

**Albemarle County Planning Commission
August 23 2016**

The Albemarle County Planning Commission held a regular meeting on Tuesday, August 23, 2016, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Mac Lafferty, Pam Riley, Jennie More, Daphne Spain, Tim Keller, Chair; Karen Firehock, Vice Chair and Bill Palmer, University of Virginia (UVA) representative. Members absent were Bruce Dotson. Ms. Firehock arrived at 6:08 p.m.

Other officials present were Rebecca Ragsdale, Senior Planner; Scott Clark, Senior Planner; John Anderson, representative for the County Engineer; J.T. Newberry, Senior Planner, Elaine Echols, Acting Chief of Planning; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission and John Blair, Senior Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Keller, Chair, called the meeting to order at 6:02 p.m. and established a quorum.

Other Matters Not Listed on the Agenda from the Public:

Mr. Keller invited comment from the public on other matters not listed on the agenda. There being no comments, the meeting moved to the next item.

Public Hearings

SP-2016-00015 Springhill/Towneplace Suites (Signs 59 & 60)

MAGISTERIAL DISTRICT: Rio

TAX MAP/PARCEL: 061Z0-03-00-00200

LOCATION: 1305 Seminole Trail (approximately 900 feet north of the intersection of Greenbrier Drive and Route 29)

PROPOSAL: Establish a 192 room, five story hotel with associated structured parking (see SP201600016 for structured parking information)

PETITION: Hotel, motels and inns under Section 22.2.2(7) of the Zoning Ordinance. ZONING: C-1 Commercial – retail sales and service; residential by special use permit (15 units/ acre)

OVERLAYS: Entrance Corridor, Managed Steep Slopes, Airport Impact Area COMPREHENSIVE PLAN: Urban Density Residential – residential (6.01 – 34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses; Urban Mixed Use (in Centers) – retail, residential, commercial, employment, office, institutional, and open space in Neighborhood 2 of Places29 (JT Newberry)

AND

SP-2016-00016 Springhill/Towneplace Suites Parking Structure (Signs 59 & 60)

MAGISTERIAL DISTRICT: Rio

TAX MAP/PARCEL: 061Z0-03-00-00200

LOCATION: 1305 Seminole Trail (approximately 900 feet north of the intersection of Greenbrier Drive and Route 29) PROPOSAL: Establish structured parking associated with a 192 room, five story hotel (see SP-2016-00015 for hotel information)

PETITION: Stand-alone parking and parking structures under Section 22.2.2(9) of the Zoning Ordinance. ZONING: C-1 Commercial – retail sales and service; residential by special use permit (15 units/ acre)

OVERLAYS: Entrance Corridor, Managed Steep Slopes, Airport Impact Area COMPREHENSIVE PLAN: Urban Density Residential – residential (6.01 – 34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses; Urban Mixed Use (in Centers) – retail, residential, commercial, employment, office, institutional, and open space in Neighborhood 2 of Places29 (JT Newberry)

J.T. Newberry said that he would be taking the Commission through these two applications tonight. He started with a quicker overview of the parcel showing both the comprehensive plan map and the zoning map. The comprehensive plan calls for Urban Density Residential as well as Urban Mixed Use in centers and the capital C on the map is designating this as a community center. The zoning map on the right in the slide shows this parcel is zoned C-1, Commercial, and the area to the north and east of the site is Planned Unit Development. The aerial map shows some of the existing vegetation around the subject parcel as well as some of the surrounding uses.

Overview of Request:

- The request is to establish a 192 room, five-story hotel and associated two-story parking structure/
- The existing buildings will be demolished.
- As we will see on the concept plan there is an approximately 0.75 acres outparcel that is being reserved for future development.
- Along with these requests was a special exception request for the stepback from the right-of-way. For structures over three stories there would be a 15 foot stepback so this request was to exempt the building for stories four and five.

Concept Plan:

In the concept plan you may notice some of the features that has been here since we first had our preapp meeting. The parking structure is in the northeast corner of the site. The applicant can give an overview of some of the other features.

Economic Information:

In a graph to highlight some of the information provided by the Economic Development Office Mr. Newberry pointed out assessment information for the site since 1996. The land value, as you can see, has consistently grown over time whereas the improvements have remained steady or decreased.

Factors identified: Hotel

Favorable:

1. The hotel supports and complements the existing mixture of uses in a Community Center.
2. Redevelopment of the site will result in stormwater controls where none currently exist. This was one of the things that was brought up during the community meeting.
3. The redevelopment of the site will transform an underutilized commercial property as demonstrated by the assessment information.
4. The request is consistent with the Comprehensive Plan.

Unfavorable:

1. No direct pedestrian connection to the parcel to the north is provided.
2. Some landscaping used to mitigate visual impacts from the development are not located on the subject parcel's property.

Factors identified: Parking structure:

Favorable:

1. The parking structure is not anticipated to be visible from the Route 29.
2. The request is consistent with the Comprehensive Plan.

Unfavorable:

1. Some landscaping used to mitigate visual impacts from the development are not located on the subject parcel's property.

Recommended Conditions

1. Use of site shall be in general accord with the concept plan "Concept Plan for Springhill/Towneplace Suites" dated 06/02/2016, last revised on 06/05/2016, as determined by the Director of Planning and the Zoning Administrator. To be in general accord with this plan, development and use of the site shall reflect the general size, arrangement and location of the proposed hotel, associated parking areas (including the parking structure) and interparcel connections. Minor modifications, as approved by the

Zoning Administrator, to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance;

2. No parking shall be permitted between the right-of-way and the primary structure located on the Future Development Parcel, as identified on the Concept Plan.
3. The landscape plan shall be subject to approval by the Architectural Review Board.

Notably missing from this slide is condition #4 which is present in the report. After working with the County Attorney's office it was determined that there is no legal basis to really require the pedestrian connection to the north. But, the three other conditions remain unchanged.

The next two slides are recommended motions for both the hotel and the parking structure. With that he offered to take any conditions that the Commission has.

Ms. Firehock arrived at 6:08 p.m.

Mr. Keller said he had questions about the outparcel given the urban design discussions the Commission has been having about urban form. He asked why we are not seeing the hotel encouraged to be closer to the roadway and for some sense of what the form of that outparcel development might be.

Mr. Newberry suggested the applicant may be able to better answer that question in terms of why they felt it needed to be pulled back to the middle and rear of the site. One of the conditions is meant to address that concern with the condition being that there would be no parking in between the right-of-way and whatever structure is built on that outparcel. He asked Ms. Echols if she would like to expand on that at all.

Ms. Echols explained that because we have two different uses that are expected on the property and right now we are only dealing with the hotel that we acknowledge that this is what the applicant wanted to do and have hope that when the parcel that is going to be developed at the front comes in that it will do a better job at meeting our urban design principles. However, we probably won't be able to require it unless it is a special use permit.

Mr. Keller pointed out his second question on this would be to our counsel for an explanation on not being able to ask for that pedestrian connection to the north.

Mr. Blair replied that the only thing we could possibly require is asking the applicant to request it. However, as that is another parcel that is owned by a completely different owner we don't really have the ability to require an access easement onto that property, and there is no legal ability for the applicant to compel the owner to grant the easement.

Mr. Keller said just as a follow up on that in our last meeting we had a number of discussions of subdivisions that seemed to have had those stubbed out connections. He asked what makes this different from those. It seemed to have been part of the development plan for a number of existing subdivisions that have that.

Mr. Blair pointed out that was part of the interconnectivity in the comp plan and suggested that maybe Ms. Echols can better explain that.

Ms. Echols agreed that Mr. Blair was correct since those are public road connections and we were expecting that the public will be driving across all of those roads. In this particular case we have private property owners with connectivity across one property through another property to the grocery store property. So there isn't a direct public benefit there in that becomes sort of a public access way; but, it is a little gnarly.

Ms. More questioned the landscaping being used to mitigate visual impacts not being on the property. In the staff report she noticed that it appears that some of the landscaping being referred to is actually on the county's detention facility easement and then possibly the grocery store site. She asked if staff can explain a little bit about where the majority of that landscaping is.

Mr. Newberry suggested that they go back to the aerial map and see if he can grab the electronic laser. He pointed out the detention facility that is north of the Charlottesville Area Association of Realtors (CAAR) property where he would estimate that area to be. As you are coming down Hillsdale Drive he thinks it provides the most significant buffer towards this development. He would say from the northeast property corner sort of parallel to the back corner of Food Lion over to where you see the Fairfield site he believes all of this belongs to the Food Lion.

Ms. More thanked Mr. Newberry.

Ms. Riley said in the annual report you point out that there is currently no storm water management. She was wondering if he could describe that because he had also indicated that some of the residents that came from Cross Hills were concerned about the current situation with storm water management. She asked what is happening with the storm water runoff and is it going into the detention pond behind there. She asked if he could describe the current conditions a little bit more.

Mr. Newberry replied the current conditions on the site right now is there is a concrete swale that sort of catches sheet flow from gravel and even the very old broken up paved areas in the back. My estimation in going out there with Water Resources is that the rain water comes off the back of the site, captures that concrete swale, and flows towards the county's detention facility. If you go out there on site, you can see where the water jumps over a drain that is supposed to be going down and then it eventually makes its way to the pond anyway to the detention area. But, there is a lot to be desired for what is there now.

Ms. Riley suggested that perhaps the applicant can tell us a little bit more about what their underground detention structure is supposed to look like. She asked if he had any comment to give us about a boundary line description.

Mr. Newberry replied that Water Resources and Engineering just indicated that really anything would be an improvement to the site. He said we wanted to make sure that any development of that outparcel would also be accommodated by the volume of the underground facility; and, the applicant has assured us that is true. The size of the site out front we were wanting to make sure that was also going to be treated, and our understanding is that conditions will improve.

Ms. Spain said to follow up on that some of the community members suggested capturing rain water off the roof or making a green roof, and asked has the applicant explored that or is that a question for the applicant.

Mr. Newberry replied that he would have to let the applicant answer that.

Ms. Firehock asked if it is certain that there is adequate capacity in the sanitary sewer because staff said they need to connect to a different sewer line in the Dominion Engineering Report.

Mr. Newberry replied that he would let the applicant expand on that a little bit further; but, there is no objection from Albemarle County Service Authority (ACSA) in terms of for water or sewer.

Ms. Echols noted that ACSA typically tells us that if there are any issues and they say no objection that there is sufficient capacity.

Mr. Keller opened the public hearing and invited the applicant to come forward and give his or her presentation. He noted they would have ten minutes and then you will get a warning light towards the end.

Jim Daly said he represents Daly Seven Corporation and was happy to say that he was here 19 years ago when we built our first Marriott Hotel in Albemarle County that Marriott Fairfield Inn is leasing. He is happy to be back 19 years later to develop this combination hotel, the Marriott Springhill Suites and the Marriott Townplace. With me tonight is my project manager, Mark Dowdy that also developed the first hotel 19 years ago; Tom Murphy with Olive Architect; Mike Meyers and Dustin Green from Dominion Engineering who can address the water control measures; and Dan Tilley who is also with Daly 7, our real estate department. Just to address a couple of questions he has heard regarding the outparcel he pointed out that the layout

of the hotel leaving the outparcel was strictly based on the engineering plan to get the best use of the site and the widest area of the land to actually be able to put the hotel on there. This property has a Flaming Wok Restaurant in the front and two metal buildings behind it being served as a glass company. From my perspective he thinks it will greatly enhance the area and be quite an improvement when they finish the construction of this project, and he looks forward to doing that.

Mr. Daly said regarding the pedestrian access the biggest hurdle we have is the elevation difference. Moving to the north our property sits about 25' higher than the Food Lion Shopping Center below us. Any access that we could provide would be a very steep stair well that would be towards the back of the shopping center, which he does not feel very comfortable with the safety and security situation. If people slip back there nobody would ever know it. It is not a regularly accessed area between the two properties because of the difference in elevation, which is from the applicant's perspective. He said my primary concern would be the safety and the security of our guests if they tried to access the Food Lion or the Applebee's Restaurant; he would prefer that they drive for the safest route. With that he would ask the engineering company to come up and address some of the other questions unless you have some other questions for me as the applicant, and thanked them.

Mark Dowdy with David Southern said the steepness is quite a concern when talking about the stairwell going down towards the Food Lion and Fairfield. He has talked with Catherine Hall, our insurance and benefits manager, and she was concerned about having a steep exterior stairwell since in our company slip and fall claims are our biggest claim. It is about 70 percent of our insurance claims. He pointed out not all of those are exterior falls, but it can be as simple as somebody slipping off the curb the wrong way and if someone gets hurt we are liable for the medical. It is not always a liability claim; but, we are always responsible for medical bills. For that reason, she had concerns about a stairwell. If we had a stairway we would take out part of the natural vegetation that is on the hillside now. For security we would have to illuminate it and probably have security cameras. If we illuminate it, it would attract your eye towards the development more than the natural vegetation would screen it now. Those are the reasons why they would prefer not to have a stairway between the two properties.

Ms. Spain asked could a person go out to 29 and walk around.

Mr. Dowdy replied that there is a sidewalk that goes between 29 and Fairfield all the way around to Applebee's and so the sidewalk would all be along 29.

Ms. Spain said so there is a way for the clients who stay there. She thanked Mr. Dowdy.

Mr. Palmer pointed out that the sidewalk stops on 29 where you turn in to go down towards Food Lion; and, that road does not have a sidewalk along it which is the one that accesses Food Lion and Toys R Us.

Ms. Echols pointed out staff has a visual that shows where the sidewalk system is.

Mr. Keller said that the Commission would like to see it now.

Mr. Newberry said he would go through some pictures. The first picture shows the corner of the site or sort of the intersection with Route 29 and the sidewalk going down to Branchlands. Next is a quick picture that looks like the people might be cutting through the site. The next picture shows the front and back of the Fairfields site. He pointed out just past where the right lane must turn right it kind of looks like people jump over there and cut through the site. But, this is where the sidewalk ends with Branchlands so there is not much of a place to turn and walk to get to the site. However, certainly you could cut through those trees and get to the Applebee's. The next picture is looking back up towards 29 along Branchlands, and it looks like there is some anticipated connection to be there one day; however, right now it is not there. While we are talking about it he did draw this graphic that is not easy to read; however, it shows some different possibilities of distances. From the edge of the hotel using the sidewalk along Route 29 going around to the Food Lion it would be just over a third of a mile. The bright teal represents what a vehicle trip would look like. Unfortunately, getting back to the hotel would require a U turn with the intersection with Greenbrier. So that is about 1.3 miles. Then if there were any sort of pedestrian connection you would

really be achieving the kind of walkability the comp plan talks about in terms of a quarter mile or less in terms of distance traveled. He thinks that is where our heads were when we were looking at this; however, staff feels we have investigated it fully and understand the challenges with doing it.

Mr. Dowdy apologized because he thought the sidewalk continued all the way to Applebee's.

Ms. Spain asked if there were any plans to have that sidewalk to Applebee's completed.

Mr. Newberry replied not currently.

Ms. Spain said okay so the person would walk down the vehicular entrance, get off the sidewalk and then walk down to the restaurant or the Food Lion through the parking lot, and Mr. Newberry replied that was correct.

Ms. Riley said she went over to the site today to look at the slope and it is very steep. There are similar stairwells in Charlottesville though that do actually end up being parking lots, and so it is not out of the question. On the issue of liability she realizes this is private land and was just curious about the out parcel; what the topography is there in terms of the slope; and, is there potentially a better pedestrian connection there.

Mr. Dowdy replied that the boundary between the upper parcel, the Food Lion and the Fairfield is all roughly over 20'.

Mr. Keller asked if there were any other questions for the applicant or the applicant's group.

Mr. Dowdy noted that Mike Meyers would like to address the storm water.

Mike Myers, engineer with Dominion Engineering, said we put together the special use permit package and looked at the issues, such as storm water and the utility connections, and he would just run through quickly what our plan is. With regards to storm water management, as you see on the plan as to what Mr. Newberry had alluded to before, that right now it is predominantly a paved site and the water just runs off to the back edge of the property and uses that concrete ditch at the edge of the property and goes down eventually to the detention pond. Actually where it goes is a four-bay to a pretreatment pond for one that is further south. There is also some talk about expansion of that pond with the Hillsdale Drive plan, which is a different topic and down the way a little bit. As designers of storm water requirements what we propose to do here is actually to provide an underground vault. He does not have a final design on it; but, the underground vault is going to be used to pull back a volume of water and essentially release it at rates that would mimic the redevelopment rates. We are not talking about meeting the current outfall rates with all the pavement; we are talking about going back to where the site was covered in grass, trees, or whatever and do our best job to mimic the outfall that leads to say it was quicker than it did back then. That is sort of our challenge that we will work on with the county engineering staff to get through those issues and provide actual engineering computations to support our design.

