

**Albemarle County Planning Commission  
October 6, 2009**

The Albemarle County Planning Commission held a public hearing, work session and meeting on Tuesday, October 6, 2009, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Marcia Joseph, Don Franco, Calvin Morris, Bill Edgerton, Linda Porterfield, Thomas Loach, Vice Chairman and Eric Strucko, Chairman. Julia Monteith, AICP, non-voting representative for the University of Virginia was absent.

Other officials present were Wayne Cilimberg, Director of Planning; Elaine Echols, Principal Planner; Mark Graham, Director of Community Development; Scott Clark, Senior Planner; David Benish, Chief of Planning; Bill Fritz, Director of Current Development; Francis McCall, Planner; Amelia McCulley, Director of Zoning/Zoning Administrator and Greg Kamptner, Deputy County Attorney.

**Call to Order and Establish Quorum:**

Mr. Strucko called the regular meeting to order at 6:00 p.m. and established a quorum.

**Committee Reports:**

Mr. Strucko invited committee reports.

- Mr. Franco reported that the Fiscal Impact Advisory Committee met last week. A series of meetings will be held during the next couple of months, which will be timed with the CIP's moving forward through the County process. The primary focus is to look at the methodology used to create the proffer policy. Ideally a recommendation will be made during the spring timeframe.
- Mr. Edgerton reported that the ACE Committee met several times over the past couple months and are in the process of trying to adjust the conditions of the ACE easement to encourage people to do certain things that will specifically focus on groundwater protection and establish buffers. The Committee has not resolved it yet and will meet next week.
- Mr. Loach reported that the Crozet Advisory Council is working with staff to set up focus area meetings that will take the community through the master plan revision. A town hall meeting was recently held with the county, which was very well attended. The Library Committee will meet next month to look at installing the parking first to address the parking needs for Downtown until the economy picks up. His other committee, CHART, is meeting tomorrow with a presentation from VDOT on a Route 29 report.
- Mr. Morris reported that the Pantops Steering Advisory Committee met last week to say good bye to their staff representative Britton Miller. Dick Jennings, a resident of Westminster Canterbury was selected as the new Chair.
- Ms. Joseph reported that the MPO Tech Committee met. VDOT has a modeling program up and running that the Thomas Jefferson Planning District can help us use. One of the things it does is provide pollutant outputs. The city and county along with the Thomas Jefferson Planning Commission are looking at a Hollymead/Downtown Commuter Bike Project. She also noted more people are riding the Jaunt and CPS buses.
- Ms. Porterfield noted that the Historic Preservation Committee met, but she missed the meeting. An update will be provided next month.

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

**Other Matters Not Listed on the Agenda from the Public:**

Mr. Strucko invited comment from the public on other matters not listed on the agenda. There being none, the meeting moved to the next item.

**Consent Agenda:**

**APPLICANT REQUESTS INDEFINITE DEFERRAL OF THE FOLLOWING:**

- a. **SDP200700083 Anderson Property/Verizon Tier II – Final**
- b. **SDP200700092 Cervenka Property/Verizon Tier II PWSF – Final**
- c. **SDP200700100 Sprouse Property/Verizon Tier II – Final**
- d. **SDP200700135 Fox Property/Verizon Tier II PWSF – Final**
- e. **SDP200800015 Christian Aid Mission/Verizon Tier II PWSF – Final**
- f. **SDP200800039 Durkin Property – Verizon Wireless/Verizon Tier II PWSF – Final**
- g. **SDP200800075 Easton Estate/Verizon Tier II – Final**
- h. **SDP200800132 Ramland Corp/Verizon Tier II – Final**

**PC Referral Consent Agenda Text**

- a. **SDP-2008-00015 Christian Aid Mission/Verizon Tier II PWSF – Final**  
Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 85 feet tall (741 feet AMSL) and 10 feet AMSL above the height of the tallest tree within 25 feet, with a 12'x 30' x 12 (W x L x H) prefabricated shelter/equipment cabinet. This application is being made in accordance with section 23.2.1.14 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in (CO) Commercial Office. The site contains 12.5 acres, and is described as Tax Map 59, Parcel 23G1. The property is located in the Samuel Miller Magisterial District and is zoned CO, Commercial Office. The Comprehensive Plan designates the property as Commercial Office in Rural Area 1. (Gerald Gatobu) ***APPLICANT REQUESTS DEFERRAL TO JANUARY 15, 2010.***
- b. **SDP-2008-00039 Durkin Property – Verizon Wireless/Verizon Tier II PWSF – Final**  
Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 105 feet tall (664 feet AMSL) and 10 feet AMSL above the height of the tallest tree within 25 feet, with a 12'x 30' x 12 (W x L x H) prefabricated shelter/equipment cabinet. This application is being made in accordance with section 10.2.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the (RA) Rural Area. The site contains 29.27 acres, and is described as Tax Map 34, Parcel 70. The property is located in the Rivanna Magisterial District and is zoned RA Rural Area. The Comprehensive Plan designates the property as Rural Area in Rural Area 2. (Gerald Gatobu) ***APPLICANT REQUESTS DEFERRAL TO JANUARY 15, 2010.***
- c. **SDP-2008-00075 Easton Estate/Verizon Tier II – Final**  
Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 85 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet). The ground equipment, which will be placed on a platform, will consist of six 35.4"x32"x72" cabinets containing transmitters and radios, two 30.71"x30.56"x69.17" cabinets containing batteries, and a stand-alone diesel powered emergency back-up generator. The monopole and ground equipment will be contained within a 2,500 square foot lease area on the property. This application is being made in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property is 4.5 acres, described as Tax Map 79A1-C, Parcel 35, is located in the Scottsville Magisterial District and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property as Rural Area in Rural Area 2. (Gerald Gatobu) ***APPLICANT REQUESTS DEFERRAL TO JANUARY 15, 2010.***
- d. **SDP-2007-00083 Anderson Property/Verizon Tier II – Final**  
Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 98.5 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with a 12-foot high 360 square foot shelter/equipment cabinet. This application is being made in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property is 13.68 acres, described as Tax Map 105, Parcel 46, is located in the Scottsville Magisterial District and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property

as Rural Area in Rural Area 3. (Gerald Gatobu) ***APPLICANT REQUESTS DEFERRAL TO JANUARY 15, 2010.***

e. **SDP-2007-00092 Cervenka Property/Verizon Tier II PWSF – Final**

Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 104.5 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with a 12'x 30.42' x 10.58' (W x L x H) shelter/equipment cabinet. This application is being made in accordance with section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property contains 3.06 acres, described as Tax Map 93, Parcel 47N, is located in the Scottsville Magisterial District and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property as Rural Area in Rural Area 4. (Gerald Gatobu) ***APPLICANT REQUESTS DEFERRAL TO JANUARY 15, 2010.***

f. **SDP-2007-00100 Sprouse Property/Verizon Tier II – Final**

Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 100 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with a 12-foot high 320 square foot shelter/equipment cabinet that will be contained within a 2,500 square foot lease area. This application is being made in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property is 2.21 acres, described as Tax Map 57, Parcel 8A, is located in the Whitehall Magisterial District and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property as Rural Area in Rural Area 3. (Gerald Gatobu) ***APPLICANT REQUESTS DEFERRAL TO JANUARY 15, 2010.***

