**Albemarle County Planning Commission**
**October 6, 2015**

The Albemarle County Planning Commission held a public hearing on Tuesday, October 6, 2015, at 6:00 p.m., at the County Office Building, Room 241, 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. Absent was Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia.

Staff present was Claudette Grant, Senior Planner; Glenn Brooks, County Engineer, Sarah Baldwin, Senior Planner; Bill Fritz, Manager of Special Projects; Wayne Cilimberg, Deputy Director of Community Development; David Benish, Acting Director of Planning; Amelia McCulley, Director of Zoning/Zoning Administrator; Steward Wright, Senior Permits Planner; 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.**

The following was noted by Commission members:

Mr. Dotson reported the PFRA entertained potential donations amounting to 1,000 acres to be added to the protected rural area.

Mr. Randolph noted the following:
- The Historic Preservation Committee had presentation by Mr. Dewberry with staff regarding artist colonies.
- The Village of Rivanna CAC had a presentation by Will Cockrell from the TJPDC about potential future expansion of lanes on Rt. 250 east.
- Long Term Solid Waste Solutions Committee Final Report to Board tomorrow as well as a discussion on the Ivy MURF.

Ms. Firehock reported the following:
- At the Rivanna River Renaissance meeting she made a presentation on conserving green infrastructure that would be posted on the Rivanna River Basin Commission website.

Mr. Loach noted the following:
- Celebrated the second anniversary of Crozet Library.
- Article in Crozet Gazette on new building coming to Downtown Crozet consistent with the Downtown Model District.

Mr. Lafferty noted the MPO Policy Board met on the 23rd on the following:
- Authorized TJPDC by resolution to submit grants for a bike-pedestrian lane that goes from Downtown to 5th Street Station.
- Discussed House Bill 2.
- Second bike count coming up around town.
- Joint meeting with the Staunton, Waynesboro and Augusta County MPO at Crozet Library.

Mr. Morris noted Places 29 three subcommittees started training for the committee members on September 30. Due to his absence Mr. Morris asked Mr. Dotson to report on the meeting.

Mr. Dotson reported the Places 29 three subcommittees as well as a nucleus from the new Southern Area Committee met and had a presentation by current Crozet CAC Chair. Those committees are now back on track and ready to work.

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

**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.

**Review of Board of Supervisors – September 23, 2015**

Mr. Cilimberg reviewed the actions taken on September 23, 2015.

Mr. Cilimberg left the meeting at 6:21 p.m.

The meeting moved to the next agenda item.

**Public Hearing Items**

**SP-2015-00003 North Pointe Middle Entrance Amendment (Sign # 61)**
MAGISTERIAL DISTRICT: Rivanna
TAX MAP/PARCEL: 03200000002000
LOCATION: North of Profit Road, east of Route 29 North, across from Northside Drive and south of the Rivanna River
PROPOSAL: Amend conditions of approval for SP2007-00003
PETITION: Amend conditions for Fill-in the floodplain SP2007-0003 under Section 30.3 of Zoning Ordinance. No dwelling units proposed.
ZONING: PD-MC Planned Development Mixed Commercial - large-scale commercial uses; residential by special use permit (15 units/acre).
Flood Hazard Overlay District (30.3)
ENTRANCE CORRIDOR: Yes
AIRPORT IMPACT AREA: Yes
COMPREHENSIVE PLAN: Urban Mixed Use (in Destination and Community Centers) – retail, residential, commercial, employment, office, institutional, and open space; Urban Density Residential – residential (6.01 – 34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses; Privately Owned Open Space; Environmental Features – privately owned recreational amenities and open space; floodplains, steep slopes, wetlands, and other environmental features; and Institutional – civic uses, parks, recreational facilities, and similar uses on County-owned property in Hollymead - Places 29.
(Claudette Grant)

Ms. Grant presented a PowerPoint presentation for SP-2015-3 North Pointe Middle Entrance Amendment and summarized the staff report. Staff pointed out the portion of the development that is pertinent to this special use permit request and the general location for the proposed middle entrance, which is an extension of Northside Drive.

The Comprehensive Plan designation for this area shows several different possible uses, which are detailed in the presentation and staff report.

The applicant is requesting to amend special use permit conditions for SP-2007-3 (fill-in the flood plain) to modify conditions requiring an arched span crossing of Flat Branch stream. The next slide shows a revised plan of the proposed crossing, which is also in the packet. For a different point of reference, staff referred to the approved North Pointe application plan and pointed out North Point Boulevard, which is to the east and parallel to Route 29, and the middle entrance crossing that they were speaking about this evening.

The next slide provides a visual picture of what the revised crossing will look like. This design incorporates two 6' X 8' box culverts at the crossing with a separate 8' X 8' lighted underground pedestrian tunnel; whereas, the previous design was a single arched culvert that incorporated a pedestrian walkway in the culvert. This pedestrian walkway is a little bit outside of the culvert.

Staff apologized that the approved plan is not very clear on the next slide. She referred to a comparison of the approved and proposed design. Conditions of the approved special use permit require a single arch culvert with a bottomless design. This design was intended to be more environmentally sensitive than a conventional boxed culvert. However, at the time of the original approval there were concerns that VDOT might not approve this type of culvert in part due to extensive soil testing needed and future maintenance cost. As a result the special use permit conditions provided an alternative to the arch span in the way of a boxed culvert. The specific details are provided in the staff report. As the applicant began to work on the design of the original special use permit they found the approved design to be more expensive than boxed culverts, and knowing that VDOT had concerns about the design they decided to redesign the crossing and amend the special use permit.

The applicant has demonstrated to the county engineer that obstruction and fill is minimized and protected against erosion or pollution to at least the same level as the span culvert.

**Factors favorable to this request include**:

1. The proposed design modifications are not expected to change the floodplain levels or the overall impact to the stream.
2. Environmental impacts appear to be the same, regardless of the design.
3. The proposed design is similar to the design approved for the northernmost stream crossing for North Pointe.
4. There are no anticipated detrimental impacts to the use or on adjacent property resulting from the proposed revisions to the special use permit and conditions.

**Factors unfavorable to this request include:**

1. There are no unfavorable factors.

Based on the findings contained in this staff report, staff recommends approval of SP-2015-3, North Pointe Middle Entrance Amendment with the following changes in conditions from the original special use permit:

- Change to Condition 1 to reflect new ordinance requirements related to fill in the floodplain;
- Elimination of Conditions 2, 3, 4, 8 and 9, since these are now ordinance requirements;
- Elimination of Conditions 6 and 7 because they are no longer accurate; and
- Revision of Conditions 5, 10, 11 and 12 for clarity and with technical language updates.

See Attachment D for Action Letter, dated August 16, 2007, inclusive of the approved special use permit conditions. Blackline of approved and proposed conditions are provided below:

1. ~~The applicant must obtain a map revision, letter of revision, or letter of amendment as required from the Federal Emergency Management Agency (FEMA) and copy the County Engineer on all correspondence, since changes to the floodplain are proposed;~~
   Prior to final road plan approval, the applicant shall obtain from the Federal Emergency Management Agency (FEMA) a conditional letter of map revision (CLOMR, or CLOMA), and prior to road acceptance the applicant shall obtain from FEMA a letter of map revision (LOMR or LOMA). In addition, the applicant shall copy the County Engineer on all correspondence with FEMA.

2. (Intentionally deleted)

3. (Intentionally deleted)

4. (Intentionally deleted)

5. The culvert under Northside Drive shall be ~~an arch culvert which leaves the natural stream channel and banks undisturbed for a minimum width of twenty-four (24) feet. In the case that VDOT does not approve the placement of footings or the arch span under Northside Drive, box culverts may be used,~~

~~subject to the review and approval of the County Engineer. In this case a minimum of two (2) culverts with one (1) countersunk for base stream flow shall be used, with impacts to the FEMA floodplain equal to or better than for the arch culvert span;~~ in general accord with the attached drawing titled "North Pointe SP Crossing of Flat Branch" prepared by Townes Site Engineering with a revision date of July 20, 2015, page 2 of 3. To be in general accord with the plan, development shall reflect the general size, arrangement, and location of the culverts. Modifications to the plan, which do not conflict with the elements above may be approved subject to the review and approval of the County Engineer;

6. (Intentionally deleted)

7. (Intentionally deleted)

8. (Intentionally deleted)

9. (Intentionally deleted)

10. Design Planner approval of a landscape plan. Prior to obtaining approval of the road plans and erosion and sediment control plans for Northside Drive, the applicant shall obtain approval of a landscape plan. ~~The landscape plan shall be shown on the road plans and erosion and sediment control plans submitted for Northside Drive.~~ The landscape plan shall include a complete planting schedule keyed to the plan and shall provide the following:

    a. Existing tree line and proposed tree line to remain, the limits of clearing and grading, and tree protection;

    b. Provide an informal planting of mixed tree and shrub species and sizes to compensate for removed vegetation, and low-growing plants to stabilize slopes in the areas of proposed grading and tree removal; ~~This planting shall occur regardless of the grading proposal (DDR or KCA) chosen;~~

    c. Provide large shade trees on the north and south side of Northside Drive, along the sidewalk and space reserved for the sidewalk, two and one-half (2½) inches caliper minimum at planting, forty (40) feet on center, for a minimum distance of four hundred (400) feet from the existing edge of pavement of Route 29 North;

11. Design details of the retaining walls, including column cap design, pier design, stone finish, ~~etc.~~ and similar design details shall be shown on the road plans and are subject to review and approval of the Design Planner; and

12. If the use, structure, or activity for which this special use permit is issued is not commenced ~~within sixty (60) months after the permit is issued~~ by [insert date that is 5 years after the date the BOS approves the SP], the permit shall be deemed abandoned and the authority granted there under shall thereupon terminate.

Conditions (Clean copy):

1. Prior to final road plan approval, the applicant shall obtain from the Federal Emergency Management Agency (FEMA) a conditional letter of map revision (CLOMR, or CLOMA), and prior to road acceptance the applicant shall obtain from FEMA a letter of map revision (LOMR or LOMA). In addition, the applicant shall copy the County Engineer on all correspondence with FEMA.

2. (Intentionally deleted)

3. (Intentionally deleted)

4. (Intentionally deleted)

5. The culvert under Northside Drive shall be in general accord with the attached drawing titled "North Pointe SP Crossing of Flat Branch" prepared by Townes Site Engineering with a revision date of July 20, 2015, page 2 of 3. To be in general accord with the plan, development shall reflect the general size, arrangement, and location of the culverts. Modifications to the plan, which do not conflict with the elements above may be approved subject to the review and approval of the County Engineer;

6. (Intentionally deleted)

7. (Intentionally deleted)

8. (Intentionally deleted)

9. (Intentionally deleted)

10. Design Planner approval of a landscape plan. Prior to obtaining approval of the road plans and erosion and sediment control plans for Northside Drive, the applicant shall obtain approval of a landscape plan. The landscape plan shall include a complete planting schedule keyed to the plan and shall provide the following:

    a. Existing tree line and proposed tree line to remain, the limits of clearing and grading, and tree protection;

    b. Provide an informal planting of mixed tree and shrub species and sizes to compensate for removed vegetation, and low-growing plants to stabilize slopes in the areas of proposed grading and tree removal;

    c. Provide large shade trees on the north and south side of Northside Drive, along the sidewalk and space reserved for the sidewalk, two and one-half (2½) inches caliper minimum at planting, forty (40) feet on center, for a minimum distance of four hundred (400) feet from the existing edge of pavement of Route 29 North, and

11. Design details of the retaining walls, including column cap design, pier design, stone finish, and similar design details shall be shown on the road plans and are subject to review and approval of the Design Planner; and

12. If the use, structure, or activity for which this special use permit is issued is not commenced by [insert date that is 5 years after the date the BOS approves the SP], the permit shall be deemed abandoned and the authority granted there under shall thereupon terminate.

