of the public within the constraints created by the 1996 Telecommunications Act where they don't have a lot of local input and local authority. Therefore, he thinks it is a balancing act. However, the balancing act is one where they are pretty comfortable with the changes that are occurring in the industry and situations in most context.

Mr. Morris said it was a good comment. Before moving to the next agenda item Mr. Morris said he would call for a five minute recess.

The Planning Commission recessed at 7:29 p.m. and the meeting reconvened at 7:35 p.m.

ZTA 2015-00008 Wireless – Replacement of wooden pole with metal pole. The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance that would amend Sec. 18-5.1.40, Personal wireless service facilities; collocation, replacement, and removal of transmission equipment, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-5.1.40 by requiring a special exception to replace a wooden monopole with a metal monopole if the monopole is located closer in distance than its height to any lot line and the document authorized by Sec. 18-5.1.40(c)(3) does not exist. Currently, such a replacement is allowed by right. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Bill Fritz)

Mr. Fritz presented a PowerPoint presentation to summarize the executive summary regarding ZTA 2015-00008 Wireless – Replacement of wooden pole with metal pole.

Currently a wood pole may be replaced with a metal pole by-right and only a building permit is required. Under the current ordinance new poles may be located closer to the property line than the height of the

pole if an easement on the adjoining property is obtained or if the Board grants a special exception. Previous ordinances allowed poles to be located closer if a waiver was granted by the Planning Commission. This proposed amendment would require replacement of wood poles approved with a waiver or a special exception to receive a new special exception or obtain an easement on the adjoining property. This ordinance would not impact the replacement of old wood poles with new wood poles. No ordinance amendment can affect that. The applicant may always rely on the original approval to allow the replacement of a wood pole with a new wood pole.

Comparison of wood and metal poles

Wood

- Limited in size and color by the ordinance.
- Likely cannot be increased in height due to previous approvals. Except to account for tree growth.
- Subject to rot and decay.
- May have less weight bearing capacity than metal

Metal

- Limited in size and color by the ordinance.
- Likely cannot be increased in height due to previous approvals. Except to account for tree growth.
- Less subject to decay than wood.
- May have more weight bearing capacity than wood.

The regulatory differences between wood and metal poles is non-existent. They are subject to the same design requirements except that for metal poles the cabling must be routed inside of the pole while wood poles obviously have the cables visibly mounted on the exterior of the pole. Both poles may be able to be extended in height. Staff is aware of wood poles having extensions mounted on the top which have raised the overall height of the pole to account for tree growth. No metal poles have been extended in height that staff are aware of. Extension may be easier to do with a metal pole than with a wood pole. However, even extension of a metal pole is difficult due to the limitation that the top of the pole is 18 inches in diameter. This makes height extensions difficult.

The issue of capacity has come up during the review of this text amendment. It is not possible to say that metal poles can always hold more antenna than wood poles. However, it is likely that a metal pole can be designed with the structural ability to hold more weight than a wood pole that is not engineered. However, an engineered wood pole (for example one that is laminated) may be as strong as or stronger than a metal pole. Staff does not see the use of metal poles as likely to result in increased use of any particular site. This is due to the fact that height, not the weight bearing capacity, is the limiting factor for treetop facilities. As antenna are added they are lower and lower on the pole. As the height decreases the effectiveness of the facility drops to the point that installation no longer makes no sense. The type of pole, wood or metal, makes no difference in that calculation.

The impact caused by a wood and a metal pole are substantially the same. Since a wood pole can be replaced with a wood pole by-right staff is unable to identify a purpose served by requiring a special exception for replacement with metal. Therefore, staff does not support this amendment.

Mr. Fritz pointed out the information that was passed out by Ms. Baldwin the Commission had before them. It is a lot of it. He would be happy to answer questions about that, but the Commission might want to hear from the public first. (Attachment)

Mr. Morris invited questions for staff.

Mr. Lafferty said he had a question about the email the Commission received today at 4:05 p.m. from Jennifer Greeson. On the first page, third paragraph the provision allowing replacement of a wooden pole with a metal tower by right was adopted in 2013 under direction of the previous Board of Supervisors to simplify the process of cell towers. It seems that they already have the right to do that.