Mike Myers said with respect to water quantity, which is a different topic than the quantity and the detention vault that slows down the water, the requirement is basically to reduce the amount of pollutants that are going to be washed off site. We looked at this preliminarily with the special use plan. The idea of a green roof is something we can certainly consider. He pointed out what ends up happening with a green roof often times is though the cost of putting a green roof in it requires substantially fortifying the building foundation and ends up being sort of a prohibited type of thing. It is certainly something that is on the menu of items that we can pick. We probably will opt for some small but actually quite large structural components, like a filtera, that essentially is a curve inlet that cleans the runoff as it goes in and gives the benefit of a tree in the middle of the filtera that grows. It actually sucks up those nutrients so it actually will be a benefit. He was not sure; but, they may have seen those around town. We don't have a whole lot of space as you can see by the site and the urban nature of it. So the other things we will consider will be the other sort of prefabricated or pre-engineered systems, like there is something called a jelly fish filter or a storm chamber

and we will work with the suppliers of those to make sure we provide adequate information in the plan to be reviewed and approved with engineering staff.

Mr. Myers said finally he wanted to address the sanitary sewer issue that came up about the connection. He explained the way this site sits now from 29 it slopes across the site down to the back of the property, and the existing sewer is actually up towards the out parcel, which is higher than the hotel. So one option would have been to pump our sewer up to the manhole and use that. But, often times sanitary pumping is not ideal for a hotel where you don't have to worry about this maintenance of the pump system. So there is actually a tie into the sewer in Hillsdale. We have done some research to show we have an easement or the right to connect to that line in Hillsdale and it will provide gravity flow so hopefully that will clear that up. He was happy to answer any more questions you might have on anything.

Ms. Spain said she had one question about the pavement. She asked is it possible to have pervious pavement.

Mr. Myers replied absolutely, pervious pavement is another one of our options and we have sort of a design kit that we use. It certainly cost a little more than asphalt; but, it does provide a lot of bang for the buck. We are restricted by the slope of the parking lot because we can only do it on very flat slopes, which sort of restricts its use. We will certainly investigate that as we move into the site plan stage and work out the fine details.

Ms. Spain thanked Mr. Myers.

Mr. Palmer said in terms of the storm water and impervious area on that site of the future development parcel it says that it is existing asphalt to remain. Is there any reason you couldn't just take that out now and provide some permeability there?

Mr. Myers thanked him for asking because actually one thing he forgot to mention is the storm water system that will be designed for the outparcel. He pointed out because it is all going in the same direction it makes sense to build one system for both from a cost and engineering point of review. With respect to reducing that area to grass, it is something we could consider because it is something he imagined as part of the water quality and quantity requirements and we could convert asphalt to grass. But, in order for that to actually work we would have to put a permanent easement on that grass so they could never disturb it again. So creating green space is certainly one way to address it that is allowed. He thinks in this case they would tend not to choose that on the south parcel just for those reasons.

Mr. Keller invited other questions for staff. There being no further questions for staff, he asked if other members of the applicant's team wished to speak. There being no further applicant comment, he asked Ms. Firehock to invite public comment.

Ms. Firehock said there were two people signed up to speak Jim Daly and Tom Murphy. Since both were representatives for the applicant, she invited other public comment. There being none, the public hearing was closed to bring the request back for discussion and action.

Mr. Keller invited discussion and asked for thoughts on the project.

Mr. Lafferty said he had no questions because this was the second time he had seen this and would like to make a motion. Mr. Lafferty moved to recommend approval of SP-2016-00015 Springhill/Towneplace Suites with conditions outlined in the staff report with the elimination of condition #4 that the pedestrian access has been eliminated.

Ms. Riley seconded the motion.

The motion passed unanimously by a vote of 6:0:1. (Dotson absent)

Mr. Keller asked for a motion on SP-2016-00016

Mr. Lafferty moved to recommend approval of SP-2016-00016 Springhill/Towneplace Suites Parking Structure with the conditions outlined in the staff report.

Ms. Spain seconded the motion.

The motion passed unanimously by a vote of 6:0:1. (Dotson absent)

Mr. Keller noted that SP-2016-15 and SP-2016-16 would be moving forward to the Board of Supervisors.

The meeting moved to the next agenda item.

**SP-2016-00009 Faith Christian Center International and
SP-2016-00013 Faith Christian Center International – Daycare Amendment
(Sign 102)**

MAGISTERIAL DISTRICT: Scottsville

TAX MAP/PARCEL: 078000000047A0

LOCATION: 2184 Richmond Rd

PROPOSAL: Amend existing special use permits to change planting standards in stream buffer

PETITION: Church, as permitted under Section 10.2.2.35 of the Zoning Ordinance. Day care facility, as permitted under Section 10.2.2.7 of the Zoning Ordinance. No dwellings proposed.

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

COMPREHENSIVE PLAN: Rural Area – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources; residential (0.5 unit/ acre in development lots) (Scott Clark)

Mr. Clark summarized the staff report in a PowerPoint presentation.

These are two special use permit amendment requests of previously approved special use permits with one for a church on the site and one for a daycare center. The church is located in the rural areas in the Shadwell area across from the Shadwell property just outside of the Pantops portion of the development area.

The first slide is an aerial of the property, which was before the development of the church that is being built on the site now. However, probably the important thing to note for tonight's hearing is that you can see that Shadwell Creek borders the edge of the property at the upper end. It goes adjacent to the property, but just off the property line to the east.

Just to give a little history for what is being amended here there are two existing special use permit approvals on the property. Back in 2010 the Board approved a 399 church for the site and also a 50-child daycare. Since that time the daycare has already been amendment once to increase the attendance from 50 to 120. Those permits are already approved on the site. It is actually under development as we speak.

This is the original conception plan for the church and the daycare that was approved back in 2010. On the conceptual plan he pointed out Route 250 and the entrance road going back to the new church building and the parking areas. The area between the property line and the black line on the plan is the replanting area that is referred to in the conditions of approval. Part of that still has trees on it and part of it was disturbed before the church project ever began. There was a mobile home park on the site. So a part of that buffer was already disturbed before the church came along.

The next slide is a view of the buffer area to the right that is near the entrance at US 250 on the property, which shows the entrance road and the building under construction in the center. The stream is behind those trees on the right. If you get a little closer to the building that is under construction we can see the existing trees that are in the buffer area; however, that 100' buffer new planting area extends beyond those

trees onto the slope that is part of the grading and construction for the site. A lot of that area has been graded on since then. However, a lot of that was disturbed when the mobile home park was there.

The proposal is to change the planting standards for the buffer; the area of the buffers remain the same. It is just changing the reference from the replanting requirements table that in the Department of Conservation & Recreation (DCR) document that we used as a reference at the time. So it is changing from Table A to Table B, which he would show them what that means. Restoration Table A from the DCR report requires a planting for every 400 square feet of a certain number of canopy trees, understory trees and small shrubs. This standard was developed for sites of a quarter of an acre or less. The replanting area in this case is over an acre. In fact, the more appropriate standard and what the applicants are requesting is what is in Table B, which gives a few different options. The applicants are looking at part B of Table B in which the first 50' of the buffer, except from the creek, about 50' would be the same as Table A. But, the outward 50' could use varied seedlings, whips or tree tubes instead of having a little more precise pattern of larger plants. Both of these are recommended. Appropriate standards from DCR and Table B is actually more appropriate for the size of the area that has been designated as the replanting area in this case.

Just to give you a more detailed idea here, the applicant provided this illustration that shows the grade line that is the creek, which is not actually on the property. It is partly on the neighboring property and so we are measuring the buffer back from that creek 100'. You can see the hatching of the outer portion of the buffer area that would be allowed for the tree tubes and whips. The cluster portion, which if there are any areas disturbed there, would need to be planted with the Table A standard. He just wanted to point out that a lot of this as we saw in the pictures already has trees on it. So those areas would not need to be cut and replanted with the new standard; they are already taken care of.

In summary the proposed change meets the Department of Conservation and Recreation's standards for riparian buffer planting areas; and the proposed change will still result in an improved riparian buffer. It also is for the applicant's concerns because it is going to be less expensive for them. The applicants feel like they are going to be largely planting on the slopes on the outer edge of the buffer. We think they will have better luck maintaining and working for the survival of the plantings if they have the tree tubes than if they have the larger plants required in Table A.

Staff recommends approval of both special use permit amendments with conditions. Just in summary he wanted to lay out what has changed in the conditions. There were a couple of fixes that are happening as well as the proposal.

- In condition 4 for each permit, which is about lighting, the words "shall be required" are being deleted to fix a grammatical error.
- In condition 6 for each permit, the change in the planting standard is made as discussed; and also a clarification just to be absolutely clear that those portions of the buffer that still have trees don't need to be cleared or replanted in this new pattern that they can stay as they are.
- In condition 7 of the special use permit for the church, which set the time limit for construction work to begin on proposed uses, is being deleted. Work has already begun on the site and this condition is no longer needed. The matching condition on the day-care special use permit was already deleted as part of the approval of the amendment back in 2012.

There are two different sets of conditions and motions to go over. First with the church these are the existing conditions with the changes marked again with 3 words being removed from condition 4; a change in condition 6 which was actually something not included in the staff report to make the clarification that the area shall be planted where tree cover does not already exist and changing the reference from Table A to Table B; and last deleting condition 7 about the start date for construction.

There are a couple of motions for the church and if you like we can go ahead and take your questions.

Mr. Keller invited questions for staff.

Ms. Firehock said she was looking at the site plan that was submitted with the packet and she was sorry but it was very small. She asked about the corner of the parking lot because she could not tell if it was

going into the stream buffer. It looks like it is, but then there is a funny line there.

Mr. Keller noted it was on the northeast corner.

Ms. Firehock asked if the speckled dots on the site plan were plantings.

Mr. Clark replied that the speckled dots are the limits of the 100' buffer.

Ms. Firehock pointed out there was a notation that says area buffer set aside for required parking lot landscaping, and then there is a line going into the speckled dots. She was trying to figure out what is all of that is telling me.

Mr. Clark replied that he was not sure and would go back and look at the original conceptual plan. He noted this is actually the final site plan for site, which has already been approved and the construction is going on. Unfortunately, he does not have a copy of that site plan; but, we can see on the original conceptual plan that the parking was shown as staying out of that buffer area. He said it was hard to tell because this illustration is not meant to be a new conceptual plan for the use and we don't actually refer to this illustration.

Ms. Firehock pointed out she was trying to determine the extent of buffer disturbance in thinking about the variance that they are asking for with the plantings. She said that was why she was curious.

Mr. Clark suggested that perhaps the applicants can tell us more if he did not answer her question.

Mr. Keller asked if there were further questions before we open for the applicant. There being none, Mr. Keller opened the public hearing and invited the applicant to come forward and present.

Doctor Wayne Frye, Senior Pastor of Faith Christian Center International, said he was here just to answer any questions you may have based upon our proposed amendment.

Ms. Firehock asked if he could explain the drawing of the corner of the parking lot and what is happening in that corner.

Doctor Frye replied yes, that little jagged area was added due to the required number of parking spaces. They had extensive discussions with county engineering and as is in the notes John Anderson allowed us to use that small space just to formulize a parking space there to meet the required number of parking spaces.

Ms. Firehock said she was sad to hear that the county was more concerned with getting one or two more car spaces rather than the encroaching in the buffer. She was just expressing her sadness. It is nothing you can do; if they required you do that they did.

Doctor Frye replied yes, ma'am.

Mr. Keller asked is the construction of this parking lot under way, and Doctor Frye replied yes, sir it is.

Ms. Spain said this is just a comment. She thinks this is the second church application that we have had for increased coverage for daycare. She thinks that is a very good thing and we should thank you for enhancing the daycare coverage in the county because it is something that is needed.

Mr. Keller asked if there were any other questions for the applicant. There being no further questions for the applicant he thanked Doctor Frye and invited other members of the public who wished to speak on this project. There being none, Mr. Keller closed the public hearing to bring the before the Commission for discussion and action.

Ms. Firehock said that she can concur with our staff's understanding and recommendation that the smaller whip sized trees actually have a much higher survival rate than do 1" to 2" to 3" caliper trees. The only

question she has for staff along those lines is the State Code certifies a certain survival percentage and who checks that. We don't really have the staff to go out and say that the 50% of the saplings that were required to survive did indeed survive.

Mr. Clark replied that she was right that we don't have the staffing to do that. He thinks we are referring to the pattern in the condition and not so much to a survival rate. This was originally developed by the Chesapeake Bay Local Assistance Department meaning that they have different requirements in the bay area and we are in the Tidewater Coastal Plain for specific requirements for survival. We were just using this as a reference for the planting pattern.

Ms. Firehock said it would be somewhere along the line of a 50% survival rate.

Mr. Clark said we hoped for an outcome and were not trying to mandate a particular area.

Ms. Spain said she was the previous pavement questioner tonight. She asked what the surface of this parking lot is.

Mr. Clark replied that as far as he knew it was all asphalt; however, he only looked at the buffer and did not actually go up and check the parking surface on the most recent visit. But, unless John Anderson who is here tonight knows different from the site plan review which he was not involved in. He did not remember hearing that there were special paving types being installed.

Ms. Spain asked if that would help with the slight overlap with the buffer.

Ms. Firehock noted that it was probably too late because it is already under construction. In terms of permeable pavement or permeable pavers usually those are not recommended for use in the floodplain. She was not looking at a floodplain diagram right now; but considering where the site is located it probably does include significant portions.

Mr. Lafferty noted that it did not.

Ms. Firehock said in any case even a 200-year flood we try not to put permeable pavement too close to riparian systems because when the water does get up high enough it deposits sediments and clogs the pores of those pavers. Grass creep is something that we will probably discuss tonight and that can handle some siltation from a flood event. So that is the kind of thing that would work in this environment.

Mr. Lafferty noted that is not even the proposal before us; the proposal is to change the buffer.

Ms. Firehock agreed.

Mr. Keller invited further discussion. There being none he asked for a motion.

Ms. Firehock moved to recommend approval of SP-2016-00009 Faith Christian Center International with the conditions outlined in the staff report.

Ms. Spain seconded the motion.

The motion passed unanimously by a vote of 6:0:1 (Dotson absent).

Mr. Keller noted that there was a second piece to this.

Regarding SP-2016-00013 Faith Christian Center International – Daycare Amendment Mr. Clark pointed out the condition changes on this one for the correction to the land condition and the two changes for the buffer condition are the same from the other special use permit. The deadline condition for start of work on this site has already been removed in an earlier amendment so it is just the changes to conditions 4 and 6 in this case.

Ms. Firehock moved to recommend approval of SP-2016-00013 Faith Christian Center International – Daycare Amendment with the conditions outlined in the staff report.

Ms. Riley seconded the motion.

The motion passed unanimously by a vote of 6:0:1 (Dotson absent).

Mr. Keller said the special use permits would move forward to the Board of Supervisors for their final decision. He thanked the applicant for providing more daycare in the community.

The meeting moved to the next item.

c. SP-2016-00010 Cornerstone Community Church Addition (Sign 105)

MAGISTERIAL DISTRICT: Rio

TAX MAP/PARCEL: 04500000031D0

LOCATION: 2001 Earlysville Rd PROPOSAL: Expansion of existing church from 180 to 250 seats.

PETITION: Church, as permitted under Section 10.2.2.35 of the Zoning Ordinance. No dwellings proposed. ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)

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

Mr. Keller complemented staff on this clear delineation of the changes from the prior special use permits, and he thinks the underlining of what is going out using basically the track changes and the red marks to see what has been added is really a helpful technique.

Mr. Clark summarized the staff report for SP-2016-00010 Cornerstone Community Church Addition in a PowerPoint presentation.

This is a special use permit request for an existing church. The proposal is to expand an existing church from 180 to 250 seats. This is a church that predates the zoning requirement for a special use permit for a church and so it is an existing nonconforming church that needs a special use permit in order to expand and come into compliance with the current ordinance.

The location of the church is right by the South Fork Rivanna Reservoir east of the Earlysville Road Bridge or the reservoir. He pointed out the reservoir natural area on the map and you can see the development area is nearby. The next slide is an aerial view of the church showing the existing building and parking lot and the proximity of the reservoir. This gives a better idea of the building and some of the improvements on the site. The aerial shows the existing tapering right turn lane at the entrance, the existing building improvements on the site and the parking, which is partially paved at the upper end and unpaved at the lower end near the edge of the reservoir.

In summary, the details of the proposal are:

- The increase seating at the existing, non-conforming church from 180 to 250;
- Increasing the building footprint from about 6,250 square feet to approximately 10,500 square feet;
- Within that the interior space would increase from about 9,000 square feet to 17,800 square feet of internal space (including additional basement space);
- Enlarge parking area from approximately 46 spaces (including unpaved and unmarked area) to 97 paved spaces, and
- Disturb 0.24 acres of vegetated stream buffer area adjacent to the reservoir and part of that disturbance would be to add biofilters for water-quality management.

