

**Albemarle County Planning Commission
March 8, 2016**

The Albemarle County Planning Commission held a regular meeting on Tuesday, March 8, 2016, at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Mac Lafferty, Daphne Spain, Pam Riley, Jennie More, Bruce Dotson, and Tim Keller, Chair. Absent was Karen Firehock, Vice Chair. Bill Palmer, University of Virginia Representative, was present.

Other officials present were Megan Yaniglos, Principal Planner; Scott Clark, Senior Planner; Wayne Cilimberg, Acting Director of Community Development; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Keller, Chair, called the meeting to order at 6:00 p.m. and established a quorum.

Committee Reports

Mr. Keller invited committee reports.

The following was noted by Commission members:

Mr. Lafferty reported the following:

- The Citizens Transportation Committee met with the MPO Technical Committee to discuss what the MPO actually does and ways to get input from Planning Commissions and Board of Supervisors for the upcoming Long Range Transportation planning session.

Mr. Dotson noted that the report on the ACE Committee will be given by Commissioner More after meeting on Monday.

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

Review of Board of Supervisors Meetings – March 2, 2016

Mr. Benish reviewed the Board of Supervisors actions taken on March 2, 2016.

Consent Agenda

a. **Approval of Minutes** – January 19, 2016

Mr. Keller asked if any Commissioner would like to pull the item from the consent agenda. There being no one, the Commissioner needs to go straight to a vote. He asked all in favor to say aye.

The motion was approved unanimously by a vote of 6:0. (Firehock absent)

Mr. Keller asked Mr. Kamptner if that was correct that a motion and second was not needed for approval of the consent agenda.

Mr. Kamptner explained that the second's purpose is to further support having a discussion.

Mr. Keller said the consent agenda was approved and the meeting would move to the next agenda item.

Regular Item

SUB-2015-00194 Green Loft Farm - Rural Preservation Development - Preliminary Subdivision

MAGISTERIAL DISTRICT: Samuel Miller

TAX MAP/PARCEL: 08900000000250; 10100000000200; 101000000002A1; 101000000002B0; 101000000002C0

LOCATION: Dudley Mountain Road (Route 706) approximately one mile north of Red Hill Road (Route 708)

PROPOSAL: Request for preliminary subdivision plat approval to create 17 lots (16 development lots and one preservation lot) as a Rural Preservation Development on a total of 148.89 acres. Associated with this subdivision is a request for a private street.

ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)

PROFFERS: No

COMPREHENSIVE PLAN: Rural Areas – (preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/ acre in development lots) Rural Area 4.

(Megan Yaniglos)

In response to Mr. Keller's request, Mr. Kamptner provided background on the rural preservation type of development. The rural preservation development has been in the zoning ordinance for quite a while. The regulations that are in place right now are essentially frozen because the State law was changed in 2004. The regulations that were in place at that time are grandfathered so we have to allow for by right developments. There was one last amendment before the new law became effective, which eliminated the special use permit being available for these types of developments having more than 20 lots on an existing parcel. The RPD is the preferred mode of development within the development areas. The Comp Plan does have a strategy to promote the use of RPD's and other types of tools to help preserve agricultural and forestal soils and other items, which has been cited on page 5 of the staff report. The RPD is essentially a ministerial decision. The alternative to a RPD is not new development; it is a conventional subdivision. He asked if there were any questions.

Other Matters Not Listed on the Agenda from the Public:

Mr. Keller said having skipped the order of the items on the agenda that he would go back and invite comment from the public on other matters not listed on the agenda.

Barbara Cruickshank said she lives in the city on Parkway Street that was close by. However, she was a county tax payer and her kids went to county's schools and her grandchildren may be. She is here to speak about an issue that they have not taken up yet, the cell tower at Albemarle High School that she wants to voice opposition to. She knows what the law says, however, she wants to oppose this cell tower placement because these towers are powerful

transmitters of radio frequency radiation. The FCC standards are 20 years old and they are outdated. They do not protect children by any means and they do not reflect current science. The World Health Organization in 2011 has classified radio frequency radiation as a class 2B carcinogen because of the links between that radiation and leukemia and brain cancer. Studies continue to show that when you live or work near a cell tower base your chance of getting cancer are increased. One current study she gave to the Commission shows a ten-fold increase in cancers if you live near or work near a cell tower base. Other adverse effects from being near a cell tower base include damage to the reproductive systems, damage to DNA, headaches, tremors, insomnia, and the list goes on and on. The 2012 Bio Initiative Report, which is an international group of scientists and researchers that look at all the research on radiation exposure and human health, they cite five new cell tower base studies showing harm to human health. Researchers from this group state that by placing cell towers near children's schools we are exposing kids to thousands of times higher levels of radiation than even existed 20 years ago. Students are reporting increases in headaches, concentration, behavioral problems, depression and anxiety. Again, that is a long list of things that children are complaining about. The American Academy of Pediatrics has called to the FCC to update its standards to protect human health, which has not happened yet. Scientists from around the globe are also calling for the standards to be tightened up. Of course, you know that the International Association of Firefighters does not allow cell towers near their buildings until studies prove that they are not hazardous to the health of its members. Our standards should not be lowered for our children, and she asks that they not approve any cell towers that are near children. People around the country are rallying about this issue, including parents, teachers and students. There are ways that we cannot let this happen at Albemarle High School and she asked that the Commission please look at the information she provided. She knows the Commissioners are busy; but, it is very, very important. (Attachment A: Excerpt from An Electronic Silent Spring and other studies – Cell Towers and Health – How does living near a cellular antenna (a base station) affect health; Bio initiative 2012 – A Rationale for Biologically-based Exposure Standards for Low-Intensity Electromagnetic Radiation; Increased Incidence of Cancer Near a cell-phone transmitter station; and Biological effects from exposure to electromagnetic radiation emitted by cell tower base stations and other antenna array. Information available in the office of the clerk with minutes.)

Mr. Keller apologized for overlooking the agenda item. He invited other public comment on matters not on the agenda. There being none, he asked to go back to Mr. Kamptner's discussion.

Mr. Lafferty asked to respond to Ms. Cruickshank's remarks since she knows the federal government will not allow us to take that into consideration that the approach would be to get the FCC to change their rules.

Ms. Cruickshank pointed out that communities are finding a way all around the country.

Mr. Lafferty replied that they would be interested in hearing what that is; however, it is pretty explicit that we can't take that into account.

The meeting moved back to the discussion on the Rural Preservation Developments.

Regular Item – Continued Discussion

SUB-2015-000194 Green Loft Farm - Rural Preservation Development - Preliminary Subdivision

Mr. Kamptner explained in terms of Rural Preservation Developments this is a form of development in the rural areas and the land that is preserved is called a preservation tract. It is protected in perpetuity by a deed of easement that he circulated earlier today, which was the most recent example he could find that he had worked on in 2006. It is similar to the old ACE and other type of open space easements as far as controlling the location and the size of structures on the site and activities that can take place on the parcel. He asked if there were any specific questions about this process.

Mr. Dotson asked does a RPD go on from the Commission to the Board of Supervisors or is this a final decision, and Mr. Kamptner replied that this is it.

Mr. Dotson asked does a private street go on to the Board of Supervisors, and Mr. Kamptner replied no unless it is appealed.