Mr. Fritz noted there were a number of amendments that were begin made in 2013 at the direction of the Board. One of the changes that was in that was a redefinition or an amendment to the definition of what a Tier I facility was. It was added to make replacement of wood with metal as a Tier I meaning that it just got a building permit. So that was done as a means to allow for the replacement. Some of these wood poles are getting old. He did not remember the exact year the first wood pole went in. It was in the mid '90's. He did not know if it was '95, '96 or '97; but, they were talking that sort of timeframe. So these things are getting kind of old. There are four that have been replaced. Two wood poles were replaced with wood poles and two wood poles were replaced with metal poles. Under this proposed ordinance one of those two that was replaced wood with metal would have had to receive a special exception because it did not have the setbacks. He can provide some more information about wood poles and setbacks if the Commission would like. That is some of the information that is contained in the report.

Mr. Morris invited further questions.

Ms. Firehock noted she had a question for the county attorney, but would wait until after the public comments.

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

Maynard Sipe, land use attorney in Charlottesville Virginia representing Mr. Van Der Werf and Ms. Greeson, said he would be as concise as possible,, but he knows because of the complexity of the Wireless Ordinance that they need to address details he would like to ask for an extra minute or so.

Mr. Morris replied that was fine.

Mr. Sipe said he would like to try to boil this down to two point. First, they have the ordinance amendment as proposed that is right before you. There are a couple of purposes served by this proposed ordinance change which he would like to high light just to make clear that he thinks there are purposes served. The first is that these wooden poles structurally are different from the metal poles and other towers that are built. He believes there is a safety issue involved with the setback. When a wooden pole does not meet a setback of its height from the property the wooden poles obviously could be snapped in something like an event, deration or a storm and they are going to fall in one piece generally. So he thinks that there is an issue where they have poles in place that were approved under schemes predating the Wireless Ordinance or even perhaps in waivers after the Wireless Ordinance was adopted where those poles were allowed to be put in place that did not meet the general standards for setbacks by a waiver process. Currently when those applications come in you usually see an easement granted by the adjacent owner who has been informed and is agreeable to that. So there are probably very few in that circumstance. As Mr. Fritz has pointed out he believed he mentioned there have been four and only one that has been affected by the circumstance you are talking about with the propose language. He thinks that is important.

Mr. Sipe explained the second point aside from safety that he thinks is important for you to understand which has not been really brought forward, is that prior to 2013 a new metal tower would have required construction as a Tier II application. That changed in 2013 to remove those towers from the review that any other treetop metal tower would have gotten. They allow this replacement straight forward by right, which means if you take the wooden pole down and put the new metal pole up by right under the current provisions you are going to get a tower that may not meet the design guidelines in terms of visibility, tree screening and other factors that impacts adjacent owners. He thinks that is the important purpose served as well.

Mr. Sipe said he would quickly run through a little bit of history. He thinks Mr. Fritz pointed out the issue about 2013 and why it was changed in that year. It was an attempt to ease the application process. It was done perhaps without some foresight about this impact that he just described. He also thinks it was done at a time when you did not have the federal preemption that has happened with the new role making. He thinks the preemption does have a bearing that limits your ability to regulate collocations. That is a change of circumstance that he thinks is applicable to this situation with wooden poles and replacement. As Mr. Fritz mentioned this is not about maintenance because you can still replace a

wooden pole with a wooden pole. If the wooden pole has rot or some issue they can replace it one for one with a building permit, and they are not touching that.

Mr. Sipe pointed out his applicants have asked the Commission to consider an additional provision to require all wooden poles to go back through that Tier II process because there are wooden poles near homeowners lots or adjacent owners that probably to be replaced by right now with a metal pole without scrutiny under the Tier II review they probably would not meet the circumstance or get the approval. But, they would have had to go through this Tier II. He thinks that is an important point to consider. He thinks that it is an administrative process and it is not a significant change to consider the additional request. It is not changing the process to one like a special use permit. It is still an administrative process as a Tier II, although as the Commission knows comes before them. He would ask that you regardless move forward the proposal as they have before them and recommend approval of the Board of Supervisors. He knows the Board has expressed interest in this not only to resolve the particular issue his client has but to also put into place protections for other homeowners and adjacent property owners to these sites. He would ask the Commission to move that through, and also ask that you recommend approval of their alterative by requiring all wooden poles to be treated as Tier II's.