Staff would be happy to answer questions. Glenn Brooks, the County Engineer, is also here to answer any questions.

Mr. Morris invited questions for staff.

Mr. Dotson said he had a clarification on the attached maps in Attachment b on page 3. There is a red box showing the area subject to the special use permit. He assumed they were approving the pedestrian undercrossing of the road since it is being relocated. However, that is located outside the red box and he was wondering if that red box is in fact accurate and needs to be corrected to show that the action is also a little south of that.

Ms. Grant deferred the question to the County Engineer, Glenn Brooks.

Glen Brooks, County Engineer, said his understanding is that the special use permit is for the floodplain crossing, which is part of the Floodplain Overlay District regulation, and the applicant could do a pedestrian crossing under the road without a special use permit. It is not necessarily tied together. The applicant did tie them together because they are doing them all at once and it is all one grading activity. As County Engineer his function is related to the floodplain impacts, the crossing in the floodplain and that is all. He actually asked

the applicants to draw that box because he did not want the Commission to necessarily think that they are approving things outside of that box.

Mr. Dotson said he would guess the answer to his question by sort of reading between the lines would be there is latitude within the approved zoning to shift the location of the pedestrian undercrossing subject to approval of the planning director as meeting the intent of the original approval.

Mr. Brooks agreed that was his understanding.

Mr. Keller asked Mr. Brooks if it is his feeling that there is more or less fill in the floodplain required by the amendment than in the previous proposal.

Mr. Brooks replied that he would say that they are about the same.

Mr. Randolph said he had a questions for Mr. Brooks. On attachment B on the back side it shows two 8' X 6' proposed double box culverts, which equals 96 square feet. Then to the right of what looks to be the concrete construction of the culvert it says approximate location of existing FEMA floodplain elevation 424. He asked is that a 100-year flood.

Mr. Brooks replied yes.

Mr. Randolph said in light of Nikki Haley's experience in South Carolina is it adequate in the Commonwealth of Virginia that we are still utilizing the 100-year floodplain standard when the applicant is proposing putting in double box culverts of 96 square feet. If there is a huge volume of water is there going to be more water going through than could possibly be accommodated by those two culverts. He asked staff to point out in attachment A the North Pointe middle entrance. The location of this proposed bridge/culvert is located in the cross section of 32/20 and if you go west it is right there. It is where 32/20 and 32/23 meet on that boundary line. If they go west that is approximately where this is located. Understanding that this North Fork migrates in a south to north direction, as development occurs in 32/20 and the volume thereby of runoff goes up we are going to be looking at more water needing to go into this tributary. Then we are creating a potential bottleneck using a standard of a 100-year flood that says all the water is going to get through there. Is that really adequate from the standpoint if we have a 250 year or 500 year flood and a stalled hurricane sitting over Charlottesville. Is that going to accommodate that volume of water in your judgment?

Mr. Brooks replied yes. They have a lot of free board on this crossing meaning the road is much higher than the culvert crossing itself. This stream section is actually a pretty narrow ravine and the floodplain does not spread out a lot. So the water will rise, and we have plenty of height. So a catastrophic event would have to clog the culvert first for that serious occurrence to happen. The other thing is this is a federal regulation, and he does not have the lead way to do something beyond it. The Board would have to pass an ordinance to say we are going to use the probable maximum flood, the 200-year or some other standard.

Mr. Randolph thanked Mr. Brooks because the Commission's responsibility is to do planning and to think longer term. He would hate to see us permit a project and then have it come back and be a source of problems in the future. That is in the best interest of the applicant as well as all of us. So he had to ask that question.

Ms. Firehock noted the staff report said the environmental impacts were the same. It did not necessarily say the impacts were exactly the same, but it implied that. So my reading of this report is the only thing that is the same is that the base flood elevation is the same with both approaches, the one that was already permitted and the new one. However, environmental impacts are a much larger category of things. She did not even understand what the first proposal was since it was not done during my tenure on the Planning Commission. Therefore, she did not feel like she had adequate drawings to interpret. But, it cannot be exactly the same to put a stream into a box culvert as to have a natural stream channel.

Mr. Brooks agreed.

Ms. Firehock said it was not really a correct statement to say they are the same because they really are talking about FEMA requirements.

Mr. Brooks replied yes, it would not have been his choice of words. He did not know if the special use permit for fill in the floodplain can reach that far. It was definitely one of the criteria used in the original approval that went with the rezoning. There was also some talk about the pedestrian trail being along the creek and that was a better situation at that time. Thoughts have changed since then and they wanted to be up closer to the road. Ms. Firehock was correct that keeping the natural shape of the stream channel might be better for smaller environmental concerns for organisms in the creek.

Ms. Firehock agreed and noted that box culverts could also cause shallow below the box culvert over time and increase sedimentation.

Mr. Brooks said the arches can cause quite a bit of shallow, also. They have a wider section so presumably the water is not concentrating or shallowing as much. However, they do create a dark zone where nothing grows and end up with just mud through there. Then they have to armor it with rocks and end up impacting the creek anyway. They did not specify the size of their arch on their original rezoning. So if it was a very, very large arch yes you can get a lot of environmental benefits out of that. But, they probably would not end up with something that big because VDOT does not want to maintain something beyond the minimum maintenance requirements for them. So that is the driving force.

Ms. Firehock suggested when the applicant comes up they can comment more about this because she understood this request for changes was simply a matter of cost.

Mr. Brooks agreed that had something to do with it, but thought that VDOT was a big driver.

Mr. Lafferty said he thought Mr. Brooks answered his question about the square footage of the box culverts being greater than the curb culvert since it was not specified.

Mr. Brooks said they can't say that for sure; but, he can just look at the floodplain predictions and it is roughly the same.

Mr. Lafferty asked if the watershed is changing.

Mr. Brooks replied it was just for the development, and that has been considered in the calculations.

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

Valerie Long, with the law firm of Williams Mullen representing the applicant, Great Eastern Management Company, said joining her this evening was David Mitchell with Great Eastern Management Company; and Brian Mitchell, civil engineer with Townes Engineering. She introduced her special guest, her son Davis, who is here tonight observing to get his community service hours for his honors civic class at Henley.

In a PowerPoint presentation Ms. Long explained why they were making the changes and how it would function. The basic issues they are dealing with is an updated design. She clarified that they did say, Ms. Firehock, there was less impact to the stream buffer for some of the reasons Mr. Brooks mentioned. However, generally it was because the arch culvert in our designs indicated it could have required almost as much fill in the floodplain for the footers of that arch culvert as being an equivalent amount of impact as is required for the boxed culverts. So that is, again, perhaps not the best choice of words as Mr. Brooks said, but that was the basis for that statement. So again, the smaller culverts results in smaller footings. Also, an important factor was the pedestrian enhancements. The original design had the arched culvert, which had the pedestrian trail right next to the stream. They were balancing this goal in order to have a large enough arch that they could have a pedestrian friendly path and not have a pedestrian feel like they were walking sort of through a culvert. They wanted to have it large enough to have head room for folks to walk. However, of course that requires a larger span impact and thus impact on the floodplain. It is also substantially more expensive.

Ms. Long noted Mr. Morris was perhaps the only person who was on the Planning Commission back in the North Pointe days. She thought it might be helpful for the Commission just to see the approved application plan for North Pointe. They always talked about three entrances to the project with Route 29 along the bottom. The UVA Research Park was essentially across 29, which is the called the northern entrance. She pointed out the southern entrance and the middle entrance, which is the subject of tonight's application and the area in question.

Ms. Long pointed out the view that show the box culverts. They separated the pedestrian path from the stream channel so that they could have a more pedestrian friendly path under the road. They wanted to show that it was going to be wide enough for essentially a multi-use path. In the exhibit the Commission discussed already and that Mr. Brooks explained made it clear that this is the pedestrian tunnel and as noted it is beyond the scope of the red box. But, they certainly wanted to have the information there that Mr. Brooks wanted. They are comfortable with it. She pointed out the original design from the plans from SP-2007-3 showing the wider culvert. The next slide is at a slightly different scale because they wanted to be able to show the context of the pedestrian tunnel and the proposed replacement box culverts. She would be happy to go through the conditions. However, the conditions were mostly housekeeping measures and clean up. A lot of the original conditions from 2007 required certain things that are now automatically required by the ordinance so they were determined to be unnecessary. She would be happy to answer questions or elaborate on any of these exhibits.

Mr. Morris invited questions for Ms. Long.

Ms. Firehock asked if the original proposal was sort of a domed tunnel with a natural stream channel flowing in some sort of pedestrian walkway in the doomed tunnel.

Ms. Long replied that was correct.

Ms. Firehock asked if now they were simply relocating the pedestrian part to another tunnel, which from the scale is just over 100 feet long and then the stream goes through the box culverts, and Ms. Long agreed.

Mr. Randolph asked Ms. Long for an approximation of how many square feet the original culvert was through there. It looks to be much larger than 96 square feet.

Mr. Long asked if he meant in terms of the amount of water volume it could accommodate.

Mr. Randolph replied yes, the surface area there and how many square feet on a linear basis and if you were to take a cut of it what would it approximately be?

Ms. Long asked Brian Mitchell with Townes Engineering to answer this question.

Mr. Lafferty noted they also have a pedestrian walkway in there, too.

Brian Mitchell, with Townes Engineering, said that he did not believe that the original arch was ever truly sized. The bottom of the creek is around elevation 417. The road elevation going over top of it is up around 445 to 450. Essentially he would call it 30 to 35 feet from the bottom of the creek to where the road goes by. So if you are envisioning me standing in the creek and the road is up above this ceiling it is a number of feet.

Mr. Randolph asked if it was 11' 8" or 17' 8".

Mr. Mitchell replied it was 17'.

Mr. Randolph said it was much higher. So instead of an 8' ceiling it would be more than a double ceiling. So there would be considerably a greater capacity for water to flow through the original culvert.

Mr. Brian Mitchell replied that he was correct in looking at it from the size standpoint. Part of the thought process behind this was if you could envision people walking along our entrance road where you see the people up at the top. Also, they have pedestrian paths that are going to be proposed throughout the

subdivision and development. To have them be able to actually stay up in that area where they envision the pedestrian traffic being instead of having to go down into a gully, which they thought would not be the safest scenario, was another thing that drove us to having the separate pedestrian tunnel.

Mr. Randolph asked if the culverts they plan to use were prebuilt concrete, brought in on a flatbed, lifted by a crane, put into place, and then they would build earth on top of them.

Mr. Brian Mitchell replied that they have done them both ways. He has done that where they come in essentially 8' long sections and they piece them together. They have also built them in place before. They would just give both options to the contractor. The problem with bringing them in on a crane is you essentially have to build a path for the crane to get down to the bottom. Whereas, if you form them in place then you are talking about a concrete truck building the cast structure down at the bottom and maybe constructing one having the water go in the other one or the other one would be in place, pouring the concrete and then moving over and forming the other one. They have done it both ways. It really just depends on constructability and access.

Mr. Randolph said he would like to ask a hypothetical question. Let's say you are a property owner directly upstream from this proposed culvert and you have stream frontage on it and were at an elevation of 5' above the stream, would you prefer to have your original culvert or would you prefer to have the culvert that you are proposing here in terms of your own safety and preservation of your property.

Mr. Brian Mitchell replied that he did not think it matters. Referring back to the North Pointe application plan he explained that the actual culvert crossing is essentially where the middle red box is at the middle entrance. Upstream of this the water on this is flowing from Profit Road towards the culvert crossing. There is enough elevation fall in there that there isn't any affected property owner that is upstream of it. If they got into the scenario they were saying not one culvert box, but these big 6' X 8' box culvert boxes, and if one of them got blocked they have the second one as redundancy. If they both get blocked for some reason that water is going to rise up and quite honestly it is going to go through the 8' pedestrian tunnel that we have as a third fail safe option. Then at that point there was the road elevation and the sag in the road elevation. He had looked at the topo on this upstream and did not believe even if it had to go up and over top of the road to get out that there is not anything upstream of this in his opinion that would be affected. Route 29 is where that stream eventually goes. The elevation of the road at that point is like 465, which is about 20' higher than the elevation of the sag of the road in this area. He did not see there was any chance of that occurring.