g. **SDP-2008-00132 Ramland Corp/Verizon Tier II – Final**

Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 99.5 feet tall (10 feet AMSL above the height of the tallest tree within 25 feet), with a 12-foot high 200 square foot shelter/equipment cabinet that will be contained within a 2,500 square foot lease area. This application is being made in accordance with Section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The property is 3.001 acres, described as Tax Map 42, Parcel 9K, is located in the Whitehall Magisterial District and is zoned RA, Rural Areas. The Comprehensive Plan designates the property as Rural Area in Rural Area 3. (Gerald Gatobu) ***APPLICANT REQUESTS DEFERRAL TO JANUARY 15, 2010.***

h. **SDP-2007-00135 Fox Property/Verizon Tier II PWSF – Final**

Request for approval of a treetop personal wireless service facility with a steel monopole that would be approximately 115 feet tall (578 feet AMSL) and 10 feet AMSL above the height of the tallest tree within 25 feet, with a 12'x 30.42' x 10.58' (W x L x H) shelter/equipment cabinet. This application is being made in accordance with section 10.1.22 of the Zoning Ordinance, which allows for Tier II wireless facilities by right in the Rural Areas. The site contains 1.99 acres, and is described as Tax Map 47, Parcel 18. The property is located in the Rivanna Magisterial District and is zoned RA, Rural Areas and EC, Entrance Corridor. The Comprehensive Plan designates the property as Rural Area in Rural Area 2. (Gerald Gatobu) ***APPLICANT REQUESTS DEFERRAL TO JANUARY 15, 2010.***

Mr. Strucko noted that there are eight indefinite deferral requests from Verizon for wireless facilities. He asked if any Commissioner would like to pull an item from the consent agenda for further review.

Mr. Morris asked if there was any specific reason for all of these deferrals being requested at the same time.

Mr. Fritz replied that the applicant initially requested deferral of all of the requests at the same date. Therefore, all of the requests are coming due for an extension of the deferral on the same date. It has to do with the merger of Verizon with Alltel.

**Motion:** Mr. Morris moved and Mr. Franco seconded for approval of the consent agenda.

The motion passed by a vote of 7:0.

Mr. Strucko noted that the consent agenda was unanimously approved.

**Public Hearing Items:**

**AFD-2009-00003 Sugar Hollow**

Review of the Sugar Hollow Agricultural/Forestal District: Periodic (10-year) review of the Sugar Hollow Agricultural/Forestal District, as required in Section 15.2-4311 of the Code of Virginia. The district includes the properties described as Tax Map 25 Parcels 11C, 12, 13, 14, 14A, 14B, 14C, 18, 18A, 18B, 21, 21A, 24, 25, 26, 27, 28; Tax Map 26 Parcels 5A, 9, 10, 10B, 10D, 10F, 11C, 11D, 12A, 13, 19, 40B, 40C, 41A, 52, 52D; Tax Map 27 Parcels 8, 8E, 26; Tax Map 39 Parcels 2, 2A, 3, 4, 14, 15, 25, 25A; Tax Map 40, Parcels 1, 9, 9C, 10, 10A, 10B, 10C, 12B1, 22, 22A, 27A, 46C1, 49. The district includes a total of 4,944.34 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Scott Clark)

Mr. Clark summarized the staff report, as follows.

- Staff recommends the Planning Commission recommend renewal of the District for another ten-year period.

The district is located to the west and north of White Hall. The majority of the district is located in the North Moormans River watershed, which drains to the South Fork Rivanna River and the community's largest surface drinking water supply. The remainder of the district drains to the Beaver Creek reservoir. Land cover in the district is largely forested.

The district was created in September, 1989, and originally included 2,546 acres. The following table shows the history of the district:

|                               | Acres    |
|-------------------------------|----------|
| <b>1989 District Creation</b> | 2546.007 |
| <b>1990 Addition</b>          | 697.718  |
| <b>1993 Addition</b>          | 1590.586 |
| <b>1999 Addition</b>          | 71.593   |
| <b>1999 Withdrawal</b>        | 80.83    |
| <b>2002 Addition</b>          | 156.268  |

The district now includes 4,901.21 acres.

Landowners may withdraw their parcels from districts by right during a renewal at anytime before the Board of Supervisors takes final action to continue, modify, or terminate the district. No landowners have requested withdrawal yet.

Mr. Strucko invited questions for staff.

Mr. Edgerton asked if there had been no requests for additions to this tied to the new land use.

Mr. Clark replied that additions have to be done in a separate process.

Mr. Cilimberg noted that the Commission had received the proposed additions as of September 1. Requests can be made to those additions from persons who received adjacent owner letters. But, the official deadline has passed of September 1 for this year.

Mr. Edgerton said that the agricultural forestall district designation guarantees land use under the new interpretation of lands use.

Mr. Kamptner said that it makes the land eligible for land use provided that it is actually used for that use. It is a prerequisite to qualify for open space land use. It is one of three ways in which land must be held in order to qualify for land use. It also has to be devoted to open space uses under the tax laws.

Mr. Cilimberg pointed out that staff will be bringing those additions in two new districts on that list to the Commission on November 10.

Mr. Morris said that he was really encouraged to see that in the past 20 years that the amount of land in this particular area has doubled.

Mr. Strucko opened the public comment and invited public comment.

Bob Gossup, resident of Sugar Hollow, said that he had 15 parcels of land in a district in an open space conservation easement. He questioned since they can't withdraw at any other time except between now and November, what possible benefits would be lost with withdrawal considering that it is already an open space easement.

Mr. Strucko replied that the Commission would answer his questions after they get through the public comment session.

Mr. Gallius asked if the property was sold to a new owner is the new owner committed to the ten-year period.

There being no further public comment, Mr. Strucko closed the public comment to bring the matter back before the Commission for further discussion and possible action.

Mr. Strucko asked that the Commission address Mr. Gallius' questions.

Ms. Joseph noted that if he had land under conservation easement that is also in the agriculture/forestall district does it make any difference that he is in the agricultural/forestall district or not.

Mr. Clark replied that it would not make any difference. Being under the easement and in the agriculture/forestall district are both equal qualifications for the open-space tax rate. Easements are typically more restrictive than districts and are permanent. Once in an easement he did not think being in the district is much of anything other than just being part of the community. He noted that a new owner would be committed to the ten-year period.

#### **Motion on AFD-2009-00003 Sugar Hollow Agricultural Forestal District Renewal:**

**Motion:** Mr. Loach moved and Mr. Morris seconded, to recommend approval of AFD-2009-0003, Sugar Hollow Agricultural Forestal District Renewal for a ten-year period.

The motion passed by a vote of 7:0.

Mr. Edgerton stated that AFD-2009-00003, Sugar Hollow Agricultural Forestal District Renewal would go before the Board of Supervisors on November 4, 2009 with a recommendation for approval.