Mr. Morris invited questions.

Mr. Randolph said he wanted to make sure that he heard Mr. Sipe correctly that he thought there was a problem with wooden poles that were installed with improper setbacks. He asked is that correct.

Mr. Sipe replied that was what this proposal would address.

Mr. Randolph requested to ask a question about sequencing. This is a little bit like the chicken and the egg. He asked which happened first here. Did the pole go in first and then the client built the house or did your client build the house and the pole went in subsequently.

Mr. Sipe replied that he would answer that question, but he also wanted to answer it a little more broadly just because of the circumstance. Prior to the adoption of the Wireless Ordinance a lot of poles were approved and waivers given not necessarily with a lot of input as to the impact of those waivers. In this case the applicant got approval of a pole. Subsequently the adjacent lot was built on. So my clients did build after the pole was in place. But, it was not any mechanism for them to know that pole was present because it was a wooden pole and was partially screened. The screening had to be removed for their construction for requirements for septic and the house foundation for the site. If there had been more setback and the screening had to be done on the property of the applicant with the pole, which the Wireless Ordinance now does, the circumstance that they are under would not have occurred. The current ordinance requires tree preservation around the current Tier II poles and that is permanently in place as part of the plan for them. That was not done on this circumstance that faces my clients. He asked did that answer the question.

Mr. Randolph asked if he established the sequence.

Mr. Sipe replied the sequence is right, but he was just saying that the pole that was put in the person that built that pole on their property they were not having that imposition of maintaining tree screening.

Ms. Jennifer Greeson said she was here because it turns out that they do live next to two wooden poles on our neighbor's lot. One is operated by AT&T and one by Ntelos. These poles have a visual impact on our property and the operation and maintenance of them has been disruptive to our neighborhood and will continue to be disruptive to our neighborhood. Neither of these towers would meet the Tier II requirements for screening today as Mr. Sipe explained. Both of them are closer to the property line than their setback and therefore create a safety issue for adjoining lots as well as the visual encroachment. Indeed both of them violate the basic customary setbacks for any tower structure in Virginia. There is no easement allowing that encroachment. They have come before the Board of Supervisors a couple of times on variance of this matter. So she knows they are more familiar with it. She was sorry for all the emails. What they have heard a number of times that staff will say these towers would never be approved today. They have learned a lot since then. These were approved in the early days. But, yet

they are still here. They are not going anywhere. In fact, they were approved and the setback waiver was granted by this body. This body also worked very carefully to put conditions in place to prohibit any future expansion of these towers at all. Of course, the FCC has taken away a lot of that legislative authority. The towers are still here and she feels that even in the face of the FCC's encroachment it is imperative that our County Code provide oversight of any future expansion of such badly sited accident towers as these. Wherever you can find a means to maintain your rights of review, decision making and balancing the needs of industry with the primary residential use of the site in our neighborhood, which she would remind is the primary use. So they have identified here a place where our County Code gives away something that the FCC does not make you give away. It gives away a piece of the oversight that the FCC does not require you to give away and they would like you to close that loophole. It does not take anything away from the industry, but just says if you want to put a new metal structure here let us make sure that it meets our design standards or our criteria for a new metal tower structure. She thinks it is fair and good policy. She strongly encourage the Commission to support this amendment.

Dade Van Der Werf said he may reiterate some of the things my wife and Mr. Sipe said, but wanted speak briefly about why it is so important to regulate the replacement of wooden poles with metal poles. As they have all referred to the FCC has usurped a lot of local control that has been assumed in a lot of the original approvals for these structures which exist today. As his wife and Mr. Sipe indicated as restrictive as that rule is it does not remove your authority to regulate the replacement of poles. Despite what some have said about the strength of metal versus wood he was an architect and works with structural engineers all the time and can tell you that for the same cross section a metal pole is stronger. It is in the light of the uncertainty about how the FCC law will be applied. He supports strongly the work staff in the county has done to create a new ordinance that focuses on methods of concealment. It is not yet clear as a matter of law whether that will stand challenged from the industry. If it does not there are a lot of changes that can happen to these poles as of right. They can go up or out 20' and who knows what comes next in the FCC rules. So allowing an instrumental structural change that could physically support other changes as a metal pole could. It gives away a whole lot of control that you can retain if you retain the wooden pole in the existing structures on these sites. As folks have referred, wooden poles are a legacy of the early approvals in the county. They do not represent the majority of structures. There is a limited number. So it is not an onerous demand to ask staff and the county to review these instances closely. As folks have referred, both of the poles that exists near us were created through a process that happened before the county had really developed the uniform standards it has today and before it applied them uniformly. In the case of the tower closest to us your predecessors on the Planning Commission granted a waiver really of our future property rights in a motion that is not allowed any longer under Virginia law. He thinks it is very important to restrict this replacement as a way to retain the original ministerial and legislative approval, which was so clearly written into the original special use permits that allowed these poles, so that these geometric and transformative changes that could come with a metal pole replacement given the new FCC rules can't come to pass. He thanked the Commission for their time.