Mr. Morris invited other questions.

Mr. Lafferty pointed out the present design is far superior from a bike/pedestrian position in that it looks like if you were taking the other culvert, the semi round one, you would have to go down 35' and then go up 35'.

Mr. Brian Mitchell said they really did not think anybody was going to do what Mr. Lafferty just said. That really drove us to this in that they have done a lot of golf course communities and that sort of thing where they have these pedestrian tunnels. If you don't make them user friendly for somebody they are not going to use them. So that was one thing that drove us to this. The other thing is that the ones where they have done a pedestrian path down next to a stream it does exactly what Mr. Randolph says it floods. It ends up wiping out the pedestrian path that has been installed or it becomes a maintenance issue. So this is a better way to do it.

Mr. Lafferty said he has had the opportunity to put in some of these oval culverts and doing the face of them is real problematic to make it look nice. It is not shown here, but you want the whole face to be concrete to keep the erosion from getting around it.

Mr. Brian Mitchell said the other thing they had a problem with is with the arch system. Essentially there is so much weight on the footing and the foundation that you have to drive piles generally down to rock in order to support them. In order to do that you have to get a piece of equipment down there to do that and that requires a lot more clearing and impact to what you are trying to avoid. These are some of the background reasons that maybe are not in the presentation, but drove us to this decision.

Mr. Keller said he would like to weigh in on this because he sort of disagrees with what both of you have said. He thinks from an environmental standpoint there are ways that if they are not so dramatically impacting the topography of the site and if we really want the young folks in our community to understand water quality issues, which many people are saying is the biggest set of issues that mankind has to confront, then they would be interested in bicycle trails and other things being able to get the person down closer to that. If they had proper kinds of plantations instead of going for just pastoral landscape that is all clipped then there are ways that the water would not be doing the impact to that area that would lead to the kind of wash out that you are talking about. It is beyond this. Each of us understand as a Commissioner what our responsibilities are here to vote on. Since they have Mr. Mitchell engaging in this in a thoughtful and positive way he asked how he could envision a development like this with a bridge in that water way. Let's just say hypothetically and not here how you can envision a solution to a situation like this that might be better. He asked Mr. Mitchell to take the cost aside for a moment.

Mr. Brian Mitchell replied that the issue that was driving this is the elevation of 29, which is the road we are mandated to connect to and where they are mandated to connect to across from Northside Drive. The elevation of that intersection is 463. VDOT is mandating to us that we have to drop that road coming into our main entrance down. They have to have a flat area for 50 feet of 3 percent so no cars go sliding at the intersection. Then once they get 50' into the site they have a slope grade that needs to go down, and they need to do that around 5 to 8 percent because of the road classification. So that is kind of dictating what the elevation is as we go over Flat Branch Creek. Another situation is if we were in some other location where they did not have accesses to 29 mandated at this location, then he thinks you could get into something like that where they can work the grades around to where the main road can get down to an elevation equivalent to a creek and be able to create that transition that you are looking for. That is not this situation, but certainly we try to do that in other projects where they have that capability and where the elevations work. That is not the situation here, but that certainly is the situation in other places where it is flatter and the floodplain is more spread out like Mr. Brooks said. In those areas they generally can get the roads and the pedestrian systems down to the elevation of the creek bed and create what you are referring to.

Mr. Keller noted another alternative would be a longer span bridge at the elevation that you need that becomes an eloquent design feature in its own right.

Ms. Firehock noted she had two questions. The design you showed us from before with the tunnel she did not see a walkway on that. She asked was there another drawing that had that or was it just said it would be done.

Mr. Brian Mitchell replied it was said in the proffer conditions.

Mr. Benish pointed out there is nothing in the proffers that dictated a particular design. It had to be figured out. This drawing really has no standing other than just a conceptual drawing.

Ms. Firehock said she would like to know since it was stated in the application materials that cost was a major determining factor in requesting this change. She wanted to know the difference in cost. She wanted to know what the original might have cost. She understands that he had not fully designed it yet. She needs to have something because she can't just hear that it cost more.

Mr. Brian Mitchell said they took just a schematic arch that would have been required for this and then sent that out to Comspan, which is a manufacturer for arch pipe/bridge systems. They sent us back what their most cost effective solution is that is a steel plate system. Essentially instead of building the arch and sending us pieces of concrete, which can be very expensive to transport if they send us pieces of steel plate, they show up on trucks and you erect those. You have to build footings with the foundation and most likely driven piles down to rock. The actual steel plate from the manufacturer for the span was like a million seven for that. They would still have to construct the footings and drive the piles. The last time they built an arch system the piles for it were about $250,000. This span would probably be $300,000 to $400,000 because it is a lot bigger than the last one they did. He thinks that is a ballpark number. They were thinking somewhere in the 2.2 to 2.5 million dollar range to build it as an arch. The culvert system with the double 6' X 8' boxes was around $400,000 or $500,000 for those transported and placed on site. Then they still have to do the 8' X 8' pedestrian crossing, which was not as long. He thinks that was probably $260,000 for that. It was double.

Mr. Lafferty said since this is not really the proposal and this just happens to be in the drawings and outside of the scope of the drawings should we be doing design work here for him.

Mr. Morris said he did not think so, but it is a legitimate question.

Mr. Benish added that at the time of the rezoning he believed that VDOT did not commit to accepting the arch design. That is why the original language was such. Their concern was long term maintenance of the arch structure. He did not know if staff has gotten any more recent comments from VDOT on that. However, that was passed back in 2007.

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

Mr. Lafferty said this design is certainly superior to what they saw previously. If VDOT is not going to accept it, then it is sort of a mute question as to which one you go to. You might face these entrances to the pedestrian walkway into the culvert for the storm water with rock or something like that to dress them up and make it look a little bit nicer. From a pedestrian and bicycle point of view he thinks this is a far superior design.

Ms. Firehock said she did not actually agree. She has been in plenty of tunnel systems with streams going through them and pedestrian pathways that are quite pleasant. VDOT did not say they did not accept this, but said they have concerns with maintenance. It is not a rejected application. She takes the point about the tunnel perhaps being easier to reach in the new design and get through as a pedestrian; however, it is much worse on the environment. So people might get a little fitter perhaps if they have to go a little farther to go through it.

Mr. Randolph said he appreciates Mr. Brooks' and engineering staff's frankness about this. He would feel a little bit more comfortable looking out over the next 20 years if the 96 square feet was greater.

Mr. Keller said from Mr. Lafferty's point he was asking because he thinks that we want to be working towards planning design excellence. Those questions are not going to affect my vote on this. However, he thinks staff, the general public and the Commissioners need to be thinking about a higher degree of design execution in the future. He thinks we need to be raising the bar in this world class county that they are said to be in, and he did not believe that any of those solutions get anywhere close to that.

Mr. Lafferty said they also have mobility issues and he thinks they are somewhat obligated to plan so people can use the pedestrian path and be willing to use it. You can put a path down to the creek if you want to have a place to park your bike and walk down there.

Mr. Morris recalled when the Commission looked at this in the beginning it was obvious that this is going to probably come up again. It has and I commend you for the design work that you have done and the candor that you have addressed the issue. Therefore, he supports this. He asked if anyone desired to make a motion.

**Motion:** Mr. Randolph moved and Mr. Lafferty seconded to recommend approval of SP-2015-3 North Pointe Middle Entrance Amendment with the conditions outlined in the staff report.

Mr. Morris invited further discussion. There being none, he asked for a roll call.

The motion passed by a vote of 5:2. (Firehock, Keller nay)

Mr. Morris noted that SP-2015-3 North Pointe Middle Entrance Amendment would be forwarded to the Board of Supervisors with a recommendation for approval on a date to be determined.

The meeting moved to the next agenda item.

**SP-2015-00023 5th Street Station - Drive through Windows (Signs # 47 & 48)** MAGISTERIAL DISTRICT: Scottsville

TAX MAP/PARCEL: 076M10000002A0, 076M10000002B0, and 076M10000004A PROPOSAL: Request for multiple drive-through windows
ZONING: Planned Development Shopping Center
COMPREHENSIVE PLAN: Regional Mixed Use – residential (up to 34 units/acre), regional serving retail, service and office uses, non-industrial employment centers.
EC Entrance Corridor – Overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access.
AIA Airport Impact Area – Overlay to minimize adverse impacts to both the airport and the surrounding land.
(Sarah Baldwin)

Ms. Baldwin presented a PowerPoint presentation for SP-2015-00023 5th Street Station – Drive through Windows.

This is a request for a special use permit to establish multiple drive-through windows located at 5th Street Station. Typically, with special permits an application plan is submitted that depicts the important concepts that staff has identified. In this case, the applicant has submitted a conceptual plan that identifies three potential drive-through locations that the applicant may utilize, but they may anticipate more.

This project is zoned Planned Development – Shopping Center (PD-SC). Planned districts in general are meant to provide for more flexibility. In order to allow the applicant more flexibility, staff has developed design standards which identify best practices for drive-throughs. This will give the applicant the opportunity to assure future tenants that drive throughs are permitted that also provide staff with standards conditions. In the future it is possible that the design standards that the Commission will see tonight may be used for future drive-through applications and potentially lead to a zoning text amendment (ZTA) to allow them by right.

The conditions, as outlined in the staff report, are based upon extensive research from both the United States and Canada. Staff has reviewed and analyzed them against other drive-throughs. Staff noted the conditions address such things as circulation, safety, location of window, lane width, and separation of lanes. The conditions also change stacking to a measurable distance, line up entrances, and provide for a travel way beyond the window and address screening. The conditions far exceed those we currently have in the ordinance. As part of this application the applicant is requesting special exceptions from the existing ordinance for stacking and lane width, which is supported by staff.

In the next slide, Ms. Baldwin pointed out what these conditions would look like regarding the following:
- Window located at side/rear
- Access not on travel way
- Landscaping

In the next slide Ms. Baldwin pointed out an example of one that does not work:
- There are no barriers
- There is conflicting traffic flow

The conditions staff outlined will address these type of things.

In the next slide Ms. Baldwin pointed out another example that does work:
- There is adequate separation between the travel ways
- There is space beyond the window
- The window is located at the side or the rear of the building

Staff received an email today from a citizen addressing screening, which the Planning Commission also received. Staff agrees and anticipated such issues. Conditions 2 and 3 address landscaping. Additionally, our ordinance currently allows for screening of objectionable features. That is always an option for us.

Staff has identified factors which are favorable and unfavorable to this proposal:

**Factors favorable to this request include:**
1. The proposed conditions address the design and functionality of any drive-through and offer significant

flexibility for the location, number and type of businesses that make use of drive-through windows.
2. The drive-through windows proposed for this development are not expected to be visible from the Entrance Corridors.

**Factors unfavorable to this request include:**

1. There is no application plan or maximum number of drive-through window requests accompanying this approval.

Based on the findings contained in this staff report, staff recommends approval of SP 2015-23 -5th Street Station Drive-Through Windows with the following conditions:

1. When adjacent to a public street the drive-through windows shall be located on the side or rear of the building.

2. Drive-through lanes shall not be located between a building and a public street unless separated from the right of way by a 10 foot landscaped area meeting the requirements of section 32.7.9.5(b)(c)(d) and (e).

3. Drive-through lanes shall be separated from sidewalks, and any vehicular travel areas by a planting strip at least 5 feet in width.