#### **AFD-2009-00004 Chalk Mountain**

Review of the Chalk Mountain Agricultural/Forestal District: Periodic (10-year) review of the Chalk Mountain Agricultural/Forestal District, as required in Section 15.2-4311 of the Code of Virginia. The district includes the properties described as Tax Map 97 Parcels 21, 21A, 21A1, 21B, 21B1, 21C, 21D, 22, 22A, 22B, 22C; Tax Map 98, Parcels 1G, 11, 12, 13, 14, 30. The district includes a total of 1,560.6 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Scott Clark)

Mr. Clark presented a PowerPoint presentation and summarized the staff report.

- The district was created in October, 1999. No parcels have been added or withdrawn from the district since it was created. The district includes 1,560.6 acres.
- There are some requested withdrawals shown in the red cross-hatch. The withdrawal is a total of 575 acres. The remaining district would be 984 acres. This request came in yesterday, which was after the agricultural forestall committee saw this item.
- On August 4, 2009 the Agricultural/Forestal Committee recommended that the Board continue this District for a ten-year period. Staff recommends the Planning Commission recommend renewal of the District for another ten-year period.

Mr. Strucko invited questions for staff.

Ms. Joseph asked if the land was owned by one family owner, and Mr. Clark replied that it was family ownership and it was sort of overlapping ownership. Several of the family members are considering going under easement. So it would be a benefit to them to be out at this point.

Mr. Strucko opened the public hearing and invited public comment. There being none, the public hearing was closed and the matter before the Commission.

Mr. Kamptner noted that several requests for additions are being processed and will come before the Planning Commission in November.

#### **Motion on AFD-2009-00004 Chalk Mountain Agricultural Forestal District Renewal:**

**Motion:** Mr. Loach moved and Mr. Morris seconded, to recommend approval of AFD-2009-0004 Chalk Mountain Agricultural Forestal District Renewal for a ten-year period.

The motion passed by a vote of 7:0.

Mr. Strucko stated that AFD-2009-00004, Chalk Mountain Agricultural Forestal District Renewal would go before the Board of Supervisors on November 4, 2009 with a recommendation for approval.

#### **Public Hearing Items:**

#### **ZTA-2009-00015 Nonconforming Lots**

Amend Secs. 2.1.4, Reductions of lot areas below minimum prohibited, 3.1, Definitions, and 6.4, Nonconforming lots, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend and rename Sec. 2.1.4 to clarify the regulations pertaining to reducing the size, width and frontage of lots existing on December 10, 1980 below the minimums standards for those lots under the applicable district regulations; amend Sec. 3.1 to amend the definition of "nonconforming lot" to expressly add lot frontage, width and the presence of a building site as elements determining whether a lot is nonconforming, and to cross-reference the lot requirements of section 4; and amend Sec. 6.4 to change the regulations pertaining to subdivisions, lot combinations and boundary line adjustments involving nonconforming lots, and to reorganize the section. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Francis McCall)

Mr. MacCall summarized the staff report. (See Staff Report) He noted that Ms. McCulley would handout revisions that have happened since the packets went out. (ATTACHMENT B)

- ZTA-2009-00015, Nonconforming lots amending the definitions and regulations regarding lot combinations and boundary line adjustments. This amendment deals with some recent variances that have occurred and that have been coming to the Board of Zoning Appeals with regards to these nonconforming lots and boundary line adjustments that happen. The language is being proposed in regard to three different sections. Specifically Section 6.4 is

where the heart of the changes that they are actually going to be discussing is located. The other changes are grammatical and definition enhancements.

**PUBLIC PURPOSE TO BE SERVED:** The proposed change would:

1. Allow for the nonconforming lot section of the ordinance to be more easily understood by staff and the public.
2. Allow the public to adjust the boundary line(s) of their property without the need for variance granted by the Board of Zoning Appeals (BZA). This has become a recurring variance; therefore, we are directed by Virginia Code to review our regulations.
3. In many cases, a nonconforming lot combination or boundary line adjustment better serves a public purpose. Examples of this public purpose include a) combining two lots that are below the minimum lot size to create one larger lot; b) adjusting boundary lines to 1) allow the septic system serving the house to be located on the same lot; 2) allow the house or other structure which does not meet structure setbacks to be setback further from the property lines and 3) allow acreage shifts between lots such that property can be placed into conservation easements or land use.

Zoning Ordinance Section 6.4 allows for boundary line adjustments (BLA) between conforming and nonconforming lots. Currently there are two ways the Zoning Ordinance allows the property lines of nonconforming lots to be adjusted. First, there needs to be at least one lot that is a conforming lot and the "...adjustment does not make the conforming lot nonconforming or the nonconforming lot more nonconforming." Second, if both of the lots are nonconforming, the adjustment must either make all lots conforming or must be determined by the zoning administrator to "more substantially conform to the requirements of section 4.0 (general regulations) of this chapter and the area and bulk regulations applicable to the district in which the lot is located, and comply with all other applicable requirements of the Albemarle County Code." This high standard for adjustments to nonconforming lots has precipitated variance requests. When variances are repeatedly requested for the same reason, the locality must then look at the regulations that are being varied and determine if those regulations need to be amended. In addition, the current high standard does not adequately serve the public interest (see #3 in public purpose to be served by the ordinance amendment). Staff has reviewed our current nonconforming lot regulations and has determined that the sections proposed are the appropriate sections for amendment.

The draft ordinance amends Zoning Ordinance Sections 2.1.4, 3.1 and 6.4. This amendment will establish consistent requirements for combination and boundary line adjustment involving one or more nonconforming lots.

The proposed ordinance establishes regulations for four different scenarios that can arise when nonconforming lots are altered: 1) subdivisions that include nonconforming lots, 2) combination of nonconforming lots, 3) boundary line adjustments between conforming and nonconforming lots and 4) boundary adjustments between two or more nonconforming lots.

1. A lot is proposed to be divided into new lots. One or more nonconforming lots may be included in the subdivision provided that the resulting lots **fully comply** with the applicable regulations. The nonconformities would no longer exist thus the purpose and intent of the ordinance is met.
2. Two or more nonconforming lots or a nonconforming lot and a conforming lot are combined into one. This essentially eliminates a nonconforming lot and makes the resulting lot more conforming than the individual lot(s).
3. A conforming lot and a nonconforming lot lines are adjusted (BLA). This is permitted as long as the nonconforming lot does not become more nonconforming.
4. The property lines of two or more nonconforming lots are adjusted (BLA). This is

permitted as long as neither lot becomes more nonconforming.

Staff is constantly looking at our language that staff put together with the help of the County's Attorney's Office. After the packets went out staff was in further discussions and came up with a particular section that was brought to their attention. That is one reason they have multiple people looking at the text. Staff found that in Section 6.4, Section D2 and E2 the actual language that was in the packet where it says the boundary line adjustment does not result in an increase in the number of lots or dwelling units that may be established. The unintended consequences was when you have zoning districts that are not rural area districts the potential there is the R-1 or R-2 during a boundary line adjustment may preclude that from happening because there might be additional lots or dwellings. Staff recommended text additions to Sections 6.4 D2 and E2, this added "If the lots are in the rural areas zoning district," to the beginning of the sentences. The change would not increase the development potential of the RA parcels. Staff recommends adoption of the draft ordinance found in Attachment A.

Mr. Strucko invited questions for staff.