Valerie Long, representing Ntelos Wireless and AT&T, said there are a couple of broader concerns. She had strong concerns about a zoning text amendment that purports to apply county wide to certain wood poles under certain circumstances when it has become very clear from statements on the record and correspondence that the actual intent of this ordinance is to apply to a single property owner or at more two poles on the same property. So from a procedural aspect she thinks that is a little concerning, and again is an issue of changing the rules for the entire county based on one set of facts that is not necessarily applicable. She would be happy to respond more to that.

Ms. Long pointed out on the broader issue of replacing wood versus steel and the merits of both she has been working with the Wireless Ordinance and even before it even existed. The site at the Bellair neighborhood was actually one of the first two sites she ever worked on. That was back in 1999 when they started the process, and it was approved in 2000. At the time the strong preference was for wood poles. There were those who thought that they were less visible. Over the years more and more wood poles were built. Ntelos estimates they have 30 or 40 in Albemarle County. She worked on at least 20 for AT&T. Ms. Schweller can probably give an estimate of how many Verizon has. But, it is a lot more than has been estimated by some of the comments. It quickly became clear that the merits of steel poles far outweighed the merits of wood poles even if they did agree that there was a slight visual difference

between wood versus steel. She has a handout which she will pass out in a minute. But, they made a list and she will run through them. The biggest is safety. Some of the comments from the public have noted this as well. You can engineer a steel pole to handle heavier and heavier weights absolutely, and that is a good thing. You cannot engineer a wood pole. You can engineer them to meet the diameter requirements that the ordinance requires. You can engineer a steel pole unlike a tree or a wood pole which is going to fall over like a tree in a single piece. You can engineer them to have a break point at certain areas so that in the highly unlikely instance of a failure it can collapse within a very small radius. If this is really about safety and that is what the resolution of intent said was the purpose, it is almost a no brainer in terms of steel. One of the biggest issues that they noticed in Albemarle County when they started was when AT&T in particular started trying to build the wood poles that have been approved on Route 53. Where the roads are so curvy they had to shut down Route 53 because the wood poles were over 100' tall in some instances. It had to be transported on a flatbed trailer. They literally could not navigate the curves on Route 53 without impacting the traffic in the opposite direction. As you can imagine that created a nightmare for everyone. They had to shut down exit ramps off the interstates in order to navigate the radius. Those are just a handful of reasons. She would pass around a sheet showing the comparative advantages of steel versus wood pole construction. (Attachment) Ntelos has had termite damage and woodpecker damage. If it is really about safety allow wooden poles to be replaced with steel poles. That makes sense. If this is about trying to prevent equipment from being added to an existing pole she thinks that is a real questionable approach to go about it. She would be happy to respond further.

Mr. Morris closed the public hearing to bring the matter before the Planning Commission for discussion and action.

Ms. Firehock said she had a question for the County Attorney. Even though she knew the answer she still wanted him to state it so that they can all be on the same page. In reading some of the comments she received today and this was stated this evening that they should not allow conversion of a wood pole to a metal pole to happen easily because they should have it come back before the Planning Commission so that they could deliberate on that. But, the implication was that they might somehow change the location or what is allowed. She asked under what standards would the consideration of wood versus metal change the ability to relocate the pole or to change what is on the pole. She did not think they would be able to consider any of that because it is an existing pole. She asked if all they would be considering is metal versus wood.