On the conceptual plan for the changes Mr. Clark pointed out the light gray in the center is the existing outline of the building; the dark line is showing the expansion outward of the building and then the new paved parking added lower on the hill and along the entrance road closer to the entrance. He pointed out

the resulting proposed tree lines and then a good part of the area where all of those tree lines are going back closer to the reservoir the bio filters are shown for storm water management. Obviously, that would be developed in a lot more detail if this is approved under the site development plan for the use.

Stream Buffer

One of the big questions with this obviously is the impacts of the stream buffer.

- The majority of the site is the only Water Protection Ordinance stream buffer as shown on the map in the blue cross hatching. Very little of the site is not in that buffer area.
- The building predates the adoption of Water Protection Ordinance and is permitted as a pre-existing building.
- The Zoning Ordinance specifies that non-conforming structures, whose building site does not conform with zoning requirements, that if they are only non-conforming because of the stream buffer then they can't expand. There are no flood plain or critical slopes on this building site. It is just a stream buffer issue and so Section 18-4.2(a) says that those structures can in fact expand, which is why we are able to consider this special use permit for an expansion.

This approval would bring an existing church into conformity with the Zoning Ordinance and allow this proposed expansion. The building and parking would obviously expand outward and so it will remain in general in the same area of the site and not go a lot closer to other adjacent properties in the area. So staff is not expecting substantial detriment to the adjacent residential lots. The other adjacent lot here, which is unusual, is sitting on the South Fork Reservoir. While the site would expand parking and the building towards that reservoir about a quarter of an acre of the existing buffer will be disturbed a good part of that disturbance would allow for biofilters to capture a lot of the runoff from the site, which is not happening now and would attempt to improve the water quality and how the site affects the reservoir.

Another concern that came up during the review at the public meeting on the site was road safety on Earlysville Road. There have been a fair number of crashes. In 2013 to 2015 there were fourteen crashes within a half-mile of the site. However, most of those happened either across the reservoir on the other side near the entrance to the Ivy Creek Natural Area, which some of you may notice is sort of an abrupt turn in the middle of a curb that is kind of dangerous or fairly farther north of the site near Arrowhead Road. VDOT staff has told us that they performed a safety study of Earlysville Road this year and found the crash and injury rate to be less than the District average. So while we recognize there are policy concerns with an expansion of a use on a rural road that the site here is on a road that is not atypical for safety problems in the rural areas.

VDOT has also looked at the applicant's proposed plan and whether or not a left turn lane is warranted. Obviously, there is already an existing right turn lane. Given the trip generation for the site in its review it indicates that a left-turn lane is not warranted for the proposed expansion although future larger expansions or significant amount of increases of traffic on Earlysville Road might make that necessary. Any expansion of the church for seating capacity beyond 250 would require a special use permit amendment if it was shown they could address the need for a left turn lane if they decided to do a future expansion.

Just to summarize, staff has identified the following factors favorable to this proposal:

1. While there is an expansion of the impervious area on the site we would be gaining water-quality protection measures that are not there now.
2. While there are transportation concerns as always with expansion of uses in the rural areas Virginia Department of Transportation (VDOT) has not found that entrance improvements or a left-turn lane are not warranted by the current proposal.

Staff has identified no factors unfavorable to this proposal.

Mr. Clark reviewed the proposed conditions and the motions. He mentioned that John Anderson from our engineering staff and Adam Moore from VDOT are here if there are any questions on their reviews of the stream buffer in John's case or the transportation issues in Adam's.

Staff is recommending approval of SP-2016-00010 Cornerstone Community Church with six (6) conditions.

1. Development and use shall be in general accord with the conceptual plan titled "Cornerstone Community Church Addition – Application Plan" prepared by Timmons Groups and dated 7/27/2016 (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:

- building orientation
- building size

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. The area of assembly shall be limited to a maximum 250-seat sanctuary.
3. There shall be no day care center or private school on site without approval of a separate special use permit;
4. The applicant shall obtain Virginia Department of Health approval of well and/or septic system prior to approval of the final site plan.
5. All outdoor lighting shall be only full cut off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval. (Mr. Clark pointed out there were a few mentions at the community meeting concerns about lighting and this condition would address that.)
6. If the use, structure, or activity for which this special use permit is issued is not commenced by [date three years from Board approval], the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate

Mr. Clark said he would be happy to take any questions.

Ms. Firehock noted she had questions, but they probably should be addressed to the applicant's engineer so she will just wait.

Ms. Riley asked if any trees would be removed in the vegetative buffer. She knows there is a very limited amount of trees there and they are providing a very good visual buffer as well.

Mr. Clark pointed out in the photos that there are trees near the water line up to the edge of the unpaved parking area on the site as it exists now. So on the conceptual plan there are two tree lines shown, the outer one closest to the parking is where the existing trees are now approximately and the line down here is the one that shows the resulting tree line. So yes, there would be some trees removed to accommodate the building expansion and the parking, but also to fit in the storm water measures.

Mr. Lafferty asked will this bring them into conformity.

Mr. Clark replied yes, they can continue to operate at their current size indefinitely as long as they don't expand the use in any way. But, were it to expand seating, building size, parking and anything like that they would have to amend the permit as they are doing now and were becoming in conformity with the ordinance as we do that.

Mr. Keller opened the public hearing and invited the applicant to come forward to speak.

Craig Kotarski, with Timmons Group representing the applicant Monticello Wesleyan Church, said he was also joined by Tony Savone the lead pastor of Cornerstone Community Church as well as the architect Steve Davis with Thrive Architecture. What he would like to do is quickly give a brief overview and hopefully

answer some of the questions that Ms. Firehock was going to ask as well as maybe shed a little light on Ms. Riley's comment with regards to the trees.

Mr. Kotarski presented a PowerPoint Presentation. He pointed out that the first slide is just basically giving you another shot of the existing church in its current location where they have 180 seats and as already was reported by the planner that the application is to increase the number of seats in the sanctuary from 180 to 250. Again, just to provide a little bit of an overview where we are situated along Earlysville Road he noted this picture depicts the addition. You can see where the lighter color shade of tan is. Next is the existing building with the darker shade representing the addition?

Mr. Kotarski asked to draw their attention regarding the tree comments to where you are coming in off of Earlysville Road at the top of the page there are some circles with some lines drawn that are a little bit darker. Those represent some additional trees that would bring us into conformance with the county's ordinance with regards to the buffers as far as landscape buffer and providing separation from the existing street and then we still meet that requirements which he believes is 20' over where the bio retention areas are demonstrated on the west side of the plan. Hopefully to demonstrate a little bit clearer where the impacts are in regards to the BPO buffer and what they are for what he is trying to demonstrate with this slide is show where the additional impacts are that are really more site related. Either there is some parking being shown or some grading that is associated with the parking. You also see that he is including those trees up on the north end of the site as well as a part of that. This in total is around 8,000 square feet or about .2 acres of additional impacts there. Then when we add in the areas that we are showing for bio-retention that bumps up slightly and it is about 7,000.

Mr. Kotarski said he wants to address one of the things that Mr. Clark reported was an additional .24 acres of impact in the WPO buffer, and it is actually 0.33 acres. The discrepancy there is that area on the north end, which is just within the 200' buffer. So that piece was not in Mr. Clark's report and he just wanted to make sure clear that was clear as the Commission looks at this. The other thing that he just wanted to note with regards to this is on the current church's parking lot there is only 46 to maybe 50 designated parking spaces and then a lot of it is large amounts of gravel and some asphalt that is scattered around. What we are looking to do is sort of make that a little bit more streamlined and make that where it is a little bit more efficiently done in such a way that they are getting the most for the impervious surface that is currently on the site and then that we are added. So currently on the site the impervious surface makes up 0.82 acres and the proposed site would have 1.02 acres. About one-half of that is building and then about the other half is additional parking. In general, that is his presentation, but he was happy to answer any questions.

Ms. Firehock asked what the elevation of the bio filters above the mean wire line of the reservoir is. She was trying to understand if there was chance of them getting inundated.

Mr. Kotarski replied that they were outside of the 100-year floodplain so they are above that. But, from where the water line is looking at the contours it is approximately 10' to 14' above.

Ms. Firehock said above the 100-year, okay.

Mr. Kotarski replied no, it was 10' to 14' above the average.

Ms. Firehock said she was trying to look at the aerial photo, but had been out that way many times since she used to live in Earlysville. She was trying to understand just looking at the photograph or the aerial how many trees might be removed to put in the bio-swales. It looks a little patchy there. She can see some open space and some trees.

Mr. Kotarski said there are some open spaces. Some of the trees there are not necessarily in the greatest shape. But, he did not want to oversell that. However, he wanted to demonstrate that our intent is to come back those are not to be just grass bio-filters; they are to be vegetative either with grasses or some combination of grasses, trees and appropriate plantings that you would see in a well working bio-retention facility.

Ms. Riley asked can you describe along the road and along the reservoir what the impact is going to be on the visual buffer with the amount of vegetation you will need to remove and what you intend to replace it.

Mr. Kotarski replied that along the road there are he believes 3 or 4 trees that are being removed. Again, some of them are smaller in nature and we are coming back he believed it was a total of 20 trees up on Earlysville Road to provide that buffer and actually he thinks enhance a little bit more than what is there currently. Additionally, over where the bio-filters are shown we are proposing to trim back that tree line some. We are maintaining the buffers that are spelled out in the county ordinance, which is maintaining at a minimum of 20' off of the property line. Some of the trees that are shown on that aerial actually are on the other side of the property line as well. So there is even additional buffer there based on that. The intent would be to come back along with this and also use some plantings and trees. He is not a landscape architect so he won't start to put that on you. But, as far as what goes in and what is planted in those bio-retention facilities we would have a landscape architect look at that and there would be additional trees that would come back and be planted there.

Mr. Keller said it was nice to have a plan view that shows the vegetative changes; but, it would really be nice to have that real photograph what is coming off of the vegetation, that sort of bird's eye view. From looking at this my sense because it is the higher elevation is that the parking area and the church is going to be much more visible when someone is coming down before going over the bridge and even a quarter of a mile further up. Given the constraints of the site and the predating of the various regulations that we have for this site it seems that we are a bit boxed in by how far we can go with it, and staff has worked to get us to as far we can.

Ms. Firehock noted in response to that the applicant did say that he was not going to pretend to be a landscape architect but that he knows that you can design bio-filters with mature trees in them. A great example is at the high school on Route 20 south where the bio-filters are planted with mature trees that are doing fantastically well. So you can design bio-filters with small shrubby things. However, since we are losing some trees she would encourage the applicant to ask the landscape architect to include trees that will grow to a mature height and replace some of the functionality that would not be met by simply planting dogwood or some shrubby wispy thing in there.

Mr. Keller noted as a landscape architect he would say that the issues to me come down to the number of parking places that were required. We all know if we took several of those parking spaces along the way we could also get a tree cover, and then we could have tree cover for the parking. But, he was assuming that we are working under a requirement for the number of spaces based on the congregation size.

Mr. Clark replied not exactly. He pointed out in rural area churches when we do the special use permits rather than going by a hard number as we might in development areas we tend to ask the applicants to do a parking study to figure out what they need. The 97 spaces on this site is probably a bit more than the minimum number we might normally hope to get; but, the statement from the applicant said they need that number because they have some occasional coordination events that are larger. Especially on a site like this where there is no surrounding neighborhood to absorb overflow parking they needed to have this number to accommodate for the bigger events of the year.

Ms. Firehock said one thing she also could not tell was whether all of the spaces are uniform or have we varied the spacing for the smaller cars since not everyone drives a giant truck. She was just wondering because you could actually get a lot more spaces in smaller area by varying the spacing sizes for each parking spot.

Mr. Clark pointed out the site plan ordinance requires 9' X 18' spaces.

Ms. Echols noted that there are some abilities to vary. However, she did not know if the applicant considered that because there are different sizes that can be done.

Mr. Kotarski pointed out as they are shown the parking spaces are all 9' X 18'. The handicap spaces are 8' X 18' both in accordance with the Code. We did look at some tandem parking up on the north end where

the WPO buffer had already been infringed upon and we were told that due to the ordinance that we could not show those. So that is one reason why there are no tandem spaces. He explained that kind of the thought behind that being is if there is a family there that is serving and teaching a Sunday School class then maybe dad comes early and then mom would block his space in and that way they would work in that regard. But, those were removed from this plan. The one other thing he would bring up with regards to the parking is Mr. Clark sent us a few of the projects that recently had been approved kind of all in that same corridor as the applicant that we just saw before us. The one thing that you will notice on all of those is that even though they are necessarily in residential or rural area we can pull off on the side of the road they all have these long winding roads and the parking the way it is done in certain ways is a little bit less efficient. He was sure there are site reasons that you have required that. What he means by that is there may be a drive isle with parking only on one side or there may be situations like that where if you were in a situation where you needed that extra parking you would be able to pull to the side. We have all seen that in schools and other situations like that. On this site we really don't have any of those types of areas. We have one small one kind of at the southern tip of the site. But, outside of that we don't have those opportunities on this site particularly for where we are at and what the situation currently is here.

Ms. Firehock said she is still confused since staff mentioned that there is a possibility to vary the sizes of the spaces; but, that has not been done in this case. She was not saying that it would have automatically happened; but, is there any possibility to play with the size of the spaces to pull back on the amount of encroachment into the buffer.

Ms. Echols replied that she did not know the answer to the second part of that question. She has been looking at the County's Design Standards Manual and there are some different alternatives that might be able to be used to minimize the amount of disturbance. Staff has not looked at that so we can't fully answer that question right now; but, it is something that can be looked into.

Mr. Kotarski said one item that he knows they could possibly look at is on the west side, the side nearest the two bio-filter facilities that are shown, he believed the county ordinance will allow you to instead of building an 18' deep space build a 16' deep space allowing for the overhang. That is a potential opportunity to reduce some impervious surface and some of that encroachment pull the bio-retention facilities up a few feet and that sort of thing.

Ms. Firehock asked did you consider permeable pavement for any of these.

Mr. Kotarski replied that no, they did not consider permeable pavement because it is a steeper site. But, one of the things that we really want to be mindful of is the fact that we are right at the reservoir and so where do we place and how do we position any storm water treatment. We thought it was appropriate. One, to your point previously to make sure that bio-retention facilities need to be kept out of the 100-year floodplain. That is one of the reasons for their location. But, then the other is instead of trying to put something say in the middle of the parking or do something underground we thought it was a lot more appropriate particularly to be a steward of this piece of property and its location to do something that would capture the storm water and work towards returning it back to a cleaner state before entering the reservoir. Currently there is nothing in that location that captures and filters the water in any way except for obviously the tree buffer that is around it.

Mr. Keller asked if there were any other questions for the applicant. There being none, he invited public comment. There being no public comment, the public hearing was closed and the matter before the Commission for discussion.

Ms. Firehock said she would just note she finds this site very frustrating. She really respects the church's need to try to accommodate their parishioners and continue to function. Also, we have not storm water management so she understands we would be getting some; but, they were also increasing the size of the impact. So we are not necessarily coming out ahead and we are taking out the tree buffer and putting in bio-filtration to replicate some of the function either the trees provide. So she does not know how she will vote; but, she just finds it really a frustrating site. She wished they would have gone a little farther perhaps with other techniques for mitigating storm water from the source such as she feels like they could have

used permeable pavement on the actual parking spaces considering that it is outside of the 100-year floodplain. She can make her thoughts known, but she can't really require that since they have offered what they have offered.

Ms. Riley said they also tried to encourage them to look at the visual buffer in terms of mature tree replacement. Right now she thinks it is a really beautifully buffered site and in the future she would hope they would be able to continue when you are crossing that bridge not to necessarily be looking at cars in a parking lot.

Mr. Keller pointed out to do that they were going to have to add some trees within the parking area because of the elevation of that.

Ms. More said it seemed like a couple of things had been mentioned about changing the size of some of the parking spaces and Ms. Echols mentioned looking into that and maybe making these along where the potential bio-filters are to have those be shorter spaces. She asked are we hearing those as things that are actually going to happen or if we were to vote we are voting on what is in front of us. She said some of these seemed like really good suggestions.

Ms. Echols pointed out the Commission can recommend conditions. She noted that special use permits are different than rezoning's in terms of what you can ask. In terms of rezoning's an applicant if they are proffering something they have to be voluntarily offered. But, if there are conditions to mitigate impacts the Commission can impose conditions on a special use permit. What you could do is to recommend approval or whatever you want to do with certain changes taking place. The Commission may also want to say you want these things to be explored and may want to have it come back to you or if you want it to go to the Board of Supervisors with some different conditions, you could do that, too.

Mr. Keller asked staff to put the actions up on the screen.

Ms. Firehock moved to recommend approval of SP-2016-00010 Cornerstone Community Church with the conditions outlined in the staff report, as amended that the applicant use as large trees as possible in the bio-filters; that they shorten the spaces alongside the buffer to pull back the amount of impact and encroachment into the buffer and that they also work with staff to recalculate the parking spaces across the site to determine whether or not they can further reduce impacts of the paved surface while still maintaining the same number of parking spaces and also to investigate the use of permeable pavement of which there are several different technologies available.