Mr. Edgerton asked if there was a case for a third bullet under each one that would mimic the boundary lot adjustment for all areas other than rural areas.

Mr. MacCall replied no because the other zoning districts are governed by the density and the rural areas is governed by density and development rights.

Ms. Porterfield asked if it was four different areas outlined in the country store subsection F. If so, the four areas should be separated by semi-colons. In addition, side yard should be hyphenated. She would take out the semi-colon after nonconforming lot in the next line and take out the comma in the second to last line after "located." She felt that it should all be together. She questioned what would happen if the country store ceased to exist. She asked if they need to deal with it other than just the ownership.

Ms. Joseph asked to talk about septic sites once more concerning if they are talking about making the lot more conforming to add suitable soils for septic. Because this lot does not have suitable soils for septic that by changing this and making it nonconforming thereby they are creating a buildable lot.

Mr. MacCall noted that is the reason they are adding building site to the definition for the rural area. They were looking at other parts of Section 4.0 where there are other requirements under the 30,000 square foot definition that talks about Health Department approval. If they don't have suitable soils it makes it nonconforming and nonbuildable.

Ms. Joseph asked if she did not have suitable soils would they allow a boundary line adjustment to get suitable soils and thereby making that lot buildable.

Ms. McCulley replied that the two dwellings on the lot is a totally different situation. She felt that this language would mean that they would need a variance. With the kernel rule they would be achieving an additional lot by that boundary line adjustment.

Ms. Joseph asked if she had one vacant lot without suitable soils if she would be allowed to do a boundary line adjustment to get suitable soils to build.

Ms. McCulley replied that the existing nonconforming lot language with regards to building sites would let you actually build on critical slopes for the first dwelling. But there are no exemptions from the septic requirement. They would still have to on the nonconforming lot provide septic either on site or off site the primary and reserve based on a three bedroom house. In that situation there would not be adequate septic on the existing lot that is nonconforming.

Mr. Franco noted that they could not restrict them from building so would allow them to put the septic field off site on the adjacent parcel. Therefore he should be allowed to adjust the property line to bring that on site because he was now taking a nonconforming lot and making it conforming.



Ms. Joseph questioned if they were doing anything different than what they are doing now. It sounds as if they can do that boundary adjustment then they are doing what they can now if they can have a septic site off site with an easement.

Mr. Franco said that they would not be allowing any more building.

Mr. Edgerton said that the adjustment of the language on the handouts really locks it in that within the rural areas there are a certain number of development rights based on the parcel configuration right now and they would not get more.

Ms. Joseph noted that there are alternate means of septic that she discussed with Mr. MacCall. So it is possible that they don't need suitable soils and can provide other means of providing that.

Ms. McCulley said that they could use marginal soils and smaller sites through the engineered systems. She noted that since there is no definition of kernel rule in the ordinance that makes this amendment very helpful

Mr. Kamptner noted that they have a consistent and long standing interpretation.

Mr. Strucko invited other questions or comments.

Mr. Kamptner asked to respond to Ms. Porterfield's questions. The term side yard is a defined term in the zoning ordinance and it does not have a hyphen. For consistency they will leave it as it is. Staff will take it into consideration when codifying the ordinance. Regarding the country store question if the country store use ceases that lot would not qualify under subsection F. It would then be subject to the general nonconforming rules in the other subsections. The country store use in the zoning ordinance is fixed in time. The lot is entitled to the fairly flexible standards which apply while the lot is used for the country store uses. So the country store regulations do envision that it is possible that a lot that is used for a country store has that country store use stop. Country store regulations allow the accessory uses that have been established, such as the small office uses, to continue for a period of time. For the nonconforming lots, it is a little simpler. The country store use is in effect and if they do one of these types of boundary line changes, they qualify under F. If the country store use stops, they no longer are entitled to proceed under subsection F.

Mr. Strucko invited public comment.

Roger Ray, land surveyor and land planner, said that the present ordinance wording of boundary line adjustment and division of nonconforming lots is really complicated and unjust to the property owners. Most of the nonconforming lots are larger parcels out in the rural areas. If two lots are nonconforming they cannot do boundary line adjustments. It allows the property owners to correct boundary line adjustments and improve the use on the property. It may allow the moving of the driveway on two nonconforming lots. He felt that this rule change has been long overdue. He commended the staff on their rewording of Section 6.4. He supported the ordinance change.

There being no further public comment, Mr. Strucko closed the public hearing to bring the matter before the Planning Commission.

**Motion:** Ms. Joseph moved and Mr. Morris seconded for approval of ZTA-2009-00015 Nonconforming Lots, with the changes recommended by staff and Ms. Porterfield, as follows:

1. PC recommended grammatical changes to Section A2, Section F, and Section H
2. Staff recommended text additions to Sections 6.4 D2 and E2, this added "If the lots are in the rural areas zoning district," to the beginning of the sentences.

The motion passed by a vote of 7:0.

Mr. Strucko stated that ZTA-2009-00015 Nonconforming Lots would go before the Board of Supervisors on December 2, 2009 with a recommendation for approval.

## **ATTACHMENT 2 of Action Memo – Proposed Zoning Text Amendment Language with changes**

ZTA-2009-00015 Nonconforming Lots

### **ORDINANCE NO. 09-18( )**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, AND ARTICLE II, BASIC REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, and Article II, Basic Regulations, are hereby amended and reordained as follows:

#### **By Amending:**

Sec. 3.1                      Definitions  
Sec. 6.4                      Nonconforming lots

#### **By Amending and Renaming:**

Sec. 2.1.4                  Reduction of lots or areas below minimum prohibited

### **Chapter 18. Zoning**

#### **Article I. General Provisions**

##### **Sec. 2.1.4 Reduction of lots ~~or areas~~ below minimum prohibited**

~~No lot or parcel(s) existing at the time of passage of this ordinance shall not be reduced in dimension or area below the minimum requirements set forth herein of the zoning district in which the lot is located and section 4 of this chapter except for the purpose of meeting or exceeding standards set forth herein or as a the result of the dedication of land to public use to or the exercise of eminent domain by a public agency entity. Lots or parcel(s) Any lot created after the effective date of this ordinance chapter shall meet satisfy at least the minimum requirements established by this ordinance of this chapter, except for lots created for usage use by a public agency entity to the extent that the same public use may be justifiable under the powers of eminent domain. (Amended 9-9-92)~~  
The size, frontage and width of any lot of record existing on the effective date of this chapter shall not be reduced in dimension or area below the minimum requirements set forth herein of the zoning district in which the lot is located and section 4 of this chapter except for the purpose of meeting or exceeding standards set forth herein or as a the result of the dedication of land to public use to or the exercise of eminent domain by a public agency entity. Any lot created after the effective date of this ordinance chapter shall meet satisfy at least the minimum requirements established by this ordinance of this chapter, except for lots created for usage use by a public agency entity to the extent that the same public use may be justifiable under the powers of eminent domain. (Amended 9-9-92)

##### **Sec. 3.1 Definitions**

...

*Nonconforming lot:* The term “nonconforming lot” means a lawful lot of record existing on the effective date of the zoning regulations applicable to the district in which the lot is located, that does not comply with section 4 of this chapter and the minimum applicable size, frontage, width, building site or other lot requirements of that zoning district. (Added 6-14-00)

...