Mr. Dotson said so this is an unusual circumstance compared to all the other things we deal with that we are the final authority unless it is appealed.

Mr. Kamptner replied yes, this set of regulations is an old holdover because it does have to be frozen in time and it should be treated as such. Even though it is in the zoning ordinance it is similar to the subdivision approval process; it is ministerial in nature and by statute it has to be ministerial in nature because otherwise we lose our grandfathering status and it comes under the new cluster laws.

Mr. Dotson asked what does ministerial in nature means, and Mr. Kamptner replied that it meets the standards in the ordinance and needs to be approved.

Mr. Lafferty asked what the new standards indicate and how are they different from the old ones.

Mr. Kamptner replied that it is something that the General Assembly often does and they make the enabling authority so convoluted and complicated and probably so that the locality at first that it is not used. He was not aware of any localities in 12 years since it was adopted that localities have enacted ordinances implementing this law.

Mr. Keller invited the staff report.

Ms. Yaniglos summarized the request for SUB-2015-000194 Green Loft Farm - Rural Preservation Development - Preliminary Subdivision in a PowerPoint presentation.

The proposed subdivision consists of 5 parcels totaling approximately 149 acres, located along Dudley Mountain Road off of Old Lynchburg Road. The applicant has proposed that this subdivision be considered for a rural preservation development (RPD). The proposal contains 16 development lots and one preservation lot of approximately 73 acres. As part of this proposal the applicant is also requesting a private street to serve the development. As stated in the staff report, this is the result of VDOTs regulations that require a stub out be provided which would result in more land disturbance and could be interpreted as encouraging future development within the Rural Areas.

One of the requirements for a rural preservation development is that the applicant demonstrate that the proposed RPD does not contain any more lots than could be achieved with a by right

subdivision. The applicant submitted the by right plan to demonstrate the number of lots as well as show how this plan would result in more land disturbance than the RPD. The road would be extended and the disturbance of critical slopes would be necessary.

Factors Favorable:

- The proposal meets the requirements of the ordinance and the design standards set forth in Section 10.3.3.
- The rural preservation development furthers the goals outlined in the Rural Areas section of the Comprehensive Plan.
- The preservation parcel allows a large portion of the properties that includes the stream, wooded areas, and critical slopes to be protected.
- The private street would require less disturbance than a public street.

Factors Unfavorable:

There were none identified.

Staff Recommendation

Staff recommends approval of the RPD and private street request.

Ms. Yaniglos noted that Scott Clark, the Rural Areas Planner, is here and he helped a great deal with this review as well. Therefore, she may call on his assistance if there are any questions.

Mr. Keller invited questions for staff.

Ms. More asked if there were other options here if they were to do it by right or would this be what would have to be done.

Ms. Yaniglos replied that staff really evaluates what the applicant submits and does not look at future alternatives. However, she thinks the applicant might be able to speak to that. The other issue is the development rights need to be used within the parent parcel. Some of the lots are clustered in different areas because those development rights need to be used in certain areas and she did not know how the applicant might redesign that or if they could.

Ms. More said she just wanted to be sure they were not being shown like the worse possible scenario of by right development, and Ms. Yaniglos replied that staff was really charged with reviewing what they submit.

Mr. Keller asked staff to explain the number of by rights created by the multiple parcels.

Ms. Yaniglos explained there are 5 parcels: Tax Map 89, parcel 25 has 5 development rights; Tax Map 101, Parcel 2-2 has zero (0) development rights; Parcel 2A1 has 5 development rights and each front lot has one development right totaling the number of 12. In addition, the creation of parcels 21 acres in size can be done without a development right. So that is how the applicant gets the extra 5 development rights with the number of acres which would equal to 17 lots possible.

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

Brian Ray, with Roger Ray and Associates, said they prepared the plan and Jess Ocanbock is here as the owner representative in case there are any non-technical questions asked. He thinks staff did a good job if you read through all the information about pointing out all of the different characteristics that are required for a rural preservation development. He thinks they have come up with a plan that either meets or exceeds those in all cases and the staff report clarifies that, too. The easiest way to look at the comparison is to look at the by right plan.

As a follow up on the question about the by right plan, Mr. Ray pointed out the parent tract lines that existed in 1980. Regarding development rights, there are 2 in the front side of the diagonal line that cuts through and 2 small lots and behind that to the east there are 5; and 5 in the northern area. So to develop those rights we had to demonstrate not only building sites, but that the lots could be created in each one of those parent tracts. So the best one to demonstrate are the ones furthest back of the cul-de-sac. Those are good building sites up there since the ground is level and away from critical slopes. There are 5 development rights that are within that parent tract. The rest of those areas are critical slopes that are shaded in and the stream buffer, which would not allow building sites in this area.

Mr. Ray explained if it were developed by right in order to get those rights it could be a slightly different configuration; but, it would be very similar to what we have. He said that is how we came up with the by right layout to get those development rights and building sites that are reasonable if this was developed as a by right plan. We feel this is how it would be developed or very similar to this if it was developed by right, which he thinks Mr. Kamptner did a good job of pointing out. This is the county's preferred method of development in the rural area because not only do we get condensed lots that are smaller, but it allows a roadway that is shorter with less disturbed area and less impervious area. The great thing is that we end up with a 70 plus acre preservation tract that has a preservation easement that is managed with the county under this easement. So we are really doing something here that we almost feel like should be the by right plan because this is the preferred method of development. However, the ordinance does require us to come before you and request this permission although he thinks Mr. Kamptner pointed out that if we meet those standards that the ordinance sets out that it could be approved.

Mr. Ray asked to touch on something that did not show up real quickly as far as the staff report and numbers. He pointed out the by right plan would be about 3.1 acres of impervious area created by the public road or private road that would serve the other lots and the RPD would get reduced to 1.3 acres. So they were basically looking at 2 ½ times the amount of impervious area created by the roadway with a by right versus a RPD and equating that the length of the road would be about 6,450 feet of road to be constructed versus the 2,600 feet with a rural preservation. Then again, he did not think that Ms. Yaniglos touched on the by right plan would also require the road to go through some critical slopes so that would be disturbing about 4/10 of an acre of critical slopes that we are able to avoid by doing the RPD. Not only are those critical slopes and stream buffer protected under the current ordinance requirements; but, being in part of the rural preservation tract they are further protected by the easement that is placed on it. He would be happy to answer questions.

Mr. Keller invited questions for the applicant.

Mr. Lafferty asked Mr. Ray to address the private road.

Mr. Ray replied that we actually started this process requesting a public road. However, in site review one of VDOT's comments was interconnectivity, which does not make a lot of sense in

the rural areas where the adjacent lands really are not as important as to connect to. He pointed out VDOT requested that we extend the public road from the cul-de-sac basically down the lot line all the way to the adjacent property owner. He noted historically that one time we were able to just provide a right-of-way in case that ever needed to be built. However, VDOT required us to build the road all the way to that point and it may never serve anyone. So again we are looking at more impervious area that may or may not be used. When talking to staff, Ms. Yaniglos actually suggested that we look at the private road because it is one thing that we would not have to do that and would not promote any other development or possibly create 375 feet of public road with a 20 foot width that is just going to sit there. That is how we came around to requesting the private street.

Mr. Lafferty asked if there would be a homeowner's association or who is in charge of maintaining the road, and Mr. Ray replied that the homeowner's association would.