4. Where pedestrian access crosses drive-through lanes a 5 foot wide raised pedestrian travel way or a 5 foot wide pedestrian travel way containing a change in texture and visual markings shall be provided.

5. Drive-through lanes shall be a minimum of 11 feet wide.

6. Drive-through shall not enter directly from or exit directly to any public street.

7. Entrances to drive-through lanes shall be more than 50 feet from any intersection with a public or private street or travel way without parking (interior circulation in shopping areas).

8. Drive-through lane length shall be a minimum of 100 feet measured from the center of first window or service point. This length may be reduced if a study is submitted and approved by the Director of Community Development or their designee.

9. A 20 foot long lane meeting the same standards as the drive-through lane shall be provided beyond the window.

10. Where a drive-through lane is located adjacent to a travel way the direction of travel in the drive-through and the travel way shall be the same unless separated from the right of way by a 10 foot landscaped area meeting the requirements of section 32.7.9.5(b)(c)(d) and (e).

11. The use shall commence on or before [date three years from Board approval] or the permit shall expire and be of no effect.

Mr. Morris invited questions for staff.

Ms. Firehock said the Commission was being asked to take a form based code approach to drive throughs in this development. She asked would staff then suggest the conditions be adopted for all of the developments in the future so they won't have discussions about every drive through window. She did not have any problem with changing their planning practice since she did not like reviewing drive through windows. However, she was just trying to understand where they were going with this.

Ms. Baldwin noted that Bill Fritz were here to address some specific questions about the standards. This is something that has been on our list of zoning text amendments to do for quite a while. This provided staff an opportunity to look more in depth at those things and our ordinance right now does not go into the extensive standards that they have here.

Ms. Firehock said this would potentially become a precedent or the way we do business in the future.

Mr. Benish said he thinks they would start to look at this as a standard for the special use permit reviews and then consider a text amendment to make this potentially part of the ordinance as supplementary regulations.

Ms. Firehock asked if it could then switch to administrative review and not come before the Planning Commission.

Mr. Benish replied yes, that was potentially the next step.

Mr. Morris invited Mr. Fritz to address this issue.

Mr. Fritz said staff discovered that we were reviewing every special use permit for drive throughs sort of ad hock. We did not have any standards and we were just bringing the requests here and could not tell applicants what was going to get approved. Staff could not provide any guidance. So we put a small team together of Sarah Baldwin, Glen Brooks and myself. They wanted to have an engineer and a planner. He pulled a lot of research from across the country and Canada. There were some really good studies that had developed best management practices, and they decided to use those as conditions for this. And if it looks like it works, which they think it does ultimately have those as zoning text amendments, and if someone wanted to deviate then it would be a special exception and it would go to the Board of Supervisors.

Ms. Firehock said it sounds like a good idea.

Mr. Morris invited other questions for staff.

Mr. Lafferty said in the email they got this afternoon one of the objections was the light shining into Willoughby. He asked if this is way down and much lower in elevation.

Ms. Baldwin replied that it is a lower elevation and staff did look into that. She believed it was anywhere from 12' to 24' lower. But, they also noticed that the lights will go directly into the hillside for Willoughby and not up near the houses.

Mr. Randolph said he emailed staff earlier today with a question. They received a blanket email from Joan Albiston who lives at 921 Royer Drive. He has visited Ms. Albiston's house before and her house was probably the most contiguous in Willoughby to the 5th Street Station project. He estimated just using a combination of Google and then your legend here to figure that she is approximately 645 some feet give or take 10 feet from the back of her house to the closest one of these drive through windows. The question he had was the topographical differential between the heights of where the drive thru window is going to be versus the elevation at 921 Royer Drive. He asked if staff was able to get a handle on that.

Ms. Baldwin replied yes, we looked at it and it looks like the lights would shine directly into the hillside and not up towards her house. She would also point out that the closest drive through that he is referencing is one that staff is not supporting. The layout of it is not conducive with the conditions that they have laid out.

Mr. Randolph said he appreciated that. He just wanted to make sure that we put that on the record that her question was addressed and we followed through and found that it really does not represent an issue as she perceived it.

Mr. Keller complimented staff on this because this is a great step forward to try to do this. Regarding point 10 where a drive through lane is located adjacent to a travel way, he was thinking back to some issues that several of us had with CVS with the issue of a high traffic roadway adjacent. In this and that previous case staff did an excellent job of thinking about the stacking relevant to that particular operation, but not necessarily the issues of what happens if ten cars come up the travel way at the same time and there is not a way for that stacking to be dealt with. He thinks that is sort of getting at that with condition 10.

Ms. Baldwin replied that was correct.

Mr. Keller noted a side discussion that he had with Mr. Benish of two, which would be different than a new construction like this, but when they are adjoining parcels and there is already allowed access to one and then you are putting this new piece in and how that coordination of what could become another stacking problem occurs. He suggested Mr. Benish could fill in what they are talking about.

Mr. Benish said he thinks the spacing requirements for the intersection will apply to anything including internal streets, too. In fact, what Ms. Baldwin showed as one of the examples is actually part of an internal travel way network in terms of the spacing issue. He thinks the standard conditions allow at us at the CVS site to look at that adjacent site of that intersection created relative. In that particular case that was part of that travel way for the island. It is something that they are going to have to pay a little closer attention to and make sure that these are covering it. We don't know whether these are going to be the final conditions. But, he thinks we can handle those under the standard conditions.

Mr. Keller said but yet he thinks that this is really important when we think about some of the places like Pantops where the fast access areas were not thought of collectively at least conceptually up front. There have been some real challenges and this begins to highlight what the challenges are up front.

Mr. Benish said with redevelopment and required interconnectivity with redevelopment of sites is something that we are going to have to pay closer attention to.

Mr. Fritz said staff looked at a case just like what he is talking about in the county and these conditions address those potential conflicts when you have adjacent sites developing. The CVS site in particular would not have met these standards; it had conflicting traffic flow similar to what is shown in the slide on the screen.

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

Valerie Long, representative for the applicant 5th Street Station Ventures, LLC and Avon Holdings, the owners and developers of the project. Others present as representatives of the project are Dan Tucker, the project manager for 5th Street Station Ventures; Bruce Lucas, the on-site construction manager; and Daniel Hines, civil engineer with Bohler Engineering. She had some slides prepared, but thinks Ms. Baldwin's slides probably addressed all of your questions. She offered to answer any questions. It sounds like the commissioners are comfortable with Ms. Baldwin's responses in response to Ms. Joan Albiston's email that arrived today. Ms. Baldwin was gracious enough to send it to me so she was familiar with its content and was able to reach the same conclusions she did that among other things the difference in elevation between where these drive throughs would be located and those houses is significant enough that it would not impact them. They also have extensive landscaping on site. This site plan has gone through extensive rounds of review with county staff. They even shared the landscaping plan with the neighbors just after our community meeting. The neighbors gave us a little bit of feedback to the plan and asked for some revisions, which they have committed to make. They know there are a handful of fairly minor revisions that they are going to need to make on our site plan. So we have committed to introducing those revisions as part of our next round of revisions. It is mostly replacing some deciduous species of landscaping with some evergreen species in certain areas. So we are confident that there will not be a problem. But, again, she would be happy to answer any questions.

Ms. Long pointed out that her only issue was the very last condition in the staff report that is not one of the standard conditions. It says that the use has to be implemented within X number of years. This is intended to kind of be a special use permit, which Ms. Firehock had a good term for, form based code approach. It established the basis rules and the burden is on the applicants to make sure that every proposed drive through meets those standards and if it does, it would be approvable administratively as part of the site plan. If it does not, then it won't. But, the beauty of it is as they have new tenants come in and out over the life time of this property's project that we do not have to come back to the Commission and the Board every time for a new special use permit. So she would say just maybe between now and the Board hearing she would like to work with staff on appropriate wording for that one condition just to make sure we've fulfilled the goal that she thinks we all share. Otherwise, she would like to thank publicly to staff, Ms. Baldwin, Mr. Fritz, Mr. Brooks and their colleagues. This was an extraordinarily collaborative approach that we put together. It was kind of an unique ask on our part to be able to do it this way and we were very grateful that starting with Mark Graham he said

yes, that makes a lot of sense and work with staff to see if we can make it work. Not only did it work in a way that we are very comfortable with, but it actually did not even take that long. She wanted to thank that publicly and thank all of them for their help.

Mr. Morris invited questions for the applicant.

Mr. Randolph said he will divulge that he is a Star Buck's shareholder. His question is if a 100' stacking space adequate for a Starbucks. We have seen the Star Bucks open up in Pantops. The traffic that has congregated at that Star Bucks has been a major bottle neck in that area. Given the fact that 100' really lends itself probably to no more than 10 cars coming back to Commissioner Keller's question is there an adequacy of stacking space in this design given the demand and knowing that this facility is going to be open contiguous to I-64. There are a lot of people that are java lovers that will be putting it into their I-phones and looking to see where the nearest Star Bucks is located. They will be getting off the interstate expressly to go to this facility. So they are assuming, especially in the morning, that there is going to be a high degree of congregation. If reducing that stacking distance down to 100' is that prudent understanding the demand for services that may well arise.

Ms. Long replied certainly they obviously want to make that the drive through works and that it is adequate. The beauty of it is originally we started out with a proposal that had a minimum stacking distance for different types of uses. It was a coffee shop, which needs more space as compared for instance to a pharmacy that needs very few spaces because they don't receive the same volume of vehicles that a coffee shop does. Or, compared to a Panera Bread Restaurant for instance. So there are different sort of industry standards and different recommendations based on the type of use. So we originally proposed different links for each different use. Staff based on their research of best practices both around the country as well as internationally indicated that the 100' minimum way was a way to go and they could always go higher than that; or if we could demonstrate for instance with a pharmacy that 100' was more than you really need you can ask for a reduction if you can demonstrate that with some sort of a study or other evidence that you don't need that much. But, that was considered to be kind of the industry standard for what you needed. But, there is no prohibition against having a greater number of stacking spaces. So for all the reasons you indicated if Star Bucks decides to lease space here, and they certainly hope that they will, that most likely we would design it to have many more stacking spaces than other uses would have and certainly would be factoring in some of the lessons learned at the Pantops facility to make sure that it functions better. Some of that is just the initial excitement about the Star Bucks there and having a drive through. We knew that was going to be well received. That was a project that she worked on as well, and frankly it exceeded everyone's expectations. But, we find that it is settling out a little bit.

There being no further questions for the applicant, Mr. Morris invited public comment or rebuttal. There being no public comment or rebuttal, the public hearing was closed to bring the matter back to the Planning Commission for discussion and action.

**Motion**: Mr. Randolph moved and Mr. Keller seconded to recommend approval of SP-2015-0023 - 5th Street Station, Request for Drive-Through Windows with the conditions outlined in the staff report noting that there will be continued due diligence on condition 11.

There being no further discussion, Mr. Morris asked for a roll call.

The motion passed by a vote of 7:0.

Mr. Morris noted that SP-2015-0023 - 5th Street Station would be forwarded to the Board of Supervisors with a recommendation for approval on a date to be determined with the following conditions.

**SP-2015-23 5th Street Station Drive through Windows – Planning Commission Recommendation**

1. When adjacent to a public street the drive-through windows shall be located on the side or rear of the building.

2. Drive-through lanes shall not be located between a building and a public street unless separated from the right of way by a 10 foot landscaped area meeting the requirements of section 32.7.9.5(b)(c)(d) and (e).

3. Drive-through lanes shall be separated from sidewalks, and any vehicular travel areas by a planting strip at least 5 feet in width.

4. Where pedestrian access crosses drive-through lanes a 5 foot wide raised pedestrian travelway or a 5 foot wide pedestrian travelway containing a change in texture and visual markings shall be provided.