#### **Article II. Basic Regulations**

##### **Sec. 6.4 Nonconforming lots**

A nonconforming lot may continue, subject to the provisions, conditions and prohibitions set forth herein.

~~A. Physical changes to a nonconforming lot. A nonconforming lot may be changed as follows:~~

~~1. Area or width. The area or width, or both, of a nonconforming lot may be increased to make the lot less nonconforming.~~

~~2. Boundary line adjustments. The boundary of a nonconforming lot may be adjusted provided that one lot sharing the boundary to be adjusted is a conforming lot and the boundary line adjustment does not make the conforming lot nonconforming or the nonconforming lot more nonconforming.~~

~~3. Public dedication or eminent domain. The area of a nonconforming lot may be reduced by dedication for a public purpose or by the exercise of eminent domain.~~

BA. Uses allowed on a nonconforming lot. A nonconforming lot may be used as though it satisfies the zoning regulation that makes it nonconforming, provided that:

1. The use is either a nonconforming use or is a use that complies with the zoning regulations applicable to the district in which the lot is located; and

2. The zoning administrator determines that the lot may be occupied consistently with the public health, safety and general welfare.

~~C. Division, combination, or adjustment of boundary line of nonconforming lot authorized. A nonconforming lot may be divided, combined with any other lot, or have one or more of its boundary lines adjusted, provided:~~

~~1. The resulting lot or lots comply with the requirements applicable to the district in which the lot is located and all other applicable requirements of the Albemarle County Code; or~~

~~2. In the opinion of the zoning administrator, the resulting lot or lots more substantially conform to the requirements of section 4.0 (general regulations) of this chapter and the area and bulk regulations applicable to the district in which the lot is located, and comply with all other applicable requirements of the Albemarle County Code.~~

B. Subdivision that includes a nonconforming lot. A nonconforming lot may be part of a subdivision provided that all of the resulting lots comply with the requirements of the zoning district in which they are located and all other applicable requirements of the Albemarle County Code.

C. Combination of a nonconforming lot with another lot. A nonconforming lot may be combined with a conforming lot or a nonconforming lot provided the size, area or frontage of the resulting lot is increased to make it conforming or not more nonconforming.

D. Boundary line adjustment between a nonconforming lot and a conforming lot. One or more boundary lines between a nonconforming lot and a conforming lot may be adjusted provided:

1. The boundary line adjustment does not make the conforming lot nonconforming or the nonconforming lot more nonconforming; and

2. If the lots are in the rural areas zoning district, the boundary line adjustment does not result in an increase in the number of lots or dwelling units that could otherwise be established on each lot.

E. Boundary line adjustment between nonconforming lots. One or more boundary lines between two or more nonconforming lots may be adjusted provided:

1. The boundary line adjustment does not make either nonconforming lot more nonconforming; and

2. If the lots are in the rural areas zoning district, the boundary line adjustment does not result in an increase in the number of lots or dwelling units that could otherwise be established on each lot.

F. Subdivision, combination, or adjustment of boundary line of nonconforming lot used by country store. A nonconforming lot may be subdivided, combined with any other lot, or have one or more of its boundary lines adjusted provided: (i) the resulting lot or lots serve a country store, Class A or B; (ii) the subdivision, combination or boundary line adjustment is required to allow the country store use to meet the requirements of the Virginia Department of Health; (iii) the location of all structures on the resulting lot or lots will not become nonconforming or more nonconforming; (iv) the size of the resulting lot or lots will not become more nonconforming.

G. Change to nonconforming lot resulting from public dedication or eminent domain. The area of a nonconforming lot may be reduced by the dedication of land for public use or by the exercise of eminent domain.

DH. Setbacks applicable to a nonconforming lot. The current front, rear and side yard minimum setbacks applicable to the district in which the lot is located shall apply to a nonconforming lot; provided, that, if any such setback is thereafter reduced as a result of an amendment to the setbacks applicable to the district in which the lot is located, and is in effect when an existing structure is extended or enlarged, then that reduced setback shall apply.

EI. Effect of change of ownership. A change of the ownership or occupancy of a nonconforming lot shall not affect the status of the nonconforming lot.

(§§ 20-6.1.1, 6.1.2, 6.5.1, 6.5.2, 6.5.4, 12-10-80, 4-15-81, 9-21-88, 6-14-89, 9-9-92; § 18-6.4, Ord. 98-A(1), 8-5-98; Ord. 00-18(4), 6-14-00; Ord. 08-18(7), 11-12-08)

**State law reference** – Va. Code § 15.2-2307.

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of \_\_\_\_\_ to \_\_\_\_\_, as recorded below, at a regular meeting held on \_\_\_\_\_.

\_\_\_\_\_  
Clerk, Board of County Supervisors

|             | <u>Aye</u> | <u>Nay</u> |
|-------------|------------|------------|
| Mr. Boyd    | _____      | _____      |
| Mr. Dorrier | _____      | _____      |
| Ms. Mallek  | _____      | _____      |
| Mr. Rooker  | _____      | _____      |
| Mr. Slutzky | _____      | _____      |
| Ms. Thomas  | _____      | _____      |

**Work Sessions:**

**ZTA-2009-00001 Wind Turbines**

Adopt Resolution of Intent and review ordinance proposal prior to drafting an ordinance amendment for public hearing (Mark Graham)

Mr. Graham presented a PowerPoint presentation and summarized the executive summary. (See Executive Summary)

#### **BACKGROUND:**

The purpose of this report is for the Planning Commission to adopt a Resolution of Intent and to review the current ordinance proposal prior to a Planning Commission public hearing scheduled for November 17, 2009.

On May 6, 2009, the Board of Supervisors (Board) and Planning Commission held a joint work session to consider an ordinance proposal and provide direction on how to proceed. Staff was directed to draft an ordinance amendment, working in cooperation with Mr. Slutzky, Mr. Edgerton, and Ms. Joseph and to maintain the previously approved Community Development work program in scheduling this effort. Staff gratefully notes its appreciation for the help provided by Ms. Joseph, Mr. Edgerton, and Mr. Slutzky in preparing an ordinance proposal.

Based on the direction at the joint work session and subsequent guidance by the representatives of the Planning Commission and Board, staff has revised the previous April 2009 proposal. The revised October 2009 proposal is Attachment A.

Among the changes with this proposal are:

- A simplified administrative process that eliminates the need for a Special Use Permit associated with height. It was recognized that a modification of Supplemental Regulations would provide an opportunity for public vetting of any issues associated with modifying the height without the need for the complex and expensive process required for a Special Use Permit.
- Allowing small wind turbines in the Development Areas and Entrance Corridors as part of a Tier 1 use. It was recognized that the proposed setback requirement results in a much greater restriction on wind turbines than it would for other structures. That assured there is no increased impact on adjoining properties.
- Restricting the use of wind turbines within County recognized Historic Districts and Mountain Overlay. By placing this requirement in the Supplemental Regulations, this assures wind turbines in those areas would be allowed only if a waiver of the Supplemental Regulations is granted by the Planning Commission.