Ms. More seconded the motion.

Mr. Blair said if I may could we procedurally have a vote to add that as a condition to the special use permit (SUP) first and then if that is approved then you would vote on the special use permit.

Mr. Keller thanked Mr. Blair and asked for a motion.

Ms. Firehock asked if it was for a motion to what she just said.

Mr. Blair said it would be a motion to amend the special use permit (SUP) to include the condition you just stated.

Ms. Firehock asked if she did not have to state the conditions again since they had been recorded.

Mr. Blair asked did the clerk get the condition.

Mr. Keller asked Ms. Taylor if she got the conditions, and Ms. Taylor replied yes.

Ms. Firehock made a motion to amend SP-2016-00010 Cornerstone Community Church to include the conditions she stated previously.

Mr. Lafferty seconded the motion.

The motion passed by a vote of 6:0:1. (Dotson absent).

Mr. Keller pointed out now they have this added to the special use permit and now we need another motion.

Mr. Blair said it would be to make a motion to approve the amended special use permit (SUP).

Ms. Firehock made a motion to approve the amended SP-2016-00010 Cornerstone Community Church.

Ms. More seconded the motion.

The motion passed by a vote of 6:0:1 (Dotson absent).

Mr. Keller noted this request would be going forward to the Board of Supervisors for their consideration.

Public Hearing

d. SP-2016-00001 Kapp Driveway – Stream Crossing (Signs 75 & 77)

MAGISTERIAL DISTRICT: Samuel Miller

TAX MAP/PARCEL: 098000000004C0

LOCATION: Sutherland Road (Route 697), approximately 1.5 miles west of its intersection with Monacan Trail Road (US 29)

PROPOSAL: Grading in the floodplain for two culvert stream crossings for road access

PETITION: Grading activities in the Flood Hazard overlay zoning district under Section 30.3.11 of zoning ordinance; No dwellings proposed.

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

FH Flood Hazard – Overlay to provide safety and protection from flooding COMPREHENSIVE PLAN:

Rural Area – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources; residential (0.5 unit/ acre in development lots)

(Scott Clark)

Scott Clark presented information and recommendations regarding SP-2016-00001 Kapp Driveway – Stream Crossing in a PowerPoint presentation.

This is a special use permit in the rural areas for two fill sites in the floodplain at the South Fork Hardware River for two culvert stream crossings for road access and grading activities in the Flood Overlay zoning district. This use requires a special use permit. The site is located on Sutherland Road (Route 697), approximately 1.5 miles west of its intersection with Monacan Trail Road (US 29) just over Chalk Mountain. This is a very large parcel of 207 acres and the locations proposed are shown on the slides.

The landowners own several adjacent parcels and have access to their property over Sutherland Road as it exists now. However, the public road portion of Sutherland ends at the northwest corner of the map. The private section of the road goes past a winery on one side and crosses a very small pipe that is down near the floodplain. It has been there for many years and goes up into the property in this location. The applicant proposes two crossing locations that could access their property from the public portion of Sutherland Road that their property fronts on. The tributary crossing location would be used as access into their existing property to the southwest where they have some dwellings.

DETAILS OF THE PROPOSAL:

- Floodplain fill and construction of two culverts for stream crossings on 207-acre property
- Crossings would be built over South Branch of the North Fork Hardware River & a tributary
- "Proposed Tributary Crossing Location"

- Would provide access to three dwellings on adjacent property under same ownership (TMP 98-14 – 485 acres)
- Alternative access to current route on private portion of Sutherland Road
- Approximately 9,400 square feet of fill
- Located 1,600 feet from Sutherland Road
- “Proposed Second Crossing Location”
- Would provide access to currently undeveloped portion (~120 acres) of TMP 98-4C that has no public-road access
- Approximately 16,500 square feet of fill
- Located 1,850 feet from Sutherland Road

Floodplain area adjacent to tributary.

Tributary stream near proposed crossing – approximately 2 feet wide.

Floodplain area.

Stream near second crossing site – approximately 6 feet wide.

No substantial detriment. The proposed special use will not be a substantial detriment to adjacent lots.

- No flood impacts on adjacent properties

Character of district unchanged. The character of the district will not be changed by the proposed special use.

- No change in district character from requested fill
- Floodplain crossings could change the character of the district by making more development possible
- Recommended conditions are intended to limit the capacity of the crossings – to permit requested access without encouraging development

...and with the public health, safety and general welfare.

Principal safety concern is flood impacts on adjacent properties

- Engineering review of applicant’s studies indicates any flood impacts would be limited to this property
- Access:
 - Fire/Rescue recommends weight capacity of 46,000 pounds for the crossings
 - Fire/Rescue recommends 10-foot minimum width (also required by Zoning Ordinance)
- Erosion & Sediment Control:
 - Staff has recommended conditions requiring approval of an erosion and sediment control plan, and of a mitigation plan, for disturbance of the stream buffer.
- The mitigation plan would establish areas to be replanted with approved vegetation to make up for vegetation lost during construction

Consistency with the Comprehensive Plan. The use will be consistent with the Comprehensive Plan.

Providing access to otherwise-inaccessible land for residential development is contrary to Comprehensive Plan goals for limiting Rural Area development. In order to limit the amount of residential development that could be accessed by the proposed crossings, staff has recommended two conditions of approval:

- Condition 2 would limit the width of the travel way on each crossing to a size (maximum width of 12 feet) that would permit no more than two lots on the side of each crossing beyond the floodplain
- Condition 3 would further restrict the “Proposed Second Crossing Location” to providing access to no more than one dwelling.

ADJACENCY TO AGRICULTURAL-FORESTAL DISTRICT

- This property is not in an Agricultural-Forestal District

- Property is adjacent to parcel 98-14, which is included in the Chalk Mountain district.
- County policy is to consider possible impacts of land-use proposals on adjacent Districts
- At their meeting on July 18, 2016, the AFD Committee voted 5:1, with one abstention, to support approval of this floodplain-fill proposal.

SUMMARY:

Staff has identified the following factors favorable to this proposal:

1. The proposed floodplain fill would not impact adjacent properties.
2. Impacts to the stream buffer would be offset by mitigation plantings.

Staff has identified the following factors unfavorable to this proposal:

1. Additional access to land for residential development is contrary to Comprehensive Plan goals for reducing Rural Area development. Proposed conditions of approval would limit the extent of residential development that could be accessed by the proposed crossings.

RECOMMENDED ACTION:

Staff recommends approval of SP201600001 Kapp Driveway with the conditions.

1. The stream crossing locations shall be in general accord with the locations shown on sheet 3 of 4 of the plan titled "Kapp Driveway SP," prepared by Shimp Engineering P.C., and dated 5/25/16.
2. The travelway on each stream crossing shall be at least ten feet in width but shall not exceed twelve feet in width.
3. No more than one dwelling shall be accessed via the crossing labelled as "Proposed Second Crossing Location" on sheet 3 of 4 of the plan titled "Kapp Driveway SP," prepared by Shimp Engineering P.C., and dated 5/25/16.
4. Prior to construction of either stream crossing, the applicant shall provide signed and sealed documentation from a licensed engineer establishing that each stream crossing is designed to support a minimum weight of 64,000 pounds for fire-apparatus access.
5. The applicant shall obtain a Program Authority approval for an erosion and sediment control plan, and obtain a land disturbance permit according to the Water Protection Ordinance requirements, prior to the start of construction of either stream crossing, regardless of whether the project exceeds the minimum disturbance limits.
6. The applicant shall obtain a Program Authority approval of a mitigation plan prior to the start of construction of either stream crossing, and provide mitigation according to Water Protection Ordinance requirements.
7. The applicant shall obtain approval from FEMA for changes to the floodplain, and update the FEMA maps. This shall include FEMA's conditional approval prior to the start of construction of either stream crossing. Prior to permitting of a land disturbance in the floodplain, the applicant shall obtain from the Federal Emergency Management Agency (FEMA) a conditional letter of map revision (CLOMR, or CLOMA), and prior to use of the permitted stream crossings 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.
8. The applicant shall obtain all necessary federal and state agency approvals prior to the start of construction of either stream crossing (including but not limited to the Army Corps of Engineers and the Department of Environmental Quality).

Mr. Keller invited questions for staff.

Mr. Lafferty asked the height of the crossings; and, Mr. Clark replied the applicant would have to provide that information since that is not in the presentation.

Mr. Lafferty said he has to reflect back to the View at Crozet where they had actually designed the crossings and knew what the culvert is going to be like, and this does not seem to have any of that work done. He wondered if the applicant has investigated the alternative means of getting to the property such as going off Chalk Road.

Mr. Clark replied that our engineering staff has reviewed preliminary culvert designs. He apologized that he did not have that information in the presentation; but, he thinks the applicants can give you an idea of the height of the crossings. The applicants are proposing to use arched culverts, which are mostly flat on the bottom and arched on the top, and not pipe culverts that we tend not to prefer. Also, these crossings are quite a distance of 1,600 to 1,800 feet downhill from the public road so visually speaking the height is not going to be that apparent. There are a couple of issues with the access from Chalk Mountain Trail, which he pointed out on the map. He noted it is a private road and also at the point where you would access this property you are at the top of the ridge in very steep territory with critical slopes. In a lot of ways there would be a lot more impacts to the property. Even if access was practical it is a very narrow steep private road with a very difficult terrain to access this portion of the property from that really impacts coming across the floodplain where they are proposing it.

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

Justin Shimp, engineer representing the request, said Jason Knapp who was the land owner of these properties was also present. He said he would give a brief overview of why we are here because he knows that floodplain fill permits are sort of unusual and wants to cover a couple of things to explain what the nature of this floodplain is. Most of the time when you think about floodplain you think of Rivanna River, Moore's Creek or some significant area prone to major flooding where there could be structures damaged by flooding. Every now and then you run across what they call a Zone A flood map area, which are referred to as approximate. Basically these are areas that he guessed probably in 1980 somebody took a topo map from 1965 and drew some lines on it estimating the floodplain in this area and it becomes a map. In fact, based on the county ordinance that line is imprecise as it is created and then precisely becomes the floodplain; and, then any activity within that boundary is subject to the floodplain ordinance.

Mr. Shimp pointed out the property as outlined in red on the official flood map in the PowerPoint presentation that shows the drainage area for one-half of this crossing and for reference the drainage area for the other crossing that follows the Chalk Mountain Road and comes around. He said so more or less this is floodplain that originates in our own property and is not miles and miles of river that creates a floodplain. He said it is basically the drainage out of this little property albeit a large property. He displayed a couple of pictures to scale in order to give you an idea of the creek. In the lower section it gives you an idea that it is not a river; but, it is a good size creek. However, it really is not the kind of thing that we typically associate with the floodplain.

Mr. Shimp noted the other item that sort of brings us to this plan is the access on the private portion of Southerland Road. He pointed out the winery on the left side of the picture that was built a few years ago there and the one-lane road that is an access to and from the Kapp's property. He said Jason Kapp would describe some of this; but, there certainly is some traffic challenges in some locations that is hard to see. He pointed that there is a big ditch off the side of the road there; and, so if you happen to encounter somebody in that section of the road somebody has to back up a couple hundred feet to the nearest place to get a safe place to pass. Therefore, it really is not an ideal situation as far as road access for a house.

Mr. Shimp said originally when we looked at this plan we knew that fill in the floodplain special use permits are generally not encouraged in the county; however, in this particular application we had a couple of choices. One thought we had was to go to FEMA and say we are just going to amend this floodplain to get rid of it because essentially he did not know if it meets the requirement to be a floodplain. He said since we know the process for that we can go through that; however, there was a down side to that and since the Kapps are not developers and live back there they bought the land from a developer. He pointed out the Kapp's goal is to get a driveway across to a state portion of Sutherland, which is the tributary crossing; but, then leave some access to another building site on the 207 acres they purchased. He pointed out in a way

that would not encourage either development if it ever were to be sold. If we left the land as is the by right sort of maximum use as you bring a cul-de-sac off the road with 6 or 7 lots and a driveway over the Kapps property could be done by right. But, we felt if we devised a plan that had restrictions on it that said okay we are going to do this; but, once this is done to continue this use you cannot change these conditions being the width of the road. So our proposal to create this scenario where we can do a driveway from the state road would preserve one building site that we view as a potential for maybe their family down the road or if they did need to sell this. It is a big investment for land conservation only for 207 acres; and, we feel that to put one house on that is not an unreasonable request. So that led us to this plan and why we are coming across the floodplain. There really is no other way to get to these parcels without using that private Sutherland Road access. He asked that Jason Kapp talk for a minute about his experience there concerning traffic and things like that.

Jason Kapp, owner of the property with his wife, thanked the Commission for their consideration here and explained they brought the original property back in 2008 and had lived there while their house was being built. He pointed out that really what precipitated this whole thing was when the vineyard came into play since it is a very narrow road and on the weekends it can be problematic for us to get access to our place. When our neighbor was suggesting to sell her property we thought we would be able to solve a lot of problems with this one purchase by being able to get our driveway access and also help preserve the rural character of the neighborhood back there. He said he would be happy to answer questions.

Mr. Keller invited questions.

Ms. Firehock asked Mr. Kapp to elaborate a little more about trying to solve the problem of the winery because she did not really understand.

Mr. Kapp explained that the residents actually live beyond where we are hoping our new driveway would go so we would be able to cut back on the traffic ourselves that contributes to the ongoing traffic problem that we have back there. There was always concern in the area about what would happen if this giant parcel of land were to be sold to a developer and so we bought it. We are not developers; but, we are trying to preserve a couple of the nice building sites on there for value and perhaps for our kids in the future.

Ms. Firehock said she thinks you were just basically saying that you were trying to avoid having to down by the winery to access your property and contend with all the traffic. She asked if that was part of it.

Mr. Kapp agreed that is part of it and another part of it was just to help preserve the rural character of the neighborhood. They did not want anybody to just come in and buy this land and have it become a cul-de-sac.

Ms. Firehock asked the applicant to elaborate on the design of the stream crossing and what staff was talking about the half dome.

Mr. Shimp replied that the proposal is for arched pipes, which are like a bridge and is a one-half pipe. We use those for a lot of reasons. One is they pass a lot of water so they cause limited restriction. We have a situation here where we do have neighboring properties up stream. It is a requirement of a special use permit to be a good neighbor, and we don't want to do anything that will back water up on our neighbors. He pointed out the tributary stream there is 2' to 3' wide. We have a 26' span pipe over it. So it takes a lot of rain to get the water up to where it is even approaching the top of that 26'. The height was asked and it is about 6' to 7' from the creek to the top of the road.

Mr. Lafferty asked if that was for both of them

Mr. Shimp replied yes; but, the second crossing is a little larger area and maybe it is a foot higher; but, in general it is the same scale. The crossings are not big. The stream sits down 3' or so from the field so the driveway will rise up a couple feet and go across the stream and then back into the woods. But, we don't have any intention of actually touching the water with our work.

Mr. Lafferty asked what is the area of runoff for these streams.

Mr. Shimp replied that the second point is around 1.7 or 1.8 square miles for the second crossing and the first one is a lot less than that. It is probably in the neighborhood of 600 or 700. Since he does not actually have that, he said that John Anderson actually has the file if they are curious about the specific number, and we can talk about that. But, they are ranging from hundreds of acres to less than 2 square miles.

Mr. Lafferty asked what coefficient of runoff did you use.

Mr. Shimp replied that we used rural regression methods, which are the standard for that size water shed; and, particularly in a rural area like that he would suspect that our theoretical flows are pretty high. He said that particular area back there is beautiful and there are a lot of mature forest. He pointed out he helped with a project across the street there to help somebody with a driveway and we computed a certain flow and two years later the culvert does not fill up because the woods are so healthy there is no runoff.

Mr. Lafferty asked if most of it was wooded area, and Mr. Shimp replied yes, most of the watershed is wooded.

Ms. More said she understands in the report it says any impact would not affect the adjacent properties and it would just be on this property. But, she was wondering if the base flood elevation would be affected by the fill or if there is any information about that.

Mr. Shimp replied that we submitted the study to the engineering staff about that. He noted there is no base flood elevation in Zone A; it actually is a space horizontally not vertically. He said we mapped that and that is in the file. But, basically what we find is when computing the flood plain it actually is narrower in almost every place than the map floodplain. So actually we did a survey; we surveyed nine cross sections; and we do a hydrologic analysis the same way FEMA does for the Rivanna River basically but on a smaller scale. We actually say the floodplain is not 220' wide as the map shows; it is 141' wide or some precise number based on our calculation. So when we run that model you do increase the elevations locally because with a culvert the water does rise a little bit and it is a restriction. But, our study shows at the far end of the property at the neighbor's property line there is no change in base flood elevation. So if there was a BFE, a base flood elevation, for the property we would show no increase beyond our property; we would show an increase down sort of in the middle of our property right at the culvert.