Mr. Kamptner replied yes, the essence of the discussion would be wood versus metal recognizing that the applicant has the right to replace wood with wood. It would be a discussion regarding that conversion. In an individual case there may be no impact on visibility and certainly the wood monopoles that are located within the trees. In the case of the Bellair parcel visibility issues have already been addressed by the removal of trees. So then they are talking about back to the wood versus metal.

Ms. Firehock said that aesthetics is really the only thing that they would be deliberating about on metal versus wood.

Mr. Kamptner noted Mr. Sipe raised the safety issue. He thinks at one time that was a consideration. As Mr. Fritz explained wood can be replaced with wood that is just as strong or stronger than metal.

Ms. Firehock said she did not completely agree with Ms. Long. She worked with the forestry industry and their woods have different tensel strengths and density. So not all woods is equal.

Mr. Kamptner noted they also recognize, as the staff report indicated, that at least the early monopoles that were erected are now rotting and some of them are being replaced.

Mr. Loach asked does the lack of easement convey as well. It seemed there was a question about the lack of having the original easement.

Ms. Firehock pointed out it was poles that were maybe not in the right place by today's standards.

Mr. Kamptner pointed out they were allowed to be closer to the property line than otherwise. But, in the 40 poles that are out there they may be monopoles that are 80' tall and 50' from the property line, but they are 500' or 1,000' feet from any structure. There are all those variables that come into play.

Mr. Loach asked if it comes before us is that an issue that can be considered then.

Ms. Firehock noted that the question was would they be allowed to look at anything besides metal versus wood, aesthetics and safety.

Mr. Kamptner replied let's say we have a situation where there is a structure that was 10' from the setback on the other side and if the pole fell it could land on the structure.

Ms. Firehock asked would they be able to say that actually they were not going to approve it because the pole is not in the right place.

Mr. Kamptner replied if safety is a concern they would want the pole to be replaced with a metal pole across the board if it is properly designed. He asked do we get the certification that the metal pole if it falls will collapse upon itself.

Mr. Fritz replied that he did not believe so. If there is an easement and it is within the easement area they would.

Ms. Firehock said her read of this is if somebody was to come before them and wanted to switch from wood to metal she would really be considering the aesthetic and the safety. She would not be able to say things like she did not think the pole was in the right place so she was not going to let them make this change because they might be able in the future to upgrade the equipment on that pole. She thinks that is part of the challenge with the comments she received today. Whenever they deny something they must have a legal reason for why they are denying that. She certainly has had to hold my nose and vote for things she does not like because she does not have a legal basis for denial. She was trying to imagine the scenario in which she would get greater discretion by simply requiring all of these questions of changing to metal to have to come before the Planning Commission. She did not see any greater discretion afforded to me. So that is just her take and she just wanted to have him weigh in on that so thanks.

Mr. Loach said so essentially then the vendor's fallback position though even in that consideration would be alright we will replace it with wood, which they don't need any governmental approval.

Mr. Kamptner agreed.

Ms. Firehock said they would just keep it wood.

Mr. Randolph said it has been brought up already, but he has a real issue with a single case study as a basis for a zoning ordinance change. He worries about that and in essence it is not the best way to conduct public policy. Secondly, he has a concern here about penalizing the telecommunication industry for approving the durability of poles by moving into metal poles. They are going to create a standard where they are saying they are going backwards in time in terms of use of wood when clearly the tinsel strength of metal and the ability of metal to collapse far exceeds the capability of wood.
Thirdly, three arguments have been raised here. One is about safety. In the communications concerns were expressed about the technology. Technology was referred to in the future as obtrusive and powerful equipment vastly more transmission equipment. Thirdly, another objection was the visual impact. The only major concern that he has is about safety with this pole. He thinks the safety of this pole can easily be addressed by having additional cables attached to it to reduce the likelihood that this pole would ever fall down. It is a wood pole, it can stay put, and they could have urged that there be additional cabling to secure that pole. But, he was not concerned about the safety once it is really even further secured. Fourthly, none of us likes federal pre-emption here. But, it is understandable because of the potential for local mischief in opposing new technology because of health concerns which may not be justified. Aesthetics and technophobia where people worry about technology and how it is threatening their lives.