#### **RECOMMENDATION:**

1. Advise staff of any additional changes the Planning Commission wishes to see with an ordinance presented for public hearing.
2. Adopt the Resolution of Intent provided in Attachment B

### **Wind Turbine Outline October 6, 2009 Proposal**

#### **Definitions:**

**Small Wind Turbine** - A wind energy conversion system used for the generation of power to support an allowed activity on the property. This includes all components of the system such as the tower, guy wires, wiring, rotors and turbine blades, generators, and control systems. The small wind turbine may be connected to a public utility and sell power to that utility provided the power sold is not in excess of that typically used for the primary use on that property.

*This definition effectively restricts small wind turbines to an accessory use of the property. For those turbines that are an accessory to a single family residence or agricultural use, no site plan is required per 18-32.2 of the Zoning Ordinance. For other uses (e.g. power for a commercial greenhouse), there would*

*still be a site plan requirement to satisfy before a building permit for the small wind turbine could be issued.*

#### **Tier I**

A small wind turbine located on property within any zoning district except within a County recognized Historic District or within the Mountain Contour List as defined in the County's Comprehensive Plan.

*A Tier I system would be considered a "by right" use, subject to the conditions in the Supplementary Regulations of the Zoning Ordinance but administratively handled with minimal cost to applicants. These facilities are anticipated to result in very little or no impact to the community and would have minimal costs associated with County requirements.*

#### **Tier II**

A small wind turbine that does not qualify as a Tier I, requiring the Planning Commission to waive Supplemental Conditions for the use. This would include situations such as a system within a County recognized Historic District, reduced setbacks, or height above that allowed for buildings in that zoning district.

*This would require the Planning Commission waiving a condition of the Supplemental Regulations. The administrative cost for such a system would be considerably higher than a Tier I.*

#### **Supplemental Regulations for Small Wind Turbines**

Within Section 5 of the Zoning Ordinance (Supplementary Regulations), establish conditions for wind turbines. As a Supplementary Regulation, the Planning Commission may waive or modify these conditions, for a Tier II facility. This provides the simplest oversight for situations where project specific conditions may require special consideration. The following are the recommended conditions:

1. Small wind turbines are an allowed use within any zoning district, except within County recognized Historic District or the Mountain Overlay District.  
*This makes wind turbines a "by right" use within any zoning district and allows the Planning Commission to decide if the use is appropriately sited in the overlay district where the potential for conflict is higher.*
2. Require a minimum setback from property lines of the height of the structure, plus twenty feet. It is recommended this include a provision for an administrative waiver where the applicant has demonstrated to the satisfaction of the Agent and County Attorney that the adjoining property owner has agreed to restrict development within that part of their property that would be within this setback distance.  
*This allows a margin of safety for structure collapse and ice throws from turbines.*
3. Prohibit collocation of personal wireless service antenna.  
*This avoids situations where wind turbines might be constructed to circumvent wireless facility ordinance requirements rather than being primarily intended for generation of wind energy.*
4. Prohibit all lighting of the wind turbine and tower.  
*This restriction recognizes the dark skies provisions in the Comprehensive Plan.*
5. Prohibit wind turbines within the Entrance within the Mountain Contour List as defined by the Comprehensive Plan. *This assures oversight by the Planning Commission for visual impacts within the Entrance Corridors and mountains. Within the EC, the Planning Commission may also request input from the Architectural Review Board before considering a request.*

#### **Height Restrictions**

Under the Supplemental Conditions for small wind turbines, add a provision for small wind turbines to meet the height limits within the underlying zoning district. Thus, the Planning Commission could modify this requirement.

*Unlike previous proposals, this eliminates the need for a Special Use Permit, which greatly reduces the administrative burden for the County and the cost to the applicant while still assuring there is a process where exceptions are vetted in public.*

## **Administration**

A building permit is required prior to the County permitting construction of a small wind turbine. A site plan may be required before a building permit application is submitted per 18-32.2 of the Zoning Ordinance for those uses that are not exempted from the site plan requirements. . The following information must be provided with the building permit application.

1. A plat of the property that clearly shows the boundary lines, location of the proposed small wind turbine, and setbacks to the property line.
2. Plans that clearly show the total height of the proposed structure and satisfy all provisions of the Building Code.
3. A signed and notarized affidavit using a County form that demonstrates the small wind turbine will be used to support an allowed use of the property and assures the small wind turbine shall be removed if the supported use is ended.

### **Tier I -**

A Tier I small wind turbine is a "by right" use and will typically only require a building permit.

*Recognizing administrative costs can be a significant deterrent to use of small wind turbines, this provision attempts to keep that cost to a minimum.*

### **Tier II -**

A Tier II small wind turbine shall require Planning Commission approval of a waiver or modification of the conditions in the Supplemental Regulations prior to approval of a building permit or site plan. As part of approving a waiver or modification, the Planning Commission may establish reasonable conditions to assure the ordinance intent is maintained. If the commission denies an application, it shall identify which requirements were not satisfied and inform the applicant what needs to be done to satisfy each requirement.

*Recognizing site specific considerations may suggest a small wind turbine should be allowed, the Planning Commission can waive or modify the requirements as related to setbacks, zoning districts and overlay districts, collocation of antenna, lighting, and height. Depending on the submission requirements, the cost of this application may be a significant deterrent to applicants constructing small wind turbines.*

Mr. Graham noted that this is a follow up from the joint work session of the Planning Commission and Board of Supervisors held earlier this year. Staff has been working with Ms. Joseph, Mr. Edgerton and Mr. Slutzky on this since then. The purpose of this review is for the Planning Commission to adopt a Resolution of Intent and to review the current ordinance proposal prior to a Planning Commission public hearing scheduled for November 17, 2009. Staff has had one question since the staff report on whether an appeal could be made on one of these modification requests. The answer is yes it could be appealed by the applicant to the Board if the modification is denied by the Planning Commission.

Staff recommends approval of the resolution of intent noting that they plan to bring this back to the Planning Commission for a public hearing on November 17. If there is any other changes the Commission would like to see with this advertised ordinance staff will try to incorporate those as well.

Mr. Strucko invited questions for staff.

Mr. Edgerton asked on page 3 in the definition of small wind turbine if the last part of the first paragraph, "Provided that the power sold is not in excess of the typically used for the primary use of that property" was necessary. The current net metering system regulation coming down from the State actually says that. He was hoping that at some future date when Dominion Power is more inclined to be going towards renewable energy that regulation will be adjusted to allow and encourage private property owners to generate as much power as they can into the grid. Right now it is kind of a protection. So they have a regulation right now that will keep it that way regardless of whether it is a solar system or a wind system. He was wondering if they want to add that extra language in an ordinance because if the regulations in Richmond change then they would have to come back and adjust this later. He asked if there was some legal reason that has to be in there.

Mr. Kamptner replied no that there was none that he was aware of. He thought that the reason for this language is to assure that the scale of the wind turbine was appropriate to the primary use. They can probably develop some other language that will accomplish the same thing. That is to just assure that the scale is consistent, but to provide the flexibility that he was referring to.