Ms. More asked Mr. Shimp to elaborate on the decision not to get updated maps from FEMA. She noted in the beginning he talked about that as a way to proceed.

Mr. Shimp replied that the options would be to actually not say update the map; but, to simply say petition it to be removed. So we could go to FEMA and say we only have 2 square miles and your threshold is 3 square miles or whatever that number may be since it depends on the factors; and we should actually move the flood plain downstream, which then would not need a special use permit. But, sort of the down side of that is that if your perspective is one of land conservation it actually might open up development for the parcels that you might not want. So rather than go that route to say let's get rid of the floodplain we would say we will keep it and try to work within the confines of the regulations and develop a plan that does not really cause more development; but, in fact allows some level to occur that would decrease the overall potential of development. So FEMA does not create a detailed study for an area like this; it is either a Zone A approximate or it is nothing.

Ms. More pointed out in the conditions that staff have outlined that is number 7 even though some of the language was changed ultimately you would get FEMA's conditional approval and maps would be updated. So the potential is there for that change to be made as part of your process as you move forward conditionally.

Mr. Shimp agreed that was correct, and we would have to go through that process. Basically, as he understands the process, the flood map would be revised per our study and so it will get generally smaller across our property; but, it will still be there.

Ms. Spain said since you seem to be concerned about protecting that parcel on that land from development have you thought about a conservation easement and in that context would these same criteria or requirements apply.

Mr. Kapp said he would take the first question. He explained we have thought about a conservations easement; it is not something that we would want to do for a number of years until we actually got to know the land itself. As it is even though it is contiguous to our property we don't have a direct access to it and have to go all the way out to Sutherland Road and come in. He asked what is the second question.

Ms. Spain said she wondered if it were in a conservation easement would it affect whether you would need a permit for these bridges.

Mr. Clark replied that it would not change flood plain whether or not it is in a conservation easement, and if they decide to put the land in an easement later whatever work or improvements are already approved on the site the easement the new organization would just adapt to what is already there in their assessment of the conservation value of the land.

Mr. Keller said just as a follow up to that he asked do you have other parcels under conservation easement.

Mr. Kapp replied no. He pointed out that he believed that it was supposed to be contiguous to a public road, and our current land is not that way. He said if we were to link these two parcels, then we would have that ability.

Mr. Keller asked how many acres do you have in this full holding, and Mr. Kapp replied the full holding was going to be close to 1,000 acres.

Mr. Keller invited public comment.

Werner Hambsch said he was Mr. Kapp's neighbor and there was a concern which Mr. Kapp mentioned. The private road is Sutherland and continues from the state end to his property and we share the driveway and it is a very narrow road for one car only at a given time. He can say that Mr. Kapp would eliminate that particular road; and, it is right next to the winery. He can only stress that since the Kapps moved to North Garden, which was 7 years ago, he has been an exceptional good neighbor and a very good steward of his land. Whatever Mr. Kapp has done he has done to perfection. So if Mr. Kapp proposes that driveway to the property he would encourage you to consider that because he could not find a better neighbor. Thank you.

Tom Ward said he was Mr. Kapp's neighbor on the other side and the person who would be most impacted by this road. He said he lived across the road from Werner Hambsch. He pointed out that Jason Kapp has to drive through his property to get to his own, and he certainly understands why he would like to put in a new road. He explained his only concern basically is that in the flood plain itself it is how the downstream impact will be. Even though he has been assured he has not seen any documentation on this that if there is flooding it won't affect my property. He feels like Jason has been a very good neighbor and when he says he is concerned about the environmental quality of the neighborhood he takes that as fact much more than the prior neighbor and glad that Mr. Kapp has this property. He said his basic concern is downstream water quality; he told that to Jason and was sure you are perfectly capable of addressing that. Thank you very much.

Mr. Keller invited the applicant if he had a summary.

Mr. Justin Shimp said he would address the last comments to make sure everybody was clear on that. He explained they have a detailed model they submitted over to the county engineers we just talked about which shows there will not be an impact upstream. Downstream and using the arched pipes we stay out of the water. So it is really sort of the way to do this with absolute minimal disruption of the stream, really now; and, we will have to also for everywhere we disturb we will have mitigate that in a 2:1 ratio. So what

is say currently the field adjacent to, which is a hay field and they are not running cattle right now, a portion twice of what we disturb becomes wooded basically. We are required to plant those and it will become a wooded area rather than a field area. So we are not actually getting into the stream; but, in that perimeter around it we will be enhancing the buffer as part of our work. He hopes that addresses the neighbor's questions.

Mr. Keller asked if there were any further questions for the applicant.

Mr. Lafferty asked what is the nature of the existing crossing of the floodplain on Sutherland Road.

Mr. Shimp replied it is a 48' metal pipe, and an old metal pipe that has been there since 1975 for the record.

Mr. Lafferty said he wondered if it ever backed up, and wanted to make sure that the cross sectional area was at least compatible with that.

Mr. Keller said he had a question to ask counsel about the second connection. He asked does that second connection carry the same ability that an easement would so that if another party in the future wished to come in for that parcel, if it remains a separate parcel, and wanted to do a development by right for as many units as that 200 plus acres would allow they could come forward and ask for another special use permit to do that, correct.

Mr. Blair replied yes, they could.

Mr. Keller said he was persuaded on the first piece; but, on the second he just can't see the argument as a strong one unless you were willing to truly say that it is going to be limited to one development.

Mr. Shimp replied that there was nothing to stop this other property in ten years for somebody coming back to you from saying we are scraping this special use permit and we are going to proceed with a different plan. But, what we thought would sort of protect this area better was the fact that this is all tied to one special use permit so as long as the road or driveway to the Kapp's current home is in use, then the condition applies to all the property. He said we would be agreeable to some condition that required us to remove the current connection off Sutherland because we intend to do that anyway. So the ones that the special use permit establishes that creates this driveway through the property somebody would be into it already that much and to start over would be less ideal than say start again today. So if we have that connection we don't have another way out, that is our driveway and that one crossing we had approved than both crossings, then really for someone to go back would sort of challenge that whole existing access. We feel like it is sort of like the poker term "pot commitment". We are going down this road and you want to keep going down this road; otherwise, you are going to have to start from scratch completely. There are no guarantees that somebody wouldn't try to do that; but, certainly if they wanted to use that access off Sutherland then only one dwelling could be permitted in that second area and to step aside from the easement route that certainly is the greatest protection that can be provided to that area.

Mr. Keller asked if there were further questions. There being none, he closed the public hearing to bring the matter before the Commission for discussion. Mr. Keller said he was comfortable with the first crossing; however, he was still not convinced as to the benefit of the second crossing.

Ms. More said she had a question and thinks the answer would probably be as it has been in the past that things are taken on a case by case basis. But, she just wonders when the comprehensive plan is very clear about additional access to land for residential development if it is contrary to the goals set forth in the comprehensive plan yet staff is able to make a finding and create some reasons why this is favorable she wonders what sort of precedent that could set for future developers to come forward and us not to follow the Water Protection Ordinance that we have in place.

Mr. Blair replied that he would let staff address the comprehensive plan. But, legally there are a couple of things to keep in mind. First, when you talk about precedent typically in a land use context it is a legislative decision. So as a legislative decision if the Commission or the Board of Supervisors can point to any aspect

of the parcel or the action or the conditions that are different in a separate case there really is not a precedent set. That is from a legal perspective. From a policy perspective you can look at it a couple different ways as to what are we doing; are we really opening ourselves up from a policy perspective to say this is what we favor from that policy perspective. But, legally again it is a legislative action and if you can differentiate in any way this parcel on this application from another parcel application you don't set a legally binding precedent.

Ms. More asked if staff wants to comment at all.

Mr. Clark replied that clearly we typically hope that we won't see environmental impacts in the rural areas happening to allow more development to happen. He thinks here given the limited amount of development that the applicants are requesting on the site with that one site across the flood plain, staff felt that given that we could hold that to just one house; there would be the mitigation plans that would offset the crossing; we are talking about a 120-acre portion of the property with one dwelling on it and that is not atypical for a large estate in the rural area. If the applicants had come in and said they just want an unlimited crossing of the floodplain to access our development, our recommendation would have been entirely different. Staff would have said that is inappropriate in the rural areas to open up all that land for development through those kind of impacts. Staff felt like this was such a limited request that we could off-set it to some degree with the limitation on the number of dwellings and requiring the mitigation plantings.

Ms. More said she was sensitive that they have a point of access that is not desirable because of the nature of that road being narrow. However, that is a concern from a policy standpoint that there is an access and so to create an alternative access may be opening the door for future requests where maybe the floodplain is not a Class A or there are not always explanations as to why the impacts are smaller. She was conflicted because she appreciates the applicant's desire to have a safer access to their home site and she sees the pictures of that road. However, she does worry because they do have access and so we are not looking at a place where there is no access other than taking this action.

Mr. Keller said he thinks your point is well stated; however, the applicant has stated that they did not have direct property access before and it is through a right-of-way through someone else's property and with this purchase of land they now have the ability for a direct access and they can mitigate some of the issues with a development at the end of that public road where the private road is. So he is more comfortable with the first one than he is with the second one. He pointed out he shared Ms. More's view in terms of the second one.

Ms. Spain said a point of clarification, does the 10' width limit the possibility for further development.

Mr. Clark replied that the 12' maximum width being required is intended to prevent these crossings from meeting the 3 to 5 lot subdivision standard for just 14'. So essentially the area is accessed by these 10' to 12' crossings and could only be divided into 2 lots.

Ms. Spain said so does that address your concerns.

Mr. Keller replied not mine because we see people coming back for reworking special use permits all the time; we have some tonight. So it means just changing that standard next time; so no he does not see it.

Ms. Firehock agreed with Mr. Keller since she understands the need for the additional crossing to provide an access to a residence; and, she understands that they do have some access. But, she also has been down there when the winery is open and going and can understand some of those traffic concerns. She does not see the need necessarily for the second crossing except to open up some investment potential, and she did not know why they would need to approve that. It is simply an applicant's request to have more investment value out of their land to potentially sell in the future, and she does not know if that is the business we are about. The other thing she would mention is that we talked a lot about the stream crossing and she wanted to make two quick points about that. One is that it is not just a crossing but the road that then would go through the entire property because there is a crossing there. So there is the impact of the road. Then the last thing she would say is Mr. Shimp commented on the fact that these are just tiny streams

and we have the dog ruling to check how big they were. But, those small trees are quite fragile and there are actually quite a lot of wetlands back in that area. So it is not simply just because there is a small stream that it does not matter; it is actually more sensitive to disturbance than a larger river system.

Mr. Keller asked if there was any further discussion. There being none, he asked if there was a motion.

Ms. Firehock asked if she wanted to make a modification to what is up there if she needs to include everything here and the modification or do you want a separate motion to make the modification first.

Mr. Blair said he preferred to make the modification first just because it provides clarity on what you are voting on at each time.

Mr. Clark pointed out that there was a typo in condition 4 in the wind capacity was listed as 64,000 pounds and it was actually supposed to be 46,000 pounds. He noted it had now been corrected on the screen and pointed out that would be part of the Commission's motion.

Ms. Firehock said with regards to SP-2016-00001 Kapp Driveway she motioned to amend the request to remove the second stream crossing that was proposed on the site plan as the proposed second crossing location.

Mr. Keller seconded the motion.

Mr. Keller invited discussion.

Mr. Lafferty said if they are going to allow one stream crossing which is contrary to the comprehensive plan we might as well allow two. He thinks the applicant is certainly aware of the conservation nature of this project if he is willing to have the restrictions about the buildings. He said the proposal is a better part of something that is wrong in doing stream crossings.

Ms. Firehock pointed out that she already talked about the sensitive nature of the streams and she would note that the reason that she proposed to not have the second one, she is not being arbitrary or capricious, she is simply stating that the first stream crossing seems to have some merit to it because it also helps the current landowner to live more comfortably on the land and not have the conflicts with the one-lane road situation by the winery. So there was a compelling reason to me beyond simply investment potential to approve that first one. She did not hear the same rationale for the second one nor has the landowner particularly proposed any specific conservation activities. She was sure he was a great guy and sure he did a great job with his land; but, she can only deal with what is actually written before me.

Mr. Keller said he would add to that we heard the applicant say that they would be willing to close off the access point so in effect one of those is going away. So we would have one instead of two or in your case three. The other one is that he thinks that our counsel has shown us actually that staff is taking a big leap of faith, and we have even heard this from the applicant in terms of whether it is really going to lower the development on that parcel.

Mr. Lafferty pointed out that he was not talking about three crossings.

Mr. Keller said but on that second crossing you are assuming that there is only going to be one development.

Mr. Lafferty agreed that was right.

Mr. Keller said that counsel has told us that we don't have to accept that argument that there could be a new special use permit that would allow for multiple crossings so the only real way to ensure that there is one would be to have an easement on it that said that there was only going to be one development.

Ms. More asked Mr. Keller to clarify.

Mr. Keller apologized and noted when he says development he means a development unit, a house.

Ms. More asked if he could clarify when he said to close off the one because she did not understand since he said that they were going to close off one and they would only need two.

Mr. Clark pointed out that the applicants could potentially stop using their existing private road access off of Sutherland Road. They could not actually close that stream crossing that is there because it is not on their property and it is used by other people.

Ms. Firehock pointed out the applicant said that they were not using it.

Ms. More agreed they are not going to use it; but, it is staying there because other people potentially access their property by using that. She said the amendment is still on the floor; but, she was a little conflicted and wait to see if the amendment moves forward.

Mr. Keller said they could vote this one up or down and if it is voted down, then we would move to the next one. He said somebody would need to make a motion. He asked for a roll call vote. He noted there was a request for clarification and that the motion by Ms. Firehock is for a modification to the special use permit.

Ms. Firehock said it was to remove the second crossing.

Ms. More asked if she was not going to support the second motion should she abstain from the amended portion or support the amendment even though she is going to vote against it.

Mr. Blair replied no, right now this is a motion to amend the conditions in the proposed special use permit (SUP) and it is about whether you want to in effect delete the proposed second crossing location.

Mr. Keller asked if he could continue the explanation. He said so then the next vote after that one if that was approved would be to look at the first crossing.

Mr. Blair replied what you would do is in effect if the motion passed you would then, unless there was another amendment, vote on the amended SUP without the second crossing.

Mr. Keller said so you would have an opportunity to express it. He asked for a roll call vote.

Ms. Taylor called the roll.

Mr. Lafferty voted nay for the reason that he thinks that it is sufficient for me to take the applicant's explanation that he wanted to open up land for his children at a later date. If it came back to us and they wanted future developments he thinks they could turn it down for the reason that they are doing a development in the rural area.

Ms. Spain voted nay for the same reasons that Mr. Lafferty cited.

Mr. Keller voted aye.

Ms. Firehock voted aye.

Ms. Riley voted nay for the same reasons.

Ms. More voted no for the reason that she does not support the second crossing because it is contrary to what is called for in the comprehensive plan.

The motion to amend the conditions in the proposed SP-2016-00001 to remove the second stream crossing **FAILED**, by a vote of 2:4:1 (Lafferty, Spain, Riley, More nay) (Dotson absent).

Mr. Keller said the Commission can move on and go back to the special use permit as staff has proposed. He asked if they wanted to have further discussion on this or was there a motion.

Mr. Lafferty moved to recommend approval of SP-2016-00001, Kapp Driveway with the conditions outlined in the amended staff report.

Ms. Riley second the motion.

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

Ms. Taylor called the roll.

Mr. Lafferty voted aye.

Ms. Spain voted aye.

Mr. Keller voted nay for the reasons he has discussed before and he does not believe that staff and the applicant have convinced me that there would be limited development on the second so he is in support of the single crossing for the home, but not for the second crossing.

Ms. Firehock voted nay for the reasons expressed by Mr. Keller and expressed earlier by me.

Ms. Riley voted aye.

Ms. More voted no for the reason that she thinks the applicants made a valid case for the first crossing, but there is an alternate access so she does not think either crossing is supported by the comprehensive plan.

The motion to recommend approval of SP-2016-00001 Kapp Driveway failed by a tie vote of (3:3:1). (Keller, Firehock, More nay) (Dotson absent)

Mr. Keller said there is a 3:3 tie vote and this request will be going to the Board of Supervisors for their decision. He thanked everyone for a lively discussion on this.

The Planning Commission recessed at 8:32 p.m. and the meeting reconvened at 8:39 p.m.

Public Hearing

e. ZMA-2016-00007 Hollymead Town Center, A-2 (Signs 24 & 31)

MAGISTERIAL DISTRICT: Rio

TAX MAP/PARCEL: 03200000004500, 03200000005000

LOCATION: Hollymead Town Center Area A-2, the southwest quadrant of Seminole Trail (US 29) and Towncenter Drive to the west of Area A-1 in the Hollymead Development Area.