Mr. Kamptner noted the ordinance requires that every subdivision have an agreement for the maintenance for all private improvements.

Ms. Riley said it looks like you have met all the requirements of the RPD; however, she has some questions about some enhancements you might be able to make in terms of the design. It is good that you are clustering the development in the front. She would think for some neighbors and/or just people on the road you could preserve the trees in the front and asked what plans and protections you might do. She realized that the majority of land has been timbered in the past and some of the neighbors have shown some concern about storm water runoff, and asked Mr. Ray to address what their plans are for that and if you would be doing something besides a traditional retention or to maybe address that issue with the neighbors.

Mr. Ray replied that there are 2 areas proposed for storm water detention. One is in the rear and the other in the western area. He pointed out that Collins Engineering is actually working with us on storm water and water quality, and that was their proposed areas that would catch the most run off from the road. The road would be designed such as that run off will be directed to those 2 areas. In talking with the owner they are willing to look at alternative ways to do storm water and detention with low impact. However, at this point he could not say that would work or not. We know that the conventional ways of looking at the runoff will be allowed and we will go through the engineering process that meets all of the county's regulations. We will look at those other options; but, he did not know since some alternative methods may or may not be something as easy to maintain for the property owners. We don't really know at this point if there is an alternative that will work. However, we do know that it will go through the county's process through engineering and will meet all of the county's regulations for storm water.

Mr. Jess Ocanbock noted that the owner has expressed that they are willing to look at doing tree preservation for the remaining trees that are on the site.

Ms. Riley asked if the owner will be looking to establish some uses on the preservation tract such as trails as opposed to just having it all undefined in terms of its use.

Mr. Ray replied that they may consider that; however, she might want to ask Scott Clark because he was not sure if the regulations will allow for the type of uses such trails and such. He knows that the easement is pretty comprehensive; but, there may be some walking trails if the easement allows that. He suggested they ask Mr. Clark about the particulars in what is allowed as far as trails and other types of use.

Mr. Keller suggested that they hear from the public first.

Mr. Palmer asked if the rural preservation tract been logged at this point, and Mr. Ray replied that there is a portion of it that has been timbered. However, if you look at parcel 25 he believed that parcel 25 is forested.

Mr. Keller invited public comment.

Rachael Horsley, resident of 2351 Dudley Mountain Road, said she had watched the clear cutting of this land and wanted to speak against this and go for the by right plan. She did not know how the county considers rural preservation; but she thinks about it as open spaces and not clusters of houses that creates a subdivision rather than a rural setting. She sees Dudley Mountain Road as a beautiful road that is getting more developed by the minute. But, this is the most development in that concentrated area on that road, which will change the character of the road. With all due respect she has questions about people fulfilling what they say they are going to do since we have already had problems with water and run off. The clear cutting to me was the most painful thing to watch. There are just fewer and fewer areas in that part of Albemarle County that are wooded anymore and we can't go back and change that. She is opposed to having a subdivision. The west side against Dudley Mountain Road is where all of those houses are going to be clustered, and the back part or the rural preservation part won't be visible to anybody. She felt it does not really serve the purpose if you are trying to have this for the public because if you want to have rural land it should be visible to the public. Having all of these houses clustered toward the road just does not do that. She preferred the by right because the houses would be spread out and not a subdivision. It is becoming suburban. If you want Albemarle County to be rural she would talk against this request.

Stefan Gorsch said he owned the farm directly opposite this proposal with his wife and echoed Rachael Horsley's comments. He thinks one of the key factors that they need to decide, and he recognized that they don't have a lot of lead way here, is how we preserve the rural nature of what is left in the county. If we don't have a choice about clustering, which it sounds like we probably don't, cluster it in the back of the property and not up on the road so everyone who is biking, driving and walking the road will actually see rural land instead of a subdivision of a cluster of houses on tiny lots surrounded by fewer and fewer farms. So if we have to have clustered housing and don't have an option of that, then cluster it in the back somewhere it is not going to be an offense to everyone who is driving down the road. He pointed out the way he discovered his farm was biking down that road and thinking it was beautiful and he would love someday to have a farm there. He would like for other people to have that experience biking down the road in the future. He will impugn the incentives of the people who are developing this land since these are not people who are interested in rural preservation. They have a right to develop the land because they bought it; but, they have massacred that land. For two years it has been mud and runoff and an eyesore. He asked please if you have the option to be guarding this with the county do that.

Lisa Gorsch said they are really trying to operate Wineberry Farm, which is our property across the street, as a farm with sheep, horses and a produce garden to try to address the agricultural nature of this county. What she would like to add to what her husband said was highlighting the intensity of the drainage problem. This RPD is set up with the majority of the houses on a fairly steep embankment that goes down to Dudley Mountain Road and then goes down across the road into our property. After this land was clear cut it decimated our driveway, which has washed out many times. She was on her tractor so many times trying to regrade the driveway for the tenant that was there at the time that she finally gave up. She spent \$6,000 to get the

driveway paved because she could not handle the water that came down every time it rained. The paved driveway is washing out, which is how bad the drainage is without all of these homes taking up land which might be able to absorb some of the rain. One concern is the drainage proposed is wholly insufficient and inadequate to the task. She submitted videos of the water runoff to the county 1½ or 2 years ago whenever this all happened. It was horrendous because they had ditches being etched through our land because of this runoff. The other thing that has not been noted is noise pollution. This is all elevated and every single noise that is generated on that hillside comes right down across the road to our property and to the property of our neighbors. It is really loud and she considers this noise pollution. She thinks these are two issues that have not been adequately addressed. Finally, she agreed and would not object to this many houses in the back of the lot where they would be invisible. But, to put the houses in front just runs counter to everything that makes this county wonderful.

William Griffin, resident of 2242 Dudley Mountain Road, said he would second what Lisa Gorsch just said. There is an acoustical anomaly in that valley in that his house is 1,000 feet back from the road and when bicyclists ride down the road he can hear their conversation. It is that much of a transfer. When Mr. Graves was logging the place off they showed no respect at all for their neighbors. They bought equipment in at 5 a.m. in the morning, unloaded tractor trailers in the street and hauled wood out with no respect to the neighborhood at all. When the drainage problem started there was water and mud very deep in the road. After the storm they had last weekend there was deep water that covered half of the road. There was so much mud that you could not drive down that lane. For 6 to 9 months they hauled dump truck loads of dirt in there and used this property as a landfill. They filled in critical slope areas that should have never been logged in the first place. There was a permanent swamp in the middle of the property that had large buttress swamp trees. In the Department of Forestry manual it says that those areas are never to be logged or disturbed and they cut all the trees down, filled it in and did away with it altogether. So they have totally disregarded many of the natural protection laws. He has no faith at all that they will do anything in the spirit of the rural preservation. Basically, they just bought that end lot at the county courthouse because the people had stopped paying taxes, and that lot still has timber on it. It is basically not a good place to build. He had been all over the property because Mr. Wright who use to own their farm had given him permission to go over there and run his horses. He has been there for 26 years and has seen the things that have gone on. He said his bigger concern, which he did not think there was anything they could do anything about, is that right now there are only 11 houses from his house all the way down to Route 708 and if you put 17 families in there it would add another 300 to 400 vehicle trips a day onto Dudley Mountain Road. Dudley Mountain Road is a very important biking destination and the traffic they have now is dangerous for the bicyclists. He has come close to hitting people coming around the corner and sitting in the middle of the road riding like it is a private bike trail. However, to add this many more people there is going to really cause safety problems.