5. Drive-through lanes shall be a minimum of 11 feet wide.

6. Drive-through shall not enter directly from or exit directly to any public street.

7. Entrances to drive-through lanes shall be more than 50 feet from any intersection with a public or private street or travelway without parking (interior circulation in shopping areas).

8. Drive-through lane length shall be a minimum of 100 feet measured from the center of first window or service point. This length may be reduced if a study is submitted and approved by the Director of Community Development or their designee.

9. A 20 foot long lane meeting the same standards as the drive-through lane shall be provided beyond the window.

10. Where a drive-through lane is located adjacent to a travelway the direction of travel in the drive-through and the travelway shall be the same unless separated from the right of way by a 10 foot landscaped area meeting the requirements of section 32.7.9.5(b)(c)(d) and (e).

11. The use shall commence on or before [date three years from Board approval] or the permit shall expire and be of no effect.

Mr. Kamptner noted the Commission can also make recommendations on the two special exceptions to reduce the stacking and the lane width.

Mr. Morris asked for a motion.

**Motion**: Mr. Randolph moved and Mr. Keller seconded to recommend approval of two special exceptions to 1) reduce the stacking, and 2) reduce the lane width.

There being no further discussion, Mr. Morris asked for a roll call.

The motion passed by a vote of 7:0.

Mr. Morris noted that the Planning Commission recommends approval of two special exceptions be forwarded to the Board of Supervisors on a date to be determined to reduce 1) the stacking requirement under Section 4.12.6 from 5 spaces to 100 feet and 2) the lane width requirement under Section 4.12.17(c)(2) from 12 feet to 11 feet.

**The Planning Commission took a break at 7:27 p.m. and reconvened at 7:35 p.m.**

Mr. Morris called the meeting back to order at 7:35 p.m.

**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 the applicant to provide written notice to landowners of all abutting parcels of proposed Tier I facilities and proposed exempt collocations and exempt replacements of transmission equipment, and to provide documentation of such

notice. Currently, the agent is required to provide written notice of proposed Tier I facilities requiring a special exception, and no notice is provided for proposed exempt collocations and exempt replacements of transmission equipment. 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. (Sarah Baldwin)

Ms. Baldwin presented a PowerPoint presentation for ZTA-2015-00007 Wireless – Public Notice.

The proposal is to amend the ordinance to require that notice be provided **by the applicant** to abutting owners for Exempt Collocations or Tier I applications.

On July 8th the Board of Supervisors (BOS) discussed amending the ordinance to provide notice for administrative actions for personal wireless service facilities. As you may recall, the staff and the Planning Commission (PC) recommended denial of the ZTA. The BOS identified the need for staff to further research notice on all projects, but acknowledged that this task could take time. They felt that notice for Tier I and exempt collocations should be put ahead of this research. The BOS recommended staff revise the ZTA to provide for the applicant to provide notice to abutting owners for Tier I and exempt collocations and further directed staff to bring this revision to the PC.

**Recommendation**: Staff believes that the intent of the Board of Supervisors is being met by this ordinance amendment.

Mr. Morris invited questions for staff.

Mr. Dotson said he had no problem in terms of the content of the letter of notice that would go out since the appropriate paragraph says describe the facility, proposed location, proposed height and the County Office where the application could be viewed. However, it seems by having the applicant send out the notices we are trying to encourage communication between the applicant and the neighborhood. Therefore, he was wondering if the letter shouldn't also include specifying the entity doing construction, the contact person and number, and the approximate schedule of the work because we really are not trying to direct all the questions to the county office building, but trying to direct them elsewhere. He questioned if staff considered that or would see that as a problem.

Ms. Baldwin replied that she did not see that as a problem. Staff had not specifically talked about it, but that can certainly be added.

Mr. Dotson noted he would not include that in the Tier II facilities where it is appropriate for people to contact the county.

Ms. Firehock asked does this require a registered letter to be sent or a regular letter.

Ms. Baldwin replied it was a regular letter.

Ms. Firehock pointed out that registered letters have been problematic for people with jobs because when they get a registered notice at their house they have to take annual leave to get to the post office in their rural area to get the letter. In the past when she had received a registered letter about development projects it was a 20 minute drive in both directions, which requires her to take two hours of annual leave to get the registered letter. So it is not a good idea in general. She discussed this matter with Liz Palmer who asked why I voted no on this the last time and she pleaded with me to support this.

Mr. Randolph commented that the theme of this notice is going to be very important. When adjacent property owners receive this communication it does not matter who is sending it out because it has some official appearance and is going to raise some expectations of the property owners being able to give input and influence the outcome of a governmental process. At a Tier 1 level what they are recognizing here is that is not a possibility. So the wording has to be gentle, but be very clear and effective in essentially saying we are just going through the courtesy of advising you of this; however, the reality is under federal law we are preempted from you being involved in this approval process.

Ms. Firehock pointed out the Commission voted against this last time because it would set up false expectations for the public, and that it was work for staff.

Mr. Randolph said they have to make sure that the private interest that are going to send this notice out follow a format with language; or, otherwise staff is going to be at the broad end of some hostility reaction that could spill over into the Planning Commission of misunderstanding and misperception. Therefore, he thinks it is really important to have a common notice with a clear consistent format like the community notice in which they have some consistency now with the use of a common notice. This has to be equally clear. There has to be some kind of approval process so when they develop this that the applicant has to run it through somebody on staff to sign off on it to make sure that the right language is in there. They are saving problems for the business as well as for government if we do that. If we don't do it right it is going to come back to haunt us since it may add to that feeling that you just can't trust government because they gave me this notice and I wanted to get involved, and now they tell me as a tax payer I can't do anything.

Ms. Baldwin pointed out staff talked about the same things, and obviously they are going to have to look at crafting some language that addresses that issue.

Ms. Firehock suggested the Commission could perhaps suggest some language.

There being no further questions for staff, Mr. Morris opened the public hearing for applicant and public comment. Since we are the applicant, he invited public comment. There being no public comment, the public hearing was closed to bring the matter back to the Commission for discussion and action.

**Motion**: Mr. Randolph moved to recommend approval of ZTA-2015-7 Wireless – Public Notice. There is no other official motion language in here.

Mr. Kamptner asked if the motion includes the discussion about including the name of the contractor, contact person, an overall schedule, and some additional language to be developed by staff.

Ms. Firehock noted that it would include the standardized paragraph as recommended by staff.

Mr. Kamptner said it would include some additional language that staff will provide to the person interested.

Mr. Randolph agreed and that he trusts staff to put that additional language together.

**Second**: Ms. Firehock seconded the motion.

Mr. Fritz asked to clarify if the Commission wants to add that content in the ordinance itself or is it just a direction to staff that when they prepare the form letter that it would have that information in it.

Mr. Randolph replied it would be the latter because to codify it would cause complications.

Ms. Firehock pointed out they would have to change that over time.

Mr. Dotson disagreed with that.

Mr. Kamptner said there was a motion and a second and now there is some discussion and Mr. Dotson had some additional comment.

Mr. Dotson disagreed with not putting it in the ordinance about the entity, the contact and the schedule because otherwise this states what should be included. So the ordinance is misleading to someone unless those are included.

Ms. Firehock said she thought the only thing they were saying was the exact language in the form letter did not have to be in the ordinance because those regulations will change and they will need to be able to nimbly update that.

Mr. Fritz said that he got it and they will put it in.

Mr. Randolph asked if she was saying everything else would be included, and if so he totally agrees.

Mr. Fritz said that he just wanted to make sure.

Mr. Morris asked for a roll call.

The motion passed by a vote of 7:0.

Mr. Morris noted that ZTA-2015-7 Wireless – Public Notice would be forwarded to the Board of Supervisors with a recommendation for approval on a date to be determined.

In summary, the Planning Commission recommends approval of ZTA-2015-7, by a vote of 7:0, as recommended by staff, as amended, with direction to staff that content of the letter of notice also specify the entity doing construction (contractor), the contact person and number, the overall or approximate schedule of the work, and also include some additional language to be developed by staff.

The meeting moved to the next agenda item.

**ZTA-2015-00012 29 Solutions Temporary Signs** – The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance amending Secs. 4.15.4A, Signs authorized by temporary sign permit, 4.15.12, Regulations applicable in the C-1, CO and HC zoning districts, 4.15.13, Regulations applicable in the PD-SC and PD-MC zoning districts, and 4.15.14, Regulations applicable in the HI, LI and PD-IP zoning districts, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 4.15.4A to authorize a class of temporary sign permits allowing temporary signs on lots located within the limits of a VDOT construction project until the VDOT construction project is substantially complete, and to authorize temporary signs of up to 48 square feet on lots having 4 or more businesses; and amend Secs. 4.15.12, 4.15.13, and 4.15.14 to refer to the increased sign area (48 square feet) allowed for certain temporary signs described herein. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Amelia McCulley)

Steward Wright, Senior Permits Planner, presented a PowerPoint presentation to summarize the staff report for ZTA-2015-00012 29 Solutions Temporary Signs. In his review of sign permits, which includes temporary sign permits, he implements the sign ordinance.

This is the second phase of the zoning text amendment that is intended to address signage for businesses that will be impacted by the construction of the Rio-29 grade separated interchange. The map in the second slide shows the affected area they will be discussing tonight. The project limits of construction extends from the 29th Place signal (south) to Woodbrook Drive (north) and from the Berkmar/ Rio intersection (west) to the mall entrance on Rio Road (east).

**Background**

**Phase 1:** Temp Signage for Businesses Whose Signs Will Be Removed

Phase 1 was targeted in scope and addressed temporary signs for those businesses whose permanent signs were slated for removal as a result of the utility work associated with the project. Originally staff thought it was going to be a large number of signs that would have to be removed. However, after working with their contractor it is down to about four signs that need to be taken down. First, staff had to work with those businesses so they could have a sign up during the construction project.

**Phase 2:** Temp Signage for Businesses within the Limits of Construction

Phase 2 involves an examination of additional temporary sign provisions for businesses within the construction project who were not otherwise covered with the Phase 1 sign amendments that were not going to have their sign taken down. This was based on the initial business concern that the grade separation could impact business visibility,

**Phase 3**: Changes to Permanent Signage for Businesses within the Limits of Construction

Phase 3, the next step that they may or may not get to, was to consider whether we need to change the sign regulations for permanent signage.

**Outreach Program for Business Signage**

Over a three month period this summer, various County staff engaged the business community in several different forums on multiple occasions. Some of the feedback staff received includes:
1. Support for additional temporary sign allowances to run the full length of the construction period;
2. Support for an incentive for businesses to aggregate their signage; and
3. Support for reduction or elimination of temporary sign permit fees during this period.

When staff was talking to these businesses everybody wanted a sign out on the road. Staff asked what it was going to look like if every single business in this project has a temporary sign out on the road. Therefore, the businesses were open to the idea of bundling onto temporary signs. There was also support for a reduction or elimination of permit fees during this period.

**Proposed Ordinance** –
During the construction project;
1. Not more than one (1) sign per lot;
2. The lot has an existing primary use or structure for a pending use under construction;
3. The lot abuts a primary arterial or other public street within a project that involves the primary arterial*; and
4. The lot is zoned commercial or industrial.

To reduce the proliferation of signs in the construction zone and to encourage businesses to work together for creative solutions, the proposed ordinance allows one temporary sign per lot. To offer the greatest flexibility for businesses, staff does not want to dictate but instead to allow them to decide whether they use the same sign or change out signs to meet their needs. That being said, if a sign was erected on a parcel that had a big number of tenants, such as Fashion Square, Albemarle Square and Rio Hill, they could change out tenants from time to time without having to come back for a new permit and a new process.

**Proposed Ordinance - Additional Provisions includes:**
- Signs that serve four (4) or more businesses would be allowed a temporary sign up to 48 sq. ft. and presently it is 32 sq. ft.;
- Businesses that have three (3) or less businesses would still allow a temporary sign of 32 sq. ft.