PROPOSAL: Request to amend proffers for ZMA 201000006 related to provision of for-sale affordable units, revise how the percentage of affordable units are calculated from total number of units within the development to total market rate units, to reduce the cash proffer amount from \$12,400/townhouse or condominium and \$11,900/apartment to \$3,845 for these units, to eliminate a cash proffer for County recreational facilities, to add recreational facilities to the site, and to revise the phasing plan for residential and commercial use.

PETITION: Amendment to rezoning for 44.5 acres on property zoned Neighborhood Model District zoning district which allows residential (3 – 34 units/acre) mixed with commercial, service and industrial uses. Existing density is 27 units/acre. No change to density is proposed.

OVERLAY DISTRICT: EC-Entrance Corridor; AIA-Airport Impact Area; Managed and Preserved Steep Slopes

PROFFERS: Yes

COMPREHENSIVE PLAN: Urban Mixed Use (in Centers) –retail, residential (6.01-60 units/acre in Destination Centers), commercial, employment, office, institutional, and open space; Commercial Mixed Use -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; and Light Industrial - manufacturing from prepared materials, processing, fabrication, assembly, and distribution of products. (Rebecca Ragsdale)

Ms. Echols recognized Rebecca Ragsdale who works in the Zoning Division. So it is an unusual thing for her to be here tonight; but, she used to be in the Planning Division and we are very glad that she is able to assist us with this staff report. So she just wanted to say thank you Rebecca.

Mr. Keller said thank you and welcome.

Ms. Ragsdale summarized the staff report in a PowerPoint presentation. This is a rezoning before you that deals specifically with the number of proffer amendments that have been proposed to Hollymead Town Center A-2.

The Planning Commission has had some other recent proffer amendment requests before you and Hollymead has been rezoned in different components over the years. We are referring to one specific area of Hollymead in the location shown on the map that is the undeveloped portion along Meeting Street.

This request is dealing specifically with Area A-2 as outlined on the map. The rezoning was approved originally in 2007 and it is Neighborhood Model District (NMD). The approval allows up to 1,222 residential units, 104,000 sq. ft of retail, 179,000 sq. ft. of office, and an 80,000 sq. ft. hotel. There have been some amendments over the years one of which was to allow a movie theater. But, to date there has not been any development on this site. We have a couple of site plans under review. Those site plans are all residential that are proposed and they are noted in the staff report. Nothing is proposed as far as Code of Development or Application Plan changes at this point. It is specifically the series of proffer amendments as noted in the staff report that she would go over again quickly.

The first is a few changes to the Affordable Housing Proffer 1. That is what the Commission saw most recently as far as the Hollymead A-2 Proffer change. The proposal was to reduce the minimum number of units or the percentage of affordable units from 20% to 15%, which was approved by the Board. That was based on the total number of units within the development. You will note that we have noted that the current version of the proffers before you are suggesting that that percentage be based on the market rate units. Staff is recommending, as there was a lot of discussion the last go round, that be changed back to the total number units, which would make it consistent with the Affordable Housing Policy and other affordable housing proffers.

There was a proposed change to the banking and carry over requirements in the affordable housing proffer. Then there is a proposal to eliminate the minimum percentage of units that would be for sale. That is actually a change that we have seen in other developments such as Old Trail that went through the process towards the beginning of the year.

The other change that is requested before you is to amend the CIP Cash Proffer Proffer 4. The request is to reduce it from \$12,400 for attached/townhouse/condominium and \$11,900 for multifamily/apartment to \$3,845 for each attached/townhouse or condo/multifamily/apartment dwelling unit. Ms. Ragsdale pointed out that the applicant might want to speak to the Commission more about that this evening or how the suggestion as far as how they might want to look at revising their proposed amendment.

There is also as the proffers before you are presented there is a proposal to remove the cash proffer 8 for \$500/unit for off-site recreation facilities. That proffer was in addition to the green space and amenities within the development to off-set regional type recreational facilities. Although there was not a specific recreational project identified at the time of the rezoning the thought was it could go to Chris Green Lake.

There is currently not anything identified specifically either and we will talk a little bit more about that one in a second.

Then the last proffer 11 is to amend the phasing plan for commercial and residential. There was a minimum number of residential units that are required before any commercial could be built. Originally it was approved with 100 dwelling units before any commercial. So the proposal is that before 75,000 sq. ft. of commercial is constructed that there be residential units be built.

Then there is a proffer to commit to additional on-site amenities within certain blocks of the development within A-2. As previously stated this is all physically to area A-2. That would include a minimum of a 3,500 square foot pool including the deck and then a 1,777 square foot clubhouse.

Just to give a little bit more background on the recreation and the amenities staff provided a table in the staff report. When the rezoning was originally analyzed staff looked at what the ordinance requirements are in Section 4 of the ordinance and then the Neighborhood Model also speaks to greenspace and amenities so there was a modification of the Section 4 requirements and the amenities that were approved through that rezoning are in the middle column. So it was determined given the greenway dedication and the characteristics of this type of development that all of the ordinance specified amenities could not be provided on site so they proposed alternative amenities such as civic plazas, pocket parks, the linear park, 2 tot lots, a clubhouse including a basketball court, and a neighborhood center and pool. Then as mentioned the \$500 per unit recreational proffer. So with this rezoning the proposal was to add the additional on-site amenities as stated and originally to eliminate the \$500 per unit cash proffer completely. As outlined in the report staff feels like the off-site amenities still need to be addressed. So staff had suggested that similar to the cash proffer for the CIP proffer if you noticed there were a number of credits that were given so payments for the CIP cash proffers would not start until 151st unit. We sort of looked at it in a way as to quantify the cash value of the on-site amenities and that is how we had suggested one approach to keeping the \$500 per unit proffer to mitigate the off-site amenities. She thinks the applicants can speak to whether they would be agreeable to making that change or not; but, staff has not recommended eliminating Proffer 8 unless there is an alternative proposal along those lines.

The next slide is a Greenspace & Amenities Plan that was included in the packet. It was hard to find a crisp legible Greenspace & Amenities Plan. But, this just gives you a sense of how the greenway, the linear parks and the plazas are interspersed within the development. So the new proposed clubhouse and pool would be within other blocks, Blocks C and D, and the one already proposed in the Code of Development and application plan is over in Block B closer to the Kohl's end of the development.

So just outlining again how staff came to its recommendation we feel like based on our experience in recent developments in what we are seeing with affordable housing that having some additional flexibility helps ensure that we get the affordable housing, we get people in it and it is a type that is responding to the needs in the market. So staff has supported the affordable housing proffer changes, except as she said for how the calculation is done that it should be based on the total number of units. The changes to the phasing plan staff does not have any concerns about since we will still have some assurances that there will be a mix of residential and non-residential activities. Then they have proposed a significant amenities package with Area A-2.

The factors unfavorable just citing some of the reasons why staff have not supported the CIP cash proffer reduction. There has been a lot of discussion with Out of Bounds and Spring Hill Village recently as far as where the county is with reducing the cash proffer amounts and the rezoning was reviewed under prior legislation than we have now and we are deemed to be reasonable and mitigate the impacts of this particular development. We are not required to change the proffers. There has not been a Board direction to start analyzing them in that way and then the two recent proffer amendments that went to the Board were not approved to reduce the cash proffer amounts.

Staff recommends approval of the following proffer amendments:

- Proffer 1-Affordable housing -- eliminate the minimum percentage of units required to be for-sale and revise the banking/carry-over requirements.

- Proffer 11-Phasing plan – eliminate the requirement for a set ratio of commercial to residential square footage to be constructed over the life of the project.
- Proffer 13 Recreation amenities- New proffer to provide additional recreation amenities in Block D-2, C-2, or C-4 to include a minimum of 3,500 square foot pool and deck along with a 1,777 square foot clubhouse/exercise facility.

Staff does not recommend approval of these proffer amendments

- Proffer 1-Affordable housing - Revise how the percentage of affordable units are calculated from total number of units within the development to total market rate units
- Proffer 4 - Reduce CIP cash proffer amounts.
- Proffer 8- Amendment to remove a cash proffer in its entirety for off-site recreation facilities. Recommend keeping proffer and revising to begin proffer payments with the 913 unit within the development.

Our recommendation since there are so many proffer changes is for the motion to recommend approval of Proffer 1 with the exception noted; the changes to the phasing plan proffer, and then supporting the additional amenity proffer. But, staff does not recommend the change to how affordable units are calculated, to reduce the cash proffer amounts or to completely remove Proffer 8 unless it is revised. One of the approaches would be to revise it that proffer payments begin with the 913th unit within the development. So that was the motion that was suggested. Staff has referenced the staff changes in the motion going back to the slide because it was so detailed as far as the list of them. So she would be happy to answer any questions.

Mr. Keller asked staff to put the motions back up since it is complicated.

Ms. Ragsdale pointed out the motion references the changes recommended by staff, which was really this slide.

Mr. Keller noted that he just wanted to see it for a moment longer while we are having our discussion. He invited questions for staff.

Ms. Riley said she had a question on Proffer #1. She understands your recommendation on eliminating the minimum percentage being required to be for sale. But, she is not clear what revise the banking/carry over requirements means, and asked if she could please describe that.

Ms. Ragsdale replied that it allows for a plat or plan to potentially go below 15% if they have banked units; but, at no point would the total number of units within the development be less than 15%. So it allows them to do a little bit less in one block if they have some banked in another.

Ms. More said when there are some banked in another portion is there a guarantee if that is a different phase of the development. She does not understand how the county can guarantee that those end up being built when it always keeps changing.

Ms. Ragsdale replied that we have experience with this type of proffer and tracking it in Old Trail so it has to be tracked with every site plan and subdivision plat. Now approving a subdivision plat or a site plan does not guarantee that they get built; but, we have a tracking table for the total build out of the development. They are interspersed with each subdivision site plan or site plan that comes in per block. So you get them sort of distributed throughout the development and we are tracking them on the tables at the time of review of those permits or applications.

Ms. Echols pointed out this is something that we have been doing before and it is not new so we do guarantee that there will be 15% of affordable units. Sometimes what we have done is say that you could provide 20% in one section and down to 10% in another because overall what you get is the 15%. But, Ms. Ragsdale is actually the proffers zoning person who deals with making sure that the proffers are administered properly, and so she can do this with some assurance in how we have done this in other developments.

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

Nena Harrell, with United Land Corporation, said we are here before you again to discuss the proffers for Hollymead Town Center Area A2. We have heard a lot about it in the last couple of months. We have an apartment developer that has a pending site plan for 243 apartments at Hollymead Town Center. As most of you remember the proffers were entered into by a prior owner in 2007 when the economy was extremely strong and everybody thought that it could only go up. There was a collapse; we just haven't pulled out of it yet. Additionally, the zoning that was obtained at that time is impossible to build on that site.

Ms. Harrell said our site consists of 44.5 acres and was zoned for 1,222 units as Rebecca mentioned and 368,000 square feet total non-residential. The buildings would have to be many stories with parking garages, and not just 3 stories. Residential and commercial rents for our area will not support the cost of construction of multi-story buildings with parking garages. The proffers and the expectations for development are totally unrealistic. We fully intend to apply to amend the code of development as we have discussed with the county staff. But, that is a very lengthy and time consuming process and so in the interim we have a local apartment developer who wants to build 243 apartments. So we are trying to find a way to make that happen. That apartment developer would build an apartment complex that would be beneficial to the county and its residents in many ways for the affordable housing, for jobs and for tax revenue to the county. However, the proffers, the cash proffers and the other proffers are just too restrictive to make the development work.

Ms. Harrell said the chart she gave as a handout compares the major features of the development that has recently been before you. Brookhill is 277 acres with 1,550 residential units and 50,000 square feet of non-residential. Once again, we are 44 acres that is one-sixths the size and we have 80% of the number of the units of Brookhill and 7 times more non-residential than Brookhill. It sounds really great. We are usually here asking for density; but, the numbers are impossible for Albemarle County. The cash proffers of 2007 were based on 1,222 units and 368,000 square feet of commercial. The number is not realistic based on the reality of the development.

Ms. Harrell pointed out the chart is a summary of what she just said about the number of units, the acreage and the comparison and then actually what a projected annual development could look like. Based on our zoning you can typically build approximately 8,500 square feet of commercial space per acre. At that rate you could not even build the commercial portion alone without any residential on our site. Additionally, you could also not build all of the residential with no non-residential and so it is just way over the reality. These numbers are based on gross acreage before deducting the greenway, which was already dedicated, and the linear park and green space, which is a total of about 10 acres. So we really only have about 30 acres net to develop. At most we could get 500 to 575 residential units without any supporting commercial. The zoning is just not achievable so the original cash proffer amount just no longer is applicable.

Ms. Harrell pointed out the Hollymead Town Center, as was Biscuit Run, has grossly impossible cash proffers, and we know what happened with Biscuit Run. Our zoning and proffers were for a metropolitan area, which we certainly are not. We are in agreement with staff's recommendations to amend proffer 1. We still question how the number of units is calculated; but, we will accept that is the county's policy so that is fine. We would love to participate in studies later on; but, we accept that. We are also accepting what staff said about proffer 11, the phasing plan, and the new proffer 13 for the recreation amenities. It is the cash proffer policy that we strongly ask you to consider. Not only has the proffer law changed since 2007 the financial conditions have change dramatically since these proffers were agreed to by a previous owner.

Ms. Harrell noted that more than 2 years ago a resolution of intent to amend the cash proffer policy was adopted by the Board of Supervisors in April, 2014. The Board of Supervisors instructed the FIAC to study the cash proffer policy and determine what would be really fair, equitable and consistent within the state law. Some of your own members participated very well in this and accepted the duty. They held well over 2 dozen meetings and worked diligently for years to come up with numbers that could be fair and equitable for developers and the county. But, those numbers have not been utilized. The committee was charged with "using the same methodology that the county used in 2007, but incorporated updated financial

economic and demographic information.” For this apartment developer on only 7 acres the cash proffer would be almost 1 million dollars, which makes the project financially unfeasible. Shouldn't we be able to update our proffers based on financial and economic data as well as what the FIAC Committee was charged with. It is debatable whether the cash proffer was reasonable at the time; but, we know it is not reasonable or within the current law of today. Also, the prior owner signed the proffers and stated that the conditions were voluntarily proffered; but, we all know we have to sign that in order to get our zoning. It is always added to what we are doing. We have installed all of the infrastructure for the development and Mr. Wood will speak further to you about how much we have spent to build the infrastructure. She would also like to add that Rebecca brought up when we originally submitted the new proffers we put the number in at 3,865 because we were evaluating the difference in the CIP and the CNA or just the CIP alone, which Mr. Keller can speak a lot better to than she can. But, that is why we chose the 3,845 number. However, after reassessing and also at the time we thought we were going to get more townhouses, so we used the number for townhouses with the CIP and CNA instead of just the CIP. However, now we are willing to go with the 5,262 number for the multi-family and the 3,845 for the towns because we do have more multi-family units than we do towns.

Ms. Harrell said additionally, we are taxed like when you can use the property as it is currently zoned; however, the huge cash proffers prevent us from using the property. If we cannot find a way to reduce the cash proffer, we will be forced to appeal our tax assessment for a lower evaluation. An apartment developer can usually pay approximately \$20,000 per unit for the land cost, and with a \$15,000 proffer, it is obvious the numbers just will not work. Also, they pay less for an affordable unit. Often what they will pay for an affordable unit is equal to the amount of the proffer so you get nothing for the land at that rate and the land is free.

Ms. Harrell said the legality of the past proffer policy may continue to be a debate. However, we know that it is not consistent with the current state law and request that you support our request so that the developer may move forward. I would like to remind you that this development really does produce 15% affordable housing/affordable rental housing; however, it cannot be built with the existing cash proffer. The property has been sitting idle since 2007 due to the economy and the proffers that were agreed to by the prior owner. Also, new water quality regulations have increased the cost of development due to the expense to meet the regulations and by requiring more land to meet the regulations. Therefore, it reduces density. We have an opportunity to bring affordable units and tax revenue to the County if you will support the lower cash proffer. The county is looking for revenue services and this would be a long term tax payer by a local business and developer that would provide much needed rental and affordable housing. We respectfully ask for your support and she would be happy to try to answer any questions. (Attachment – Letter and chart submitted by Nena Harrell)

Mr. Keller invited further questions for the applicant.

Mr. Lafferty asked if the swimming pool that is proffered and the clubhouse will that be dues.

Ms. Harrell replied no, sir, it will not be dues and will be for the apartment development. The apartment developer is here and he can speak more to why that cannot be dues. We had that discussion with Rebecca.

Ms. More asked what percentage of the proposed apartment development is affordable, and Ms. Harrell replied 15% of the 243.

Ms. Riley asked do you agree with the staff recommendation for the difference between the 1,242 and the 913 units for the \$500 cash proffer for recreation off site.

Ms. Harrell replied yes, ma'am, we are in agreement with that. We would be happy to pay the \$500 if we are able to get 900 units there.

Mr. Keller thanked Ms. Harrell and invited other public comment.