Ted Thomas said he and his wife own 2 parcels on this map that includes the one with Green Creek and he had a couple of comments. Regarding the erosion problem in the course of the clear cut he thinks the property owner cut a straight line ditch across the front of the property in order to divert water instead of out onto Dudley Mountain rather than going into that small creek. He noted they call it Briery Creek because of it being named that in old papers and plats. That creek has silted in horribly as a result of the clear cut and he was terribly worried that the measures that are proposed to take the drainage water off the road in the front of this development will go into the settling pond. He was hoping that was adequate, but was not sure it is especially if it was only designed to take water from the road and not from all the house sites which are going to be opening up all kinds of soil. The environmental damage that already occurred to Briery Creek could be exacerbated if this drainage system does not work well. Also,

the timing of when that drainage system goes in is important to all of us. It should be the very first thing because there is going to be a lot of soil disturbed there and after all these home sites are excavated Briery Creek and ultimately the Hardware River are all going to be silted in all the worse. So environmentally he was very concerned about the design. Secondly, he thinks the RPD, if the houses were to be clustered in the back, will have the same effect as securing land in the front of the property that will not be built on. So there are probably going to be 50 to 70 acres of low density in the front that gets swapped to the back if you do the preservation, and he thinks either one has very close to the same effect even though the easement won't be part of the clustering in the back. He thinks it will have the same effect as far as preserving the rural character that we all see. Finally, we are the landowners that would be affected by the private street versus the private road since ours would be the connecting property. If it were, in fact, a public street we would favor that option given the land lock of our land to the south. He did not know if it was possible if a private street goes in if there is a mechanism whereby our land could still be connected to the private street and if that mechanism exists or it does not. However, that is something that is of interest to us and whoever ultimately owns that land after we do.

Rick Palermo, resident of 1671 Dudley Mountain, said he just recently built as far back on his 5½ acres as he could and echoed everyone's sentiments because even though he has added to the development out there he put one house on 5 ½ acres. He really has a question about this by right plan with the biggest lot that had zero subdivision rights to it and if had to do with the soils. He knows it would be more expensive to spread lots out and have more road; but, all of that could be ameliorated because we put Targets, Walmarts and Coscos up and down 29. He was sure if this was proposed in some parts of the county north of Charlottesville there would be a lot more people here expressing their concerns.

Mr. Keller invited the applicant back for follow up rebuttal.

Mr. Occubond said it is important to discuss the storm water management that currently exists as opposed to what would be proposed in the new RPD. The owners did timber the property in the past. There was no Erosion and Sedimentation (E&S) requirements to do that work and that has resulted in the conditions that are out there today. By moving forward with this plan it will put in place an E&S plan to deal with these current conditions. First, he thinks that stating that moving forward is going to make the problem worse is incorrect. Secondly, the purpose of the RPD is to preserve the land and in moving the lots to the back they are going to have to be timbering the piece that is not timbered, getting into the critical slopes and invading the stream buffer. As far as clustering the lots in the back he was not sure how they would do that without accessing the 50 acre piece that is on the back side. In response to the character of the road he understands that there are large tracts out here; if you go to the north there are 15 homes within a half mile and within a half mile north and south there are 20 homes. The average parcel size is 5.2 acres. The average proposed parcel size in the RPD is 4.7 acres and they don't feel that is very out of character with the surrounding homes. The average frontage on Dudley Mountain Road of those 20 homes is 264 feet, and the average frontage of the 5 lots they propose will be 340 feet, which is actually larger. They understand that there are large farms and large pieces of land out there. However, they don't think that because of the development around this it necessarily is out of character.

Mr. Ray said speaking to clustering the lots to the rear that one of the great benefits of the proposed layout is to reduce that amount of impervious area and disturbance of critical slopes. Since we only have a stream buffer back here all those things are better protected by shortening the road and clustering the lots. They are talking about over 3 acres of impervious area that they are creating with the road versus 1.2 acres for the RPD and they are still going to have the

same number of houses and driveways. However, we are able to greatly reduce the amount of impervious area and disturbance of ground by clustering everything at the front. In creating a rural preservation tract that includes the majority of the critical slopes and the stream buffers that are on the property and we feel like those are being protected along with being under this easement will further protect it more than the county does currently. So he thinks the intent of the RPD ordinance is to allow exactly what we are proposing here.

Mr. Occubond said in response to Commissioner Riley's question about the trails in the preservation tract it is my understanding that the owner's original intent was to provide a trail system back there. But, after looking at the ordinances they found out that clearing of any sort is not technically allowed. That said, they are willing to work with the county in whatever means they can to provide that.

Mr. Keller asked Mr. Clark to come up and join the Commission in this discussion in case there are commissioners that have questions for him as well. He invited follow up questions for staff or the applicant.

Ms. Yaniglos asked Mr. Keller if he wanted her to address the development rights question, and Mr. Keller replied that would be good.

Ms. Yaniglos explained that 101-2 was subdivided and development rights were given in 101-2B and 101-2C. She did not have all of the plats here, but that was why it ended up with zero because they were distributed under a subdivision. But, it is such a large parcel that it still can be subdivided into 21 acre parcels.

Mr. Keller asked if she was saying the smaller parcels are there, but there still are the 21 acre ability, and Ms. Yaniglos agreed.

Mr. Keller asked can you assume that because that had so much hydrology within it that was one of the reasons it was not given development rights, and Ms. Yaniglos replied that she can't make that assumption.

Scott Clark pointed out that development rights were distributed parcel by parcel in 1980 not by any features on the land, but just five for each parcel of record. So the development rights may have been used or moved around since then and not due to the requirement of the layout of the creeks.

Mr. Keller noted that it was just my experience in looking at rural land development that when a parcel does not have rights left it was usually a land use reason that it does not have rights left and he was wondering if that hydrology was the issue there given what the neighbors are saying.

Mr. Dotson asked Mr. Clark under the proposed easement that would go on the preservation track what limitations would be on timbering of that portion and could it be timbered in the same fashion as the majority of the site.

Mr. Clark replied not necessarily in the same fashion; but, the easement does not necessarily prohibit timbering of the preservation tract. It usually would require approval of a timbering plan by the easement holder so the form of the practice of the timbering would be controlled to some degree by that. But, it would not out and out prohibit timbering.

Mr. Dotson said the logic of not prohibiting it he would assume that timbering is a normal forestal activity in rural areas.

Mr. Clark replied the original purpose or idea of clustered subdivisions, which also goes to the question about trails, was that someone would have a working farm that would be subdivided; they would give up the development lots and then keep the remaining area to continue as that working farm. That does not always happen. So, yes, the original idea behind this was that crops and raising timber could all continue on that preservation tract. It was not meant to be a hands off complete preservation parcel. In fact, to get to the question about trails it is not open space for the benefit of the rest of the subdivision. It is on a private lot and can have a dwelling on it. So it is very rare for these preservation tracts to have trails or other community amenities on them because it is someone's farm. So unlike a subdivision you would see in a planned zoning district that has a large chunk of land with trails on it for open space this is actually a private lot.