The next section of the presentation will address Neil Williamson's comments received by email on Friday in which he raised this question with examples of several businesses. In his examples many do have public road frontage and would qualify for the temporary signage provision; however, several would not. Staff wanted to provide a signage solution for those properties without going too far beyond the Tier 2 priority area and without unintended consequences.

The specific example that Mr. Williamson brought up, the Gardens Shopping Center, is shown in the next slide. Quite often when staff looks at a shopping center, Fashion Square is a great example, they always look at it as one piece of land, one lot, and one parcel. Fashion Square is actually five or more tax map parcels. The Gardens Boulevard is the same and staff views it as the Gardens Shopping Center; however, the Gardens Shopping Center consists of multiple parcels. Woodbrook Shopping Center is another example that looks like one shopping center, but actually is five parcels.

Crutchfield is located on 29 and has frontage. There is one business attached to that same building. However, if you look at the next lot to the east of Crutchfield there is a property line going through that building and the

businesses on that lot do not have frontage. Mr. Williamson's concern is would those businesses that have their artery coming in from 29 be able to take advantage of these sign regulations. Yesterday staff and today tried to figure out what could be done and what changes would need to be made. The proposed changes are, "The establishment identified on the sign may be those located on the lot on which the sign is located and any lot that abuts the lot on which the sign is located provided that the abutting lot is also within the project limits of the construction area and does not abut a primary arterial or public street." Gardens Boulevard is a private street, which is where the dilemma came from because the draft ordinance suddenly excluded those businesses in this affected area. This draft language allows those parcels (listed as "abutting lot") to be included in signs on the road frontage and for the business to count towards the number of establishments – with 4 or more qualifying for 50% larger signs.

In summary, staff recommends that each parcel within the project limits qualify for one temporary sign with no permit fee, for the duration of construction as follows:

- Parcels with 3 businesses or less would be allowed One (1) temporary sign (32 sq. ft.); and
- One (1) temporary sign (48 sq. ft.) with no permit fee if 4 or more businesses being able to participate using that sign.

While the zoning ordinance language isn't specific to this Rio/29 Grade Separated Interchange project, staff hopes to use it as a pilot for signage needs during major construction projects in the future for other areas. Staff can always tweak the provisions based on that experience.

With regards to phase 3 (consideration of changes to the permanent sign regulations), staff has not received input that suggests this is necessary. As you know from what Mr. Higgins brought to the Commission not too long ago, we are in the midst of a more comprehensive sign ordinance amendment to address the Reed Supreme Court case which requires content neutrality for much of our regulation. Therefore, staff was still working through that before they can even get to phase 3.

Following the public hearing, staff recommends approval of the proposed zoning ordinance amendment addressing Phase 2 Route 29 Solutions Business Signage Impacts (Attachment A in staff report).

Mr. Morris invited questions for staff.

Mr. Randolph pointed out no mention has been made about lighting and asked how does lighting apply to the temporary signage and is that permitted. Because it is essential during the construction phase that lighting be permitted on these signs he assumed it was permitted.

Mr. Wright replied the illumination of a temporary sign is not prohibited; but, it is just not carried out in practice very often. Again, these signs would be temporary in nature so the applicant could do some ground and up lighting that would have to meet the lighting ordinance regulations, which are fairly stringent. He could not see them doing an internally illuminated sign although somebody may get creative. Definitely, it is a possibility. However, there are strict lighting regulations they would have to meet.

Mr. Randolph asked if temporary signs in the Entrance Corridor would not be subject to ARB review, and Mr. Wright replied that is correct.

Mr. Randolph noted on page 2 under C within limits of VDOT construction project during construction it is proposed in the language that the signage basically would be allowed to exist until the date of project construction completion as evidenced by the date that VDOT issues a form C5 or makes an equivalent written determination. He would like to see it changed to 30 days beyond that to provide a transitional time period. He thinks there is going to be a significant learning process for people initially as to where to turn and how to get into a business. It would prudent to just say that there should be 30 additional days and then the signage terminates at that point.

Mr. Loach suggested adding "or when there are enough signs from either VDOT or the businesses" to Mr. Randolph's suggestion.

Ms. McCulley explained what VDOT described to us and the reason staff was using that form C5 is that the construction is physically complete, the lanes are open, the lights are on, the temporary construction signage is down, and it is many months beyond the end of their project that has been complete for a while. So it is well beyond the construction.

Mr. Randolph asked if there will be that transitional time period.

Ms. McCulley replied that was staff's understanding; but, she could check with VDOT.

Mr. Randolph suggested that should be communicated to the business community to provide some reassurance to them since there is a lot of nervousness.

Mr. Loach agreed that they need a transition period when signs are put up and then back to normal with the traffic flow. He thought the companies will have their signs back up long before the temporary signs have to come down.

Mr. Dotson said he could image that as construction proceeds visibility could change and asked would it possible for somebody to move the location of a temporary sign easily without a lot of red tape.

Mr. Wright replied absolutely since moving the location of a temporary sign would be done administratively and handled very quickly.

Mr. Dotson said the example staff showed on the screen of the abutting lots used the Gardens Center. Since the building where the trampoline center jump is located would not be abutting he asked if that business would not be included in this language.

Mr. Wright replied that business would qualify because there is a pipe stem to the south that goes out to Route 29.

Mr. Dotson suggested rather than abutting properties maybe in general we should think about having the internal circulation sort of define the shed of who should qualify for the sign. It was just another thought; however, in this particular case he saw what was pointed out.

Mr. Wright explained the Gardens is an unusual situation in this area of the project since it also has access from Albemarle Square.

Mr. Dotson commented that 42 square feet for 3 or fewer signs seems fine. However, he would not be against 64 square feet if 8 businesses were put on the sign or maybe even be larger. He asked does the 48 square feet just seem like a reasonable number or is that consistent with something else that we have in the ordinance.

Mr. Wright replied that 48 square feet seemed like a reasonable number since it actually is not consistent with anything in the ordinance as far as sign area goes. Typically, these commercial sites are allowed up to a 32 square foot sign. The larger shopping centers that have the 50,000 square feet or larger are allowed an additional 8 square foot bonus tenant panel sign. So the largest permanent sign, not temporary sign, you can presently have is 64 square feet, but that requires at least a 200,000 square foot leasable retail area. Some of those 64 square foot signs have been erected in the county, which includes the 29th Place sign and the Kohl's sign at Hollymead Town Center.

Ms. McCulley pointed out with TODD Sign, the blue and white program tourist oriented directional signage program, and VDOT is going to give free signage to any of the 34 or so businesses that meet their criteria in terms of types of business. For example, food service establishments are a qualifying type of business. There are lots and lots of other criteria, such as number of hours the business has to be open for operation and things like that. However, in any event that is the signage that travelers are used to looking at to find their way. Therefore, we really want to defer to signage in the right-of-way that is something that people know and are familiar with because it is going to be a very crowded field of vision for the construction zone.

Mr. Dotson said he was comfortable because it is temporary with 64 square feet. But, that is kind of arbitrary, too, because it is two 4' X 8' sheets.

Mr. Loach asked to follow up on Mr. Randolph's comment about the lighting. He suggested looking into lighting more because it is going to be dark pretty soon at 5:30 p.m. and the holidays are coming. With the commotion and confusion around the sites they need to make sure that the signs are lit, but don't confuse anyone driving through there and make it more dangerous.

Mr. Wright pointed out he had spent a lot of time driving up and down Route 29 looking at these signs and just trying to figure out what could come about from this proposed changes with the existing signs that are not being removed. The majority of the businesses have their freestanding signage out there and the majority of it is illuminated. This is just additional signage. If they wanted to do the lighting, then it is a possibility. But, the four businesses that are going to have their signs removed and they need to have a sign put up temporarily, it is a bigger deal for them. Staff will work closely with those businesses as far as illumination goes because they are losing their sign. However, for these other businesses it really is additional signage and an opportunity for a lot of these tenants who are a little bit further back off the road. Great examples include Albemarle Square and Fashion Square because you see that sign, but you don't know who the tenants are. It is a wonderful opportunity for those businesses to get some legal signage out at the road until the land lord in the future changes the sign package to get more tenant branding out at the road. Staff has been working with both of those shopping centers mentioned who want future permanent signage to where they can take advantage of the regulations that are on the books right now for permanent signage.

Mr. Lafferty said he assumed they will not be able to use electronic signs or the changeable message signs.

Mr. Wright replied those are still required to be by special use permit, which probably would not be financially feasible for them to go through that process and that money for a temporary sign.

Mr. Lafferty asked about the trailers with the plastic sign on it.

Mr. Wright replied as long as the signs are not changeable, they are not prohibited.

Ms. McCulley noted unless it is an advertising vehicle. Someone can have a vehicle that has advertising on it that is used as part of the business and parked in a parking space associated with the business. However, if it is modified just as a sign, that is not allowed

Mr. Lafferty said he would hate to see 500 of those lining 29.

Mr. Wright pointed out that many rental companies rent out towable temporary signs that right now are a legal form of a temporary sign.

Mr. Keller asked are they still set for the sign meeting the week after next.

Ms. McCulley replied that yes, the Reed Work Session is scheduled for October 20th.

Mr. Keller said this is wonderful and well done. Even in the time of GPS there may be a reason for what we are doing here. However, in terms of the next phase that relates to this he remembers reading lots of interesting psychology of sign studies that came out of Transportation Research Board (TRB) that were moving towards how little signs serve the traveling community. He believes it is a very small percentage. But, in light of this new media world that we live in he would appreciate it if Ron Higgins or another staff member would just do a quick study of the journals and see if there are any current articles out of the Transportation Research Board (TRB) that speak to this when we are thinking about signs and the relevance of signs in the post boomer era even. They need signage in a place so that when you drive up you know for sure that you are going into the correct business area. However, he has a feeling that signage is really going away and would like to know whether the research at the moment represents that or whether this is just a crazy idea.

Mr. Kamptner said it is not a crazy idea because in the constitutional analysis the localities have to leave open reasonable alternative channels of communication when you are restricting signs. With modern technology

that alternative channel of communication is in a digital format that people are carrying around with them. It is not the ability to send out letters or to fly flags or to post an alternative type of advertising vehicles or something like that. So we are thinking about it, but we are not there.

Mr. Keller said the benefit of this is that we have all been places where the GPS can't properly route us in when there has been a road change or road closure. Therefore, he did not have any difficulty with this; but, thinks it is the bigger question of signs. He thinks this is a case of looking to the future staff and the Planning Commission might be able to provide some suggestions to the Board of Supervisors.

Mr. Randolph agreed that Mr. Keller has got a good point.

Mr. Lafferty pointed out we are doing this one for the merchants.

Mr. Randolph agreed that staff's recommended change built in here as per Neil Williamson's suggestion is a good one. He asked Mr. Dotson if he was comfortable with the way it is worded.

Mr. Dotson replied yes.

There being no further questions, Mr. Morris opened the public hearing and invited public comment. There being no public comment, the public hearing was closed to bring the matter back to the Commission for discussion and action.

Mr. Randolph agreed to make a motion to go ahead and move ZTA-2015-12 29 Solutions temporary signs on to the Board of Supervisors.

Mr. Keller seconded the motion.

**Motion**: Mr. Randolph moved and Mr. Keller seconded to recommend adoption of ZTA-2015-12 29 Solutions temporary signs for the proposed Zoning Ordinance Amendment (Attachment A in the staff report), as amended in the additional page distributed by staff.

Mr. Kamptner asked if that was with the replaced page 2 as distributed this evening.

Mr. Randolph agreed the motion included the changes they just talked about in the additional page distributed.

Mr. Morris invited further discussion. There being none, he asked for a roll call.

The motion passed by a vote of 7:0.