Todd Dofflemeyer, CEO of the Cathcart Group, said they have developed the Lakeside Apartments, Carriage Hill and most recently the Reserve at Belvedere. We have a total of 780 units in Albemarle County and pay exactly a million and 27 dollars a year in real estate taxes, which works out to be about \$1,300 a unit. We love Albemarle County. We have been very successful here and have been providing homes for people for years. My partner, Rip, and I actually stopped building in Albemarle because of the proffers. So we looked in West Virginia where we built units there. We have built in Harrisonburg, and of the 1,500 units that we have built we have never been able to make one work with proffers. We actually paid less for the land in Harrisonburg than what the proffers are in Albemarle County; and, we have had a very successful project there. At the end of the day everybody has got to make money and we have got to figure out a way to do that. He understands the land seller has to put in infrastructure and make money on that side of the deal as well. We have been looking at this deal for close to 12 months with Wendell and Nina. Quite honestly he had a meeting with them 2 weeks ago and said we were not going to be able to make it work since we are about a million dollars apart. One of the biggest challenges is all of the proffers on the property.

Mr. Dofflemeyer pointed out at first we were looking at 20% affordable units, and we would love to do affordable. We offer affordable discounts to service men, to teachers and the community without being proffered. We do that as a good citizen. But, the 15% affordable that they were able to reduce it to actually has an impact of \$122,000 a year on the cash flow of the community. It is a big number when you are talking about making a debt service. He is not asking for them to feel sorry for us; but, we are trying to provide affordable housing. So we have looked at different ways in making that work. If you look at the apartments we have in Albemarle County, we like to look at them at least from our perspective as a tax revenue positive generator. You don't have services as far as police and fire since we are a minimal use on those. He pointed out this morning there were 2 children at the reserve at Belvedere getting ready to get on the bus. So there is a lot of density on tight sites and it is not a big driver on schools. We have done school impact studies in other communities and it just has a very minimal impact for the amount of units.

Mr. Dofflemeyer said he was a lifelong resident of Albemarle County and was attracted to this site. Having worked in Richmond for 10 years he was concerned about the density described here. He did not know if anyone had been down recently to Short Pump and seen the atrocity of the work down there. But, he would hate to see the type of density that the former developer was looking at for this community even attempted out there. Regarding the traffic situation, he lives in Earlysville and comes up 29 every day; and, he won't say that the new bypass solutions have worked or not; but, it has made it better. One of our goals was to try to find a land out on the north end of town for our luxury apartment housing, and this looked like the great site. We have gotten into it and we thought we could make it work. We actually talked to Wendell about having to do the structured parking underneath. It cost \$60,000 more per unit to build a unit on structured parking four stories on structure than it does our typical garden style walkup.

Mr. Dofflemeyer said we have looked at this thing 6 ways from Sunday and it just is not going to work. So when we look and talk about bringing 34 affordable units; it is not going to happen; we are not going to build them; and we are going to walk away from the deal. It is not your problem. But, it would regenerate. We did some revenue generation and think this deal is going to generate about \$302,000 in taxes. So we are going to lose 34 affordable units, \$302,000 in taxes, and then he thinks the biggest thing that needs to happen in Hollymead Town Center in that end of town is rooftops to drive retail and to make that a successful side of the county to keep people from driving down 29 putting more strain on our road system. In terms of other jobs apartments for the long run 300 to 400 apartments we will support a 10-person staff long term; but, we would have 300 to 400 jobs for a period of about 22 months on the construction side. So there are a lot of positives. Obviously, he would love to see the deal happen. As it is structured now and the proffers that are in place it just won't and we will continue to go look elsewhere to build. That is all, thank you.

Mr. Keller asked if there are any questions.

Mr. Wendell Wood said he was a lifelong resident of Albemarle County. Actually, he is the fifth generation here and as of three weeks ago he added two more great grandsons. So we are in the community and have been. We love this community. He started his business here in 1960 and he feels like we have committed considerable tax dollars over the years. It is well into high means. The taxes on this property alone since

it got approved he would like to remind you this project was submitted by a large metropolitan Washington/New York developer who he thinks thought downtown Manhattan was coming. The comparison sheet before you breaks that down pretty good. This land is 44 acres and we can only build 550 units. It is actually only 33 acres when you take out the green space and all. That is with no commercial. So let's say it goes the other way, we can only build 250,000 square feet if it is all commercial with no residential. So it is an impossible zoning and the property is being taxed in that fashion. We have paid the taxes in the last 9 years. He pointed out we were not the applicant for this project; but, we had to take it back over because the applicant could not do it and defaulted. We took it back over and are having to live with these. For 9 years we have not been able to get anything developed on this property. During that period of time we have paid a little over 2 million dollars in taxes while the land sits there. We would be glad to meet with anybody; but, these are the facts by your own standards in how you have to develop. It can't happen and it can't be built on to this density. That is the price. We have spent over 7 million dollars on Route 29. A lot of people think the state widened 29. The state did not widen 29 from Hollymead up to the traffic light at Forest Lakes; I paid for that. Hollymead Town Center Drive from Town Center back to the airport people think the State of Virginia; I paid for that. We ran water and sewer to this whole project. We put sewer from Forest Lakes to the airport. The sewer was bubbling up on the ground at the airport; and, we ran the sewer to the airport. They contributed a small amount to that. For the money that has been spent in that site like it was going to be developed as Ms. Harrell said you have to build 6, 8 and 10 story buildings there with parking decks of 4 and 5 stories to make the density requirements. It is not happening. It has not happened in 9 years, and not one piece has happened yet we had built the infrastructure. We would like for you to consider this. We have now a local developer who is building 15% affordable housing and getting housing built in there. We would hope you could support that and appreciate it. If you have any questions, he would be glad to try to answer them.

Mr. Keller invited questions for Mr. Wood. There being none, he invited public comment.

Ms. Firehock pointed out that Morgan Butler had signed up to speak.

Morgan Butler, with the Southern Environmental Law Center, thanked you for the chance to speak tonight. He pointed out the Southern Environmental Law Center was actively involved back in 2007 when this piece of the larger Hollymead Town Center was approved. We worked to make it more consistent with the comprehensive plan amendment that governed the town center. The proffers, the phasing proffer in particular, were a big part of that and key to this ultimate approval. Notably, the Hollymead chapter of the County's Land Use Plan called for a mixed use town center with a significant residential component. However, as the different areas of the Town Center property came in for rezoning that residential component was largely missing. As those pieces then began to build out what emerged resembled a massive shopping center with a small residential piece of its outskirts rather than the truly mixed use town center called for in the comprehensive plan.

Mr. Butler said the 18th proposal, the one before you tonight, was the last piece of the Town Center rezonings to be approved. It was here where the substantial residential component finally showed up at least on paper. We felt the 1,200 dwelling units proposed and approved for A2 that this one piece accounted for roughly 75% of the residential units proposed for the entire Town Center; but, it also included a large chunk of commercial space, roughly 400,000 square feet. The county was understandably concerned that the developer might build that commercial space first and then give short shift to the residential component that was so essential to achieving the balanced mix of uses here. That is where the phasing proffer comes from. It deliberately phases the development of non-residential space in A2 to the construction of residential units. He won't go over the specifics of the different tiers and what they require; but, he will note that nothing he has heard tonight from the applicant has explained how that existing phasing requirement would preclude the apartment proposal that has been discussed tonight and is apparently the driving force behind the proffer changes they are seeking. Because that phasing requirement is so important to getting the true mix of uses here we would urge you to reject the new phasing scheme that has been proposed by the applicant. Thank you for the chance to comment.

Ms. Firehock invited anyone else to speak who did not sign up.

There being no one, Mr. Keller closed the public hearing to bring the matter before the Commission for discussion and action.

Ms. Echols asked if the applicant would be given time for a rebuttal.

Mr. Keller said he was sorry because he felt that the three speakers for the applicant went way over the ten minutes; but, he still should invite them up and ask them to have a very concise piece.

Ms. Firehock suggested that the applicant respond to Mr. Butler's comments.

Mr. Keller invited Ms. Harrell to respond to Mr. Butler's comments.

Nena Harrell, with United Land Corporation, said she was a little taken back because what we are trying to do is bring residential into the development. That is the whole crux of what we are trying to do. We have a site plan pending. So we are trying to bring the residential component in so she is not sure she understands Mr. Butler's comment because that is what we are trying to do. We are not trying to put more non-residential in right now. We have plenty available in A1 so we have plenty of commercial that we can build so we are not trying to add any commercial in A2; we are trying to bring in rooftops.

Mr. Keller invited questions.

Ms. Firehock said Mr. Butler just said he wondered how the phasing requirement affected the apartment proposal.

Ms. Harrell said that it just allows the apartment proposal to go ahead. She does not actually have those numbers with me; but, she knows Rebecca and Elaine have them. But, they were huge numbers of apartments that needed to be put in before any commercial; and, then vice versa a bigger number of commercial that needed to be put in. So at this point if we can do the apartment complex she thinks we would be ahead of the game as to what the entire intent was.

Ms. Riley said she was a little bit confused by this then. She asked Ms. Harrell if she was saying the apartment complex cannot take place without the proffer 11 phasing plan.

Ms. Harrell asked Ms. Ragsdale to read the old proffer language since she did not have it.

Ms. Ragsdale pointed out she went through things quickly when they touched on this. She said it was 100 dwelling units before any commercial and then 600 dwelling units before 200,000 square feet of non-residential. So the proposal is 30 units before 75,000 square feet, and then 100 units before 200,000 square feet. So we have this proffer; but, we also have some pretty detailed tables in the Code of Development. It is sort of another safe guard, if you will, that have minimum residential units required by block. We did not have that in the slide show. But, there is this proffer; but, there are also some regulations in the Code of Development that we feel like still get the mixed use and assure that there would be residential and not just commercial.

Mr. Keller said to follow up on both of these points then you have lowered the numbers of residential that would be required in this process. So we have heard from a part of the team saying that it is very difficult to make the apartments work. So if the apartments were to fall through then it means that we could move sooner to a higher amount of commercial.

Ms. Echols said that is correct with the proffer amendment if that were approved.

Mr. Keller asked if that is being supported by staff at this point.

Ms. Echols replied that is correct. She explained the reason why staff was supporting this residential change for the change in the mix is because we believed we were getting residential units. We were not looking at it from the perspective of if they don't do those residential units. But, you are absolutely right. We have

been working hard with them on a particular site plan in trying to make they can do the residential units. It may have been a safeguard for them; but, they can do the residential units without changing the phasing proffer that they have right now. They could do these residential units.

Ms. More said so the phasing proffer is not preventing them from moving forward with residential units.

Ms. Echols replied that is correct.

Mr. Keller said he would guess this is so unusual anyway that he invited Mr. Wood to come forward and speak, but to try to keep it brief. He noted that if Mr. Butler feels that he needs to say something that they would give him a chance, too.

Mr. Wendell Wood said he would apologize because he was now confused because we are in here to build these apartments. That is what our request to you is. It sounds like Mr. Butler was saying we were not going to build them. That is what we are here before you tonight for is to build 244 apartments before any more commercial. He has to admit that he is confused about it. But, that is what this application is, and that is what we have been working with staff on. The application that is before you is strictly for the apartment to go forward and not for more commercial.

Mr. Keller said we will give Mr. Butler a chance to clarify his point, and if you would like to have another rebuttal we will do it, and then we will call it at that point. But, he wants everyone to feel that they have had an opportunity to express their views on this.

Mr. Morgan Butler said he was following up on earlier comments. He said he shares the confusion because as he said before and the staff just confirmed he was confused why this particular proffer is even on the table for a change. It is not precluding them from going forward with this current proposal. So why is it even on the table and why does it need to be changed. The down side of changing it in the way they have discussed is the potential that you just discussed if the apartment complex falls through then it will allow them to build more commercial sooner without a residential component. But, you can even put that aside and he did not see why they even need to change the proffer in the first place because it is not precluding what they are trying to go forward with tonight, which is this residential piece. He hopes that is clear. Thank you.

Mr. Keller invited Mr. Wood or his colleagues if they would like to have a couple of minutes for rebuttal.

Ms. Nena Harrell asked Rebecca to read the original proffer one more time. They only requested to change a portion of that original proffer and not the entire proffer so she has to try to figure out why they were trying to change it.

Ms. Ragsdale pointed out that she left her memory stick and could not put it up on the screen. But, the phasing plan prior to the issuance by the county of building permits that would authorize the construction of any square feet of gross floor area of commercial and office gross floor area within the property building permits shall have been issued for at least 100 dwelling units prior to the issuance by the county of a building permit that would authorize construction of up to 200 square feet of gross floor area of commercial and office within the property, building permits shall have been issued for at least 600 dwelling units. That is in your packet, too.

Ms. Harrell said she would guess the 600 dwelling units is what we don't think we could ever do anyway. So we did not try to change the entire proffer. She thinks the 30 units actually came up five years ago when we were doing the movie theater and working with Mark Graham at that time. It is the second part of the proffer she believes that they are trying to change because it is about the 600 units which we don't think we will ever have.

Mr. Keller said he thinks now we are seeing what the point is.

Ms. Harrell asked is not that correct Rebecca we are only trying to change the second part of the proffer. We are not changing the first part.

Ms. Ragsdale pointed out the proposed language has both. The old proffers were attachment B and the new proffers are in there as well. So the change is to the first and the second part of the proffer that prior to building permits they would authorize up to 75,000 square feet of commercial office building permits shall have been issued for at least 30 residential units. So it is lowering like you said the number of residential that is required and then they can do a little more commercial which we don't have any concerns about because we are still getting mixed use within Hollymead Town Center. As she said other sections have built residential as we noted in the staff report and then this also has the code of development that has minimal residential units required in blocks. Even though it is not being driven by the apartment complex we did not really analysis these proffers with that project in the back of our mind; we were analyzing them you know do we have any concerns about any of these changes and we just don't put this one in.

Ms. Harrell said actually she really thought we had gotten the 30 units approved when we did the movie theater because that is where the 30 units came from. Perhaps it was not approved because we had so many iterations of these proffers that we all have gotten very confused. So we actually thought the 30 units was approved when we did the movie theater. So she thinks that was a holdover from those proffers at that time.

Mr. Keller thanked Ms. Harrell.

Ms. Echols said Mr. Chairman for simplicity sake if the Commission believes that the phasing proffer does not need to be changed it will not impede their ability to do the residential complex that has been described.

Mr. Keller asked do we have an overall figure for the total project beyond this just for background of the amount of square feet of commercial that has been constructed and the amount of homes so that we can compare that to the original number of all pieces that were proposed in the beginning to get back to Mr. Butler's point.

Ms. Ragsdale replied that she does not have the exact figures.

Ms. Echols pointed out that she may have them. In Hollymead Town Center Area A2 nothing has been developed.

Mr. Keller said he understands that; but, the point that has been made that he thinks they all understand and we have heard from the applicant as well on this, and he is not saying it is fact, he is asking you for the figures. The supposition is that there was a formula for the amount of commercial and residential and to date we have had significantly more commercial than we have residential that would have complimented that. Now we have a phased piece which is encouraging more commercial to occur before a certain residential number can be met yet again. He is not saying that any of that is fact for the record; he is asking for a clarification as to whether it is.

Ms. Ragsdale said that we don't have it; but, Ms. Echols is looking to see what the total number that may have been built in the other sections. Abington Place has been built and there have been the townhomes over in Area C. As like you said some of the other sections actually were approved with more commercial than this one, and this one was approved with the bulk of residential. But, we don't have that tabulated for you. We can just sort of eyeball it on the aerial with what you can see on the ground since we don't have the square footage and number of total units.

Ms. Echols asked for a moment on that request.

Mr. Keller invited other discussion.

Ms. Riley said she would like to stay on proffer 11. It seems that the majority of the pitch this evening is that they want this apartment complex to be able to go forward. But, changing the phasing in proffer 11 is not necessary for that to happen. She is not inclined to recommend that.

Mr. Keller said if we follow with counsel's approach that we have done twice now would it be your recommendation, Mr. Blair, that if Ms. Riley made that as a motion to amend the conditions.

Mr. Blair said what we have before us is set of amendments to the proffers. Currently one of the proposed amendments is to proffer 11 on the phasing portion. He would advise if you want to make a motion to move to reject the proposed amendment to proffer 11.

Ms. Riley said before she did that she just wondered if they want to go down this in order numerically and just start with proffer 1.

Ms. Firehock said she has a question for counsel. She does not understand why we can't simply take this list of proposed proffers and then we can say these are the ones we support and these are the ones that we don't. She wondered if what is happening is they were going to do each one, one at a time if you support 3 and 3 of them and not 2 of them.

Mr. Blair said for clarity sake it was for two reasons. Number one there is the clarity aspect of voting one at a time. Number 2 he thinks you can get the issues mixed up. Let's say you offer an amendment to accept the amendments to proffer 1 and proffer 8, but not to proffer 11, 13 and 4 that may die. And then what you have is no one knows who supports any of these amendments. It could end up in a permutation of many different sort of motions coming when you are talking about multiple proffers. That is just my advice to take them one by one if there are feelings that way because he thinks they could end up with a lot of motions. It could be while I support 4, but I don't really support 13; but, she supports 4 and 13.