Mr. Keller asked with the discussions that they are having right now about agricultural and forestal districts would that if there was a single house placed on that lot, if it was approved, would it qualify within an agricultural forestal district. Is the one close enough by and given the current regulations would it qualify.

Mr. Clark asked if he meant the preservation tract if this was developed in this form; and Mr. Keller replied yes.

Mr. Clark replied under the current standards yes; but, there would not be much point because the conservation easement that will go on the preservation tract, unlike a district, and is more restrictive than the district. Also, if it was developed this way it would not be any development rights left on the preservation tract for them to give up as part of the district. So they could join; but, it would not really change anything.

Mr. Keller asked in terms of the taxes and land use, and Mr. Clark replied that they would be under a conservation easement so that is going to affect their taxes as well. Either way it is going to be able to reduce the tax burden.

Mr. Keller thanked Mr. Clark and invited further discussion.

Mr. Dotson said they have seen a preservation development and a private street. They have seen a by right development and a public street. He asked is there a possible combination of by right and a private street.

Mr. Kamptner asked if he meant a by right conventional development, and Mr. Dotson replied yes, and in other words it would be less surface area paved he would assume.

Ms. Yaniglos replied yes, the standards are the same with this number of lots for the street.

Mr. Dotson noted the answer is that the private and the public would be developed to the same standards; therefore, the same paving area.

Mr. Benish agree for this number of lots on this roadway. If it were for a much less number of lots there is a little bit more discretion in the private road standards, but not for this number of lots.

Ms. More said under favorable factors the preservation parcel allows a large portion of the properties that includes the streams, wooded areas, critical slopes to be protected; but, what we are hearing is that the wooded area is not necessarily protected.

Ms. Yaniglos noted that some of the preservation tract has been logged; but, the large majority of the preservation tract remains wooded. So this one piece is all still wooded.

Ms. More asked if it were up to their discretion to timber the land, and Ms. Yaniglos agreed.

Mr. Clark noted that it was not required to be kept wooded. It will probably have more control over the character of the timbering that was done because of the involvement of the conservation easement although he would note that if it was done for by right development it would be timbered just under the Department of Forestry standards without that extra control or if it was just timbered as it is now. So it is not a complete protection of the woods; but, it is an increase level of scrutiny over the methods used.

Mr. Benish noted the language used in one of the most recent examples for forestal use as timber harvesting is permitted only in accord with a timbering harvest plan approved in writing by the county. So that control is on there that is not on there before, but again the purpose of these open space areas in the rural area is to allow for agricultural and forestal activities. So timbering properly done is an expected use in our rural areas.

Mr. Lafferty asked so you can't put a walking trail in; but, you can timber it.

Ms. More added or clear cut.

Mr. Benish noted as Mr. Scott said this is a private property that is intended to be a farm in open space use not general open space owned by the home owner association.

Mr. Clark said they could theoretically if they wanted to put in trails in such a way that complied with the conservation easement he would suppose that the private land owner of the preservation tract could give an easement to somebody else to use that. But, it is not a common practice and he was not sure if it had ever happened on other RPD's.

Mr. Kamptner pointed out that will be up to the owner.

Mr. Lafferty asked if the owner would be the homeowner's association, and Mr. Clark replied no, it would be a private land owner.

Mr. Keller said with the Commission's approval there is one member of audience who has been raising her hand a great deal. He asked if the Commission was okay with letting her have one more comment. With the agreement of the Commission Mr. Keller invited Ms. Gorsch back up.

Lisa Gorsch noted she had a question and a comment. There has been discussion of how to minimize the amount of roadway this evening. She assumed the purposes of minimizing the roadway is to minimize the drainage. She pointed out that everything to the right of the driveway, which winds itself up from Dudley Mountain Road and curves around and goes along the top of a ridge, and everything to the right of the ridge goes down in the opposite direction from Dudley Mountain Road. What she was trying to suggest is that putting fewer houses to the left and more to the right according to what they saw of the by right plan would result in a more even distribution of runoff water. At least ½ of it would be going to the right and ½ would be

going to the left. But, concentrating all of the houses over on the left the vast majority of the water is going to be flooding down onto Dudley Mountain Road. She foresees that as being a real problem. That is her impression of the lay of the land.

Mr. Keller thanked Ms. Gorsch for making that point.

Mr. Keller said as a person who has been interested in rural preservation for over 40 years that the cluster developments in rural areas often serve a very good purpose; but, this may be a case of where the land form, the geomorphology, and a concept that many of us believe strongly in find themselves in conflict. He noted the Commission needs to have a discussion and take an action.

Ms. More agreed with what Mr. Keller was saying. However, she needs clarification from staff about what our options are.

Mr. Keller pointed out he was saying that was for the public to understand that we have a comprehensive plan that is encouraging us when we have developments in rural areas there is the philosophy that encourages us to cluster as opposed to have the more spread out development pattern. In the groups of public that he is often with there is a debate with those who factor the clustering and having more open space around it and those who like to feel that spread out feature on the land. If you feel strongly regardless of how this goes, then you need to weigh in at the time of the comprehensive plan redevelopment, which we are very close to beginning that five-year process again. If the public lets their elected and appointed officials know that they believe that there should be a different kind of form given then that will be reflected in the comprehensive plan and that will in effect affect how staff, the planning commission and supervisors respond to these kinds of issues.

Mr. Lafferty said if it were clustered wouldn't staff imagine that the people who are living in those lots clustered would take care of the erosion and have grasses and stuff like that. Otherwise, if they have it by right we have 21 acres that still drains down into Dudley Mountain Road and who would be responsible for the erosion control there. He asked would that go with the development.

Mr. Kamptner pointed out that would go with the owner of that lot. The 21 acre lot zoned RA could be forested.

Mr. Lafferty asked if something would have to be done with erosion control.

Mr. Kamptner replied no, forestry is exempt from erosion and sediment control.

Mr. Lafferty said we would basically be leaving everything that is adjacent to Dudley Mountain Road and that it could be the same as it is now.

Mr. Kamptner agreed. He said he heard a snicker in the audience and noted the exemption for agricultural and forestal activities from erosion and sediment control is a state requirement. We have no discretion to make it subject to our erosion and sediment control regulations.

Ms. Spain said she was sympathetic with the neighbors and it does seem heartbreaking that the land was logged in what seems to be an inappropriate way for that environment. But, my understanding of ministerial review is that if the applicant has followed all of the guidelines, then we are compelled to approve. She asked are these exceptions to that?

Mr. Kamptner replied that the regulations in the zoning ordinance require that if the Commission is inclined to deny the development the Commission has to make specific findings. The findings are the proposed development does not forward the purposes of rural preservation development. It is really the list of all of the criteria that are in the staff report, and you also have to find that the public purposes of rural preservation would be better served by the conventional development. In order to make those two findings the Commission needs to have facts in the record that would support identifying the reasons why the rural preservation development's purposes are not satisfied and why the conventional development is the better approach to accomplishing the purposes of rural preservation.

Ms. Spain asked do we have information on water supply.

Mr. Benish replied if it is about water supply, watershed; groundwater it will be subject to health department approval per lot.