Mr. Morris noted that ZTA-2015-12 29 Solutions temporary signs would be forwarded to the Board of Supervisors with a recommendation for approval at a time to be determined, as follows.

The Planning Commission recommends adoption of Attachment A of staff report with the following change to Section 4.15.4A c. (2) (c):

(c) . . . and (5) the sign area of the sign shall not exceed either thirty-two (32) square feet if the sign identifies three (3) or fewer establishments, or forty-eight (48) square feet if the sign identifies four (4) or more establishments, where the establishments identified on the sign may be those located on the lot on which the sign is located and any lot that abuts the lot on which the sign is located, provided that the abutting lot is also within the project limits of the construction area and does not abut a primary arterial or other public street. **(See Staff Report Attachment A for full text)**

Ms. McCulley pointed out the public hearing was set for the November 4th day meeting since the Board asked staff to expedite it.

The meeting moved to the next agenda item.

**Old Business**

Mr. Morris asked if there was any old business.

a) **Cash Proffer Policy** – next steps

Mr. Morris apologized for allowing the last meeting to kind of disintegrate at the end of the cash proffer policy discussion. However, Mr. Dotson stepped forward in working with Mr. Keller in trying to determine and clarify the Planning Commission's recommendations to bring us back to date on the Cash Proffer Policy.

Mr. Dotson said he would state his opinions, the Commission will discuss it, and then see where we are. To clarify the discussions there were really three issues the Commission should address in a clarifying recommendations that would go to the Board.

The first thing he would like to see has to with the cash proffer amount because he did not believe this has already been done as part of the work of the Fiscal Impact Committee. Mr. Fritz provided him with all the notes from those meetings, and he can tell you those people worked hard and did a very good job. But, he did not think that part of what they were doing was checking with other peer jurisdictions. He thought we ought to simply know what the proffer maximums are that our peer jurisdictions are using just as a case in point because we have cited Chesterfield County as really the place from which we borrowed much of the logic of our ordinance. On June 15th they just adopted for single-family a maximum of almost $19,000 or $18,966. Yet they are under the same state law that we are and must have a lot more capacity in expanding capital improvements than we have; or, they are doing something else difference. He would just feel that in terms of due diligence it is incumbent that we suggest that the Board of Supervisors know what the numbers are for six or eight peer jurisdictions. That would be my first point and he would put that out for discussion.

The Planning Commission discussed Mr. Dotson's first point requesting that the Board of Supervisors know what the numbers of the proffer maximums are for six or eight of our peer jurisdictions.

Mr. Randolph echoed that they need that comparative study to have a handle on what is going on with the normal comparable that are used with Albemarle County. He thinks it is an excellent solution.

Mr. Keller said Mr. Kamptner gave the Commission some information from the historical perspective, and so he might wish to speak to this. But, there were some things that we asked that for a number of reasons we did not ultimately end up with, and that was one. Another was examples of other models especially dynamic models that are used around the country. He knew that the Fiscal Impact Committee would like to see both of what you have talked about.

Ms. Firehock and Mr. Loach agreed with Commissioner Dotson and Commissioner Keller.

Mr. Morris asked if there was anyone not in favor of this. There being no one, he noted it was the consensus of the Planning Commission that they would like to see that happen to include what Mr. Keller added to this other dynamic models.

Mr. Firehock pointed out the problem was they only had the one model and they don't understand what is going on under the hood necessarily.

Mr. Kamptner explained one of the reasons why the committee's cash proffer recommended the numbers drop was that the CIP, which is the fundamental basic for the maximum cash proffer, shifted into a maintenance mode during the recession. They are still in that mode. So if the Board adopts and the Commission recommends a CIP that is recommending new infrastructure that cash proffer amount once the numbers are plugged into the current model can shift. The model is an important thing that was one of the latter things that the committee was very interested in as well as the assumptions that go into the crimp model, which is the one we have been using for about 15 years. There have been new studies and probably some new models. So that is a task that Steve Allshouse is looking at. The other thing in getting the proffer amounts from the peer localities is something that staff can do. Those numbers will range from 0 up to probably around $50,000 or $55,000 since he heard Loundon County and possibly Stafford County were up at that rate. Loudoun County

has been through phrases where they had to add 7 new elementary schools every year; and, therefore their CIP is probably quite large. That is kind of the background for those questions and the information that you are looking for, which seems to be all good.

Mr. Dotson said it seems that there are two different time scales here. He thinks studying the dynamic models is possibly a long term project and considering improving the crimp model is a long term project. What he was trying to address first is simply the short term need of having something that can go forward to the Board. He would be afraid the Board might not agree to hold up all the cash proffer changes that might happen for a review of the dynamic model. So maybe that is a second item that the Commission could recommend that for the long term the Board request the Fiscal Impact Committee review improved more up-to-date models.

It was the consensus of the Planning Commission to recommend the following:

- Regarding cash proffer amounts and policies of peer jurisdictions the Board of Supervisors should know what the numbers of the proffer maximums are for six or eight of our peer jurisdictions.
- Regarding looking at improved alternative models the Board request examples of other models especially dynamic models that are used around the country. For the long term the Board request that the Fiscal Impact Committee review improved then more up-to-date models.

Mr. Keller said they could continue with the current fee structure that was established and continue that historic benchmark, which is a higher figure, without a modification to the existing. So there is a range possibility right now.

Mr. Dotson said perhaps we can put that in two motions. He suggested one motion regarding the cash proffer amounts and policies of peer jurisdictions and vote on that. Then make a second motion on looking at alternative models, and then vote on that. The Board can then decide how to deal with these.

Mr. Morris said they were eliminating clutter.

Ms. Firehock said she was not able to attend the proffer session, but met with Supervisor Palmer on it and they talked about it, too. She thought the problem was we have been using our CIP maintenance budget as a way to justify the amounts of the proffers and they are feeding that into the model. When you do that we get a much lower number. Proffers are supposed to be based on what happens as a result of new development and we can't use ongoing maintenance of existing county facilities as a proffer fee.

Mr. Kamptner said the 2007/2008 CIP upon which the current cash proffer maximum amount was based was more than a maintenance type of CIP. So that is why we are still at around $20,000 for single-family detached.

Ms. Firehock agreed, as she understands it. However, she has not studied the models. The joke in the model world is that all models are wrong and some models are less wrong than others. Nevertheless, she thinks that just looking at getting a different model wouldn't necessarily get us out of the problem of how we have been determining the amount that should be paid by the development community to offset the impacts of development.

Mr. Loach said he was going to suggest when Mr. Dotson talked about getting the amounts in the policies that he thinks it was more important just getting the methodologies that they used to arrive at their amounts. Again, what model did they use? Now they are saying we are using a maintenance level.

Mr. Kamptner said in 2013 there was a change in the state law that cash proffers for facilities could not be used for maintaining those facilities. Cash proffers related to existing facilities, and they could not be used to maintain those facilities unless they expanded capacity. There are some existing cash proffers where there is a question as to whether or not the cash proffer can be used for a particular project, like a school related project. The work that is being done may actually expand the capacity even though it is an existing facility. Staff goes through a case by case, project by project analysis to determine whether or not the cash that was proffered can be applied to that particular project.

Mr. Loach said he was surprised because when they looked at the CIP of about 130 million dollars in projects, he was sure that a lot of those, like the park in Crozet that has not been approved, is on capacity. It is not because it increased capacity in the community. So why aren't those projects calculated in.

Mr. Fritz pointed out Mr. Benish was part of it, too. However, they went through every item that was in the CIP that determined whether or not it was expanding capacity and was therefore eligible. The fact of the matter is that it is not that much and a relatively small percentage of the CIP that is expanding capacity. Most of it is maintenance.

Mr. Benish noted those are approved project. Requests are made, but in the approved CIP for the budget that is available many projects that are requested don't get included in the CIP.

Mr. Loach said that is a Catch-22.

Mr. Fritz pointed out the model is what the model is, and we can all argue if it is a good or a bad model. That does have some impact on it; but, the biggest thing is if they don't have eligible projects in there.

Ms. Firehock added that it is not a basis for setting a proffer, and Mr. Fritz agreed.

Mr. Dotson said that is going to be my third motion.

Mr. Randolph said two years ago one of the things that the county needed to do for the elementary and middle schools was improve security in the entrance. That was a necessity, but is that truly capacity. It is not capacity; and, therefore is ineligible for projects. That was a major ticket item in the CIP 3 years ago.

Mr. Fritz said there were projects that do expand capacity that were in the CAN and the proffer amounts are based not only on the CIP, but also on the capital needs assessment. So that was one of the places it has been identified where projects could be placed. The concern there is that it becomes a wish list that never actually gets built. So that is one of the concerns about using the CAN that came up in the FIAC meetings. He said the simple fact of the matter is that the rules were changed on us and then in addition to that there was a change in the economy and we moved from expansion to simple maintenance. So that was a double whammy that significantly reduces the amounts. There is one thing that the FIAC Committee recommended, which is to expand the list of categories that are included in determining the impacts. They looked at those very briefly and there really is nothing in those expanded programs. It could be in the future, but there really is nothing in there now. They would be talking pennies really, not big and not even dollars.

Mr. Keller said the state allows us to add some categories; but, they have even prescribed what those categories are that can be utilized.

Mr. Fritz said if they did we don't have any projects in those categories of any size. But, that does not mean that we would not in two years or five years.

Mr. Dotson said since we are sort of talking about this let me jump to what is my third topic. It seems logical, particularly in light of the fact that at the strategic planning meeting we've heard that the Board was discussing how to fund urbanization in the county which is a longer term ambition, that it only makes sense for us to look at the comprehensive plan that is a 20 or 25 year plan, factor out all those capital needs that would expand capacity in order to achieve that plan, and then take those into account in calculating the cash proffer or at the minimum to at least be aware of what we are not including if they are not going to do that. But, it seems that we need that list and some rule of thumb ballpark comparable, whatever, estimates of costs before we really know what we are looking at.

Mr. Dotson noted a second thought would be that, again, in doing due diligence once you have lowered the cash proffer he was suspecting it is a lot harder to then raise it. Let's get it right while we are doing it now rather than going forward too quickly. Therefore, a third motion that he would offer would be something along the lines of including all of the capital needs for capacity expansion that are implied by the comprehensive plan that we've just adopted. In the houses that are being built now they are going to be there longer than 5 years, 10 years, 20 years, and even 50 years. So the capital needs to serve those people certainly extend out in

time. So we can't just say well your needs for the next five years is the only thing we are going to look at. In the recommendation of the Fiscal Impact Committee they did recommend we look at 10 years. But, he thinks that really is short sited as well.

Mr. Morris invited comments.

Mr. Keller said he would just add that there was a number of members of the committee that he thinks were interested in the 20 years. It was actually a movement forward to go to 10 years from where there had been more in the CIP historically.

Mr. Loach said you would think it would be easier for us because we have growth areas and those population densities have been mapped out over a period of the next 20 years for most of them. To look at those needs that you are talking about, again, since they have these noncontiguous areas for growth areas that we can calculate those. So we can use the data that we have for capacity planning.

Mr. Keller said there are so many interesting pieces that spin off. He really appreciates this opportunity for the Commission to have this conversation. The point made many times is the proffer system the best way to direct the land use form that we are striving towards in the comprehensive plan or would a comprehensive rezoning of areas where we want higher densities. There have been some experiments with that right in the Crozet area even where there was a rezoning for higher density as opposed to a developer having to come for a special use permit and a rezoning and the proffers that are associated with it. The committee tried to think in terms that there are these issues that are related to generating funds that would help offset development costs. But, there are also these issues of where do we want the development to go and what form do they want that development to be. Proffers have been tried to be pigeon holed to answer both of those questions and maybe neither of them is effective as it could be if it was focused more specifically on one of those or the others.