Mr. Edgerton said if it was to try to keep the scale he felt the high limitation is going to do a rather dramatic job of doing that anyhow it being limited to the current height regulations in the underlying zoning district. But if they can leave that language out and achieve what they are trying to do somewhere else he would prefer to do it that way because this is so specific. Then they go back and look at last year's electric bill and limit them to what that is. Right now the explanation he has been given on the limitation is that it is a protection for the power company, which happens to be Dominion Power in Albemarle, but the power company under law has to credit the individual for electricity that is being generated into the grid from a renewable source. He thought that this clause in the current legislation protects them from having to credit the land owner with more than what had been done before. So it is a protection clause. He was hoping that this changes. There are a number of people working on changing this legislation in the General Assembly. But if they can leave it out of our ordinance and achieve the scale or issue that everybody is worried about some other way he felt it would be a healthier way to go about it.

Mr. Graham replied that Mr. Kamptner had it right. The intent was just to assure that this was not turning into a small commercial wind farm with someone putting up 30 or 40 for the purposes of making money by selling electricity.

Ms. Porterfield asked if there was a limitation on how many wind turbines can be placed on a piece of property.

Mr. Graham replied not as proposed. That was the important part of limiting the power that could be sold to no more than the use of that property. That was the intent so that it remains accessory to that use on the property.

Ms. Porterfield asked if it would be possible that somebody would not want to sell the power but would put more turbines on their property.

Mr. Graham replied absolutely. One of the things that they were trying to recognize is that the state of the art is changing so quickly and for example one of the things that is happening is people are putting many turbines along the edges of certain buildings. They may be a foot in diameter and may have 30 or 40 wind turbines setting on the parapet of the building and that is what generates their power. The question is raised in how they regulate the number and still not impact the state of the art as it is moving forward here.

Mr. Morris noted that many of those he just described are not propeller driven.

Mr. Graham agreed because there are egg beaters and all sorts of different shapes and sizes.



Ms. Porterfield pointed out that wind turbines would be allowed in the Entrance Corridor without any review.

Mr. Graham agreed that was the way it was being proposed right now. As proposed right now the wind turbines would have to meet the setback requirement as discussed.

Ms. Porterfield questioned wind turbines in the Entrance Corridor not having to meet other regulations.

Ms. Joseph noted that cell towers on commercial buildings and multi-family residence in the Entrance Corridor required review by the Architectural Review Board.

Mr. Graham summarized the concerns as follows:

- Leave the proposal for the EC District the way staff has presented it and PC can discuss it after receiving public input at the public hearing;
- Need to have a provision for removal of derelict or abandoned wind turbines;
- Regarding Tier II, staff needs to provide for a notification of adjacent property owners on modifications or waivers; and
- Regarding ridgelines, as alluded to by Mr. Kamptner, staff will need to more clearly define what those areas are.

Mr. Franco noted that he did not hear Mr. Edgerton's proposed modification in the list to relook at the language.

Mr. Edgerton agreed and noted that it was in regards to the scale issue and taking out the limitation on how much is being produced. He asked that this be encouraged. In discussion with Ms. Joseph they felt the fair way to do this would be to model it after the cell tower ordinance. But that is such an onerous thing that it could only happen with a huge commercial investment, which a private land owner that wanted to stipulate more use of renewal energy would not be able to afford to participate. That would in fact kill it. That is why they are where we are. He thought that the conversation going around amongst the Commission and the concerns expressed are certainly valid and he thought that they ought to be vetted in a public hearing. They need to hear if there are other concerns.

Ms. Porterfield suggested that additional thought be given to regulations for wind turbines in the Entrance Corridor.

**Motion:** Mr. Edgerton moved and Mr. Franco seconded for adoption of the resolution of intent for ZTA-2009-00001 Wind Turbines.

The motion passed by a vote of 7:0.

Mr. Strucko said that the resolution of intent for ZTA-2009-00001 Wind Turbines has passed. Staff would proceed to set the public hearing and incorporating the Commission's and public's comments and suggestions to the draft.

## **RESOLUTION OF INTENT**

**WHEREAS**, wind turbines have been determined to not be accessory to primary commercial, industrial and residential uses in Albemarle County because, historically, they have not been customarily incidental to those primary uses; and

**WHEREAS**, the County of Albemarle desires to promote renewable energy sources such as wind turbines; and

**WHEREAS**, it is desired to amend the Albemarle County Zoning Ordinance to permit wind turbines that provide energy for the primary use or uses to which they are accessory in various zoning districts under appropriate regulations.

**NOW, THEREFORE, BE IT RESOLVED THAT** for purposes of public necessity, convenience, general welfare and good zoning practices, the Planning Commission hereby adopts a resolution of intent to add to and amend the appropriate sections of the Albemarle County Zoning Ordinance to achieve the purposes described herein; and

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

\* \* \* \* \*

**The Planning Commission took a break at 7:33 p.m. and the meeting reconvened at 7:40 p.m.**

**Work Sessions:**

**ZTA-2009-00017 Zoning Fees**

Review Board Direction on Zoning Ordinance Fees. (Mark Graham)

Mr. Graham presented a PowerPoint presentation and summarized the executive summary. (See Executive Summary)

The purpose of this work session is to review the County Board of Supervisor's (Board) direction on staff recommended changes to Zoning Ordinance ("Ordinance") fees prior to a Planning Commission public hearing. Proposed changes to fees in the Zoning Ordinance were discussed with the Board at an August 5<sup>th</sup> work session and a Resolution of Intent to amend these fees was adopted by the Board on September 2<sup>nd</sup>. The August 5<sup>th</sup> report to the Board and Resolution of Intent are attached to the executive summary.

**STRATEGIC PLAN:**

Goal 5: Fund the County's Future Needs.

**DISCUSSION:**

At the August 5<sup>th</sup> Board work session, staff provided several attachments to help understand the issues with the fees. Those include:

- Attachment B provides a comparison of the current fees and County costs associated with each item. As noted, many of the fees represent a very small percentage of the costs.
- Attachment C provides a comparison of staff's proposed fees and the Fee Study's recommendation. This also includes new fees recommended by the Fee Study or as a result of staff's analysis.
- Attachment D provides a comparison of current fees, staff's proposed fees, and fees imposed by several other localities for certain services. For consistency, staff has used the same localities as previously used when Subdivision Ordinance fees were considered.
- Attachment E provides an estimate of revenues generated from current fees.
- Attachment F provides an estimate of revenues generated from staff's proposed fees.

As noted at the August 5<sup>th</sup> work session, there were several fees considerations where the proposed fees differed from those initially recommended in the fee study. Those included:

1. Special Use Permits (SPs) - In considering SPs, staff determined it was appropriate to simplify the fee structure into two groups. Minor SPs, which are those uses listed under a.1. and Major SPs, which are all other special permit uses listed under a.2. In addition, staff determined it was

appropriate to recognize that many SPs do not require numerous reviews. As such, staff recommends a base fee, which includes the submission and resubmission to address comments, then a separate fee for those complex applications that require multiple resubmissions. Attachment D shows these fees would be lower in some circumstances and higher in others. Overall, staff believes they are comparable.