Ms. Riley agreed with Commissioner Spain that this is a really difficult case to evaluate. She would be hard pressed to say that the conventional development is going to preserve the rural character and the rural development any better. Therefore, she thinks this is a ministerial act that is a difficult one to swallow.

There being no further discussion, Mr. Keller asked for a motion.

Mr. Lafferty asked if there needs to be two motions, and Mr. Kamptner replied there needs to be separate motions.

Motion: Mr. Lafferty moved and Ms. Spain to approve the Rural Preservation Development for the reasons recommended by staff.

Mr. Keller invited further discussion.

Mr. Dotson commented that years ago when he sat on the Commission there was a similar case in the Coveseville Orchard, which was proposed as a rural preservation development and staff and he supported it. However, he had sort of learned a lesson in a sense from that experience which was denied and then went in as a conventional development. The concern to the neighbors was that the clustering created more of a suburban character than the preservation tract, which was off the road and a very similar situation given the outcome of that particular one because it went in as a regular rural area by right development. So this is not an issue that perhaps comes up very often.

Ms. Spain asked what was the result and what does it look like now.

Mr. Dotson replied that he has not driven down there and was not sure.

Mr. Kamptner recalled that they had one that came in for a RPD and it was denied. This was back when it was more discretionary. They came back with a conventional subdivision plat and that was denied. Then they asked him to come back with the RPD a third. He was not certain that it ever came back that third time.

Mr. Benish pointed out that he thinks they did a by right subdivision with ministerial lots. He did not know if they subdivided it the full extent that was proposed; but that is old history.

Mr. Keller pointed out he had several points. One, if we are going to see more of these cases and if it is as unusual as staff is saying that it is one every 6 or 7 years, then maybe it does not warrant this. But, as a landscape architect he would really like to see view shed analysis done of these sorts of things. When we have 2 different views coming forward from the public and the applicant saying about what will or won't be seen from different from areas, and they have not talked about whether it would be seen from Route 20, so he would like to encourage staff to get into the process to see whether there could be if funding for the software if there isn't that software. Secondly, they look at this wooded area and all of us that are dealing with rural area issues know that the pine plantations age out and they are either going to be consumed by the beetle or the bore, but they are not going to be there as a tall evergreen forest for a long time. So there are issues of having to cut these areas. He was seeing different colors in the aerial photograph which is leading him to believe that there is some evergreen as well as deciduous growth up there. So he thinks that in the rural area developments that they are talking about there needs to be a little bit more expertise about agriculture and forestry represented in the staff reports. Finally, they all know that this area is developing because of its location and he was wondering about the possibility of looking at the Entrance Corridor and controls to an area like this as well and what effect, if any, it would have on this sort of decision making process at least the concerns that they have heard about the development along the roadway.

Ms. Spain said she had a question about how in any instance neighbors could be informed of logging before it happens. If it is private property does the property owner have to notify neighbors? (Staff shook their head.) She said so there is no control over that and the neighbors don't know until it is too late to do something.

Ms. Yaniglos agreed.

Mr. Lafferty asked to call the question.

The role was called and the motion was unanimously approved by a vote of 6:0:2. (Firehock absent)

Mr. Keller asked for the next motion on the private road.

Staff has reviewed the request in accordance with the requirements of Section 14-232 and 14-234 and finds that the proposed private street meets the requirements of the ordinance. Staff recommends approval.

Motion: Mr. Lafferty moved and Ms. Riley seconded to approve the private street request for reasons stated in the staff report.

Mr. Keller said he would like to have a discussion of this one. They heard the proposal for not being private. Also, did he understand that there would also be an effect on the entrance and what would have to be done on the entry road? He asked if there was a VDOT component to that.

Ms. Yaniglos pointed out that is either private or public.

Mr. Lafferty noted it has to be stemmed out to the property line.

Mr. Benish said approval of the private road does not preclude the applicant from coming in and

doing a public road; it gives them the ability to do a private road. So if they were to get with the adjacent property owner and decide to construct a public road he thinks they could.

Mr. Kamptner agreed and pointed out the main issue with the public road was VDOT's requirement for the connection to the adjoining parcel. That was the main issue with that creating a connection.

Mr. Keller said once that becomes a private parcel in the future if there is an interest in connectivity that opportunity will have gone away unless there is room on the way that lot is developed for that right-of-way to be given.

Mr. Keller said if indeed we believe in clustering to the extent that we seem to have said that we believe in clustering by this vote, then we are providing an opportunity for an adjacent cluster. He asked staff to put the slide with the parcel back up on the screen.

Mr. Brian Ray offered to respond to the question.

Mr. Keller asked if the Commission wanted clarification of that, and Ms. Riley replied that she thinks it would be helpful.

Brian Ray, with Roger Ray and Associates, said he believed that your property has one more development right potentially. He asked if that was correct.

Mr. Ocanbock replied yes, that was correct.

Mr. Ray noted that a cluster would not be able to happen when we are talking about one more lot. In speaking with the owners he thinks they would be willing to discuss the possibility of a private easement to possibly serve some of your property he believes. He asked if that is correct, Jess.

Mr. Ocanbock replied yes.

Mr. Ray said so some discussions have been with them after we decided to go versus public to private and that there may be some discussion with a property owner about access off of the cul-de-sac to his property. Again, if we are talking about a cluster development his property really won't be allowed to do that because there is one more development rights. So there is a possibility of one more lot there that may be served off of an easement that the property owner may allow that to happen just so it is a clarification.

Mr. Keller pointed out that really makes my point moot. He thanked Mr. Ray for the clarification. There being no further discussion, Mr. Keller called for a roll call.

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

Mr. Keller noted that the request was approved.

Mr. Kamptner said before moving off the topic he noted a couple of the ideas that the Commission has raised such as the visual impacts and there was another issue. Under the current regulations we are hamstrung because we can't change the current regulations we have in place. So we may need to just take a whole fresh look at this whole issue. We probably would be hamstrung if we characterize it as a cluster development under the state law. They may

need to just look at a different way we deal with this. Our cluster regulations were adopted in 1980 and replaced in 1988 or so.

Mr. Cilimberg noted it was in the early 90's.

Mr. Kamptner noted they were a quarter of a century old and a relook might be warranted.

Mr. Benish suggested in a bigger sense these sorts of issues with dealing with this would be one of the future topics to sort of inform us about other changes we need to make. This provision is really stuck and we are kind of hamstrung doing any sort of changes so he thinks they would have to take a broader approach to comply with the standards.

Mr. Keller said they would move to the next agenda item.

Public Hearing Item.

ZTA-2016-00002 Expedited Proffer Amendment

The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance amending Secs. 18-33.4, Uniform procedures for owner-initiated zoning map amendments and special use permits, 18-33.7, Owner-initiated zoning map amendments; authority to accept proffers, and 18-35.1, Fees, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Secs. 18-33.4 to authorize the Board of Supervisors to reduce certain application and process requirements that apply to applications for zoning map amendments (rezonings) if the application is only to amend existing proffers that do not affect use or density, 18-33.7 to reflect the changes to Sec. 18-33.4, and 18-35.1 to establish a new reduced fee of \$457.00 for applications for rezonings to amend existing proffers that do not affect use or density if the Board reduces application and process requirements. The proposed fee is authorized by Virginia Code § 15.2-2286(A)(6). A copy of the full text of the ordinance, and the documentation pertaining to the proposed fee being imposed, 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. (Wayne Cilimberg)

Mr. Cilimberg presented a PowerPoint presentation to summarize the executive summary for ZTA-2016-00002 Expedited Proffer Amendment entitled LEGISLATIVE REVIEW - Proffer Amendments Not Affecting Use or Density.