So he thinks there is a solution here. The only argument he is persuaded by is the safety argument and he thinks that is an easy solution. But, to undertake a change with the zoning ordinance to address a single case study safety concern is not something he can support.

Mr. Fritz said he just wanted to clarify in case the Board has questions. When he was talking about cabling he just wanted to make clear that guidewires are not permitted by the ordinance.

Mr. Randolph asked what other mechanism would be available to ensure that this pole is secure beyond a reasonable doubt.

Mr. Fritz replied replacement with a new pole.

Mr. Randolph reiterated replacing the pole, then that is fine.

Mr. Fritz said he just wants to make that clear.

Mr. Dotson said focusing on the situation with the two towers in Bellair, and this is in the form of a question, if they are closer to the property line than it would be allowed if they were to be built today. He asked if that is a fact.

Mr. Fritz replied without either a special exception being granted by the Board of Supervisors or an easement on the adjoining property.

Mr. Dotson said he was going to interpret that they are a nonconforming use. He asked if that was correct.

Mr. Kamptner replied no, this is a legal use because they obtained what was then called a waiver to allow them to be closer to the property line than was otherwise allowed.
Mr. Dotson noted often the term legal is paired with this is a legal nonconforming use. However, it seems to me that it is an illegal nonconforming use.

Mr. Kamptner replied no, it was just a legal use because of the waiver. If they had been established prior to setback regulations being adopted that would be a legal nonconforming use. But, they obtained an approval that allows them.

Mr. Dotson said to continue what they are doing.

Mr. Kamptner agreed, that the analogy would be any use that is allowed in a district by a special use permit they get that permit that allows them to engage in a use that is not allowed by right. This is the setback equivalent to that.

Mr. Dotson pointed out the thing that he is getting at, and maybe his vocabulary is not exactly right, is that the normal doctrine as he understands it with legal nonconforming uses is that they can be replaced if damaged, they can be repaired, but not expanded. My question, therefore, is would the owners of these towers be able to simply to for one for one replace wood with metal; but, not in any way add to them because that would be an expansion.

Mr. Fritz said if they wanted to add 20' onto the tower, they cannot do that because of the conditions of the previous approval and even under the new FCC rule because that would defeat the concealment element. So that is a nonstarter, and so they can't do that. But, under our current and prior ordinances they would be able to add new equipment to the antenna. For example, if they had an array at the top and there was enough room to add another array 10' below the first array they could do that and keep doing that. So that is permitted. He did not know if that answered the question.

Mr. Dotson said they could add to a structurally sound wooden pole.

Mr. Fritz replied yes. What they have seen, which is a general statement for all sites, is the treetop towers tend not to have multiple arrays on them, generally not more than two arrays on them, not because of the capacity of the tower, but because these things are only 10' above trees. The first array is above the trees. The second array is at and below the tree level. The third array is below the tree level. Now they are getting down to not only where they are getting interference from the vegetation, but also from the topography. So that is why they tend not to see more than two arrays on a treetop tower due to the effectiveness of it. It does not make any sense. It could be as strong as you wanted it to be and it would be able to support massive amounts of equipment. But, the coverage is so insignificant that it does not justify the expense of putting the equipment in.

Mr. Dotson asked what would be the worst case scenario from the abutting property owner standpoint if the steel towers replaced the two wooden poles. Would it be just that it is now steel and not wood? Or, does that then open the door to other things that might not have happened otherwise.

Mr. Fritz replied our opinion is that the visual impact from going to wood to metal is insignificant. Under our current ordinance they would not be able to increase the height of the tower or have increased offset. He is always hesitate to speak for a member of the public, but the way he hears what they are saying is their concern is not necessarily what the existing regulations are, but what future regulations might permit. Because of the structural differences between a wood and a metal pole a metal pole if the FCC were to come along and remove the county's authority to do anything the metal pole might potentially be more readily accessible for expansion or alteration in some way. He thinks that is what the public is saying. That is the way he is hearing it, and if wrong he is sorry.

Ms. Firehock noted that was what she understood as well. She said her earlier point was she did not see how to use that as a basis for denying a request to switch from wood to metal because there would be no legal standing to say they might expand in the future.

Mr. Kamptner said the issue become moot because if the feds step in and pre-exempt our authority it does not matter what we are doing now.