2. Zoning Map Amendments (ZMAs) – Staff used a similar approach for ZMAs to that for SPs, recognizing that both larger and more complex applications will involve a higher cost to the County. Attachment D shows the very wide range of fees for these applications. In considering these fees, staff determined that it would be more appropriate to charge on a per review basis rather than trying to estimate the average number of reviews and charging everyone the same. Applicants who view a submittal as a negotiation point can still make a number of submittals, but the County will recover the costs of the additional reviews necessitated by this approach.
3. Appeals – Under the Board of Zoning Appeals and Final Site Plan fees, staff has listed fees associated with appeals. Staff is recommending a much lower fee recovery than proposed in the Fee Study. After consulting with the County Attorney, staff believes there may be due process issues associated with these fees and those fees should reflect the administrative cost of processing the application, but not any of the costs associated with reviewing or preparing staff reports for those applications. Costs associated with required advertising would be handled separately as a new fee.
4. Notices and Advertisements – Staff has included new fees for both required notifications and advertisements. The recommended fee for notifications is identical to that recently adopted in the Subdivision Ordinance. For required legal advertisements, staff is recommending the County recover the actual cost of advertising the application. While those advertisement costs can vary a little, they appear to average around \$200-\$250 each time the advertisement runs in the newspaper. As such, if an application requires two notices for the Planning Commission public hearing and two for the Board of Supervisors public hearing, the cost of advertising is in the range of \$800 to \$1,000. If an applicant chooses to request deferral after an advertisement has run, the applicant would be responsible for the additional advertising cost.
5. Architectural Review Board - These are also new fees proposed by staff. With respect to revisions to a Certificate of Appropriateness or a Certificate of Appropriateness required for a building permit, staff concurs with the Fees Study's recommended fee. With respect to Site Plan reviews, staff has simplified the fee structure to include only reviews requested by an applicant or required for a Certificate of Occupancy. Staff's recommended fee is a compilation of several fees in the Fee Study, but lower than the Study's recommendation. The staff-recommended fee reflects staff's assessment of costs for these reviews and recently proposed changes that staff believes will lower review costs.

#### **BUDGET IMPACTS:**

Budget impacts were discussed in the August 5<sup>th</sup> Executive Summary. No changes or additional information are included at this time.

#### **RECOMMENDATIONS:**

The purpose of this work session is to review the Board's direction in advance of a proposed November 10, 2009 public hearing. The Board was content with the proposal and asked that it be brought forward in a public hearing.

Mr. Strucko invited questions for staff.

Ms. Porterfield asked what percentage of costs staff estimates will be recovered across the board.

Mr. Graham replied that as an aggregate it would be around 35 percent of the costs. In looking at comparables they found that other localities were not able to recover a significant part of the costs for zoning fees. The one exception was Stafford County who operates as an enterprise. The proposal is scheduled for public hearing on November 10 by the Planning Commission.

Ms. Joseph said that if people are abiding by the rules that the community sets up does the community have some responsibility in helping to pay for the review of it because they want their community to look a certain way.

Ms. Porterfield supported the applicant paying more than 75 percent, but at least 50 percent.

Mr. Graham noted that what was before the Commission was what he brought before the Board in August and they did not make any changes on it.

Mr. Morris said that they have two different sets of figures.

Mr. Graham replied that was correct. As he noted with zoning fees a lot of localities are all over the map, but there seems to be a lower level of cost recovery than with other ordinances.

Ms. Porterfield said that government can't pay it all.

Mr. Strucko supported what the Commission recommended initially on this for the 75 percent and then the Commission could lower it.

Mr. Graham noted that they could recommend higher fees in the advertisement and the Board could adopt a lower amount, but could not go up.

Mr. Kamptner noted that one of the reasons the Board agreed to the 35 percent is that they are recognizing that a lot of the things the County requires through the public process has a public benefit as well. It is not just the developer's benefit to get the approval, but the public's benefit that comes about through architectural review, the development of wireless regulations and things like that. So that was kind of the counter balance to a different type of fee structure.

Mr. Strucko noted that there would be some discussion about this issue at the public hearing.

Mr. Graham noted that this work session was to review what happened at the Board meeting.

Mr. Edgerton noted that the Commission agrees that the fees need to be raised and comparable to other localities. He asked that the Commission go on record saying that they don't think the fees are high enough. In order to provide more support for staff he felt that the fees should be increased.

Mr. Loach said that from what he has seen the public within Albemarle County feels the development should do more to pay for itself.

Mr. Franco noted that they have discussed limiting the review so to keep that cost low. He asked what level of review they want to associate with requests. He was necessarily pushed to see a higher level come forward.

Mr. Graham noted that the Board did not specify a percentage.

Mr. Strucko said that this would be a debate at the public hearing.

Ms. Porterfield asked if it has to be advertised for a specific percentage.

Mr. Kamptner said based on what he had heard when they drafted the advertisement they will set the possible fees high enough so that the Commission has the flexibility when they make their recommendation.

Mr. Strucko asked if they have to determine those levels tonight.

Mr. Kamptner replied no. When the public hearing is held they will have to determine those levels. When staff prepares the advertisement it will not be based simply on the ordinance that he has been working on. Some flexibility will be built into it to go up or down.

Ms. Porterfield noted that last time they set it at 75 percent so they would have a lot of wiggle room. She suggested that they set it at 75 percent.

**Motion:** Ms. Porterfield moved and Mr. Edgerton seconded to draft the advertisement for the fees to be 75 percent.

Mr. Franco said that they were not making a motion. Staff was going to move forward to draft an ordinance that will be going through for public hearing based on this work session.

Ms. Porterfield noted that it has to be advertised.

Mr. Strucko asked when it would be advertised.

Mr. Kamptner replied that the advertisement for the Planning Commission meeting will be going out next week. The content would identify the fees and probably list an amount not to exceed. It will be pretty high and probably 75 to 100 percent.

Mr. Strucko asked if the Commission could determine what the advertisement level would be this evening through a motion.

Mr. Kamptner acknowledged that they need to build flexibility into the advertisement.

Mr. Strucko asked for the sake of clarification if the Commission feels comfortable with at least a 75 percent level. The Commission wants to make sure that the fees are high enough.

Mr. Graham noted that staff could come up with fees that are comparable to recovering 75 percent of cost.

Ms. Porterfield noted that there was a motion on the floor and asked if they could make it official.

Mr. Strucko said that they could proceed. He asked for a vote. It has been moved and seconded that the advertised rate be at least recovering 75 percent of staff processing cost. He asked for a roll call vote.

The motion passed by a vote of 4:3. (Mr. Franco, Mr. Morris and Ms. Joseph voted nay.)

Mr. Strucko noted that he had not asked for public comment. Therefore, he invited public comment. There being none, he noted that staff would proceed to the public hearing incorporating the Commission's comments.

#### **Old Business:**

Mr. Strucko asked if there was any old business.

Ms. Porterfield thanked the Commission for handling the Luck Stone issue.

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

#### **New Business:**

Mr. Strucko asked if there was any new business.

The Commission asked staff to email the Resolution of Intent regarding the Route 29 Corridor Study if passed by the Board in order that the Commission can consider passing a resolution of intent at next week's meeting.

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

**Adjournment:**

With no further items, the meeting adjourned at 8:18 p.m. to the Tuesday, October 13, 2009 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

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