This zoning text amendment really applies to proffer amendments which are legislative process rather than ministerial like the one the Commission was just dealing with. It actually has some relationship to amendments that were done a few years ago as an outgrowth of the Development Review Task Force and the Board of Supervisors' interest in 2010 as we look at how to satisfy and improve the public as well as the staff's interest in processing rezonings and special use permits.

Clarifying the Goal

- Applicants want clarity
- Avoid Unnecessary and Burdensome Regulations
- Maintain Opportunities for Public Information/Input
- Maintain Community Quality in whatever process we had in place

Primary Interests

- Applicants want clarity, consistency and reasonable predictability
- Staff wants information necessary to provide comprehensive review
- Public wants to be informed
- All want reliable decision-making timeframe

Specific Goal

- Create a value-added process
- Provide clear expectations
- Reduce iterations of re-submittal
- Get decisions made most efficiently

History

- **Comprehensive Amendments Adopted by Board 12/5/12**
 - Required pre-application meeting
 - More specific application requirements that came out of the pre-application meeting
 - Community meeting process
 - Application acceptance process
 - Possibility of work session(s) with Planning Commission and/or Board of Supervisors for particular projects
 - Included waiver provision of public hearing possibility for proffer amendments that do not affect use or density, but still required compliance with requirements for:
 - Pre-application meeting
 - Full application
 - Community meeting
 - Standard application fee
- **Board of Supervisors Resolution Of Intent**
 - Consider amendments that provide a simplified process for proffer amendments that do not affect use or density – at the Board’s discretion.
 - The Board passed a resolution of intent on 1/6/2016 to consider amendments that would provide for that.

Proposed Ordinance Changes

- **Allowance of simplified process for proffer amendments that do not affect use or density**
 - Waiver of public hearing(s)
 - Waiver of certain procedural requirements
 - Pre-application meetings
 - Work sessions
 - Community meetings
 - Waiver of certain application requirements
- **Reduced application fee - \$457** (As noted in the staff report \$457 is the same fee for special exceptions that go directly to the Board of Supervisors.)
- **Case by case reviews**
- **Board discretion** – There is no guarantee that any of them would, in fact, get the simplified process. But, at least they would have the opportunity to go to the Board of Supervisors to request that.

Based on a research just on the last few years the following are potentially eligible types of Proffer Amendments:

- Phasing of public improvements, particularly roads
- Change to character of public improvements
- Removal of certain public improvements – ex. interparcel connection
- Timing/sunset for public improvements/cash
- Change to cash proffer amounts
- Timing of requiring certain uses based on other uses – ex. commercial square footage based on residential units
- Change to private amenities – ex. trail, tot lot
- Phasing of development
- Change to form/character of development
- Change in location of features of development

If the county were to change its cash proffer policy and they had old proffers requesting a reduced amount and the policy called for a reduced amount that would be the kind of proffer amendment that could be subject to the expedited or simplified process.

Factors to Consider in Determining in whether or not a proffer amendment can go through that more simplified process are:

- Was the proffer as originally provided essential to the approval of the original rezoning?
- Does the change in proffer have a potential impact on adjacent properties not anticipated with the original rezoning?
- Has development already occurred within the rezoned area for which the current residents/businesses would have relied on the proffer or for which a change in the proffer would materially affect them?
- Is there a general public interest in the proffer as originally provided that would be materially affected by the requested change?

These kinds of questions will be good for staff to analyze in making recommendation to the Board regarding any particular request should these amendments be passed.

Staff has provided ordinance language and recommends the Planning Commission recommend the Board's approval of the zoning text amendment. Again, it does not guarantee any particular amendment will have that process approved for them. However, it does give them the opportunity to request it with the Board if they meet the requirements as set out in state law and in the County Code.

Mr. Keller invited questions for staff.

Mr. Lafferty asked if the director of planning has the discretionary part in this to carry it forward to the Board.

Mr. Cilimberg replied that any request can go to the Board; however, it is only after a consultation with staff that such a request would be then sent to the Board. Then, of course, staff would be analyzing that request and advising the Board as to whether or not we felt that the request would be justified in that particular case.

Mr. Lafferty asked if the director and staff have control over notification and things like that.

Mr. Cilimberg replied that would be a decision of the Board as to how they felt a proffer amendment should be processed in a particular case.

Mr. Kamptner pointed out staff would make recommendations if they thought it was appropriate depending on the particular application.

Mr. Keller asked would this expedite the development process timeline.

Mr. Cilimberg replied it would certainly in cases where it is a fairly simple type of amendment that we have to otherwise go through two public hearings. Again, if you have some particular provisions that have been set out under our own policies that an amendment is attempting to address that is not about use or density in a process it does give it a lot quicker approval route. Very honestly that is why staff proposed the lower fee. Staff feels like it is similar to the special exceptions that the Board reviews and it has the potential for some of the amendments that we might get to reduce staff time.

Mr. Keller said given the governor's signature today this is all about past proffers and it really wouldn't have applicability going forward. He asked if they are looking back for this.

Mr. Kamptner noted he sent Mr. Cilimberg an email just before the meeting that may change everything, and it probably does. He suggested that we may want to adjust this ordinance. His expectation for the new projects that are going to be qualifying under the new proffer legislation in a number of those staff would recommend that the expedited process not be available because the level of servitude that is required in our analysis is such that it is just too risky for the county to expedite the process.

Mr. Cilimberg explained this is somewhat of a laymen's view of how this code change may affect us. It is supposed to be prospective, not effective or applicable to any of the zonings in place as of July 1, but those of the future. This is for amendments to proffers that have already been provided. So this would be a system in place to address amendment requests even after July 1 to projects that already have gotten approvals. The new projects will fall under the new process after July 1, and if they came in later for an amendment then they would be amending based on approvals that already took place under the new code provisions.

Mr. Kamptner pointed out that even for a new project if the applicant was suggesting to amend a proffer with respect to the phasing of the development and it was something that staff supported, then something like that would warrant an expedited review. As Mr. Cilimberg said when you are looking at this each request will be evaluated on a case by case basis; there will be a consultation with the director of planning, and then it also goes to the Board to weigh in and ultimately decide whether the expedited review should be allowed in a particular situation.

Mr. Keller invited other questions from the Commission.

Mr. Dotson said as he understands the two-step process that a property owner or developer would file what we are calling a request that would go to the Board to make a determination as to whether the amendment is major or minor.

Mr. Cilimberg replied that if it was not a use or density amendment the applicant developer would more than likely come in for a pre-application meeting with staff saying they want to do it. Staff may identify it as eligible or the applicant may say that they like to pursue this as an eligible type of amendment. After that the applicant would then submit that request and it would

go directly to the Board with a staff recommendation.

Mr. Dotson asked since some staff time would have been invested in that if there is a fee for that request.