Ms. Firehock thanked Mr. Blair.

Ms. More said she had a question about the comparison chart. She knows this was something that was given to us. But, the 44 ½ acres is the entire site some of which has already been developed. She asked if that is correct.

Ragsdale replied that the 44 acres in this chart is just A2.

Ms. More said she thinks that is just a little bit misleading because what we are being shown here is there is a choice of residential units of 550 and then non-residential units none, and then what could be done non-residential is 250,000 square feet and they want to ultimately propose a mix of development. She does not really understand what the purpose of this comparison chart is. It is just one section of the property and she did not know if they can get those numbers tonight. It seems that it has been largely developed commercially.

Ms. Ragsdale pointed out this was provided by the applicant and she has not seen it until this evening. So she can't speak to that. But, overall with Hollymead Town Center she thinks we were trying to pull up some of the capacity analysis and figures that Ms. Echols has worked on with the comp plan update. So we think it is about 250 units of residential that have been built like we said with Abington and the other townhouses. She did not know if they have gotten to the commercial.

Ms. Echols said no, she did not have any updated figures on how much non-residential has been built. She thinks it goes back to 2013 and she does not have it any more updated. But, we had Hollymead Town Center Area C which has 42 units in it, and Abington Place which has about 200. So it is somewhere around 250 units that have been built so far. But, it certainly is not the high numbers that would be in A2. This would be first part of A2 that would be developed.

Mr. Lafferty asked do we know how many of those 250 are affordable.

Ms. Echols replied that she would have to relook at the proffers to see if they all proffered 15% affordable because she does not remember. At this point she would have to look up the proffers and see what it is at that time.

Ms. Ragsdale noted that she does have that on the affordable housing sheet. She does not know that those areas had affordable housing proffers. They are not on my list. She knows A2 is on her list; but, she did not believe the other sections had the affordable housing proffer.

Mr. Lafferty asked if they did not conform to the comprehensive plan.

Ms. Echols said if the Commission wants staff to provide some additional information that is also an option. If you feel like you can't take action tonight, we can provide you with the additional information you need in order to have a full picture because we don't have all of that information at our fingertips to give you at this moment.

Mr. Keller said he thinks some important questions have been asked this evening and some strong points have been made by the applicant and by the public. He would be comfortable if somebody was interested in making the motion that you just outlined that we defer and staff comes back with more specific information.

Mr. Firehock asked for information on what was promised originally for the entire site and what has actually been built.

Mr. Keller agreed.

Ms. Echols said she thinks the applicant needs to be amendable to the deferral in order for the Commission to do that because she believes the time period is up.

Mr. Keller noted that was a question the Commission needs to ask Mr. Wood. If he was not amendable to that, then we will have to take action.

Mr. Wendell Wood apologized again because he was confused. The other areas are not ours. We don't own them. We are talking about what our restrictions are. We do not own anything other than A2 and never have and can't control that section. We have not put apartments on our section and that is what we were instructed to do and what they are trying to do.

Mr. Keller said that we understand. But, there was an overall concept that was agreed to with a number of different components to it.

Mr. Wood pointed out each section had its own requirements. Each section has an amount of commercial that can be built on ours. There is an amount of apartments that could be built. It had a staging of what it is. We are actually behind. We have built commercial on our section and have built no apartments. So it is almost a reverse of what is being asked. We are not asking for more commercial. I would think you would be saying hey you have not done your residential proportion. We have built no residential in 9 years. The other parcels that we are talking about I think staff can easily find in a moment. We have no control over how that is built. We are asking to build apartments which we really thought that was what we were being instructed to do.

Mr. Keller said he will take a shot at it and then fellow Commissioners can weigh in. He said the concern comes over this phasing and the fact that there is still the protection for a significant amount of commercial to be built with a lower. So if that phasing piece came out so that we knew that it was going to be residential it would complement that greater picture of commercial that had occurred. So maybe we are not far off here in what we need to agree on.

Mr. Wood said he did not think we are. That is what he means they are trying to catch up. We have zero apartments. We are trying to build a portion of apartments that we were being requested to build. This is the first apartment request on what we own.

Mr. Keller asked if there was anyone else who wanted to speak. There being no one, he closed the public hearing to bring the matter before the Commission.

Ms. Firehock said it seemed to me that in listening to all the testimony about the different proffers the number one thing that she heard really was the concern about the amount of the cash proffers. She knows that there was also a statement made that if we could not support reduction of the cash proffers they would not then be able to support the affordable housing proffer. So we are talking a lot about phasing and other aspects and she was just sort of calling out that was the number one thing she has heard.

Mr. Keller said he thinks that would change my mind. He noted that Ms. Echols got me thinking about we could put it off; but, he thinks we should go forward and go through the points if we are going to take counsel's suggestion and we go point by point and see whether we are supportive or not. He said they can either do it as a straw pull up here to get a sense or we can vote each one for the proffers.

Ms. Spain said she needs a point clarification that you just said if the cash proffers are not revoked there could be no affordable housing. My understanding was that if you can't get the cash proffers reduced there will be no apartment building at all. She asked is that correct.

Mr. Lafferty said that is what we were told.

Ms. Firehock pointed out it was from this particular person who is proposing to build, but not for all time necessarily. The case has been made that the market does not support this project.

Mr. Keller asked for a motion on the first staff recommendations for approval of the proffer amendments.

Ms. Riley asked that they start with Proffer #1. The staff has recommended approval of eliminating the minimum percentage of units required for-sale and to revise the banking/carry-over requirements. She thinks that is a reasonable thing. Personally she did not think they need to tie the percentage to for sale. She thinks there is a real demand for affordable rental units as well. She thinks that the banking carry-over requirements is okay as long as in the end there is 15 percent units total. But, the staff does not recommend revising how the percentage of affordable units are calculated from the total number of units within the development to total market rate units. She would agree with that because she did not want to see the number of affordable units reduced, which is what that would do.

Ms. Firehock seconded.

Mr. Keller said let's go in order and just handle the first half of that.

Mr. Blair said or in effect you could make on that one just to approve staff's recommendation as proffer 1 because staff is recommending approval of that portion of proffer 1 and disapproval of the other portion of the amendment.

Mr. Keller asked Ms. Riley if she was agreeing that was the point.

Ms. Riley made a motion to agree with the staff recommendation on proffer #1.

Mr. Keller asked if the motion was for both the part that staff recommends and the part that they don't recommend.

Ms. Riley replied yes.

Mr. Keller asked for a roll call vote.

The motion passed by a vote of 6:0:1. (Dotson absent)

Mr. Keller thanked them for helping us move this along. He asked for a motion on the next proffer.

Ms. Ragsdale said she thinks we decided to go in order of the proffer and not down the list as she had them here. So it takes us to proffer 4 to reduce the CIP cash proffer amounts.

Mr. Lafferty moved to agree with staff's recommendation not to recommend the approval of Proffer 4 to reduce the CIP cash proffer amounts.

Ms. Riley seconded the motion.

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

The motion passed by a vote of 6:0:1. (Dotson absent)

Mr. Keller said they would move down the list.

Mr. Lafferty said Proffer 8 is the next one.

Ms. Riley said that she thought she heard the applicant agree with the staff recommendation to not remove the cash proffer in its entirety for off-site recreation facilities, but to suggest that the cash proffers for the difference of the 1,222 and the 913 units that there would be a \$500 cash proffer for those. She said maybe that was not stated very clearly.

Ms. Echols replied yes, that was staff's recommendation and we did hear that the applicant said that they would be willing to proffer that. She was not sure how you would word that one.

Mr. Blair said the way that Proffer 8 is worded right now staff does not recommend approval of the proposed Proffer 8. He asked is that correct.

Ms. Echols replied that actually it is as it is written on the screen that staff does not recommend amendment to remove the cash proffer in its entirety; we recommend keeping the proffer revising it to begin proffer payments with the 913 unit within the development, and the applicant verbally agreed to that.

Mr. Blair said right, and so you would move to adopt the recommendation by staff for Proffer 8.

Ms. Riley made the motion to adopt the staff recommendation as written by staff for Proffer 8.

Ms. Firehock seconded the motion.

The motion passed by a vote of 6:0:1. (Dotson absent)

Mr. Keller noted the next number is Proffer 11.

Mr. Lafferty moved to recommend accepting staff's recommendation on Proffer 11 of the phasing plan to eliminate the requirement for a set ratio of commercial to residential square footage to be constructed over the life of the project.

Ms. Spain seconded the motion.

Mr. Keller invited discussion.

Ms. More pointed out that phasing was the one thing she was hearing from most people that they were not comfortable with.

Ms. Firehock pointed out that we did not see that it was necessary.

Ms. More agreed and asked if she misunderstood the wording.

Mr. Keller pointed out there was a motion and second, but now we have a discussion.

Ms. More said that out of all of them that was the one that at least some commissioners expressed a concern to not change the phasing because that does not affect their ability to move forward. They can move forward with residential without us changing the phasing so it does not need to be removed necessarily.

Mr. Keller suggested they vote on this and then we can come back if your view is held and you can make a motion the other way on this.

Ms. Spain said she thought that the intent was only for the residential part of this, which basically makes the phasing plan relevant at this point right or not.

Ms. Riley said she thinks she heard the applicant and the staff say that this change that is recommended for the phasing plan is not necessary for this apartment complex or other residential development to go forward.

Mr. Keller invited Ms. Echols to jump in.

Ms. Echols said she thinks if the Commission believes that the existing proffer that has been approved in year's past is sufficient, then they don't want to follow staff's recommendation that has been put in the staff report.

Ms. Ragsdale pointed out the recommendation is to approve the proffer as amended not to eliminate it altogether. That is what the applicant has proposed. She explained that it changes the ratio a little bit; but, the proffer that has been submitted is like we talked about to reduce the number of residential units that are required as compared to the commercial.

Mr. Keller asked if the previous one that we are acting on would have called for more residential sooner than commercial.

Ms. Ragsdale replied yes.

Mr. Keller said first we have a motion and so we either have to have it withdrawn or we have to vote on it.

Mr. Lafferty said since we have a second he did not know if he could withdraw the motion.

Mr. Blair said if there has been a second, then it probably needs to be voted on.

Mr. Keller asked for a roll call.

Ms. Taylor called the roll.

Mr. Lafferty voted no.

Ms. Spain voted no given my current understanding of the situation.

Ms. Keller voted no.

Ms. Firehock voted no.

Ms. Riley voted no.

Ms. More voted no.

The motion for approval failed by a vote of (0:6:1) (Lafferty, Spain, Keller, Firehock, Riley, More nay).

Mr. Keller thanked the commissioners for the good humor in which they have dealt with this.

Mr. Lafferty said it was a valuable discussion.

Mr. Keller said it is the value in going through these point by point so he appreciates what counsel is having us do.

Mr. Lafferty agreed that they needed to deal with it.

Mr. Keller asked for a new motion.

Ms. More made a motion to not amend Proffer 11 the phasing proffer.

Ms. Riley seconded the motion.

The motion to not amend Proffer 11 phasing was approved by a vote of (6:0:1) (Dotson absent).

Mr. Keller noted next is Proffer 13. He asked if he remembers that there may be some changes in that.

Ms. Ragsdale replied no, this is just the one to add those amenities. We have dealt with the other one already. So this is a new proffer that they would be adding.

Mr. Keller asked for a motion.

Ms. More made a motion to recommend approval of Proffer 13, the recreation amenities as outlined by staff.

Mr. Lafferty seconded the motion.

Mr. Keller invited discussion.

Ms. Firehock said her impression of that particular proffer that was added was it was to off-set getting rid of the contribution to the regional recreational amenity. So if you accept this we are sort of making the developer do the thing they originally was supposed to do plus more than what they originally came forward with.

Ms. More said it is the \$500 and they are saying they will happily give that after 913 units, which indicates to me here there is no intention to ever reach that many units. What she is seeing from these numbers is they were happy to proffer that at 913 or maybe even 800 because she did not think they are going to reach that many units. That is what she is seeing from the comparison chart for A2.

Mr. Keller asked if that affects your opinion, and Ms. More replied no, because she did not think the \$500 is going to come into play.

Mr. Keller asked for a roll call.

The motion was approved by a vote of 6:0:1. (Dotson absent)

Mr. Keller said the request will be going forward with our recommendations to the Board of Supervisors for a decision. He thanked everyone that came for this.

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

Other Public Comments.

Mr. Keller invited other public comments.

Neil Williamson, Free Enterprise Forum, said he appreciate each of your personal opinions and your personal passions. He was concerned, however, that some of these philosophies may be expanding the scope of this Commission beyond your legal standing. Tonight you discussed a hotel considering a green roof, and it is unclear how that really connects to the Planning Commission function. You also discussed and he was very fearful of how an owner should consider a conservation easement. He was in favor of voluntary conservation easements, but he does not think government should be really engaged in that other than he still believes they should have a public hearing so the neighbors know what is going on. You also mentioned permeable pavement far beyond your scope for two different churches. He said it is a tease that we would hear about grass creek, but he did a little internet research and learned a little bit about that UK grass creek. It is fascinating, but he just does not know how that falls really in the purview of the Planning Commission. He said my main reason for speaking this evening is to mention my concern for the manner in which you and the Board of Supervisors are processing cash proffer amendments. Under the 2013 Code change he spoke to this group and the Board of Supervisors each a dozen times saying you are operating illegally and he was told the FIAC committee is working on this. Tonight he understands that you have wasted the community's time with the FIAC committee. Your staff report calls the FIAC committee report outdated. Twelve months coming before you and the Board of Supervisors saying do something, which is why it is outdated you did not do something. He was not sure what law you are operating in this time for applications that are not July 1 applications. Your legal team has determined that you don't have standing or suggests you don't have standing under the current state law to have to consider this or these other applications. He asked what law you are operating under. He thinks the legal team should provide a clear explanation of that. He thinks technically you are absolutely correct you are not operating under a law for applications that came forward after July 1. He asked are they ignoring the 2013 state law change because it certainly seems that way. Thank you.

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

Old Business

Mr. Keller invited old business.

Mr. Keller said under old business we all spent some time thinking about historic resources at the last meeting and Ms. Echols was going to give us an update on how that moved to the Historic Preservation Committee.

Ms. Echols said Ms. Riley was at the Historic Preservation Committee meeting yesterday. Staff took the recommendations from the Planning Commission with some minor additions because the Chair of the Historic Preservation Committee suggested that those be included in what went to the Historic Preservation Committee. The Historic Preservation Committee was good with those changes and also wanted to add a few more things to the zoning text amendment. What they said is that in terms of the considerations for the special use permit and for modifications to historic sites archeology resources should be considered. They wanted the text to clarify that the special use permit is potentially available for structures that have historically been used as restaurants, taverns or inns just to add some more clarity. There was a lot of discussion about how the State or National Register eligibility comes into play. She thinks our biggest take away from that is that as with you all there is a desire that nothing that would get changed would affect the resources listing on the National Register; it is just a matter of how you clarify in the zoning ordinance what that means. So staff is working on that to meet the things you all and the Historic Preservation said and bring back to you all in the recommended ordinance amendment that the Commission will see hopefully in October. She did not know if it would be the first or second meeting in October for a public hearing, but

she believed it would be one of those. Staff will get it to the Commission just as soon as they can for some recommendations and let them take it from there.

Mr. Keller thanked staff.

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

New Business

Mr. Keller invited new business. He announced the following:

- *THERE ARE NO PLANNING COMMISSION MEETINGS ON TUESDAY, AUGUST 30, 2016 AND TUESDAY, SEPTEMBER 6, 2016. THE NEXT PLANNING COMMISSION MEETING WILL BE HELD ON TUESDAY, SEPTEMBER 13, 2016.*
- The next Planning Commission meeting will be held on Tuesday, September 13, 2016.

Ms. More asked to give a quick update about the Crozet CAC meeting she attended last week. She reported that they had our first video podcast that was done live and the Crozet Gazette sponsored that podcast. She thinks having the live podcast was a really exciting thing that is something they want to continue to do. We had Captain Greg Jenkins there to have his community meeting and he presented to the group about a satellite office that will be part of their geo-policing movement and that will be located in Old Trail. She thinks that is a consent agenda item that they will be hearing when the Commission meets again in two weeks.

Mr. Blair pointed out it is a compliance review, not a detailed review of the plan, but just whether it is consistent with the comprehensive plan. He said that will be a September consent agenda item.

Ms. More reported that they also heard from Frank Stoner and he is developing the former Barnes Lumber property and he will be back in front of the CCAC in September prior to being in front of the Planning Commission. It was a pretty exciting meeting.

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

Adjournment

With no further items, the meeting adjourned at 10:06 p.m. to the Tuesday, September 13, 2016 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)

Approved by Planning Commission
Date: 12-6-2016
Initials: SCT