Mr. Fritz noted one of the questions was what is likely to occur, which was a million dollar question that he wished he had the answer. The answer is he does not know. He was working with NACCO on this also and they do not know. The options range anywhere from a total pre-exemption to partial pre-exemption to nothing. They don't know and not only that they have no idea what timeframe the discussions might even occur. So he is trying to be as blunt as he can. They do not know if and when anything will be done.

Mr. Loach said given the history of the government's handling of it he can understand the neighbors' concerns as far as the future. He asked if they go from wood to metal does the vendor then also have the ability to upgrade the surrounding ground equipment.

Mr. Fritz replied that they already do. Whether it is wood or metal they can upgrade the equipment.

Mr. Dotson asked would they be able to remove trees that are not defining the reference tree, but some of the understory trees.

Mr. Fritz replied no, the conditions prohibit the removal of trees. So they would not be able to remove any trees. They would not be able to expand the lease area. The access road would need to stay the same. They can't do any ground clearing outside of the lease area. If they replace a tower wood for wood or wood for metal the new tower cannot be any closer to the property line than the existing one. It could be located farther away. They can retain the setback.

There being no further questions, Mr. Morris asked for a motion.

Motion: Mr. Randolph moved and Ms. Firehock seconded to recommend denial of ZTA-2015-00008 Wireless – Replacement of wooden pole with metal pole.

The motion passed by a vote of (5:2). (Loach and Morris – nay)

Mr. Morris said the motion was approved to deny this particular item. He asked if there was any further questions.

Mr. Kamptner said for the benefit of the Board of Supervisors since the Planning Commission has had a pretty lengthy discussion about your concerns about the zoning text amendment; they have the staff's analysis; and also most Commissioners have articulated some additional reasons, he asked if there was enough to capture that in how staff presents that to the Board.

Mr. Fritz replied yes, and pointed out the Board will have the Planning Commission's minutes. In our new system staff will provide a cover with some brief description and the conversations. He thinks staff can do that, but might have to go back and listen to it.

Mr. Cilimberg said as always with the action memo Ms. Taylor includes as an attachment of the points raised, which staff reviews. The Commission will have a chance to see that. If they see anything that might have gotten missed, please let staff know.

Mr. Fritz noted that was the primary thing staff relies upon to create the record that goes before the Board of Supervisors.

Mr. Kamptner pointed out the Board also has the Commission's minutes, and Mr. Cilimberg agreed that was correct.

Mr. Morris noted that ZTA-2015-00008 Wireless – Replacement of wooden pole with metal pole would be forwarded to the Board of Supervisors on July 8th with a recommendation for denial.

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.

- Based upon what the Commission did at the last meeting they will now be discussing the Rivanna River Corridor as well as the Broadway and Franklin area at the Joint City/County Planning Commission meeting on the 23rd of June. Mr. Morris said he would very much invite and welcome any comments that Ms. Firehock or Mr. Dotson have because they both will be elsewhere on that date.

- A joint meeting of the Planning Commission and Board of Supervisors will be held on July 8th. There will be an update on the Development Review Task Force, discussion of Commission and Board rules and protocol and comp plan implementation.

- Planning Commission liaison to Natural Heritage Committee

Mr. Morris noted the Planning Commissioner who is currently on the liaison Natural Heritage Committee is coming off that committee. However, the Board would like to have Planning Commission representation. He asked is there any commissioner who would like to sit on that Commission. Being no one, Mr. Morris volunteered to be the liaison if the Commission agreed.

Motion: Mr. Randolph moved and Mr. Lafferty seconded that Mr. Morris be appointed as the Planning Commission liaison to the Natural Heritage Committee.

The motion was unanimously approved by a vote of (7:0).

- Request by Ms. Firehock to establish work group with Mr. Keller to work on Dark Skies Policy in response to Phil Inanna's email on implementation. Staff suggested bringing this proposal up at the July 8 joint Board/PC work session.
- NO PLANNING COMMISSION MEETING ON JUNE 9, 2015.
- THE NEXT PLANNING COMMISSION MEETING WILL BE HELD ON TUESDAY, JUNE 16, 2015.

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

Adjournment

With no further items, the meeting adjourned at 8:30 p.m. to the Tuesday, May 16, 2015 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

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