Mr. Cilimberg replied no, there is not. There are no fees now for pre-applications and this type of request is on the order of a pre-application. Very honestly it could end up being quicker or easier than a pre-application in some cases. In some cases we have an exploratory and then have to have a mandatory pre-application. So in this case if the exploratory discovers that this is possible we would just say make the request and staff will take it directly to the Board. However, staff will have to write an executive summary for the Board of Supervisors. So that is a commitment of time for staff that is not currently a commitment we have for pre-applications.

Mr. Benish said in terms of the fee for the work that staff does if that work in that preliminary process takes a lot of time it is probably an indication that it is not going to be recommended for that process. If there is a lot of assessment from a staff perspective of whether this request has merit or not that is probably the first red flag that it is not and most of those costs would incur through the full fee for the rezoning review.

Mr. Cilimberg said that staff was going to advise someone more than likely out of the pre-application process that this particular request does not look like a good candidate.

Mr. Dotson added or the request does look like a good candidate.

Mr. Cilimberg agreed and pointed out it is ironic that we have had a few cases of proffer amendments that were a use request that made all the sense in the world; however, under the code allowances we can't do that in the same way or process. As an example, staff had a very quick request to change a use in Old Trail that became the independent living facility, and we can't do that under this same process.

Mr. Dotson asked if that was because that was involving a use, and Mr. Cilimberg agreed because it is a use.

Mr. Dotson said he understands step 2 would be after the Board had made a determination whether this is a full application or an expedited application. He pointed out in the staff report there are 4 bullets that are identified on the second page that would guide the staff in reviewing such a request and those are not in the ordinance. He asked if there is some way that those can be endorsed by resolution or something else be able to deal with that since we don't put those in the comp plan, but want them to have some status. Since that is not part of the ordinance how do we deal with that?

Mr. Cilimberg replied one way would be for the Board to separately endorse or pass those as factors to be used in the procedures so it will become part of procedural requirements the Board sets out for the processing of that type of request. He recalled when we did the special exceptions with the Board that there was an accompanying procedural policy. He asked Mr. Kamptner to comment.

Mr. Kamptner pointed out the Board adopted a policy that kind of directed staff as to when it was appropriate for special exceptions to go directly to the Board and when they should first go to the Planning Commission before going on to the Board.

Mr. Dotson asked would it be helpful tonight when the Commission acts on this zoning text amendment to also request that a policy reflecting these four bulleted items be approved.

Mr. Cilimberg replied yes.

Mr. Kamptner noted the other fail safe in this process is even if the Board decides that a particular project is eligible for the expedited review it will come back to the Board. Then if unexpectedly there is public interest and there are some issues that may not have been identified, the Board can remand it to the Planning Commission, direct that public hearings be held and then it gets a different review than was originally envisioned.

Ms. Riley asked how many potential projects there would be since she was trying to get a sense of how many projects or applications there would be after July 1.

Mr. Cilimberg replied that he did kind of a seat of the pants estimate of about two a year that may have been qualifying as requested amendments in the past five years. It is hard to say once this is in place if that increases the number. However, something like a change to the proffer policy, which he knows Ms. Riley has been involved in looking at, if the Board ultimately passes any changes could instigate more requests of that type which may be eligible. It is hard to say the real number that they will be seeing.

Mr. Keller asked how many proffer projects are out there right now that are still in existence and could come back.

Mr. Cilimberg replied that the Commission has seen one and there are two more in process now; however, he did not know the exact number.

Mr. Keller asked if it was in the 30 range.

Mr. Cilimberg replied that it was not that many because actually the proffer policy was passed in 2008, and Mr. Kamptner noted it was actually adopted in 2007.

Mr. Benish said he thinks it is 6 or 8 projects since it is not many that actually utilize and were approved under the cash proffer policy.

Mr. Keller opened the public hearing and invited public comment.

Neil Williamson, representing the Free Enterprise Forum, said this is a great little ordinance that does not do much since it is permissive. What he wanted to do won't happen; however, it could but just won't. He has written about and told the Commissioners about his concerns that he does not believe proffers belong in front of this body. He thinks that if the cash proffer policy changes, which he is anticipating will have to at some point, that those changes should go directly to the Board where it should be discussed. He thinks what will happen with this is someone will request it; staff will say no; it may go to the Board and the Board will agree with staff and say no and then send it back to the Commission. Whether that is right or wrong that does not matter. Staff might even say yes and he believes the Board will likely say we will send it to the Planning Commission because that provides political cover that we have done what we are supposed to do. He likes it and suggests they run with it since it is not going to streamline a whole lot of anything with maybe two applications. He will say when you look at some of the proffers that are out there, including the plans that are proffered, there are some amendments that are so minor they really are crying for this. That is because of the level of detail that is

being required at the rezoning phase. That is neither here nor there since that may help one or two projects get things done a month or two, and maybe three months faster. Three months is a good amount; but, he did not think this is going to change the world. He did not think staff is going to support all cash proffers going directly to the Board. If it is only the cash proffers that is okay; but, not everybody agrees. He thinks this is a very permissive ordinance that allows staff the ability when driveways have to change from one site to another or something that has been proffered in phasing the commercial to the capacity of the residential and you wanted to have the commercial in sooner than the residential that it would allow that. But, he would leave it with the Commission in this way.

Mr. Keller invited further public comment. There being no further public comment, the public hearing was closed and the matter before the Commission. He invited further discussion. There being no further discussion, Mr. Keller noted the Commission would go straight to the motion.

Motion: Mr. Dotson moved and Ms. Spain seconded to recommend approval of ZTA-2016-00002 Expedited Proffer Amendment regarding County Code regulations processing certain rezonings on the basis of the recommendation of staff and also include the recommendation that the Board adopt a policy to parallel the ZTA reflecting the factors that staff has proposed go into evaluating such request and that they forward that recommendation to the Board of Supervisors.

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

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

Mr. Keller pointed out the motion for ZTA-2016-00002 carried unanimously and the recommendation would be forwarded to the Board of Supervisors.

The meeting moved to the next agenda item.

Old Business

Mr. Keller asked if there was any old business.

- Mr. Keller noted a presentation by Faith McClintic will be given next week on the Economic Development Strategic Plan process with the possibility of the Board of Supervisors attending.
- Mr. Keller noted the scheduling and program for the first annual special meeting on Economic Development as it interfaces with land use and planning potentially with the Board is being worked on.
- There was a request for an opportunity for Commissioners to meet staff possibly in an open house.

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

New Business

Mr. Keller asked if there was any new business.

- Mr. Benish announced that the liaison to the public engagement process associated with ZTA-16-3 Farm Wineries, Breweries and Distilleries Events to be appointed next week.
- Mr. Dotson will be absent on April 5, 2016
- Mr. Kamptner noted that the governor signed SB549 Proffer Legislation. The recommendation to Board of Supervisors will be to appeal the existing Cash Proffer Policy and for the Planning Commission to initiate a new Proffer Policy that is consistent with SB549. He plans to bring resolutions for consideration to the Planning Commission next Tuesday for consideration.
- The next meeting will be held on Tuesday, March 15, 2016 at 6:00 p.m.

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

Mr. Lafferty moved and Mr. Dotson seconded for adjournment to Tuesday, March 15, 2016.

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

Adjournment

With no further items, the meeting adjourned at 7:58 p.m. to the Tuesday, March 15, 2016 meeting at 6:00 p.m. at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

David Benish, Acting Secretary

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

Approved by Planning Commission
Date: 8-9-2016
Initials: sct