Mr. Loach said he would assume that there is no way as far as the rural area goes when there is building in the rural areas where you don't want it that it pays a price as a negative reinforcement.

Mr. Fritz replied no, not really because proffers only apply if there is a rezoning in the rural area and there isn't. In the FIAC meetings there were some lively conversations about comprehensive rezonings or rezonings in targeted areas, like what was done in Crozet. One of the options you have there is that if the county does a comprehensive rezoning we lose the opportunity to get proffers because we will have rezoned it and there would be no further rezonings. But, if you have identified in your comprehensive plan those areas and particular things you are going to do within those areas you could then have a special tax district within that area to achieve the amenities that you were going to put into that district. So that was one of the tools that could potentially be used to offset cash proffers. But, that is another lively conversation.

Mr. Randolph said Mr. Keller is raising a level of analysis question of do we have a macro problem, which potentially we may. This means it needs to be resolved through comprehensive rezoning. Mr. Dotson's approach is to look at it in a micro level and at a comparative level and to really try to assess where Albemarle County's stands comparable to the counties that we usually cite. He would feel comfortable saying we should consider moving to a macro level. We really need the detailed analysis at the micro level looking at the cash proffer policies of at least the five comparable usually cited and maybe a couple of other counties. Then at the same time as you have also suggested try to look at some models in other communities in the country, but waiting for that analysis we should not hold up on doing something that is completely internal within Virginia and have a discussion about that. If we just discuss today what James City does we would have a very rich conversation of potential ways to reframe our proffer policy that could be effective in addressing our macro needs and maybe even addressing the macro challenge that you have presented to us. He was in favor of staying down at the lowest level until we need to move it up if they in fact do need to move it up. But, he thinks the discussion that Mr. Dotson has suggested is really going to be profitable for all of us.

Mr. Keller agreed. He would say that the committee was operating at both of those to look at through that time period.

Mr. Fritz asked is the intent here to come back to this Commission before they go to the Board of Supervisors with that information.

Mr. Lafferty replied yes, I would think so.

Mr. Randolph and Mr. Loach agreed.

Mr. Morris pointed out to Mr. Dotson that you only had one and three. He asked what about 2, 4 and 6.

Mr. Dotson asked to throw out one more issue so that our actions are clear. He would like to see the Commission approve or disapprove several motions so that Ms. Taylor can get those down and they will know exactly what was done.

Mr. Morris said the first motions were to really take a comparative look as to where other comparable communities are with their proffers. He asked if that was correct.

Mr. Dotson agreed adding and how they have complied with this 2013 law.

Mr. Morris noted that the Planning Commission all agreed and they have consensus on that. He asked if there was a motion.

**Motion One**: Mr. Dotson moved and Mr. Lafferty seconded to take a comparative look as to where other comparable communities are with their proffers.

The motion passed by a vote of 7:0.

Mr. Morris asked for the next motion.

**Motion Two**: Mr. Dotson said the next motion gets at Mr. Keller's concern for looking at the crimp model that is the basis of our analysis and conclusions and including something that is more dynamic and some of the better models used across the country as a longer term assignment and ongoing assignment to the Fiscal Impact Committee. He moved to recommend that the Board charge the Committee with that task.

Mr. Randolph seconded the motion.

Mr. Morris supported the motion. He noted historically eleven years ago the Fiscal Impact Committee was addressing the same thing that we need a better model. He asked all in favor of the motion to signify by aye.

The motion passed by a vote of 7:0.

**Motion Three:**

Mr. Dotson said the third motion was part of doing due diligence to assess the capital facility expansion needs (CNA) associated with the recently adopted comprehensive plan and to consider how those might be addressed either in the current cash proffer action or in a subsequent cash proffer action.

Mr. Randolph asked if it was specific to the urban areas, and Mr. Dotson replied no.

Ms. Firehock said she had a question on that. She was thinking about, for an example, the comp plan talks about we want to make the urban ring more livable where there will be more attention given to parks and green spaces. However, it is kind of a vague statement. We could do an analysis of the parks per capita and location, and distance to parks to come up with some fudge factor of how much more park land we need or whatever. It would be hard to get that number into the CIP because it could be such a variable number. She was just thinking if we throw a million dollars in that we will need for parks in the next 10 years; but, she was not sure because some of the comp plan goals are a little squirrelly.

Mr. Dotson said there is a range of projections, projections on population and housing as Mr. Loach was saying. However, we do have some adopted standards, which may be qualitative and would require some sort of best judgement to put a dollar figure to them. But, he thinks that is better than not looking at it.

Mr. Firehock agreed, but the challenge being that if we don't ever have a dollar figure and it is just sort of a goal it probably won't be planned for.

Mr. Dotson agreed. On the question Mr. Randolph asked about the urban area and so forth he would have another motion on that, which would be number 4. He said they would get back to our comp plan needs assessment.

Mr. Kamptner asked just to clarify is the motion a recommendation to the Board to refer those issues back to the Commission or is it just laying out a desire for the Commission to study the issue.

Mr. Dotson replied it is to do due diligence by assessing the comp plan needs prior to making a decision on the cash proffer.

Mr. Kamptner asked is that a motion that is going to go on to the Board as a recommendation.

Mr. Dotson replied that he would assume that our actions tonight would be reported to the Board.

Mr. Kamptner asked if it was a recommendation, and Mr. Morris agreed it was a recommendation.

Mr. Dotson said they will do it that way or not, but we are going to go ahead and act without that due diligence.

Mr. Benish said the assumption of this work for this resolution is that being referred to FIAC to undertake or the Planning Commission to undertake because it is your comp plan.

Mr. Dotson replied that he would think that the Planning Commission is probably the place where that would happen as sort of stewards of the Comp Plan, and Mr. Benish agreed.

Mr. Morris noted it had been moved and seconded. He asked if there was any further discussion. There being no further discussion he asked for all in favor to signify by aye.

The motion passed unanimously by a vote of 7:0.

Mr. Dotson noted there were two more motions. He pointed out the next one has to do with credits and the FIAC put forward a number of interesting ideas that would lead towards goals of affordable housing, mixed use/urban densities and so forth. Those involve land use considerations and so the recommendation would be that those items be addressed by the Planning Commission and that the Board ask the Planning Commission to address those items involving credits.

Mr. Loach asked that credits be defined.

Mr. Dotson replied that another way to put it would possibly be exemptions.

Mr. Randolph suggested from off sets.

Mr. Dotson said if you do this it kind of sets the cash proffer that would normally have been expected. So if it means building in Downtown Crozet and they are trying to encourage commercial building or residential as well as commercial mixed use projects in Downtown Crozet, then we would study whether we thought that should be.

Mr. Keller asked to jump in and give an example. The example in effect has already been accepted by the Board of Supervisors that the by right development that could occur on a parcel before the higher density would kick in through a special use permit they don't have to pay proffers on that. That is something that has been an issue.

Ms. Firehock said that is because you want the greater density and we don't want to make it hard.

Mr. Keller replied yes, so we are not charging them for what they could have done already. That is the one that has actually happened although there is an affordable housing credit. Actually the real charge to the FIAC was about credits. That really was the bigger part of the proffer issue anyway. He thinks this has to be one of the recommendations from the Planning Commission.

Mr. Loach noted as long as they are talking about what Mr. Fritz brought up about the other side of that coin regarding taxing and special taxing districts to offset those costs.

Mr. Fritz pointed out that is completely different.

Mr. Keller said this is basically a give back.

Ms. Firehock said if you do these things that meet these county goals that we have established and written as they are.

Mr. Fritz said already in the cash proffer policy there are some credits that are listed. For example, age restricted housing would be one because obviously it has a lesser impact on the student populations so you would back out the student enrollment numbers. To Mr. Keller's point the FIAC Committee in the memo they advanced to you and the Board of Supervisors they commented very specifically. They spent most of their time on updating the numbers and not on the credits. So they acknowledged that they did not work a lot on the credits.

**Motion Four**:

Mr. Dotson said the motion here would be that since the credits involve achieving the goals of the comprehensive plan that the Planning Commission be asked by the Board to consider the various recommendations of the Fiscal Impact Committee, and obviously to do it in a timely way and report back.

Mr. Randolph seconded the motion.

There being no further discussion, Mr. Morris asked all in favor signify by saying aye.

The motion passed by a vote of 7:0.

Mr. Dotson said the last one is not one they have discussed before and it is kind of a bureaucratic aspect. It occurs to me that if a cash proffer that is significantly lower is set by the county that we need a process, and he is not sure if we do or do not have one. He thinks it needs to be publicized about can someone who has had a previously approved project at a much higher proffer come back and apply for a rezoning to take advantage of the lesser proffer. There could be a land office business perhaps in doing that and he was not sure that we have addressed it. If they have, he thinks it needs to be communicated very clearly what the rules are.

Mr. Kamptner said staff can lay that out because they are set out in state law and incorporated into the County Code.

Mr. Kamptner said in Hanover County they have dramatically reduced their proffers when they had a change in the Board a few years ago. They set up a relatively easy process that complied with state law to allow applicants to do that.

Mr. Dotson pointed out Chesterfield County has a process in their policy that he will just mention.

Mr. Morris asked Mr. Dotson if he would just like the rules spelled out and communicated very clearly.

Mr. Dotson replied that was correct.

**Motion Five**:

Mr. Dotson made a motion to have the rules spelled out, communicated very clearly and be publicized about can someone who has had a previously approved project at a much higher proffer come back and apply for a rezoning to take advantage of the lesser proffer.

Mr. Randolph seconded the motion.

There being no further discussion, Mr. Morris asked all in favor to signify by saying aye.

The motion passed by a vote of 7:0.

**In summary**, the Planning Commission asked that the following actions be forwarded to the Board:

**Motion 1:**
**RECOMMEND**, by a vote of 7:0, to take a comparative look as to where 6-8 other comparable communities are with their cash proffer amounts and how they complied with the 2013 legislation.

**Motion 2:**
**RECOMMEND**, by a vote of 7:0, that the BOS task Fiscal Impact Advisory Committee (FIAC) with evaluating the existing CRIM model against other dynamic models. This should be a long term and ongoing assignment to the Fiscal Impact Advisory Committee.

**Motion 3:**
**RECOMMEND**, by a vote of 7:0, that the Capital Needs Assessment (CNA) be updated to reflect all the capital facility expansion needs associated with the recently adopted Comprehensive Plan. Once updated consider how these facilities might be addressed by either the current cash proffer action or in a subsequent cash proffer action.

**Motion 4:**
**RECOMMEND**, by a vote of 7:0, since the credits involve achieving the goals of the Comprehensive Plan, that the Planning Commission be asked by the Board to consider the various recommendations of the Fiscal Impact Advisory Committee related to credits and report back.

**Motion 5:**
**RECOMMEND**, by a vote of 7:0, to have the county's rules spelled out (and communicated very clearly and be publicized) about whether a previously approved project at a much higher proffer could come back, or not, and apply for a rezoning to take advantage of the lesser proffer.

**New Business**

Mr. Morris asked if there was any new business.

- Request work session on existing site development standards in the zoning ordinance that could be used in the review of other projects and applied as standard conditions (like the proposed drive through window standard conditions).
- Staff requests suggestions for additional information needed for comprehensive revision of sign regulations discussion in two weeks.
- Thomas Jefferson Planning District Commission (TJPDC) is forming an educational academy. There will be an organizational meeting next Tuesday from 12 to 1 on transportation issues.
- No Planning Commission on October 13, 2015.
- The next Planning Commission meeting will be held on Tuesday, October 20, 2015.

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

**Adjournment**

With no further items, the meeting adjourned at 9:01 p.m. to the Tuesday, October 20, 2015 meeting at 6:00 p.m. at the County Office Building, Second Floor, Room 241, 401 McIntire Road, Charlottesville, Virginia.

David Benish, Secretary

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